

Xaviers Vs. State of Kerala

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Court : Kerala

Decided On : Mar-27-1998

Reported in : 1998CriLJ3182

Judge : S. Marimuthu, J.

Acts : Kerala Police Act - Sections 51; [Evidence Act, 1872](#) - Sections 145 and 157; Code of Criminal Procedure (CrPC) , 1974 - Sections 154, 155, 161 and 162

Appeal No. : Crl. M.C. No. 117 of 1997

Appellant : Xaviers

Respondent : State of Kerala

Advocate for Def. : V.V. Nandagopal, Public Prosecutor

Advocate for Pet/Ap. : P. Vijaya Bhanu, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S. Marimuthu, J.

1. This Crl. Miscellaneous case is directed against the order delivered by the Sessions Judge, Alappuzha in Crl. Revision Petition No. 119/1995, which arose

challenging the confirmed conviction and sentence rendered by the Assistant Sessions Judge, Sherthellai, in Criminal Appeal No. 13/1993. The present petitioner as accused was found guilty under Section 51 (a) of Kerala Police Act by the Judicial Magistrate, Sherthallai in S.T. No. 170/1991.

2. The present petitioner, according to the prosecution, behaved in a disorderly manner, uttering rubbish language and obstructed the traffic on the night of 17-12-1991, being in a drunken mood at Champakattu Mukku, where on that night a festival was going on. P.W. 1, the Assistant Sub-Inspector of Police attached to Arthungal Police Station, arrested the accused in the presence of a Police Constable examined as PW. 2, took the accused to the police station where Ext. P1 complaint was written by PW. 1 himself. Thereafter, the accused petitioner was sent to PW 3 for medical examination. P.W. 3, on examination found the petitioner/accused that he had consumed alcohol. P.W. 3, to that effect has issued Ext. P2 certificate. P.W.4 was examined for the purpose of corroborating the evidence of PW. 1 and PW 2. The entire investigation in this case was conducted by PW. 1, who, after the completion of the investigation laid the charge-sheet before the Trial Magistrate. The Trial Magistrate, on examining the evidence let in by the prosecution, since the accused petitioner denied the charge, found the petitioner guilty Under Section 51 (a) of the Kerala Police Act and sentenced him to undergo simple imprisonment for a period of thirty days and also to pay a fine of Rs. 200/-. The above conviction and sentence, as I have pointed out above, were confirmed by the Assistant Sessions Judge and the criminal revision filed against it was also dismissed. Now, the only point that arises for consideration before me is whether PW. 1, being the complainant can be an investigating Officer throughout and whether he can file the final report. In a case of this nature, when the complainant himself is a Police Official, the investigation should have been conducted by his top ranking officer and the final report also ought to have been filed by the higher official. A complainant being a police officer cannot be an investigating Officer. For, in such case, the accused and the prosecution will be deprived of their valuable rights of contradicting and corroborating, the previous informations recorded Under Section 154 of 155 Cr. P.C. and previous statement of the witness, being a police officer, complaint recorded, under Section 161, Cr. P.C., enjoined (in Sections 145 and 157 of the Indian Evidence Act and proviso of

Section 162, Cr. P.C. In the instant case, before me, P.W. 1 is an Assistant SubInspector of Police, and I understand from the Public Prosecutor as well as from the Counsel for the petitioner that the particular Police Station has got a Sub Inspector of Police. Therefore, in this case, the investigation ought to have been conducted by the Sub Inspector of Police or any other Police Officer above the rank of P.W. 1. In the instant case, thus an incurable infirmity and flaw have been committed by the prosecution, quite against the proposition of law. Therefore, on that score itself, the petitioner, is entitled to get an order of acquittal. In view of my above conclusion on the footing of position of law, this is a fit case, which has to be allowed by acquitting the petitioner.

3. In the result, the CrI. M.C. is allowed by setting aside the judgments and order of all the three Courts below. Ultimately, the accused/petitioner stands acquitted. The fine amount, if already paid by the petitioner will be refunded to him.

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