

Paulson, vs State of Kerala

Paulson, vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1444036

Court : Kerala

Decided On : Mar-02-2022

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Crl.MC/532/2019

Appellant : Paulson,

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
WEDNESDAY, THE 2ND DAY OF MARCH 2022/ 11TH PHALGUNA,
1943 CRL.MC NO. 532 OF 2019 SC 672/2018 OF ADDITIONAL
DISTRICT & SESSIONS COURT, ERNAKULAM
PETITIONER/ACCUSED No.9: PAULSON, AGED 37 YEARS,
S/O.JOSEPH, C.C.NO.XXIII/66, EDAKOCHI, NEAR ACQUINAS
COLLEGE, EDAKOCHI, ERNAKULAM-682 010 BY ADVS.
C.ANILKUMAR (KALLESSERIL), SRI.C.Y.VINOD KUMAR,
SRI.P.M.MANASH RESPONDENT/COMPLAINANT: STATE OF
KERALA, (REP.BY THE SUPERINTENDENT OF POLICE, SPECIAL
BRANCH CID, ERNAKULAM-CRIME NO.206/2002 OF

THOPPUMPADY POLICE STATION) REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM BY SRI M P PRASANTH-PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02.03.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ..2..

ORDER

This CrI.M.C. has been filed to quash the proceedings against the petitioner on the ground of acquittal of the remaining accused.

2. The petitioner was arrayed as the 9th accused in Crime No.206/2002 of Thoppumpady Police Station. Altogether

there were 19 accused. The offences alleged are under Sections 120B(1), 292, 372, 373, 376 of the IPC and Sections 3(1), 4(1), 5(1)(a), 6(1), 6(1)(a), 6(3)(a) and 9 of the Immoral Traffic (Prevention) Act, 1956 and Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986.

3. The prosecution case in short is that, during the

period 2001-2002, in order to gain income, the accused Nos.1 to 5 indulged in the business of prostitution with PW1 in different places and the accused Nos.14 to 19 indulged in prostitution with PW1. It is further alleged that the accused No.5 conspired with the accused Nos.6 to 13 and created porn video with PW1 and thus the accused have committed the offences. ..3..

4. The case was committed to the court below and numbered as S.C.No.602/2013. The accused Nos.4 and 14 died during the pendency of the case. The accused Nos.9 and 13 did not appear at the court below. All the remaining accused faced trial. The court below after full-fledged trial acquitted the accused who faced trial. Since the petitioner was absconding the case against him was split up and refiled

as S.C.No.672/2018. According to the petitioner, in view of the acquittal of the remaining accused, the substratum of the prosecution case is dislodged. It is in

these circumstances, he has filed this CrI.M.C. invoking Section 482 of the Cr.P.C.

5. I have heard Sri.C.Anilkumar Kallesseril, the learned counsel for the petitioner and Sri.M.P.Prasanth, the learned Public Prosecutor for the respondent.

6. To prove the prosecution case, PWs.1 to 8 were examined. PW1 is the victim. PW2 is her elder sister. Both of

them did not support the prosecution case. Since no incriminating evidence was adduced, even the questioning of the accused under Section 313 (1)(b) of the Cr.P.C. was ..4.. dispensed with. PW1 stated that, while she was standing along with her elder sister, CW2 at Thoppumpady bus stop, the police intercepted them and recorded her statement and subsequently, they went to Judicial First Class Magistrate and gave statement. But, she categorically stated that, she was not sexually abused by any person especially the accused. She also stated that she did not live in the house of the accused No.1 and nobody had raped her at the house of the accused

No.1. She further deposed that, she was married to the accused No.5 and out of the wedlock three children were born. She has no grievance at all against the accused. PW2 also admitted that, the accused No.5 is the husband of PW1. She deposed that they were not taken into custody by the police along with the accused No.5 from the Hotel at Thoppumpady and they were not misused by the accused. PW3, who is the mother of the PWs.1 and 2, also did not support the prosecution case.

7. The court below, on analysis of the evidence, held

that, the evidence of the victim as well as her sister and ..5.. mother was not at all sufficient to prove the prosecution case and convicted the accused. A reading of Annexure-A1

judgment would show that the substratum of the prosecution

case is dislodged.

8. The Apex Court in Sahadevan & another v. State of Tamil Nadu [2012 (6) SCC 403] has held that, if the entire

prosecution has been found to be unreliable and the prosecution as a whole has not been able to prove its case beyond reasonable doubt, then the benefit should accrue to all the accused persons and not merely to the accused who faced trial. The Full Bench of this Court in Moosa v. Sub Inspector of Police [2006 (1) KLT 552] in paragraph 50 has held that in a case where the very substratum of the case is lost by the acquittal of the co-accused, the power under Section 482 of the Cr.P.C. could be invoked.

9. It is a case where the entire prosecution case has

been found to be unreliable and the prosecution as a whole has not been able to prove its case beyond reasonable doubt. Hence, no purpose will be served in proceeding with the trial of ..6.. the accused.

10. For all these reasons, I am of the view that this is a fit case where the jurisdiction vested with this Court under Section 482 of the Cr.P.C could be invoked. Accordingly, the further proceedings as against the petitioner in S.C.No.672/2018 on the file of the Additional Sessions Court, Ernakulam stand hereby quashed.

This Crl.M.C. is allowed as above. Sd/- DR.KAUSER EDAPPAGATH, JUDGE skj ..7.. APPENDIX OF CRL.MC 532/2019 PETITIONER'S ANNEXURES ANNEXURE-A1 CERTIFIED COPY OF THE JUDGMENT DATED 2.8.2018 IN S.C NO.602/13 ON THE FILE OF THE ADDITIONAL DISTRICT & SESSIONS COURT, ERNAKULAM ANNEXURE-A2 PHOTOSTAT COPY OF THE FINAL REPORT IN S.C NO.672/18 ON THE FILE OF THE ADDITIONAL DISTRICT & SESSIONS COURT, ERNAKULAM ANNEXURE-A3 CERTIFIED COPY OF THE DEPOSITION GIVEN

BY PW1 ON 2.7.2018 IN S.C NO.602/13 ON THE FILE OF THE ADDITIONAL DISTRICT & SESSIONS COURT, ERNAKULAM

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com