



2024/KER/58336

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 1<sup>ST</sup> DAY OF AUGUST 2024 / 10TH SRAVANA, 1946

CRL.MC NO. 5385 OF 2024

CRIME NO.1039/2023 OF Kulathupuzha Police Station, Kollam  
CC NO.29 OF 2024 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,  
PUNALUR

PETITIONER/ACCUSED NO.3:

JOEL JOJI  
AGED 22 YEARS  
S/O JOJI JOSEPH, EATHEAKKADU HOUSE, ALAYAMON,  
ANCHAL, KOLLAM, PIN - 691306  
BY ADVS.  
K.SUDHINKUMAR  
S.NITHIN (ANCHAL)

RESPONDENTS/STATE, COMPLAINANT AND DEFACTO COMPLAINANT:

- 1 STATE OF KERALA  
AGED 22 YEARS  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM, PIN - 682031.
- 2 THE SUB INSPECTOR OF POLICE  
KULATHUPUZHA POLICE STATION, KOLLAM, PIN - 691310.
- 3 SHAHIDA BEEVI  
W/O MYTHEEN, KIZHAKKEKUNNUPURATH VEEDU,  
KULATHUPUZHA PO., KOLLAM, PIN - 691310.  
R3 BY ADV GOKUL D. SUDHAKARAN  
PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
05.07.2024, THE COURT ON 01.08.2024 PASSED THE FOLLOWING:



“C.R”

**A. BADHARUDEEN, J.**=====  
*Crl.M.C No.5385 of 2024*  
=====*Dated this the 1<sup>st</sup> day of August, 2024***ORDER**

The 3<sup>rd</sup> accused in C.C.No.29/2024, on the files of Judicial Magistrate First Class Court-I, Punalur, arising out of Crime No.1039 of 2023 of Kulathupuzha Police Station, Kollam, has filed this Criminal Miscellaneous Case under Section 482 of the Code of Criminal Procedure (‘Cr.P.C’ for short) with a prayer to *quash the proceedings as against the petitioner in C.C.No.29/2024 pending before the Judicial First Class Magistrate’s Court-I, Punalur in Kollam District and render justice to the petitioner.*

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor in detail. Perused the relevant documents.

3. Here the prosecution allegation is that at 1.10 p.m on



30.10.2023, accused 1 to 3 with intent to steal the gold necklace worn by the defacto complainant reached, the tea shop run by the defacto complainant and her husband opposite to Kulathupuzha Mosque, on a bike. Thereafter, the 1<sup>st</sup> accused came to the shop and asked for a cigarette. While the defacto complainant was taking the cigarette, the 1<sup>st</sup> accused snatched the gold necklace and left the place along with accused 2 and 3 on the same bike. Thereby the defacto complainant sustained loss of Rs.1,35,000/-. It is on this premise, the prosecution alleges commission of offence punishable under Section 392 r/w 34 of the Indian Penal Code, by the accused.

4. The petitioner would submit that the petitioner is innocent and he had no role in this crime. He also submitted that now the defacto complainant filed an affidavit in view of the compromise entered into between him and the defacto complainant. Therefore, quashment is liable to be allowed, is the submission of the learned counsel for the petitioner. He has placed



a decision of the Apex Court reported in [2023 KHC 6763 : 2023(5) KHC SN 19 : 2023 KHC OnLine 6763 : 2023 INSC 683 : 2023 SCC OnLine SC 951 : 2023 KLT OnLine 1683 : AIROnLine 2023 SC 616 : AIR 2023 SC 3784 : 2023(4) KLJ 16 : 2023 (5) KLT SN 27], ***Mohammad Wajid v. Stae of U.P***, to contend that, *theft amounts to `robbery` if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. Before theft can amount to `robbery`, the offender must have voluntarily caused or attempted to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. The second necessary ingredient is that this must be in order to the committing of the theft, or in committing the theft, or in carrying away or attempting*



*to carry away property obtained by the theft. The third necessary ingredient is that the offender must voluntarily cause or attempt to cause to any person hurt etc., for that end, that is, in order to the committing of the theft or for the purpose of committing theft or for carrying away or attempting to carry away property obtained by the theft. It is not sufficient that in the transaction of committing theft, hurt, etc. had been caused. If hurt, etc., is caused at the time of the commission of the theft but for an object other than the one referred to in S.390, IPC, theft would not amount to robbery. It is also not sufficient that hurt had been caused in the course of the same transaction as commission of the theft.*

5. According to the learned counsel for the petitioner, in this case theft alone is the offence, which is permitted to be compoundable and no offence of robbery would attract.

6. The learned Public Prosecutor would submit that the defacto complainant has given statement supporting settlement of



the case in between the defacto complainant and the 3<sup>rd</sup> accused. But no settlement reached in so far as accused 1 and 2 are concerned. He also pointed out that the petitioner is a habitual offender having involvement in multiple crimes. He has pointed out Crime No.154/2023 registered for offences punishable under Sections 341, 294(b), 323, 324, 506, 427, 34 IPC and Crime No.864/2023 registered for offences punishable under Section 20(b) II(A) of the Narcotic Drugs and Psychotropic Substances Act, of Eroor Police Station in this regard, while opposing settlement in a case involving offence punishable under Section 392 of IPC, for which punishment provided is rigorous imprisonment upto 10 years and the punishment would extend to fourteen years, if robbery is committed on the highway between sun set and sun rise.

7. In this matter, serious offence alleged to be committed is one punishable under Section 392 of IPC. Section 390 of IPC



explains when theft is robbery. It is provided that robbery is committed when a person takes or attempts to take away property obtained by theft from another person, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

8. Thus the ingredients to attract the offence of robbery are:

(1) Firstly at the time of commission of theft, the offender must have voluntarily caused or attempted to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

(2) Secondly, while committing theft, the offender must voluntarily cause or attempt to cause to any person hurt etc., for that end, that is, in order to commit theft or for the purpose of committing theft or for carrying away or attempting to carry away



property obtained by the theft. It is not sufficient that in the transaction of committing theft, hurt, etc. had been caused.

(3) Thirdly, if hurt, etc., is caused at the time of the commission of the theft but for an object other than the one referred to in S.390, IPC, theft would not amount to robbery.

(4) Fourthly, it is also not sufficient that hurt had been caused in the course of the same transaction as commission of the theft.

9. Reading the prosecution allegations herein, the ingredients to constitute an offence under Section 390 punishable under Section 392 of IPC are not made out, *prima facie*. Hence the offence *prima facie* made out is theft punishable under Section 379 of IPC, which is compoundable at the option of the owner of the property stolen.

10. Holding so, when the matter is compounded at the option of the owner of the property stolen, as espoused from the





case records, the same can be accepted. In view of the above finding, this petition is liable to be allowed. For the said exercise, involvement of the petitioner in two more crimes would not be a hurdle, since criminal antecedents shall not be a rider to compound an offence, which is compoundable.

11. In the result, this Criminal Miscellaneous Case stands allowed. Consequently, further proceedings as against the petitioner/3<sup>rd</sup> accused stand quashed, while holding that the trial against accused Nos.1 and 2 shall go on.

Registry shall forward a copy of this order to the jurisdictional court for information and further steps.

Sd/-

**A.BADHARUDEEN, JUDGE**

*rtr/*



APPENDIX OF CRL.MC 5385/2024

**PETITIONER' S ANNEXURES**

- Annexure I** CERTIFIED COPY OF THE FINAL REPORT IN C.C. NO. 29/2024 FILED BY THE 2ND RESPONDENT DATED 02.01.2024 OF THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT-I, PUNALUR.
- Annexure II** THE ORIGINAL COPY OF THE AFFIDAVIT OF THE 3RD RESPONDENT DATED 06.06.2024.
- Annexure III** TRUE COPY OF THE EMPLOYMENT CONTRACT OF THE PETITIONER.