



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 12TH DAY OF APRIL 2024 / 23RD CHAITHRA, 1946

CRL.MC NO. 492 OF 2024

CRIME NO.533/2023 OF PANAMARAM POLICE STATION, WAYANAD

PETITIONERS/ACCUSED NOS.1 & 2:

- 1 NIMESH, AGED 38 YEARS
S/O SANTHAKUMARI KUDIYATH HOUSE, ARANCHERMALA POST,
CHUNDAKUNNU PANAMARAM, MANANTHAVADY TALUK, WAYANAD
DISTRICT, PIN - 670721.
- 2 RAKKILA N.R, AGED 35 YEARS
W/O NIMESH KUDIYATH HOUSE, ARANCHERMALA POST,
CHUNDAKUNNU PANAMARAM, MANANTHAVADY TALUK, WAYANAD
DISTRICT, PIN - 670721.

BY ADV CELINE JOSEPH

RESPONDENTS/STATE & AGGRIEVED PERSONS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031.
- 2 DHANYA T.C,
AGED 34 YEARS,
D/O CHANDRAN THAKIDIYIL HOUSE, VATTATHANI,
VALAVAYAL P.O., IRULAM VILLAGE, SULTHAN BATHERY
TALUK, WAYANAD DISTRICT, PIN - 673596.
- 3 NISHA, AGED 41 YEARS
W/O ANIL MANGALATH HOUSE, CHUNDAKUNNU, ARINCHERMALA
POST, PANAMARAM VILLAGE, MANANTHAVADY TALUK,
WAYANAD DIST., PIN - 670721.



- 4 VANAJA C.K., AGED 56 YEARS
W/O CHANDRAN THAKIDIYIL HOUSE, VATTATHANI,
VALAVAYAL P.O., IRULAM VILLAGE, SULTHAN BATHERY
TALUK, WAYANAD DIST., PIN - 673596.

- 5 USHAKUMARI C.K.,
AGED 59 YEARS
W/O VENUGOPALAN PUTHANVEEDU HOUSE, ARINCHEMALA
POST, PANAMARAM VILLAGE, MANANTHAVADY TALUK,
WAYANAD DIST., PIN - 670721.

SENIOR PUBLIC PROSECUTOR SRI RENJITH GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
05.04.2024, THE COURT ON 12.04.2024 PASSED THE FOLLOWING:



"C. R"

A. BADHARUDEEN, J.

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Crl.M.C No.492 of 2024
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Dated this the 12th day of April, 2024

O R D E R

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure ('Cr.P.C' for short) with a prayer to quash Annexure-I FiIR and further proceedings, pending against the petitioners/accused in Crime No.533/2023 of the Panamaram Police Station, Wayanad.

2. Heard the learned counsel for the petitioners, the learned counsel for the defacto complainant as well as the learned Public Prosecutor. Perused the case diary and the relevant materials, including the affidavit filed by one Dhanya.



3. In nut shell, consequent to committal of suicide by the mother of the petitioners, crime was registered alleging commission of offences punishable under Section 306 of the Indian Penal Code ('I.P.C' for short), by the petitioners, who are arraigned as accused Nos.1 and 2.

4. It is argued by the learned counsel for the petitioners that the petitioners are innocent. The allegation at the instance of the prosecution is that the mother of the 1st petitioner and mother-in-law of the 2nd petitioner, committed suicide because of abetment is absolutely false and the mother had been residing along with the petitioners so peacefully with utmost harmony and she committed suicide not because of any abetment at the instance of the petitioners. The petitioners were falsely implicated in this case and the petitioners and family members including the 2nd respondent (Dhanya) discussed the matter and all misunderstandings were



cleared. Therefore, the proceedings are liable to be quashed.

5. It is submitted that quashment of proceedings involving offences punishable under Section 306 of I.P.C is legally permissible. In support of this contention, the learned counsel for the petitioners placed a decision of the Apex Court reported in [2021 KHC 6593 : 2022 (1) KLD 30 : 2021 KHC OnLine 6593 : 2021 (11) SCALE 698 : AIR 2021 SC 4764 : 2021 (5) KLT OnLine 1144], *Geo Varghese v. State of Rajasthan and another*. Based on the above decision it is argued that a case involving an offence punishable under Section 306 of I.P.C can also be quashed under Section 482 of Cr.P.C. Going through the decision, the Apex Court considered a case whereby a 9th standard student committed suicide in the morning at 4 a.m on 26.04.2018. The mother of the student lodged F.I.R alleging commission of offence punishable under Section 306 I.P.C due to mental harassment meted out by the



teacher, who is the accused therein. In the said case the Apex Court dealt with other decisions and finally held as under:

“What is required to constitute an alleged abetment of suicide under S.306 IPC is there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations attributed to the accused is otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be unsafe to hold the accused guilty of abetment of suicide. Thus, what is required is an examination of every case on its own facts and circumstances and keeping in consideration the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased.”

6. Thus the ratio laid down in ***Geo Varghese v. State of Rajasthan and another***’s case (*supra*) is that in crimes involving offence under Section 306 of IPC is concerned, what is required is



an examination of every case on its own facts and circumstances and in consideration of the circumstances, quashment of crime alleging commission of offence punishable under Section 306 I.P.C can be considered when an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations attributed to the accused is otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be unsafe to hold the accused guilty of abetment of suicide.

7. Per contra, the learned Public Prosecutor strongly opposed quashment contending that the prosecution materials



including the suicide note written by the deceased would show harassment by the petitioners at the residential house by threatening her to be sent out from the house after getting her property assigned in their favour. He also placed another decision of the Apex Court reported in [2022 SCC OnLine SC 936], ***Daxaben v. State of Gujarat & Ors.***, wherein, in paragraph 50 the Apex Court held as under:

“In our considered opinion, the Criminal Proceeding cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C only because there is a settlement, in this case a monetary settlement, between the accused and the complainant and other relatives of the deceased to the exclusion of the hapless widow of the deceased. As held by the three-Judge Bench of this Court in Laxmi Narayan (supra), Section 307 of the IPC falls in the category of heinous and serious offences and are to be treated as crime against society and not against the individual alone. On a parity of reasoning, offence under Section 306 of the IPC would fall in the same category. FIR under Section 306 of the I.P.C cannot even be quashed on the basis of any financial settlement with the informant, surviving spouse, parents, children, guardians, care-givers or anyone else. It is clarified



that it was not necessary for this Court to examine the question whether the FIR in this case discloses any offence under Section 306 of the I.P.C, since the High Court, in exercise of its power under Section 482 Cr.P.C, quashed the proceedings on the sole ground that the disputes between the accused and the informant had been compromised.”

8. In this connection, the principle laid down by the Apex Court in the decision reported in [(2019) 5 SCC 688], ***State of Madhya Pradesh v. Laxmi Narayan and others***, by the three Judges Bench while considering quashment of a crime would require reference. The same is as under:

“15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.1. That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial



transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3. Similarly, such power is not to be exercised for the offences under the special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

15.4. Offences under Section 307 IPC and the Arms Act, etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act, etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed



under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge-sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore the ultimate conclusion in paras 29.6 and 29.7 of the decision of this Court in Narinder Singh [(2014) 6 SCC 466 : (2014) 3 SCC (Cri) 54] should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of noncompoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was



absconding, how he had managed with the complainant to enter into a compromise, etc."

9. The law regarding quashment of a crime alleging commission of offence punishable under Section 306 of I.P.C is that when the facts of the case placed on materials could not constitute anything to substantiate *prima facie* commission of offence punishable under Section 306 of I.P.C, in such cases as an exception to general rule, quashment of the said crime, under Section 482 of Cr.P.C is legally permissible. At the same time, when the prosecution materials are sufficient, *prima facie*, merely because of settlement a crime alleging commission of offence punishable under Section 306 of I.P.C cannot be quashed. In fact, in such cases the relatives could not settle the case either by filing affidavit or otherwise.

10. In this case, prosecution allegation is that the petitioners, who are son and daughter-in-law of the deceased



abetted commission of suicide by the deceased, who was aged 78 years. In the suicide note she had elaborately discussed the cruelty, ill-treatment and threat at the instance of the petitioners, as reasons for committing suicide. If so, it appears that there are materials in abundance to hold that this is a case where offence punishable under Section 306 of I.P.C is attracted, *prima facie*, warranting effective investigation and meaningful prosecution

11. It is relevant to note that, earlier, the petitioners herein moved for anticipatory bail before this Court and this Court dismissed the same as per order dated 05.01.2024 in B.A.No.11348/2023 and it is at this juncture, the present application for quashment of crime has been filed.

12. When the facts of the case placed on materials and other materials *prima facie* would suggest commission of offence punishable under Section 306 of I.P.C by the accused persons,



merely because the sister of the 1st accused filed an affidavit regarding settlement, shall not be a ground to quash the crime.

13. Therefore, quashment sought for herein must fail and accordingly, this CrI.M.C stands dismissed.

The Investigating Officer is directed to continue investigation without fail, as per law.

Sd/-

(A.BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF CRL.MC 492/2024

PETITIONERS' ANNEXURES

- Annexure I A CERTIFIED COPY OF THE FIR IN NO. 533/2023 OF THE PANAMARAM POLICE STATION, WAYANAD.
- Annexure II TRUE COPY OF THE INQUEST REPORT OF THE DECEASED DATED 09/11/2023.
- Annexure III TRUE COPY OF THE AFFIDAVIT SWORN IN BY THE 2ND RESPONDENT BEFORE THE NOTARY DATED 05.01.2024.
- Annexure IV TRUE COPY OF THE AFFIDAVIT SWORN IN BY THE 3RD RESPONDENT BEFORE THE NOTARY DATED 05.01.2024.
- Annexure V TRUE COPY OF THE AFFIDAVIT SWORN IN BY THE 4TH RESPONDENT BEFORE THE NOTARY DATED 05.01.2024.
- Annexure VI TRUE COPY OF THE AFFIDAVIT SWORN IN BY THE 5TH RESPONDENT BEFORE THE NOTARY DATED 05.01.2024.
- Annexure VII TRUE COPY OF THE CERTIFICATE OF ELDER DAUGHTER THANMAYA NIMESH OF THE PETITIONERS ISSUED FROM THE ST. JOSOSEPH SCHOOL CHERUKATTUR, PANAMARAM.
- Annexure VIII TRUE COPY OF THE CERTIFICATE OF THE YOUNGER SON THANUL NIMESH OF THE PETITIONERS ISSUED FROM THE ST. JOSEPH SCHOOL CHERUKATTUR, PANAMARAM.
- Annexure IX TRUE COPY OF THE ORDER IN BA NO.11348/2023 DATED 05.01.2024 OF THE HON'BLE HIGH COURT OF KERALA.