

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.HARIPAL

TUESDAY, THE 8TH DAY OF MARCH 2022 / 17TH PHALGUNA, 1943

CRL.MC NO. 239 OF 2022

PETITIONERS/ACCUSED:

- 1 MUHAMMED NAZAR
AGED 32 YEARS
ASM HOUSE, KHAZI LANE, THALANGARA P.O., KASARAGOD, PIN - 671121
- 2 ABDUL KHADER
AGED 30 YEARS
MISRIYA MANZIL, M.D. NAGAR, THALANGARA VILLAGE & POST, KASARAGOD,
PIN - 671121
- 3 NIZAMUDDEEN T.A.
AGED 28 YEARS
SULAIMAN JUNAID MANZIL, WEST HILL, THALANGARAR POST & VILLAGE,
KASARAGOD., PIN - 671121
- 4 ABHI@ SAINUL ABID
AGED 30 YEARS
C.A.P. HOUSE, NEAR RAILWAY GATE, THAYALANGADI, KASABA VILLAGE,
KASARAGOD., PIN - 671121
- 5 MUHAMMED JASHID
AGED 28 YEARS
MASTER MANZIL, PALLIKKADAN HOUSE, THALANGARA POST & VILLAGE,
KASARAGOD., PIN - 671121
- 6 SHANU
AGED 29 YEARS
H. NO. 23/183, PALLIKKAL HOUSE, THALANGARA VILLAGE & POST, KASARAGOD.,
PIN - 671121
- 7 ADINAS A.V.
AGED 32 YEARS
H. NO./ 24/99, PADINHAR HOUSE, THALANGARA VILLAGE & POST, KASARAGOD.,
PIN - 671121
- 8 MUHAMMED NIZAMUDDEEN @ IJJU
AGED 28 YEARS
H.NO. 29/45, NECHIPADUPPU, THALANGARA VILLAGE & POST, KASARAGOD., PIN -
671121
- 9 NOUSHAD P.N.
AGED 35 YEARS
H.NO. 23/166, KHAZI LANE, THALANGARA PIOST & VILLAGE, KASARAGOD, PIN -
671121
- 10 ANWAR @ ANNU, MUCHIRIYAN ANNU

CrI. M. C. NO. 239 OF 2017

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AGED 28 YEARS

KMC 24/415, PALLIKKAL THALANGARA VILLAGE & POST, PIN - 671121

BY ADV S.JIJI

RESPONDENTS/STATE & DE FACTO COMPLAINANT:

1 STATE OF KERALA

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

2 SANAL T.R.

AGED 30 YEARS

THUNDIYIL HOUSE, KARTHIKAPURAM VILLAGE, CHERUPUZHA, KANNUR

DISTRICT, PIN - 670511

BY ADV M.M.BABY

OTHER PRESENT:

SR.PP - SRI. HRITHWIK C.S.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08.03.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Petitioners are the accused in S.C. No. 215 of 2019 on the file of the Assistant Sessions Court, Kasaragod which originated from the final report in Crime No. 646 of 2017 of Kasaragod police station where offences under Sections 143, 147, 148, 341, 323, 324, 506(ii), 308 read with Section 149 of the IPC are alleged against the accused persons, ten in number.

2. The allegation is that on 23.07.2017 at 12.30 hours, at Thalankara old harbour and then around the premises of Malik Dinar hospital, accused persons along with some identifiable persons formed an unlawful assembly and in prosecution of their common object, owing to the reason that CW1 Sanal had taken a lady of a different community in a car, the 1st accused wrongfully restrained and intimidated that he would be killed; 2nd accused beat him with a wooden reaper, a dangerous weapon and caused him injuries; accused Nos. 3 and 4 assaulted him with iron rods. Now the final report has been

laid with the above-stated allegations and the case is pending before the Assistant Sessions Court. It appears that the trial has already commenced. Petitioners have moved this Court seeking to quash the proceedings on the ground of settlement reached with the 2nd respondent.

3. I heard the learned counsel for the petitioners and also the learned Senior Public Prosecutor who seriously opposed the application for settlement.

4. Even though the learned Senior Public Prosecutor has confirmed the settlement reached with the 2nd respondent, who had given a further statement stating that the matter is settled, has opposed quashing the proceedings. According to him, petitioners were virtually doing moral policing. Moreover, accused Nos. 4 and 5 are having serious criminal antecedents to their credit. The 4th accused is involved in fifteen other cases including two cases alleging offence under Section 307 of the IPC and three other Sessions Cases, whereas the 5th petitioner has seven other cases including offence under Section 307 of

the IPC.

5. After hearing counsel on both sides, I am also convinced that the proceedings cannot be quashed as prayed for by the petitioners. Firstly the trial of the case is in progress, the memorandum of evidence indicates that at least seven witnesses have already been examined on the side of the prosecution. Secondly, it is a case in which a violent mob was attacking the 2nd respondent ostensibly for no reason. The reason shown is that he had removed a lady from another community in the car. As rightly suggested by the learned Senior Public Prosecutor if such a case is allowed to be quashed on the ground of settlement, that would send a wrong message to the public.

6. In the decision reported in **Gian Singh v. State of Punjab and others [2012 (10) SCC 303]** the Hon'ble Apex Court has laid down guidelines while considering application for quashing proceedings on the ground of settlement, invoking jurisdiction under Section 482 of the Cr.P.C. According to the

Apex Court securing ends of justice is the ultimate guiding factor. Serious offences like murder, rape, dacoity, etc, or other offences of mental depravity under the Indian Penal Code or offences of moral turpitude under special statutes are saved from being considered for quashing on the ground of settlement. Following these guidelines, it is certain that petitioners are not entitled to get the proceedings quashed.

7. Firstly, as noticed earlier, it was a case in which a mob, armed with deadly weapons were rounding up and assailing the 2nd respondent on the ground that he had removed a lady of a different community in a car. In other words, they were doing moral policing. That means this is an offence involving mental depravity. Moreover, brutal attack was unleashed against an unarmed single person and caused him serious injuries.

8. Again, at least a few of the petitioners are fugitive criminals having very grave criminal antecedents. In the circumstances, the alleged settlement reached with the 2nd respondent cannot be reckoned for quashing the proceedings

under Section 482 of the Cr.P.C. The Criminal Miscellaneous Case is devoid of merits and is liable to be dismissed. Dismissed.

Sd/-

**K. HARIPAL
JUDGE**

PETITIONER ANNEXURES

Annexure1

**CERTIFIED COPY OF THE FINAL REPORT FILED BEFORE THE
JFM COURT, KASARAGOD IN CR. NO. 646/2017 OF KASARAGOD
POLICE STATION**

Annexure2

**THE AFFIDAVIT DATED 04-01-2022 SWORN BY THE 2ND
RESPONDENT**

TRUE COPY

P . A . TO JUDGE