

Fayis vs State of Kerala

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Court : Kerala

Decided On : May-19-2022

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

Appeal No. : Crl.MC/320/2022

Appellant : FAYIS

Respondent : State of Kerala

Judgement :

Crl.M.C.No.320/2022 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
THURSDAY, THE 19TH DAY OF MAY 2022 / 29TH VAISAKHA, 1944
CRL.MC NO. 320 OF 2022 CRIME NO.314/2006 OF Payangadi Police
Station, Kannur AGAINST THE ORDER/JUDGMENT IN SC 188/2019
OF SUB COURT, PAYYANNUR PETITIONER/ACCUSED NO.4: FAYIS,
AGED 35 YEARS, S/O.ABDUL KAREEM, KARAKKANTE KANDI (H),
MATTOOL AMSOM, MATTOOL P.O., KANNUR DISTRICT, PIN - 670
302. BY ADVS. P.S.BINU K.SEENA

RESPONDENT/COMPLAINANT: STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN- 682 031. THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19.05.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Crl.M.C.No.320/2022 2

ORDER

The petitioner is the 4th accused in Crime No.314 of 2006 of Pazhayangadi Police Station, which is now pending before the Asst.Sessions Court, Payyannur as C.C.No.188 of 2019. The offence alleged against the petitioner and other accused are under Sections 143, 147, 148, 341, 323, 324, 307 read with 149 IPC.

2. The prosecution case is that on 21.11.2006 at 10.30 pm

accused Nos.1 to 14 along with some unidentified persons, formed themselves into an unlawful assembly with deadly weapons such as iron rods, GI pipes etc. assaulted CW1 to CW3 with the intention to commit murder of CW2 and CW3. CW1 to CW3 have sustained injuries in the said incident and Annexure-AI FIR was filed in connection with the same. After completing the investigation final report was filed by the police.

3. All the accused persons except the petitioner herein have faced trial on the basis of the said final report in S.C.No.809 of 2007 before the Asst.Sessions Court, Payyannur, which culminated in Annexure-II judgment. The learned Asst.Sessions Judge after Crl.M.C.No.320/2022 3

evaluating the materials arrived at the conclusion that the accused are not guilty of the offences. It is pointed out that as the petitioner was working abroad, he could not participate in the trial and accordingly the case against him was split up and the same is now

pending as C.C.No.188 of 2019. This Crl.M.C. is filed by the petitioner praying for quashing all further proceedings against him pursuant to the aforesaid final report on the ground that consequent to the acquittal of the other accused as evidenced by Annexure-II judgment, substratum of the prosecution case is lost and hence no

purpose would be served by allowing the continuation of prosecution against him.

4. Heard Sri.Binu P.S., learned counsel for the petitioner and Smt.Sreeja V., learned Public Prosecutor for the State.

5. I have perused the findings entered into by the

Asst.Sessions Judge in Annexure-II judgment. Even though CW1 to CW3 have sustained injuries, only CW1 was examined as PW1. The other injured witnesses were not available for the trial as they were abroad. While examined as PW1, he clearly stated that, he could not identify any of the assailants. The observations made by the Assistant Sessions Court indicates a settlement between the parties CrI.M.C.No.320/2022 4 in respect of the offence. It is also seen mentioned in the aforesaid

judgment that, CWs 2 and 3 had also settled the matter. In addition

to the above, CW4 and CW5 who were the eye witnesses and examined as PW2 and PW3, have clearly stated that they did not witness the incident as alleged by the prosecution. PW4, the witness who attested the mahazar also turned hostile to the prosecution. In such circumstances, the learned Asst.Sessions Judge acquitted the accused persons under Section 232 Cr.P.C. for want of evidence. When going through the nature of evidence that has been let in in the aforesaid trial, it can be safely concluded that no fruitful purpose would be served by allowing the continuation of prosecution against

the petitioner as well. In Moosa v. Sub Inspector of Police [2006(1) KLT 552], a Full Bench of this Court clearly laid down that if the substratum of the prosecution case is lost consequent to the order of acquittal passed by the trial court in respect of co- accused, powers of this Court under Section 482 Cr.P.C. can be invoked to quash the proceedings against the remaining accused. Considering the facts and circumstances of the case, I am of the view that this is a fit case in which principles laid down by this Court in Moosas case (supra) can be applied.

Crl.M.C.No.320/2022 5 In the result, this Crl.M.C. is allowed. Annexure-I final report submitted in Crime No.314 of 2006 of Pazhayangadi Police Station and all further proceedings in S.C.No.188 of 2019 on the files of Asst.Sessions Court, Payyannur are hereby quashed as against the petitioner herein. Sd/- ZIYAD RAHMAN A.A. JUDGE DG/19.5.22 Crl.M.C.No.320/2022 6 APPENDIX OF CRL.MC 320/2022 PETITIONER ANNEXURES Annexure-I COPY OF THE FIR & POLICE CHARGE IN CRIME NO.314/2006 OF PAZHAYANGADI POLICE STATION. Annexure-II COPY OF THE JUDGMENT OF ASST.SESSIONS COURT, PAYYANNUR IN S.C.NO.809/2007 DT.21.03.2019.

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