
(2007) 07 KL CK 0059
In the High Court Of Kerala
Case No : Criminal MC No. 2211 of 2007

Girish Chandran

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 149, 448

Citation : (2007) 07 KL CK 0059

Hon'ble Judges : R. Basant, J

Bench : Single Bench

Advocate : M. Sasindran, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—The petitioner is the seventh accused in a prosecution inter alia u/s 448 read with 149 I.P.C. The petitioner was available for trial as the seventh accused. But after the completion of the prosecution evidence before the final disposal of the case, the petitioner could not continue to appear before the learned Magistrate. The learned Magistrate therefore split up the case against the petitioner. Of the co-accused, one was convicted, others were acquitted, the learned Magistrate has issued non-bailable warrant to procure the presence of the petitioner.

2. The learned Counsel for the petitioner has come to this Court now with the prayer that powers u/s 482 Cr.P.C may be invoked in his favour. He, first of all, submits that the proceedings against him may be quashed. Secondly he contends that in the alternative, the petitioner may be permitted to surrender before the learned Magistrate. He may be directed to be released on bail. The case against him may be directed to be disposed of expeditiously.

3. The learned Counsel for the petitioner relying on the judgment rendered by the learned Magistrate contends that there is no evidence against the petitioner

and that the acquittal of the co-accused on the same evidence must entitle him also to acquittal. The learned Counsel for the petitioner submits that the decision in Moosa Vs. Sub Inspector of Police, is not squarely applicable as the prayer is to quash the proceedings after the entire evidence has been adduced.

4. I find it not possible to accept the said request to invoke the powers u/s 482 Cr.P.C. Of course, there are incidental observations about the evidence against the petitioner herein also in the judgment rendered by the learned Magistrate. But it is evident that the learned Magistrate was not called upon to and did not pointedly advert to the complicity of the petitioner in the said judgment (a copy of which is produced as Annexure A1). I am, in these circumstances, not satisfied that this is a proper case where powers u/s 482 Cr.P.C can be invoked to quash the proceedings against the petitioner. The petitioner must also appear and stake his claim for acquittal on the basis of the materials available before the learned Magistrate.

5. In the result, this petition is dismissed but I may hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to consider the application for bail and pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

6. The learned Counsel for the petitioner submits that the petitioner, employed abroad, has come on leave now. It is prayed that there may be a direction for expeditious disposal of the case as the petitioner has only a period of one month to remain in India. Thereafter, he has to return to his place of employment abroad. I am satisfied that direction can be issued to the learned Magistrate to expeditiously complete the proceedings against the petitioner. If the final disposal of the case does not take place before the expiry of his leave, the petitioner can apply for exemption from personal appearance. All offences being bailable, I am satisfied that the learned Magistrate must consider such application also on merits, in accordance with law and expeditiously.

7. This Criminal Miscellaneous Case is, in these circumstances, dismissed with the above observations.

8. Hand over copy of this order to the learned Counsel for the petitioner for production before the learned Magistrate.