

Kerala High Court

Joseph Thomas vs State Of Kerala on 4 December, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl.Rev.Pet.No. 3647 of 2008()

1. JOSEPH THOMAS, @ PAPPACHAN,  
... Petitioner
2. MUKESH, AGED 30 YEARS,

Vs

1. STATE OF KERALA, REPRESENTED BY  
... Respondent

For Petitioner :SRI.G.PRIYADARSAN THAMPI

For Respondent :SRI.V.GOPIKRISHNA

The Hon'ble MR. Justice M.SASIDHARAN NAMBIAR

Dated :04/12/2008

O R D E R

M.SASIDHARAN NAMBIAR, J.

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Crl.R.P. NO.3647 & 3898  
OF 2008  
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Dated this the 4th day of December,2008

ORDER

Accused 1 and 6 in C.C.371/2001 on the file of Judicial First Class Magistrate Court-I, Alappuzha are the revision petitioners in Crl.R.P.3647/2008. Accused 2 to 5 therein are the revision petitioners in Crl.R.P.3898/2008. Revision petitioners were convicted and sentenced for the offences under sections 143,147,447,427,506(ii)and 435 read with section 149 of IPC. Revision petitioners in Crl.R.P.3647/2008 challenged the conviction before Sessions Court, Alappuzha in Crl.A.413/2007 and the other revision petitioners in Crl.A.391/2007. Learned Sessions Judge as per common judgment dated 7.8.2008 confirmed the conviction but modified the sentence. Revision petitions

are filed challenging the conviction and sentence.

2. Revision petitioners along with PW2, de facto complainant in Crl.R.P.3647/2008 filed CRRP3647 & 3898 of2008 2 Crl.M.A.11986/2008 seeking permission to compound the offence under section 320 of Code of Criminal Procedure stating that the matter has been settled between them and the de facto complainant has no further grievance against the revision petitioners.Crl.M.A.11976/2008 is filed in Crl.R.P.3898/2008 under section 320 of Code of Criminal Procedure seeking permission to compound the offence reiterating the same submission. An offence under sections 447 and 427 of IPC are compoundable under sub section (1) of Section 320 of Code of Criminal Procedure. Even leave of the court is not necessary. Hence petitions are allowed to the limited extent of permitting to compound the offence under section 447 and 427 of the Indian Penal Code.

3. The question is whether the non-compoundable offences under sections 143,147,435 and 506(ii) of IPC could be permitted to be

compounded in view of the settlement arrived at between the parties. Learned counsel appearing for CRRP3647 & 3898 of2008 3 the revision petitioners and the learned counsel appearing for de facto complainant submitted that the dispute was purely personal between the de facto complainant and the revision petitioners and that too in respect of the way claimed by the revision petitioners through the property of the de facto complainant and prosecution case is that revision petitioners committed damage to the fence as well as improvements in the property to the tune of Rs.10,000/- and when revision petitioners have already compensated that damages to the de facto complainant, this court is to permit the parties to compound the non compoundable offences also, eventhough as provided under section 320 of Criminal Procedure, they are not compoundable. Learned counsel relied on the decisions of the Apex Court in *Sujeetha Thomson v. M.P.Devassy* (2003(2) KLT 162), *Madan Mohan Abbot v. State of Punjab* (2008(3) KLT 19) *Nikhil Merchant v. Central Bureau of Investigation* (2008(3) KLT 769 and *Manoj Sharma CRRP3647 & 3898 of2008 4 v. State* (2008(4) KLT 417) and argued that when the dispute is purely personal as in this case and the case has been settled between the parties, in the interest of justice, permission is to be granted to compound the offence.

4. On hearing the learned counsel and going through the decisions of the Apex Court, I cannot agree with the submission that in view of the said decisions an offence which is not compoundable under section 320 of Code of Criminal Procedure could be allowed to be compounded in revision. In all those decisions Apex Court was considering the power of the court under section 482 of Code of Criminal Procedure to quash the proceedings. Finding that when the matter has been settled between the parties and the dispute is purely personal in nature and the trial is yet to be started and no purpose will be served by spending the valuable time of the court when ultimately there is no possibility of a conviction due to the settlement of the dispute between the parties, it CRRP3647 & 3898 of2008 5 was held that the valuable time of the court could be saved so that it could be devoted for taking up other matters which deserves the time of the court and so the cases could be

quashed. That principle cannot be applied in respect of an application for permission to compound an offence which is not compoundable under section 320 and that too in revision. It cannot be said that there is no possibility for conviction, when two courts concurrently found the accused guilty and convicted the revision petitioner.

5. But the question whether on the facts and circumstances of the case, conviction of the petitioners for the offences under sections 143,147,435 and 506(ii) of IPC is sustainable. While considering this aspect it is to be born in mind that the very prosecution case is that the revision petitioners in furtherance of their common object trespassed into the property of PW2, the de facto complainant and destroyed the fence and also the improvements. The offences alleged are CRRP3647 & 3898 of 2008 consequent to the trespass and mischief. The offences were settled and were compounded. In such circumstance, interest of justice warrants that the accused are not to be convicted for the remaining offences also. Hence in the peculiar facts and circumstances of the case, the conviction of the petitioners for the offences under section 143,147,435 and 506(ii) read with section 149 of IPC are set aside. Petitioners are acquitted of the said offences.

Revision petitions are disposed of.

M.SASIDHARAN NAMBIAR JUDGE tp/-

M.SASIDHARAN NAMBIAR, J.

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W.P.(C).NO. /06

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JUDGMENT SEPTEMBER, 2006