

Hyder Vs. State of Karnataka, Represented By Police Circle Inspector

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Court : Karnataka

Decided On : Dec-12-2014

Judge : A.N. Venugopala Gowda

Appeal No. : Criminal Petition No. 2963 of 2011

Appellant : Hyder

Respondent : State of Karnataka, Represented By Police Circle Inspector

Judgement :

(Prayer: This Crl.P. Is Filed U/S.482 Cr.P.C., Praying to Quash the entire proceedings in Sessions Case No.3/2008 (Crime No.71/2007) of Udupi Town Police Station, on the file of the P.O., etc, Udupi, against the petitioner registered for the Offence P/U/Ss.364, 302, 392 And 201 R/W S.34 of IPC.)

1. Inspector of Udupi Police Circle, having submitted a charge-sheet against the petitioner and others to the Prl. Chief Judicial Magistrate, Udupi for the offences punishable under 5s. 364, 302, 392 and 201 read with S.34 of IPC, in Crime No.71/200/ of Udupi Town Police station, the Chief Judicial Magistrate, having taken cognizance of the said offences, committed the case registered thereon to the Court of Sessions, Udupi District, under Section 209 of Cr.P.C. for trial, by splitting up accused No.2 from the case, as he was absconding. The petitioner herein, shown as accused No.3, having jumped the bail and as he could not be secured, case was split against him on 31.12.2007. Trial of the case as against the

accused No.1 was conducted and by a Judgment dated 22.01.2009, was acquitted of the offences punishable under Ss.36-4, 302, 201 read with S.34 of IPC. Since he was in judicial custody, was ordered to be released, if not detained in any other crime/case.

2. Case having been split up against the petitioner, this petition was filed invoking Section 482 of Cr.P.C., to quash the entire proceeding in Sessions Case No.3/2008 (in Crime No.71/2007 of Udupi Town Police Station) on the file of Fast Track Court, Udupi District, in so far as petitioner is concerned i.e., for the offences punishable under Ss. 364, 302, 392 and 201 read with S. 34 of IPC.

3. Sri Nishit Kumar Shetty, learned advocate, contended that the benefit of acquittal in the Judgment dated 22.01.2009 passed in Sessions Case No.41/2007 by the Fast Track Court, Udupi could be extended to the petitioner.

4. Sri Y.D.Harsha, learned Government Advocate, on the other hand submitted, that the petitioner having not surrendered before the Court below, is not entitled to seek any relief, much less, benefit of the acquittal extended to accused No.1 in Sessions Case No.41/2007 by the Presiding Officer, Fast Track Court, Udupi, vide judgment dated 22.01.2009.

5. The position of law, as to what happens in a case of acquittal of similarly placed co-accused on the same set of facts and similar accusations, has been considered by the Apex Court, in catena of cases. In DEEPAK RAJAK Vs. STATE OF WEST BENGAL, 2007 (15) SCC 305, it was held as follows:-

6. A departure may be made in cases where the accused had not surrendered after the conviction in addition to not filing an appeal against the conviction. But, as in the present case, after surrender, the benefit of acquittal in the case of co-accused on similar accusations can be extended." (emphasis supplied)

Since the petitioner has not surrendered before the Court below, this petition is disposed of by permitting the petitioner to surrender before the trial Court and then seek the remedy.

If an application is made at the time of surrender, the Court below shall consider the same and pass order without any delay, as the accused No.1 was acquitted in S.C.No.41/2007 on 22.01.2009.

All contentions raised in this petition are left open and the petition is disposed of in the above terms. CrI.Misc.No.3057/2011 filed for stay of all further proceedings in S.C. M6.3/200S, on the file of Fast Track Court, Udupi, Udupi District, does not survive for consideration.

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