

Rakesh Joy vs State of Kerala

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Court : Kerala

Decided On : Jul-01-2022

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : Crl.MC/3/2021

Appellant : Rakesh Joy

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
FRIDAY, THE 1ST DAY OF JULY 2022 / 10TH ASHADHA, 1944
CRL.MC NO. 3 OF 2021 AGAINST THE ORDER/JUDGMENT IN CC
153/2020 OF JUDICIAL MAGISTRATE OF FIRST CLASS -
I,NEDUMANGAD PETITIONER/ACCUSED: RAKESH JOY, AGED 45
YEARS, S/O.NJANAN, JOY BHAVAN, NEAR PETROL PUMP,
KUTTICAL, MANNOORKARA VILLAGE, NEDUMANGADU TALUK,
THIRUVANANTHAPURAM DISTRICT. BY ADVS. G.SUDHEER
SRI.R.HARIKRISHNAN (H-308) RESPONDENTS/STATE & DEFACTO
COMPLAINANT: 1 STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

KOCHI 682 031 2 SMT.MANJUSHA, D/O.SHANTHA, AGED 44 YEARS, MUKKALI THERIYAM VILAKOM, KOTTAKKAKAM, ARYANAD, NEDUMANGADU TALUK, THIRUVANANTHAPURAM DISTRICT, PIN 695 125 OTHER PRESENT: ADV NIMA JACOB- PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01.07.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC NO. 3 OF 2021 -2-

ORDER

The petitioner is the accused in C.C.No.153/2020 pending before the Judicial First Class Magistrate Court-I, Nedumangadu. The aforesaid case arises

from Crime No.1196/2019 of Aryanadu Police Station, which was registered for the offences punishable under Sections 279, 337, 304(A) of The Indian Penal Code and also under Section 185 of the Motor Vehicle Act, 1988 (hereinafter referred to as the MV Act, for short). The prosecution case is that, on 25.12.2019 at 3.00 p.m. accused had driven a car bearing Registration No.KL-21-R-2710, under the influence of alcohol, hit a pedestrian and later, as a result of the injuries, the said person died. Annexure A is the FIR, and Annexure B is the Final Report submitted by the Police. This Criminal M.C. is filed

CRL.MC NO. 3 OF 2021 -3- for quashing all further proceedings pursuant to Annexure B against the petitioner.

2. Heard Sri.G.Sudheer, learned counsel appearing for the petitioner and Smt. Nima Jacob, learned Public Prosecutor for the State.

3. The case of the petitioner is that none of the offences alleged against the petitioner are attracted from the materials produced by the prosecution along with Annexure B Final Report.

4. On the other hand, learned Public Prosecutor opposes the same.

5. I have gone through the materials produced and also considered the rival submissions.

6. As regards the offences under Sections 279, 337 and 304(A) of the Indian Penal Code, I am of the view that the contentions put forward by the learned counsel for the petitioner are purely questions of CRL.MC NO. 3 OF 2021 -4-facts. Therefore, I do not find any reason to interfere in the Final Report regarding the offences above.

7. Regarding the prosecution for the offence

under Section 185 of the MV Act, the specific case of the learned counsel for the petitioner is that the aforesaid offence is charged without conducting a proper blood test as mandated under Section 185 of the MV Act.

8. On perusal of the records, I find that there

is some force in the contention of the learned counsel for the petitioner. As per Section 185 of the M.V Act, a person can be punished if it is found that, at the time when he was found driving the vehicle, he has in his blood, alcohol exceeding 30mg/100ml of blood. It is specifically contemplated that the said percentage of alcohol should be detected in a test by a breath analyser or any other test, including a laboratory

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test. Thus it is evident that, to prosecute a person for the offence under Section 185 of MV Act, a blood test by way of a breath analyser or any other test, including a laboratory test is mandatory. In addition to that, by conducting such a test, the prosecution has to establish that the percentage of alcohol at the relevant time exceeds 30mg/100ml. In this case, the

only material relied on by the prosecution is Annexure C Certificate of Drunkenness. The aforesaid certificate does not contain any indication as to the conduct of any blood test as specified in Section 185 of the MV Act. It is only stated that there was the smell of alcohol. Since the percentage of alcohol is not detected in the manner as contemplated under Section 185 of the MV Act, the prosecution for the aforesaid offence is not legally sustainable. CRL.MC NO. 3 OF 2021 -6- In such circumstances, even though I am of the view that the petitioner is

liable to face trial about the offences under Sections 279, 337 and 304(A) of the Indian Penal Code, I do not find any sustainable grounds for continuing the prosecution under Section 185 of the Motor Vehicles Act. Accordingly, this Criminal M.C. is disposed of quashing Annexure B Final Report to the extent it contains the offence under Section 185 of the MV Act. The prosecution can be continued for the other offences. Sd/- ZIYAD RAHMAN A.A. JUDGE vv CRL.MC NO. 3 OF 2021 -7- APPENDIX OF CRL.MC 3/2021 PETITIONER ANNEXURES ANNEXURE A A TRUE COPY OF THE FIR AND FIS IN CRIME NO.1196/2019 OF ARYANADU POLICE STATION, THIRUVANANTHAPURAM DISTRICT DATED 25.12.2019 ANNEXURE B ATTESTED COPY OF THE FINAL REPORT CRIME NO.1196/2019 OF ARYANADU POLICE STATION, THIRUVANANTHAPURAM DISTRICT DATED 25.12.2019 FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, NEDUMANGADU ANNEXURE C TRUE COPY OF THE CERTIFICATE OF DRUNKENNESS OF THE PETITIONER ISSUED BY MEDICAL OFFICER IN -CHARGE, CHC ARYANADU ANNEXURE D TRUE COPY OF ORDER DATED 13.9.2018 IN CRL.M.C. NO.5418/2018 OF THIS HONOURABLE COURT

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