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Rojan Vs. State of Kerala

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Court : Kerala

Decided On : Feb-17-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Rojan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY,THE17H DAY OF FEBRUARY201428TH MAGHA, 1935 Crl.MC.No. 1137 of 2014 () ---------- CRIME NO. 175/2012 OF ERAVIPURAM POLICE STATION, KOLLAM DISTRICT ---------- PETITIONER/ACCUSED NO.4 : ---------- ROJAN, AGED25YEARS S/O.HILLARI, HOUSE NO.122, ANUGRAHA NAGAR PALLITHOTTOM, KOLLAM WEST VILLAGE, KOLLAM. BY ADVS.SRI.K.ABDUL JAWAD SRI.MATHEW A. KUZHALANADAN SMT.VINEETHA V. KUMAR RESPONDENTS/STATE & COMPLAINANT : ---------- 1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM - 682 031.

2. DISTRICT POLICE CHIEF, KOLLAM - 691 001.

3. CIRCLE INSPECTOR OF POLICE, ERAVIPURAM, KOLLAM DISTRICT - 691 001.

4. SUB INSPECTOR OF POLICE, ERAVIPURAM POLICE STATION KOLLAM DISTRICT - 691 001.

5. JOSE JOHNSON, AGED33YEARS S/O.JOHNSON, KOTTOOR WEST, THEKKUMBHAGOM ERAVIPURAM P.O., KOLLAM - 691 001. R1 TO R4 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE P. R5 BY ADV. SRI. MUHAMMED AL-RAFI THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON1702-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Mn ...2/- Crl.MC.No. 1137 of 2014 () ---------- APPENDIX PETITIONERS' ANNEXURES : ---------- ANNEXURE A: PHOTOCOPY OF FIR AND THE FIS IN CRIME NO.175/12 BY ERAVIPURAM POLICE STATION. ANNEXURE B: TRUE COPY OF THE ADDITIONAL REPORT DT. 14/04/2012 SUBMITTED BY THE3D RESPONDENT. ANNEXURE C: TRUE OF THE REPRESENTATION SUBMITTED BY THE5H RESPONDENT BEFORE THE CITY POLICE COMMISSIONER, KOLLAM. ANNEXURE D: TRUE COPY OF THE PETITION DTD. 13/1/2014 SUBMITTED BY THE FATHER OF THE PETITIONER BEFORE THE CITY POLICE COMMISSIONER, KOLLAM. ANNEXURE E: THE ORIGINAL OF THE AFFIDAVIT DTD. 24/1/2014 SWORN BY5H RESPONDENT.I RESPONDENTS' EXHIBITS : NIL ---------- //TRUE COPY// P.A. TO JUDGE Mn K. Ramakrishnan, J.

========== Crl.M.C.No.1137 of 2014 ========== Dated this, the 17th day of February, 2014.

ORDER

This is an application filed by 4th accused in Crime No.175/12 of Eravipuram Police Station for issuing direction for conducting proper investigation under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that he was implicated as accused No.4 in Crime No.175/12 of Eravipuram police station alleging offences punishable under Sections. 143, 147, 148, 341, 323, 307,149 and Section 27 of the Arms Act. The gist of the prosecution case is that on 19.02.2012, accused Nos. 1 to 6 formed themselves into an unlawful assembly, armed with deadly weapons and in furtherance of the common object of killing the de facto complainant and his friends, inflicted serious injuries on them and thereby they have committed the offences punishable under Sections.143, 147, 148, 341, 323, 307, 149 and Section 27 of the Arms Act. In the incident, 5th respondent was the other victim who sustained serious injuries besides the de facto complainant. As a matter of fact, the Crl.M.C.No.1137 of 2014 :

2. : petitioner has not involved in the crime. His name was not mentioned in the First Information Report or in the First Information Statement. None of the injured victims made any accusation against him in any statement before the police. However, officer in charge of third respondent's office, at the relevant time, for the reasons best known to him, implicated the petitioner as an accused by filing Annexure-B report, while omitting the person named by the victims. The 5th respondent/injured submitted Annexure-C complaint before the second respondent on this behalf. The father of the petitioner also submitted a complaint before the second respondent. 5th respondent filed Annexure-E affidavit in supporting the case of the petitioner. But, the investigating officer is not considering these aspects. So, the petitioner has no other remedy except to approach this court under Section 482 of Code of Criminal Procedure for the intervention of this court. So, the petitioner filed the above petition seeking following reliefs: i) To quash all further proceedings in Crime No.175/12 of Eravipuram Police Station in Kollam District, so far as it relates to the petitioner alone; ii) To issue a direction commanding the respondent Nos.1 to 4 to make proper investigation in Crime Crl.M.C.No.1137 of 2014 :

3. : No.175/12 of Eravipuram Police Station, on the basis of Annexure-C and D representation and to take action to exclude the petitioner from the array of the accused in the Crime.

3. Heard the Counsel for the petitioner, 5th respondent and the learned Govt.Pleader.

4. Learned Govt.Pleader submitted that the investigation is in the preliminary stage and 4th accused after the incident had left the country. Look out notice also issued against him. The Counsel for the 5th respondent submitted that he has no objection in quashing the proceedings as against the petitioner as he was convinced that the petitioner has not involved in the crime. Counsel for the petitioner submitted that in fact he had not involved in the crime, his name has not been mentioned by any of the witnesses questioned by the investigating officer and he had to leave to gulf country to making out his livelihood.

5. It is an admitted fact that the case was registered by Eravipuram police as Crime No.175/2012 alleging offences under Sections. 143, 147, 148, 341, 323, 307,149 and Section 27 of the Arms Act against one Vincent, Son of James and Biju, son of Earnest and other identifiable 4 persons, on the basis of the statement given by the de facto complainant who is not Crl.M.C.No.1137 of 2014 :

4. : made as a party in this petition on the ground that he is working abroad. 5th respondent, one of the injured filed an affidavit stating that the present petitioner has not involved in the crime and also Annexure-D complaint was filed by the father of the petitioner alleging that the petitioner has been falsely implicated and a proper investigation has to be conducted and real culprits will have to be brought on record. It is also in a way admitted that Annexure-B report was submitted by implicating the present petitioner as an accused along with the other persons. It may be mentioned here that merely because the name of the person has not been mentioned in the First Information Report or First Information Statement is not a ground to come to the conclusion that he had not involved in the crime as claimed by the Counsel for the petitioner. If the names of the persons or if the involvement of persons have been brought out during the course of investigation, the investigating officer is at liberty to implicate those persons as well as accused in the case.

6. If the practice of receiving the affidavit of de facto complainant or injured during the period of investigation itself and started quashing the crimes against one or

two of the Crl.M.C.No.1137 of 2014 :

5. : accused persons during the preliminary stage of investigation, that will affect the smooth progress of the investigation itself. If the petitioner or any of the person has any grievance regarding the false implication, they can make complaints to the appropriate authorities and seek for proper investigation. In this case, it is seen that Annexure C & D petitions have been filed by the 5th respondent and father of the petitioner respectively before the second respondent and according to them, the second respondent has not passed any orders on those applications. The alleged accused persons who had a case that they have been falsely implicated, have also a duty to co-operate with the investigation. Without their presence, it is not possible for the investigating officer to find out whether they have been involved in the crime or not as the presence of those persons may be required for proper identification and interrogation etc., by the witnesses. So, considering the nature of offence and the manner in which the offence was committed and stage of the investigation, I feel that it is not a fit case to quash the proceedings as against the petitioner alone at this stage merely relying on the affidavit filed by the 5th respondent who is supposed to be an injured person Crl.M.C.No.1137 of 2014 :

6. : without verification by this court as to whether he is a real person affected as well. The de facto complainant is also not made a party in the proceedings. He also will have to be heard on this aspect. So under the circumstances, I feel that it is not a fit case to invoke Section 482 Code of Criminal Procedure to quash the proceedings in Crime No.175/12 on Eravipuram police station against the petitioner who is now arrayed as 4th accused. So, that relief cannot be granted. But, I feel that the petition can be disposed of by directing the second respondent to consider Annxures.C & D complaints filed by the petitioner's father and also the 5th respondent regarding the incident and pass appropriate orders or these applications in accordance with law. With the above direction and observation, this petition is disposed of. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

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