

Ali vs the State of Kerala

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Court : Kerala

Decided On : Dec-22-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/8704/2016

Appellant : ALI

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 22ND DAY OF DECEMBER 2023 / 1ST POUSHA, 1945
CRL.MC NO. 8704 OF 2016 CRIME NO.27/2005 OF PERUMPADAPPU
POLICE STATION, MALAPPURAM AGAINST THE
ORDER/JUDGMENT LP 338/2014 OF JUDICIAL MAGISTRATE OF
FIRST CLASS -I, PONNANI PETITIONER/ACCUSED: ALI S/O.ABDUL
KHADER, KATTILAKATH HOUSE, THIRUVATHRA, CHAVAKKAD,
THRISSUR DISTRICT. BY ADV SRI.BABU S. NAIR
RESPONDENTS/STATE/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 PERUMBADAPPU POLICE STATION, MALAPPURAM DISTRICT, PIN: 679 580. BY ADV. SMT SREEJA V, PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22.12.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- Crl.M.C. No.8704 of 2016
----- Dated this the 22nd day of December, 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. This Criminal Miscellaneous Case is filed to quash the proceedings against the petitioner in LP No.338/2014 on the file of Judicial First Class Magistrate Court, Ponnani arising from Crime No.27/2005 of Perumbadappu Police Station, Malappuram District.

3. It is submitted that the co-accused were

already acquitted as per Annexure-B and C. One of the accused approached this Court and this Court quashed the proceedings against that accused as per Annexure-D order. Hence, it is submitted that the continuation of the proceedings against the petitioner alone is an 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 judgment 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 Annexure-B judgment by which the co-accused were acquitted:

6. Point No.1 and 2: PW1 and 2 have deposed that they have not witnessed the incident. The FIS given by PW1 is marked as Ext.P1. CW2 an eye witness to the incident was not examined since he is abroad. Since there is no evidence to establish the allegation of torching of the waiting shed the learned APP was right in giving up the remaining witnesses.

7. The offences alleged against the accused are not proved and hence point No.1 and 3 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 in LP No.338/2014 on the file of Judicial First Class Magistrate Court, Ponnani arising from

Crime No.27/2005 of Perumbadappu Police Station, Malappuram District are quashed. Sd/- P.V.KUNHIKRISHNAN nvj JUDGE APPENDIX OF CRL.MC 8704/2016 PETITIONER ANNEXURES ANNEXURE A TRUE COPY OF THE CHARGE IN CRIME NO.27/2005 OF THE PERUMBADAPPU POLICE STATION ANNEXURE B TRUE COPY OF THE JUDGMENT OF THE J.F.C.M., PONNANI DATED 23/2/2013 IN C.C.NO.275/2012 ANNEXURE C TRUE COPY OF THE JUDGMENT OF THE J.F.C.M, PONNANI DATED 5/9/2014 IN C.C NO.105/2013 ANNEXURE D TRUE COPY OF THE ORDER OF THIS HON'BLE COURT IN CRL.M.C NO.1112/2015 DATED 2/3/2015 RESPONDENTS EXHIBITS :NIL //TRUE COPY// PA TO JUDGE

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