

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

Crl.MC.No. 57 of 2013 ()

**AGAINST THE JUDGMENT IN C.C.NO.888/2010 of JUDICIAL FIRST CLASS MAGISTRATE
COURT, KOTHAMANGALAM
CRIME NO. 816/2010 OF KOTHAMANGALAM POLICE STATION, ERNAKULAM**

PETITIONER(S)/6TH ACCUSED:

**ANEES, AGED 22 YEARS,
S/O.ALIYAR, KEEPURATHU HOUSE, CHUVAPPUKUNNU,
ERAMALLOR VILLAGE, KOTHAMANGALAM.**

BY ADV. SRI.S.RENJITH

RESPONDENT(S):

**STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - 682 031**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09-07-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

- ANNEXURE A1. CERTIFIED COPY OF THE FIR IN CRIME NO.816/2010 OF KOTHAMANGALAM POLICE STATION.
- ANNEXURE A2. CERTIFIED COPY OF THE FIS OF THE SUB INSPECTOR KOTHAMANGALAM POLICE STATION DATED 15.10.2010 AND THE SEIZURE MAHAZAR.
- ANNEXURE A3. CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.816/2010 OF KOTHAMANGALAM POLICE STATION.
- ANNEXURE A4(a). CERTIFIED COPY OF THE 162 STATEMENTS GIVEN BY THE CW-1 IN CRIME NO.816/2010 OF KOTHAMANGALAM POLICE STATION.
- ANNEXURE A4(b). CERTIFIED COPY OF THE 162 STATEMENTS GIVEN BY THE CW2 IN CRIME NO.816/2010 OF KOTHAMANGALAM POLICE STATION.
- ANNEXURE A4(c). CERTIFIED COPY OF THE 162 STATEMENTS GIVEN BY THE CW3 IN CRIME NO.816/2010 OF KOTHAMANGALAM POLICE STATION.
- ANNEXURE A4(d). CERTIFIED COPY OF THE 162 STATEMENTS GIVEN BY THE CW4 IN CRIME NO.816/2010 OF KOTHAMANGALAM POLICE STATION.

RESPONDENTS' EXHIBITS

NIL

//True Copy//

P.A. To Judge

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RAJA VIJAYARAGHAVAN V, J.

Crl.M.C.No.57 of 2013

Dated this the 09th day of July, 2015

O R D E R

This is a petition filed under Section 482 of the Code of Criminal Procedure by the 6th accused in Crime No.816/2010 of Kothamangalam police station now pending as C.C.No.888/2010 on the file of Judicial First Class Magistrate Court, Kothamangalam for offence punishable under Sections 353, 506 (2) read with Section 34 of Indian Penal Code and under Section 25 of the Arms Act. The prayer is to quash all further proceedings as against the petitioner on the ground that the allegations in the final report do not disclose any materials against him.

2. The case of the prosecution is that, on 15.10.2012 at 12.15 p.m., the Sub Inspector of Police, Kothamangalam police station received reliable information that certain persons under the influence of alcohol, were threatening people outside the Mariya Bar at Kothamangalam. He along with the subordinate officers reached the place and on seeing the police officials, two persons ran away from the spot. The remaining four were

apprehended and it was found that the first accused was carrying a sword stick in his hand. It is further alleged that accused Nos. 1 to 4 criminally intimidated and assaulted the police officers and deterred them from discharging their official duty. Accused Nos.1 to 4 were arrested. Based on the statement given by the accused the persons who had fled the spot on seeing the police officers, which included the petitioner herein, were also arraigned as accused No 5 and 6. The investigation was carried out by the Sub Inspector himself and the final report was laid before court on 17.11.2010.

3. I have heard the learned counsel for the petitioner as well as the learned Public Prosecutor.

4. It is submitted by the learned counsel for the petitioner that there is not even a whisper of allegation as against the petitioner either in the earliest records or in the Final Report submitted before court. It was pointed out that no offence under Sections 353, 506(2) read with Section 34 of the Indian Penal Code or under Section 25 of the Arms Act were attracted as against the petitioner herein in the facts and circumstance of the case.

5. The learned public prosecutor has fairly submitted that the prosecution records do not reveal the presence of the accused at the spot and that it was later on the basis of the statements by the co-accused that the petitioner was implicated.

6. I have perused the certified copies of the First Information Report, the Final Report and also the statements of CWs 1 to 4 to ascertain the genuineness of the contention raised by the counsel for the petitioner that the implication of the petitioner as the 6th accused is without any materials. It is seen that the crime was suo moto registered by the Sub Inspector of Police, Kothamangalam. The records would reveal that when the Sub Inspector along with his subordinate officers reached in front of Mariya Bar, Kothamangalam at 12.15 p.m., he spotted 4-5 youngsters standing at the entrance of the bar and one of the said persons was holding a sword stick in his hand. The said persons were talking loudly. The Sub Inspector approached them and at the time, two persons are alleged to have fled from the place. When the officer approached the accused Nos.1 to 4, who stood there, the 1st accused is alleged to have brandished a sword and threatened that if they do not leave, they would be

done away with. The officers in the said circumstances tried to apprehend the first accused. At that time, the accused Nos.2 to 4 are alleged to have assaulted the officers and attempted to push them down. It was in the said circumstance that the accused Nos. 1 to 4 were arrested then and there and were taken to the police station. According to the prosecution, it was the said accused who had disclosed the name of the petitioner herein as the person who had fled the scene when the police had arrived.

7. The witnesses who are cited by the prosecution to prove the occurrence are the subordinate officers of the Sub Inspector of Police and they also do not have a case that the 6th accused was present when the 1st accused had brandished the sword or that he was also one of those persons who had assaulted or used criminal force to prevent or deter the police officers from discharging their duty as a public servant. As against the petitioner herein, there is no allegation that he had threatened the public servant with any injury to person, reputation or property with intent to cause alarm. There is no allegation that the petitioner herein was carrying any arms.

8. From the facts and circumstances, it does not appear that the allegations as against the petitioner herein would attract the offence under Section 353 and Section 506(2) of the Indian Penal Code or under section 25 of the Arms Act. It would amount to abuse of process to direct the petitioner herein to face the trial in the light of the above facts.

9. I am of the considered view that this is a fit case where powers under Section 482 of the Code of Criminal Procedure can be invoked to quash the proceedings pending before the trial court as against the petitioner herein .

In the result, this Criminal Miscellaneous Case is allowed, and all further proceedings as against the petitioner, who is the 6th accused , in C.C.No.888/2010 on the file of Judicial First Class Magistrate Court, Kothamangalam are quashed.

Sd/-
**RAJA VIJAYARAGHAVAN V,
JUDGE.**

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[True copy]

P.A to Judge