

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

**WEDNESDAY, THE 25TH DAY OF OCTOBER 2023 / 3RD KARTHIKA,
1945**

CRL.MC NO. 1896 OF 2023

AGAINST THE ORDER/JUDGMENT CC 755/2022 OF JUDICIAL

MAGISTRATE OF FIRST CLASS I ,PERUMBAVOOR

CRIME NO.967/2022 OF PERUMBAVOOR POLICE STATION

PETITIONER/S:

JOHNSON STEPHEN
AGED 51 YEARS

BY ADVS.
PRABHU K.N.
MANUMON A.

RESPONDENT/S:

1 CHINCHUMOL
AGED 32 YEARS

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

OTHER PRESENT:

G SUDHEER GP,,KK DHEERENDRA KRISNAN AMICUS
CURIAE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 25.10.2023, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

“C.R.”

K.BABU, J.

Crl.M.C.No.1896 of 2023

Dated this the 25th day of October, 2023

ORDER

The accused in C.C.No.755 of 2022 on the file of the Judicial First Class Magistrate’s Court-I, Perumbavoor seeks to quash the final report and all further proceedings.

2. The petitioner faces charges under Sections 406 and 420 of IPC. The prosecution case is that the petitioner, on a false promise to arrange a job visa to Australia, collected Rs.6,10,000/- from respondent No.1, the *de facto* complainant. It is alleged that the petitioner obtained wrongful gain, causing wrongful loss to the victim.

3. The petitioner pleaded the following:-

Based on the first information given by the victim, Perumbavoor Police registered Crime No.967/2022. During the stage of investigation, the petitioner and the victim settled their disputes. The victim submitted a petition seeking composition of the offences along with an application seeking leave of the Court to permit her to compound the offences. The victim filed a statement before the Investigating Officer that she had settled the dispute and did not intend to prosecute the offence. The learned Magistrate sought a report from the Investigating Officer. As per Annexure-A5 dated 31.10.2022, the Investigating Officer informed the learned Magistrate that the victim received Rs.1,75,000/- as a full and final settlement.

4. The victim later submitted before the learned Magistrate that she was not pressing the application seeking composition, and the learned Magistrate dismissed the application as not pressed.

5. Notice was served on the victim. She did not turn up.

6. I have heard the learned counsel for the petitioner, the learned Public Prosecutor and the learned Amicus Curiae.

7. The learned counsel for the petitioner submitted that an application seeking composition under Section 320 Cr.P.C., having been filed by the victim, cannot be withdrawn for the reason that the moment it is filed, it shall have the force of acquittal.

8. The learned Public Prosecutor, per contra, contended that the filing of the application seeking composition should have the force of acquittal at the moment it is filed only in the case of offences compoundable without the leave of the Court and in case of offences where leave of the Court is required, only after granting of leave, a judicial act of deciding whether,

in the interest of justice, the parties should be allowed to compound, it shall have the force of acquittal.

9. The learned Amicus curiae Shri. K.K. Dheerendrakrishnan, relying on the decision in ***N.Raja Malla Reddy v. State of A.P. and Another*** [2005 KHC 2083], submitted that a petition seeking composition of the offence cannot be withdrawn in as much as it has the immediate effect of acquittal of the accused. The learned Amicus Curiae further submitted that unilateral withdrawal of consent by one party, especially after the other party performed his part of the terms in the agreement, cannot be permitted. The learned Amicus Curiae submitted that the Court ought not to have permitted the victim to withdraw the application seeking composition.

10. It is profitable to extract Section 320 of the Cr.P.C..

320.Compounding of offences.-(1) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
XXXX		

2. The offences punishable under the sections of the Indian Penal Code,1860, (45 of 1860) specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
xxxxxx		

3. When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under section 34 or 149 of the Indian Penal Code, may be compounded in like manner.

4.(a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf, may, with the permission of the Court compound such offence.

(b)When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court compound such offence.

5. When the accused has been committed for trial or when he has been convicted and an appeal is pending no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

6. A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

7. No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

8. The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

9. No offence shall be compounded except as provided by this section.

11. Compounding is defined in Black's Law Dictionary as follows:-

“ Compounding a crime:

The offence of either agreeing not to prosecute a crime that one knows has been committed or agreeing to hamper the prosecution.”

12. In Sri.P. Ramanatha Aiyer's the Law Lexicon (Reprint 2002 - Second Edition), compounding is defined as follows:-

“Compounding felony or offence: Compounding an offence is defined to be “the offence of taking a reward for forbearing to prosecute a felony; as where the party robbed takes his goods again, or other amends upon an agreement not to prosecute.”

13. It is trite that the composition is a unilateral act. A joint application by the accused and the victim is not a requirement of Section 320.

14. Going by the above-extracted provision, it is seen that the Court seeks to categorize the offences into

two groups. Under Sub-section (1), certain offences have been listed which can be compounded without the permission of the Court. Under Sub-section (2), certain offences are listed, which can be compounded only with the permission of the Court. It is obvious from Sub-section (8) that the composition of offences by the aggrieved party has the effect of acquittal of the accused. The policy of law in the section is to promote friendliness between the parties so that peace between them is restored. The legislature has carefully chosen to categorize the offences compoundable with the permission of the Court and without the permission of the Court. The question as to whether the permission is to be accorded or not depends upon the nature of the offences alleged. The basis for the classification of offences as compoundable, offences compoundable with the sanction of the Court and offences not compoundable at all, is the degree of wrong done to the State. Wrongs done to the

citizens which do not seriously affect the interest of the community or the State are permitted to be compounded by the victim without the permission of the Court. However, in the second category of cases, the larger community interest is involved, and therefore, the composition of such offences requires the leave of the Court, which is to be exercised in a judicious manner.

15. I shall first consider the argument of the learned counsel for the petitioner to the effect that the moment a petition for composition is filed, it has the effect of acquittal under Sub-section (8) of Section 320. The question is whether the mere filing of the petition seeking composition results in acquittal. In the normal course, the Court accepts the assertion of the complainant that he has compounded the offence. If the Court is satisfied that the composition is voluntary, genuine and true, it has no other option but to accept it, and then the composition has the effect of acquittal. In

such a case, the complainant cannot later resile from the composition. There may be cases where the Court may proceed to verify the factors prompting the victim to resort to the act of composition. In exceptional cases, the Court may permit the victim to withdraw from the composition on satisfied that the composition is not voluntary. It is profitable to refer to the observations of this Court in **Y.P. Baiju v. State of Kerala and others** [2007(4) KHC 706] and **Sudheer Kumar @ Sudheer v. Manakkandi M.K. Kunhiraman and Another** [2008(1) KHC 127]. In **Y.P. Baiju**, this Court observed thus:

“Normally a Court can accept the word of the complainant that he has compounded the offence. The voluntariness of such composition can be verified by the Court to satisfy itself that the composition is true, genuine and voluntary. The factors prompting the victim to resort to the unilateral act of composition can also be verified from him.”

16.In ***Sudheer Kumar*** a Division Bench of this Court observed thus:-

“14.....We have already seen that offence under the NI Act comes in par with offences mentioned in the Table I of S.320(1). Such offence is compoundable when the trial is pending, without permission from Court. Therefore if such offences are compounded by the parties, the Trial Court is bound to accept the compounding. The Trial Court need only look into whether a genuine compromise was entered into and the compounding petition is filed accordingly.”

17. The learned counsel for the petitioner relied on the decision of the Andhra Pradesh High Court in ***N.Raja Malla Reddy*** (Supra) to contend that the moment the complainant files an application for composition before the Court, it has the immediate effect of acquittal of the case. I respectfully disagree with the view of the Andhra Pradesh High Court. I hold the view that even in the case of offences compoundable without the permission of the Court, the satisfaction of the Court as to whether the

composition is genuine, true and voluntary is essential. Necessarily, when the Court satisfies itself that the composition is true, genuine and voluntary, the composition shall have the effect of acquittal.

18. Coming to the cases where the offences are compoundable with the permission of the Court. As I stated above in cases governed by Sub-section (2) of Section 320, the offences are of the nature which affect not only the interest of the individual but also the interests of the society as a whole. As far as the aggrieved party is concerned, the position seems to be the same regardless of the fact that the offence alleged is compoundable with or without the permission of the Court. In cases governed by Sub-section (2), the Magistrate has to perform the judicial act of deciding whether the parties should be allowed to compromise in the interest of justice. Unless and until the Court has given its sanction, the so called composition has no legal

effect and cannot be taken cognizance of by any Court dealing with the offence. Such a composition is ineffective and does not deprive the Court of its jurisdiction to try the case.

19. The observations of the Apex Court in the decisions mentioned below reflect the nature of the judicial act while granting permission to compound the offences coming under Sub-section (2) of Section 320.

20. In ***Dasan v. State of Kerala*** [(2014) 12 SCC 666] the accused therein was alleged to have caused grievous hurt by iron rod, but there was no clear evidence that iron rod was used. The recovery made was of wooden stick and in the suit for compensation the injured also stated that assault was by stick. Thus the conviction was altered to Section 325 and as the case was 18 years old, permission to compound the offence was granted. In ***Bharti v. State of Haryana*** [(2014) 4 SCC 14], in a case under Section 354 and house trespass where the incident

took place 13 years ago and both the parties were neighbours, the parties settled their differences. Since the offence under Section 354 was compoundable on the date of the incident, the offence was permitted to be compounded in the larger interest of justice.

21. Therefore, the indisputable position of law is that composition of a compoundable offence coming under Sub-section (1) is complete as soon as the Court accepts it and it has the effect of acquittal of the accused even if the person by whom offence may be compounded later resiled from the composition. Insofar as the offences involved are compoundable with the permission of the Court, unless and until the Court has granted permission, the composition does not have any consequences.

22. Now, coming to the facts of the case. The offences alleged are compoundable with the permission of the Court. It may be true that the defacto complainant

(CW1) received the amount mentioned in Annexure-A2. However, the circumstances under which she resiled from the composition of the offences have not been placed before the Court.

23. The learned Public Prosecutor placed a report submitted by the Investigating Officer stating that the complainant informed that a sum of Rs.1,67,000/- more is due to her from the petitioner/accused.

24. Another relevant aspect to be noted is that the charge witness No.2 had mentioned in his statement under Section 161 Cr.P.C. that a sum of Rs.2,50,000/- is due to him from the petitioner/accused in connection with the alleged transactions leading to the registration of the crime. He is also in the position of a victim.

25. The petitioner has failed to place any sufficient material to quash the proceedings in C.C.No.755/2022 on the file of the Judicial Magistrate of First Class,

Perumbavoor. I find no reason to interfere with the impugned order.

Having regard to the entire circumstances, this Crl.M.C. is disposed of granting liberty to the victims to move a petition seeking composition of the offences alleged, if so advised.

Sd/-
K.BABU,
JUDGE

kkj

APPENDIX OF CRL.MC 1896/2023

PETITIONER ANNEXURES

- Annexure A1 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.967/2022 OF PERUMBAVOOR POLICE STATION, ERNAKULAM DISTRICT DATED 01-07-2022
- Annexure A2 TRUE COPY OF DD NO.650307 ISSUED BY SOUTH INDIAN BANK DATED 27-10-2022
- Annexure A3 TRUE COPY OF CMP NO. 4097/ 2022 BEFORE THE JUDICIAL MAGISTRATE COURT NO.1, PERUMBAVOOR TO COMPOUND CRIME NO.967/2022 OF PERUMBAVOOR POLICE STATION, ERNAKULAM DISTRICT ALONG WITH VAKALATH DATED 27-10-2022
- Annexure A4 TRUE COPY OF CMP NO. 4096/ 2022 BEFORE THE JUDICIAL MAGISTRATE COURT NO.1, PERUMBAVOOR FOR PERMISSION OF COURT TO COMPOUND CRIME NO.967/2022 OF PERUMBAVOOR POLICE STATION, ERNAKULAM DISTRICT DATED 27-10-2022
- Annexure A5 TRUE COPY OF THE REPORT FILED BY THE INVESTIGATION OFFICER IN CRIME NO.967/2022 OF PERUMBAVOOR POLICE STATION, ERNAKULAM DISTRICT ALONG WITH THE STATEMENT OF THE 1ST RESPONDENT/DE-FACTO COMPLAINANT DATED 31-10-2022
- Annexure A6 TRUE COPY OF THE FINAL REPORT IN CRIME NO.967/2022 OF PERUMBAVOOR POLICE STATION, ERNAKULAM DISTRICT DATED 15-12-2022
- Annexure A7 TRUE COPY OF THE ORDER PASSED BY THE JUDICIAL MAGISTRATE COURT NO.1, PERUMBAVOOR IN CMP NO. 4096/ 2022 31.01.2023
- Annexure A8 TRUE COPY OF THE ORDER PASSED BY THE JUDICIAL MAGISTRATE COURT NO.1, PERUMBAVOOR IN CMP NO. 4097/ 2022 31.01.2023