

Hydarali Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1130939

Court : Kerala

Decided On : Feb-26-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Hydarali

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR. JUSTICE K.RAMAKRISHNAN WEDNESDAY, THE 26^H DAY
OF FEBRUARY 2014 7TH PHALGUNA, 1935 CrI.MC.No. 1235 of 2014
----- AGAINST THE

ORDER

/

JUDGMENT

IN CC2992009 of JUDICIAL FIRST CLASS MAGISTRATE COURT, PATTAMBI
CRIME NO. 231/2004 OF THRITHALA POLICE STATION , PALAKKAD
----- PETITIONER(S)/ACCUSED NO.7: -----
HYDARALI, AGED 39 YEARS, S/O.MOIDU, KURUTHOLA VALAPPIL HOUSE,
KAPPUR, KUMARANELLOOR P.O., PALAKKAD DISTRICT. BY
ADVS.SRI.K.B.ARUNKUMAR SRI.RANJIT BABU RESPONDENTS/STATE AND
DEFACTO COMPLAINANT:

----- 1. STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE, TRITHALA POLICE
STATION, PALAKKAD DISTRICT, REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. ABDUL RAZZAQ, AGED43YEARS, S/O.KUNJAVA HAJI, RESIDING AT
MELATTU VALAPPIL HOUSE, MAVARA, KUMARANELLOOR P.O., PALAKKAD
DISTRICT-679 552.

3. ALIMON, AGED35YEARS S/O.ABDULLA, RESIDING AT CHERIYATHU
VALAPIL HOUSE MAVARA, KUMARANELLOOR P.O., PALAKKAD DISTRICT-
679 552.

4. KUNJAVA HAJI, AGED75YEARS S/O.MUHAMMED, RESIDING AT MELATTU
VALAPPIL HOUSE MAVARA, KUMARANELLOOR P.O., PALAKKAD DISTRICT-
679 552. R2-4 BY ADV. SRI.PRATHEESH.P R1 BY PUBLIC PROSECUTOR
SMT.SAREENA GEORGE THIS CRIMINAL MISC. CASE HAVING COME UP
FOR ADMISSION ON2602-2014, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING: PJ CrI.MC.No. 1235 of 2014 -----

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

ANNEXURE-1. THE TRUE COPY OF THE FINAL REPROT IN CC NO.299/2009
ON THE FILE JFCMC, PATTAMBI. ANNEXURE-2.THE AFFIDAVIT EXECUTED
BY THE RESPONDENT2TO4 RESPONDENT(S)' ANNEXURE

----- NIL. / TRUE COPY / P.S. TO JUDGE PJ K.
Ramakrishnan, J.

===== CrI.M.C.No. 1235 of 2014
===== Dated this, the 26th day of February,
2014.

ORDER

This is an application filed by the petitioner who is the original 7th accused in
Crime No.231/04 of Thrithala Police Station and is the sole accused in
C.C.No.424/10 which is pending as L.P.No.22/12 on the file of the Judicial First

Class Magistrate Court, Pattambi, to quash the proceedings after recording composition with the de facto complainant under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that petitioner was arrayed as 7th accused in Crime No.231/04 of Thrithala Police Station alleging offences under Sections. 143, 147, 148, 341, 323, 324, 427 & 188 of Indian Penal Code along with 9 other accused persons. After investigation, final report was filed and it was originally taken on file as C.C.No.76/05. Accused Nos.1, 4, 6, 8 to 10 faced trial in that case and after trial, they were acquitted by the court alleging that the prosecution has failed to prove the case beyond reasonable doubt. The case against accused Nos.2,3,5 & 7 in the original final report was split up Crl.M.C.No. 1235 of 2014 :

2. : and refiled as C.C.No.299/09 arraying accused Nos.2, 3, 5 & 7 in the original final report as accused Nos.1 to 4 and in that case also, the present petitioner did not appear. So, case against the other accused persons namely accused Nos.2, 3 & 5 were, after trial, were acquitted by the court as per judgment dated 24.06.2010. Thereafter, the case against the present petitioner was split up and refiled as C.C.No.424/10 and since he did not appear, the case was transferred to register of long pending cases as L.P.No.22/12. Now, the matter has been settled between the de facto complainant and the other injured persons who were shown as respondents 2 to 4 and no purpose will be served by proceeding with the case. Since, some of the offences are non-compoundable in nature, the same cannot be compounded before the trial court. So, he has no other option except to approach this court seeking the following relief: "To quash Annexure 1 Final Report and all further proceedings in L.P.No.22/2012 now pending on the file of the Judicial First Class Magistrate Court, Pattambi in the interest of justice." 3. Respondents 2 to 4 appeared through Counsel and submitted that the matter has been settled between the Crl.M.C.No. 1235 of 2014 :

3. : parties and they have no intention to proceed against the present petitioner as the case against other accused persons were ended in acquittal and no purpose will be served in proceeding with the case.

4. The learned Public Prosecutor on instructions, as directed by this court, submitted that except this case, there is no other case against the petitioner and he has no other criminal antecedent.

5. Counsel for the petitioner submitted that in view of the settlement arrived between the parties, no purpose will be served by retaining the case on file.

6. It is an admitted fact that on the basis of the statement given by the de facto complainant, Crime No. 231/04 was registered by Sub Inspector of Police, Thrithala Police Station against the petitioner and 9 others alleging offences under Sections.143, 147, 148, 341, 323, 324, 427, 188 read with Section 149 of Indian Penal Code and after investigation, final report was filed in the case was originally taken on file as C.C.No.76/05. Original accused Nos. 1, 4, 6, 8 to 10 appeared and faced trial and after trial, they were acquitted by the court. Case against original accused Nos. 2, 3 Crl.M.C.No. 1235 of 2014 :

4. :

5. & 7 (including the petitioner) was split up and refiled as C.C.No.299/09 and in that case also the present petitioner did not appear, others were tried and were acquitted by judgment dated 24.06.2010. The case against the present petitioner was split up and refiled as C.C.No.424/10 and since he did not appear and was absconding, the case was transferred to register of long pending cases as L.P.No.22/12. Except the present petitioner, the case against other accused persons were ended in acquittal after trial. Now, the matter has been settled between the de facto complainant and other injured who were shown as respondents 2 to 4.

7. Further, in the decision reported in Moosa Vs. Sub Inspector of Police [2006 (1) KLT552, full bench of this court has held that acquittal of some of the accused persons after trial will not entitle the co-accused seeking for an acquittal invoking inherent powers. But in the same decision, it has been held that if the root of the prosecution case itself has been shattered on the basis of evidence and the entire prosecution case itself was not believed by the court, then, the case against the other accused who did not face trial can be quashed on the basis of acquittal of

other co-accused by this CrI.M.C.No. 1235 of 2014 :

5. : court invoking Section 482 of Code of Criminal Procedure.

8. Further, in the decision reported in *Gian Singh V. State of Punjab* [2012(4) KLT108(SC)] is held as follows: "The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing in criminal proceeding or F.I.R. or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under S.320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz;(i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc., cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc; or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of case, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused

to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal Crl.M.C.No. 1235 of 2014 :

6. : proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding." 9. So, in view of the dictum laid down in Gian Singh's Case and also considering the fact that the case against other accused persons were ended in acquittal after trial on the ground that the prosecution was not able to prove the incident as such as claimed by the injured witnesses and now all the injured witnesses including the de facto complainant have settled their dispute with the present petitioner and now they are living in harmony and no purpose will be served by allowing the trial to proceed with as against the present petitioner in view of the fact that all the injured persons have settled their dispute with the present petitioner and they will not support the case of the prosecution and there is remote possibility of conviction being entered against the present petitioner and allowing the trial to go will only be a wastage of judicial time, this court feels that this is a fit case where the power under Section 482 of Code of Criminal Procedure can be invoke to quash the proceedings against the Crl.M.C.No. 1235 of 2014 :

7. : petitioner as well. So, the petition is allowed and further proceedings in L.P.No.22/12 (C.C.No.424/10 in Crime No.231/04 of Thrithala Police Station) pending before the Judicial First Class Magistrate Court, Pattambi, as against the petitioner is quashed. Office is directed to communicate this order to the concerned court for necessary action in this regard. Sd/- K.Ramakrishnan, Judge.
Bb [True copy] P.A to Judge