

Saju Vs. State of Kerala

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Court : Kerala

Decided On : Aug-21-2015

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appellant : Saju

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V FRIDAY, THE 21ST DAY OF AUGUST 2015 30TH SRAVANA, 1937 H CrI.MC.No. 5794 of 2015 ----- CC3022014 of J.M.F.C.-I, NEYYATTINKARA CRIME NO. 735/2006 OF NEYYATTINKARA POLICE STATION , THIRUVANANDAPURAM PETITIONER(S)/PETITIONERS: ----- 1. SAJU AGED 42 YEARS S/O. CHELLAPPAN, SANGEETHA BHAVAN, PUNNAKKAD PERUMPAZHATHOOR DESOM AND VILLAGE NEYYATTINKARA TALUK.

2. MANIYAN, S/O. DASAN, THAZHVARAM HOUSE, ARUVIPPURAM PERUMPAZHATHOOR DESOM AND VILLAGE NEYYATTINKARA TALLUK.

3. AJITHKUMAR, AGED 36 YEARS S/O. RAMACHANDRAN NAIR, PULIMOODU HOUSE, KOOTAPPANA MARUTHATHOOR DESOM, NEYYATTINKARA VILLAGE.

4. RAJESH, AGED 34 YEARS S/O. KUTTAPPAN, KUNNUMPURATHU VEEDU, KADAVATHARAM DESOM NEYYATINKARA VILLAGE.

5. AJIKUMAR, S/O. RAJU, PUTHUVAL PUTHEN VEEDU, PUNNAKKADU PERUMPAZHUTHOOR DESOM AND VILLAGE NEYYATINKARA TALUK. BY ADVS.SRI.G.SUDHEER SMT.N.P.ASHA RESPONDENT(S)/STATE AND DEFACTO COMPLAINANT: ----- 1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM.

2. THE SECRETARY, NEYYATINKARA MUNICIPALITY, NEYYATINKARA P.O.- 695 125 BY PUBLIC PROSECUTOR SRI. GITHESH THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 5794 of 2015 APPENDIX ANNEXURES A- TRUE COPY OF FIR AND COMPLAINT IN CRIME NO.735 OF 2006 OF NEYYATTINKARA POLICE STATION DATED 5-10-2006 B- TRUE COPY OF THE FINAL REPORT IN CRIME NO.735 OF 2006 SUBMITTED BY THE SI OF POLICE, NEYYATTINKARA BEFORE THE JFCM-I, NEYYATINKARA C- TRUE COPY OF DEPOSITION OF WITNESSES PW1 TO 7 IN C.C.NO.1292 OF 2006 BEFORE THE JFCM-I, NEYYATINKARA D- TRUE COPY OF THE

JUDGMENT

DATED 18-2-2014 IN C.C.1292 OF 2006 OF THE JFCM-I, NEYYATINKARA TRUE COPY P.S TO JUDGE RAJA VIJAYARAGHAVAN.V. J -----

CrI.M.C. 5794 of 2015 ----- Dated 21st August, 2015 -----

ORDER

1 The petitioners herein are the accused Nos.5, 9, 10, 11 and 18 in C.C.1292 of 2006 on the files of the Judicial Magistrate of First Class-I, Neyyattinkara. They were charged for having committed offence punishable u/s 143, 147, 149, 448, 342, 332 of the IPC.

2. The prosecution case tersely is that on 5.10.2006 at 10.30 am, the accused, who owed allegiance to the youth movement of a political party, in prosecution of their common object, formed themselves into unlawful assembly and trespassed into the Municipal Office, Neyyattinkara. They wrongfully confined the staff in the office by locking the front door and shouted slogans and CrI.M.C.5794/15 2 deterred the staff from discharging their duty as public servants and thereby committed offence.

3. After investigation, the charge was laid before the learned Magistrate. The petitioners did not appear before the learned Magistrate and the explanation offered by the learned counsel is that they were working out of state. Proceedings as against them were split up and trial was proceeded with , as against accused 1 to 4, 7, 13, 16, 17 and 19.

4. Before the learned Magistrate, prosecution examined eight witnesses to prove its case Exhibits.P1 to P4 were marked.

5. PW1 was the Secretary of the Neyyattinkara Municipal Corporation. Though he admitted the filing CrI.M.C.5794/15 3 of Ext.P1 complaint before the police, he deposed that he had only hearsay knowledge about the incident. PW2 and 3, who are workers of the Municipality, deposed that they had no idea as to who had committed the offence. PW4 to 6, the eye witnesses, turned hostile and deposed that they had no occasion to see any part of the incident.

6. The learned Magistrate on an evaluation of the entire evidence, came to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt and acquitted the accused u/s 248 (1) of the Cr.P.C.

7. In the meantime, the case against the petitioners were split up and refiled as CC302of 2014 on the files of the Judicial Magistrate of First Class- I , Neyyattinkara. CrI.M.C.5794/15 4 8. The petitioners have now preferred this Criminal Miscellaneous Case banking on the order of acquittal passed by the learned Magistrate and seek for quashing of the pending proceedings on the ground that the substratum of the case has been destroyed. The petitioners have also produced Annexure-D judgement dated 18.2.2014 and Annexure-C , the

depositions of PWs 1 to 6 in the said case.

9. I have heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

10. According to the learned counsel appearing for the petitioners, the continuance of proceedings as against the petitioners would be a sheer waste of time and thus an abuse of process, in view of Annexure-D judgement, as according to him, the CrI.M.C.5794/15 5 result of the trial is a foregone conclusion.

11. I have anxiously gone through the judgment rendered by the learned Magistrate . After evaluating the evidence in detail, the learned magistrate has held that the prosecution has failed to prove its case beyond reasonable doubt. The learned Magistrate has taken note of the fact that the prosecution witnesses have not supported its case and It was on its basis that the accused 1 to 4, 7, 13, 16, 17 and 19. were acquitted.

12. In order to acquit the accused the learned Magistrate has also taken note of the fact that the FIR in the case was registered even prior to the receipt of the First Information Statement . The learned Magistrate has observed that this aspect of the matter would throw serious doubts on the CrI.M.C.5794/15 6 genuineness of the case set up by the prosecution .

13. In Moosa v. Sub Inspector of Police (2006 (1) KLT552 and also Ashraf Kancheriyil v. State of Kerala (2011 (2) KHC812 it was held that when it is found that the substratum of the case is destroyed by an order of acquittal against a co accused, powers under S482 can be exercised to terminate the proceedings in exceptional cases to secure the ends of justice.

14. After evaluating the materials placed before court and after anxiously considering the arguments advanced by both sides, I am of the considered view that no meaningful purpose will be served by keeping the criminal proceedings pending. It would only enure to waste precious judicial hours. I am therefore, of the view that the criminal proceedings CrI.M.C.5794/15 7 pending as against the petitioners can be quashed by invoking inherent powers of this Court u/s 482 of

the Code of Criminal Procedure.

15. In the result, this Crl.M.C. is allowed. All further proceedings in C.C. No. 302/2014 on the files of the Judicial Magistrate of First Class-I, Neyyattinkara, in so far as it is against the petitioners, are quashed. Sd/- RAJA VIJAYARAGHAVAN.V. Judge MrCs //True Copy//

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