

Arafath vs State of Kerala

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Court : Kerala Orders

Decided On : Mar-31-2021

Judge : Honourable Mrs. Justice M.R.Anitha

Appeal No. : Crl.MC/2262/2014

Appellant : Arafath

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE M.R.ANITHA
WEDNESDAY, THE 31ST DAY OF MARCH 2021 / 10TH CHAITHRA,
1943 Crl.MC.No.2262 OF 2014(C) SC 54/2009 OF I ADDITIONAL SUB
COURT, THRISSUR CRIME NO.427/2008 OF Chavakkad Police Station
, Thrissur PETITIONER/ACCUSED ARAFATH, AGED 27 YEARS,
S/O.ALI, PANIKKAVEETIL HOUSE,
MANATHALAPARAPPILTHAZHAM NEAR TRANCHING GROND,
MANATHAL, CHAVAKKAD TALUK, THRISSUR DISTRICT. BY ADV.
SRI.RAJIT RESPONDENTS/STATE & DEFACTO COMPLAINANT 1
STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM. 2 KANNAMMA AGED 54

YEARS, W/O.THANKARAJ, ARUNAVLAYAM HOUSE,
MANTHALAPARAPPILTHAZHAM NEAR TRANCHING GROUND,
MANATHAL, CHAVAKKAD TALUK, THRISSUR DISTRICT - ADV.
SRI.V.V.JOY PP SRI. ANAS THIS CRIMINAL MISC. CASE HAVING
BEEN FINALLY HEARD ON 23-03-2021, THE COURT ON 31-03-2021
PASSED THE FOLLOWING: CrI.M.C.No.2262/2014 2

M.R.ANITHA, J.

----- CrI.M.C.No.2262 of 2014
----- Dated : 31st March, 2021

ORDER

1. This petition has been filed u/s.482 Cr.P.C. to quash the proceedings against the petitioner in S.C.No.54/2009 on the file of the 1st Additional Assistant Sessions Judge, Thrissur. According to the petitioner, he is the accused in crime No.427/2008 of Chavakkad Police Station registered for the offences u/s. 452, 324 & 308 IPC.
2. The prosecution case is that, out of previous enmity with the son of the defacto complainant/2nd respondent, petitioner/accused trespassed into the house of the defacto complainant and when he attempted to attack CW3 - the son of the defacto complainant, she intervened and thereupon the petitioner/accused hit her with wooden rafter, which was evaded by the defacto complainant, thereby, it was touched on her nasal bone and thereby caused grievous injuries to her. Hence petitioner/ accused committed the offence aforementioned.
3. The contention of the petitioner is that he is totally innocent of the offences levelled against him and even if the entire allegations raised against the petitioner is taken as true, no offence as alleged is made out.
4. According to the petitioner, the defacto complainant compounded the offence and she had filed an affidavit stating that fact. The affidavit sworn in by the

Crl.M.C.No.2262/2014 3 defacto complainant is produced as Annexure-B. So according to him, the continuation of the proceedings against the petitioner would be an abuse of process of law.

5. A report was called for from the concerned court in view of the fact that the crime is of the year 2008 and the present petition has been filed by him after six years. The report filed by the First Additional Assistant Sessions Judge,

Thrissur would show that the petitioner/accused made an appearance before the trial court on 02.06.2009 and the case was posted for framing charge on 07.08.2009 and thereafter on 20.10.2009. But subsequently he remained absent and in spite of repeated coercive steps his presence could not be procured and M.C.No.52/2013 was registered against the sureties and they were directed to pay penalty of Rs.10,000/- each and distraint warrant is pending against the sureties. It is also stated that the steps initiated against the petitioner u/s.82 & 83 Cr.P.C. is completed and the Sessions Judge has been addressed to transfer the case to LPR and NBW was ordered against the petitioner/accused. So it is obvious that the petitioner/accused has been willfully avoiding the process of law for quite a long time from 2009 onwards and 82 & 83 steps is also completed and the steps has been taken to transfer the case to LPR. It is true that an affidavit alleged to be that of the defacto complainant/2nd respondent has been produced as Annexure-B and in which she has stated that the matter has been settled out of court by herself and the petitioner and she has no grievance against him and she has no

Crl.M.C.No.2262/2014 4 objection to quash the case pending against the petitioner. But the crime is of the year 2008 and the petitioner/accused has been avoiding the process of law willfully for the last several years and without even surrendering before the trial court he has straight away come before this Court seeking for

quashment of the proceedings. The learned Public Prosecutor also specifically contended about contumacious conduct of the petitioner/accused.

6. Time and again it has been held by the Apex Court that the extraordinary

power vested with this Court u/s.482 Cr.P.C. can be invoked only very sparingly to prevent the abuse of process of law or to secure the ends of justice. It is relevant to quote State of Haryana & Ors. v. Bhajan Lal & Ors. [1992 Supp (1) SCC 335] wherein an elaborate consideration has been made with regard to the exercise of powers under Section 482 Cr.P.C by the High Court. In that the Hon'ble Supreme Court has given some guidelines in the matter of exercise of the extra ordinary powers under Article 226 of the Constitution of India or the inherent powers under Sec.482 Cr.P.C.

The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently

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channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised: (1).Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. (2).Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. (3).Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4).Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is

permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5).Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6).Where there is an express legal bar engrafted in any of the provisions of the Code of the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7).Where a criminal proceeding is manifestly attended with mala CrI.M.C.No.2262/2014 6 fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

7. The case of the petitioner at hand would not satisfy any of the illustrations

specified above. The petitioner, is a chronic evader of the process of law for the last several years, and hence the ends of justice also does not demand quashment of the proceedings against the petitioner. Hence CrI.M.C is found to be devoid of any merit and hence dismissed. Sd/- M.R.ANITHA JUDGE MrCs/Shg CrI.M.C.No.2262/2014 7 APPENDIX ANNEXURES ANNEXURE P1 ANNEXURE A. COPY OF THE FINAL REPORT FILED BY THE CHAVAKKAD POLICE STATION, THRISSUR DISTRICT. ANNEXURE P2 ANNEXURE B. COPY OF THE AFFIDAVIT FILED BY THE 2ND RESPONDENT EVIDENCING THE ABOVE FACT.

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