

Abdul Rahim vs State of Kerala

Abdul Rahim vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1313988

Court : Kerala

Decided On : Jul-31-2024

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Crl.MC/2207/2024

Appellant : Abdul Rahim

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946 AGAINST THE ORDER DATED 15.02.2024 IN SC NO.1912 OF 2011 OF I ADDITIONAL DISTRICT COURT & I ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM PETITIONER/ 1ST ACCUSED : ABDUL RAHIM AGED 54 YEARS, RESIDING AT SHAMEENA MAMZIL, SED FARM, KADAKKAL VILLAGE, KADAKKAL, KOTTARAKKRA, KOLLAM, PIN - 691536 BY ADVS. B.DIPU SACH DEEV ARUN BABU ANEESHRAJ R. RESPONDENT/ PROSECUTION SIDE : 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF

KERALA, PIN - 682031 2 INVESTIGATION OFFICER INVESTIGATION OFFICER AND INSPECTOR OF POLICE, KADAKKAL POLICE STATION, KADAKKAL P.O. KADAKKAL, KOLLAM, PIN - 691 536 SRI.NOUSHAD K. A., PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

==--==--==--==--==--==--==--== Crl.M.C.No.2207 of 2024 ==--==--==--==--==--==
==--== Dated this the 31st day of July, 2024

ORDER

Petitioners application to recall three witnesses was dismissed, challenging which this petition under Section 482 of Cr.P.C. has been preferred.

2. Petitioner is the first accused in S.C.No.1912 of 2011 on the files

of the Additional Sessions Court-I, Kollam. His application under Section 311 Cr.P.C. filed as Crl.M.P.No.258 of 2024 sought the recall of PW1 to PW3 to further cross-examine them. By the impugned order, the learned Sessions Judge dismissed the said application.

3. The prosecution alleges that on 19.04.2007, the accused had

formed themselves into an unlawful assembly and abducted the witnesses for a ransom and demanded Rs.3,00,000/- thereby committing the offences under Sections 143, 147, 364A and 120B r/w Section 149 of the Indian Penal Code, 1860.

4. Originally, the case was made over to the Assistant Sessions

Court, Kottarakkara for trial. However, after completion of the trial including the hearing, and when the case was posted for judgment, the learned Assistant Sessions Judge noticed that the said court did not have the jurisdiction to try the

offence, since Section 364A I.P.C. was charged and it provided for a punishment of death or imprisonment for life and hence could not have been tried by an Assistant Sessions Court.

5. Thereafter, the case was made over to the Sessions Court for

trial and disposal and when it came up for consideration on 11.01.2024, the court ordered that the evidence already recorded before the Assistant Sessions Court would be read in evidence as per Section 326 Cr.P.C. and posted the case for arguments. It was at this stage that the petitioner filed an application for the recall of prosecution witnesses to be examined.

6. I have heard Sri. B. Dipu Sach Deev, the learned counsel for the petitioner as well as Sri.Noushad K.A., the learned Public Prosecutor.

7. Section 326 of the Cr.P.C. confers power upon a succeeding Judge to act on the evidence recorded by his predecessor. The provision reads as follows:-

326. Conviction or commitment on evidence partly recorded by one Judge or Magistrate and partly by another.-

(1) Whenever any Judge or Magistrate, after having heard and

recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself : Provided that if the succeeding Judge or Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code

from one Judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein and to be succeeded by the latter, within the meaning of sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under Section 322 or in which proceedings have been submitted to a superior Magistrate under section 325.

8. The general rule is that only the person who heard the case

which includes hearing the evidence, can decide it. Section 326 Cr.P.C is an exception to that principle. On a reading of the above provision, it is evident that the proviso to Section 326(1) Cr.P.C. itself gives power upon the succeeding Judge to even re-summon any one or some of the witness for the purpose of further cross-examination, including re-examination, if interests of justice require him to do so. The succeeding Judge has the option to choose between different alternatives, either to have a total re-trial or recall some of the witnesses or to proceed from where it was stopped by his predecessor Judge. A discretion is vested with the Judge to choose one of the above alternatives. The power to recall witnesses is conferred as a facet of fair trial since the evidence already recorded would have been either before the court which lacked jurisdiction or because the learned Judge did not have the opportunity to see the demeanor or otherwise of the witnesses.

9. In the instant case, when the evidence already adduced in the

case was before a court which lacked jurisdiction, it is only appropriate that the accused be given an opportunity to cross-examine the witnesses he wants to cross-examine. In the circumstances of the instant case, the defence could have, after noticing that the prosecution was before a court which did not have jurisdiction to try an offence under Section 364A I.P.C. even avoided putting questions to that effect, especially when such a liberty was available under law. However, when the benefit of such a defence available in the earlier proceedings before the Assistant Sessions Court has been set at nought after identifying the lack of jurisdiction, necessarily an opportunity must be given to the defense to the

extent it

desires. In such circumstances, I am of the view that the impugned order

is liable to be set aside and PW1 to PW3 as requested by the petitioner ought to be permitted to be cross-examined by the accused as sought for. Hence, I set aside the order dated 15.02.2024 in Crl.M.P.No.258 of 2024 in S.C.No.1912 of 2011 on the files of the Additional Sessions Court-I, Kollam and allow this petition. The learned Sessions Judge shall recall PW1 to PW3 and permit the counsel for the accused to cross- examine the said witnesses. This criminal miscellaneous case is allowed as above. Sd/- BECHU KURIAN THOMAS, JUDGE RKM
APPENDIX OF CRL.MC 2207/2024 PETITIONER'S ANNEXURES : Annexure A1 THE COPY OF THE PETITION DATED 30.01.2024 IN IN CRL.M.P.NO.258 OF 2024 IN S.C.NO.1912 OF 2011 Annexure A2 THE COPY OF THE OBJECTION DATED 12-02-2024 FILED AGAINST CRL.M.P.NO.258 OF 2024 ON THE FILES OF THE 1ST ADDITIONAL DISTRICT AND SESSIONS COURT OF KOLLAM Annexure A3 THE COPY OF THE ORDER DATED 15-02-2024 IN CRL.M.P.NO.258 OF 2024 ON THE FILES OF THE 1ST ADDITIONAL DISTRICT AND SESSIONS COURT OF KOLLAM Annexure A4 THE COPY OF THE ORDER DATED 17.10.2023 IS PRONOUNCED IN S.C.NO.1912 OF 2011 OF THE KOTTARAKKARA SUB & ASSISTANT COURT

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com