

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

CRL.A.No. 208 of 2011 ()

AGAINST THE JUDGMENT IN SC 1493/2010 of THE COURT OF ADDITIONAL
DISTRICT AND SESSIONS JUDGE (ADHOC)-II, KOLLAM DATED 04-02-2011

APPELLANT/4TH ACCUSED:

DEEPU KOSI @ DEEPU, S/O.THAMPI
VAZYAYAN VEEDU, MUKKODU, MOONGODU MURI
ALAYAMON VILLAGE, KOLLAM DISTRICT.

BY ADVS.SRI.K.B.DAYAL
SRI.JAISON JOSEPH(KOOTHATTUKULAM)
SRI.S.MOHAMMED FEBIN
SRI.SIBI KARUN

RESPONDENTS/STATE & COMPLAINANT:

- 1. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - KOCHI - 31.

2. THE SUB INSPECTOR OF POLICE
YEROOR POLICE STATION, KOLLAM, PIN-691312.

ADDL. 3. P.M.WILSON, S/O. MATHAI, ETTIMOOTTIL VEEDU (PEACE VIEW),
MOONGODU MURI, CHANNAPETTA.P.O., MEENKULAM,
KOLLAM DT., PIN-691311.

ADDL.4. SARAMMA, W/O.P.M.WILSON, ETTIMOOTTIL VEEDU (PEACE VIEW)
MOONGODU MURI, CHANNAPETTA P.O., MEENKULAM,
KOLLAM DT., PIN-691311.

(ADDL. RESPONDENTS 3 AND 4 ARE IMPEADED AS PER ORDER DATED 1.9.2015
IN CRL.M.A.NO.4169 OF 2015)

R3,R4 BY ADV. SRI.J.JULIAN XAVIER
R3,R4 BY ADV. SRI.FIROZ K.ROBIN
R1 & R2 BY PUBLIC PROSECUTOR SRI.JITHESH.R.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT'S EXHIBITS:

ANNEXURE A1: AFFIDAVIT SWORN BY PW1 WHO IS THE ADDITIONAL 3RD
RESPONDENT IN THE ABOVE CRIMINAL APPEAL AND THE
CRIMINAL M.A. DATED 17.8.2015.

ANNEXURE A2: AFFIDAVIT SWORN BY PW2 WHO IS THE ADDITIONAL 4TH
RESPONDENT IN THE ABOVE CRIMINAL APPEAL AND THE
CRIMINAL M.A. DATED 17.8.2015.

// TRUE COPY //

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P.S. TO JUDGE

C.T.RAVIKUMAR, J.

Crl.A.No.208 of 2011

Dated 1st September, 2015

JUDGMENT

This appeal is directed against the judgment of conviction dated 4.2.2011 in S.C.No.1493 of 2010 of the Court of Additional District and Sessions Judge (Adhoc)II, Kollam. The appellant herein was the 4th accused in S.C.No.939 of 2008 on the files of the same court. The other accused stood trial in S.C.No.939 of 2008 and since the appellant herein was absconding the case against him was split up and re-filed as S.C.No.1493 of 2010. In fact, he surrendered before the trial court on 27.10.2010 and by the time the trial in S.C.No.939 of 2010 was commenced and concluded. The accused who stood the trial in S.C.No.939 of 2008 were found guilty, convicted and sentenced by the trial court as per judgment dated 25.10.2010 in S.C.No.939 of 2008. Later, the case was heard on 27.1.2011 and on 4.2.2011 the impugned judgment of conviction was passed. The judgment itself would undoubtedly reveal that after the surrender of the appellant/accused no fresh trial was actually conducted and in fact, it was without conducting a fair trial the case was posted for his examination under Section 313 of the Code of Criminal Procedure.

Indubitably, the prosecution has not adduced evidence in S.C.No.1493 of 2010 and the 313, Cr.P.C. examination was done with the evidence adduced by the prosecution in S.C.No.939 of 2008. After hearing the parties and upon finding that the appellant herein was not entitled to acquittal under Section 232 Cr.P.C. he was called upon to enter on his defence. However, he did not adduce any evidence. Virtually, a scanning of the impugned judgment would reveal that based on the evidence collected during the trial of the co-accused in S.C.No.939 of 2008 and without conducting a trial of the appellant herein he was found guilty, convicted and imposed with the same sentence as has been awarded to his co-accused who stood trial in S.C.No.939 of 2008. When several persons were charged for an offence and some of them stood the trial and the trial in respect of the rest could not be held owing to their abscondence, upon surrender/arrest of all or any of such absconders, trial has to be conducted in accordance with law, in respect of such person/persons. There is no provision for relying on the evidence collected in the matter of trial of the co-accused who stood the trial for the purpose of considering the culpability or otherwise of the accused who absconded and later, arrested or surrendered, subsequent to the trial of his/their co-accused. At the same time, a careful scanning of the judgment in this case would reveal that an impermissible course was

adopted by the trial court without putting the appellant herein to face the trial. The evidence collected during the trial in S.C.No.939 of 2008 was used for arriving at the finding of his guilt. Consequently, with the said evidence he was convicted and sentenced as aforesaid. True that, no ground based on such a patent illegality was raised in this appeal. Still, when such an illegality has come to the notice of this Court the same cannot be ignored. In fact, on that sole ground itself the impugned judgment invites appellate interference. In such circumstances, the normal procedure to be adopted is to set aside the judgment of conviction and remit the matter for conducting trial in accordance with law. But, today, in the appeal preferred by the co-accused of the appellant herein who stood trial in S.C.No.939 of 2008 viz., Crl.A.No.2222 of 2010, in the light of the compromise entered into between the victims and the appellants I quashed the proceedings against them relying on the decision in **Gian Singh v. State of Punjab** reported in **2012 (4) KLT 108 (SC)**. It is to be noted that in this case also the same injured witnesses viz., PW1 and PW2 entered appearance pursuant to the filing of Crl.M.A.No.4641 of 2015. It is submitted by them that they have filed Annexures-A1 and A2 sworn affidavits to bring on record the factum of settlement of the dispute between them and the appellant. In such circumstances, though the course open to this Court

and which is to be adopted in accordance with law is to set aside the judgment and to remit the matter for trial, in accordance with law, I am of the view that ordering for trial against the appellant herein viz., the accused in S.C.No.1493 of 2010 (4th accused in S.C.No.939 of 2008) would result in abuse of process of court as no fruitful purpose could be served now. Besides resulting in abuse of process of the court it would also result in a wasteful exercise by the court. In the said circumstances, owing to the illegality committed in the matter of conducting the trial and the passing of the impugned judgment, the impugned judgment is set aside. In view of the subsequent developments the further proceedings in S.C.No.1493 of 2010 based on the F.I.R in Crime No.143 of 2007 of Yerroor Police Station and all consequential proceedings arising there from are hereby quashed.

The appeal is allowed to the above extent.

Sd/-
C.T.RAVIKUMAR
Judge

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