

Arsal vs State of Kerala

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Court : Kerala

Decided On : Feb-02-2022

Judge : Honourable Mr. Justice K.Haripal

Appeal No. : Crl.MC/89/2022

Appellant : ARSAL

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE K.HARIPAL
WEDNESDAY, THE 2ND DAY OF FEBRUARY 2022 / 13TH MAGHA,
1943 CRL.MC NO. 89 OF 2022 (CRIME NO. 1233 OF 2015 OF
OTTAPPALAM POLICE STATION, PALAKKAD)) PETITIONER: ARSAL
AGED 28 YEARS EDAKKATTIL HOUSE, R.S ROAD, OTTAPALAM
PALAKKAD, PIN - 679101 BY ADVS. K.B.ARUNKUMAR POOJA K.S.
RESPONDENTS/STATE: 1 STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM. ERNAKULAM, PIN - 682031 2 SUB INSPECTOR OF
POLICE THE SUB INSPECTOR OF POLICE, OTTAPALAM POLICE
STATION, OTTAPALAM PALAKKAD, PIN - 679101 SR.PP - SRI.

HRITHWIK C.S. THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02.02.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

The 1st accused in Crime No. 1233 of 2015 of Ottappalam police station has moved this Court under Section 482 of the Cr.P.C. for quashing the proceedings against him and seeks exoneration on the ground of acquittal of the co-accused in S.C. No. 508 of 2017. That crime was registered on 23.12.2016 alleging offence punishable under Sections 452, 308, 427 read with Section 34 of the IPC.

2. The precise allegation against the petitioner and three

others was that on 06.12.2015 at 10 PM, in furtherance of their common intention and out of the animosity towards the brother of CW1, after making preparations, trespassed into house No. petitioner assaulted CW1 with a sword aiming at his head but since he had resisted it with his left hand the attack hit on his left

forearm and he sustained injuries. If it was not resisted, the attack would have turned fatal. The accused persons also committed vandalism in the house by destroyed scooter bearing registration No. KL-51E-76 and also destroyed windows and doors of the house and caused a loss of Rs.10,000/- to the de facto complainant. On conclusion of investigation, charge sheet was laid before the Judicial First Class Magistrate's Court-I, Ottappalam. Thereafter the case against accused Nos. 1 to 3 was committed to the Sessions Court and thus S.C. No. 508 of 2017 was taken on file. The case reached before the Additional Sessions Court, Ottappalam where accused Nos. 2 and 3 alone faced trial and the petitioner, 1st accused went absconding. Accused Nos. 2 and 3 were tried and acquitted by Annexure-3

judgment dated 17.03.2021. Now taking shelter under

Annexure-3 judgment, in view of the acquittal of the co-accused persons, the petitioner has approached this Court for quashing Annexure-1 FIR and Annexure-2 final report against him.

3. I heard the learned counsel for the petitioner and also the learned Senior Public Prosecutor. The learned counsel for the petitioner has placed reliance on Annexure-3 judgment of the trial Court.

4. As rightly pointed out by the learned Senior Public Prosecutor it was an acquittal under Section 232 of the Cr.P.C., after examining PWs 1 to 4.

5. The witness list attached to the charge sheet indicates

that there are sixteen witnesses in the schedule. However, only four witnesses were examined, who included the de facto complainant who had set the law in motion by giving the First Information Statement. When the de facto complainant was examined as PW1, he said that he does not remember the date of the incident. According to him one day, a group of persons had

trespassed into his house and caused injuries to him and thus he went to hospital and the police recorded his statement. That statement was marked as Ext.P1 for the case. He further stated that he could not identify the culprits. Thereafter he was cross examined by the Public Prosecutor and during cross examination, he confided that the case is settled between parties. He had reportedly deposed before the Court that he had not stated to the police that the accused had caused him injuries.

6. The statement of PW1 in Annexure-3 proceedings is

highly fatal to the prosecution. The de facto complainant who gave the First Information Statement and also the injured has completely backed out from his previous statements and has disowned the prosecution case. In the circumstance, even if the petitioner, the 1st accused who is

the main culprit is put to trial, in the above background, that would be a futile exercise and that is not going to give any edge to the prosecution.

7. In other words, Annexure-3 judgment is a complete set

back to the prosecution case and in the light of the same there is no purpose in putting the petitioner to trial. Now the learned counsel for the petitioner submits that the case against the petitioner is pending before the Additional Sessions Court as S.C. No. 822 of 2021. For the aforesaid reasons, entire proceedings in S.C. No. 822 of 2021 of the Additional Sessions Court, Ottappalam are quashed and the petitioner shall stand exonerated.

The Criminal Miscellaneous Case is allowed as above. Sd/- K. HARIPAL JUDGE
RMV/02/02 /2022 APPENDIX OF CRL.MC 89/2022 PETITIONER ANNEXURES
Annexure1 CERTIFIED COPY OF THE FIR IN CRIME NO.1233/2015 OF
OTTAPALAM POLICE STATION Annexure2 CERTIFIED COPY OF FINAL
REPORT IN CRIME NO.1233/2015 OF OTTAPALAM POLICE STATION
Annexure3 THE CERTIFIED COPY OF THE JUDGMENT DATED 17.03.2021 IN
S.C.NO. 508/2017 ON THE FILE ADDITIONAL SESSIONS COURT,
OTTAPALAM TRUE COPY P.A.TO JUDGE

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