

(2014) 02 KL CK 0185

High Court Of Kerala

Case No: Crl. A. No. 804 of 2011

Thomas, V.C. and Others

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

---

**Date of Decision:** Feb. 8, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 320, 482
- Penal Code, 1860 (IPC) - Section 308, 323, 324, 34, 367

**Citation:** (2014) CriLJ 2396 : (2014) 2 ILR 238**Hon'ble Judges:** B.P. Ray, J**Bench:** Single Bench

**Advocate:** P. Vijaya Bhanu, Senior Advocate, Sri P.M. Rafiq and Sri M. Revikrishnan, Advocate for the Appellant; Thomas John Ambukan, Public Prosecutor, Sri K. Gopalakrishna Kurup, Senior Advocate, Sri S. Manu and Smt. K. Deepa (Payyanur), Advocate for the Respondent

---

**Judgement**

B.P. Ray, J.

Heard the learned counsel for the petitioners, learned senior counsel Sri K. Gopalakrishna Kurup for the second respondent and learned Public Prosecutor.

2. This appeal is directed against the judgment of Additional Sessions Judge (Ad hoc I), Kottayam in S.C. No. 290/2009. By the impugned judgment, the trial court found the appellants guilty under Sections 450, 395, 367 and 323 read with Section 34 I.P.C. and convicted them accordingly. Appellants 1 to 12 were sentenced to undergo rigorous imprisonment for five years and a fine of Rs. 5,000 each u/s 395 I.P.C., rigorous imprisonment for five years and a fine of Rs. 5,000 each u/s 367 I.P.C. and rigorous imprisonment for three years and a fine of Rs. 5,000 each u/s 450 I.P.C. and imprisonment for a period of three months for the offence u/s 323 I.P.C.

3. The prosecution case is that the first accused and P.W. 1 who are husband and wife and were residing together along with the mother of P.W. 1, i.e. C.W. 2 at

Thalapalam in House No. TP IV/339. The first accused had decided to sell the house and property, ignoring the objections of C.Ws. 1 and 2 as they have no other house, and first accused, in furtherance of the above intention, engaged accused 2 and 3 as brokers for sale of the property and on 31-8-2007, the first accused sold the house and property where C.Ws. 1 and 2 were residing, to the fourth accused for an amount of Rupees fifty one lakh and since C.Ws. 1 and 2 refused to move out of the house after the sale, accused Nos. 1 to 4 had engaged accused Nos. 5 to 12 for forcefully evicting C.Ws. 1 and 2 for a sum of Rs. 15,000 to be paid to accused Nos. 5 to 12 and in furtherance of the above agreement, accused Nos. 1 to 12 had travelled in the Tata Sumo vehicles belonging to eighth and ninth accused (KL-5P 3068 and KL-12/b 4008) on 1-9-2007 at about 12.30 in the noon and reached the house and accused Nos. 1, 2, 3 and 5 had broke opened the front door of the house and entered into the house and accused Nos. 1 and 2 had voluntarily caused hurt to C.Ws. 1 and 2 by beating with hand and kicking with legs and thereafter the accused in this case had forcefully brought out C.Ws. 1 and 2 from inside the house and in the meanwhile accused Nos. 9, 10, 11 and 12 entered into the house and committed dacoity and extortion by taking away the bag belonging to C.W. 1 containing gold chains, Rs. 30,000, dollar, mobile phone and key of lockers. Thereafter accused Nos. 1 and 5 to 8 had together forcefully took C.Ws. 1 and 2 in Car KL-5P 3068 driven by 8th accused towards Vezhanganam and while on travelling in the Sumo vehicle, the fifth accused had forcefully put waste cloths into the mouth of C.W. 1 and 6th accused pushed waste cloth to the mouth of C.W. 2 to avoid crying and they also committed dacoity by forcefully snatching the gold chain worn by C.Ws. 1 and 2 and thereafter abandoned C.Ws. 1 and 2 on the roadside at Vezhanganam and since all the accused were acting with the common intention and accused 1 to 4 had abetted the commission of offences by accused 5 to 12, all accused are commonly liable for offences alleged above.

4. The evidence on record reveals that the issues which lead to the unfortunate incidents narrated above were essentially the outcome of a matrimonial dispute.

5. There are other disputes pending between the de facto complainant wife and the 1st accused husband. Crl. R.P. 2467/2012 filed by the 1st respondent pending before this Court against the judgment in Crl. A. No. 82/2010 of Additional Sessions Court, Kottayam arising out of M.C. (D.V.) No. 43/2007 of Judicial Magistrate of the First Class, Erattupetta and R.P.F.C. No. 222/2007 of the Family Court, Kottayam were also settled between the parties. Parties appeared before court in person and filed joint statements and accordingly orders were passed as per the terms of settlement in the above said cases. Now the fourth accused/fourth appellant has executed a registered document granting a right of way over the property purchased by him to the property belonging to the son of the petitioner and first accused.

6. Now the parties have settled the disputes amicably. The de facto complainant (wife of the first accused) filed Crl. M.A. No. 1172 of 2014 seeking to invoke the

powers of this Court u/s 482 of the Code of Criminal Procedure to treat the offences as compounded and to quash the conviction and sentence passed against the appellants. Hence the question arises for consideration is:

Whether the offences which are non-compoundable in nature can be compounded and if not, whether the High Court, in exercise of its power u/s 482 Cr.P.C., can quash the conviction and sentence passed against the appellants, in the circumstances of the case.

7. The position regarding the same is settled now after the decision of the Honourable Apex Court in a number of cases. The Apex Court held that though the High Court cannot compound the offences which are non-compoundable in nature, it can very well use its wide powers u/s 482 to quash the charge against accused even in pre-trial stage. The decision in [Jitendra Raghuwanshi and Others Vs. Babita Raghuwanshi and Another](#), in which the Apex Court in paragraph 12 opined in unambiguous terms that even if the offences are non-compoundable, if they relate to matrimonial disputes and the court is satisfied that the parties have settled the same amicably and without any pressure, the court can exercise its inherent power for quashing such F.I.R., complaint or subsequent criminal proceeding. Section 320 would not be a bar for exercising such power.

8. In another reported decision, i.e. [Shiji @ Pappu and Others Vs. Radhika and Another](#), the Apex Court, in paragraph 13, held that a court, trying or hearing an appeal against conviction may not be competent to permit compounding of an offence based on settlement arrived at between the parties in cases where offences are non-compoundable u/s 320. The High Court may quash the prosecution even in cases where the offences with which accused stands charged are non-compoundable. The inherent powers of High Court u/s 482 Cr.P.C. are not for that purpose controlled by Section 320 Cr.P.C. By this decision the Apex Court widened the scope of Section 482 even to matters pending in appeal against conviction and sentence. The only word of caution from the Apex Court was that such powers need to be used sparingly and cautiously and the same should not be used where the offences are grievous in nature and are against society at large.

9. This Court itself, while exercising its powers u/s 482, quashed a charge-sheet filed under Sections 308 and 324 I.P.C. in which the proceedings were initiated at the instance of a complaint launched by the daughter-in-law noting the fact that disputes were amicably settled between the parties ( 2013 (1) KHC 772 (Ker) ).

10. In [Thankamma Vs. State of Kerala](#), this Court considered whether the power u/s 482 can be exercised in an appeal against conviction. In the said decision, this Court categorically stated that, though the appellate court cannot compound an offence which is non-compoundable in nature, the inherent powers u/s 482 can be used for quashing the proceedings against the accused/appellant and thus acquitted the accused/appellant. The said decision is squarely applicable in the present case, more

so, considering the age of both the 1st appellant and de facto complainant.

11. Now, in this case as stated above, all the disputes between the parties have been settled and joint statements are filed. Certain other disputes over the property are also settled.

12. Considering the facts and circumstances of the case, it would be appropriate to accept the request of the parties for compounding the offences and the institution of marriage could be saved and the ends of justice would be met by exercising the powers u/s 482 as held by this Court in [Thankamma Vs. State of Kerala](#), . Therefore, Crl. M.A. No. 1172 of 2014 is to be allowed and all offences alleged against the accused Nos. 1 to 12/appellants are to be compounded and the criminal proceedings are to be quashed accordingly. The conviction and sentence passed against appellants 1 to 12 are to be set aside and the convicted persons are acquitted and set at liberty. All gold ornaments, currency notes and dollar marked as material objects in the case shall be returned to the de facto complainant

Crl. Appeal is disposed of accordingly.