IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 27TH DAY OF JANUARY 2023 / 7TH MAGHA, 1944

CRL.MC NO. 5431 OF 2022

THIRURANGADI POLICE STATION, MALAPPURAM

CRIME NO.280/2022

PETITIONER/ACCUSED:

SUDHEESH BABU, AGED 37 YEARS
S/O. PADMANABHAN, PALAMADATHIL CHALIL,
CHEMBAZHIMADU HOUSE, OLAKKARA. P.O.,
MALAPPURAM, PIN - 676306.

BY ADVS.
C.P.UDAYABHANU
NAVANEETH.N.NATH

RESPONDENTS/RESPONDENTS:

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

2 VINEESH
AGED 28 YEARS
S/O. UNNI, CHEMBAZHIMADU HOUSE,
PERUVALLUR, OLAKKARA. P.O.,
MALAPPURAM, PIN - 676306, PIN - 676306.

BY ADVS.
PUBLIC PROSECUTOR SRI G.SUDHEER
FOR R2 RASSAL JANARDHANAN A.
CP Udayabhanu
A.N.SANTHOSH(S-190)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13.01.2023 ALONG WITH CRMC.NO.6844/2022, THE COURT ON 27.01.2023 THE SAME DAY PASSED THE FOLLOWING:

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 27TH DAY OF JANUARY 2023 / 7TH MAGHA, 1944

CRL.MC NO. 6844 OF 2022

AGAINST THE ORDER IN CRMP 1128/2022 OF SPECIAL COURT

(ATROCITIES AGAINST SC/ST), MANJERI

THIRURNAGADI POLICE STATION

CRIME NO.280/2022

PETITIONER/ACCUSED:

SUDHEESH BABU, AGED 37 YEARS
S/O. PADMANABHAN, PALAMADATHIL CHALIL,
CHEMBAZHIMADU HOUSE,
OLAKKARA. P.O., MALAPPURAM, PIN - 676306.

BY ADVS.
C.P.UDAYABHANU
NAVANEETH.N.NATH

RESPONDENT/COMPLAINANT:

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

BY ADV PUBLIC PROSECUTOR SRI.SANAL P.RAJ

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13.01.2023 ALONG WITH CRMC.NO.5431/2022, THE COURT ON 27.01.2023 THE SAME DAY PASSED THE FOLLOWING:

"C.R"

A. BADHARUDEEN, J.

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Crl.M.C Nos.5431 of 2022
and
6844 of 2022

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Dated this the 27th day of January, 2023

O R D E R

The petitioner in the above Crl.M.Cs is the sole accused in Crime No.280 of 2022 of Thirurangadi Police Station, where he alleged to have committed offences under Sections 324 and 307 of Indian Penal Code (hereinafter referred to as `IPC' for convenience) as well as under Sections 3(1) (s), 3(2) (va) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 2015 (hereinafter referred to as the `SC/ST Act' for short). Crl.M.C No.684 of 2022 has been filed under Section 482

of the Code of Criminal Procedure (hereinafter referred to as `Cr.P.C' for short) to quash Annexure 2 order dated 20.09.2022 rejecting release of car bearing Registration No.KL 65 P 0790 involved in the above crime.

2. Crl.M.C.No.5431 of 2022 has been filed under Section 482 of Cr.P.C and the prayer therein is to quash Annexure 1 FIR (in crime No.280/2022 of Thirurangadi Police Station) and all further proceedings initiated by the 2nd respondent acting on the affidavit, filed as Annexure 4 in this case.

3. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor. Advocate Rassal Janardhanan appeared for the 2nd respondent.

4. It is argued by the learned counsel for the petitioner that the matter has been settled in between the defacto complainant and the accused. In order to substantiate the settlement, the learned counsel placed affidavit produced as Annexure 4, sworn by

Vineesh, S/o.Unni, the defacto complainant/injured in this case. In the affidavit it has been stated that except the act of assault by accused, the other averments recorded by the police are not completely true. Further, the defacto complainant did not hear calling his caste name, as alleged in his statement. It has been submitted that the defacto complainant had no objection in accepting the affidavit for the purpose of quashing the proceedings.

5. The relevant paragraphs in the affidavit are as under:

> *"4. I respectfully swear before this Hon'ble Court that except the act of assault by the accused the other averments recorded by the police are not completely true. In fact I have not heard the accused calling me by caste name. My friends who were present nearby the scene of occurrence told me that he had uttered some abusive words which he presumes as my caste name. Because of the pressure exerted on me by my friends and relatives I was constrained to give a statement against the accused before police.*
>
> *5. Even though I have sustained two injuries on both sides of my body, none of the injury was serious. After about four days I was discharged from the hospital. I have recovered from*

the injury thereafter and is now attending my regular job.

9. The accused is known to me from the glimmering of my senses. Because of the incident the local respectable persons and upon their intervention we both participated in the meeting and decided to settle the issues that lead to the incident. I have no grievance against the accused. I am not intending to prosecute the above case further."

6. Cursory glimpse on the recitals in the affidavit also would suggest that the defacto complainant reiterates the assault, consequential injuries and his treatment for the same as inpatient. The defacto complainant did not state those allegations as false. As far as the seriousness of the injury, the treatment records and opinion of the Doctor/Doctors are decisive.

7. Accordingly, the learned counsel for the petitioner pressed for quashment of Annexure 1 F.I.R and further proceedings as also release of the vehicle involved in the above crime on the submission that the learned Special Judge went wrong in dismissing the application on the ground that the petitioner did not

co-operate with the investigation and he had been evading from arrest. He also submitted that initially offence under Section 307 was not there and the same said offence incorporated subsequently.

8. Per contra, the learned Public Prosecutor would submit that though the defacto complainant/the 2nd respondent herein filed affidavit not objecting quashment of the proceedings, for the said reason the proceedings could not be quashed since serious offences under Section 307 of I.P.C as well as under Section 3(2)(va) of the SC/ST Act also were alleged.

9. In order to substantiate quashment of the F.I.R and further proceedings, the learned counsel for the petitioner placed decision of the Apex Court 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 & Ors.*** In the said decision, the Apex Court laid down the principles regarding the matters to be considered while compounding non compoundable offences. The

principles are 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 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 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 therefore 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/delegate 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 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."

10. Thus the law emerges is that offence under Section 307 of IPC would fall under the category of heinous and serious offences and, therefore, the same is to be treated as crime against the society and not against the individual alone. 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 the powers under S.482 of the Cr.P.C, on the ground that the parties have resolved their entire dispute

amongst themselves.

11. At the same time, the Apex Court carved out exceptions to the said proposition holding that when FIR was already filed alleging commission of offence under Section 307 of IPC, such proceedings can be quashed in view of settlement of dispute between the parties, only after the evidence is collected after investigation and the charge sheet is filed/charge framed and/or during trial and such an exercise is not permissible when the matter is still under investigation. Similarly, it was held that 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 proving 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/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by

the victim can generally be the guiding factor. On the basis of this *prima facie* analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak.

12. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

13. In the case on hand, the case is under investigation and so far no final report filed. Therefore, the quashment of the F.I.R on the submission that the parties resolved their dispute could not be considered at the crime stage, since such an exercise in cases involving offence under Section 307 of IPC is not permissible,

before filing final report. It is relevant to note that in this matter very serious offences are alleged to be committed by the accused. On reading the case diary, the specific allegation is that at 8 p.m on 27.04.2022, out of enmity, the petitioner herein, who was proceeding in a car caused hindrance to the defacto complainant on the road and consequently he called his caste name and threatened him that he would face dire consequences. Thereafter at 9 p.m on 28.04.2022, the petitioner stabbed the defacto complainant with a knife and inflicted serious injury. This is the base on which, initially crime was registered alleging commission of offence under Section 324 of I.P.C as well as under Sections 3(1)(s), 3(2)(va) of the SC/ST Act against the accused, and without much delay, offence under Section 307 of I.P.C also was incorporated. The copies of the medical records showing the treatment of the defacto complainant at Medical Hospital, Kozhikode as inpatient, are part of the case diary. In the third page of the treatment records

(referred as `case record') it has been stated that the physical condition of the defacto complainant during the stage of admission at the hospital was very serious and the said fact was duly informed to the relatives. It is relevant to note that the following injuries were also noted when he was taken to casualty and subsequent to thereafter.

> *"1) Stapled wound 2 cm over ® upper abdomen (Hypochondria)*
>
> *2) Stapled wound 3 cm over posterior aspect ® hypochondria*
>
> *3) Incised wound 4 cm over lateral aspect (L) upper abdomen."*

14. The defacto complainant underwent treatment for penetrating injury on the chest due to the stab injury caused by the accused, which is fatal, even as per the statement recorded as that of the doctor, who treated him. Therefore, it appears that even though as per the ratio in ***State of Madhya Pradesh v. Laxmi Narayan & Ors.*** (*supra*), quashment of crime involving offence under Section 307 of IPC is permissible for a court, after investigation and filing of final report, then also, if the prosecution

is one which would show commission of heinous and serious offences and has a serious impact on society *prima facie,* with reference to the nature of injuries, it could not be held that the same is a fit case for quashment.

15. It is relevant to refer further that the petitioner herein had approached the Special Court seeking anticipatory bail and the same was dismissed by the Special Court. Against which, the petitioner had filed Crl.Appeal No.691/2022 before this Court and as per judgment dated 12.10.2022 this Court dismissed the application after discussing the nature and seriousness of the offences and also highlighting the above fact. It is thereafter, the present petition to quash the complaint acting on the affidavit of the defacto complainant has been filed, during the progress of investigation, by the petitioner/accused without conceding to the domain of the investigating officer, so as to co-operate with the investigation. In fact, such a petition cannot be entertained by this

Court in view of the decision reported in ***State of Madhya Pradesh v. Laxmi Narayan & Ors.*** (*supra*). Further, the argument advanced by the learned counsel for the petitioner that initially offence under Section 307 was not there and the said offence was incorporated subsequently also is of least significance, in a case, commission of offence under Section 307 of IPC could be gathered from the prosecution records inclusive of the medical records.

16. Therefore, Crl.M.C No.5431 of 2022 is liable to be dismissed and is accordingly dismissed.

17. Accordingly, the petitioner is directed to surrender before the Investigating Officer in this crime to facilitate the proper investigation of the crime, within three days from today, failing which the investigating officer shall arrest the accused and go with investigation of the case without fail.

As far as Crl.M.C.No.6844 of 2022 for release of the vehicle (Polo car bearing Registration No.KL 65 P 0790) is concerned, I

am inclined to set aside Annexure 2 order and remand the matter back to the Special Court to consider the same afresh within ten days of surrender or production of the petitioner (in the event of his arrest), in accordance with law.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF CRL.MC 5431/2022

PETITIONER'S ANNEXURES

Annexure1	A CERTIFIED COPY OF THE FIR IN CRIME NO. 280/2022 OF THIRURANGADI POLICE STATION, MALAPPURAM DISTRICT PENDING ON THE FILE OF SPECIAL COURT FOR SC/ST (POA) CASES, MANJERI.
Annexure2	STATEMENT DATED 01.05.2022.
Annexure3	THE REPORT DATED 06.06.2022 SUBMITTED BY R1.
Annexure4	THE AFFIDAVIT DATED 01.08.2022 SWORN BY R2/VICTIM.

APPENDIX OF CRL.MC 6844/2022

PETITIONER'S ANNEXURES

Annexure 1	COPY OF THE FIR IN CRIME NO. 280/2022 OF THIRURANGADI POLICE STATION, MALAPPURAM DISTRICT PENDING ON THE FILE OF SPECIAL COURT FOR SC/ST (POA) CASES, MANJERI.
Annexure 2	ORDER IN CRL. M.P. NO. 1128/2022 DATED 20.09.2022 PASSED BY THE HON'BLE SPECIAL COURT FOR SC/ST (POA) ACT & NDPS CASES, MANJERI.