

Abbas Ali vs the State of Kerala

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Court : Kerala

Decided On : Oct-04-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/1013/2015

Appellant : Abbas Ali

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
WEDNESDAY, THE 4TH DAY OF OCTOBER 2023 / 12TH ASWINA,
1945 CRL.MC NO. 1013 OF 2015 AGAINST THE ORDER/JUDGMENT
IN LP 30/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT
,MALAPPURAM PETITIONER/ACCUSED: ABBAS ALI S/O.
MOIDEENKUTTY, CHEMBAKKATTIL HOUSE, KANNAMANGALAM,
VENGARA, MALAPPURAM DISTRICT. BY ADV SRI.BABU S. NAIR
RESPONDENTS/STATE AND COMPLAINANT:

1 THE STATE OF KERALA REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI -
682 031. 2 THE SUB INSPECTOR OF POLICE VENGARA POLICE

STATION, MALAPPURAM DISTRICT - 676 304. OTHER PRESENT:
SREEJA. V PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 04.10.2023, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING: P.V.KUNHIKRISHNAN -----

----- Dated this the 4th day of October, 2023

ORDER

This Criminal Miscellaneous Case is filed under Section 482 of the Code of Criminal Procedure, 1973 (the Code for the sake of brevity).

2. The petitioner is the 5th accused in L.P.No.30/2013

which is now pending as C.P.No.1/2021 before the Judicial First Class Magistrate Court, Malappuram arising from Crime No.194/1995 of Vengara Police Station. The above case is charge sheeted against the petitioner and four others alleging offences punishable under Section 4 of the Explosive Substances Act and Section 120B r/w Section 34 IPC.

3. The prosecution case is that the accused had

entered into a criminal conspiracy and a secret meeting was convened after the demolition of Babri Masjid and decided to manufacture pipe bombs. The accused Nos.1 to 4 faced trial and they were acquitted as per Annexure B judgment. The contention of the petitioner is that, in the light of Annexure B judgment, the prosecution against the petitioner is unsustainable.

4. Heard counsel for the petitioner and the Public

Prosecutor. The counsel for the petitioner submitted that the co-accused were already acquitted by the trial court and the continuation of the trial against the petitioner will be an abuse of process of court because the substratum of the prosecution case is shattered. The Public Prosecutor submitted that the petitioner has to face trial before the lower court and this court may not invoke the powers under Section 482 of the Code.

5. This Court in Moosa v. Sub Inspector of Police

(2006 (1) KLT 552), Abbas T.K. v. State of Kerala (2013 KHC 336) and in Ashraf Kancheriyil v. State of Kerala (2011(2) KHC 812) considered the powers of this court to invoke Section 482 of the Code to quash the proceedings based on the acquittal of co-accused. The dictum laid down by this court in the above judgment is that, if substratum of prosecution case is shattered by the

judgement of acquittal of the co-accused that could be

taken into account while considering the request to quash the proceedings. After going through the judgment of the trial court, I am of the considered opinion that the continuation of the prosecution against the petitioner will be an abuse of process of court. It will be beneficial to extract the relevant portion of the judgment by which the co-accused is acquitted:-

11. The presence of A2. Sainudheen and A4 alongwith A1, their meeting in the shop of A1, their presence in a vehicle near the Koomankallu bridge etc. even if found true will not lead to the

conclusion that they manufactured the disputed

bombs. The sound and light like that of welding work from the shop of A1 also will lead to the

conclusion that they manufactured pipe bombs.

The action with organisation like a SIMI also cannot be taken as a ground to conclude that they manufactured those articles. All the witnesses who had given statements before the police regarding the extremist activities of A1 to A4 had deviated from their statements. Unless there is incriminating evidence against the accused regarding their involvement, participation or conspiracy to manufacture bombs with explosive substance they cannot be held liable for the offences. An analysis of the evidence on the side of the prosecution will go to show

that there is evidence to the effect that the seized bombs are manufactured using gelatin explosives substance. But there is absolutely no reliable evidence on the side of the prosecution to establish that those are manufactured by the accused or the accused had dealt with the same.

12.A contention is advanced on behalf of the accused that the evidence of PW18, the bomb that he defused the bombs cannot be believed since he has not prepared any report for the same. The

defusing work by PW18 is only an official work done in 1995. When an official conducts it is normally expected that he will prepare a report and at the time of evidence without relying on the report he may not be able to recollect and reproduce everything after a long period of 14 years. If he had prepared a report regarding the work done by him in the alleged pipe bombs, his evidence would have been more reliable. In that way the contention advanced on behalf of the accused appeal to be sustainable.

6. From the above, it is clear that the substratum of

the prosecution case is shattered by the judgment delivered by the lower court, while acquitting the co-accused. Therefore, this court is of the view that the continuation of the prosecution will be an abuse of process of court and it will be a judicial waste of time. Therefore, this Crl.M.C can be allowed. Hence this Criminal Miscellaneous Case is allowed. All further proceedings against the petitioner alone in C.P.No.1/2021 in L.P.No.30/2013 on the files of the Judicial First Class Magistrate Court, Malappuram arising from Crime No.194/1995 of Vengara Police Station are quashed. Sd/- P.V.KUNHIKRISHNAN JUDGE bng APPENDIX OF CRL.MC 1013/2015 PETITIONER EXHIBITS ANNEXURE A TRUE COPY OF THE CHARGE IN CRIME NO. ANNEXURE B TRUE COPY OF THE JUDGMENT IN SC NO. COURT (FAST TRACK COURT NO. III), MANJERI DT. 12.5.09.

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