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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 4TH DAY OF DECEMBER 2024 / 13TH AGRAHAYANA, 1946

CRL.MC NO. 9250 OF 2024

CRIME NO.663/2023 OF NADAPURAM POLICE STATION, KOZHIKODE

SC NO.346 OF 2024 OF DISTRICT & SESSIONS COURT, KOZHIKODE

PETITIONER/PETITIONER/ACCUSED:

ARSHAD
AGED 28 YEARS
S/O ANDRU, NADUTHAREMMAL (H), VANIMEL, NEDUMPARAMB, KOZHIKODE,
PIN - 673506

BY ADV.SMT. K.REEHA KHADER

RESPONDENTS/RESPONDENTS/STATE/DE FACTO COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031

2

R1 BY SENIOR PUBLIC PROSECUTOR SRI.RENJITH GEORGE
R2 BY ADV.SRI. N.JISHINE BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29.11.2024, THE
COURT ON 04.12.2024 PASSED THE FOLLOWING:



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'C.R.'

ORDERDated this the 4th day of December, 2024

This Criminal Miscellaneous Case has been filed under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 to quash Annexure-A1 Final Report and all further proceedings in S.C.No.346/2024 on the files of the District and Sessions Court, Kozhikode arose out of Crime No.663/2023 of Nadapuram Police Station, Kozhikode. The petitioner herein is the accused in the above case.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the 2nd respondent/defacto complainant who is injured person. Also heard the learned Public Prosecutor, in detail. Perused the case diary and relevant materials available.

3. In this matter, the prosecution allegation is that, at about 01.15 pm on 26.09.2023, the accused who was in



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love affair with the de facto complainant wrongly restrained and assaulted the de facto complainant with intention to commit murder when the relationship was collapsed. The specific allegation is that the accused stabbed the de facto complainant using a knife saying "I will kill you" and thereby caused injury to her left shoulder. On this premise, the prosecution alleges commission of offences punishable under Sections 341,323,324,307 and 506 (ii) of the Indian Penal Code, 1860.

4. The learned counsel for the petitioner submitted that the matter has been amicably settled and the 2nd respondent/de facto complainant filed affidavit in this regard. The de facto complainant stated in her affidavit that she has no intention to proceed further in this matter.

5. The learned counsel appearing for the defacto complainant would submit that the matter has been settled and the de facto complainant has no intention to proceed further in this matter.



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6. The learned Public Prosecutor also submitted that the matter has been settled between the parties and statement of the 2nd respondent/de facto complainant to that effect has been recorded. But, the learned Public Prosecutor opposed quashment on the premise of settlement, since offence punishable under Section 307 of IPC is also involved in this matter.

7. The principles governing compounding of non-compoundable offences have been discussed elaborately by the Apex Court in the Three Bench decision reported in **[2019 (2) KHC 190 : AIR 2019 SC 1296 : 2019 (2) KLJ 226 : 2019 (5) SCC 688] State of Madhya Pradesh v. Laxmi Narayan and Others**, after referring **Narinder Singh and Others v. State of Punjab and Another [(2014) 6 SCC 466]** and laid down the principles as under:

"Considering the law on the point and the other decisions of this Court on the point, referred to herein above, it is observed and held as under:

i) that the power conferred under S.482 of the Code to quash the criminal proceedings for



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the non compoundable offences under S.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;

ii) 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;

iii) similarly, such power is not to be exercised for the offences under the special Statutes like 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;

iv) offences under S.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



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not against the individual alone, and therefore, the criminal proceedings for the offence under S.307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under S.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 S.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 S.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 S.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



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the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated herein above;

v) while exercising the power under S.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 impart 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."

8. In view of the above legal position, settlement of cases involving offence punishable under Section 307 of IPC also can be considered, after filing Final Report and not before filing Final Report, if the prosecution materials



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do not suggest commission of the said offence and also in consideration of the nature of injuries sustained. That is to say, when the courts, while taking a call as to whether compromise in such cases should be effected or not, the Court should go by the nature of injuries sustained, the part of the body where the injuries were inflicted with specific attention to see whether the injuries caused are on the vital/delicate parts of the body and the nature of weapons used etc. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of *prima facie* assessment of the aforesaid circumstances, if the Court forms an opinion that offence punishable under Section 307 IPC was unnecessary included in the charge sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.



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9. Keeping the above legal principle in mind, I have gone through the medical records of the injured. On perusal of the wound certificate of the injured, incised wound over left upper arm laterllay 3 cm x 0.5 cmx 0.5 cm and left shoulder 1 cm x .5 cm are the injuries noted. Thus, the medical records in no way suggest that the de facto complainant sustained any injuries on vital/delicate parts of her body. Since no injuries sustained to the de facto complainant on any vital or delicate parts of the body, the allegation as to commission of offence under Section 307 of IPC is not substantiated *prima facie*. In view of the matter, there is no reason to disallow the quashment following the ratio in **Laxmi Narayan's** case (supra).

10. Therefore, I am inclined to allow the prayer for quashment at the instance of the petitioner, on the strength of settlement, where the injured person supported settlement.

Accordingly, this petition stands allowed and all



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further proceedings in S.C. No.346/2024 on the files of the District and Sessions Court, Kozhikode, arose out of Crime No.663/2023 of Nadapuram Police Station, Kozhikode, as against the petitioner/accused, stand quashed.

Sd/-

A. BADHARUDEEN
JUDGE

MJL



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APPENDIX OF CRL.MC 9250/2024

PETITIONER'S ANNEXURES:

- Annexure A1 A CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.663/2023 REGISTERED IN NADAPURAM POLICE STATION, KOZHIKODE DISTRICT PENDING BEFORE THE HON'BLE DISTRICT AND SESSIONS COURT, KOZHIKODE AS SC NO. 346/2024 ALONG WITH STATEMENT OF WITNESS NO.1 AND A TRUE COPY WOUND CERTIFICATE
- Annexure A2 A TRUE COPY OF MEMORANDUM OF EVIDENCE.
- Annexure A3 SWORN AFFIDAVIT OF RESPONDENT NO. 2

RESPONDENTS' ANNEXURES: NIL

/TRUE COPY/

PA TO JUDGE