

Latheef Vs. Sub Inspector of Police, Valayam Police Station

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Court : Kerala

Decided On : Jun-26-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Latheef

Respondent : Sub Inspector of Police, Valayam Police Station

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE 26^H DAY OF JUNE 2014 5TH ASHADHA, 1936 CrI.MC.No. 3227 of 2014 ----- SC NO. 4/2006 OF ADDL. DISTRICT & SESSIONS COURT, VADAKARA DATED 2001-2009 SC NO. 53/2014 OF ADDL. DISTRICT & SESSIONS COURT, VADAKARA CRIME NO. 111/2002 OF VALAYAM POLICE STATION , KOZHIKODE PETITIONER/ACCUSED: ----- LATHEEF, AGED 32 YEARS, S/O. KUNHABDULLA, KUNDANCHALIL HOUSE, VALAYAM AMSOM, CHERUMOTH DESOM, VATAKARA TALUK, KOZHIKODE DIST. PIN 673517. BY ADV. SRI. U.P. BALAKRISHNAN RESPONDENTS/STATE: ----- 1. SUB INSPECTOR OF POLICE, VALAYAM POLICE STATION, VALAYAM P.O., KOZHIKODE DIST., PIN 673517.

2. THE STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN 682031. R1 & R2 BY PUBLIC PROSECUTOR SMT.

P.MAYA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 2606-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
Kss Crl.MC.No. 3227 of 2014 ----- APPENDIX
PETITIONER(S)' ANNEXURES: ----- ANNEXURE-1:
THE TRUE COPY OF THE FIR DATED 0306.2002 IN CRIME NO.111/2002 OF
VALAYAM POLICE STATION. ANNEXURE-2: THE TRUE COPY OF THE FINAL
REPORT IN CRIME NO.111/2002 OF VALAYAM POLICE STATION.
ANNEXURE-P3: THE TRUE COPY OF THE

JUDGMENT

OF THE ADDL.DISTRICT AND SESSIONS COURT, VATAKARA IN
S.C.NO.4/2006. ANNEXURE-P4: THE TRUE COPY OF THE JUDGEMENT OF
THE ADDL.DISTRICT AND SESSIONS COURT, VATAKARA IN S.C.NO.79/2009.
RESPONDENT(S)' ANNEXURES: ----- N I L
/TRUE COPY/ P.A.TO JUDGE Kss K.RAMAKRISHNAN, J.

----- Crl.M.C. No. 3227 of 2014
----- Dated this the 26th day of June, 2014

ORDER

This is an application filed by the petitioner who is the sole accused in S.C. 53/2014 now pending before Additional Sessions Court, Vadakara to quash the proceedings on the basis of acquittal of co-accused under section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner has been arrayed as first accused alleging offences under sections 3 and 5 of Explosive Substances Act. Crime was registered as a suo motu case, as Crime No.111/2002 of Valayam Police Station, on the basis of the report of the Sub Inspector of Police of that Police Station against the petitioner and three others, alleging commission of the above said offences and after investigation, final report was filed and the case was committed to the Court of Sessions, Crl.M.C. No. 3227/2014 -2- Kozhikode, where it was originally taken on file as S.C. 4/2006 and thereafter it was made over to Additional Sessions Court, Vadakara for disposal. There, only the second accused

appeared and after trial he was acquitted by the Additional Sessions Judge as per Annexure 3 judgment. Thereafter, accused nos. 3 and 4 also appeared and the case against them was refiled as S.C. No. 79/2009 and after trial, they were also acquitted as per Annexure 4 judgment.

3. In both those cases, it was found that the prosecution failed to prove the case against the accused persons and their case is not believable and on that basis, acquitted the accused persons who have faced trial. The present petitioner, thereafter, came to know about the pendency of the case and he surrendered before the Court and the case against him was refiled as S.C. No.53/2014. In view of the fact that the foundation of the case itself has been shattered on account of the acquittal of other accused CrI.M.C. No. 3227/2014 -3- persons, no purpose will be served by proceeding with the case as against the present petitioner also and it will only be a wastage of judicial time. It will take more time for completion of trial and he will be losing his employment if he is compelled to be in India for a long time. So the petitioner has no other remedy, except to approach this Court seeking the following reliefs: "(i) To call for the records in S.C. No.53/2014 on the file of the Addl. District and Sessions Court, Vatakara. (ii) To quash the proceeding of S.C. No.53/2014 on the file of the Addl. District and Sessions Court, Vatakara. (iii) To grant any other relief/reliefs that this Hon'ble Court may deem fit to grant in the interest of justice." 4. Heard the counsel for the petitioner and learned Public Prosecutor. CrI.M.C. No. 3227/2014 -4- 5. The counsel for the petitioner submitted that in view of the fact that, except the petitioner, other accused persons were tried and acquitted on the ground that the prosecution case is not believable and the evidence collected are not sufficient to convict the accused persons and on that basis the court below disbelieved the case of the prosecution and acquitted the accused persons. So, no purpose will be served by proceeding with the case and allowing the petitioner to undergo the trauma of trial so as to get the same result, will only be a wastage of judicial time as well. So, he prayed for allowing the application.

6. On the other hand, the learned Public Prosecutor submitted that it is not a case where the power under section 482 of Code of Criminal Procedure has to be invoked as these petitioners were arrested from the spot, immediately after the

explosion. Crl.M.C. No. 3227/2014 -5- 7. Heard both sides.

8. It is an admitted fact that the present petitioner was implicated as first accused along with three other accused persons in Crime No.111/2002 of Valayam Police Station alleging commission of offences under sections 3 and 5 of Explosive Substances Act. The case of the prosecution was that on 3.6.2002 at 11.00 pm the petitioner and other three accused exploded country bomb and created tense atmosphere near the compound wall of one Kunhippeedika Moidu near Cherumoth O.P. Mukku in Valayam Amsom and thereby they have committed the offences punishable under sections 3 and 5 of Explosive Substances Act. It is also an admitted fact that on hearing the sound of the explosion, the Assistant Sub Inspector of Police of that Police Station came to the spot and saw some persons running away and out of them, he intercepted and arrested five persons including the present petitioner and Crl.M.C. No. 3227/2014 -6- registered suo motu case as Crime No.111/2002 against those five persons alleging offences under sections 3 and 5 of Explosive Substances Act. During investigation it was revealed that the fifth accused shown in the First Information Report had not involved in the crime and so his name was deleted and after investigation, final report was filed only in respect of four accused persons including the present petitioner.

9. It is also seen from the documents produced that after committal, the case was taken on file originally as S.C. 4/2006 on the file of Sessions Court, Kozhikode and it was made over to Additional Sessions Court, Vadakara for disposal. In that case, except the second accused, others did not appear and he alone faced trial and the case against him ended in acquittal as per Annexure 3 judgment. In that case, the lower court came to a conclusion, on the basis of the evidence, that the case of the prosecution is not Crl.M.C. No. 3227/2014 -7- believable and there is no witness to prove that these persons were in possession of any explosive substance or none had witnessed these persons using the explosive substance causing the explosion as alleged by the prosecution and also found that Assistant Sub Inspector of Police was not competent to register the crime under Rule 179 of Explosive Substances Rules and on that ground acquitted the second accused in the case. Thereafter, accused nos. 3 and 4 appeared and the case against them was taken on file as S.C. 79/2009 and there also after evidence, the Court came to

the same conclusion and acquitted them. Now, the only accused who has to face trial in that crime is the present petitioner.

10. In the decision reported in *Moosa v. Sub Inspector of Police* - 2006 (1) KLT552 the Full Bench of this Court has held that acquittal of some of the accused is not a ground for acquitting other co-accused who did not face trial. But, if the foundation of the case itself has been shattered in the earlier case and no purpose will be served by allowing the accused who did not face trial to undergo the same trauma, then the acquittal of the co-accused can be taken as a ground for acquitting the accused who did not face trial. Applying that principle, it is seen from this case that the Court below, on appreciation of evidence in two trials, came to a conclusion that evidence adduced from the side of the prosecution is not sufficient to come to the conclusion that the accused have committed the offences alleged and on that ground acquitted the accused persons who faced trial, which is clear from Annexures 3 and 4 judgments. So, under the circumstances, no purpose will be served by allowing the case to proceed with, in view of the fact that it will only cause wastage of judicial time and so the petitioner is entitled to get the benefit of acquittal of co-accused as per Annexure 3 and 4 judgments and he is Crl.M.C. No. 3227/2014 -9- entitled to get acquittal and the case against him is quashed by invoking section 482 of Code of Criminal Procedure.

11. So the application is allowed and further proceedings in S.C. 53/2014 (Crime No.111/2002 of Valayam Police Station) pending before Additional Sessions Court, Vatakara, as against the petitioner is quashed. Office is directed to communicate this Order to the concerned court immediately. Handover a copy of this order to the counsel for the petitioner so as to enable him to produce the same before the court below. Sd/- K.RAMAKRISHNAN, JUDGE jjj

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