

(2006) 11 KL CK 0007
In the High Court Of Kerala
Case No : Criminal M.C. No. 3530 of 2006

E.K. Jeevaraj

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 14-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 323, 324, 498A

Citation : (2007) CriLJ 713 : (2007) 1 ILR (Ker) 368 : (2007) 1 KLJ 18

Hon'ble Judges : R. Basant, J

Bench : Single Bench

Advocate : Manjeri Sunderraj and B. Premnath, for the Appellant; Public Prosecutor, Puzhakkara Muhammed and V.N. Ramesan Nambisan, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—The petitioner laces indictment in a prosecution under Sections 323 and 324 of the IPC. The allegation against the petitioner is that he had assaulted his brother-in-law who along with the wife of the petitioner took objection to the petitioner-a married person, moving around with another lady in the park. Cognizance has been taken by the learned Magistrate on the basis of the final report submitted by the police. Proceedings are still pending before the learned Magistrate.

2. The petitioner wants the proceedings pending before the learned Magistrate to be quashed. What is the reason? The learned Counsel for the petitioner submits that the matrimonial dispute between the petitioner and his wife has been settled amicably and the parties have agreed to give quietus to all the disputes between them. Accordingly, it has been agreed that the prosecution under Sections 323 and 324 of the IPC can also be brought to termination. Accordingly, it is prayed that powers u/s 482 of the Cr.P.C. may be invoked and the proceedings quashed.

3. The learned Counsel relies on the decision in B.S. Joshi and Others Vs. State

of Haryana and Another, to contend that in an appropriate case notwithstanding the stipulations of Section 320 of the Cr.P.C., powers u/s 482 can be invoked to quash the proceedings. I have no quarrel with such a proposition. The Supreme Court was considering the prayer to quash a prosecution for the non-compoundable offence u/s 498-A of the IPC wherein the wife had made an allegation against the husband. That decision is based on the peculiar facts and circumstances of that case and it would be myopic to understand the dictum in the said case as declaring that hereafter there shall be no distinction between compoundable and non-compoundable cases. The interests of justice can at times, though rarely, transcend the interests of mere law and the dictum in B.S. Joshy v. State of Haryana is only an acceptance of that principle. I am certainly not persuaded to invoke the dictum in that case in the facts and circumstances of this case where the parties can appear before the learned Magistrate and report composition of the compoundable offences allegedly committed by the petitioner. I am certainly of opinion that powers u/s 482 of the Cr.P.C. are not to be invoked merely because it is more convenient to do the same. Interests of justice cannot be equated to the interests of mere convenience. Even hard cases cannot persuade the Court to err in law. Order and discipline must be insisted in proceedings. The regular and prescribed procedure cannot be permitted to be circumvented merely because it is expedient and convenient for the parties and the Court or because this Court has wider, sweeping and unlimited inherent powers. Greater the width and amplitude of the powers, greater must be the circumspection. I cannot certainly endorse such a procedure which if accepted would inevitably lead to a flood of unnecessary petitions u/s 482 of the Cr.P.C. before this Court when the real remedy lies before Subordinate Courts u/s 320 of the Cr.P.C. I find no compelling reason to deviate from the normal course in the facts and circumstances of this case.

4. I am, in these circumstances, certainly persuaded to take the view that this is not a fit case where the powers u/s 482 of the Cr.P.C. can or ought to be invoked. The petitioner along with the de facto complainant must appear before the learned Magistrate and report composition of the compoundable offences to the learned Magistrate who must take appropriate action and pass orders expeditiously.

5. With the above observations, this Cri. M.C. is dismissed.