

Shafi Vs. State of Kerala

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Court : Kerala

Decided On : Mar-24-2003

Reported in : 2003CriLJ3612; 2003(2)KLT920

Judge : J.B. Koshy, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482

Appeal No. : Crl. M.C. No. 1777 of 2001

Appellant : Shafi

Respondent : State of Kerala

Advocate for Def. : Sujith Mathew Jose, Public Prosecutor

Advocate for Pet/Ap. : V.N. Achutha Kurup, Adv.

Judgement :

ORDER

J.B. Koshy, J.

1. This is a petition filed under Section 482 of the Code of Criminal Procedure.
2. Bakel Police registered a case against seven identified persons and fifteen unidentified persons, alleging offences punishable under Sections 143, 147, 148, 323, 324 read with Section 149 of the Indian Penal Code. The petitioners who

were also arrayed as accused were absconding. Therefore, the case against them was split up. The accused who appeared before Court were acquitted after trial. Now it is the case of the petitioners that there is a finding against unlawful assembly. No appeal or revision has been filed against the acquittal of the other accused. Therefore, it is their contention that the case against them should be quashed.

3. The Apex Court in *R.P. Kapur v. State of Punjab* (AIR 1960 SC 866) held as follows:

'..It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not....'.

As Section 482 itself indicate it can be exercised only:

- (a) to give effect to an order under the Code.
- (b) to prevent abuse of the process of the Court.
- (c) to otherwise secure the ends of justice.

It is settled law that the inherent jurisdiction under this Section though wide has to be exercised sparingly, carefully and only when test specifications laid down in the Section are satisfied. (Kurukshetra University and Anr. v. State of Haryana and Anr. (AIR 1977 SC 2229))

4. The petitioners were absconding. Merely because they were abroad they will not get a special right. They have to appear before the Magistrate and prove the case. It cannot be stated that FIR will not disclose any case against the petitioners. Even if there is no unlawful assembly it is for the trial court to decide whether the petitioners have committed offences under Sections 323, 324 etc. I am not deciding the merits of the case here. The inherent powers of the Court are not meant for helping a person whose conduct shows that he has been all through avoiding services of summons and deliberately negligent to put in appearance and now wants to take advantage of his own unjustified conduct. In fact, if inherent powers are used to help such absconding accused who approach the Court at a later stage after the trial against law abiding accused are over, it is an abuse of the process of court and contrary to the guidelines mentioned in the Section. Expeditious trial of a criminal case is the cardinal rule. Delay causes injustice to social order. Absconding will cause delay and inherent powers of this Court cannot be used to help such persons. Section 482 cannot be used to achieve purposes which are directly opposite to the guidelines mentioned in the Section itself. Of course, they can place their arguments based on Annexure D before the Court below. It is for the petitioners to surrender before the Magistrate and take their defence according to law.

The CrI. M.C. is dismissed.

