

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

Crl.MC.No. 2716 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN CC 66/2015 of J.M.F.C.-II, HOSDRUG DATED
CRIME NO. 222/2013 OF NILESWAR POLICE STATION , KASARGOD**

PETITIONER(S)/ACCUSED NOS.1&2:

- 1. SHAKKEER, S/O.MUHAMMED AGED 25 YEARS
ASMA MANZIL, KOYAMPURAM P.O, KOTTAPPURAM
NILESHWAR VILLAGE, KASARAGOD DISTRICT.**
- 2. MUHAMMED JASEEL AGED 26 YEARS
S/O.MUHAMMEDKUNHI, AYISHAS (H), PADANNAKKAD
PADANNAKKAD P.O, KANHANGAD VILLAGE
KASARAGOD DISTRICT.**

BY ADV. SRI.K.P.HARISH

RESPONDENT(S)/STATE OF KERALA/COMPLAINANT:

**STATE OF KERALA -
THROUGH STATION HOUSE OFFICER
NILESHWAR POLICE STATION (CRIME NO.222/2013)
- REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22-05-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 2716 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNX.A1 - THE TRUE COPY OF THE FIR IN CRIME NO.222 OF 2013 OF NILESHWAR POLICE STATION.

ANNX.A2 - A TRUE COPY OF THE FINAL REPORT DATED 25.03.2013 IN CRIME NO.222/2013 AS NUMBERED AS C.C.NO.934 OF 2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE-II HOSDURG.

ANNX.A3 - THE TRUE COPY OF THE JUDGMENT DATED 15.01.2015 IN C.C.NO.934 OF 2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, HOSDURG.

RESPONDENT(S)' EXHIBITS

NIL.

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///True copy///

P.S. to Judge

ALEXANDER THOMAS, J.

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Crl.M.C.No. 2716 of 2015

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Dated this the 22nd day of May, 2015

O R D E R

This Crl.M.C. has been instituted seeking the remedy available under Sec.482 of the Code of Criminal Procedure with the following prayer:

“..... to quash all further proceeding pending against the petitioners in C.C.No. 66 of 2015 on the Court of the Judicial First Class Magistrate Court-II, Hosdurg.”

2. The petitioners herein are accused 1 and 2 in the impugned Anx.A-1 FIR in Crime No.222/2013 of Nileshtar Police Station, Kasargod district, for offences under Secs.323, 348, 500 read with Sec.34 of the IPC. The Police investigated the case and submitted the impugned Anx.A-2 final report/charge sheet in the impugned Anx. A-1 crime, which led to the pendency of Calendar Case, C.C.No. 934/2013 on the file of the Court of Judicial First Class Magistrate-II, Hosdurg, Kasargod district. The petitioners were not available for trial and therefore the cases against them were split up and the trial was proceeded against the other remaining

accused. The court below as per Anx. A-3 judgment rendered on 15.1.2015 in C.C.No. 934/2013 had acquitted the accused. Thereafter, the case against the remaining two accused in the case was re-numbered as C.C.No. 66/2015 on the file of the Judicial First Class Magistrate's Court-II, Hosdurg. The petitioners submit that in the light of the legal principles laid down by the Full Bench of this Court in the case *Moosa v. Sub Inspector of Police* reported in 2006 (1) KLT 552 as followed by this Court subsequently in the case *Ashraf Kancheriyil v. State of Kerala* reported in 2011(2) KHC 812 and the decision of this Court in *Abbas v. State of Kerala*, reported in 2013 (2) KLT 976, the impugned criminal proceedings as in this case could be quashed due to the shattering of the substratum of the prosecution case in view of the acquittal of the co-accused, etc. It is in the light of these aspects that the petitioners have filed the above mentioned Criminal Miscellaneous Case.

3. Heard Sri.K.P.Harish, learned counsel for the petitioners and the learned Public Prosecutor appearing for the respondent-State of Kerala.

4. It is found from a perusal of Anx. A-3 judgment that PW-1, defacto complainant, who was examined by the court below,

deposed clearly that he could not identify the assailants and the evidence of PW-1 further goes to show that the matter was also settled out of court and that further PWs 2 and 3 also turned hostile and deposed that they could not identify the assailants. Accordingly, the court below held in Anx.A-3 judgment that the prosecution has miserably failed to prove the charge against the accused and that since no incriminating evidence has come out in the trial, the contesting accused is entitled to get clear acquittal. Accordingly, the accused was acquitted for offences under Secs.323 and 348 read with Sec.34 of the IPC.

5. From a reading of Anx. A-2 final report as well as Anx. A-3 judgment, it is crystal clear that the substratum of prosecution case remains shattered by the acquittal of the co-accused as per Anx.A-3 judgment. Therefore, no meaningful purpose would be subserved any public interest to carry on the impugned criminal proceedings as against the petitioners herein.

6. Accordingly, it is ordered in the interest of justice that the impugned criminal proceedings against the petitioners initiated as per the impugned Anx. A-2 final report/charge sheet filed in the impugned Anx.A-1 Crime No. 222/2013 of Nileshtar Police Station,

which has led to the pendency of C.C.No. 66/2015 on the file of the Court of Judicial First Class Magistrate-II, Hosdurg, Kasargod district and all further proceedings arising therefrom stand quashed. The petitioners will produce certified copy of this judgment before the court below concerned and the Station House Officer concerned for compliance.

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Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge