
(2015) 03 KL CK 0057
In the High Court Of Kerala
Case No : Criminal M.C. No. 4984 of 2013

Ramachandran

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2015) 03 KL CK 0057

Hon'ble Judges : K. Ramakrishnan, J.

Bench : Single Bench

Advocate : Nireesh Mathew, for the Appellant; Rajesh Vijayan, Public Prosecutor, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Ramakrishnan, J.—First accused in Crime No. 21/2002 of Ernakulam Excise Range and accused in S.C. No. 262/2010 on the file of the Additional Sessions Judge, No. VII, Ernakulam has filed this application to quash the proceedings as against him under section 482 of the Code of Criminal Procedure (hereinafter called the Code).

2. It is alleged in the petition that the petitioner was working as Accountant in Century Club, Vennala, Cochin. He was charge sheeted by Excise Inspector, Ernakulam Excise Range in CR. No. 21/2002, on the allegations that he along with other accused were engaged in sale of liquor from the club against the provisions of the Abkari Act and thereby all of them have committed the offence punishable under section 55(a) of Abkari Act. After investigation, final report was filed and it was originally taken on file as CP. 64/2003 before the Judicial First Class Magistrate Court-I, Aluva, and thereafter it was committed to the Sessions Court wherein it was taken on file as S.C. No. 207/2005 and made over Additional Sessions Court (Adhoc-I). Ernakulam. Since the present petitioner and second accused did not appear before the Additional Sessions Court, the case against the third accused was proceeded with and as per Annexure-C judgment,

it was ended in acquittal. The case against the petitioner and second accused was split up and refiled as S.C. 262/2010 and it is pending before that court. The learned Additional Sessions Judge has to come to the conclusion that the seizure itself is illegal as it was done against the interim directions given by this court as per Annexure-D order and the third accused is none other than the secretary of the club and he was acquitted by the court below on that ground and no appeal has been preferred against them. The substratum of the case has been shattered and no purpose will be served by proceeding with the case as against the petitioner. So, he has no other option except to approach this court seeking the following reliefs:-

"to pass an order quashing Annexure-B final report and all its further proceedings in CR. No. 21/2002 of Ernakulam Excise Range, now pending as S.C. No. 262/2010 on the file of the Addl. Sessions Judge No. VII, Ernakulam as against the petitioner/accused by allowing the above CrI. M.C." 3. Heard the counsel for the petitioner and the learned Public Prosecutor.

4. The counsel for the petitioner submitted that accused Nos. 1 to 3 were charge sheeted on the ground that illegal sale of liquor has been done in the club and the harassment made by the police against the club was challenged by the club before this court as O.P. No. 32836/2000 and as per order in Annexure-D namely C.M.P. No. 56036/2000 dated 23.11.2000, this court has granted interim relief prayed for directing the police not to interfere with the activities of the members of the petitioner's club in the premises including consumption of liquor by its members, their family members and guests in the premises of the club pending disposal of O.P. It was during the pendency of this order that the seizure was effected and the Additional Sessions Judge while considering the evidence found that sine the seizure was effected at the time when the order of this court was in force, the search and seizure are illegal and as such no offence under section 55(a) can be attracted as the as against the secretary and acquitted him of that charge. The present petitioner was working as Accountant and he is also entitled to get that benefit. So, he prayed for allowing the application.

5. The application was opposed by the public prosecutor on the ground that it is only an interim order and O.P. was disposed of later.

6. It is an admitted fact that the petitioner was working as Accountant of Century Club, Vennala at the relevant time. It is also an admitted fact that on 21.10.2002, the excise officials conducted search of the club and seized Indian made foreign liquor bottles kept in the club. They have no case that the articles seized were not licit liquor or it is illicit liquor. Further, Annexure-D order was passed by this court on 23.11.2000, whereas the search was conducted on 22.11.2002 when Annexure-D order was in force. Even if, the possession of Indian made foreign liquor was found in the club and it is being used by its members that was done on the basis of the permission granted by this court as per interim order. So, it cannot be said that the possession was illegal or it was done against the provisions of the Abkari Act as well, in view of the directions

given by this court permitting them to continue the activities of the club including consumption of liquor in the club by the members and their family members and guests. There is no case for the prosecution that it was sold to outsiders other than the persons mentioned in the interim order. Further, on the basis of the evidence, the secretary of the club was acquitted by the Additional Sessions Judge by Annexure-C judgment. That was not challenged and it has become final.

7. It is true that in the decision reported in *Moosa Vs. Sub Inspector of Police*, the Full Bench of this court has held that normally the acquittal of the co-accused is not ground for quashing the proceedings as against the accused who did not face trial invoking the power under section 482 of the Code. But in the same decision, it has been observed that if the substratum of the prosecution case has been shattered in the previous judgment by which some of the accused were already acquitted and no purpose will be served by proceeding with the case as against the remaining accused, then court can in appropriate case invoke the power under section 482 of the Code of Criminal Procedure to quash the proceedings. This was followed and held so in the decision reported in *Subhash Vs. State of Kerala* [2011 (2) KLD 152] and *Ashok Vs. State of Kerala* [2013 (2) KLD 665]. In this case also on the basis of the materials available on record, the Additional Sessions Judge has come to the conclusion that the seizure itself is illegal and no offence under section 55(a) of the Abkari Act has been made out against the secretary of the club. The present petitioner is only an Accountant of the club and he is entitled to get that benefit. Even if, the prosecution is allowed to continue, no purpose will be served in view of the fact that the activities of the club including the consumption of liquor was permitted by this court by an interim order and possession and consumption of liquor in the club cannot be said to be an illegal act warranting commission of an offence under section 55(a) of the Abkari Act especially when the prosecution had no case that the articles found in the club were illicit liquor or sale was effect in violation of the directions given by this court as per Annexure-D order as well. So, under the circumstances, the entire prosecution case has been shattered and foundation of the prosecution case has been crumbled and no purpose will be served by proceeding with the case as against the present petitioner and it will only amount to abuse of process of court. So, under the circumstances, this court feels that it is a fit case where the power under section 482 of the Code of Criminal Procedure has to be invoked to quash the proceedings as against the present petitioner in S.C. No. 262/2010 on the file of the Additional Sessions Court, No. VII, Ernakulam.

8. So, the Criminal Miscellaneous case is allowed and further proceedings against the petitioner who is shown as accused in S.C. No. 262/2010 (Crime No. 21/2002 of Ernakulam Excise Range) pending before the Additional Sessions Court, No. VII, Ernakulam is hereby quashed.

Office is directed to communicate this order to the concerned court immediately.