

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

Crl.Rev.Pet.No. 512 of 2005 ()

AGAINST THE JUDGMENT IN Crl.APPEAL 444/2001 of ADDL.DISTRICT AND
SESSIONS FAST TRACK COURT (ADHOC-1), KOZHIKODE DATED 29-11-2004

AGAINST THE JUDGMENT IN CC 126/1998 of JUDICIAL MAGISTRATE OF FIRST
CLASS-II, PERAMBRA DATED 23-07-2001

REVISION PETITIONER(S)/APPELLANTS 1 TO 3, 5 & 6/
ACCUSED 1 TO 3, 5 & 6::

1. SURESH, S/O. THOMBIRA.
KOZHAKKOTTU MEETHAL, CHERUVANNUR AMSOM OF
KOYILANDY TALUK.
2. THOMBIRA, S/O. VERAN, KOZHAKKOTTU MEETHAL
CHERUVANNUR AMSOM OF KOYILANDY TALUK.
3. ASHOKAN, S/O. KANNAN,
POOVULLAPARAMBIL, CHERUVANNUR AMSOM.
4. SURESH, S/O. KANARAN NAIR,
PARAYULLATHIL, CHERUVANNUR AMSOM DESOM.
5. VIJAYAN, S/O. KANARAN PANICKER,
THEKKE PAZHAMADATHILTHAZHEKUNI, CHERUVANNUR AMSOM
DESOM.

BY ADVS. SRI. P. K. SURESH KUMAR
SRI. K. P. SUDHEER

RESPONDENT(S)/RESPONDENT/COMPLAINANT::

SUB INSPECTOR OF POLICE, MEPPAYYUR,
KOZHIKODE REP. BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI 31.

ADDL.R2: N.K. DASAN, S/O. NARAYANAN, AGED 45 YEARS,
NEELADANKANDY MEETHAL, CHERUVANNUR AMSOM DESOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT,
PIN - 673 524. (IMPLEADED AS PER ORDER IN
CRL.M.A.No.4994/2015 DTD. 19.11.2015)

R1 BY PUBLIC PROSECUTOR SRI. N. SURESH
ADDL.R2: ARUN MATHEW VADAKKAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 19-11-2015, ALONG WITH CRL.RP. 600/2005, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:

P.D. RAJAN, J.

Crl.R.P.Nos.512/2005 & 600/2005

Dated this the 19th day of November, 2015

ORDER

Revision petitioners were accused in C.C.No.126/1998 of Judicial Magistrate of First Class-II, Perambra, for having committed offence u/s.143, 147,148, 324 r/w.149 IPC. The charge against them was that on 27.6.1997 at about 7 p.m., while PW1 was proceeding through canal road, the accused formed themselves into an unlawful assembly due to political enmity and in furtherance of their common intention, committed rioting and thereafter, assaulted with iron rod, as a result, PW1 sustained serious injuries, immediately he was removed to hospital. On the basis of information, Meppayur Police registered Crime No.59/1997 and after completing

investigation, laid charge before Judicial First Class Magistrate Court-II, Perambra.

2. Prosecution examined PW1 to PW9 and marked Exts.P1 to P4. The trial Court convicted them u/s.143, 147, 148, 324 r/w.149 IPC and acquitted u/s.294 (b) IPC. Against that, they preferred Crl.Appeal No.444/2001 before Additional District and Sessions Judge, Fast Track (Adhoc-I), Kozhikode, which was dismissed by the appellate Court. Being aggrieved by that, they preferred these two revision petitions.

3. When the matter came up for hearing, the learned counsel appearing for the revision petitioners contended that the dispute between the revision petitioners and the injured have been compromised due to intervention of mediators and they filed Crl.M.A.No.4995/2015 u/s.320 Cr.P.C. I have perused the

Crl.M.A., in which both parties and their counsel signed. Both parties can compound the case in the revisional stage u/s.320(b) of the Code of Criminal Procedure (hereinafter referred to as the 'Code') according to the settlement. When offence is compounded, it has the effect of an acquittal as per Section 320(8) of the Code. They filed Crl.M.A.No.4994/2015 for impleading the injured as additional respondent, accordingly, the injured is impleaded as additional 2nd respondent. They also filed Crl.M.A.No. 4995/2015.

4. The offences compoundable under the Indian Penal Code are specified in the first two columns of Section 320 of Code of Criminal Procedure 1973. The offence u/s.324 IPC at the time of occurrence was compoundable, but after Amendment by Act 5 of 2009, it is non-compoundable. The offence u/ss.143 and 148

r/w.147 are also non-compoundable offences. But in view of the decision of the Apex Court in Gyan Singh v. State of Punjab [2012 (4) KLT 108 (SC)], High Court can invoke inherent powers u/s.482 Cr.P.C. to quash the criminal proceedings, when the matter is compromised by both parties, including non-compoundable offences. Apex Court in **Gian Singh V. State of Punjab** (2012(4) KLT 108) was held as follows:-

"The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or F.I.R or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under S.320 of the Code. Inherent power is of wide plentitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint of F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court

must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc, cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc, or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal

proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

Hence, on the basis of compromise reached between the parties, no further grievance subsists, therefore, this court permits parties to compound the case. These revision petitioners are disposed of as compromised.

In the result, the conviction u/s.143, 147, 148 and 324 r/w.149 IPC of the Judicial Magistrate of First Class-II, Perambra is quashed by invoking the inherent power u/s.482 Cr.P.C. and the accused are acquitted and set at liberty and the revision petitions are disposed of as compromised.

P.D. RAJAN, JUDGE.

acd

