2024:KER:58865

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 5TH DAY OF AUGUST 2024 / 14TH SRAVANA, 1946

CRL.MC NO. 3305 OF 2023

CRIME NO.1135/2021 OF NORTH PARAVUR POLICE STATION, ERNAKULAM

IN S.C. NO.15 OF 2022 OF FAST TRACK SPECIAL COURT, NORTH PARAVUR

PETITIONERS/ACCUSED:

1 X

2 X

BY ADVS.
S.RAJEEV
M.S.ANEER
PRERITH PHILIP JOSEPH
SARATH K.P.
ANILKUMAR C.R.

RESPONDENTS/STATE/DEFACTO COMPLAINANTS:

1 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR HIGH COURT OF KERALA
(CRIME NO 1135/2021 OF NORTH PARAVUR POLICE STATION,
ERNAKULAM DISTRICT), PIN - 682031

2 X

3 X

PP - M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 5th day of August, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash all further proceedings in S.C. No.15/2022 on the files of the Sessions Court, North Paravur. The petitioners herein are the accused in the above case.

2. Heard the learned counsel for the petitioners as well as the learned Public Prosecutor, in detail. Perused the relevant materials available.

3. In this matter, the prosecution allegation is that, in between 01.01.2017 and 31.12.2017, the accused herein sexually assaulted the victim. On this premise, the prosecution alleges commission of offences punishable under Sections 7, 8, 9(m)(n)(p)(l) read with 10 of the Protection of Children from Sexual Offences Act [hereinafter referred as 'POCSO Act' for short].

4. While seeking quashment of the proceedings on the ground of settlement in between the parties, on the

strength of affidavits filed by the father and mother of the victim, the learned counsel for the petitioners read out the FIS and argued that the allegations raised as against the petitioners are absolutely false, since the period of occurrence as per the prosecution records is during 2017 and the complaint was lodged only on 16.10.2021, after a delay of four years, that too, after lodging a complaint by the wife of the 1st accused against the father of the victim, in connection with another dispute which occurred on 14.10.2021. Accordingly, it is argued that the entire case is foisted and in view of the settlement in between the parties, who are close relatives, quashment prayer is liable to be allowed, in the interest of justice.

5. The learned Public Prosecutor opposed quashment merely on the ground of settlement. But, he also conceded the occurrence as on 14.10.2021, prior to the registration of this crime, whereby the wife of the 1st accused lodged a complaint against the father of the victim.

6. Having gone through the prosecution allegations,

in the FIS the victim narrated sexual assaults at the hands of the brothers of his father, while he was going to mosque sitting in between the accused persons on a scooter. It is discernible further that in the FIS itself, there is disclosure regarding lodging of complaint by the wife of the 1st accused against the father of the victim, with regard to another occurrence on 14.10.2021 and the FIR in this crime was registered after two days i.e. on 16.10.2021.

7. Adverting to the power of this Court to quash criminal proceedings restoring to Section 482 of the Cr.P.C. is concerned, indubitably, in respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. In a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple.

These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error. Such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility.

Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community, but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a "settlement" through duress, threats, social boycotts, bribes or other dubious means. It is well said that "let no guilty man escape, if it can be avoided."

8. Thus, the law as it stands is that although High Court can invoke its jurisdiction u/s.482 Cr.P.C. even in non-compoundable offence and can quash the proceedings on the basis of settlement arrived at between the parties even in the cases of non-compoundable offences but while exercising its jurisdiction this Court must consider the fact that whether the proceeding relates to any serious and heinous offences and whether the crime in question has impact over the society. In cases of serious nature which affects the society at large this Court should not exercise its jurisdiction under Section 482 Cr.P.C. for quashing the proceedings on the basis of compromise executed between the parties. (See decisions in ***Gian Singh*** *v.* ***State of Punjab and Another*** reported in **[(2012) 10 SCC 303],** ***Narinder Singh and Others v. State of Punjab and Another*** reported in **[(2014) 9 SCC 466],** ***Shimbhu*** *v.* ***State of Haryana*** reported in **[AIR 2014 Supreme Court 739]**(three Bench)**,** ***State of Madhya Pradesh*** *v.* ***Madanlal*** reported in **[AIR 2015 Supreme Court 3003]** (two Bench), ***Parbatbhai Aahir @ Parbatbhai***

Bhimsinhbhai Karmur and Others *v.* ***State of Gujarat and Another*** reported in **[(2017) 9 SCC 641],** ***State of Madhya Pradesh*** *v.* ***Laxmi Narayan & Ors****.* reported in **[(2019) 5 SCC 688],** ***Arun Singh and Others*** *v.* ***State of Uttar Pradesh Through its Secretary and Another*** reported in **[(2020) (3) SCC 736],** ***Ram Gopal & Another*** *v.* ***State of Madhya Pradesh*** reported in **[(2021 0 Supreme (SC) 529)],** ***Daxaben*** *v.* ***The State of Gujarat & others*** reported in **[2022 LiveLaw (SC) 642],** ***P.Dharmraj*** *v.* ***Shanmugam and others*** decided on 8th September 2022 in Crl.Appeal Nos.1515-1516 of 2022).

9. Thus, settlement of cases including POCSO Act offences is not permissible under law. However, in the instant case, the prosecution allegations are much belated and that too after registration of another complaint against the father of the victim by the wife of the 1st accused. Therefore, *prima facie*, the prosecution allegations are in the midst of doubt. Further, no serious allegations also could be gathered from the prosecution records. Therefore, the quashment sought for is liable to be allowed even

otherwise and the affidavits filed by the father and mother of the victim are also aiding factors for granting quashment. Therefore, I am inclined to allow the prayer for quashment.

Accordingly, this petition stands allowed and all further proceedings in S.C. No.15/2022 on the files of the Sessions Court, North Paravur stand quashed.

Sd/-
A. BADHARUDEEN
JUDGE

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