

Nazar vs State of Kerala

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Court : Kerala

Decided On : Jul-31-2024

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/4892/2016

Appellant : NAZAR

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946
CRL.MC NO. 4892 OF 2016 CRIME NO.2043/2015 OF Fort Kochi Police
Station, Ernakulam AGAINST THE ORDER IN CC NO.2043 OF 2015 OF
JUDICIAL FIRST CLASS MAGISTRATE COURT-V, MATTANCHERY
PETITIONER/ACCUSED NO.2: NAZAR, AGED 51 YEARS, S/O ABU,
FEEFA TOWERS,PANAYAPPALLY, THOPPUMPADY, KOCHI. BY
ADVS. SRI.S.RAJEEV SRI.K.K.DHEERENDRAKRISHNAN
SRI.D.FEROZE SRI.V.VINAY RESPONDENT/STATE/COMPLAINANT:
STATE OF KERALA REP.BY PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM -682031. (CRIME NO.174/2014 OF FORT

KOCHI POLICE STATION, ERNAKULAM DISTRICT. OTHER
PRESENT: SRI.SANGEETHARAJ.N.R, PP THIS CRIMINAL MISC.
CASE HAVING COME UP FOR ADMISSION ON 31.07.2024, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

P. V. KUNHIKRISHNAN, J.

----- CrI.M.C.No.4892 of 2016
----- Dated this the 31st day of July, 2024

ORDER

This Criminal Miscellaneous Case is filed to quash the proceedings in C.P.No.10/2015 pending before the Judicial First Class Magistrate Court, Mattancherry. The petitioner is the 2 nd accused in the above case. The above case is charge sheeted alleging offences punishable under Sections 55(a) and (i) of the Kerala Abkari Act.

2. The prosecution case is that, with the knowledge of the

petitioner who is the 2nd accused, the 1st and the 3rd accused supplied Kingfisher beer in the restaurant owned by the petitioner to two foreign national on 09.02.2014 at about 6.30p.m. The police party reached the hotel and seized two bottles of Kingfisher beer. On the basis of this allegation, Annexure-I FIR is registered. Subsequently after investigation, Annexure-II final report is filed. The contention of the petitioner is that, even if the entire allegations are accepted, no offence is made out against the petitioner.

3. Heard counsel for the petitioner and the Public Prosecutor.

4. It is submitted by the counsel for the petitioner that the

admitted case of the prosecution is that the petitioner is the owner of the building and the other accused sold the Kingfisher beer with the knowledge of the petitioner. The counsel takes me through Annexure-IV Encumbrance Certificate, in which, it is stated that the property is already sold by the petitioner on 30.03.2004.

Hence, it is submitted that the allegation against the petitioner will not stand.

5. The Public Prosecutor submitted that, it is a matter of evidence and this Court may not interfere with the prosecution against the petitioner.

6. This Court considered the contention of the petitioner

and the Public Prosecutor. Annexure-II is the final report filed by the prosecution. As per Annexure-II, the allegation is that the accused 1 to 3 without getting license, sold beer in the hotel premises which is conducted by the 1st accused and the 2nd accused is the owner of the premises and the beer supplied with the knowledge of the petitioner. There is no case to the prosecution that the petitioner who is the 2nd accused was present at the time of the alleged seizure of Kingfisher beer from the hotel premises. The definite case of the petitioner is that, he already transferred the building and the premises before the date on which the alleged seizure happened.

7. This Court perused Annexure-IV. From the above, it is

clear that the property is already sold on 30.03.2004. The alleged incident in this case was on 09.02.2014. If that is the case, I am of the considered opinion that the prosecution against the petitioner need not be continued. But I make it clear that, this order is not applicable to the other accused and the same is to be considered by the appropriate court in accordance with law.

Therefore, this Criminal Miscellaneous Case is allowed. All further proceedings against the petitioner alone in C.P.No.10/2015 pending before the Judicial First Class Magistrate Court, Mattancherry are quashed.

The Registry will forward a copy of this order to the Court concerned forthwith.
Sd/- P. V. KUNHIKRISHNAN JUDGE Sbna/30.07.24 APPENDIX OF CRL.MC 4892/2016 PETITIONER ANNEXURES ANNEXURE1 COPY OF THE FIRST INFORMATION REPORT AND FIRST INFORMATION STATEMENT IN CRIME NO.174/2014 OF FORT KOCHI POLICE STATION. ANNEXURE 2 CERTIFIED COPY OF THE FINAL REPORT IN

CRIME NO.174/2014 OF FORT KOCHI POLICE STATION WHICH IS NOW PENDING AS CC NO.2043/2015 PENDING ON THE FILE OF THE JUDICIAL MAGISTRATE OF FIRST CLASS -V, MATTANCHERY.

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