IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 25TH DAY OF JULY 2024 / 3RD SRAVANA, 1946

CRL.MC NO. 5889 OF 2024

CRIME NO.613/2021 OF Nilambur Police Station, Malappuram AGAINST THE ORDER DATED 04.07.2024 IN CRMP.NO.2/2024 IN SC NO.132 OF 2022 OF SPECIAL COURT (ATROCITIES AGAINST SC/ST), MANJERI
(OFFENCE AGAINST WOMEN AND CHILDREN)

PETITIONER/PETITIONER/ACCUSED:

MUHAMMED MUSTHAFA, AGED 43 YEARS
S/O RAYIN VELLUKKATHATHODI HOUSE,
AMAYOOR P.O., PATTAMBI,
PALAKKAD DISTRICT, PIN - 679303.

BY ADVS.
P.SAMSUDIN
JASNEED JAMAL
LIRA A.B.
NASRIN WAHAB
DEVIKA E.D.
ABIN RASHID

RESPONDENTS/RESPONDENT/STATE AND DEFACTO COMPLAINANT:

1 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.

2 **XXXXXXXXXX**
XXXXXXXXXX XXXXXXXXXX

PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11.07.2024, THE COURT ON 25.07.2024 PASSED THE FOLLOWING:

A. BADHARUDEEN, J.

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Crl.M.C No.5889 of 2024

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Dated this the 25th day of July, 2024

O R D E R

In this Criminal Miscellaneous Case filed under Section 520 of Bharati Nagari, 2023, according to the learned counsel for the petitioner, the petitioner impugns Annexure A3 order dated 04.07.2024 in Crl.M.P.No.2/2024 in S.C.No.132/2022, on the files of Special Court (Atrocities Against SC/ST), Manjeri, arising out of Crime No.613 of 2021 of Nilambur Police Station, Malappuram, passed by the Special Judge for Trial of offence against Women and Children (POCSO) Act. But the reliefs sought for are as under:

> *(i) Call for the records in Crime No.12/2020 of Kuttiady police station now pending as SC No.750/2020 on the files of the Fast Track Special Court (FISC) for Disposal of Rape Cases and Cases Registered Under POCSO Act, Koilandy and quash all the proceedings againt the petitioner.*

(ii) Grant such other reliefs as this Hon'ble Court may deem fit and proper as on the facts and circumstances of the case."

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor in detail.

3. Here the prosecution alleges commission of offences punishable under Sections 342 and 376 of the Indian Penal Code as well as under Section 3(2)(v) of Scheduled Caste/Scheduled Tribe (Prevention Of Atrocities) Act. After completion of the evidence of PW1, Annexure-A2 petition was filed seeking recall and re-examination of PW1. It is submitted by the learned counsel for the petitioner that the Special Court ought to have allowed Annexure-A2 petition so as to effectuate settlement in between the accused and PW1. Therefore, the order would require interference permitting recall, is the submission of the learned counsel for the petitioner.

4. It is submitted by the learned Public Prosecutor that in this matter PW1 was examined and was cross examined at

length and thereafter now the trial almost completed. At the fag end the present petition was filed only on the ground that the matter has been settled. According to the learned Public Prosecutor recalling of PW1 in view of settlement in a case involving serious offences including one under the POCSO Act could not be considered and, therefore, the Special Judge rightly dismissed the petition. Therefore, the said order doesn't require any interference.

5. In so far as the law regarding recalling of witnesses is concerned, the law is well settled in the decision reported in [2024 KHC 15 : 2024 KLT OnLine 1399], ***XXXX v. State of Kerala & anr.*** with reference to paragraph Nos.8 to 10 as under:

> *"8. Section 311 manifestly in 2 parts. Whereas the word `used' in the first part is `may' the word used in the second part is `shall'. In consequence, the first part which is permissive gives purely discretionary authority to the Criminal Courts and enables the Courts `at any stage of enquiry, trial or other proceedings' under the Code to act in*

one of the three ways, namely,

(1) to summon any person as a witness, or

(2) to examine any person in attendance, though not summoned as a witnesses, or

(3) to recall and re-examine any person already examined.

The second part which is mandatory imposes an obligation on the Court--

(1) to summon and examine, or

(2) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

9. The power conferred under S.311 Cr.P.C should be invoked by the Court only in the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. The Court has wide power under S.311 Cr.P.C to recall witnesses for re-examination or further examination, if it is necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case.

10. Scope and object of Section 311 of Cr.P.C is well discussed in the decision reported in [AIR 1991 SC 1346 : 1991 Supp (1) SCC 271 : 1991 CrLJ 1521], Mohanlal Shamji Soni v. Union of India, wherein it is held that in order to enable the Court to find out the truth and

render a just decision the salutary provisions of S.311 are enacted where under any Court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. Opportunity of rebuttal shall be given to other party. The aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or capricious exercise of the power may lead to undesirable results. It should not be used for filling up the lacuna by the prosecution or by the defence or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties. It is held in the decision reported in [(2002) 4 SCC 578 : AIR 2002 SC 1856 : (2002) 2 Crimes 200 : 2002 CrLJ 2547(2562) (SC)], ***Ramchandra Rao v. State of Karnataka****, that the criminal Courts should exercise their available powers such as those available under Ss.309, 311 and 258 Cr.P.C to effectuate the right to speedy trial. The power*

under S.311 can be exercised both at the behest of accused (defence) as well as prosecution."

6. Here recall of PW1 was sought for on the ground of settlement, without any valid reasons. The prayer to quash the entire proceedings also sought for only on the ground of settlement after completion of evidence. Therefore, the reason stated in the petition to recall PW1 is not justifiable as rightly found by the Special Judge. Hence Annexure-A3 order doesn't require interference.

7. As far as quashment sought for on the ground of settlment, the legal position is well settled.

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. Since quashment of serious offences under the POCSO Act is not legally permissible, the quashment of the proceedings must fail.

10. Hence this Crl.MC stands dismissed.

Registry shall forward a copy of this order to the jurisdictional court for information and for further steps.

Sd/-

A. BADHARUDEEN, JUDGE

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