
(2016) 05 KL CK 0005
In the High Court Of Kerala
Case No : Crl. M.C. No. 2880 of 2016

Mohammed Ashraf

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 279, 304A, 338

Citation : (2016) 3 ILRKerala 63 : (2016) 3 KHC 225 : (2016) 2 KLT 873

Hon'ble Judges : V. Raja Vijayaraghavan, J.

Bench : Single Bench

Advocate : P. Samsudin, Advocate, for the Appellant; P. Sareena George, Government Pleader and M.S. Mohammed Ansary, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V. Raja Vijayaraghavan, J.—This petition is filed under S.482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") with a prayer to quash all further proceedings in L.P. No. 36 of 2014 on the files of the Chief Judicial Magistrate Court, Manjeri. The aforesaid case had arisen from Cr. No. 979 of 2011 of the Manjeri police station registered at the instance of the 2nd respondent herein under S. 304A, 279, 338 of the Indian Penal Code.

2. The prosecution allegation is that on 11.12.2011 at 4.30 P.M., while the 3rd respondent was riding a motor bike with his father on the pillion, the petitioner who was driving a jeep in a rash and negligent manner, dashed against the motor bike causing severe bodily injuries to the 3rd respondent and his father. Later, Kunjumon Maulavi, the father of the 3rd respondent herein succumbed to the injuries.

3. Heard the learned counsel appearing for the petitioner, the learned Public Prosecutor and the learned counsel appearing for respondents 2 and 3. The 2nd respondent incidentally is the younger brother of the deceased and he had set the law in motion.

4. It is submitted by the learned counsel appearing for the petitioner relying on Annexure A2 and A3 affidavits sworn to by the respondents 2 and 3 that the dispute has been settled at the instance of mediators, and that the said respondents have no objection in quashing the proceedings against the petitioner herein. The learned counsel appearing for the respondents also endorses the submission of the learned counsel appearing for the petitioner.

5. The learned Public Prosecutor on the other hand, submitted that it will not be in the interest of justice to terminate the criminal proceedings on the basis of Annexure A2 and A3. It is further submitted that as per S.2(wa) of the Code, "victim" means a person who has suffered any loss or injury caused by the reason of act or omission for which the accused has been charged and the expression victim includes the guardian as well as the legal heirs. In the case on hand, it is submitted by the learned prosecutor that this Court is kept in the dark as to the terms of the settlement and also as to who all are the legal heirs of the deceased. It is highlighted by the learned Public Prosecutor that unlike other cases, the real aggrieved person is no more and the respondents are not entitled to file an affidavit to report settlement of the dispute. It is further submitted that the offence under S.304A has a serious impact on the society and if the same is quashed on the basis of a purported settlement with one of the legal heirs of the victim and the first informant, it would send a wrong signal. The learned Public Prosecutor places reliance on *State of Madhya Pradesh v. Deepak and Ors.* (2014) 10 SCC 285 and *State of Madhya Pradesh v. Maneesh and Ors.* ((2015) 8 SCC 307) to urge that by no stretch of imagination, can it be held to be an offence between the private parties simpliciter.

6. I find merit in the submission of the learned Public Prosecutor. It is true that Annexure A2 and A3 are sworn to by the brother and son, of the deceased Maulavi. Neither the terms of the settlement or the names of the actual legal heirs/victims are stated in the affidavit.

7. The Apex Court had occasion to take note of the galloping trend in road accidents in the country and the devastating consequences that ensue, while considering the sentencing policy in cases involving S.304A of the I.P.C. In *Dalbir Singh v. State of Haryana*, (2000) 5 SCC 82. It was observed as follows:-

[1]. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.

* * *

[13]. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence Under S.304-A Indian Penal Code as attracting the benevolent provisions of S.4 of the Probation of Offenders Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of Trial Courts, for lessening the high rate of motor accidents due to callous driving of automobiles.

8. As held by the Apex Court in *Guru Basavarai alias Benne Settappa v. State of Karnataka* (2012) 8 SCC 734), that when a number of people sustain injuries due to a motor accident and a death occurs, it creates a stir in the society; sense of fear prevails all around. The negligence of one shatters the tranquility of the collective. When such an accident occurs, it has the effect and potentiality of making victims in many a layer and creating a concavity in the social fabric. The agony and anguish of the affected persons, both direct and vicarious, can have nightmarish effect. It has its impact on the society and the impact is felt more when accidents take place quite often because of rash driving by drunken, negligent or, for that matter, adventurous drivers who have, in a way, no concern for others. Be it noted, grant of compensation under the provisions of the Motor Vehicles Act, 1988 is in a different sphere altogether. Grant of compensation under S.357(3) of the Code with a direction that the same should be paid to the person who has suffered any loss or injury by reason of the act for which the accused has been sentenced has a different contour and the same is not to be regarded as a substitute in all circumstances for adequate sentence.

9. In *State of Punjab v. Saurabh Bakshi* ((2015) 5 SCC 182), the Apex Court had occasion to take note of the increasing number of road accidents in the country and exhorted the lawmakers to visit the sentencing policy in S.304A of the I.P.C. It was held in para. No. 17 and 18 of the judgment as follows :-

[17].....This Court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are

no traffic rules or no discipline of law has come to the centre stage. The protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, is worse than death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognises the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them it ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as-imposed by the Trial Magistrate which has been affirmed by the Appellate Court should be reduced to six months.

[18]. Before parting with the case we are compelled to observe that India has a disreputable record of road accidents. There is a non-challant attitude among the drivers. They feel that they are the "Emperors of all they survey". Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilized persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as "larger than life". In such obtaining circumstances, we are bound to observe that the lawmakers should scrutinize, re-look and re-visit the sentencing policy in S.304A. Indian Penal Code. We say so with immense anguish.

10. These pronouncements of the Apex Court highlights the impact that an offence under S.304A of the I.P.C. has on the society. The guidelines issued by a Constitutional Bench of the Apex Court In *Gian Singh v. State of Punjab* (2012) 10 SCC 303) as followed in *Narinder Singh v. State of Punjab* (2014) 6 SCC 466) cannot be applied in a case of instant nature as the crime committed by the accused is not one which can be categorised as private or personal. As held by the Apex Court in *Guru Basavaraj* (supra) the offence under S.304A of the I.P.C. has the potentiality of making victims in many a layer and thus to create a concavity in the social fabric. It has its own impact on the society and the impact is felt more when accidents take place quite often because of rash driving by drunken, negligent or adventurous drivers who have no concern for others. The High Court in exercise of the powers under S.482 of the Code cannot send a

signal to the wrongdoer concerned that payment of money will be a substitute to the crime committed against the society. Taking a lenient view of an offence under S.304A of the I.P.C. will leave a wrong impression about the criminal justice system and will encourage further criminal acts, which will endanger the peaceful coexistence and welfare of the society at large. Such offences cannot be treated as a private dispute between the parties, so as to persuade this Court to accept a compromise and to quash the proceedings.

11. The inherent powers under S. 482 of the Code though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. The same has to be exercised sparingly, carefully and with great caution. No such circumstances exist in the case on hand. The petition is accordingly dismissed.