
(2011) 06 KL CK 0098
In the High Court Of Kerala
Case No : Criminal MC. No. 1094 of 2011

E.K. Ashraf

APPELLANT

Vs

Benny Mathew, T.K. Aneesh Kumar and State of Kerala

RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 307

Citation : (2011) 06 KL CK 0098

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : P. Samsudin, for the Appellant; Mary Beena Joseph, for the Respondent

Judgement

Thomas P. Joseph, J.—Petitioner is the first accused in Crime No. 96 of 2002 of Town Police Station, Kozhikode and L.P. No. 3 of 2006 and S.C. No. 183 of 2008 of the court of learned Sessions Judge, Kozhikode. He, along with other accused is said to have committed offences punishable under Sections 143, 147, 148, 452, 341, 506(ii) and 307 read with Section 149 of the Indian Penal Code. Case is that on 10.05.2002 at about 3 p.m. Petitioner and other accused trespassed into Queens Bar and assaulted C.Ws. 1 to 3. It is submitted that accused other than Petitioner/first accused faced trial and were acquitted as per Annexure-A3, judgment since witnesses did not support the prosecution. Petitioner requests that proceeding against him may be quashed on the strength of Annexures-A4 and A5, affidavits of CWs 1 and 2. I have heard learned Counsel for Petitioner and the learned Public Prosecutor. Learned Public Prosecutor has submitted that he is not able to confirm whether Petitioner is involved in any other case. Considering the nature of offences alleged which includes offences affecting public tranquility I am not inclined to think that proceeding against Petitioner should be quashed based on the settlement said to be reached between parties. Moreover, there is yet another person (C.W. 3) also, alleged to have been assaulted about whom there is no mention in this proceeding. Request to quash proceeding cannot therefore, be allowed.

2. It is submitted that a non-bailable warrant is pending against Petitioner. Having regard to the circumstances I am inclined to grant Petitioner time to appear before learned Sessions Judge where the case is pending. It is open to the Petitioner to appear before learned Sessions Judge and seek regular bail/recall of warrant. Petitioner apprehends his remand on appearance since a non-bailable warrant is pending against him. But, I have no reason to think so, since final report is already filed and accused other than Petitioner/first accused are acquitted as per Annexure-A3, judgment and in the circumstances custodial interrogation of Petitioner (in this case) may not be required. Resultantly this Criminal Miscellaneous Case is disposed of in the following lines:

- i. Petitioner is granted three weeks time from this day to appear before learned Sessions Judge, Kozhikode and seek regular bail/recall of warrant.
- ii. The warrant of arrest issued against Petitioner will stand in abeyance during the said period of three weeks or till Petitioner appears before learned Sessions Judge whichever is earlier.
- iii. Learned Sessions Judge, Kozhikode before whom the case is pending is directed to dispose of the application for bail/recall of warrant if any preferred by Petitioner as early as possible having regard to the circumstances I have stated above.
- iv. Learned Sessions Judge is also directed to expedite trial and disposal of the case against Petitioner.