

Abdul Rasheed @ Imbichi Rasheed vs State of Kerala

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Court : Kerala

Decided On : Dec-04-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/9680/2023

Appellant : Abdul Rasheed @ Imbichi Rasheed

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
MONDAY, THE 4TH DAY OF DECEMBER 2023 / 13TH AGRAHAYANA,
1945 CRIME NO.58/2005 OF Areacode Police Station, Malappuram
AGAINST THE ORDER/JUDGMENT SC 189/2018 OF ADDITIONAL
DISTRICT COURT & SESSIONS COURT - II, MANJERI / II
ADDITIONAL MACT, MANJERI PETITIONER/ACCUSED NOS.1,2,3:

1 ABDUL RASHEED @ IMBICHI RASHEED AGED 42 YEARS S/O.
ABOOBAKER, KAVILPURAM HOUSE, ENGAPUZHA, KANAMVAYAL,
PUTHUPPADY P.O., KOZHIKODE DISTRICT, PIN - 673573 2
THAMEEM AGED 47 YEARS S/O. ABDUL RAHMAN KUTTY, PATTEM

KUNNUMMAL HOUSE, ENGAPUZHA, 23RD MILE, PUTHUPPADY P.O., KOZHIKODE DISTRICT, PIN - 673573 3 ALUNGAL RASHEED @ ABUSALIM RASHEED AGED 52 YEARS S/O. ALIKUTTY, ALINGAL HOUSE, MANGALAM, TIRUR AMSOM, MALAPPURAM DISTRICT, PIN - 676561 BY ADVS. M.A.AHAMMAD SAHEER SURESH JOSEPH E.A.HARIS MUHAMMED YASIL

RESPONDENTS/STATE AND COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 STATION HOUSE OFFICER AREACODE POLICE STATION, MALAPPURAM DISTRICT, PIN - 673639 SRI. M. P. PRASANTH, PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04.12.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- Crl.M.C. No.9680 of 2023
----- Dated this the 4th 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. The petitioners are the accused No. 1 to 3 in

Sessions case No.189/2018 on the file of Additional District and Sessions Court - II, Manjeri arising from Crime No. 58/2005 of Areacode Police Station. The co-accused were already acquitted as per Annexure A2 judgment. It is submitted that the continuation of the proceedings in the light of Annexure A2 is an abuse of process of court.

4. 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 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 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: 29. One of the offences charged against the accused is punishable u/s.120 B of IPC. In

order to establish the said offence, the

prosecution should prove i) that the accused agreed to do or caused to be done an act; ii) that such act was illegal or was to be done by illegal means; iii) that some over act was done by one of the accused in pursuance of the agreement. Here, in this case the prosecution has not adduced any evidence showing the fact that the accused persons facing trial in this case have agreed to do an illegal act or to do a legal act by illegal means. Moreover, the prosecution has failed to prove in connecting the over acts allegedly done by the accused persons as the acts done in pursuance of the criminal conspiracy.

30. Another major offence charged

against the accused persons is one punishable u/s.395 of IPC. It is the bounden duty of the prosecution that in all cases of decoity, the prosecution must prove i) that robbery was committed or attempted; ii) that five or more persons committed or attempted to commit robbery; or that the whole number of persons committing or attempting to commit robbery was five or more; and iii) that such persons

were acting conjointly. All the necessary ingredients are to be sufficiently proved to find the accused guilty for the above said offence. In the instant case PW4 has not adduced any evidence to the effect that the accused persons facing trial have committed the act of extortion or attempt to commit extortion by putting him or any other persons in fear of any instant death, hurt or restraint along with other accused persons. The prosecution is failed to establish the overt acts done by the accused persons facing trial in the commission of the alleged offence. It is true that PW4 has identified both accused while adducing evidence, but he failed to depose before the court about the overt acts done by the accused persons identified by him. Moreover, the other employees who cited to be present at the shop at the time of incident and have been allegedly restrained by the assailants have not adduced any evidence to that point before this court. The sole testimony of PW4 is not at all sufficient and believable to form an opinion that the accused persons facing trial were actually participated and involved in the commission of the alleged crime.

31. Though PW4 has identified the material

objects including the weapons allegedly seized by the police but the mahazars through which those weapons were seized are not seen marked and proved by the prosecution. More so, the officers concerned who effected the recovery of those material objects have not adduced any evidence in support thereof. Therefore, the seizure of material

objects allegedly used by the assailants itself is not sufficient to connect the accused persons with the allegations. Again, PW4 is silent as to which of all the weapons carried or possessed by the accused at the incident in this case. The alleged offences charged against the accused serious in nature and hence strict proof is required to found the accused persons guilty. The prosecution has not established the allegation beyond doubt to bring home the guilt of the accused. Thus I found the above points accordingly against the prosecution.

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 petitioners in SC No. 189/2018 on the file of Additional District and Sessions Court - II, Manjeri, arising from Crime No. 58/2005 of Areacode Police Station are quashed. Sd/- P.V.KUNHIKRISHNAN JUDGE sms APPENDIX OF CRL.MC 9680/2023 PETITIONER ANNEXURES Annexure 1 THE CERTIFIED COPY OF THE FINAL REPORT IN S.C.189/2018 ON THE FILES OF THE ADDL. SESSIONS COURT-II, MANJERI Annexure A2 THE TRUE COPY OF THE JUDGMENT DATED 30.03.2017 IN S.C.57/2011 ON THE FILES OF THE ADDL. SESSIONS COURT-II, MANJERI

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