

(2021) 07 KL CK 0361

In the High Court Of Kerala

Case No : Criminal Miscellaneous Application No. 4512 Of 2020

Appi Kurien

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 29-07-2021

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Explosives Act, 1884 — Section 9(B)(1)(b)
Explosive Substances Act, 1908 — Section 4, 5

Citation : (2021) 07 KL CK 0361

Hon'ble Judges : Ashok Menon, J

Bench : Single Bench

Advocate : P.Vijaya Bhanu, M.Revikrishnan, Ajeesh K.Sasi, P.M.Rafiq, Thomas J.Anakkallunkal, V.C.Sarath, Vipin Narayan, Pooja Pankaj Sruthy N. Bhat, Abel Tom Benny, Kiran Antony, T.R.Renjith

Final Decision : Allowed

Judgement

Ashok Menon, J

1. Petition under Section 482 of the Cr.P.C.

The petitioner is the 4th accused in Crime No.26/2017 of Kumily Police Station for having allegedly committed the offences punishable under Section

9(B)(1)(b) of the Explosives Act, 1884 and under Sections 4 and 5 of the Explosive Substances Act, 1908. The final report has already been filed and

taken on the files of the Judicial First Class Magistrate Court-II, Peermedu as C.P.No.3/2020. It is now committed to the Court of Sessions and is

pending as S.C.No.160/2021 on the files of the Additional Sessions Court-IV, Thodupuzha.

2. The prosecution case, in brief, is that certain explosive detonators were seized by the Preventive Officer during the search of a KSRTC bus at the

Kumily Check Post. Accused 1 to 3 were travelling in the bus with the contraband, and on seeing the Excise Party, they alighted from the bus and took to their heels. The petitioner was not present on the bus and nor was he in possession of any contraband articles. He was roped in as an accused on the basis of the statements allegedly given by accused 1 to 3 stating that he was also present when the explosive substances were purchased by them from accused 6 and 7 from Theni in Tamil Nadu. Apart from the alleged confession statement of accused 1 to 3, there are absolutely no materials to indicate the complicity of the petitioner.

The petitioner has no other criminal antecedents too. It is therefore prayed that the entire proceedings against the petitioner may be quashed under

Section 482 of the Cr.P.C.

3. The learned Government Prosecutor has filed a memo containing the statement of the Deputy Superintendent of Police (C Branch), Idukki stating that the accused persons had transported 25,500 ordinary detonators and 3000 electric detonators by keeping in four bags under the seat of a KSRTC bus bearing Reg.No.KL-15-A-503, which was plying from Madurai to Thiruvalla. The contraband articles were seized while conducting the search of the vehicle on 10.01.2017 at about 11.00 AM in front of the Sales Tax Check Post, Kumily. A preliminary investigation was conducted and three persons, who had allegedly carried the contraband were identified from the CCTV footage and all of them were arrested on 24.02.2017 and remanded to judicial custody. Accused 6 and 7, who were the suppliers of the explosive substances, were already in judicial custody in connection with another case, and their formal arrest was recorded. Accused 8 and 9 are yet to be apprehended. It is submitted that accused 4, 5, 8 and 9 were identified in accordance with the confession statement given by accused 1 to 3. Accused 6 and 7 were identified from the call register to the phone used by the 4th accused. The conductor and driver of the KSRTC bus have also identified accused 1 to 3 as the persons, who had travelled in the bus with the contraband articles. It is alleged that accused 6 and 7 had handed over the detonators to the petitioner at Kanmai near Theni and he had carried the same to Cumbom in a vehicle bearing Reg.No.KL-62-A-111 owned by him. That vehicle was also seized. After completion of the investigation, the final report was filed and the involvement of the petitioner has been established.

The petitioner had accompanied the other accused to carry the detonators in his vehicle to reach the KSRTC bus, and therefore, the petitioner is not entitled to get the proceedings against him quashed.

4. Heard the learned Counsel for the petitioner and the learned Public Prosecutor and also perused the C.D.files and other records.

5. It is well established that the confession statement of the co-accused is admissible only if it is used in the trial and corroborated by other materials.

In the instant case, apart from the confession statement of accused 1 to 3, there is no corroborative evidence collected. There is also no indication that

the petitioner had contacted accused 1 to 3 at any point in time. The fact that he had contacted accused 6 and 7 over his phone may not suffice. There

is no statement of accused 6 and 7 implicating the petitioner's complicity. The CCTV footage will not indicate that the petitioner is the person,

who had transported the contraband articles to the KSRTC bus stand or had transferred the contraband articles from his car into the bus. There is

also no material to indicate that it was the petitioner, who had purchased the contraband articles and made payment for them. Solely on the basis of

the alleged confession statement of accused 1 to 3, the petitioner cannot be proceeded against in a trial involving a grave offence under the Explosives

Act and under the Explosive Substances Act. There is no indication of the petitioner using or transporting the materials like the contraband articles

previously. The final report has already been filed and there is no possibility of collecting further materials against the petitioner. Taking the totality of

the evidence collected against the petitioner, I find that there is a total lack of evidence, apart from the alleged confession statements of co-accused to

implicate the petitioner as an accused in the aforesaid crime. It would be a miscarriage of justice to let the petitioner face trial.

Resultantly, the CrI. M.C. is allowed and the entire proceedings as against the petitioner alone in Crime No.26/2017 of Kumily Police Station, which is

presently pending as S.C.No.160/2021 on the files of the Additional Sessions Court-IV, Thodupuzha, shall stand quashed under Section 482 of the

Cr.P.C. and the petitioner is discharged and set at liberty.