

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

Cr1.MC.No. 1263 of 2015

IN SC 93/2010 OF THE SESSIONS COURT, PATHANAMTHITTA

CRIME NO. 86/2003 OF CHITTAR POLICE STATION, PATHANAMTITTA

PETITIONER/ACCUSED:

MATHEW DANEIL @ MONACHEN, AGED 57 YEARS,
S/O. DANIEL, EDAPPADAVIL VEEDU, KUADAPPANAKULAM,
THANNITHODE VILLAGE, KONNI TALUK,
PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.V.SETHUNATH
SRI.V.R.MANORANJAN (MUVATTUPUZHA)

RESPONDENTS/COMPLAINANT/STATE:

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1. THE SUB INSPECTOR OF POLICE,
CHITTAR POLICE STATION,
PIN-689662.
 2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, PIN-682031.

R1 & R2 BY PUBLIC PROSECUTOR SMT.SREELATHA PARAMESHWARAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
27-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 1263 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE 1- COPY OF THE FINAL REPORT/CHARGE SHEET IN CRIME NO.
86/2003 OF CHITTAR POLICE STATION, IN C.C.NO. 621/2003 ON THE
FILE OF THE J.F.C.M, RANNI.

ANNEXURE 2- COPY OF THE JUDGMENT OF ACQUITTAL IN C.C.NO. 621/2003
ON THE FILE OF THE J.F.C.M.,RANNI.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.1263 of 2015

Dated this the 27th day of July, 2015

O R D E R

The petitioner herein is the original 2nd accused in C.C No.621/2003 of the Judicial First Class Magistrate Court, Ranni. The said prosecution is brought under Sections 324, 323, 354 and 294(b) r/w 34 of the Indian Penal Code. The 1st accused faced trial before the learned Magistrate, and obtained a judgment of acquittal on merits, on 1.6.2007. The case against the petitioner herein was split up, and refiled when he absconded. His case was committed to the Court of Session, and now it is before the Sessions Court, Pathanamthitta as S.C No.93/2010. The petitioner seeks orders quashing the prosecution as against him on the ground that the very substratum of the prosecution case is totally lost by the acquittal of the co-accused on merits, and the prosecution cannot in any manner improve the case against him.

2. On a perusal of the Annexure 2 judgment in C.C No.621/2003, I find that the learned Magistrate acquitted the other accused in the absence of convincing and satisfactory

evidence from the side of the prosecution. It is submitted that the FIR in this case was delayed by 98 days. This aspect has also been discussed by the learned Magistrate in the Annexure 2 judgment. There is finding that the prosecution does not have any explanation for such delay in the FIR. The prosecution could not examine any independent witness, who witnessed the alleged incident. The judgment shows that when the doctor examined the victim he could not see any visible injury on the body of the victim. In para 12 of the Annexure 2 judgment the learned Magistrate found thus:

“Admittedly neighbours came to the spot on seeing the incident. But one of them is cited to prove the incident. Though PW1 herself has a case that she came to know about the incident from the neighbours. PW1 did not give a statement before Doctor that accused assaulted her or her daughter. At the same time she had a version that 2 or 3 persons had assaulted them. Admittedly, Pws 1 and 2 have previous acquaintance with the accused. If so definitely PWs 1 and 2 would have mentioned the name of the accused before the Doctor. But in this case PW1 stated before the Doctor that 3 persons assaulted her. If it was so there would have been 3 accused in this case. But in the charge there were only two accused. Pws1 and 2 are seen admitted in the hospital immediately after the incident and they were examined and Exts.P2 and P6 wound certificates are also prepared. Though PW1 has a version that she has intimated the matter before police and she had given statement before police with regard to the incident, no such F.I statement is seen produced in this case. There is inordinate delay in lodging the F.I statement which is produced in this case. In the said circumstance, there is serious suspicion with regard to

the genuineness of the prosecution case. The prosecution is relying on the interested testimonies of PWs 1 and 2 and are not supported by any independent witnesses. The sole interested testimonies of PWs 1 and 2 are not sufficient enough to prove the case against the accused beyond the shadow of reasonable doubt especially under the circumstance which there is suspicion with regard to the genuineness of the F.I statement and FIR in this case."

3. On a perusal of the Annexure 2 judgment, I find that the prosecution cannot in any manner improve the case as against the petitioner herein, if the case against him goes to trial. When the very substratum of the prosecution stands totally lost, continuance of the prosecution as against the petitioner will be a sheer waste of time. It is appropriate that the prosecution be quashed in such a situation.

In the result, this petition is allowed. The prosecution against the petitioner in S.C No.93/201 of the Sessions Court, Pathanamthitta will stand quashed under Section 482 of the Code of Criminal Procedure.

**P.UBAID
JUDGE**

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