

Shaji Vs. State of Kerala

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Court : Kerala

Decided On : Jun-01-2015

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Shaji

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS MONDAY, THE 1ST DAY OF JUNE 2015 11TH JYAISHTA, 1937 CrI.MC.No. 3364 of 2014 ----- SC542002 OF ADDITIONAL ASSISTANT SESSIONS COURT, THRISSUR. CRIME NO. 210/1999 OF KUNNAMKULAM POLICE STATION. PETITIONER/ACCUSED: ----- SHAJI, S/O.PONNARASSERY SUBRAHMANIYAN, AGED 43 KATTAKAMPAL VILLAGE & DESOM, THRISSUR DISTRICT. BY ADVS.SRI.SANTHARAM.P SMT.REKHA ARAVIND RESPONDENT(S)/COMPLAINANT: ----- STATE OF KERALA, REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM , KOCHI - 31. *ADDL. R2 IMPEADED 2 SANTHOSH, S/O.VELAYUDHAN, KOTTILINGAL, KOTTAPADI DESOM, POOKODE VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT. ADDL. R2 IS IMPEADED AS PER

ORDER

DATED 27.6.2014 IN CRL.M.A.6015/2014 R1 BY PUBLIC PROSECUTOR SMT.S.HYMA ADDL R2 BY ADV. SRI.K.B.ARUNKUMAR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01.06.2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: mbr/ CrI.MC.No. 3364 of 2014

----- APPENDIX PETITIONER(S)' ANNEXURES:
----- ANNEXURE 1 TRUE COPY OF FIR IN CR NO. 210/99. ANNEXURE 2 CERTIFIED COPY OF THE CHARGE SHEET IN CR. NO. 210/99. ANNEXURE 3 TRUE COPY OF JUDGEMENT DATED 18.08.2008 BEFORE THE 1st ADDITIONAL ASSISTANT SESSIONS COURT, THRISSUR. ANNEXURE 4 TRUE COPY OF THE DEPOSITION OF PW1. ANNEXURE 5 TRUE COPY OF THE

JUDGMENT

DATED 25.07.2013 IN CRL.M.C.3097/13. RESPONDENTS' ANNEXURES: NIL. //TRUE COPY// P.S.TO JUDGE mbr/ ALEXANDER THOMAS, J.

===== CrI.M.C.No. 3364 of 2014 ===== Dated this the 1st day of June, 2015

ORDER

The petitioner is the 11th accused in Crime No.210/1999 of Kunnankulam Police Station, registered for offences punishable under Secs.143, 147, 148, 341, 452, 427, 397, 506(2) 294(b), 120 (b) read with 149 of the I.P.C. The Police, after investigation submitted the impugned Anx.2 final report/charge sheet in the above said crime. The case was committed and thereafter was instituted as Sessions Case, S.C.No.154/2002 on the file of the 1st Additional Assistant Sessions Judge, Thrissur. The petitioner did not participate in the trial as he was abroad and the case against him was split up. 18 other accused in the said case faced trial, which led to Anx.3 judgment dated 18.8.2008 in S.C.No.154/2002 of the 1st Additional Assistant Sessions Judge, Thrissur, which resulted in the acquittal of all the said accused. The accused No.5 in the original crime thereafter approached this Court by filing CrI.M.C.No.3097/ 2013, in which, this Court, by Anx.5 order rendered on 25.7.2013, CrI.M.C.3364/15 - :

2. :- quashed the impugned criminal proceedings pending against the said petitioner arising out of S.C.No.154/2002 on the ground that substratum of the prosecution case has been shattered by the acquittal of the above said other co-accused as per Anx.3 judgment. It is pointed out that the case against the petitioner has subsequently been re-numbered as S.C.No. 54/2014 on the file of the Additional Assistant Sessions Judge, Thrissur. It is in the light of Anx.3 judgment of the court below and Anx.5 order of this Court that the petitioner has sought the prayer for quashment of the impugned criminal proceedings by filing the instant Crl.M.C.

2. After hearing the parties concerned and on a perusal of Anx.3 judgment of the court below and Anx.5 order, this Court is of the considered opinion that the prayer for quashment of the impugned criminal proceedings could be considered.

3. On a perusal of Anx.3 judgment would show that though PW-1 had deposed that the incident occurred on 1.4.1999, he did not see the incidents and he does not know the accused persons and he was declared hostile. When cross-examined by the Prosecutor, PW-1 further denied of having given Ext.P-1 to P3(a) statements before the police. PWs-2, 3 and 4 , who were eye Crl.M.C.3364/15 - :

3. :- witnesses, all turned hostile. PW-5 had identified his signature in the scene mahazar, but PW-6 has denied his signature in the mahazar and he was declared as hostile by the prosecution. Other witnesses are all official witnesses. CW-1, the injured, was no more. As already stated PWs 1, 2, 4 and 6 did not support the case of the prosecution. None of the witnesses had deposed that the accused persons had committed the offences. Accordingly, the court below on a meticulous appraisal of the materials on record and the evidence adduced came to the considered conclusion that there is no evidence whatsoever to connect the accused persons with the criminal charges. Accordingly, the court below as per Anx.A3 judgment ordered acquittal of the said accused and that they are not guilty of the offences. A perusal of the Anx.3 judgment would show that the substratum of the prosecution has been demolished by the above said judgment of acquittal as per Anx.3. Yet another accused, who has not participated in trial, viz, A5, had approached this Court by filing Crl.M.C.No. 3797/2013 seeking the quashment of

the impugned criminal proceedings on the basis of acquittal of the other accused. This Court as per Anx.5 order rendered on 20.5.2013, on an examination of Anx.3 judgment herein, also came Crl.M.C.3364/15 - :

4. :- to the considered conclusion that in view of the discussion of the court below in paragraphs 5 and 6 of Anx.3 judgment herein, there is no cogent and reliable evidence to connect the accused persons and that no meaningful purpose would be met by compelling the petitioner therein to face the trial and accordingly, quashed the impugned criminal proceedings as against that accused. In this view of the matter this Court of the considered opinion that no meaningful purpose would be subserved by continuance of the impugned criminal proceedings against the petitioner herein.

4. In the result, this Court is of the considered opinion that the substratum of the prosecution case is demolished by the acquittal of the co-accused in this case. This Court in the cases as in Moosa v. Sub Inspector of Police reported in 2006 (1) KLT552 Ashraf Kancheriyil v. State of Kerala reported in 2011(2) KHC8123 and Abbas v. State of Kerala 2013 (2) KLT976 has held that if the substratum of the prosecution is demolished by the acquittal of the co-accused, this Court could exercise the powers under Sec.482 of the Cr.P.C. to consider the prayer of quashment of the impugned criminal proceedings against the other accused. Taking into consideration this aspect of the matter, this Court is of the Crl.M.C.3364/15 - :

5. :- considered opinion that the prayer for quashment could be considered. Accordingly, it is ordered in the interest of justice that the impugned Anx.A-2 final report/charge sheet filed in Crime No. 210/1999 of Kunnankulam Police Station, which has led to the pendency of S.C.No.54/2014 on the file of the Additional Assistant Sessions Court, Thrissur and all further proceedings arising therefrom pending against the petitioner stand quashed. The Crl.M.C. is disposed of as above. Sd/- sdc+ ALEXANDER THOMAS, JUDGE ///True copy/// P.S. to Judge