

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE K.HARIPAL

Wednesday, the 28<sup>th</sup> day of April 2021/8<sup>th</sup> Vaisakha, 1943

CrL.MC No.5866/2020

SC No.771/2020 of the FIRST ADDITIONAL SESSIONS COURT, THRISSUR  
CRIME NO.274/2020 OF Pudukkad Police Station , Thrissur

PETITIONER

X

X

RESPONDENT

1.XXX

X

2.STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,ERNAKULAM

2.THE STATION HOUSE OFFICER

PUDUKKAD POLICE STATION, PUDUKKAD - 680 301, THRISSUR DISTRICT.

This CrL.MC coming on for orders upon perusing the petition and this Court's final order dated 20/04/2021 in CrL.MC 5866/2020 and upon hearing the arguments of Mr.ABRAHAM MATHAN, Advocate for the petitioner and the PUBLIC PROSECUTOR for the respondents 1 & 2, the court passed the following

**K. HARIPAL, J.**

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**Crl.M.C. Nos. 5765, 5866 of 2020 & 2294 of 2021**  
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Dated this the 28<sup>th</sup> day of April, 2021

For information purpose only  
**ORDER**

The following three Criminal Miscellaneous Cases were filed under Section 482 of the Criminal Procedure Code, hereinafter referred to as the Cr.P.C., seeking to quash the FIR/final report as the case may be, on the premise that the petitioners who are the accused in the crime had settled the matter with the respective defacto complainant/prosecutrix:-

1. Crl. M.C. No. 5765/2020 seeking to quash the final report in Crime No. 108/2019 of Kodakara Police Station alleging offence punishable under Sections 450, 370, 363, 376(2)(n) of the IPC and Sections 4 read with 3(a) and 6 read with 5(l) of the POCSO Act, pending as S.C. No.717/2019 before the Additional Sessions Court, Thrissur;
2. Crl. M.C. No. 5866/2020 for quashing the final report in Crime No. 274/2020 of Pudukkad Police Station, alleging offence punishable under Sections 450, 376(2)(n) and 363 of the IPC and Sections 6, 5(j)(ii), (l) of the POCSO Act, pending as S.C. 771/2020 before the Additional Sessions Court, Thrissur;
3. Crl. M.C. No. 2294/2021 for quashing the FIR in Crime No. 1885/2020 of Pangode Police Station alleging offence punishable under Sections 450, 376 and 420 of the IPC.

In the first two cases, offence under the POCSO Act is alleged, since at the time of the alleged commission of the crime the victims were minors.

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2. While considering the matters, this Court had taken into account the affidavits filed by the respective prosecutrix and the defacto complainant. After hearing counsel on both sides, the FIR/final report were quashed.

3. At the time of passing the said orders, this Court had not noticed the decision of the Hon'ble Supreme Court in **Gian Singh v. State of Punjab and Another [2012(4) KLT 108]**, where it is specifically held that while invoking the jurisdiction under Section 482 of the Cr.P.C., the prime consideration should be to secure ends of justice, to prevent abuse of the process of court. The court has also stated that heinous and serious offence of mental depravity or offences like murder, rape, dacoity etc., cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute.

4. This aspect has been reiterated by the Hon'ble Supreme Court in **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and**

**Another [2017(5) KHC 192(SC)]** and also in **State of Madhya Pradesh v. Laxmi Narayan and Others [2019(2) KHC 190 (SC)]**. In the subsequent two decisions also it has been stated that whenever offences of murder, rape, dacoity etc., are alleged, the court shall not invoke its jurisdiction under Section 482 of the Cr.P.C., on the ground that the matter was settled between the parties.

5. At the time when the above orders were rendered, I had in mind the decisions reported in **Manoj Sharma v. State [2008(4) KLT 417 (SC)]** and **Madan Mohan Abbot v. State of Punjab [2008(3) KLT 19 (SC)]**, where it is held that when the parties reach a settlement on their own, ordinarily the court shall not refuse to exercise its jurisdiction under Section 482 of the Cr.P.C. or Article 226 of the Constitution of India. In **Manoj Sharma's** case, it was also held that the court has to take a pragmatic view where complainant decided not to pursue with the matter. But in the decisions of the Hon'ble Supreme Court starting from **Gian Singh**, it has been categorically held that offences in the nature of murder, rape and dacoity shall not be considered for quashing the proceedings, in the light of

settlement stated before court, invoking jurisdiction under Section 482 of the Cr.P.C.

6. The learned counsel for the petitioners pointed out that once the orders are pronounced and signed by this Court, this Court has become functus officio, that it cannot review the orders. But the argument cannot be accepted for the reason that these cases are called today not to review the orders but to point out the omission to note the law laid down by the Apex Court which is binding on this Court. In other words, this is not an attempt to review the earlier orders, so that the bar under Section 362 of the Cr.P.C. cannot be attracted. The Supreme Court has made it clear that a recall order is distinct from a review of order, that a recall cannot be refused by strictly applying provisions of Section 362 of the Cr.P.C. (see the decision in **Vishnu Agarwal v. State of U.P. and Another [2011 CrL. L.J. 1744 (SC)]** etc.). Moreover, when the dictum laid down by the Hon'ble Supreme Court is not considered, it is a serious matter and therefore, there is no legal impediment in recalling the orders in the above Crl. M. C.s. The orders allowing the Crl. M.C.s are hereby recalled, suo motu.

The learned counsel for the petitioners took pain to take me through the documents and said that these cases stand out and are eminently fit cases for quashing the proceedings, if the inherent jurisdiction of this Court is not invoked, that would result in failure of justice and abuse of the process of court. I have no doubt that these matters require serious consideration and detailed hearing. Therefore, the cases will be posted as per roster, immediately after re-opening, after the summer vacation. I am told that some of the orders have already been communicated. If the orders are communicated, this order shall also be sent, stating that the earlier orders shall not be given effect to.

Sd/-

**K. HARIPAL**

**JUDGE**

DCS/28.04.2021