

Babu vs State of Kerala

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Court : Kerala

Decided On : Jun-22-2022

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

Appeal No. : Crl.MC/452/2022

Appellant : BABU

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. ND
WEDNESDAY, THE 22 DAY OF JUNE 2022 / 1ST ASHADHA, 1944
CRL.MC NO. 452 OF 2022 AGAINST THE ORDER/JUDGMENT IN CC
902/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,PALAKKAD
PETITIONER/ACCUSED NO. 2: BABU AGED 52 YEARS
S/O.CHANDRAN, MELEPURA VEEDU, KANNANOOR,
KUZHALMANNAM, PALAKKAD. BY ADV V.A.JOHNSON
(VARIKKAPPALLIL) RESPONDENT/STATE/COMPLAINANT: STATE
OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM - 682 031. ADV. C.S HRITHWIK
SR P P THIS CRIMINAL MISC. CASE HAVING COME UP FOR

ADMISSION ON 22.06.2022, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

ORDER

The petitioner is the 2nd accused in Crime No. 310/2016 of Kuzhalmannam Police Station, which was registered for the offences punishable under Sections 447, 294(b), 506 (i) and 427 r/w 34 of IPC.

2. The prosecution case is that, on 09.04.2016, at 11.00

p.m, the petitioner as well as the 1 st accused, on account of the previous animosity because the father of 1st accused died due to the injuries inflicted by the husband of PW1, have trespassed into her house, uttered obscene words to PW1 and CW2. It is further alleged that the 1st accused destroyed a motorcycle with an iron rod and the petitioner/2nd accused destroyed the window glasses and bulbs of the house with a piece of brick and caused mischief of Rs.70,000/-. Annexure-A is the final report submitted by the Police.

3. The Judicial First Class Magistrate Court-I, Palakkad has

taken cognizance of the aforesaid final report as C.C 916/2016. However, in the trial that followed, only the 1 st accused participated, and it culminated in Annexure-B judgment by which the 1 st accused was acquitted. The case against the petitioner was split up, and the same is now pending as C.C No. 902/2021 before the Judicial First

Class Magistrate Court-I, Palakkad. This CrI.M.C is filed for quashing all further proceedings against the petitioner pursuant to Annexure-A.

4. Heard Sri.Johnson Varikkappallil., learned counsel appearing for the petitioner and Sri.C.S.Hrithwik learned Public Prosecutor for the State.

5. The specific case of the petitioner is that, consequent to the order of acquittal of the 1 st accused as per Annexure-B judgment, the substratum of the matter is lost. Hence, the prosecution against

the petitioner is unwarranted. Reliance was also placed on the observations made by the Full Bench of this Court in *Moosa v. Sub Inspector of Police* [2006(1) KLT 552]. On the other hand, the learned Public Prosecutor would oppose the contentions above.

6. I have carefully gone through the contents of Annexure-A

final report, the observations made by the learned Magistrate in Annexure-B judgment and the deposition of PW1 during the trial in C.C 916/2016. The reasons to acquit the 1st accused are mentioned in detail in Annexure-B judgment by the learned Magistrate. It is discernible that, even though PW1 to PW3 were examined to prove the incident occurred, only PW1 supported the prosecution. Even though she mentioned the alleged acts by the accused, the learned Magistrate noted certain glaring discrepancies. As far as the other witnesses are concerned, namely PW2 and PW3, both turned hostile to the prosecution, stating that they did not see any of the accused. Thus the only evidence available before the learned Magistrate was the evidence of PW1.

7. One of the glaring inconsistencies noted by the learned

Magistrate in the evidence of PW1 was the lack of consistent case as to the date of the incident. She is reported to have mentioned the dates of 08.04.2016 and 09.04.2016 as the date of the incident. Apart from the above, it is also taken note of by the learned Magistrate that even though the accused persons were known to the PW1 for the past several years, being neighbours, none of the parties were explicitly named in the FIS. The aforesaid aspect was put to her during the cross-examination, and in response to the same, a specific reference has been made with respect to the petitioner/2nd accused. It is stated that, even though the petitioner was having acquaintance with the petitioner herein for the past 30 years, she did not mention the name of the petitioner in the FIR. Thus, after elaborately discussing the various discrepancies in the evidence of PW1, the learned Magistrate came to a definite conclusion that it is not safe to convict the 1st accused based on the evidence of PW1. Apart from the evidence of PW1, no other evidence could be adduced by the prosecution.

8. When the observations made by the learned Magistrate

are taken into consideration, I am of the view that, even though the aforesaid findings were entered during the trial with respect to the involvement of the 1st accused above, it would have an impact on the question of involvement of the petitioner as well. This is particularly because the only evidence supporting the prosecution evidence, namely the deposition of PW1, contains a specific reference to the petitioner herein, and there is a discrepancy as to the non-mentioning of his name in the FIR, even though the petitioner was

admittedly known to her for the past thirty years. In such circumstances, I am of the view that the observations and findings entered by the learned Magistrate concerning the 1st accused will have the effect of destroying the substratum of the prosecution case as such. Therefore, it is only proper that the proceedings against the petitioner also be quashed by the following principles laid down in Moosa's Case (supra).

In the result, this Crl.M.C is allowed, Annexure-B final report submitted in Crime No. 310/2016 of the Kuzhalmannam Police Station and all further proceedings against the petitioner in C.C

Palakkad, as against the petitioner, are hereby quashed. Sd/- ZIYAD RAHMAN A.A. JUDGE rpk APPENDIX OF CRL.MC 452/2022 PETITIONER ANNEXURES Annexure A CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.310/2016 OF KUZHALMANNAM POLICE STATION, PALAKKAD. Annexure B CERTIFIED COPY OF THE JUDGMENT IN C.C.NO.916/2016 OF THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE-I, PALAKKAD DATED

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