

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

Crl.MC.No. 886 of 2013 ()

**C.C.NO.180/2011 of JUDICIAL FIRST CLASS MAGISTRATE COURT, NEDUMKANDOM
(CRIME NO.187/2005 OF NEDUMKANDOM POLICE STATION)**

PETITIONER(S)/ACCUSED:

**ANISH, AGED 29 YEARS,
S/O. HARIKUTTAN NAIR,
MANGALATH VEETIL, NIRMALAPURAM BHAGAM,
BALAGRAM KARA, KARUNAPURAM VILLAGE.**

**BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN**

RESPONDENT(S) & STATE:

- 1. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031 (CRIME NO.187/2005 OF
NEDUMKANDOM POLICE STATION,
IDUKKI DISTRICT)**

***ADDL.R2 AND R3 IMPEADED**

**ADDL.R2. K.T.JOHN,
HC.U 752, NEDUMKANDOM POLICE STATION,
IDUKKI DISTRICT - 685 553**

**ADDL.R3. VINCENT,
PC.U 1811, NEDUMKANDOM POLICE STATION,
IDUKKI DISTRICT - 685 553**

**R2 & R3 ARE IMPEADED AS ADDITIONAL R2 & R3 AS PER ORDER DATED
14.02.2013 IN CRL.M.A.NO.1641/2013 IN CRL.M.C.NO.886/13
(C.C. NO.180/2011 PENDING ON THE FILE OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT, NEDUMKANDOM)**

R1 BY PUBLIC PROSECUTOR SRI.K.K. RAJEEV.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07-01-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 886 of 2013 ()

APPENDIX

PETITIONER(S) EXHIBITS

ANNEXURE-I - COPY OF THE JUDGMENT DATED 23-06-2011 IN C.C.NO.493/2005 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, NEDUMKANDOM.

ANNEXURE-II- COPY OF THE FINAL REPORT IN C.C.NO.180/2011 (ARISING OUT OF CRIME NO.187/2005 OF NEDUMKANDOM POLICE STATION, IDUKKI DISTRICT)

ANNEXURE - III - TRUE CERTIFIED COPY OF DEPOSITION OF PW1.

ANNEXURE - IV - TRUE CERTIFIED COPY OF DEPOSITION OF PW2.

RESPONDENTS' EXHIBITS

NIL

//True Copy//

P.A. To Judge

Bb

K. Ramakrishnan, J.

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Crl.M.C.No.886 of 2013

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Dated this, the 07th day of January, 2015.

ORDER

Sole accused in C.C.No.180/2011 on the file of the Judicial First Class Magistrate Court, Nedumkandom is the petitioner herein who filed this petition to quash the proceedings under Section 482 of Code of Criminal Procedure.

2. The present petitioner was arrayed as original 3rd accused in Crime No.187/2005 of Nedumkandom police station alleging that he along with other accused persons formed in to an unlawful assembly in the courtyard of the house by name Meppurathu Veedu with No.P.P II/47 at Thanimoodu, in Pampadumpara Village with a common object to cause hurt to CW8 with an intention to deter him from discharge his official duty as a public servant and thereby, all of them have committed the offence punishable under Sections 143, 147, 332 read with Section 149 of Indian Penal Code.

3. After investigation, final report was filed against five accused persons including the present petitioner which was taken on file as C.C.No.493/2005 on the file of the Judicial First Class Magistrate Court, Nedumkandom. Since the

present petitioner did not appear, the learned magistrate proceeded with the case against the other accused persons namely accused Nos.1, 2, 4 & 5 and after evidence, as per Annexure I Judgment, acquitted the above accused persons holding that the prosecution has failed to prove the case and the case of the prosecution is doubtful and the case against the present petitioner was split up and refiled as C.C.No.180/2011. The present petition has been filed by the petitioner to quash the proceedings on the ground that since other co-accused were acquitted, he is entitled to get the benefit of that judgment. Further, the discussion from the judgment will go to show that the substratum of the prosecution case has been shattered and court below on appreciation of evidence, came to the conclusion that the case of the prosecution is false and there is no possibility of such an incident happening and acquitted the remaining accused persons and no purpose will be served by proceeding with the case and proceeding with the case will only amount to wastage of judicial time and he has no other option except to approach this court for the following relief:

“To quash all further proceedings in CC

No.180/2011 pending on the file of the Judicial Magistrate of First Class, Nedumkandom (arising out of crime No.187/2005 of Nedumkandom Police Station, Idukki District), as it is an abuse of process of court.”

4. Heard the Counsel for the petitioner and the Public Prosecutor.

5. The Counsel for the petitioner submitted that there was no specific overt act alleged against the present petitioner and after evaluation of the evidence, court below had come to the conclusion as against the other accused persons who faced trial that the offence against them has not been made out and possibility of false implication as claimed by the defence cannot be ruled out and it was on that basis that the other accused persons were acquitted. Since the foundation of the prosecution case has been shattered on account of the earlier judgment, he is entitled to get the benefit of that judgment and he is entitled to get acquittal. So, he prayed for quashing the case against him. He relied on the decision reported in **Moosa Vs. Sub Inspector of Police [2006 (1) KLT 552]** and **Abbas Vs. State of Kerala [2013 (2) KLT 976]**.

6. The application was opposed by the Public Prosecutor on the ground that he did not face trial and merely

because other accused persons were acquitted is not a ground for acquittal of the accused who did not face trial and he cannot avoid trial and he can face the trial and have the case end in its natural course.

7. It is an admitted fact that Crime.No.187/2005 was a suo moto case registered by Nedumkandom Police alleging that the accused persons named therein five in number including the present petitioner alleging that on 09.06.2005 at about 03.15 p.m., they had formed themselves in to an unlawful assembly in the courtyard of the house by name Meppurathu Veedu with No.P.P II/47 at Thanimoodu, in Pampadumpara Village with the common object of obstructing CW8 who went there to arrest an accused and assaulted him and deterred him from performing his official duty and thereby, all of them have committed the offence punishable under Sections 143, 147, 332 read with Section 149 of Indian Penal Code. After investigation, final report was filed and it was taken on file as C.C.No.493/2005 on the file of the Judicial First Class Magistrate Court, Nedumkandom. All other accused persons except the present petitioner appeared and faced trial and as per Annexure I Judgment, the learned

magistrate had acquitted the other accused persons under Section 248(1) of Code of Criminal Procedure. Since the present petitioner did not appear, who was arrayed as third accused in the original case, the case against him was split up and refiled as C.C.No.180/2011. Now, the question is as to whether he is entitled to get the benefit of acquittal of other accused persons and on that basis, case against him can be quashed.

8. In the decision reported in **Moosa Vs. Sub Inspector of Police [2006 (1) KLT 552]**, the Full Bench of this court has observed that when the absconding accused is apprehended and tried later, the court has necessarily to consider the legally available evidence and cannot adopt the easy course of acquittal on the premise that co-accused was acquitted. So long as no inconsistencies or contradictions or infirmities were brought out to discredit the witnesses merely because the co-accused was acquitted in a prior trial, case against the absconding accused cannot be thrown out. The case against the absconding accused should be tried and decided on its own evidence unless the evidence was specially recorded under Section 299 of Code of Criminal Procedure.

The power under Section 482 of Code of Criminal Procedure cannot be invoked to prevent the trial of the accused solely by referring to the overt act played by the accused as spoken to by the witnesses in the case of the co-accused and cannot in exercise of its jurisdiction under Section 482 of Code of Criminal Procedure quash the proceedings and prevent the trial. Further, in paragraph 50 of the Judgment, the Full Bench observed that, at the same time, the judgment rendered in the case of a co-accused and the reasoning of the judgment contained therein or appreciation of the evidence therein are not matters to be taken into account for the purpose of granting any relief to quash the proceedings and thus bar the trial itself. It may however, be a case where the very substratum of the case is lost which may be an exception to this rule. However, as held by the apex court it has to be held that even when a co-accused is acquitted in the very same trial, the other accused can be convicted if there are good reasons to do so. In other words, the acquittal of some of the accused by itself is not a reason to bar the trial in the case of the other accused.

9. Further, in the decision reported in **Abbas Vs.**

State of Kerala [2013 (2) KLT 976], this court has relying on the decision of the Full Bench in **Moosa's Case** (supra) observed that however where very substratum of case is lost, there can be an exception to the rule. That was also the case where some of the accused persons were tried and acquitted and found that the case itself is not proved beyond reasonable doubt. In this case, after evaluation of the evidence in paragraph 14 and 15 of the judgment in Annexure I, the court below had observed as follows:

"14. On an evaluation of the entire evidence before the court it can be seen that the prosecution has failed to prove the ingredients of any of the offence alleged against the accused. From the nature of defence taken up by the accused a false implication of them in the crime cannot be ruled out as such. The evidence of PW1 & 2 is not free from suspicion. It is very unsafe to rely on the testimony of PW1 & 2 to convict the accused as it is not cogent and convincing.

15. Having regard on consideration of the entire evidence, I have arrived at a conclusion that the prosecution has failed to prove the occurrence regarding the commission of the alleged offences by the accused. Thus the prosecution has failed to prove that the accused have committed the offences punishable u/S, 143, 147, 332 r/W S.149 of the I.P.C. These points are answered accordingly."

10. So, it is clear from the discussion of the judgment that court below has found that the evidence of PWs 1 and 2 is not reliable and the possibility of false implication as claimed by the accused in the circumstances of the case cannot be ruled out as such and the evidence of PWs 1 and 2 is not free

from suspicion and CW8 is the person who was examined as PW5 who was the victim in the case who had conducted the investigation and filed the final report in this case also and in the absence of independent witnesses examined, court below had come to the conclusion that the case of the prosecution is not believable and it was on that ground that the other accused persons were acquitted. If that be the case, it can only be safely concluded that the substratum of the prosecution case has been shattered and since the entire prosecution case has not been believed by the court and that benefit was given to the remaining accused who faced the trial. If that be the case, the same benefit can be given to the present petitioner who was the sole accused left out, who did not face trial as no purpose will be served by allowing him to face the trial in view of the observation made by the court on evaluation of the evidence in respect of other accused persons. So, under the circumstances, the petitioner is entitled to get the benefit of the order of acquittal of other accused persons as no purpose will be served by allowing him to face the trial and the substratum of the prosecution case has been shattered and disbelieved by the court and that benefit was given to the

other accused which the present petitioner is also entitled to get. So, this court feels that it is a fit case where the power under Section 482 of Code of Criminal Procedure has to be invoked in favour of the petitioner to quash the proceedings.

So, the application is allowed and further proceedings in C.C.No.180/2011 (Crime No.187/2005 of Nedumkandom police station) as against the petitioner pending before the Judicial First Class Magistrate Court, Nedumkandom is quashed giving him the benefit of order of acquittal of other accused persons in C.C.No.493/2005 of the Judicial First Class Magistrate Court, Nedumkandom in which the substratum of the prosecution case has been shattered making it unbelievable.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge