

K. Surendran vs State of Kerala

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Court : Kerala

Decided On : Oct-03-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/2499/2020

Appellant : K. Surendran

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
TUESDAY, THE 3RD DAY OF OCTOBER 2023 / 11TH ASWINA, 1945
CRL.MC NO. 2499 OF 2020 AGAINST THE ORDER/JUDGMENT IN CC
594/2018 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-
I,KOZHIKODE PETITIONER/1ST ACCUSED: K. SURENDRAN AGED
49 YEARS S/O. KUNJIRAMAN, MAMBOYIL, ULLIYERI P. O.,
KOZHIKODE DISTRICT - 673323.

BY ADVS. KRISHNADAS P. NAIR SMT.K.L.SREEKALA
SRI.M.A.VINOD SRI.HARIDAS P.NAIR SRI.M.RAJESH KUMAR
SHRI.GERRY DOUGLES S. RESPONDENTS: 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF

KERALA, ERNAKULAM. 2 THE ASSISTANT SUB INSPECTOR RAILWAY PROTECTION FORCE, SOUTHERN RAILWAY, KOZHILKODE, PIN - 673 001. BY ADV SRI.DINESH CHERUKAT, SC, RAILWAYS OTHER PRESENT: SREEJA. V PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03.10.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
P.V.KUNHIKRISHNAN ----- Dated this
the 3rd 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 1st accused in

C.C.No.594/2018 on the files of the Judicial First Class Magistrate Court-I, Kozhikode arising from Crime No.359/2013 of Railway Police, Kozhikode. The above case is charge sheeted against the petitioner and others alleging offences punishable under Sections 147, 145(b), 146 and 174 of the Railways (Second Amendment) Act, 2003.

3. The prosecution case is that on 26.02.2013 at

about 16.00 hours, accused persons barged into the railway station premises with a flag of BJP and shouted slogans against Central Government of India expressing their displeasure against the railway budget of 2013. It is submitted that co-accused were already acquitted as per Annexure C order. It is submitted that, in the light of the same, the continuation of the prosecution against the petitioner is abuse of process of court.

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 prosecution examined Senior Civil Police Officer attacked to Railway Police Station, Kozhikode as PW5. He deposed that he was on duty at Railway platform. PW5 further deposed that the workers of BJP under the leadership of first accused K.Surendran barged into the railway station and shouted slogans from the third platform against railway budget and he further deposed that within minutes Mangalore-Coimbatore Intercity Express came to the third platform and the agitators jumped in front of halted train and some of them mounted upon the engine of the train in order to block the train, PW5 identified the accused as the persons who had blocked the train on the relevant day. PW5 further deposed that he can identify only A7 by name and he cannot identify the other accused by their name. PW5 has no case that he got prior acquaintance with the accused 2 to 7. During cross-examination he deposed that at the time of alleged incident passengers and agitators

were thronged in the platform of the railway station in such a manner as nobody can distinguish who were the agitators and who were the passengers. PW5 has no case that A7 squatted in front of the train or mounted upon the engine of the train. PW6 is the RPF constable on duty at the relevant date and time. He deposed that under the leadership of first accused K. Surendran BJP workers blocked the train by shouting slogans. PW6 identified A2 to A7

as the persons who blocked the train. PW1 to PW6 failed to depose before the court about the overt act of each of the accused. To substantiate offences punishable under Railways Act the prosecution has to prove overt act of each of the accused since there is no provision in Railways Act to invoke the principles vicarious liability like section 34 of IPC. It is pertinent to note that the accused were not arrested from the place of incident even though two RPF constables and two police constables and Sub Inspector were present at the time of alleged incident. The prosecution has no case that the assailants resisted the police personnel when they tried to arrest them. Their case is that they waited until the agitators them self dispersed since there was no sufficient force to arrest and detain the culprits. PW1 has no case that he had collected name and address of the accused to identify them later during investigation of the crime. It is pertinent to note that the investigation officer had not interrogated any of the local passengers who can identify the agitators. Since large number of persons were assembled in the Railway Station a mere presence of the accused in the railway station premises does not give a circumstance to the court to draw an inference that accused were the person who detained the train.

12. The case of PW1 is that the accused came to

the railway station at 3.00 pm and waited in the railway station by shouting slogans till arrival of Mangalore-Coimbatore intercity express at 3.45 pm and after the arrival of the train some of them squatted before

the train and some of them mounted upon the engine of the train. But the case of PW2,PWS and PW6 is that the intercity Express came to the railway station just after the accused entered into the railway station premises by shouting slogans. On appreciating the evidence of PW1 and above said witness it would reveal that their evidence does not go together amicably. The above said ambiguity is very vital to the prosecution case.

13. On appreciating the evidence and material before the court this Court finds that it is unsafe to

rely the oral testimonies of PW1, PW5 and PW6 to identify the accused as the assailants especially when they had no prior acquaintance with the accused. Hence this court finds that A2 to A7 are entitled benefit of doubt since the prosecution failed to prove beyond reasonable doubt that accused No.2 to 7 are the persons who detained the train. These points are answered against the prosecution.

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.C.No.594/2018 on the files of the Judicial First Class Magistrate Court-I, Kozhikode arising from Crime No.359/2013 of Railway Police, Kozhikode are quashed. Sd/- P.V.KUNHIKRISHNAN JUDGE bng APPENDIX OF CRL.MC 2499/2020 PETITIONER ANNEXURES ANNEXURE A THE CERTIFIED COPY OF THE FIR IN CRIME NO.359/2013 OF RAILWAY POLICE, KOZHIKODE DATED 26.02.2013. ANNEXURE B THE CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.359/2013 OF RAILWAY POLICE, KOZHIKODE ON 30.06.2013. ANNEXURE C THE CERTIFIED COPY OF THE ORDER IN CC NO.1936/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,

KOZHIKODE.

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