

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

Crl.MC.No. 2714 of 2015 ()

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CC.NO. 620/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PAYYANNUR
CRIME NO. 15/1995 OF PAYANGADI POLICE STATION, KANNUR DISTRICT
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PETITIONER/ACCUSED 2 AND 6 :

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1. KUNHAHAMMED
S/O.MUHAMMED, AGED 43 YEARS
PARAKANDI POOCHIRE VALAPPIL KIZHAKKEPURAYIL
MATTOOL AMSOM, MATTOOL NORTH, KANNUR DISTRICT.**

**2. NASSAR,
S/O.IBRAHIMKUTTY, AGED 33 YEARS
PADINJAREPURAYIL, MATTOOL AMSOM
MATTOOL NORTH, KANNUR DISTRICT.**

BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR)

RESPONDENTS/RESPONDENTS/COMPLAINANT :

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1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.**

**2. SAIFUDHEEN
S/O.MUHAMMED KUNHI,
PANAKKADA HOUSE, MATTOOL AMSOM
MATTOOL NORTH, KANNUR DISTRICT-670 001.**

**R1 BY PUBLIC PROSECUTOR SMT. S. HYMA
R2 BY ADV. SRI.T.P.PRADEEP**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEAD ON 29-05-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONERS' ANNEXURES :

ANNEXURE A1 : COPY OF THE FIR NO. 15/95 OF PAYANGADI POLICE WITH THE COMPLAINT OF THE 2ND RESPONDENT.

ANNEXURE A2 COPY OF THE FINAL REPORT ALONG WITH THE MEMO OF EVIDENCE IN CRIME NO. 15/95 OF PAYANGADI POLICE STATION, KANNUR, WHICH IS NOW PENDING AS CC NO. 620/2014 ON THE FILE OF JFCM COURT, PAYYANNOOR.

ANNEXURE A3 COPY OF THE JUDGMENT DATED 29.9.1998 IN CC NO. 177/1995 ON THE FILE OF JFCM COURT, PAYYANNUR.

ANNEXURE A4 COPY OF THE AFFIDAVIT OF THE 2ND RESPONDENT.

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.A. TO JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C.No.2714 of 2015

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Dated this the 29th day of May, 2015

ORDER

Petitioners are accused 2 and 6 in Annexure 1 Crime No.15/95 of Payangadi police station. Police after investigation submitted Annexure A2 final report /charge sheet in the said crime which led to the pendency of CC No.177/1995 on the file of Judicial First Class Magistrate Court, Payyannur. The offences alleged against the petitioners are under Sections 143, 147, 148, 341, 323, 324 r/w 149 of IPC. The petitioners had gone abroad and therefore the case against them was split up. The trial as against the other remaining four co-accused had proceeded which led to the court below rendering Annexure A3 judgment on 29/09/1998 acquitting all the said co-accused. Later the case against the petitioners was treated as long pending case and subsequently renumbered as CC No.620/2014. The prayer for quashment is made on the basis of the plea that the aforementioned acquittal of the co-accused has shattered the substratum of the prosecution

and that no meaningful purpose will be subserved by the conduct of the prosecution any further.

2. After hearing the learned counsel for the petitioners and the learned Public Prosecutor, it is noted from Annexure A3 judgment that the court below found that PW2 denied to have mentioned the names of the offenders and deposed that he has no grievance against the accused and PW2 thus turned hostile. PW1 deposed that he had seen PW2 offending A1 and that A1 had sustained hurt. PW1 also denied to have seen an incident as alleged by the prosecution. Therefore the court below held that there was no evidence whatsoever to connect the said accused with the above said criminal charges and accordingly acquitted all the said co-accused as per Annexure 3 judgment. On a perusal of the judgment it can be seen that the substratum of the prosecution case has been demolished by such acquittal of the co-accused. The crime and the original Calendar Case is of the year 1995. There is no meaningful purpose to be subserved by prolonging the agony of this prosecution any further especially taking into account the crucial evidence given by PW1 and PW2 which is totally against the prosecution. In this view of the matter the impugned Annexure A2

final report/charge sheet filed in the impugned crime No.15/1995 of Payangadi Police Station, Kannur which led to the pendency of CC No.620/2014 on the files of the Judicial First Class Magistrate Court -I, Payyannoor and all further proceedings arising therefrom pending against the petitioners stand quashed.

Accordingly the Crl.M.C.stands finally disposed of.

ALEXANDER THOMAS, JUDGE

MJL