

Jayesh K.G vs the State of Kerala Represented by the Public Prosecutor

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Court : Kerala

Decided On : Aug-25-2023

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : Crl.MC/6029/2023

Appellant : Jayesh K.G

Respondent : The State of Kerala Represented by the Public Prosecutor

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945 CRL.MC NO.
6029 OF 2023 CRIME NO.243/2007 OF Keezhvaipur Police Station,
Pathanamthitta IN CC 620/2015 OF JUDICIAL MAGISTRATE OF FIRST CLASS,
THIRUVALLA PETITIONERS: 1 JAYESH K.G AGED 35 YEARS S/O
GOPALAKRISHNAN, SREE BHAVANAM, ENNAKKAD, PERINGILIPURAM,
ALAPPUZHA, PIN - 689624. 2 RAJESH S/O RAJASEKAHARAN NAIR,
KUTTANAL PARAMPIL, KOTTANGAL, PINCODE, PIN - 686541. BY ADV
M.R.SASITH RESPONDENTS/DE FACTO COMPLAINANT/STATE:

1 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031. 2 ANISH AGED 38 YEARS S/O SALIM, PARAKKAL VEEDU, NEAR GOVERNMENT HOSPITAL, MALLAPPALLY WEST, MALLAPPALLY TALUK, PATHANAMTHITTA, PIN - 689585. 3 NAJEEB P.A AGED 35 YEARS S/O ALI RAVUTHAR, KULAKKUDI HOUSE, KOTTANGAL P.O., KOTTANGAL, MALLAPPALLY TALUK, PATHANAMTHITTA, PIN - 686547. 4 STATION HOUSE OFFICER KEEZHVAIPUR POLICE STATION, PATHANAMTHITTA, PIN - 689587. SMT.NEEMA T V, SR. PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON

25.08.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
CRL.MC NO. 6029 OF 2023 2

ORDER

The instant petition is filed under Section 482 of the Code of Criminal Procedure (the Code) for the sake of brevity.

2. The petitioners herein are the accused in C.C.No. 620 of 2015 on the file of the Judicial Magistrate of the First Class, Thiruvalla. The aforesaid case has arisen from Crime No. 243/2007 of the Keezhvaipur Police station.

3. The prosecution allegation is that on 18.10.2007, at about 2.45

pm., the accused in the aforesaid crime formed themselves into an unlawful assembly and in prosecution of their common object attacked the informant and others and caused injuries.

4. In the final report which was laid before the learned Magistrate,

seven persons were arrayed as the accused and the petitioners herein were accused Nos. 5 and 1 respectively. As the petitioners failed to appear before the court, the rest of the accused were proceeded with. By Annexure-A2

judgment dated 28.5.2015, the accused who faced trial were found not guilty

of the offence and were acquitted of all charges. The case against the petitioners was split up and re-filed.

5. It is on the basis of the acquittal of the co-accused that this petition is filed seeking to quash the proceedings on the ground that the CRL.MC NO. 6029 OF 2023 3

substratum of the case against the petitioners has been shattered. The petitioners also contend that the de facto complainants have also filed Annexure-A3 and A4 affidavits asserting that they have no subsisting grievance against the petitioners and that they have no objection in quashing the proceedings.

6. Sri. Sasith M R, the learned counsel appearing for the

petitioners, has relied on the judgments rendered by this Court in *Moosa v. Sub Inspector of Police*¹ [2006 (1) KLJ 349], *Abbas T.K. v. State of Kerala* [2013 KHC 336], *Jalalu Rajan and Anr v. State of Kerala* [2013 KHC 177] and *Ashraf Kancheriyil v. State of Kerala* [2011 (2) KHC 812] and it was urged that the continuance of proceedings against the petitioners herein would serve no purpose. Reliance is also placed on *State of M.P. v. Laxmi Narayan*,² *Gian Singh v. State of Punjab*³, *Narinder Singh v. State of Punjab*⁴, and it is argued that on the basis of the affidavit filed by the 2nd respondent, this Court will be justified in terminating the proceedings.

7. I have heard the learned Public Prosecutor.

8. I have gone through the Annexure-A1 final report and Annexure-A2 judgment of acquittal rendered by the court below. It is borne out from Annexure-A2 that none of the prosecution witnesses had deposed in [(2019) 5 SCC 688]

(2012) 10 SCC 303 2014 (6) SCC 466 CRL.MC NO. 6029 OF 2023 4

tune with the prosecution case. The Court below, after meticulous analysis of the evidence on record, came to the conclusion that the prosecution had failed to adduce any evidence to link the accused with the crime. As held by a three-Judge Bench of this Court in *Moosa v. Sub Inspector of Police* (2006 (1) KLT 552), though the reasoning of the judgment contained or appreciation of evidence in the case of a co-accused therein are not grounds to attract any relief under Section 482 of the Code of Criminal Procedure, a case where the substratum of the case is lost, is an exception to the above rule. In the case on hand, the de facto complainant has also filed an affidavit stating that he has no subsisting grievance.

9. I am of the firm view that no purpose is going to be served by

directing the petitioners herein to undergo the ordeal of a trial at this stage. It can only be a futile exercise and will only serve to waste precious judicial time, which can be used for more productive work. The prospects of conviction are nil in view of the affidavit filed by the de facto complainant. Furthermore, no evidence of worth could be adduced by the prosecution during the previous trial. In that view of the matter, I am of the considered opinion that this Court will be well justified in invoking the powers under Section 482 of the Code and in quashing the proceedings.

10. Resultantly, this petition is allowed. Annexure-A1 final report in Crime No. 243 of 2007 of the Keezhvaipur Police Station and all further proceedings pursuant thereto against the petitioners now pending as C.C

CRL.MC NO. 6029 OF 2023 5 No.620 of 2015 on the file of the Judicial First Class Magistrate Court, Thriuvalla are quashed. Sd/- RAJA VIJAYARAGHAVAN V JUDGE Sru CRL.MC NO. 6029 OF 2023 6 APPENDIX OF CRL.MC 6029/2023 PETITIONERS ANNEXURES Annexure A1 THE CERTIFIED COPY OF THE FINAL REPORT FILED BY THE 4TH RESPONDENT IN CRIME NO. 243/2007 OF KEEZHVAIPUR POLICE STATION, THIRUVALLA BEFORE THE HON'BLE

JUDICIAL FIRST CLASS MAGISTRATE COURT, THIRUVALLA. Annexure A2
CERTIFIED COPY OF JUDGMENT IN CC NO 510/2008 OF HON'BLE JUDICIAL
FIRST CLASS MAGISTRATE COURT, THIRUVALLA. Annexure A3 THE
AFFIDAVIT SWORN BY THE 2ND RESPONDENT. Annexure A4 THE
AFFIDAVIT SWORN BY THE RESPONDENT NO 3.

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