

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

Cr1.MC.No. 5767 of 2015

IN SC 238/2015 OF THE ADDL. SESSIONS COURT I, KOTTAYAM

PETITIONER/ACCUSED:

SIBY MATHEW, AGED 47 YEARS,
S/O.M.P.MATHEW, MULACKAL HOUSE,
VAZHAPPALLY KIZHAKKU KARA,
VAZHAPPALLY KIZHAKKU VILLAGE.

BY ADVS.SRI.T.P.PRADEEP
SRI.P.K.SATHEES KUMAR

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.
2. SMITHA V., AGED 38 YEARS
W/O.UNNIKRISHNAN, BODHI HOUSE, THOTTAPPADY JN.
KUNNAMTHANAM, MALLAPPALLY - 689 585.
3. UNNIKRISHNAN,
S/O.RAMAKRISHNAN NAIR, BODHI HOUSE,
THOTTAPPADY JN.
KUNNAMTHANAM, MALLAPPALLY - 689 585.

R2,3 BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR)
R1 BY PUBLIC PROSECUTOR SMT.SHEEBA M.T

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
02-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 5767 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A. CERTIFIED COPY OF THE CHARGE SHEET IN
S.C.NO.238/2015 ON THE FILE OF THE ADDITIONAL SESSIONS COURT -
I, KOTTAYAM.

ANNEXURE B. COPY OF THE AFFIDAVIT OF THE 2ND RESPONDENT.

ANNEXURE C. COPY OF THE AFFIDAVIT OF THE 3RD RESPONDENT.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

Crl.M.C No.5767 of 2015

Dated this the 2nd day of September, 2015

O R D E R

The petitioner herein is the sole accused in S.C No.238/2015 of the Additional Sessions Court I, Kottayam. He seeks orders quashing the prosecution on the ground of amicable settlement of the whole dispute between him and the de facto complainant. Crime in this case was registered under Sections 377 and 506(i) of the Indian Penal Code and Section 11(1) r/w 12 of the Protection of Children from Sexual Offences Act on the complaint of one Smitha who is the 2nd respondent in this proceeding brought under Section 482 of the Code of Criminal Procedure. She has filed affidavit to the effect that she has settled the whole dispute with the accused, and she has no grievance or complaint now. The victim of offence is the minor son of the complainant, aged 14 years.

2. The complainant's affidavit shows that she and her husband decided to settle the issue in the best interest of the child. Though the offence of sexual harassment is revealed by

the statement given by the victim, it does not in fact reveal the offence under Section 377 IPC against the child. The complainant and her husband apprehend that if the child is exposed to a trial process in court, it will cause embarrassment to him and it may even affect his studies. The complainant appeared before me with the victim and explained why the matter stands settled. I am well satisfied, on interacting with the complainant and the child, that the complainant and her husband decided to settle the issue in the best interest of child, and that if the child is exposed to a trial process, it will definitely affect his studies.

3. In so many decisions, the Hon'ble Supreme Court has held that even in cases involving non-compoundable offences, the High Court can quash the prosecution in pending proceedings, if the parties have really settled the whole dispute amicably out of court, and continuance of prosecution will not serve any purpose in such a circumstance of amicable settlement. Here, I find a real and genuine case of settlement between the parties. This is not a case involving any public interest or public issue. The parties have come to terms amicably on the intervention of persons acceptable to both sides. In such

a situation, continuance of the prosecution will not serve any purpose other than wasting the precious time of the court. No doubt, nobody will support the prosecution in such a situation, if the case goes to trial.

In the result, this petition is allowed. The prosecution against the petitioner herein in S.C No.238/2015 of the Additional Sessions Court I, Kottayam will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioner will stand released from prosecution, and the bail bond, if any, executed by him will stand discharged.

**P.UBAID
JUDGE**

ab