

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 12TH DAY OF MAY 2015/22ND VAISAKHA, 1937

Crl.MC.No.182 of 2015 (E)

CC 1119/2013 of J.M.F.C. - II, MAVELIKKARA

CRIME NO. 565/2011 OF NOORANADU POLICE STATION , ALAPPUZHA

PETITIONER/ACCUSED NO.2:

ANEESH, AGED 29 YEARS
S/O SADANANDAN, ANEESH BHAVAN, ULAVUKKADU ALAPPUZHA.

BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JOBY JOSEPH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
12-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

ANNEXURE 1: COPY OF THE FINAL REPORT.

ANNEXURE 2: COPY OF THE JUDGMENT IN C.C.NO:576/12.

ANNEXURE 3: COPY OF THE DEPOSITION OF PW-1, 2 & 3

RESPONDENT(S)' EXHIBITS: NIL

// TRUE COPY //

P.A TO JUDGE.

ALEXANDER THOMAS, J.

CrI.M.C.No.182 Of 2015

Dated this the 12th day of May, 2015.

ORDER

The petitioner is the 2nd accused in Crime No.565/2011 of Nooranadu Police Station. Offences alleged are those under Secs. 324, 323 r/w 34 IPC. The prosecution allegation is that on 22.8.2011 at 9:00 p.m., due to previous animosity accused Nos.1 to 3 attacked CWs 1 & 2 and thereby caused injury to CW-1. After investigation, Final Report/Charge Sheet was laid before the court below concerned, who had taken cognizance and numbered the matter as C.C.No.576/2012 on the file of the Judicial First Class Magistrate Court-II, Mavelikkara. It is pointed out that since the petitioner was not made available for trial, further proceedings in the trial were continued against accused Nos.1 & 3. All the witnesses have turned hostile and accused Nos.1 & 3 were acquitted. Annexure-2 is the judgment rendered in C.C.No.576/2012. The case as against the petitioner is now pending as C.C.No.1119/2013. It is the specific contention of the petitioner that the entire substratum of prosecution case has been demolished by the acquittal of the other co-accused in this case as evident from Annexure-2 judgment. It is pointed out that in view of the legal principles laid down by the Full

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Bench of this Court in Moosa v. Sub Inspector of Police reported in 2006 (1) KLT 552 (FB) as followed by this Court in the case Abbas v. State of Kerala reported in 2013 (2) KLT 976 =2013 KHC 336, the impugned criminal proceedings could be quashed in the light of the demolition of the substratum of prosecution case in view of the acquittal of the other co-accused.

2. Heard Sri.R.Sunil Kumar, learned counsel appearing for the petitioner and learned Public Prosecutor appearing for the respondent.

3. From a perusal of Annexure-2 judgment, it could be seen that CWs1 to 3 were examined as PWs 1 to 3 and since all the material witnesses had turned hostile to the prosecution, the prosecution given up the remaining witnesses. The court below held that there is absolutely no evidence to prove the prosecution case and thus it was held that the prosecution has failed to prove their case and accordingly accused 1 & 3 were acquitted of the offences alleged in the said case. By Annexure-3 the petitioner has produced copies of depositions of PWs 1to 3 in C.C.No.576/2012. On a perusal of the depositions of PWs 1 to 3 made available as Annexure-3 in this Crl.M.C, it is evidently clear that all the prosecution witnesses have spoken against prosecution and that there is absolutely no evidence whatsoever to prove any offence as

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alleged against any of the accused in this case. This Court in the case *Abbas v. State of Kerala* (supra) has held that the Full Bench of this Court in *Moosa V. Sub Inspector of Police* reported in 2006 (1) KLT 552 (FB) has carved out an exception that where the substratum of prosecution case is lost due to the acquittal of the co-accused, this Court could exercise the power under Sec. 482 Cr.P.C for quashment of the criminal proceedings as against other accused. On a perusal of Annexure-2 judgment and Annexure-3 depositions, this Court is of the considered opinion that the substratum of prosecution case is demolished by the acquittal of the co-accused. In this view of the matter the impugned Annexure-A Final Report/Charge Sheet in Crime No.576/2012 of Nooranad Police Station which has led to the pendency of C.C.No.1119/2013 on the file of the Judicial First Class Magistrate Court-II, Mavelikkara and all further proceedings arising therefrom stand quashed.

With these observations and directions, this Crl.M.C stands finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-