

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

Cr1.MC.No. 1820 of 2015

IN CC 492/2006 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT- I,
CHALAKUDY
CRIME NO. 830/2005 OF CHALAKKUDY POLICE STATION , TRISSUR

PETITIONER/4TH ACCUSED:

SANISH KUMAR, AGED 27 YEARS,
S/O.NARAYANAN,
PUTHENKUTTY HOUSE, PUTHUKKAD DESOM,
THEKKETHU RAVU.

BY ADVS.SRI.JOBY JACOB PULICKEKUDY
SRI.K.S.SUMEEESH

RESPONDENTS:

1. STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM,
PIN - 682031
2. SUB INSPECTOR OF POLICE,
CHALAKKUDY POLICE STATION,
CHALAKKUDY,
THRISSUR DISTRICT.

R1 & R2 BY SR.PUBLIC PROSECUTOR SMT.SAREENA GEORGE.P

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 20-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 1820 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1: COPY OF THE FIRST INFORMATION REPORT

ANNEXURE A2: COPY OF THE FINAL REPORT

ANNEXURE A3: COPY OF THE JUDGMENT DATED 27.1.2009 OF THE J.F.C.M,
CHALAKKUDY

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.1820 of 2015

Dated this the 20th day of March, 2015

O R D E R

The petitioner herein is the original 4th accused in C.C No.492/2006 of the Judicial First Class Magistrate Court, Chalakkudy. The offence involved in this case is under Section 332 r/w 34 of the Indian Penal Code. The person who sustained injuries in the alleged incident is a police constable. He happened to sustain injuries in an open fight between two student factions in an Industrial Training Institute at Chalakkudy. The other three accused faced trial in C.C No.492/2006 before the learned Magistrate and obtained a judgment of acquittal under Section 248(1) of the Code of Criminal Procedure when the prosecution could not prove the case. The injured police constable and the other eye witness cited by the prosecution could not identify anybody during trial. Practically they admitted during trial that the police constable sustained injuries in a riot and open fight between two groups of students. Even the injured could not tell the court who exactly assaulted him and inflicted injuries on his body. In the absence

of any evidence, the learned Magistrate found the other accused not guilty. The case against the petitioner herein was split up and refiled as C.C No.85/2009. It was later transferred to the register of long pending cases and again refiled. Now it is pending as C.C No.3910/2012 in Court. He now seeks orders quashing the prosecution as against him on the ground that the very substratum of the prosecution case is totally lost by acquittal of the others, and by the definite finding by the learned Magistrate against the prosecution.

2. Annexure 3 is copy of the judgment of the trial court in C.C No.492/2006. The prosecution examined six witnesses in the case, including the injured police constable and also marked Exts.P1 to P4 documents. One stone was also marked as weapon of offence. The injured police constable or the other eye witness could not state anything incriminating the accused during trial. They practically admitted that the police constable sustained injuries in an open fight between two student groups and they could not say who exactly inflicted the injury. The learned Magistrate found thus in para 7 of the judgment.

“Here PW1 and 4 who are the PCs attached to Chalakudy Police Station deposed that they were on law and order duty at ITI, Chalakudy in connection with the inaugural function. At that time the students belongs two different groups attacked each other and the students throw chair, flower pots and stones each other and when they attempted to interfere they also sustained injury. PW1 and 4 had given evidence before the court that they had no previous acquaintance with the students in the ITI. They have admitted that they had no previous acquaintance with these accused also. According to them the name of the accused were stated to them by the students who brought them in the hospital. But no such students were cited or examined to prove that those accused have caused injury to PW1 and 4 by showing any flower pots or stones. PW1 and 4 have admitted that these accused were not shown by the Investigating Officer to them. So the evidence of PW1 and 4 that the accused who were on the dock are the persons who caused injury to them cannot be believed especially they sustained injury in a riot between two groups. Though these PW1 and 4 deposed that they were on duty on the particular day, no records were produced by the prosecution to show that these two witnesses were deputed in the college for any official duty on the particular day. The Principal or other officers of the college were not cited or examined in this case to prove that such an incident took place within the college on the particular day”.

3. On hearing both sides, and on a perusal of the judgment, I find that the prosecution cannot in any manner improve the case as against the petitioner. It is definite that the very substratum of the prosecution case stands totally lost, and continuance of the prosecution against the petitioner herein in such a circumstance, will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioner in C.C No.3910/2012 of Judicial First Class Magistrate Court, Chalakudy will stand quashed under Section 482 of the Code of Criminal Procedure.

**P.UBAID
JUDGE**

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