

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

CrI.MC.No. 7941 of 2015 ()

CC 3348/2015 of J.M.F.C.-II,THRISSUR
CRIME NO. 1040/2015 OF NEDUPUZZHA POLICE STATION , THRISSUR

PETITIONER(S)/ACCUSED:

VEERESHKUMAR, AGED 28 YEARS,
S/O.RAJENDRA SINGH, VIL NAGAR P.O.
SAHAY,BEECHPURI DISTRICT, AGRA STATE.

BY ADV. SRI.THOMAS J.ANAKKALLUNKAL

RESPONDENT(S)/STATE AND DEFACTO COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.
2. JOHN ALUKKA, AGED 46 YEARS,
S/O.ANTONY, ALUKKA HOUSE, PLOT NO.37,
NEHRU NAGAR, KURIYACHIRA DESOM, CHICHARAM VILLAGE-683103.

R2 BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)
R1 BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23-12-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

PETITIONER'S ANNEXURES:

ANNEXURE-1: TRUE COPY OF THE FINAL REPORT IN CC NO.3348/2015 ON THE FILES OF
THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT -II, THRISSUR

ANNEXURE-2: TRUE COPY OF THE SEIZURE MAHAZAR DT.11.8.15 IN CR.NO.1040/2015
OF NEDUPUZZHA POLICE STATION

ANNEXURE-3: AFFIDAVIT SWORN IN BY THE 2ND RESPONDENT/DE FACTO COMPLAINANT

RESPONDENTS' ANNEXURES: NIL

okb.

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P.A. to Judge.

K.HARILAL, J.

Crl.M.C. No.7941 of 2015

Dated this the 23rd day of December, 2015.

ORDER

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The petitioner herein is the accused in Crime No.1040/2015 of Nedupuzha Police Station, Thrissur. The above crime was registered on the basis of the statement given by the 2nd respondent/de facto complainant alleging the offence punishable under Section 381 of the Indian Penal Code. The true copy of the final report in C.C.No.3348/2015 is produced and marked as Annexure-1. The prosecution allegation is that on 01.08.2015 at about 13.15 hours the petitioner/accused, who was a worker under the 2nd respondent/de facto complainant firm had stolen 1200 grams of gold ornaments and thus, the accused committed the offence under Section 381 of the IPC.

2. In this Crl.M.C., the 2nd respondent/de facto complainant has filed Annexure-3 affidavit stating

that the entire dispute between the petitioner and the de facto complainant has been settled by way of compromise and now the de facto complainant does not intend to proceed against the petitioner with the prosecution. In view of the settlement, the petitioner prayed for quashing the prosecution against the petitioner under Annexure-1 Final Report in exercise of the jurisdiction under Section 482 of the Cr.P.C., in view of the decision in *Gian Singh v. State of Punjab* [2012 (4) KLT 108 (SC)].

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the de facto complainant.

4. I have meticulously considered the decision laid down in *Gian Singh v. State of Punjab* [2012 (4) KLT 108 (SC)]. In the above case, three Judge Bench of the Apex Court, on a reference, considered the question whether the High Court has power to quash criminal proceedings involving non-compoundable offences on the basis of the compromise reached between the

offender and the victim and answered as given below:

“57. 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 plenitude 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 or 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."

5. In view of the proposition laid down above, the question to be considered, in the instant case, is, whether the non-compoundable offence involved in this case can be compounded, in the exercise of the inherent power under Section 482 of the Code of Criminal Procedure. Prima facie, I find that the

offences alleged against the petitioner will not come under the category of non-compoundable offences, which are specifically excluded from composition, in the exercise of inherent power under Section 482 of the Cr.P.C., in the decision referred above. Going by the affidavit filed by the de facto complainant, it is seen that the dispute between the accused and the victim had been amicably settled and, at present, the de facto complainant has no subsisting grievance at all. The de facto complainant does not want to proceed with prosecution against the accused. Full and final settlement and compromise with the victim are evidenced by the said affidavit. The learned counsel for the de facto complainant also advanced arguments in support of the argument advanced by the learned counsel for the petitioner. In view of the compromise between the petitioner and the victim, I find that the possibility of conviction is remote, bleak and continuation of the criminal case would, put the parties to great oppression, prejudice and also

tantamount to abuse of the process of the court. The present criminal prosecution against the accused must be put to an end to secure the interest of justice.

6. In this analysis, all the prosecution proceedings against the petitioner under Annexure-1 will stand quashed.

7. In view of this order quashing all the prosecution proceedings against the petitioner, the Judicial First Class Magistrate's Court-II, Thrissur is directed to release the gold ornaments kept under the custody in connection with the above crime to the 2nd respondent/de facto complainant.

This Cr1.M.C. is allowed accordingly.

Sd/-
K. HARILAL, JUDGE

okb.