

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

Crl.MC.No.1140 of 2015 (B)

CC 1121/2014 of J.M.F.C.-II, PERINTHALMANNA
CRIME NO.148/2009 OF PANDIKKAD POLICE STATION, MALAPPURAM

PETITIONER/4TH ACCUSED:

MUHAMMED SHAREEF, S/O. ABDU, KIDANGAYATH HOUSE
MANKUZHI, AMAKKAD, PANDALLUR
MALAPPURAM DISTRICT

BY ADV. SRI.U.K.DEVIDAS

RESPONDENTS/COMPLAINANT:

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1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
 2. SHABNA, W/O.ABU, AGED 28 YEARS
MADATHIL HOUSE, CHETTIYARAMMAL
WANDOOR MALAPPURAMD DISTRICT 679 328.

R1 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
21-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

ANNX I- TRUE COPY OF THE FIR IN CRIME NO. 148/2009

ANNX II- TRUE COY OF THE FINAL REPORT IN CRIME NO. 148/2009

ANNX III- CERTIFIED COPY OF THE JUDGMENT DATED 6.11.2012 IN C.C. NO. 110/2010

RESPONDENT(S)' EXHIBITS:

NIL

// TRUE COPY //

P.A TO JUDGE.

ALEXANDER THOMAS, J.

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Dated this the 21st day of May, 2015.

ORDER

The petitioner herein is the 4th accused in Annexure-I FIR in Crime No.148/2009 of Pandikkad Police Station. The police after investigation submitted the impugned Annexure-II Final Report/Charge Sheet in the above said Annexure-I Crime which led to the pendency of C.C.No.110/2010 on the file of the Judicial First Class Magistrate Court-II, Perinthalmanna. The offences alleged against the petitioner and other three accused were those under Sec. 498A r/w 34 IPC. The accused 1 to 3 are the husband, mother-in-law and sister of the 2nd respondent-defacto complainant and accused No.4 is the petitioner, who is the brother of the defacto complainant's husband. The court below acquitted accused Nos.1 to 3 as per Annexure-III judgment rendered on 6.11.2012 in C.C.No.110/2010. As the petitioner was not available for trial, the case against him was split up. None of the main prosecution witnesses including the 2nd respondent-defacto complainant have turned up to give evidence during the time of trial before the court below and the court below acquitted accused Nos.1 to 3 as per Annexure-III judgment.

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2. As the petitioner was not available for trial, the case against him was split up and numbered as C.C.No.807/2012 and transferred to L.P.No.4/2014. The petitioner was later arrested and released on bail on 15.12.2014. Now the case against the petitioner is pending as C.C.No.1121/2014 on the file of the Judicial First Class Magistrate Court-II, Perinthalmanna. It is the contention of the petitioner that the substratum of prosecution case is shattered by the acquittal of the co-accused as per Annexure-III judgment and therefore in view of the dictum laid down by the Full Bench of this Court in Moosa v. Sub Inspector of Police reported in reported in 2006 (1) KLT 552 (FB) and Abbas v. State of Kerala reported in 2013 (2) KLT 976 =2013 KHC 336, the impugned criminal proceedings could be quashed in the interest of justice. It is further pointed out that any further continuation of the impugned criminal proceedings will be abuse of process of court and will cause miscarriage of justice and sheer wastage of public money and therefore, the prayer of the petitioner may be granted in the interest of justice.

3. Notice in this case was issued to the 2nd respondent and in the postal endorsement it is stated that the addressee is in Gulf. The 2nd respondent-defacto complainant has been though cited as prosecution witness before the court below she has not turned up for giving

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evidence and the court below has acquitted all the other three accused as per Annexure-III judgment.

4. Heard Sri.U.K.Devidas, learned counsel for the petitioner and learned Public Prosecutor appearing for the 1st respondent-State of Kerala.

5. On a perusal of Annexure-III judgment, it is found that none of the main prosecution witnesses, CWs 1 to 3, including the 2nd respondent herein, have turned up for giving evidence and the only prosecution witness is PW1, who is the Investigating Officer in this matter. The court below held in Annexure-III judgment that the prosecution witnesses has miserably failed to produce the material witnesses in the case as there is no direct evidence to prove the alleged guilt of the accused and that there are no incriminating circumstances against accused Nos.1 to 3 and that prosecution has failed to prove the charges under Sec.498A r/w 34 IPC against accused Nos.1 to 3 and accordingly acquitted them. Since the main accused, who are the husband, mother-in-law and sister of the defacto complainant have already been acquitted, this Court is of the considered opinion that the substratum of prosecution case is demolished by the acquittal of the co-accused and therefore this Court is of the view that any further continuation of the impugned criminal proceedings against the

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petitioner for offence under Sec. 498A r/w 34 IPC which has mainly emanated from family dispute between the brother of the petitioner herein and his wife, this Court has no hesitation to hold that continuation of the impugned criminal proceedings would amount to abuse of process of court and is not in any public interest. Accordingly, following the dictum laid down by the Apex Court in this regard, it is ordered that the impugned criminal proceedings against the petitioner in Annexure-II Final Report/Charge Sheet in Annexure-I FIR in Crime No.148/2009 of Pandikkad Police Station, which is now pending as C.C.No.1121/2014 on the file of the Judicial First Class Magistrate Court-II, Perinthalmanna, and all further proceedings arising therefrom stand quashed, in the interest of justice. The petitioner shall produce a certified copy of this order before the Station House Officer concerned as well as before the court below concerned.

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

ALEXANDER THOMAS,
Judge.

bkn/-