

Ashraf Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1159508

Court : Kerala

Decided On : Jul-30-2014

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Ashraf

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN WEDNESDAY, THE 30TH DAY OF JULY 2014 8TH SRAVANA, 1936 CrI.MC.No. 3724 of 2014 () ----- CC.NO. 65/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, PERINTHALMANNA CRIME NO. 8/2010 OF PANDIKKAD POLICE STATION, MALAPPURAM ----- PETITIONER / FIRST ACCUSED : ----- ASHARAF, S/O. MOHAMMED, AGED 25 YEARS UCHAPPALLI HOUSE, AYANICODE, PORUR P.O., WANDOOR, MALAPPURAM DISTRICT. BY ADV. SRI.U.K.DEVIDAS RESPONDENTS / COMPLAINANT / DEFACTO COMPLAINANT : ----- 1. STATE OF KERALA REPRESENTED BY THE S.I. OF POLICE PANDIKKAD THROUGH THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM.

2. FAIZAL, S/O. ABU, AGED 30 YEARS PILAKKALTHODIKA HOUSE CHEMBRASSERI P.O., PANDIKKAD MALAPPURAM DISTRICT - 671 521 3.

SALEENA, W/O. FAIZAL AGED 25 YEARS, PILAKKALTHODIKA HOUSE CHEMBRASSERI P.O., PANDIKKAD MALAPPURAM DISTRICT - 671 521. R1 BY PUBLIC PROSECUTOR SMT. BINDU GOPINATH R2 & R3 BY ADV. SMT. LIJI KUTTAPPAN THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 3007-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Mn ...2/- CrI.MC.No. 3724 of 2014 () APPENDIX PETITIONERS' ANNEXURES : ANNEXURE I : COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.8/2010 OF PANDIKKAD POLICE STATION DATED 16.1.2010. ANNEXURE II COPY OF THE FINAL REPORT IN CC NO. 65/2010 ON THE FILES OF THE J.F.C.M COURT-II, PERINTHALMANNA. ANNEXURE III THE ORIGINAL OF THE AGREEMENT DATED 25.9.2012. ANNEXURE IV COPY OF THE

JUDGMENT

DATED 7.12.2012 IN CC NO.65/2010 ON THE FILES OF THE JFCM COURT II, PERINTHALMANNA. RESPONDENT'S ANNEXURES : NIL //TRUE COPY// P.S. TO JUDGE Mn V.K.MOHANAN, J ===== CrI.M.C No.3724 of 2014 ===== Dated this the 30th day of July, 2014

ORDER

Petitioner, who is the first accused in Crime No. 8/2010 of Pandikkad Police Station, in which the offences involved are u/s 448, 323, 324 and 506(ii) r/w Section 34 of the Indian Penal Code , preferred the above CrI.M.C u/s 482 of the Code of Criminal Procedure with the prayer to quash all further proceedings pending against the petitioner in Crime No. 8/2010 of Pandikkad Police Station now pending as C.C No.65/2010 on the file of Judicial First Class Magistrate Court - II, Perinthalmanna as the matter is settled out of court and also on the ground that the other accused who faced the prosecution are acquitted as per Annexure IV judgment. CrI.M.C No.3724/2014 2 2. Prosecution case is that on 15.01.2010 at 22:15 hours while CW1 and CW2 were standing on the eastern margin of Shappumpady-Makkada road junction in furtherance of their common intention to cause hurt A2 and A3 voluntarily caused hurt by catching on the hand of CW1. At that time A1 beaten CW1 with dangerous weapon namely stick. Further A2 and a3

pushed CW2 to floor. A1 criminally intimidated CW2 by showing a knife and threatened to kill. Thus the accused alleged to have committed the offences punishable under Sections 323, 324 and 506(ii) r/w Section 34 of the Indian Penal Code.

3. Heard the learned counsel for petitioner as well as the learned Public Prosecutor. The de facto complainant as well as the injured, who are respondents 2 and 3, entered appearance through counsel and according to them they have no objection in quashing the proceedings pending against the petitioner since the matter is CrI.M.C No.3724/2014 3 settled out of court.

4. The learned counsel invited my attention to Annexure III agreement entered into between the injured as well as the accused. The learned counsel for petitioner has also invited my attention to Annexure IV judgment, particularly paragraph 6 of the said judgment. In paragraph 6 of Annexure IV the learned Magistrate has stated that: "So in case examination PW1 has given direct evidence against A2 and A3 in response of the occurrence. When PW1 was being cross examined by the learned counsel for accused he stated that the disputes have been amicably settled. According to him the earlier statements were given by him to misunderstanding. He stated that he did not see the culprit. According to him as the disputes have been settled he does not want to proceed with the case. Evidence of PW1 in cross examination shows that he is not a trustworthy witness. He is wavering in nature and evidence of PW1 as to the occurrence is not reliable. Therefore, absolutely no other evidence against A2 and A3 in the case." CrI.M.C No.3724/2014 4 5. If that be so, even if trial is allowed to proceed, no purpose would be served rather the same will be resulted in wastage of judicial time especially when the injured has already settled the matter with the accused as evident from Annexure III agreement. So, according to me, by exercising the inherent jurisdiction vested with this court u/s 482 of the Code of Criminal Procedure the proceedings pending against the petitioner is liable to be quashed and thereby to prevent abuse of process of court. In the result this CrI.M.C is allowed quashing all further proceedings pending in C.C No.65/2010 on the file of Judicial First Class Magistrate Court - II, Perinthalmanna against the petitioner. Sd/- V.K.MOHANAN, JUDGE vdv //True Copy// P.Ato Judge

