
(2016) 09 KL CK 0065
In the High Court Of Kerala
Case No : Crl. M.C. No. 7138 of 2014

Adv. A. Santhosh

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2017) 2 CriCC 44 : (2017) 1 ILRKerala 830 : (2017) 1 KLT 604

Hon'ble Judges : Mr. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : Sri P.M. Habeeb, Advocate, for the Petitioner; M.K. Pushpalatha, (Public Prosecutor), for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Muhamed Mustaque, J.—The petitioner is the fourth accused in a Crime registered by the Vadakara Police as Crime No. 449 of 2008 under Sections 468, 471, 420 r/w 34 of Indian Penal Code.

2. The petitioner challenges Annexure A final report and further proceedings in C.C.No. 864 of 2014 on the file of the Judicial First Class Magistrate Court, Vadakara.

3. The petitioner is a practicing lawyer. The allegation against the petitioner is that with the help of him, the sureties had submitted forged documents to release two accused in Crime No. 291 of 1999 of Vadakara Police Station, namely Ayoob and Abdul Salam. On enquiry, it was found that the documents furnished by the accused is fabricated and false and with an intention to deceive the authorities, who are acting upon such documents.

4. Based on enquiry and finding that the false documents have been furnished by the accused, a crime has been registered against the accused as well as the petitioner. The allegation against the petitioner is that the accused with the help of petitioner furnished documents before the court to obtain bail from the court.

Annexure A is the final report in this regard.

5. A lawyer who is acting on behalf of the accused in a criminal case is based on a fiduciary relationship. The trust and faith constitute such relationship. The advocate cannot be termed as an agent of an accused. The relationship is therefore, professional relationship between a lawyer and a client. It does not constitute any legal relationship except for engagement as a lawyer for acting on behalf of the accused. Therefore, without there being a relationship as such to constitute to make it an involvement as part of transaction, lawyer cannot normally be implicated in a criminal offence, unless there is an overt act alleging commission of an act which would constitute an offence. The commission of an act or action on the part of an accused is distinct from a lawyer who appearing for him in a different capacity.

6. Nothing has been stated about overt act on the part of the petitioner in creating a false or fabricated address. In that view of the matter, the lawyer being not part of the transaction, he cannot be implicated in a criminal offence for an act done by his client. The act on the part of the lawyer must be part of the same transaction of which accused alleged to have been committed an offence. Since act of lawyer is not the part of the transaction of which alleged to have been committed, this Court is of the view that implicating him as an accused in the crime is sheer abuse of process of court. Accordingly, proceedings as against the petitioner is quashed. No costs.