

Ashraf Vs. State of Kerala

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Court : Kerala

Decided On : Mar-10-2015

Judge : Honourable Mr. Justice K.Abraham Mathew

Appellant : Ashraf

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID TUESDAY, THE 10TH DAY OF MARCH 2015 19TH PHALGUNA, 1936 CrI.MC.No. 765 of 2015 () ----- AGAINST SC242011 of ASSISTANT SESSIONS COURT, VADAKARA CRIME NO. 201/1996 OF KUTTIYADI POLICE STATION , KOZHIKODE PETITIONER(S)/PETITIONER: ----- 1. ASHRAF AGED 41 YEARS S/O.KUNHAMMAD, PARAKAL HOUSE, MARUTHONGARA AMSOM ATUKKATH DESOM, KUTTIADY, KOZHIKODE(R) 2. KHALID AGED 37 YEARS S/O.AMMED, POLIYANGI HOUSE, KAVILUMPARA AMSOM KUTTIADY, KOZHIKODE(R) BY ADV. SMT.K.DEEPA (PAYYANUR) RESPONDENT(S)/RESPONDENTS: ----- STATE OF KERALA REP BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM BY PUBLIC PROSECUTOR SMT.P.MAYA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 1003-2015 ALONG WITH CRL.M.C1485 OF 2015 THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 765 of 2015 () ----- APPENDIX

PETITIONER(S)' EXHIBITS ----- ANNEXURE I:-CERTIFIED
COPY OF THE FINAL REPORT OF CRIME NO20196 OF THE KUTTIADY
POLICE STATION, KOZHIKODE ANNEXURE II:-TRUE COPY OF THE

JUDGMENT

DTD911/2012 IN SC NO462006 OF THE COURT OF HTE ASSISTANT
SESSIONS JUDGE, VATAKARA RESPONDENT(S)' EXHIBITS
----- /TRUE COPY/ P.S TO JUDGE P.UBAID, J.

~~~~~ Crl.M.C Nos.765 and 1485 of 2016 ~~~~~ Dated this the  
10th March 2015

## ORDER

The petitioners in Crl.M.C No.765 of 2015 are the original accused Nos.11 and 15 in Crime No.201 of 1996 of Kuttiady Police Station, and the petitioner in Crl.M.C No.1485 of 2015 are the original accused Nos.1, 4 and 8 in the said crime. This crime was registered by the police suo motu on the basis of seizure of some explosive substances. During investigation, the police arraigned 15 persons as accused in the crime and most of them were arrested and produced in court. The prosecution is brought under Section 120 (B) of Indian Penal Code and also under Sections 4 and 5 of the Explosive Substances Act. None of the accused was admittedly seen at the premises from where the explosive substances were seized by the police, and nobody was admittedly found handling or possessing such substances. Thus, the whole prosecution proceeded solely on the basis of seizure made by the police. Initially, 10 among the 15 accused were tried in the Court of Crl.M.C Nos.765 and 1485 of 2016 2 Session. In the said case, (S.C No.46 of 2006), the learned Assistant Sessions Judge, Vadakara found seven of the accused not guilty, and accordingly acquitted them under Sections 232 of the Code of Criminal Procedure in the absence of any incriminating evidence or circumstance. The case against the other three accused including the original 1st accused was split up and refiled. The case against the original accused Nos.11 and 15 was subsequently committed to the Court of Session. The original 1st accused in the crime is now facing trial in S.C No.434 of 2013 before the learned Assistant Sessions Judge, Vadakara, and the original accused Nos.11 and 15 in

the crime are now the accused in S.C No.24 of 2011. The petitioners in these two petitions now seek orders quashing the prosecution against them on the ground that the very substratum of the prosecution case stands totally lost by the findings made by the trial court on merits, and the acquittal of most of the accused in the main case under Section 232 of the Code of Criminal Procedure.

2. Annexure-II (Annexure-III in Crl.M.C No.1485 of Crl.M.C Nos.765 and 1485 of 2016 3 2015) is the copy of the judgment of the trial court in S.C No.46 of 2006. This judgment shows that most of the accused obtained judgment of acquittal when nobody supported the prosecution. The detecting officer was examined as PW1, and he proved the seizure of explosive substances. Some other witnesses also supported the prosecution proving the said seizure. But the other witnesses cited by the prosecution to incriminate the accused or to prove some circumstances against the accused, turned fully hostile to the prosecution. Thus, the prosecution could not adduce any evidence incriminating any of the accused, or proving their involvement in keeping or possessing such substances. In paragraph 7 of Annexure- III judgment, the learned trial Judge concluded the findings thus: "Here in this case all the independent occurrence witnesses examined before court have turned hostile and denied having witnessed the incident. None of them have stated anything incriminating against any of the accused. Though PW9 has deposed about the arrest of 1st accused, prosecution has not produced any evidence to Crl.M.C Nos.765 and 1485 of 2016 4 prove his involvement. The alleged seizure of wire pieces, gun powder etc from the house of accused No.1 are not proved before court. None of the witnesses cited to prove the alleged recovery have supported the case of prosecution. There is absolutely no evidence to prove the involvement of any of the accused. Hence questioning of the accused u/S.313 Cr.P.C was dispensed with. The prosecution has miserably failed to prove the involvement of any of the accused in the case.

3. I am definite that the prosecution cannot in any manner improve the case against the others, and the material witnesses also cannot in any manner help the prosecution, if the case against the other accused goes to trial. Of course, the Police Officer may again and again prove the fact of seizure. The prosecution cited some witnesses to prove some circumstances against the accused or to prove

their complicity . But all of them turned hostile, and they did not say anything to incriminate any of the accused. It is quite definite that these persons will again speak in favour of the accused, when they are summoned as CrI.M.C Nos.765 and 1485 of 2016 5 witnesses in the cases pending against these persons and others. I am definite that continuing the prosecution against these petitioners will be a sheer waste of time. I find that the very substratum of the prosecution case stands totally lost by the acquittal of most of the accused on merits by the learned trial Judge. In the above circumstances, the prosecution pending against these petitioners also can be closed under Section 482 of the Code of Criminal Procedure to save the precious time of the trial court. In the result, these two petitions are allowed. The prosecution against the petitioners in CrI.M.C No.765 of 2015 in S.C No.24 of 2011 of the Assistant Sessions Court, Vadakara, and that against the petitioners in CrI.M.C No.1485 of 2015 in S.C No.434 of 2013 of the same Court, will stand quashed under Section 482 of the Code of Criminal Procedure. Sd/- P.UBAID JUDGE ma /True copy/ P.S to Judge

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