

(2010) 11 KL CK 0110
In the High Court Of Kerala
Case No : Criminal M.C. No. 4588 of 2010

Mohammed Rasheed M. and Mohammed Rafi	APPELLANT
Vs	
H. Velayudhan and The State of Kerala	RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 307

Citation : (2010) 11 KL CK 0110

Hon'ble Judges : M. Sasidharan Nambiar, J

Bench : Single Bench

Advocate : Jawahar Jose, for the Appellant; Cissy Mathews, for the Respondent

Judgement

M. Sasidharan Nambiar, J.—Petitioners are accused 1 and 9 in C.P. No. 37/2009 on the file of Judicial First Class Magistrate's Court-II, Hosdrug, registered on the basis of Annexure-A final report submitted in Crime No. 369/2008 of Bekal Police Station. As only accused 2, 3, 5, 6, 7 and 10 appeared, the case against them was committed to the Sessions Court after splitting up the case against the absconding accused. Later, the case against the absconding accused was transferred to the register of long pending cases as L.P. No. 111/2010. Petitioners are accused 1 and 2 in L.P. No. 111/2010. On committal, learned Sessions Judge took the case as S.C. No. 272/2009. By Annexure-B judgment, those accused were acquitted of the offences under Sections 143, 147, 148, 341, 324, 326, 427 and 307 read with Section 149 of Indian Penal Code. This petition is filed u/s 482 of Code of Criminal Procedure to quash the proceedings contending that in view of the order of acquittal of the co-accused by Annexure-B judgment as well as settlement of the disputes with the first Respondent/injured, it is not in the interest of justice to continue the prosecution.

2. Learned Counsel appearing for the Petitioners and first Respondent, who filed an affidavit stating that he has no objection for quashing the proceedings consequent to the settlement of the disputes and learned Public Prosecutor were

heard.

3. Learned Counsel appearing for the Petitioners vehemently argued that in view of the findings in Annexure-B judgment, even if Petitioners are to be tried, there is no likelihood of a successful conviction, especially when, first Respondent has already settled all the disputes with the Petitioners. In such circumstances, it is submitted that, it is not in the interest of justice to continue the prosecution. Learned Counsel appearing for the first respondent also submitted that first Respondent has settled all the disputes and therefore, he has no objection for quashing the proceedings.

4. As held by the Full Bench of this Court in Moosa Vs. Sub Inspector of Police, , based on the judgment, acquitting the co-accused, an absconding accused is not entitled to get the case against him quashed, exercising the inherent jurisdiction of this Court u/s 482 of Code of Criminal Procedure. Hence, based on Annexure-B judgment, the case against the Petitioners cannot be quashed.

5. Then the question is whether in view of the decision of the Apex Court in Madan Mohan Abbot v. State of Punjab (2008 (3) KLT 19), accepting the settlement of the disputes with the first Respondent/injured, the case could be quashed. As declared by the Apex Court in Manoj Sharma v. State (2008 (4) KLT 417), accepting the settlement, all the offences cannot be quashed. An offence u/s 307 of Indian Penal Code is an exception. As held in Manoj Sharma's case (supra), based on the settlement of the disputes, the offence u/s 307 of Indian Penal Code, against the Petitioners, cannot be quashed.

6. Petitioners are entitled to raise all the contentions raised herein before the learned Sessions Judge at the appropriate stage and seek an order of discharge. Learned Counsel appearing for the Petitioners then submitted that in view of the settlement of the disputes with the first Respondent and in view of the order of acquittal as against co-accused, a direction be issued to the learned Magistrate to release the Petitioners on bail. It is up to the Petitioners to raise this contention before the Magistrate and Magistrate to consider the same and pass appropriate order in accordance with law.

Petition is disposed.