Kabeer Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/3424

Court : Kerala

Decided On : Nov-26-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Kabeer

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD WEDNESDAY, THE26H DAY OF NOVEMBER20145TH AGRAHAYANA, 1936 Crl.Revision Petition No. 1219 of 2003 ( ) ---------- AGAINST THE

JUDGMENT
IN CRL.APPEAL NO. 265/2001 of III ADDITIONAL SESSIONS COURT (ADHOC), FAST TRACK COURT-I, THRISSUR DATED0702-2003 AGAINST THE

JUDGMENT
IN S.C. NO. 30/1999 of PRINCIPAL ASSISTANT SESSIONS COURT,IRINJALAKUDA DATED2605-2001 REVISION PETITIONER(S)/APPELLANT/ACCUSED NO.1: ---------- KABEER, S/O.SYED MUHAMMED, VALIYAKATHU HOUSE, KAKKATHURUTHY. BY ADV. SRI.P.M.ZIRAJ RESPONDENT(S)/RESPONDENT/COMPLAINANT: ---------- STATEOF KERALA, REP. BY SUB INSPECTOR OF

POLICE, MATHILAKAM POLICE STATION, (IN CRIME NO.428/97 OF MATHILAKAM POLICE STATION), REP. BY PUBLIC PROSECUTOR, HONOURABLE HIGH COURT OF KERALAATERNAKULAM. BY .PUBLIC PROSECUTOR SMT.MADHU BEN THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON2611-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: A.HARIPRASAD, J.

---------- Crl.R.P. No.1219 of 2003 ---------- Dated this the 26th day of November, 2014.

ORDER

1t accused in Sessions Case No.30 of 1999 on the file of the Principal Assistant Sessions Judge, Irinjalakuda, who was convicted for an offence under Section 333 of the Indian Penal Code (in short, "IPC") had preferred an appeal before the learned Additional Sessions Judge, Thrissur as Criminal Appeal No.265 of 2001. In that appeal, the conviction was confirmed by the learned Sessions Judge, but the sentence was reduced. Feeling aggrieved by the judgment of the lower appellate court, the petitioner has come up in this criminal revision.

2. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

3. Prosecution case, in brief, is that on 20.11.1997 at about 12.15 p.m., the revision petitioner and other accused persons committed an offence of affray in front of a bar at Vazhiyambalam. PWs 1 and 2, Police Officers, were deputed on special duty from Mathilakam Police Station to disperse the crowd. When they went to the place and asked the offenders to disperse, the revision petitioner/1st accused caught hold of PW1 and twisted his little finger forcefully causing a fracture. Thereby the revision Crl.R.P.No.1219/2003 2 petitioner has committed the said offence.

4. In the trial, PWs 1 to 8 were examined and Exts.P1 to P8 were marked on the side of the prosecution. There was no defence evidence.

5. Learned counsel for the revision petitioner submitted that the conviction of the petitioner by the courts below is legally unsustainable. According to him, the courts did not consider the evidence in the correct perspective. The first point argued by the learned counsel for the revision petitioner is that there is no evidence to show that PWs 1 and 2 were deputed to go to the place and disperse the mob. According to him, non- production of any document showing their duty is fatal to the prosecution.

6. PWs 1 and 2 testified that they were sent by the Station House Officer on special duty to enquire about the incident that was happening in front of a bar by the side of a public road. Then these two witnesses went there and found about 50 persons thronged in that area. It is the testimony of PWs 1 and 2 that they were in uniform at that time when they went there. It is the definite case that the revision petitioner/1st accused told PW1 not to meddle with the matter as they were fighting on account of some monetary disputes. Thereafter, the revision petitioner caught hold of PW1 and twisted his arm causing a fracture to the right little finger. Testimony of PW2 is also supportive to PW1.

7. Learned counsel for the revision petitioner contended that Crl.R.P.No.1219/2003 3 there are contradictions in the evidence of these two witnesses, which has to be seen as a major fault in the prosecution case. I am afraid, this Court while sitting in revisional jurisdiction, is not to re-appreciate the evidence as in the case of a second appeal. What is to be determined is the illegality, impropriety or incorrectness of the order or sentence passed by the courts below. It is true that if in a case there is complete misreading of evidence, probably the accused may contend that he suffered prejudice on account of that. I do not find any such illegality in this case. Regarding the contention of the revision petitioner that non-production of documents to show that PWs 1 and 2 were deputed specially for dispersing the mob is fatal to the prosecution case. I am of the view that the oral evidence adduced by PWs 1 and 2 and also the suggestion put to PW1, while cross-examining, would indicate that the Officers had gone to the place for bringing back peace in the area. When PW7 was cross-examined, a definite suggestion, it can only be treated as a defence case, was put that PW1 might have sustained injuries in the skirmish happened there. This indicates his

presence at the place of occurrence. Therefore, I cannot agree with that contention of the revision petitioner.

8. Another point raised by the learned counsel is that in the wound certificate (Ext.P2), PW1 has not mentioned the name of the revision petitioner/1st accused as the aggressor who was responsible for Crl.R.P.No.1219/2003 4 the fracture. It is also contended that Ext.P1 report, which is filed prior in point of time, did not reveal the names of accused 1 and 2. It is therefore, contended by the learned counsel that the report must have been created as a result of an after thought. The omission to mention the name of revision petitioner in Ext.P2 wound certificate cannot be treated as a serious infirmity since in Ext.P1 report and in the first information report (FIR), both came into existence prior to the preparation of Ext.P2, where names of the revision petitioner and the 2nd accused had been mentioned. Therefore, that contention cannot be accepted.

9. Another contention raised by the learned counsel is that there is delay in submitting the FIR. The incident was at about 12.15 p.m. on 20.11.1997. The FIR was received in the court only on the next day. The incident happened slightly away from the Court of Magistrate. I do not find, in the facts and circumstances of this case, that the delay in submitting the FIR was either intentional or that the accused suffered any prejudice on account of that. That apart, PW1 specifically deposed that the identity of the accused was known to him earlier as he was summoned to the Police Station on many occasions. On considering the entire evidence, I do not find any illegality in the matter of conviction by the courts below.

10. Learned counsel for the revision petitioner submitted that the imprisonment awarded in this case is harsh and disproportionate to the Crl.R.P.No.1219/2003 5 gravity of the offence. Considering the fact that the lower appellate court reduced the sentence to one year simple imprisonment and directed him to pay a fine of `2,000/-, I am of the view that the sentence can be modified in the following manner. In the result, the revision petition is partly allowed. Conviction of the revision petitioner under Section 333 IPC is confirmed. He shall undergo simple imprisonment for a period of six months and pay a fine of `5,000/- (Rupees five thousand only). In default of payment of fine, he shall undergo simple

imprisonment for a period of two months. Court below shall take steps to execute the sentence. All pending interlocutory applications will stand dismissed. A. HARIPRASAD, JUDGE. cks Crl.R.P.No.1219/2003 6 A.Hariprasad, J.

Crl.R.P.No.1219 of 2003

ORDER
26h November, 2014