

Kerala High Court

Asharaf vs State Of Kerala on 27 November, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl.MC.No. 4479 of 2008()

1. ASHARAF, S/O.VENTHATTEL KUNJU MUHAMMED,  
... Petitioner

Vs

1. STATE OF KERALA, REPRESENTED BY PUBLIC  
... Respondent

For Petitioner :SRI.P.SANTHOSH (PODUVAL)

For Respondent :PUBLIC PROSECUTOR

The Hon'ble MR. Justice R.BASANT

Dated :27/11/2008

O R D E R

R. BASANT, J.

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Crl.M.C.No. 4479 of 2008

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Dated this the 27th day of November, 2008

O R D E R

The petitioner, as the 8th accused, faces indictment in S.C.No. 82 of 1999 before the Addl. Sessions Judge, Fast Track-II, Trichur. He was not available when the trial commenced. Out of the nine accused who faced trial, six were available and three, including the petitioner, was not available for trial. The learned Judge, after conclusion of the trial, found all the accused who were available for trial not guilty of the offences alleged against them and acquitted them. The case against the petitioner has been split up and refiled. The petitioner now has to face the trial. The offence alleged against all the accused is only the one punishable under Section 395 I.P.C.

2. The learned counsel for the petitioner submits that the petitioner is entitled for acquittal notwithstanding the dictum in Moosa v. S.I. of Police (2006 (1) KLT 552). The counsel relies on two

circumstances. He first of all contends that at any CrI.M.C.No. 4479 of 2008 rate there is no specific allegation raised against the petitioner that he had taken part in the incident proper. At worst, the allegation against him is only that the miscreants came to the scene of the crime and went away from the scene of the crime in his vehicle. There is no precise overt act alleged against him. In these circumstances the petitioner does not deserve to stand trial, the co-accused having already been acquitted.

3. Secondly it is contended that an offence under Section 395 I.P.C. is attracted only if five or more persons jointly cause hurt in committing dacoity. Consequent to the acquittal of six of the nine accused persons, there cannot be a surviving allegation that the petitioner is vicariously liable for the offence of dacoity under Section 395 I.P.C.

4. The learned Prosecutor was directed to take instructions. The learned Prosecutor accepts that no appeal has been preferred against the judgment of acquittal. He further concedes that the State has no case that any one other than the nine persons who faced indictment was responsible for the commission of the offence. The learned Prosecutor further submits that according to the prosecution the petitioner/A8 has CrI.M.C.No. 4479 of 2008 not committed any overt act at the scene of the crime. Except that the other miscreants came to the scene and went away from the scene in his vehicle, there are no other allegations against the petitioner.

5. Having considered all the relevant circumstances, I am satisfied that in the facts and circumstances of this case, this case can be construed as an exception to the rule propounded in the decision of the Full Bench in Moosa (supra).

6. In the absence of opposition from the learned Prosecutor, it is not necessary for me to advert to facts in any greater detail. I am satisfied that continuance of the prosecution against the petitioner is unnecessary and would certainly be non-productive.

7. This CrI.M.C. is allowed. All further proceedings in pursuance of the final report in Crime No. 80 of 1998 of Kunnamkulam police station re-filed as S.,C.502 of 2003 in so far as it relates to the petitioner is hereby quashed.

(R. BASANT) Judge tm