

Kareem Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1096392

Court : Kerala

Decided On : Oct-29-2013

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Kareem

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN TUESDAY, THE 29TH DAY OF OCTOBER 2013 7TH KARTHIKA, 1935 CrI.MC.No. 4290 of 2013 ()
----- CP.NO.36/2010 AND L.P.NO.8/12 OF ASSISTANT SESSIONS COURT, KOILANDY -----
PETITIONER/ACCUSED NO.1: ----- KAREEM, S/O ABDU RAHMAN, AGED 32 YEARS, KALLUKETTIYATHIL HOUSE, MUTHUKADU, PERUVANNAMUZHI (P.O), CHAKKITTAPPARA (VILLAGE) KOZHIKODE. BY ADVS.SRI.K.M.FIROZ SRI.NIDHI BALACHANDRAN SRI.M.ASIF SRI.SABU GEORGE RESPONDENTS/STATE AND COMPLAINANT:
----- 1. STATE OF KERALA, REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. THE CIRCLE INSPECTOR OF POLICE, PEREMBRA, KOZHIKODE, REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA. R1 & R2 BY PUBLIC

PROSECUTOR SMT. P.MAYA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29.10.2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sts CrI.MC.No. 4290 of 2013 () -----

APPENDIX PETITIONER(S)' ANNEXURES: -----

ANNEX A1: TRUE COPY OF THE FINAL REPORT IN CRIME NO.4/2006 OF THE PERUVANNAMUZHI POLICE STATION. ANNEX A2: TRUE COPY OF THE DEPOSITION OF PW1. ANNEX A3: TRUE COPY OF THE DEPOSITION OF PW2. ANNEX A4: TRUE COPY OF THE DEPOSITION OF PW3. ANNEX A5: TRUE COPY OF THE DEPOSITION OF PW4. ANNEX A6: TRUE COPY OF THE DEPOSITION OF PW5. ANNEX A7: TRUE COPY OF THE DEPOSITION OF PW6. ANNEX A8: TRUE COPY OF THE

JUDGMENT

DATED 22.8.2012 IN SC8202010 OF THE ASSISTANT SESSIONS COURT, KOILANDY. RESPONDENT(S)' ANNEXURES: NIL /TRUE COPY/ P.A.TO.JUDGE sts P.BHAVADASAN, J.

----- CrI.M.C. No. 4290 of 2013 -----

----- Dated this the 29th day of October, 2013

ORDER

This is a petition filed under Section 482 of Cr.P.C. seeking to have Annexure I quashed.

2. The petitioner and others were arrayed as accused in Crime No. 04/2006 of Peruvannamuzhi Police Station for having committed offences punishable under Sections 376, 312, 313, 315 and 506(i) read with Section 34 of IPC. The accused Nos. 2 to 4 are the wife, mother and the sister of the first accused respectively.

3. It is unnecessary to go into the facts and details of the case for the simple reason that this petition can be disposed of on a short ground.

4. The petitioner seeks to have Annexure I quashed on the ground that in the trial as against accused Nos. 2 to 5, the defacto complainant has stated before the court that CrI.M.C. No. 4290 of 2013 -2- she had signed in the complaint without

knowing its contents and at the instigation of some of her relatives. She had also stated before the court that she had no complaint against anybody and the statement in the complaint was incorrect. Based on the said statement of the defacto complainant and also other items of evidence adduced before the court as against the accused Nos. 2 to 5, the court below acquitted accused Nos. 2 to 5.

5. Taking the aid of the acquittal of A2 to A5, and the statement said to have been given by the defacto complainant in that proceedings, petitioner seeks to have the present proceedings quashed pointing out that defacto complainant had stated that she had no complaint against anybody.

6. It is well settled by now that the acquittal of some of the accused by itself is not a ground to acquit the accused who is made himself scarce. The learned Public Prosecutor informed this Court that the case against the petitioner has CrI.M.C. No. 4290 of 2013 -3- been split up and is pending as L.P. No. 8/2012 before the court concerned.

7. It will be a bad precedent to quash the proceedings as against the first accused solely based on the fact that A2 to A5 have been acquitted.

8. The learned counsel for the petitioner then pointed out that there may be an observation that in case he surrenders before the court and moves an application for bail, the court below may consider the bail application taking note of the above facts. The request appears to be reasonable and just. This petition is disposed of directing the court below before whom the petitioner intends to surrender that if he surrenders and moves an application for bail, the same shall be disposed of taking note of the fact that A2 to A5 have already been acquitted and in the light of the statement of the defacto complainant that she happened to sign in the complaint which gave rise to the crime on the instigation of CrI.M.C. No. 4290 of 2013 -4- some of her relatives and she has no complaint against anybody.
P.BHAVADASAN JUDGE ds CrI.M.C. No. 4290 of 2013 -5-