

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

Cr1.MC.No. 7409 of 2014

CRIME NO.537/2014 OF KASABA POLICE STATION , PALAKKAD

PETITIONER(S)/ACCUSED:

K.M.KABEER AGED 65 YEARS,
S/O. MOIDU, AKG NAGAR, THEKKETHARA,
PALAKKAD.

BY ADV. SRI.NIREESH MATHEW

RESPONDENT(S)/STATE, DEFAC TO COMPLAINANT AND FATHER OF
THE VICTIM:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. BABIDA.P.S., AGED 33 YEARS,
W/O. REGHU, THAZHATHU HOUSE, THEKKETHARA,
MARUTHA ROAD, PALAKKAD.

3. REGHU, AGED 37 YEARS,
S/O. T.C. KUNJU, THAZHATHU HOUSE, THEKKETHARA,
MARUTHA ROAD, PALAKKAD.

R2 BY ADV. SRI.N.P.PRAJEESH

R1 BY PUBLIC PROSECUTOR SMT. R. REMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 10-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

Cr1.MC.No. 7409 of 2014

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE-A - PHOTOCOPY OF THE FIRST INFORMATION REPORT IN CRIME NO.537 OF 2014 OF CUSBA POLICE STATION, PALAKKAD.

ANNEXURE-B- THE ORIGINAL OF THE AFFIDAVIT SWORN TO BY THE RESPONDENT NO.2 BEFORE HER ADVOCATE AT PALAKKAD DATED 21/12/2014.

ANNEXURE-C- THE ORIGINAL OF THE AFFIDAVIT SWORN TO BY THE RESPONDENT NO.2 BEFORE HIS ADVOCATE AT PALAKKAD DATED 21/12/2014.

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P.S. to Judge

K. HARILAL, J.

Crl.M.C. No. 7409 of 2015

Dated this the 10th day of June, 2015

ORDER

The petitioner is the accused in Crime No.537 of 2014 of Cusba Police Station, Palakkad. The above crime was registered against the petitioner for the offences punishable under Sec.354 of the Indian Penal Code and Sec.7 of the Protection of Children from Sexual Offences Act, 2012. The 2nd and 3rd respondents are the mother and father of the victim. The respondent No.2 is the de facto complainant. Now the entire disputes between the petitioner and respondents 2 and 3 are settled out of court. They have no subsisting grievance at all and they do not want to proceed with the prosecution against the petitioner. Annexures-B and C are the affidavits

sworn by the respondents 2 and 3 in this respect. In view of the settlement, the petitioner prayed for quashing the prosecution against the petitioner under Annexure-A First Information Report in exercise of the jurisdiction under Sec.482 of the Cr.P.C., in view of the decision in *Gian Singh v. State of Punjab* [2012 (4) KLT 108 (SC)].

2. 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;(1) 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.”

3. 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 Sec.482 of the Cr.P.C. 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 Annexures-B and C. 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.

4. In this analysis, the prosecution proceedings against the petitioner under Annexure-A First Information Report will stand quashed.

This petition is disposed of as above.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge