

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

CrI.MC.No. 2217 of 2015

SC 324/2013 of ADDL. D.C. & SESSIONS COURT - III, KASARAGOD
CRIME NO. 886/2009 OF KASARAGOD POLICE STATION , KASARGOD

PETITIONER(S):

SHAFEQUE MOHAMMED C.A
S/O.ABDULLA, AGED 25 YEARS, GRACE HOUSE, TAIVALAPPU
KUDALU VILLAGE, KASARAGOD.

BY ADV. SRI.I.V.PRAMOD

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED THROUGH PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

2. RAMYESH K.V
S/O.RATHNAKARAN, KUNDOOCHI HOUSE, KUNDOOCHI
KUNDAMKUZHY P.O, BEDADKA VILLAGE
KASARAGOD DISTRICT. 671 106.

3. VINOD K.V
S/O.KRISHNAN, PANAYAL VILLAGE AND P.O, HOSDURG TALUK
KASARAGOD DISTRICT. 671 101.

BY ADV. SRI.S.U.NAZAR
BY PUBLIC PROSECUTOR SRI. GITHESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
15-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CrI.MC.No. 2217 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1. COPY OF THE FINAL REPORT SC 324/13 ON THE FILE OF THE ADDITIONAL SESSIONS COURT III, KASARAGOD DATED 31.3.12 IN CRIME NO.886/09 OF KASARAGOD POLICE STATION.

ANNEXURE A2. COPY OF THE JUDGMENT IN SC 148/13 OF ADDITIONAL SESSIONS COURT III, KASARAGOD DATED 8.1.15.

ANNEXURE A3. COPY OF THE AFFIDAVIT DATED 17.3.15 SWORN BY THE 2ND RESPONDENT.

ANNEXURE A4. COPY OF AFFIDAVIT DATED 17.3.15 SWORN BY THE 3RD RESPONDENT.

ANNEXURE A5- AFFIDAVIT SWORN BY THE 3RD RESPONDENT DATED 14.5.2015

True copy

P.S to Judge

RAJA VIJAYARAGHAVAN.V. J

Crl.M.C. 2217 of 2015

Dated 15th July, 2015

ORDER

1. The petitioner herein is the 1st accused in Crime No.886 of 2009 of Kasargode police station which is registered for offences punishable under sections 143, 147, 148, 341, 323, 324, 427, 307, 153(A) r/w 149 of the Indian Penal Code. The case was charge sheeted by the Station House Officer of the Kasargode police station and the final report was laid before the Judicial Magistrate of First Class-I, Kasargode. After initiating committal proceedings, the case was made out to the Additional District and Sessions Judge-III, Kasargode and the same was numbered as SC 148 of 2013.

2. Before the Sessions Court, the petitioner did not appear and the case against him was split up and re-numbered as S.C.No.324 of 2013. As against the 2nd and 3rd accused, the trial was proceeded with and as per

Annexure 4 judgment dated 8.1.2015, the accused Nos.2 and 3 were extended the benefit of doubt and they were acquitted u/s 235(1) of the Cr.P.C.

3. According to the learned counsel for the petitioner, the petitioner was unable to face trial as he was abroad. It is submitted that after the acquittal of the 2nd and 3rd accused, there were mediation talks at the instance of well wishers and the matter has been settled .It was submitted by the counsel for the respondents 2 and 3 that separate affidavits have been filed asserting that they are not inclined to proceed with the matter as against the petitioner herein.

4. I have heard the learned counsel for the petitioner , the learned Counsel for the respondents 2 and 3 and the learned Public Prosecutor.

5 . I have anxiously gone through the judgment rendered by the learned Sessions Judge. After evaluating the evidence in detail , the learned Sessions Judge has held

that the evidence let in by PW1 and PW2 was inconsistent and contradictory in various aspects and no reliance could be placed on the same. It was on the basis of the said finding that the accused No 2 and 3 were acquitted .In **Moosa v. Sub Inspector of Police (2006 (1) KLT 552)** and also **Ashraf Kancheriyil v. State of Kerala (2011 (2) KHC 812)** it has been held that when when substratum of the case is destroyed , there is no point in pursuing with the prosecution as against the other accused. In the instant case the injured witness and the de facto complainant have filed separate affidavits asserting that they have entered into an amicable settlement with the petitioner and they do not wish to proceed with the criminal prosecution. The counsel who entered appearance for and on behalf of respondents 2 and 3 have also asserted that the assertions in the affidavit are true.

6. After hearing the counsel for the petitioner and also the learned Public prosecutor and the learned counsel for the respondents 1 and 2 , I am of the considered opinion that this is one of those exceptional cases where prayer

for invocation of the extraordinary inherent jurisdiction can be justifiably invoked to serve the ends of justice. The bona fides of the petitioner in approaching this court with the prayer cannot be doubted as the substratum of the case has been destroyed. It has been held by the Apex Court, that the High Court, while exercising powers under S. 482 will be justified in quashing cases involving even non-compoundable offence if the disputes are really private in nature and no public interests are involved provided that the offenses are not of the gravely objectionable variety. I am convinced that the extraordinary powers under S. 482 can be invoked as the case falls within the matrix of guidelines laid down by the Apex Court in **Gian Singh v. State of Punjab (2012 (4) KLT 108)** and **Narinder Singh and others v. State of Punjab and anr. reported in (2014) 6 SCC 466)** and other cases.

7. It is also felt that quashing of the instant proceeding would bring about peace and secure ends of justice. No purpose will be served in subjecting the parties to the

ordeal of a protracted trial in view of the settlement. It will only enure to waste valuable judicial hours. I am, therefore, of the view that the criminal proceedings pending as against the petitioner can be quashed by invoking the inherent powers of this Court under S. 482 of the Code of Criminal Procedure.

8. This Criminal Miscellaneous case is allowed. The proceedings as against the petitioner in S.C.324 of 2013 on the file of the Additional Sessions Court,III, Kasargode, is hereby quashed.

SD/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

//True Copy//

P.S.To Judge