
(2015) 04 KL CK 0063

In the High Court Of Kerala

Case No : Criminal M.C. No. 2254 of 2015 (B)

K. GIGIL and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 34, 498A

Citation : (2015) 04 KL CK 0063

Hon'ble Judges : K. Harilal, J

Bench : Single Bench

Advocate : P.K. Ravisankar, for the Appellant; Egy N. Elias, Public Prosecutor, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Harilal, J.—The petitioners are the accused Nos. 1 and 2 in C.C. No. 1096/2014 on the files of the Judicial First Class Magistrate's Court-II, Kannur, arising out of Crime No. 164/2014 of Kannur City Police. The offences alleged against the petitioners are punishable under Section 498A read with Section 34 of the Indian Penal Code. The second respondent is the wife of the first petitioner and the second petitioner is the mother of the first petitioner. The marital discordancy between the first petitioner and the de facto complainant culminated in criminal prosecution for the offence punishable under Section 498A of the IPC and Annexure-A final report has been filed before the trial court. Now the said case is pending for trial.

2. In this Crl.M.C., it is stated that the parties have settled the matter out of court and now they are residing under the same roof and the second respondent has sworn to an affidavit stating the factum of compromise. As non-compoundable offences are incorporated, even though the parties have settled their dispute amicably, the criminal proceedings cannot be put to an end. In such circumstance, the petitioners filed this Crl.M.C. seeking an order quashing the

entire criminal prosecution under Annexure-A final report, invoking the inherent power under Section 482 of the Code of Criminal Procedure, in view of the decision laid down by the Apex Court in *Gian Singh Vs. State of Punjab and Another*, (2012) 9 JT 457 : (2012) 9 JT 426 : (2012) 9 SCALE 257 : (2012) 10 SCC 303 .

3. Heard the learned counsel for the petitioners, the learned Public Prosecutor and the learned counsel for the second respondent.

4. The learned counsel for the petitioners drew my attention to the proposition laid down by the Apex Court in the above decision, which permitted the High Court to compound a non-compoundable offence in exercise of the inherent jurisdiction and power under Section 482 of the Cr.P.C. The learned counsel for the second respondent submits that what is stated in the affidavit is true to the best of his knowledge and belief and now the second respondent does not want to proceed with the prosecution against the petitioners and both the counsel appearing for the respective parties urged for quashing the proceedings in exercise of jurisdiction under Section 482 of the Cr.P.C.

5. I have meticulously considered the decision laid down in *Gian Singh Vs. State of Punjab and Another*, (2012) 9 JT 457 : (2012) 9 JT 426 : (2012) 9 SCALE 257 : (2012) 10 SCC 303 . 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; (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."

6. 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 petitioners 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 Annexure-B. In view of the compromise between the petitioners 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.

7. In this analysis, the prosecution proceedings against the petitioners under Annexure-A final report will stand quashed in the exercise of jurisdiction and power under Section 482 of the Cr.P.C.

This petition is allowed.