
(2011) 06 KL CK 0065
In the High Court Of Kerala
Case No : Criminal M.C. No. 1612 of 2011

Shebeer

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 255(1)
Penal Code, 1860 (IPC) — Section 143, 147, 149, 323, 341

Citation : (2011) 06 KL CK 0065

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : P.V. Sreenivasan, for the Appellant; No Appearance, for the Respondent

Judgement

Thomas P. Joseph, J.—Petitioner is first accused in Crime No. 43 of 2003 of Kalamassery Police Station and C.C. No. 858 of 2007 of the court of learned Judicial First Class Magistrate-II, Aluva for offences punishable under Sections 143, 147, 341 and 323 read with Section 149 of the Indian Penal Code. Prosecution case is that on 04.03.2003 Petitioner and others formed unlawful assembly, wrongfully restrained and voluntarily caused hurt to C Ws 1 to 5. Petitioner, other accused and C Ws 1 to 5 were students and the clash occurred in the University Campus. Accused other than Petitioner and fifth accused faced trial in C.C. No. 690 of 2003 and they were acquitted u/s 255(1) of the Code of Criminal Procedure. Petitioner seeks benefit of that acquittal.

2. It is seen from the judgment in C.C. No. 690 of 2003 that in that case, of the injured witnesses only one was examined as PW1 and he did not support the prosecution case. None of the remaining witnesses were examined whatever be the reason thereof. They include some of the injured also. In such a situation, based on the acquittal in C.C. No. 690 of 2003 Petitioner cannot justifiably ask for quashing proceeding against him.

3. Learned Counsel submitted that Petitioner is prepared to appear before

learned Judicial First Class Magistrate-II, Aluva in C.C. No. 858 of 2007 and face trial. But, since a non-bailable warrant is pending against him, he apprehends his remand on appearance. Learned Counsel requests that a direction may be issued to the learned Magistrate to release Petitioner on bail on his surrender. I have heard learned Public Prosecutor also.

4. Having regard to the circumstances I am inclined to grant some relief to the Petitioner.

Resultantly this Criminal Miscellaneous Case is disposed of granting three weeks time to the Petitioner from this day to appear before learned Judicial First Class Magistrate-II, Aluva (in C.C. No. 858 of 2007). If Petitioner moves any application for bail/recall of warrant learned Magistrate shall consider that application having regard to the relevant aspects including the stand of PW1 in C.C. No. 690 of 2003 and pass appropriate orders on such applications as early as possible. The warrant of arrest issued against Petitioner will stand in abeyance during the said period of three weeks or till Petitioner appears before learned Magistrate whichever is earlier.