

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

Crl.MC.No. 7381 of 2015 ()

CRIME NO. 412/2015 OF MELATTUR POLICE STATION , MALAPPURAM

PETITIONER(S)/ACCUSED:

N ABOOBACKER, AGED 64 YEARS
S/O.UNNEENKUTTY HAJI, NANNATTU HOUSE
VELLIYANCHERY.P.O, MELATTOOR, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

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1. THE STATE OF KERALA,
REPRESENTD BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682031.
 2. THE SUB INSPECTOR OF POLICE,
MELATTOOR POLICE STATION, MALAPPURAM DISTRICT
PIN-679326.
 3. BASHEER,
S/O.MOIDEEN, ARAKKAL HOUSE, VELLIYANCHERY
MELATTOOR, MALAPPURAM DISTRICT, PIN-679326.

R3 BY ADV. SRI.P.A.RAJESH
R1 & R2 BY PUBLIC PROSECUTOR SMT.SHEEBA M.T.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
02-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 7381 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS:

ANNEXURE A TRUE COPY OF THE F.I.R AND COMPLAINT IN CRIME NO.412/2015
OF THE MELATTOOR POLICE STATION DATED 24-6-2015

ANNEXURE-B TRUE COPY OF THE AFFIDAVIT SWORN TO BY THE 3RD
RESPONDENT DATED 25-6-2015

ANNEXURE-C TRUE COPY OF THE APPLICATION SUBMITTED BY THE 3RD
RESPONDENT BEFORE THE 2ND RESPONDENT DATED 25-6-2015.

RESPONDENT(S)' EXHIBITS:

/TRUE COPY/

P.A TO JUDGE

P. UBAID, J.

Crl.M.C.No.7381 of 2015

Dated this the 2nd day of December, 2015

O R D E R

The petitioner herein seeks orders quashing the FIR and further proceedings in Crime No.412/2015 of the Melattoor Police Station, registered under Section 377 IPC and Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). He seeks orders on the ground of amicable settlement of the whole dispute out of court. The 3rd respondent herein is the defacto complainant, who made the complaint alleging sexual assault on his son aged ten years. He has filed affidavit to the effect that the whole dispute stands settled out of court, and he has no grievance or complaint now. As directed by the court, the learned Public Prosecutor produced the copy of the statement given by the victim to the police, for perusal. Annexure-C is the copy of the representation made by the 3rd respondent before the police, requesting the police to close the proceeding on the ground that he happened to give complaint on some misapprehension. The statement given by the victim to the

police shows that nothing as alleged in the FIR had happened. Even otherwise, I find that the complaint is suspicious. Annexure-A5 complaint does not show how exactly the boy was sexually assaulted. The complaint also does not show how the complainant got such an information regarding such an offence. Any way, the whole dispute now stands resolved forever. Immediately after the complaint, the 3rd respondent approached the police and made a request to close the proceeding. The offence alleged being serious, the police could not have closed the FIR as requested by the party. On a perusal of the materials, I find that continuance of the proceeding will not serve any purpose in the reported situation of the amicable settlement.

2. In so many decisions, the Honourable Supreme Court has held that even in cases involving non-compoundable offences, the High Court can quash the prosecution; be it at the crime stage, or at the trial stage, or even at the appellate or revision stage, if the parties have settled the whole dispute out of court, and continuance of prosecution will not serve any purpose. Here, I find that nobody will support the prosecution, if it goes to trial. The defacto complainant has no grievance or complaint

now, and his affidavit shows that he happened to make the complaint on some misapprehension. The statement given by the victim shows that no sort of assault was made on him by the petitioner herein; physically or sexually. The complaint does not show how exactly the alleged assault was made.

In the result, this petition is allowed. The FIR and further proceeding in Crime No.412/2015 of the Melattoor Police Station will stand quashed under Section 482 Cr.P.C.

Sd/-

P. UBAID, JUDGE

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// True Copy //

P.A. to Judge