

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

Crl.MC.No. 2293 of 2015 ()

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CC. NO.16/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
CHANGANACHERRY.**

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PETITIONERS/ACCUSED:

- 1. ANJU RAJEN,
D/O.RAJAN VARGHESE, PANACKAMATTATHIL VEEDU,
PAKKIL KARA, PAKKIL AREA, NATTAKOM VILLAGE.**
- 2. K.V. THOMAS, S/O.VARGHESE,
HOUSE NO.1390, T/C NO.70, WARD NO.2,
NANDANCODU ARA, KAVADIYAR VILLAGE,
THIRUVANANTHAPURAM.**
- 3. VARGHESE JOHN, S/O.VARGHESE,
HOUSE NO.335, WARD NO.II, NIRANAM KARA,
NIRANAM VILLAGE, THIRUVALLA TALUK.**
- 4. JOSE VARGHESE, S/O.VARGHESE,
PANACKAMATTATHIL VEEDU, NIRANAM KARA,
NIRANAM VILLAGE, THIRUVALLA TALUK.**

BY ADV. SRI.SHEJI P.ABRAHAM.

RESPONDENT(S):

- 1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. LAJI M.THOMAS,
ANAPRAMBAL VADAKKEMURIYIL THAYYIL VEEDU,
THALAVADY VILLAGE, ALAPPUZHA.**

R1 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 28-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

**ANNEXURE-A1: TRUE COPY OF THE FINAL REPORT IN CC.435/2006 ON THE
FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT - I,
CHANGANASSERY.**

**ANNEXURE-A2: TRUE COPY OF THE JUDGEMENT IN CC NO.435/2006 ON
THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
CHANGANASSERY.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Dated this the 28th day of May, 2015.

ORDER

The petitioners herein are the accused Nos. 3 to 6 in the impugned Crime No.400/2003 of Chingavanam Police Station registered for offences under Secs.420 & 506(1) r/w 34 IPC. The prosecution allegation is that the 1st accused as the Chairman of “Ninans Technology Education Society” had collected a sum of Rs.3 Lakhs as security from the 2nd respondents for job in the institute and accused Nos. 3 to 6 were the Directors of the institute. But they have not given employment as offered and hence committed the offences, etc. The police after investigation submitted the impugned Annexure-A1 Final Report/Charge Sheet in the above crime which led to the pendency of C.C.No.435/2006 on the file of the Judicial First Class Magistrate Court-I, Changanassery.

2. Heard Sri.Sheji P.Abraham, learned counsel for the petitioners and the learned Public Prosecutor appearing for the 1st respondent-State of Kerala.

3. Earlier this Court requested the learned Public Prosecutor to get instructions from the Station House Officer concerned as to whether

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CW1 is available in station. Learned Public Prosecutor on instructions submitted that he is not in station and that he is reported to be in Qutar and that in spite of coercive proceedings his presence could not be secured by the court below in the earlier trial.

4. As the accused Nos.3 to 6 were not available for trial the case against them was split up and the case against the remaining accused Nos. 1 & 2 had proceeded which resulted in Annexure-A2 judgment in C.C.No.435/2006. CW1, who is the defacto complainant, did not turn up to give evidence in spite of coercive steps including warrant issued against him, as he was working abroad and CW2, his father-in-law was examined as PW1. The court below on a meticulous examination of his evidence came to the considered conclusion that he could not give any direct evidence regarding the alleged transactions between the accused and the defacto complainant and that he whatever deposed on the basis of hearsay. It is not even stated in the examination of PW1 that he was made to believe that college has affiliation and recognition by the Government and that in fact it had no such recognition and thereby cheated him etc. PW1 has also did not even produce the receipt for payment of money. The court below held that he has no direct knowledge except the information which he had

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collected from the other witnesses. PWs 2 to 5 are all official witnesses and they have no direct evidence regarding the alleged transaction regarding the accused and defacto complainant. Whereas the accused took up the plea that CW1 himself did not turn up to join the job which was offered to him. The court below was convinced that the presence of CW1 could not be secured, etc. In this view of the matter the evidence was closed. The court below held that there are no material to prove the alleged cheating and that there is no evidence to connect the accused with the charges levelled against them and accordingly the court below acquitted accused Nos.1 & 2. From a reading of Annexure-A2 judgment, it is clear that the substratum of prosecution case has been shattered by the acquittal of the co-accused. It is pointed out by the learned counsel for the petitioner that there is no plea in the impugned complaint that accused Nos.3 to 6 were actually in charge and responsible for the conduct of the business of the institution which was running in the college in question and moreover it can be seen from the impugned complaint and the FI statement given on pages 10 to 17, 21, 22 and 23 of this paper book that the defacto complainant makes no allegation that the present accused 3 to 6 played any part in the transaction between accused No.1 and the complainant. The case

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against the petitioner has now been numbered as C.C.No.16/2014 on the file of the Judicial First Class Magistrate Court-I, Changanassery.

5. In view of the legal principles laid down by this Court in Moosa v. Sub Inspector of Police reported in 2006 (1) KLT 552 (FB), and in Ashraf Kancheriyil v. State of Kerala reported in 2011 (2) KHC 812 and in Abbas v. State of Kerala reported in 2013 (2) KLT 976 =2013 KHC 336, it is seen that the substratum of prosecution case has been shattered by the acquittal of the co-accused as per Annexure-A2 judgment. In view of the other attended facts and circumstances stated above, this Court is inclined to consider the prayer for quashment.

6. Accordingly, it is ordered in the interest of justice that the impugned Annexure-A1 Final Report/Charge Sheet filed in the impugned Crime No.400/2003 of Chingavanam Police Station, which has led to the pendency of C.C.No.16/2014 on the file of the Judicial First Class Magistrate Court-I, Changanassery and all further proceedings arising therefrom against the petitioners stand quashed.

Crl.M.C is disposed of as above.

ALEXANDER THOMAS,
Judge.

bkn/-