

Aboobacker vs the State of Kerala

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Court : Kerala

Decided On : Mar-12-2020

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : Crl.MC/6344/2014

Appellant : Aboobacker

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH
THURSDAY, THE 12TH DAY OF MARCH 2020 / 22ND PHALGUNA,
1941 Crl.MC.No.6344 OF 2014 CC No.200/2014 OF CHIEF JUDICIAL
MAGISTRATE COURT,KOZHIKODE CRIME NO.142/1999 OF KASABA
POLICE STATION, KOZHIKODE PETITIONER/ACCUSED NO.1
ABOOBACKER, AGED 62 YEARS, S/O.SYED MUHAMMED, KADAYIL
VEEDU, THOLLUKUZH, ADAYAMON.P.O., KILLIMMANOOR,
THIRUVANANTHAPURAM. BY ADV. SRI.R.T.PRADEEP

RESPONDENT: THE STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY SENIOR PUBLIC
PROSECUTOR SRI.B. JAYASURYA THIS CRIMINAL MISC. CASE HAVING

BEEN FINALLY HEARD ON 12.03.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No.6344 OF 2014 2 C.R.

ORDER

Dated this the 12th day of March, 2020 This Criminal M.C. is filed under Section 482 of the Code of Criminal Procedure seeking to quash all

further proceedings initiated in C.C.No.20

No.142/1999 of Kasaba Police Station.

2. Petitioner is the first accused in the case.

The allegation against him was that he alongwith accused Nos.2 to 4, has committed an offence punishable under Section 24 (1)(b) of the Emigration Act, 1983 (for short 'the Act'). Though the crime was registered against five accused, the names of accused Nos.3 and 4 have been removed from the array of the accused during the course of investigation itself.

3. The contention of Sri.R.T.Pradeep, the learned counsel for the petitioner was that the court has taken cognizance on the final report, without sanction being

CrI.MC.No.6344 OF 2014 3 obtained from the Central Government to prosecute them. The learned counsel pointedly argued quoting Section 27 of the Act that for taking cognizance on offences coming under the provisions of the Act, sanction from the Central Government is a pre-requirement.

4. The learned Public Prosecutor, based on a statement filed by him before this Court has submitted that final report was laid before the court without

sanction obtained from the Central

extracted for reference in the context:

27.Previous sanction of Central Government necessary.-No prosecution shall be instituted against any person in respect of any offence under this

Act without the previous sanction of the Central Government or such officer or authority as may be authorised by that Government by order in writing in this behalf: Provided that no sanction shall be required when an offence has been committed in respect of an emigrant or an

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intending

emigrant, or on behalf of such emigrant or intending emigrant, by the father, mother, husband, wife, son, daughter, brother, sister or guardian of such emigrant or intending emigrant, or if such emigrant or intending emigrant is a member of a joint Hindu family, by the manager of that family.

6. Section 27 of the Act provides that for effectively prosecuting a person for any of the

offences thereunder, sanction from the Central Government or such officer or authority as authorised by the Central Government by order in writing in this behalf is pre-requisite.

7. Proviso to Section 27 says that sanction is not required when an offence has been committed in respect

of an emigrant or an intending emigrant and complaint is preferred by the emigrant or intending emigrant or on behalf of such emigrant or intending emigrant, by the relatives or guardians of such emigrant or intending emigrant, or by the manager of the family, CrI.MC.No.6344 OF 2014 5 the emigrant or intending emigrant being a member of a Joint Hindu Family.

8. The prosecution on hand was not initiated by an

emigrant or intending emigrant so as to evade from obtaining sanction from the Central Government or an authorised authority prescribed by the said Government. The prosecution being originated by the police against an alleged recruiting agent, sanction must inevitably be procured from the Central Government or an officer

authorised by the Central Government. The prosecution is liable to fail if cognizance is taken by the court without sanction being accompanied by the Final Report filed by the investigating agency.

9. The learned Public Prosecutor obtained a report from the investigating officer and this Court is convinced from the contents of the report that sanction as contemplated under Section 27 of the Act was not available for consideration while cognizance was taken

on the Final Report. Therefore, act of

proceed, it will not serve the intended purpose of the prosecution. In the result, CrI.M.C is allowed. The Final Report (Annexure III) and all further proceedings initiated by Chief Judicial Magistrate Court, Kozhikode in C.C.No.200 of 2014 originated from Crime 142 of 1999 of Kasaba Police Station is quashed forthwith and consequently the accused is discharged of the offence punishable under Section 24 (1)(b) of the Act.

Sd/- MARY JOSEPH JUDGE MJL CrI.MC.No.6344 OF 2014 7 APPENDIX
PETITIONER'S EXHIBITS: ANNEXURE - I TRUE COPY OF FIR DATED 3.8.1999
IN CRIME NO.142/99 OF KASBA POLICE STATION. ANNEXURE - II TRUE
COPY OF SEARCH LIST IN CRIME NO.142/99 BEFORE CJM, KOZHIKODE.
ANNEXURE - III TRUE COPY OF MEMORANDUM OF EVIDENCE IN CRIME
NO.142/99 BEFORE CJM, KOZHIKODE DATED 30.11.2000. RESPONDENT'S
EXHIBITS: NIL

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