

Mohammed Vs. State of Kerala

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Court : Kerala

Decided On : Nov-13-2013

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Mohammed

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD WEDNESDAY, THE13H DAY OF NOVEMBER201322ND KARTHIKA, 1935 CrI.MC.No. 1004 of 2012 () ----- CC3092009 of JUDICIAL FIRST CLASS MARIGRATE-I,PERAMBRA CRIME NO. 271/2003 OF PERAMBRA POLICE STATION , KOZHIKODE PETITIONER(S)/4TH ACCUSED: ----- MUHAMMED S/O.SOPPY HAJI, ATTUVATHUKANDI HOUSE CHANGAROTH AMSOM DESOM AVADUKKA, PANTHIRIKKARA BY ADV. SRI.K.P.SUDHEER RESPONDENT/COMPLAINANT(S): ----- 1. STATEOF KERALA REP.BYITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM, REPRESENTING SUB INSPECTOR OF POLICE PERAMBRA POLICE STAITON, KOZHIKODE DIST, PIN-673525. ADDL.R2: RADHAKRISHNAN, S/O.KELAPPA KURUP, VEERKANDI VEEDU, MENHANNIAM AMSOM, PERAMBRA - 673 525 KOZHIKODE DISTRICT. IS IMPLEADED AS PER

ORDER

DATED 10.4.2012 IN CRL.M.A. NO.2048/2012 IN CRL.M.C.NO.1004/2012. R1 BY PUBLIC PROSECUTOR SHRI REJI JOSEPH THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13.11.2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC NO.1004/2012 APPENDIX PETITIONER(S) EXHIBITS ANNEX A1:- CERTIFIED COPY OF FIRST INFORMATION REPORT DTD 217/2003 IN CRIME NO 271/2003 OF PERAMBRA POLICE STATION, ANNEX A2(a):- CERTIFIED COPY OF CHARGE SHEET DTD 0102/2006 IN CC NO 309/2009 ON THE FILE OF THE JFCM COURT-I, PERAMBRA ANNEX A2(b):- CERTIFIED COPY OF MEMORANDUM OF EVIDENCE DTD 0102/2006 IN CRIME NO 271/2003 OF PERAMBRA POLICE STATION, ANNEX A2(c):- TRUE COPY OF STATEMENT OF WITNESSES IN CRIME NO 271/2003 OF PERAMBRA POLICE STATION, ANNEX A3:- CERTIFIED COPY OF THE DEPOSITION OF PW1 IN CC 125/06 ON THE FILE OF THE JUDICIAL MAGISTRATE OF FIRST CLASS-I, PERAMBRA. ANNEX A4:- CERTIFIED COPY OF

JUDGMENT

DTD 208/2009 IN CC NO 125/2006 PASSED BY JUDICIAL MAGISTRATE OF FIRST CLASS-I, PERAMBRA. //TRUE COPY// A.HARIPRASAD, J.

----- Crl.M.C. No.1004 of 2012
----- Dated this the 13th day of November, 2013.

ORDER

Petitioner is the 4th accused in Crime No.271 of 2003 of Perambra Police Station filed initially under Sections 41(1)(d) and 102 of the Code of Criminal Procedure. Later, an offence under Section 379 of the Indian Penal Code was incorporated. Case against accused 1 to 3, 5 and 6 was tried by the learned Judicial First Class Magistrate-I, Perambra in C.C.NO.125 of 2006 and those accused were acquitted. Petitioner, who is the 4th accused, was not available for trial and therefore, the case against him was split up and renumbered as C.C.No.309 of 2009. Petitioner seeks quashment of the proceedings against him, contending that the substratum of the entire prosecution case has been found to be incorrect by the Magistrate after trial in C.C.No.125 of 2006.

2. Brief allegation is that an autorickshaw owned by the 2nd respondent (PW1 in C.C.No.125 of 2006) was stolen between 10 p.m. on 20.07.2003 and 8 a.m. on 21.07.2003 by the six accused persons. Autorickshaw was intercepted during that night by the Police, while on patrol duty, and accused 1 to 3 were arrested on suspicion as they were in possession of the autorickshaw. Later, the Investigating Officer implicated CrI.MC No.1004/2012 2 other accused also in the crime. After trial, accused 1 to 3, 5 and 6 were acquitted by the learned Magistrate believing the testimony of PW1 (2nd respondent) that there was no theft of autorickshaw as alleged by the prosecution. Learned Magistrate, therefore, found that the prosecution case cannot be countenanced and acquitted accused 1 to 3, 5 and 6.

3. Considering the entire case and judgment in C.C.No.125 of 2006 (Annexure-A4) I am of considered opinion that the foundation of the prosecution case itself has been eroded. Therefore, petitioner need not stand the trauma of a trial. CrI.M.C. is allowed. Entire proceedings in C.C.No.309 of 2009 on the file of Judicial First Class Magistrate Court-I, Perambra against the petitioner are hereby quashed. All pending interlocutory applications will stand dismissed. A. HARIPRASAD, JUDGE.
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