

Jayash @ Jayan, 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/7447/2018

Appellant : Jayash @ Jayan,

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. 7447 OF 2018 CRIME NO.1361/2012 OF Kattappana
Police Station, Idukki CC NO.475/2012 OF JUDICIAL MAGISTRATE OF
FIRST CLASS, KATTAPPANA PETITIONER/1ST ACCUSED: JAYASH
@ JAYAN, AGED 46 YEARS, S/O. LAKSHMANAN, PUTHUPPALLIL
HOUSE, KOOTTAKALLU KARA AND BHAGOM, THANKAMANI
VILLAGE, IDUKKI TALUK AND DISTRICT - 685 609. BY ADVS.
GEORGE MATHEW SRI.SUNIL KUMAR A.G SRI.DIPU JAMES
SMT.BHANU THILAK RESPONDENTS/STATE & COMPLAINANT: 1
STATE OF KERALA, REPRESENTED BY THE PUBLIC

PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031. 2
THE SUB INSPECTOR OF POLICE, KATTAPPANA POLICE STATION,
IDUKKI DISTRICT- 685575, THROUGH PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM- 682031. SRI.RENJITH T.R, SR.PP
THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
31.07.2024, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- Crl.M.C. No.7447 of 2018
----- Dated this the 31st day of July, 2024

ORDER

This criminal miscellaneous case is filed to quash the proceedings against the petitioner, which is now pending as C.C. No.256/2018 on the file of the Judicial First Class Magistrate Court-I, Kattappana, arising from Crime No.1361/2012 of Kattappana Police Station. The above case is charge sheeted against the petitioner and others alleging offences punishable under Section 24 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The case was taken on file by the learned Magistrate originally as C.C.No.475/2012. Accused Nos.1 and 2 faced trial and they were found guilty as per Annexure-A2 judgment. Accused Nos.1 and 2 challenged the same before the Sessions Court, Thodupuzha and the Additional Sessions Judge-IV, Thodupuzha was pleased to set aside the conviction and sentence, as evident by Annexure-A3. It is submitted that in the light of Annexure-A3, continuation of proceedings against the petitioner is an abuse of process of the court and it will be a judicial waste of time.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. The Public Prosecutor, after getting instructions,

submitted that the victim in this case is also no more. This Court directed the Registry to find out whether any of the parties challenged Annexure-A3 judgment

by which accused Nos.1 and 2 were acquitted. Registry reported that Annexure-A3 is not challenged before this Court. This Court perused Annexure-A3 judgment. It will be better to extract the relevant portion of that judgment:

9. PW4 the Sub Inspector of Police, Kattappana, during the course of investigation recorded the section 161 statements of CW4 and 5. I have perused the statements. The statements also does not discloses that the children Have intentionally abandoned them. It is only mentioned that after marriage the accused were living in different places. So also it is stated that the Health Inspector has seen them in a critical stage. The statement also does not make out an offence as mentioned U/S 24 of the Act. It reads as follows:

14. Exposure and abandonment of senior citizen

"Whoever, having the care or protection of senior citizen leaves, such senior citizen in any place with the intention of wholly abandoning such senior citizen, shall be punishable was imprisonment of either description for a term which may extend to three months or fine which may extend to five thousand rupees or with both".

10. PW2 is the Junior Health Inspector, Primary

Health Center. According to him on 24.7.12 he obtained a reliable information from some social workers regarding the sad plight of CW4 and 5. According to him based on the information he has visit the house. At that time they were seen in critical stage. Immediately thereafter he took them to the hospital. None of the social workers who have given the information are questioned and cited witnesses. So also the statements of neighbours are not recorded. The evidence of PW2 is only hearsay.

11. Though PW2 deposed before the court that CWs

4 and 5 were having grievances against their children, it is not at all probable when CW and 5 themselves have not given such a statement with the investigating officer.

12. PW1 is the doctor has treated CW4 and 5. He would say that due to old age and for want of food

they were weak. He also does not know whether the children have intentionally abandoned them. It was he who was given the FI Statement, Ext.P1 with PW4. PW1 during cross examination would say that he too has no direct knowledge regarding the family matter of CW4 and 5. It is admitted by him that CW4, Lakshmanan was capable of looking after himself and his wife CW5. PW1 is also only having hearsay knowledge regarding the allegations.

13. PW4 conducted the investigation. Ext.P2 is the FIR registered by him. He has prepared Ext.P3, scene mahazar which was proved through PW3. After completing the investigation PW4 laid the charge sheet.

14. As per S. 18 of the Maintenance and Welfare of

Parents and Senior Citizen's Act 2007, the maintenance officer is the District Social Welfare Officer. He has not made any enquiry nor has lodged any complaint. So also as earlier stated there is no evidence to find that CW4, Lakshmanan and his wife CW5, Kamalamma were intentionally abandoned by their children.

15. POINT No.2 In such circumstances,, it is

found that the prosecution has miserably failed to prove an offence U/S 24 against the appellant. The court below went wrong in understanding the correct penal provision, its ingredients and to appreciate the evidence accordingly. In such circumstances, the conviction and sentence against the appellants are only to be set aside and I do so.

4. In the light of the above findings by the appellate

court, I am of the considered opinion that continuation of proceedings against the petitioner will be an abuse of process of the court and judicial waste of time. Therefore the proceedings against the petitioner can be quashed. Therefore, this Criminal Miscellaneous Case is allowed. All further proceedings against the petitioner in C.C. No.256/2018 on the file of the Judicial First Class Magistrate Court-I, Kattappana, arising from Crime No.1361/2012 of Kattappana Police Station, are quashed. sd/- P.V.KUNHIKRISHNAN JV JUDGE APPENDIX OF CRL.MC 7447/2018 PETITIONER ANNEXURES ANNEXURE A1 TRUE COPY OF FINAL REPORT DATED 31.07.2017 IN CR.NO.1361 OF 2012 OF KATTAPPANA POLICE STATION. ANNEXURE A2 TRUE COPY OF JUDGMENT DATED 24.03.2015 IN C.C.NO.475 OF 2012 OF THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT, KATTAPPANA. ANNEXURE A3 TRUE COPY OF JUDGMENT DATED 23.12.2015 IN CRL.APPEAL NO.74 OF 2015 OF THE ADDL. SESSIONS JUDGE-IV, THODUPUZHA.

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