



2024/KER/43584

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 21ST DAY OF JUNE 2024 / 31ST JYAISHTA, 1946

CRL.MC NO. 2676 OF 2024

CRIME NO.862/2023 OF KADINAMKULAM POLICE STATION, THIRUVANANTHAPURAM

SC NO.2410 OF 2023 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT

(ATROCITIES & SEXUAL VIOLENCE AGAINST WOMEN &

CHILDREN) , THIRUVANANTHAPURAM

PETITIONER/ACCUSED:

IVIN

AGED 41 YEARS

RESIDING AT MARIYA BHAVAN, CHOORAKUZHI, PUTHUKURICHI P.O,
THIRUVANANTHAPURAM, PIN - 695303

BY ADV P.ANOOP (MULAVANA)

RESPONDENTS/STATE/DE FACTO COMPLAINANTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031
- 2 YYY
YXY, PIN - 695304
- 3 XXX
AGED 50 YEARS
XYX, PIN - 695304
R1 BY SR.PUBLIC PROSECUTOR SRI.RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
12.06.2024, THE COURT ON 21.6.2024 PASSED THE FOLLOWING:

**CR****ORDER**

Dated this the 21st day of June, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, to quash Annexure A1 FIR and Annexure A2 Final Report in S.C.No.2410/2023 on the files of the Special Court under the Protection of Children from Sexual Offences Act (for short, 'the POCSO Act' hereinafter), Thiruvananthapuram, arose out of Crime No.862/2023 of Kadinamkulam Police Station, Thiruvananthapuram District.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor. I have perused the relevant records.

3. In this matter, the prosecution alleges commission of offences punishable under Section 377 of the IPC, Sections 3(a)(d) r/w Section 4(2), 5(l)(p) r/w Section 6, 7 r/w Section 8, 9(l)(p) r/w Section 10 of the Protection of Children from Sexual Offences Act (for short, 'the POCSO Act')



hereinafter) and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short, 'the SC/ST Act' hereinafter). The prosecution allegation is that, the accused, who was the dance teacher of the victim, belongs to Christian community (not Scheduled Caste or Scheduled Tribe) brought the minor boy, who belongs to Hindu Panan community of Scheduled Caste and subjected him for carnal sexual intercourse on 01.09.2019. Thereafter, on a day before 25.12.2019 and on several subsequent days, the accused brought the boy to his rented house at Pukayilathoppu and continued carnal sexual intercourse with him. Later, on a Saturday, during October, 2021, the accused brought the victim in a scooter, bearing Registration No.KL 22 L 2667 to Vellanikkal Rock within the limits of Pothencode police station and subjected him for oral sex. The overt acts continued on several other days till 2.7.2023. This is the base, on which, the prosecution alleges commission of the above offences.

4. The learned counsel for the petitioner would



submit that the entire allegations are false and the matter has been settled between the petitioner and respondent Nos.2 and 3 and they filed Annexures A3 and A4 affidavits, in support the settlement. Therefore, this matter would require quashment, since the victim/aggrieved person has no grievance in this matter.

5. Whereas, the learned Public Prosecutor would submit that, repeated carnal sexual intercourse and oral insertion against a minor boy, who belongs to Scheduled Caste community, are the substratum, wherefrom the accused alleged to have committed the above offences. In a case involving offences under POCSO Act, the case cannot be settled merely acting on the affidavit filed by the mother of the victim and the victim himself, though he now attained majority. It is also pointed out that settlement of cases where the minor/minors is/are victim/victims, is not permitted by law.

6. It is true that the Apex Court in catena of decisions held that High Court can exercise its power vested under section 482 Cr.P.C. beyond the scope of



Section 320 Cr.P.C. It is held that High Court can even quash the proceedings relate to non-compoundable offences on the basis of the compromise entered into between the parties but at the same time Apex Court sternly cautioned that the proceeding of serious and heinous offences which affects the society at large, should not be quashed on the basis of compromise executed between the parties.

7. In a three Judges Bench of the Apex Court in **Gian Singh v. State of Punjab and Another**, reported in **[(2012) 10 SCC 303]**, the Apex Court held that High Court can quash the proceedings in the cases of non-compoundable offences on the basis of settlement arrived at between the parties and observed as under:-

“58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the



parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably,



irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed”.

8. In **Narinder Singh and Others v. State of Punjab and Another** reported in [(2014) 9 SCC 466], the Supreme Court held that in case of heinous and serious offences, which are generally to be treated as crime against society, it is the duty of the State to punish the offender. Hence, even when there is a settlement, the view of the offender will not prevail since it is in the interest of society that the offender should be punished to deter others from committing a similar crime.

9. In the decision in **Shimbhu v. State of Haryana** reported in [AIR 2014 Supreme Court 739] (three



Bench), the Apex Court in Paragraph Nos.21 and 22 held as under:

21. Thus, the law on the issue can be summarized to the effect that punishment should always be proportionate/commensurate to the gravity of offence. Religion, race, caste, economic or social status of the accused or victim or the long pendency of the criminal trial or offer of the rapist to marry the victim or the victim is married and settled in life cannot be construed as special factors for reducing the sentence prescribed by the statute. The power under the proviso should not be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation.

22. Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left



for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurize her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso to Section 376(2) of IPC.

10. In the decision in **State of Madhya Pradesh v. Madanlal** reported in **[AIR 2015 Supreme Court 3003]** (two Bench), the Apex Court considered a case involved



offences under Sections 354, 376(2)(f) and 511 of the IPC, where the victim was a minor girl and held in Paragraph No.16 as under:

16. We would like to clearly state that in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the Courts are to remain absolutely away



from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. It has to be kept in mind, as has been held in Shyam Narain v. State (NCT of Delhi) that:

"Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullyng the physical frame of a woman is the demolition of the accepted civilised norm i.e. "physical morality". In such a sphere, impetuosity has no



room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men."

11. The Three Judges Bench of the Apex Court in the case of **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and Another** reported in [(2017) 9 SCC 641], after discussing its earlier judgments observed as under:

"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16(1). Section 482 preserves the



inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the



exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not



private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice;



and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

12. The Three Judge Bench of the Apex Court in **State of Madhya Pradesh V. Laxmi Narayan & Ors.** reported in **[(2019) 5 SCC 688]** laid down the following principles:-

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 (supra) 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 non-compoundable 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.

13. The Apex Court in the case of **Arun Singh and Others v. State of Uttar Pradesh Through its Secretary and Another** reported in [(2020) (3) SCC 736], held as under:-

14. In another decision in Narinder Singh v. State of Punjab (supra) it has been observed that in respect of offence against the society it is the duty to punish the offender. Hence, even where there is a settlement between the offender and victim the same shall not prevail since it is in interests of the society that offender should be punished which acts as deterrent for others from committing similar crime. On the other hand, there may be offences falling in the category where the correctional objective of criminal law would have to be given more weightage than the theory of deterrent punishment. In such cases, the court may be of the opinion that a settlement between the parties would lead to better relations between them and would resolve a festering private dispute and thus may exercise power under Section 482 CrPC for quashing the proceedings or the complaint



or the FIR as the case may be.

14. The Apex Court in case of **Ram Gopal & Another v. State of Madhya Pradesh**, reported in **[(2021 0 Supreme (SC) 529)]** had occasioned to discuss the issue and observed in paragraph No.14 as under:

14. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a “settlement” through duress, threats, social boycotts, bribes or other dubious means. It is well said that “let no guilty man escape, if it can be avoided.”

15. The Hon’ble Supreme Court in the decision **Daxaben v. The State of Gujarat & others** reported in **[2022 LiveLaw (SC) 642]** stated as under:



38. However, before exercising its power under Section 482 of the Cr.P.C. to quash an FIR, criminal complaint and/or criminal proceedings, the High Court, as observed above, has to be circumspect and have due regard to the nature and gravity of the offence. Heinous or serious crimes, which are not private in nature and have a serious impact on society cannot be quashed on the basis of a compromise between the offender and the complainant and/or the victim. Crimes like murder, rape, burglary, dacoity and even abetment to commit suicide are neither private nor civil in nature. Such crimes are against the society. In no circumstances can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society.

39. Orders quashing FIRs and/or complaints relating to grave and serious offences only on basis of an agreement with the complainant, would set a dangerous precedent, where complaints would be lodged for oblique reasons, with a view to extract money from the accused. Furthermore, financially strong offenders would go scot free, even in cases of grave and serious offences such as murder, rape, bride-burning, etc. by buying off



informants/complainants and settling with them. This would render otiose provisions such as Sections 306, 498A, 304-B etc. incorporated in the IPC as a deterrent, with a specific social purpose.

40. In Criminal Jurisprudence, the position of the complainant is only that of the informant. Once an FIR and/or criminal complaint is lodged and a criminal case is started by the State, it becomes a matter between the State and the accused. The State has a duty to ensure that law and order is maintained in society. It is for the state to prosecute offenders. In case of grave and serious non-compoundable offences which impact society, the informant and/or complainant only has the right of hearing, to the extent of ensuring that justice is done by conviction and punishment of the offender. An informant has no right in law to withdraw the complaint of a non-compoundable offence of a grave, serious and/or heinous nature, which impacts society.

16. The Supreme Court in the case of **P.Dharmraj v. Shanmugam and others** decided on 8th September 2022 in Crl.Appeal Nos.1515-1516 of 2022, after discussing in



earlier judgments, observed in paragraph No.42 as under:

"Thus it is clear from the march of law that the Court has to go slow even while exercising jurisdiction under Section 482 Cr.PC or Article 226 of the Constitution in the matter of quashing of criminal proceedings on the basis of a settlement reached between the parties, when the offences are capable of having an impact not merely on the complainant and the accused but also on Others."

17. Thus, the law emerges is that, in respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. In a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And



reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error. Such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. Heinous and serious offences involving mental depravity or



offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences. In other words, grave or serious offences or offences which involve moral turpitude or have a harmful effect on the social and moral fabric of the society or involve matters concerning public policy, cannot be construed betwixt two individuals or groups only, for such offences have the potential to impact the society at large. Effacing abominable offences through quashing process would not only send a wrong signal to the community, but may also accord an undue benefit to unscrupulous habitual or professional offenders, who can secure a “settlement” through duress, threats, social boycotts, bribes or other dubious means. It is well said that “let no guilty man escape, if it can be avoided.”

18. Thus, the law as it stands is that although High



Court can invoke its jurisdiction u/s.482 Cr.P.C. even in non-compoundable offence and can quash the proceedings on the basis of settlement arrived at between the parties even in the cases of non-compoundable offences but while exercising its jurisdiction this Court must consider the fact that whether the proceeding relates to any serious and heinous offences and whether the crime in question has impact over the society. In cases of serious nature which affects the society at large this Court should not exercise its jurisdiction under Section 482 Cr.P.C. for quashing the proceedings on the basis of compromise executed between the parties.

19. In the present case, sexual assault against a minor, which led to registration of crime under Section 377 of the IPC, the relevant sections of the POCSO Act and under the provisions of the SC/ST Act, sought to be quashed merely on the ground of settlement. Since the law does not permit so, quashment sought for, is liable to fail. Accordingly, this petition also must fail.



In the result, this Criminal Miscellaneous Case stands dismissed.

Sd/-
A. BADHARUDEEN
JUDGE

Bb



APPENDIX OF CRL MC.NO.2676 OF 2024

PETITIONER'S ANNEXURES

- ANNEXURE A1 THE TRUE COPY OF THE FIR IN CRIME
NO.862/2023 OF KADINAMKULAM POLICE
STATION, THIRUVANANTHAPURAM DISTRICT
- ANNEXURE A2 THE TRUE COPY OF THE FINAL REPORT
PENDING AS SC NO.2410/2023 BEFORE THE
ADDL.DISTRICT & SESSIONS COURT (POCSO)
- ANNEXURE A3 A TRUE COPY OF THE AFFIDAVIT FILED BY
THE 2ND RESPONDENT
- ANNEXURE A4 A TRUE COPY OF THE AFFIDAVIT FILED BY
THE 3RD RESPONDENT

RESPONDENTS' ANNEXURES : NIL