

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 2654 of 2006 ()

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 273/2004 of ADDITIONAL
SESSIONS JUDGE (ADHOC) FAST TRACK COURT NO.II, MANJERI
DATED 26-04-2006

AGAINST THE JUDGMENT IN CC 162/2002 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-II, PERINTHALMANNA DATED 27.04.2004

REVISION PETITIONER(S)/APPELLANT/2ND ACCUSED::

MUHAMMED SHERIEF @ BABU,
S/O. UNEEN, MADATHAD HOUSE, VETTATHUR AMSOM
PERINTHALMANNA TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENT(S)/DEFACTO COMPLAINANT/STATE::

- 1. THE SUB INSPECTOR OF POLICE,
MELATTUR POLICE STATION, MELATTUR, MALAPPURAM.
2. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

Addl.R3.MYMOONA
W/O T.K.ABDURAHIMAN, EDAYATTUR P.O., MELATTUR (VIA)
MALAPPURAM DISTRICT.

Addl.R4. T.K.ABDURAHIMAN
S/O.THODUKUZH I KUNNUMMAL MUHAMMED HAJI
EDAYATTUR P.O., MELATTUR (VIA),
MALAPPURAM DISTRICT.

ADDL.R3 AND R4 ARE IMPEADED AS PER ORDER DATED
09.07.2015 IN CRL.MA 3713/15 IN CRL.R.P.2654/2006.

ADDL. BY ADV. SRI.BABU S. NAIR
ADDL. BY ADV. SRI.K.RAKESH
BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 09-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

Crl.R.P.No.2654 of 2006

Dated this the 9th day of December, 2015

ORDER

The revision petitioner, who is the appellant in Crl.Appeal No.273/2004 on the file of Sessions Judge, Manjeri, challenges the concurrent conviction u/s.452, 324 and 326 r/w.34 IPC. He is the 2nd accused in C.C.No.162/2002 of Judicial First Class Magistrate-II, Perinthalmanna for offence u/s.452 , 324, 326 r/w.34 IPC. The charge is that on 1.3.2002 at about 8.30 p.m., the accused in furtherance of their common intention trespassed into the kitchen of PW1 and PW4 and assaulted them with dangerous weapon like knife and sword and thereby committed the offence. During trial, prosecution examined PW1 to PW10 and marked Exts.P1 to P9 in evidence.

The material objects MO1 to MO3 were also marked in the trial Court. Exts.D1 to D6 were marked in support of the defence evidence. The trial Court convicted the accused, against that, the 2nd accused preferred criminal appeal 273/2004, which was dismissed by the appellate Court. Being aggrieved by that, he preferred this revision petition.

2. When the matter came up for hearing, the learned counsel appearing for the revision petitioner contended that the accused and the injured are close relatives and the matter has been amicably settled out of Court between the parties through intervention of mediators and they have filed Crl.M.A.No.6370/2015 u/s. 320 and 482 Cr.P.C. I have perused the Crl.M.A.6370/2015, in which both parties and both counsel were signed. Today, the revision petitioner and the

injured are present before this Court. The learned Public Prosecutor identified the injured and he has no objection in recording the compromise.

3. The offences punishable under the Sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table provided u/s.320 of the Code of Criminal Procedure. The offences u/s.452, 326 and 324 IPC are non-compoundable offences (S.324 after amendment). Since the offences are non-compoundable offences, the learned counsel for the revision petitioners relied on the decision of the Apex Court in Gyan Singh v. State of Punjab [2012 (4) KLT 108 (SC)]. He also relied on the decisions in Narinder Singh & others v. State of Punjab and another [2014 (2) KLJ 252], Madhu Limaye v. The State of Maharashtra

[(1977) 4 SCC 551], Bhajan Lal v. L. Muniswamy [(1977) 2 SCC 699] and B.S. Joshi and others v. State of Haryana & Anr. [2003 (2) KLT 1062 (SC)] and urged that certain non-compoundable offence can be compounded, when parties are settling the dispute in the interest of justice. Apex Court also considered the High Court's power u/s.482 Cr.P.C. to quash the criminal proceedings or allow the compounding of the offence in cases which have been specified as non-compoundable offence under the provisions of S.320 of the Code.

4. Apex Court in Gyan Singh's case (supra) laid down the following guidelines:

"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-dominatingly 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."

I have gone through the nature of the injury sustained to PW1 and PW4. PW1 sustained a cut injury on her left wrist and PW4 sustained wound over left thigh and over scalp with fracture mandible left. There is no injury to the vital part of the body.

5. It is clear from Crl.M.A.No.6370/2015 that if

the settlement is not accepted and the criminal proceedings against the accused is not quashed, it will affect the peaceful life of both parties, since they are relatives. When parties are settling the dispute and no further grievance subsists, it is fair to permit them to compound the offences, including non-compoundable offence. Considering the provisions of S.320 of the Code of Criminal Procedure, following guidelines were issued by the Apex Court in **Giansingh's case** (supra) and in such situation, this Court can invoke the inherent power u/s.482 Cr.P.C. to quash the criminal proceedings in order to secure the ends of justice and to prevent the abuse of process of law. The injured have received sufficient amount as compensation and no further grievance subsists. If that be the position, if I am ignoring the settlement and compromise between the accused and the injured and

proceed with the matter, it will be an abuse of process of the law. In the light of the statement made by both parties, Crl.M.A.No.6370/2015 is allowed

Accordingly, in view of the composition of offences, the conviction and sentence passed by the trial Court in C.C.No.162/2002 of Judicial First Class Magistrate-II, Perinthalmanna u/s.452, 324, 326 r/w.34 IPC are quashed by invoking S.482 Cr.P.C. Accordingly, the revision petitioner is acquitted and set at liberty.

Crl.R.P. is allowed as above.

P.D. RAJAN, JUDGE.

acd

