

(2013) 07 KL CK 0091
In the High Court Of Kerala
Case No : Criminal M.C. No. 2152 of 2013

Syamkumar S.

APPELLANT

Vs

The State of Kerala and Unnikrishan Asari

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 308

Citation : (2013) 07 KL CK 0091

Hon'ble Judges : V.K. Mohanan, J

Bench : Single Bench

Advocate : T. Madhu, for the Appellant; S. Hyma, Public Prosecutor for Respondent No. 1 and Smt. Bindumol Joseph, for the Respondent

Judgement

V.K. Mohanan, J.—The above petition is filed u/s 482 of the Criminal Procedure Code (for short "Cr.P.C."), at the instance of the petitioner, who is accused No. 4 in C.P. No. 182 of 2011 of the Judicial First Class Magistrate's Court, Kattakada which is a case instituted upon the police report [in Crime No. 632 of 2011 of Malayinkil Police Station] for the offences punishable under Sections 143, 147, 148, 149, 323, 308 of I.P.C. with a prayer to quash Annexure-A2 final report and all further proceedings pursuant to it in Crime No. 632 of 2011 of Malayinkil Police Station, Thiruvananthapuram District which is now pending as C.P. No. 182 of 2012 on the file of the learned Judicial First Class Magistrate's Court, Kattakada as against the petitioner, as the matter is settled out of court. The allegation against the petitioner and other accused is that due to the animosity of the accused towards de facto complainant, as he interfered with a dispute between the petitioner herein and one Unni, the accused assaulted on the de facto complainant and A1 brandished a sword against the neck of the de facto complainant and had he not evaded the same would have been fallen on his neck and thus according to the prosecution, the accused committed the offences punishable under Sections 143, 147, 148, 149, 323, 308 of IPC and Section 27 of

the Arms Act. Now the case of the petitioner is that the matter is settled out of court between himself and the de facto complainant who is the second respondent herein who sworn into Annexure-A3 affidavit and the settlement is arrived because the petitioner and de facto complainant are neighbours.

2. Heard the learned counsel for the petitioner as well as the second respondent. I have also heard the learned Public Prosecutor.

3. The learned counsel for the petitioner submitted that during the pendency of the above case, the matter is settled amicably between the parties to the dispute which is the subject matter of the above case. Therefore, the continuation of the proceedings in the above case is abuse of process of law and proceedings.

4. The learned counsel for the second respondent who on the basis of specific instruction received from the respondent submitted that the above respondent, who is the de facto complainant does not intend to proceed any further against the petitioner and he has no grievance against him.

5. I have carefully considered the above submissions of the respective counsel. I have verified the documents and materials produced along with the above petition. In the given facts and circumstances of the case and especially in the light of the settlement arrived between the parties to the dispute, the learned Public Prosecutor has also no objection in allowing the above petition. Having regard to the facts and circumstances involved in the case, it can be seen that the offences involved in the above case are only Sections 143, 147, 148, 149, 323, 308 of IPC and Section 27 of the Arms Act which are more or less personal in nature and no public interest is involved. It is pertinent to note that though such offences are involved, the real parties to the dispute approached this Court after having amicably settled the matter. From the submission made by the counsel for the second respondent, it appears to me that the de facto complainant has no further grievance against the petitioner/accused in the light of the settlement arrived by them. In this juncture, it is relevant to note the decision of the Honourable Apex Court reported in *Gian Singh Vs. State of Punjab and Another*, . In *Gian Singh's* case, the Supreme Court has held as follows:-

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.

It is further held as follows:--

..... But the criminal cases having overwhelmingly and pre-dominatingly 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.....

According to me, in the light of the facts and circumstances involved in the present case and particularly in view of the settlement arrived in the present case, the dictum laid in the above decision is applicable in the present case. According to me, as the parties to the dispute settled the issues amicably, it is the duty of this Court to promote and encourage such settlement, instead of compelling the parties to go on with the dispute. It is pertinent to note that since the matter is settled out of court, in the event of proceeding with the trial, there would not have any fruitful prosecution resulting the conviction of the accused, rather the net result would be sheer waste of judicial time and abuse of process of the court and proceedings. Thus, according to me, following the decisions cited supra, this Criminal M.C. can be allowed granting the relief as sought for.

In the result, this Crl.M.C. is allowed, quashing Annexure-A2 final report in Crime No. 632 of 2011 of Malayinkil Police Station, Thiruvananthapuram District and all further proceedings pending against the petitioners in C.P. No. 182 of 2012 of the Judicial First Class Magistrate's Court, Kattakada.