

(2023) 07 KL CK 0025

In the High Court Of Kerala

Case No : Criminal Miscellaneous Petition No. 3931 Of 2023

Dr Aravind Madanan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 04-07-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 320, 482

Indian Penal Code, 1860 — Section 307, 323, 354, 375, 376, 376(2)(n), 451

Citation : (2023) 07 KL CK 0025

Hon'ble Judges : K.Babu, J

Bench : Single Bench

Advocate : Suman Chakravarthy, K.R.Rija, Rahul S.Nath, M.K.Pushpalatha, Shajin.S.Hameed

Final Decision : Allowed

Judgement

K.Babu, J

1. The petitioner seeks to quash FIR No.124/2023 of Thoppumpady Police Station, Ernakulam and all further proceedings thereto.

2. Heard Sri.Suman Chakravarthy, the learned counsel for the petitioner/accused, Sri.Shajin.S.Hameed, the learned counsel for respondent No.2 and the learned Public Prosecutor.

3. The petitioner is alleged to have committed the offences punishable under Sections 376, 376(2)(n), 354, 451 and 323 of IPC.

4. The petitioner is an Orthopaedic Surgeon. The victim is a divorcee. The victim was the patient of the petitioner.

5. The prosecution allegation is that the petitioner committed rape on the victim in November, 2021 at Emerald Hotel at Kadavanthra and in October, 2022 at Belvether Hotel, Thoppumpady. It is further alleged that the petitioner voluntarily caused hurt to her and used criminal force with the intent to outrage her

modesty.

6. The victim entered appearance and filed an affidavit stating that the petitioner/accused was her friend, and upon a misunderstanding, she happened to give a statement against him. She further stated in the affidavit that they settled the entire dispute, and she is not intending to proceed further. She averred in the affidavit that she has no objection in quashing all further proceedings in Crime No.124/2023 of Thoppumpady Police Station.

7. The learned Public Prosecutor, on instructions, submitted that the matter was enquired into through the Investigating Officer, who has taken the statement of the defacto complainant, and it is reported that the dispute between the parties has been amicably settled.

8. The Apex Court in *Gian Singh v. State of Punjab* [2012 (4) KLT 108 (SC)], *Narinder Singh and others v. State of Punjab and Others* [(2014) 6 SCC 466], and *State of Madhya Pradesh v. Laxmi Narayan and Others* [(2019) 5 SCC 688] considered the power of the High Court to quash criminal proceedings in FIR/complaint in exercise of its inherent jurisdiction where the offences are not compoundable under Section 320 Cr.P.C.

9. In *Gian Singh* (supra) the Apex Court held thus:-

"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 FIR 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."

10. In *Narinder Singh and others* (supra), the Supreme Court held that though the offences coming under the category of heinous and serious offences are to be generally treated as crimes against the society and not against the individual alone, the High Court while exercising jurisdiction under Section 482 Cr.P.C would examine as to whether incorporation of heinous or serious crime in the FIR is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge. The Supreme Court added that while deciding whether to exercise its power under Section 482 Cr.P.C, or not, the stage of settlement is also crucial. In *Narinder Singh and others* (supra) the Supreme Court observed thus:-

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the chargesheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no

question of sparing a convict found guilty of such a crime.”

11. In *State of Madhya Pradesh v. Laxmi Narayan and Others* (supra), approving the ratio in *Gian Singh and Narinder Singh* a three-Judge Bench of the Apex Court held that in the exercise of powers under Section 482 Cr.P.C., on the ground that the parties have resolved their entire dispute between themselves, High Court would not rest its decision merely because there is a mention of a penal section of a heinous crime in the FIR or charge. The Apex Court added that it would be open to the High Court to examine whether incorporation of a penal section of heinous crime is there for the sake of it or the prosecution has collected sufficient evidence, which, if proved, would lead to framing of charges under the said penal section.

12. In *Kapil Gupta v. State of NCT of Delhi and Another* (2022 SCC OnLine SC 1030), following *Narinder Singh and others* (supra), the Apex Court held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Apex Court further observed that High Court has also to consider whether the settlement between the parties will result in harmony between them, which may improve their mutual relationship. The Supreme Court added that the stage of the proceedings at which the application for quashing the proceedings is brought before the Court is also to be taken into account.

13. In *Kapil Gupta* the Apex Court was considering the legality of quashing an FIR wherein the offence alleged was Section 376 IPC. In paragraphs 15, 16 & 17, the Apex Court observed thus:-

“15. The facts and circumstances as stated hereinabove are peculiar in the present case. Respondent No. 2 is a young lady of 23 years. She feels that going through trial in one case, where she is a complainant and in the other case, wherein she is the accused would rob the prime of her youth. She feels that if she is made to face the trial rather than getting any relief, she would be faced with agony of undergoing the trial.

16. In both the cases, though the charge sheets have been filed, the charges are yet to be framed and as such, the trial has not yet commenced. It is further to be noted that since the respondent No. 2 herself is not supporting the prosecution case, even if the criminal trial is permitted to go ahead, it will end in nothing else than an acquittal. If the request of the parties is denied, it will be amounting to only adding one more criminal case to the already overburdened criminal courts.

17. In that view of the matter, we find that though in a heinous or serious crime like rape, the Court should not normally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of the present case and in

order to give succour to Respondent No. 2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings.”

14. In the case on hand, the parties arrived at a settlement immediately after the alleged commission of the offences, and the matter is still under investigation.

15. It is submitted by the victim that the petitioner is her friend and it was upon a misunderstanding she happened to file a statement to the Police, which led to the registration of the crime.

16. The petitioner has a specific case that, even going by the admitted prosecution materials, it can be concluded that the sexual relationship happened based on the consent between the parties. It was following a conscious decision on the part of the victim, knowing fully the nature and consequences of the act she indulged in sexual relationship, the petitioner contended.

17. In *Deelip Sing alias Dilip Kumar v. State of Bihar* [(2005) 1 SCC 88], the Supreme Court considered the relevant questions relating to “consent” as defined in the Indian Penal Code. The Supreme Court considered the following questions:-

(1) Is it a case of passive submission in the face of psychological pressure exerted or allurements made by the accused or was it a conscious decision on the part of the prosecutrix, knowing fully the nature and consequences of the act she was asked to indulge in?

(2) Whether the tacit consent given by the prosecutrix was the result of a misconception created in her mind as to the intention of the accused to marry her?

It was a case in which a girl fell in love with her neighbour. She alleged that the accused committed rape on her and later consoled her by saying that he would marry her. She continued sexual relationship with him on account of the promise made by him to marry her. The relationship between them continued. The accused later avoided her. With that factual background, the Supreme Court held that the girl had taken a conscious decision after active application of mind to the events that had transpired. It was further held that it was a case of breach of promise for marriage and not a case of rape.

18. In *Deepak Gulati v. State of Haryana* [(2013) 7 SCC 675], while drawing a distinction between ‘rape’ and ‘consensual sex’, the Supreme Court observed that when the prosecutrix voluntarily maintained intimate contact with the accused and proceeded with him to different places and indulged in sexual relationship without any objection at any stage, it is not possible to apprehend the circumstances in which rape can be levelled against him.

19. In the present case, going through the FIS it is revealed that the patient-doctor relationship developed, and the parties became close friends. The first

incident happened in the month of November, 2021 and the second incident in the month of October, 2022. There is no explanation why immediately after the first two incidents no complaint was filed. The hotel room at Belvether Hotel, Thoppumpady was taken by the victim in her name. The third incident happened at the residence of the victim. It is alleged that the petitioner went to her house and forcefully raped her. Her own version was that initially, they consumed alcohol together and it was after that the petitioner raped her. This sequence of events leads me to conclude that the victim had consensual sexual relationship with the petitioner. It is difficult to conclude that the prosecutrix had not given consent for the sexual relationship with the petitioner under any misconception of facts so as to hold that the petitioner is guilty of having committed rape within the meaning of Section 375 of IPC.

20. There is an unexplained extraordinary delay in lodging the complaint. While inordinate delay itself may not be a ground for quashing a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint. {Vide: Hasmukhlal D. Vora v. State of T.N (2022 SCC OnLine SC 1732)}

21. Having considered the totality of the facts and circumstances of the case, this Court is of the view that the impugned criminal proceedings against the petitioner are liable to be quashed, exercising the inherent power conferred on this Court under Section 482 of Cr.P.C. as its further continuance would amount to an abuse of the process of the Court.

In the result, the CrI.M.C is allowed. Annexure 1 FIR in Crime No.124/2023 of Thoppumpady Police Station and all further proceedings pursuant to it stand hereby quashed.