

Mohammed Rasheed M and anr. Vs. H.Velayudhan and anr.

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Court : Kerala

Decided On : Nov-23-2010

Judge : M.Sasidharan Nambiar, J.

Acts : Indian Penal Code (IPC) - Sections 143, 147, 148, 341, 324, 326, 427, 307 read with 149, 307; Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 482

Appeal No. : CrI.M.C.No.4588 of 2010

Appellant : Mohammed Rasheed M and anr.

Respondent : H.Velayudhan and anr.

Advocate for Def. : SMT.CISSY MATHEWS, Adv.

Advocate for Pet/Ap. : SRI.JAWAHAR JOSE, Adv.

Judgement :

M.Sasidharan Nambiar, J.

CrI.M.C.No.4588 of 2010

ORDER

1. Petitioners are accused 1 and 9 in C.P.No. 37/2009 on the file of Judicial First Class Magistrate's Court-II, Hosdrug, registered on the basis of Annexure-A final report submitted in Crime No.369/2008 of Bekal Police Station. As only accused 2,

3, 5, 6, 7 and 10 appeared, the case against them was committed to the Sessions Court after splitting up the case against the absconding accused. Later, the case against the absconding accused was transferred to the register of long pending cases as L.P.No.111/2010. Petitioners are accused 1 and 2 in L.P.No.111/2010. On committal, learned Sessions Judge took the case as S.C.No. 272/2009. By Annexure-B judgment, those accused were acquitted of the offences under Sections 143, 147, 148, 341, 324, 326, 427 and 307 read with Section 149 of Indian Penal Code. This petition is filed under Section 482 of Code of Criminal Procedure to quash the proceedings contending that in view of the order of acquittal of the co-accused by Annexure-B judgment as well as settlement of the disputes with the first respondent/injured, it is not in the interest of justice to continue the prosecution.

2. Learned counsel appearing for the petitioners and first respondent, who filed an affidavit stating that he has no objection for quashing the proceedings consequent to the settlement of the disputes and learned Public Prosecutor were heard.

3. Learned counsel appearing for the petitioners vehemently argued that in view of the findings in Annexure-B judgment, even if petitioners are to be tried, there is no likelihood of a successful conviction, especially when, first respondent has already settled all the disputes with the petitioners. In such circumstances, it is submitted that, it is not in the interest of justice to continue the prosecution. Learned counsel appearing for the first respondent also submitted that first respondent has settled all the disputes and therefore, he has no objection for quashing the proceedings.

4. As held by the Full Bench of this Court in *Moosa v. Sub Inspector of Police* (2006 (1) KLT 552), based on the judgment, acquitting the co-accused, an absconding accused is not entitled to get the case against him quashed, exercising the inherent jurisdiction of this Court under Section 482 of Code of Criminal Procedure. Hence, based on Annexure-B judgment, the case against the petitioners cannot be quashed.

5. Then the question is whether in view of the decision of the Apex Court in *Madan Mohan Abbot v. State of Punjab* (2008 (3) KLT 19), accepting the settlement of the disputes with the first respondent/injured, the case could be quashed. As declared

by the Apex Court in Manoj Sharma v. State (2008 (4) KLT 417), accepting the settlement, all the offences cannot be quashed. An offence under Section 307 of Indian Penal Code is an exception. As held in Manoj Sharma's case (supra), based on the settlement of the disputes, the offence under Section 307 of Indian Penal Code, against the petitioners, cannot be quashed.

6. Petitioners are entitled to raise all the contentions raised herein before the learned Sessions Judge at the appropriate stage and seek an order of discharge. Learned counsel appearing for the petitioners then submitted that in view of the settlement of the disputes with the first respondent and in view of the order of acquittal as against co-accused, a direction be issued to the learned Magistrate to release the petitioners on bail. It is up to the petitioners to raise this contention before the Magistrate and Magistrate to consider the same and pass appropriate order in accordance with law.

7. Petition is disposed.

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