

Prasad vs State of Kerala

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Court : Kerala

Decided On : Oct-31-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/5941/2023

Appellant : Prasad

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA,
1945 CRL.MC NO. 5941 OF 2023 CRIME NO.39/2009 OF
KASARAGOD POLICE STATION, KASARGOD AGAINST THE
ORDER/JUDGMENT IN LPC 46/2017 OF CHIEF JUDICIAL
MAGISTRATE ,KASARAGOD PETITIONERS/ACCUSED: 1 PRASAD
AGED 34 YEARS S/O. KRISHNAN, RESIDING NEAR NARAYANA
MADAM, ADKATHBAIL, KADAPPURAM, ADKATHBAIL VILLAGE,
KASARAGODE, PIN - 671121 2 MAHESH P AGED 34 YEARS S/O.
VASANTHAN, P P NIVAS, ADKATHBAIL BEACH, ADKATHBAIL
VILLAGE, KASARAGODE, PIN - 671121 BY ADVS. T.G.RAJENDRAN

T.R.TARIN

RESPONDENTS/STATE AND COMPLAINANT: 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031 2 STATION HOUSE OFFICER
KASARAGODE POLICE STATION KASARAGODE, PIN - OTHER
PRESENT: SMT SREEJA V, PP THIS CRIMINAL MISC. CASE HAVING
COME UP FOR ADMISSION ON 31.10.2023, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING: P.V.KUNHIKRISHNAN

----- Dated this the 31st 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 petitioners are the accused in LP No.46/2017

on the files of the Chief Judicial Magistrate Court, Kasaragod arising from Crime No.39/2009 of Kasaragod Police Station. The above case is registered against the petitioners and others alleging offences punishable under Sections 143, 147, 148, 427, 153(A) r/w Section 149 IPC.

3. The prosecution case is that the accused formed

themselves into unlawful assembly and assaulted the victim. It is submitted that the co-accused were already acquitted as per Annexure A2 judgment. It is submitted that, in the light of the same, the continuation of the prosecution against the petitioners is an abuse of process of court.

4. When this Crl.MC is came up for consideration,

this Court directed the petitioners to surrender before the jurisdictional court and regularise the proceedings because the case against the petitioners are included in the long pending register. Now, it is submitted that the 2 nd petitioner already

surrendered before the lower court and the 1 st petitioner's whereabouts are not known and he has not surrendered. If that is the case, the case against the 1 st petitioner cannot be quashed and if the 1 st petitioner surrendered before the lower court, the 1 st petitioner also can approach this Court again.

5. Heard counsel for the petitioners and the Public

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

6. 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 petitioners 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:-

10. On going through the testimony of PW1, 2 and 7, all of them spoke in t voice that when they reached the place of occurrence, all the persons having formed unlawful assembly, ran away from the place of occurrence. They could not chase and apprehend them. Thereafter PW7

came to the police station and registered Ext.P3 FIR.

11. The counsel for the accused disputed the

identity of the accused and the involvement of the accused in the incident. The witness could not give any convincing evidence to establish their involvement. This is a criminal case. Conviction shall not be based mere surmises and conjection. Cogent evidence must be required to prove the involvement of the accused. In this case there is no such evidence to establish prosecution versions. Therefore, nothing would salvage the case of the prosecution.

7. 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.

8. Hence this Criminal Miscellaneous Case is disposed of with the following directions:-

1. The case against the the 1st petitioner is dismissed granting liberty to the 1st petitioner to appraoch this Court again after surrendering before the jurisdictional court.

2. The case against the 2nd petitioner is

allowed and all further proceedings against the 2nd petitioner alone in LP No.46/2017 on the files of the Additional Judicial Magistrate Court, Kasaragod arising from Crime No.39/2009 of Kasaragod Police Station, are quashed. Sd/- P.V.KUNHIKRISHNAN JUDGE bng APPENDIX OF CRL.MC 5941/2023 PETITIONERS ANNEXURES Annexure1 THE CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO. 39/2009 OF KASARAGODE POLICE STATION DATED 15.1.2009 Annexure2 CERTIFIED COPY OF THE JUDGMENT IN CC NO. 85/2011 OF CHIEF JUDICIAL MAGISTRATE COURT, KASARAGODE DATED