
(2021) 08 KL CK 0136

In the High Court Of Kerala

Case No : Criminal Miscellaneous Application No. 3158 Of 2021

Nidhin Mathew

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 17-08-2021

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 143, 145, 149

Citation : (2021) 08 KL CK 0136

Hon'ble Judges : Gopinath P, J

Bench : Single Bench

Advocate : A.Arunkumar, P.Raj

Final Decision : Allowed

Judgement

Gopinath P., J

1. The petitioner is the 8th accused in Crime No.1055/2014 of Kottayam East Police Station. The crime was registered alleging commission of

offences under Sections 143, 145 read with Section 149 of IPC. The gist of the allegation is that the petitioner along with other accused uttered

slogans in front of Kottayam East Police Station demanding the arrest of the accused in Crime No.1048/2014. It is alleged that the accused had

obstructed the activities of the police station despite the direction of the Sub Inspector of Police to disperse. It submitted that following filing of a final

report cognizance was taken in the matter by the Judicial First Class Magistrate, Kottayam as CC No.3/2015. The petitioner who was studying abroad

at the time when the summons was issued in CC No.3/2015 could not appear before the court and face trial. Following the trial of CC No.3/2015,

accused Nos.1 to 4, 6, and 9 to 13 were acquitted as can be seen from Annexure-

V judgment. The case against the petitioner who was the 8th accused together with that against accused Nos. 5 & 7 was split up and renumbered as CC No.1019/2017. It is submitted that the petitioner has secured a work permit and also an offer to apply for permanent residence in Canada. It is submitted that he was required to submit a police clearance certificate and it was only when the petitioner's father applied for a police clearance certificate that the petitioner came to know that he was an accused in the matter. It is also submitted that CC No. 1019/2017 has been now transferred to the long-pending register as LP No.20/2019.

2. I have heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the State of Kerala.

3. Moosa v. Sub Inspector of Police; 2006 (1) KLT 552, (F.B) is authority for the proposition that normally the acquittal of co-accused will not be a ground for quashing proceedings against another accused, who did not face trial. However, it was observed that if the substratum of the prosecution case has been shattered and proceeding with the case against the accused who did not face trial would be futile and will amount to wastage of judicial time, then this Court can invoke the power under Section 482 of the Code to quash the proceedings. Considering the nature of the offence and the facts and circumstances of this case, I am of the view that prosecution of the petitioner, in this case, will be a futile exercise. I am, therefore, of the opinion that the jurisdiction of this court can be exercised to quash the proceedings against the petitioners. Accordingly this Crl. M.C. is allowed and proceedings in CC No.1019/2017 now pending as LP 10/2019 on the file of the Judicial First Class Magistrate Court, Kottayam will stand quashed as against the petitioner.