

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

Crl.MC.No. 2734 of 2015

**CP.NO.219/2007 IN CRL.M.P.NO.3812/2004 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT-I, KOLLAM.
CRIME NO. 120/2003 OF ANCHALUMMOODU POLICE STATION , KOLLAM.**
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PETITIONER/ACCUSED NO.1:

**HARIKRISHNA, S/O.GOPALAN ACHARY,
MELATHIL VEEDU, KAYALVARATHU,
MURANTHAL CHERRY, THRIKKADAVOOR VILLAGE,
KOLLAM.**

**BY ADVS. SRI.K.SHAJ
SRI.SAJJU.S**

RESPONDENT(S)/STATE/COMPLAINANT:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
- 2. LELA, AGED 35 YEARS, S/O.DEVANANDAN,
SINDHU NIVAS, NEAR THONDIRAKKUMUKKU,
IDAVATTAM CHERRY, PERINAD VILLAGE,
KOLLAM-691 006.**

**R1 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE
R2 BY ADV. SRI.SERGI JOSEPH THOMAS**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 25-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEXURE-A1.** THE CERTIFIED COPY OF THE COMPLAINT BY THE SECOND RESPONDENT AS CRL.MP NO.3098/2003 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KOLLAM.
- ANNEXURE-A2.** THE CERTIFIED COPY OF THE CRIME NO.120/2003 OF ANCHALUMOODU POLICE STATION.
- ANNEXURE-A3.** THE CERTIFIED COPY OF THE REFER REPORT FILED BY THE ADDL.SUB INSPECTOR OF POLICE ANCHALUMOODU POLICE STATION IN CRIME NO.120/2003 OF ANCHALUMOODU POLICE STATION.
- ANNEXURE-A4.** THE TRUE COPY OF THE COMPLAINT FILED BY THE SECOND RESPONDENT IN CRL.MP NO.3812/2004 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, KOLLAM.
- ANNEXURE-A5.** THE CERTIFIED COPY OF THE JUDGMENT DATED 24/10/2011 IN SC 876/2008 IN THE COURT, OF SESSIONS JUDGE, KOLLAM.
- ANNEXURE-A6.** THE CERTIFIED COPY OF THE DEPOSITION OF THE SECOND RESPONDENT IN SC NO. 876/2008 IN THE COURT OF SESSIONS JUDGE, KOLLAM.
- ANNEXURE-A7.** AN AFFIDAVIT SWORN BY THE 2ND RESPONDENT STATING THE SETTLEMENT OF ALL THE DISPUTES.

RESPONDENT(S)' ANNEXURES: - NIL

/TRUE COPY/

P.S.T O JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C.No. 2734 of 2015

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Dated this the 25th day of May, 2015

ORDER

The petitioner herein is the sole accused in C.P.No.219/2007 on the file of the Judicial First Class Magistrate's Court-I, Kollam, which was registered on the basis of the private criminal complaint filed by the 2nd respondent herein before the said Magistrate's court. Earlier, the 2nd respondent (defacto complainant) had filed a private criminal complaint before the said Magistrate, which was forwarded by the Magistrate under Sec.165 Cr.P.C. to the Police for investigation, which led to the registration of Crime No.120/2003 of Anchalumoodu Police Station, for offences under Secs.427, 447, 323 read with Sec.34 of the IPC and Sec.3(i)(x) of the SCST Prevention of Atrocities Act, 1989. The Police, after investigation, filed Anx.A-3 report referring the crime as false. It was noted that respondents No.2 herein was an accused in crime No.89/2003 registered for offence under Sec.302 read with Sec.34 of the IPC and that the complaint against the petitioner herein and the other

accused was false. After that the 2nd respondent filed protest complaint before the said Magistrate court and the Magistrate had taken the statement of the defacto complainant (PW-1), which led to the registration of C.P.No.9/2006 on the file of the said Magistrate court and the case was committed as one of the offences under the SCST Prevention of Atrocities Act. As the petitioner herein was not available for trial, the case against him was split up and the trial as against the other accused was proceeded with. The Magistrate's court on a meticulous assessment of the evidence on record, as per Anx. A-5 judgment dated 24.10.2011 rendered in Sessions Case No.876/2008 had found that the accused therein (co-accused) as not guilty. The court noted that PW-1 (the respondent No.2 herein) had stated before the court below that he does not even know the accused and that he does not know whether the accused in the dock is the person referred to in the complaint filed by him and he also disowned the statement given by him to the Magistrate. The only evidence in the case was that PW-1 belongs to Scheduled Caste. As there was no evidence whatsoever to pin point the charges against the accused, he was acquitted of the said offence as per Anx.A-5 judgment. Now the case against the petitioner after split up, was re-

numbered as C.P.No.219/2007, which is sought to be quashed in this Criminal Miscellaneous Case.

2. The main contention of the petitioner is that the substratum of the prosecution case has been shattered by the acquittal of the co-accused as per Anx.A-5 judgment. Moreover it is also contended that the 2nd respondent (defacto complainant) has fully settled the matter and sworn to Anx.A-7 affidavit before this Court stating that he has no further grievances against the petitioner and that the impugned criminal proceedings may be quashed in the interest of justice.

3. Heard Sri.K.Shaj, learned counsel for the petitioner, Sri.Serji Joseph Thomas, learned counsel appearing for the 2nd respondent and the learned Public Prosecutor appearing for the 1st respondent State.

4. The petitioner reiterated his submissions and contentions raised in the Crl.M.C. The 2nd respondent's counsel submitted that as the matter has been settled out of court, this Court may quash the impugned criminal proceedings and that the acquittal of the co-accused may also be taken into account by this Court. The learned Public Prosecutor also submitted that as the

Police had earlier found after detailed investigation that the entire allegations raised by the 2nd respondent herein against the petitioner and the other accused were false and as the same was referred as per Anx.A-3 refer report, they do not have any objection in considering the prayer for quashment of the impugned criminal proceedings.

5. On a meticulous appraisal of the findings and conclusion in Anx.A-5 judgment, this Court is of the considered opinion that substratum of the prosecution as has been shattered by the acquittal of the co-accused by that judgment. 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 should 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. Accordingly, it is ordered in the interest of justice that the impugned criminal proceedings against the petitioner, which has led to the institution of C.P.No.219/2007 on the file of the Judicial First Class Magistrate's Court-1, Kollam (arising out of Crime No.120/2003 of Anchalumoodu Police Station) against the petitioner and all further proceedings arising therefrom stand quashed in the interest of justice. The petitioner will produce certified copies of this order before the S.H.O. concerned and the court below concerned.

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

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Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge