

Manesh Vs. State of Kerala

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Court : Kerala

Decided On : Oct-29-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Manesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID WEDNESDAY, THE 29^H DAY OF OCTOBER 2014 7TH KARTHIKA, 1936 CrI.MC.No. 4916 of 2014 () ----- IN CC14442013 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I, ERNAKULAM CRIME NO. 1269/2012 OF PALARIVATTOM POLICE STATION , ERNAKULAM PETITIONER(S): ----- MANESH S/O MOHANAN, AGED 30 YEARS KALATHIPARAMBIL HOUSE, KARANAKKODAM BHAGOM THAMMANAM, ERNAKULAM DISTRICT BY ADVS.SRI.K.C.SANTHOSHKUMAR SMT.K.K.CHANDRALEKHA RESPONDENT(S): ----- 1. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM 2 SATHEESAN, S/O RAGHAVAN PILLAI, AGED 53 PUTHUVEETIL, POOCHAKKAL KARANAKARA THAIKATTUSSERY VILLAGE, ALAPPUZHA DISTRICT 68800 R2 BY ADV. SMT.M.M.DEEPA R1 BY PUBLIC PROSECUTOR SMT. S. HYMA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/10-2014, THE COURT ON THE SAME DAY PASSED THE

FOLLOWING: sab P.UBAID, J.

----- CrI. M.C No. 4916 of 2014 -----

Dated this the 29th day of October, 2014.

ORDER

The petitioner herein is the second accused in C.C14442013 of the Judicial First Class Magistrate Court - I, Ernakulam. Crime in the said case was registered under Sections 457 and 380 IPC on the complaint of one Satheesan who is the second respondent herein. The stolen properties involved in the crime are some construction materials. Those materials were recovered by the police during investigation on the basis of statement given by the accused. Now the second accused seeks orders under section 482 Cr.P.C quashing the prosecution as against him on the ground that he and the complainant have come to terms amicably, and that the whole case as against him stands settled. The second respondent has filed affidavit to the effect that he has settled the dispute with the second accused in the crime, and that he has no grievance or complaint.

2. On a perusal of the case diary made available by the learned Public Prosecutor, I find that this petitioner was arraigned as accused by the police on the basis of the recovery of stolen properties made under Section 27 of the Indian Evidence Act. Such recovery was made by the police on the basis of some statement made by the accused. A perusal of CrI. M.C No. 4916 of 2014 2 the case diary shows that the police does not specify what definite statement was given by this petitioner. It is not known why the police recorded a joint statement of the two accused under Section 27 of the Indian Evidence Act. When conflict of interest between different accused is possible, and when different plea in defence also will be possible, it would be inappropriate to record such joint statement under Section 27 of the Indian Evidence Act. Anyway the defacto complainant has settled the matter. No doubt, the offence under Section 380 IPC is compoundable under the law. The owner of the property can settle the dispute or compound the offence as against one or the other. He has the right to choose. The question then is whether such orders quashing the prosecution as against one of the accused will in any manner adversely affect the prosecution as against the other accused. In this case, on a

perusal of the case diary, I find that there is no such possibility of the prosecution against the first accused being adversely affected by orders made in favour of the second accused. The only material witness cited by the prosecution is one Noorudheen who purchased the stolen properties. His statement will indicate that this petitioner had accompanied the other accused, when the first accused brought the stolen articles for sale. Thus there is reason to believe that the very important materials and circumstances are in fact against the first accused. It appears that this petitioner was arraigned as CrI. M.C No. 4916 of 2014 3 second accused just because the receiver of stolen property gave a statement that he had also accompanied the first accused. The actual complicity or involvement of the second accused cannot be conclusively decided on the basis of that circumstance alone. Thus I find that orders in favour of the petitioner herein will not adversely affect the prosecution as against the other accused. Accepting the composition of the offence under Section 380 IPC made out of court, the prosecution as against him can be closed. When the offence under Section 457 IPC is involved, composition under Section 320 Cr.P.C as such in the trial court is not possible. That is why orders are sought under Section 482 Cr.P.C. In the result, this petition is allowed. The prosecution as against the petitioner herein in C.C14442013 of the Judicial First Class Magistrate Court I, Ernakulam will stand quashed under Section 482 Cr.P.C, and the petitioner will stand released from such prosecution. The said case will continue against the first accused. The bail bond, if any, executed by the petitioner herein will stand discharged. P.UBAID, JUDGE sab

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