
(2022) 05 KL CK 0191

In the High Court Of Kerala

Case No : Criminal Miscellaneous Petition No.16168 Of 2022????Sathish Ninan, J.????Petitioners are the holders of FL-3 licenses. They allege discrimination in the treatment given to them when compared with the outlets maintained by respondent 3 and 4, in various ma

Abdulla P. @ Kunhabdulla

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 30-05-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 143, 147, 148, 149, 308, 323, 341, 427

Citation : (2022) 05 KL CK 0191

Hon'ble Judges : Ziyad Rahman A.A., J

Bench : Single Bench

Advocate : Amrita Arun, Rosin Joseph, Jackson Johny, Sreeja V

Final Decision : Dismissed

Judgement

Ziyad Rahman A.A., J

1. The petitioner is the 5th accused in Crime No.933/2016 of Hosdurg Police Station which was registered for the offences punishable under Sections 143,147,148,341,323,308,427 r/w. Section 149 of the Indian Penal Code (IPC).

2. The Prosecution case is that, on 12.9.2019 at 20.00 hours, the accused persons total 7 in numbers, in furtherance of their common intention to commit offence, formed themselves into an unlawful assembly, restrained the defacto complainant and assaulted him and thereby caused injuries.

3. Annexure-A1 is the F.I.R. and Annexure-A2 is the final report. Among the 7 accused persons, except accused Nos.3 and 5, accused Nos.1,2,4,6 and 7 have faced trial in S.C.No.553/2018 before the Court of Sessions, Kasaragod at Hosdurg and it culminated in Annexure-A3 judgment. As per the said judgment, all accused persons who faced the trial were acquitted from all the charges. The

case against the petitioner was split up and it is now pending as C.P.No.87/2021 before the Judicial First Class Magistrate-1, Hosdurg. This CrI.M.C. is filed for quashing all further proceedings pursuant to Annexure-A2 final report against the petitioner herein.

4. Heard Smt.Amrita Arun, the learned counsel for the petitioner and Smt.Sreeja V., the learned Public Prosecutor for respondents 1 and

3. Sri. Jakson Johny, the learned counsel appearing for the 2nd respondent.

5. The prayer for quashing the proceedings is sought mainly for the reason that the dispute between the parties have been settled and to substantiate the same, Annexure-A4 affidavit sworn by the 2nd respondent is produced. The fact of settlement is acknowledged in the aforesaid affidavit and it is also specifically stated that the 2nd respondent has no subsisting grievances against the petitioner herein. The 2nd respondent also clearly expressed his no objection in quashing the proceedings against the petitioner. The learned counsel appearing for the 2nd respondent also confirms the aforesaid settlement and supports the prayer sought for by the petitioner herein.

6. It is true that, one of the offences alleged against the petitioner is under Section 308 of the Indian Penal Code. On going through the judgment passed by the Assistant Sessions Court vide Annexure-A3, it can be seen that, all the accused who faced the trial were acquitted. It is seen from the said judgment that, the victim was examined in the said trial as PW1 and his deposition was to the effect that he was assaulted by some unknown persons. PW2 and PW3 were the other occurrence witnesses also stated that, they could not identify any of the assailants. In such circumstances, It is evident that consequent to the finding entered into by the trial court in the said judgment, the substratum of the prosecution case itself is lost. Therefore, this is a fit case in which the powers of this Court under Section 482 Cr.PC can be invoked besides the fact of settlement of dispute between the parties.

In such circumstances, all further proceedings as against the petitioner herein in C.P.No.87/2021 before the Judicial First Class Magistrate Court-1, Hosdurg pursuant to Annexure-A2 final report are hereby quashed.