

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

Cr1.MC.No. 1795 of 2015

AGAINST S.C NO.329/2013 of ADDL.SESSN.COURT (ADHOC-II) KASARAGODE

CRIME NO. 604/2008 OF HOSDURG POLICE STATION , KASARGOD

PETITIONER/ACCUSED NO.1:

C.H.NOUFAL, AGED 31 YEARS,
S/O.IBRAHIM, P.V.K. HOUSE, NORTH CHITHARI,
CHITHARI VILLAGE,
KASARAGOD DISTRICT.

BY ADV. SRI.K.P.HARISH

RESPONDENT/STATE OF KERALA/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 26-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 1795 of 2015 : 2 :

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1: COPY OF THE FIR IN CRIME NO.604/2008 OF THE HOSDURG POLICE STATION

ANNEXURE A2: COPY OF THE FINAL REPORT DATED 25.2.2009 IN CRIME NO.604/2008 AS NUMBERED AS C.P NO.55/2009 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT I, HOSDURG.

ANNEXURE A3: COPY OF THE JUDGMENT DATED 22.12.2012 IN S.C NO.278/2009 OF THE ADDITIONAL SESSIONS JUDGE II, KASARAGOD.

ANNEXURE A4: COPY OF THE JUDGMENT DATED 19.12.2014 IN CRL.M.C NO.6522/2014 OF THIS HON'BLE COURT.

ANNEXURE A5: COPY OF THE DOCKET SHEET IN S.C NO.329/2013.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.1795 of 2015

Dated this the 26th day of March, 2015

O R D E R

The petitioner herein is the original accused No.1 in Crime No.604/2008 of the Hosdurg Police Station, registered under Sections 143, 147, 148, 341, 324, 332, 333 and 308 r/w 149 of the Indian Penal Code and also under Section 3(I) of the PDPP Act. The prosecution case is that a mob of about 50 persons, including the accused arraigned in the crime, committed acts of violence, assaulted the police party engaged in maintenance of law and order, and they also damaged a police jeep as part of a protest on 1.10.2008. The original accused Nos.2 and 4 to 6 faced trial before the learned Additional Sessions Judge II, Kasaragod in S.C No.278/2009, and obtained a judgment of acquittal when the prosecution failed to adduce any satisfactory evidence proving the case. The prosecution examined seven witnesses and also marked Exts.P1 to P6 in S.C No.278/2009. The case against the other accused including the petitioner herein was split up and refiled when they consistently

remained absent. The case against the petitioner herein is now pending as S.C No.329/2013 in the trial court. He now seeks orders quashing the prosecution against him on the ground that the very substratum of the prosecution case is totally lost by the acquittal of the others by the trial court.

2. Annexure A3 judgment of the trial court in S.C No.278/2009 shows that none of the material witnesses examined by the prosecution could implicate any of the accused, or identify anybody from among the accused, as members of the mob who committed the acts of violence as alleged by the prosecution. As regards the evidence of the material witness who gave the First Information Statement, and examined as PW6, the learned trial judge found thus in paragraph 17 of the Annexure A3 judgment:

17. ".....PW6 has a case that 50 persons who came to the spot pelted stones. Though he stated that it was the accused persons in the dock who attacked them he has no such case before the investigating officer. Though he stated that he had got some indication with regard to the accused persons at the time of preparation of Ext.P1 he has not stated so in the said document. He also stated that it was through phone he could ascertain the names of the accused. But he has not stated about the particulars of the person who had informed him to the investigating officer. In short the evidence of PW6 also is of no use at all for showing the involvement of the accused in the commission of crime."

3. As regards the allegation under the PDPP Act, the learned trial judge found thus at the end of paragraph 18 of the Annexure A3 judgment.

18. ".....Though prosecution has a case that damage was caused to the police jeep no reliable evidence is forthcoming to establish that aspect also."

4. There is a definite finding that none of the material witnesses including the police officers who allegedly sustained injuries in the incident of assault, could identify any of the accused during trial. Nobody could give any evidence regarding the involvement of anybody specifically alleged in the crime. On an appreciation of the entire evidence, the learned trial judge concluded the findings thus in Paragraph 19 of the Annexure A3 judgment.

19. "In a case of this nature where in stone throwing came from a group consisting of 50 persons the identification of the culprits has to be properly brought out on record. None of the accused persons were arrested from the spot. None of the witnesses have identified properly any of the accused persons also. So the case is one where in prosecution has not brought out any convincing material to show the involvement of the accused in the commission of crime. So I hold that prosecution has not succeeded in proving its case beyond reasonable doubt."

5. On an examination of the Annexure A3 judgment

I find that the prosecution cannot in any manner improve the case as against the petitioner herein. Continuance of the prosecution in such a circumstances will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioner in S.C No.329/2013 of the Additional Sessions Court, Kasaragod will stand quashed under Section 482 of the Code of Criminal Procedure.

**Sd/-
P.UBAID
JUDGE**

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