IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

Crl.MC.No. 2730 of 2015 ()

SC. NO.71/2012 OF ASSISTANT SESSIONS COURT, OTTAPPALAM.
CRIME NO. 552/2006 OF OTTAPALAM POLICE STATION.

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PETITIONER/ACCUSED:

RIYAS, S/O.MUHAMMED,
VAYANADAN VEEDU, PAZHAYA LAKKIDI,
AKALUR, PALAKKAD DISTRICT.

BY ADVS.SRI.BABU S. NAIR,
SRI.R.RANJITH.

RESPONDENTS/STATE & DEFACTO COMPLAINANT:
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1. **THE STATE OF KERALA,**
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31,
   THROUGH THE SUB INSPECTOR OF POLICE,
   OTTAPALAM POLICE STATION, PALAKKAD DISTRICT.

2. **REGHU, S/O.SUNDARAN,**
   NEELIKATTUPARAMBIL HOUSE, PALAPPURAM P.O.,
   OTTAPALAM TALUK, PALAKKAD DISTRICT, PIN-679 103.

R1 BY PUBLIC PROSECUTOR SMT.S. HYMA.
R2 BY ADV. SRI.K.RAKESH.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 27-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

rs.

Crl.MC.No. 2730 of 2015

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE A : **TRUE COPY OF THE CHARGE IN CRIME NO.552/2006 OF THE OTTAPALAM POLICE STATION.**

ANNEXURE B : **TRUE COPY OF THE JUDGMENT IN SC.NO.773/2007 OF THE ASST. SESSIONS JUDGE, OTTAPALAM DATED 21-12-2009.**

ANNEXURE C : **TRUE COPY OF THE AFFIDAVIT SWORN BY THE 2ND RESPONDENT DATED 23-03-2015.**

RESPONDENTS' ANNEXURES: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Crl.M.C.No.2730 of 2015

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Dated this the 27th day of May, 2015

O R D E R

The petitioner is the original accused No.1 in Crime No. 552/2006 of Ottapalam Police Station, registered for offences punishable under Secs.143, 147, 148, 341, 308 read with Sec.149 of the IPC. The allegation is that on 24.10.2006, at about 20.30 Hrs. near Akalur Siva Temple, the accused persons in furtherance of their common intention, wrongfully restrained CW-1, Reghu, (2nd respondent herein) due to political animosity and voluntarily caused hurt to him by hitting with knife on his neck and thereby committed the said offences. The Police, after investigation submitted the impugned Anx.A final report/charge sheet in Crime No.552/2006 of Ottapalam Police Station. The case was committed and it led to the pendency of S.C.No.773/2007 on the file of the Assistant Sessions Court, Ottapalam. The petitioner was not available for trial and the case against the petitioner was split up and the trial against all the other accused had proceeded. The court below as per Anx.B judgment rendered on 21.12.2009 acquitted all the other co-

accused in this case. The case against the petitioner was later re-numbered as S.C.No.71/2012 on the file of the Assistant Sessions Court, Ottapalam. It is also stated that the entire disputes between the petitioner and the 2nd respondent defacto complainant have already been settled as borne out by Anx. C affidavit sworn to by the 2nd respondent, which is produced in this case. In the light of the acquittal of all the co-accused and the aforementioned settlement, the petitioner has made the prayer for quashment of the impugned criminal proceedings.

2. Heard Sri.R.Ranjith, learned counsel for the petitioner, Sri.K.Rakesh, learned counsel appearing for the 2nd respondent and the learned Public Prosecutor appearing for the 1st respondent State of Kerala.

3. The learned counsel for the petitioner submitted that mere perusal of Anx.B judgment would conclusively establish that the substratum of the prosecution case has been shattered by the acquittal of all the co-accused and that no meaningful purpose would be subserved by the continuation of the impugned criminal proceedings. Further he has also relied on the settlement as borne out by Anx.C. The learned counsel for the 2nd respondent also makes submissions on those lines. The learned Public Prosecutor

would submit that the prayer for quashment may be considered in the light of the law settled by the Apex Court and by this Court on such issues.

4. Having given anxious consideration to the facts and circumstances of this case and on a perusal of Anx.B judgment of the court below it is found that PW-1 defacto complainant (respondent No.2 herein) is the injured and that he did not support the prosecution case and that he could not identify the assailants, etc. PWs 2 and 3 were the remaining two independent witnesses and they have also not supported the prosecution case. They deposed that they did not see the occurrence at all. The other witnesses cited by the prosecution are all common witnesses and they were not examined. In the result, the court below categorically came to the conclusion that there is no iota of evidence to connect the accused with the charges and accordingly, acquitted all the other co-accused.

5. In this view of the matter, this Court is of the considered opinion that the substratum of the prosecution case is demolished by the acquittal of the co-accused in this case. This Court in the cases as in the Full Bench decision of this Court in the case Moosa v. Sub Inspector of Police reported in 2006 (1) KLT 552, Ashraf

Kancheriyil v. State of Kerala reported in 2011(2) KHC 8123, and Abbas v. State of Kerala 2013 (2) KLT 976, has held that if the substratum of the prosecution is demolished by the acquittal of the co-accused, this Court could exercise the powers under Sec.482 of the Cr.P.C. to consider the prayer of quashment of the impugned criminal proceedings against the other accused. Taking into consideration this aspect of the matter, this Court is of the considered opinion that the prayer for quashment could be considered. Moreover, the petitioner and the defacto complainant have also settled the matter as borne out by Anx. C affidavit. In this view of the matter, the impugned Anx. A final report/charge sheet in Crime No. 552/2006 of Ottapalam Police Station, which led to the pendency of S.C.No.71/2012 on the file of the Assistant Sessions Court, Ottapalam, and all other proceedings arising therefrom pending against the petitioner stand quashed.

With these observations and directions, the Crl.M.C. stands finally disposed of.

Sd/-

sdk+ ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge