

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

Crl.Rev.Pet.No. 1156 of 2005 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO.149/2001 of ADDL.DISTRICT &
SESSIONS (ADHOC)FAST TRACK COURT-II, PATHANAMTHITTA DATED 28-02-2005

AGAINST THE JUDGMENT IN CC 190/1998 of JUDICIAL FIRST CLASS
MAGISTRATE COURT,RANNI DATED 29-09-2001

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

THOMAS,S/O. VARKEY.
ADICHILAMACKAL, KUNNAM, KOLLAMULA.

BY ADV. SRI.C.C.THOMAS (SR.)

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTED
SUB INSPECTOR OF POLICE, VECHOOCHIRA
PATHANAMTHITTA DISTRICT REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 19-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.1156 of 2005

Dated this the 19th day of October, 2015

ORDER

The revision petitioner, who is the appellant in Crl.Appeal No.149/2001 of Additional District and Sessions Judge (Adhoc) Fast Track Court-II, Pathanamthitta, challenges the judgment of conviction u/s.324, 326, 354 IPC. He was the accused in C.C.No.190/1998 of Judicial First Class Magistrate, Ranny for offence punishable u/s./447, 324, 326 and 354 IPC, he was convicted and sentenced to undergo rigorous imprisonment for one year u/s.324 IPC, rigorous imprisonment for one year u/s.354 IPC, rigorous imprisonment for three years and to pay fine of ₹5,000/- u/s.326 IPC, in default of payment of fine, simple imprisonment for three months. Against that, he preferred

the above appeal, which was dismissed by the appellate Court. Being aggrieved by that, the accused preferred this revision petition.

2. The prosecution allegation against the revision petitioner is that on 1.1.1998 at 8 a.m., the accused committed criminal trespass in the residential compound of PW1 and voluntarily caused hurt to her by caught hold of her hair and beat with the hands of a tapping knife on her back and pulled her down, thereafter he intimidated her to fear of death and pelted stone to her, as a result, she sustained injury on her right eye and also sustained a fracture on the bone and lost the sight of her right eye. On the basis of information, Vechoochira Police registered Crime No.10/98 and after completing investigation, filed a final report in the Judicial First Class Magistrate, Ranny.

3. To prove the offence, the prosecution examined

PW1 to PW9 and marked Exts.P1 to P5. The incriminating circumstances brought out in evidence were denied by the accused, while questioning him. He examined DW1 and marked Exts.D1 to D3. The trial Court, after analysing the evidence, convicted the accused.

4. When the matter came up for hearing, the learned counsel appearing for the revision petitioner submitted that they have settled the matter out of Court and filed Crl.M.A.No.172/2008 u/s.320 and 482 Cr.P.C. The revision petitioner submitted that at the time of settlement, the revision petitioner gave ₹1 lakh to PW1.

5. It is true that the offences are 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, including

non-compoundable offences, when the matter is settled by the parties. Apex Court in **Gian Singh V. State of Punjab** (2012(4) KLT 108) 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, offence u/s.447, 354 IPC are compoundable according to the Table of 320(1) (2) Cr.P.C. When an offence is compounded by the parties and no further grievance subsists, this court can permit parties to compound the case. The offence u/s.324 is non-compoundable offence after Amendment by Act 5 of 2009. S.326 IPC is also non-compoundable.

6. Today, both parties are present. I have gone through Crl.M.A.No.172/2008. On enquiry she stated that she lost the sight of one eye and the amount given by the accused is meagre one. I am satisfied with the facts stated by the victim. The revision petitioner is residing at Erumeli, who is now aged 68 years and prays to set aside the findings of the trial Court by invoking the revisional jurisdiction. Both parties have settled the matter.

However, in view of the decision in Suresh and another v. State of Haryana [(2015) 2 SCC 227], the victim is entitled to get compensation and rehabilitation. The object and purpose of Section 357A Cr.P.C. is to enable the court to direct the State to pay compensation to the victim where the compensation under Section 357 Cr.P.C. is not adequate or where the case ended in acquittal or discharge and the victim is required to be rehabilitated. In view of the above decision, I am bound to order some compensation amount to the victim invoking inherent jurisdiction since the victim lost her eye sight. The revision petitioner outraged her modesty and she sustained other injuries in the assault.

7. After settlement and quashing the conviction, there is no provision for giving any compensation for any loss or injury whether physical or pecuniary. Money will not compensate the loss of eye sight and her reputation.

In Mary Angel v. State of Tamil Nadu [1999 SCC (Cri) IL 96

Apex Court held that 482 Cr.P.C. could be invoked to award cost. Accepting the above guidelines of the Apex Court, while invoking inherent powers u/s.482 Cr.P.C. to quash the criminal proceedings, this Court has power to make such orders as may be necessary to give effect to any order under this Code. Compensation can be awarded by this Court while compounding the offence invoking S.482 Cr.P.C.

8. In the circumstances, the conviction and sentence for offence u/s.324 and 326 IPC in C.C.No.190/1998 are quashed by invoking S.482 Cr.P.C., according to the following conditions:

1) The revision petitioner is directed to appear before the Judicial First Class Magistrate, Ranny on 7.12.2015 and shall pay additional ₹2,00,000/- (Rupees two lakh only) as compensation u/s.482 Cr.P.C. for the loss

of sight, outraging modesty and fracture sustained. If the amount is deposited, it shall be disbursed to the victim.

(2) If this amount is not paid within the stipulated time, the revision petitioner has to undergo the sentence passed by the trial Court and the order u/s.482 Cr.P.C. will be treated as cancelled.

Post on 15.12.2015 for reporting compliance.

P.D. RAJAN, JUDGE.

acd

