

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

Crl.MC.No. 2779 of 2015

CRIME NO. 72/2015 OF MARANALLOR POLICE STATION.
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PETITIONER/ACCUSED:

**RAJESH, S/O.RAJAPPAN, AGED 32 YEARS,
RAJAGIRI HOUSE, KURAKONAM,
KUZHAKKADU MURI, VEERANAKAVU,
THIRUVANANTHAPURAM.**

**BY ADVS. SRI.SUMAN CHAKRAVARTHY
SMT.RIJA K.R.**

RESPONDENT(S)/STATE AND DEFACTO COMPLAINANT:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682 031.**
- 2. ABDUL RAHMAN, S/O.ABOOBECKER,
THADATHARIKATHU VEEDU, CHIRATHAKKAL,
KAPPIKADU, POOVACHAL P.O, PERUMKULAM,
POOVACHAL, THIRUVANANTHAPURAM - 695 575.**

**R1 BY PUBLIC PROSECUTOR SRI.N.SURESH
R2 BY ADV. SRI.ASHOK SURESH**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 07-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEXURE A. A CERTIFIED COPY OF THE FIR IN CRIME NO.72/15 OF
MARANALLOOR P.S.
- ANNEXURE B. ORIGINAL OF THE ATTESTED AFFIDAVIT DATED 28.1.15.
- ANNEXURE C. PHOTOCOPY OF THE ELECTORAL ID CARD OF THE
2ND RESPONDENT.

RESPONDENTS' ANNEXURES: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C.No.2779 of 2015

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Dated this the 7th day of July, 2015

O R D E R

The prayer in this Crl.M.C. is for quashment for the impugned criminal proceedings initiated against the petitioner, on the ground of settlement with the de facto complainant as borne out by Annexure B affidavit. The petitioner seeks quashment of the impugned criminal proceedings in Annexure A FIR in Crime No.72/2015 of Maranalloor Police Station , Thiruvananthapuram for offences registered under Sections 143, 147, 148, 149, 341, 506(ii), 324, 326, 308 of the IPC and 27 of the Arms Act. It is stated that this crime has been triggered as a counter blast to on an earlier complaint filed by the petitioner herein as against the de facto complainant (R2) herein. It is further stated that the entire dispute between the petitioner (accused) and the de facto complainant (R2) are settled by the parties on mediation of the Panchayath President and that the 2nd respondent has now sworn to Annexure B affidavit stating that on such settlement of all issues, he has no objection for

quashment of the impugned criminal proceedings now pending against the petitioner. The learned Public Prosecutor was requested to get instruction in the matter, there upon statement dated 01/07/2015 has been filed by the Investigating Officer in the impugned Annexure A Crime. Therein it is stated that the impugned Annexure A Crime was registered against the petitioner and five other identifiable persons on the strength of the statement given by the 2nd respondent herein. The case is that due to previous enmity, the accused had assembled unlawfully with dangerous weapons like sword, iron rod, chopper etc. and that A1 (petitioner) had chopped the left leg of the complainant with a sword and the identifiable 2nd accused beat the right hand with an iron rod and the identifiable A3 chopped the right hand with a chopper and thereby A1 to A5 manhandled the complainant bitterly and caused grievous injuries and fractures etc. When the statement was filed, the learned counsel for the petitioner objected to the factual correctness of the averments in paragraph 1 of the statement that the A1 had chopped the left leg of the complainant or that A3 had chopped the right hand of the complainant with a chopper etc. Today on instruction the learned Public Prosecutor submitted that

the word chopped is used in the statement was only meant to convey that bruise/injury was inflicted by A1 and A3 and not that the the left leg of the complainant was chopped off or that the right hand was chopped off by A3 etc. This submission of the learned Public Prosecutor on instruction from the Investigating Officer is recorded.

2. Further it is stated in paragraph 2 of the said statement that the petitioner is involved in certain other crimes. The details of which are given below:

- i. Kattakkada Police Station Crime 161/08 u/S 143, 147, 148, 149, 324, 179 IPC. He is the second accused and the case is pending trial before the Judicial First Class Magistrate Court, Kattakkada as CC 1059/08.
- ii. Kattakkada Police Station Crime 175/08 u/S 143, 147, 148, 149, 452, 326, 307, 302 IPC and 27 of Arms Act and 3 & 5 of Explosive Act. In this case the petitioner of this petition, Rajesh, is the first accused. The case was charge sheeted and the case is pending trial before the Hon'ble Sessions Court as CP 31/11.
- iii. Kattakkada Police Station Crime 195/10 u/S 341, 324, 422 and 34 IPC. He is the first accused and the case is pending trial before the Judicial First Class Magistrate Court, Kattakkada as CC 543/10.
- iv. Kattakkada Police Station Crime 150/11 u/S 394 IPC. He is the first accused and the case is pending trial before the Judicial First Class Magistrate Court, Kattakkada as CC 141/11.
- v. Kattakkada Police Station Crime 463/11 u/S 323, 294 (b), 34 IPC. He is the first accused and the case is pending trial before the Judicial First Class Magistrate Court, Kattakkada as CC 599/11."

3. In the light of these averments made in the statement filed by the Investigating Officer relating to various other crimes, this Court is not inclined to exercise its extraordinary discretion conferred under Section 482 of the Cr.P.C. to consider the prayer for quashment only on the ground of settlement between the parties. Moreover it is pointed out by the learned Public Prosecutor that the case is still at the criminal investigation stage and that the investigation has not been completed. In the light of these aspects this Court is of the considered opinion that the prayer for quashment need not be considered in the facts and circumstances of the case, more so particularly in view of the fact that serious cases as those involving the capital offences under Sections 302, 307, 308, 394 of the IPC etc. are pending against the petitioner.

4. Sri.Suman Chakravarthy, learned counsel for the petitioner submits that the investigation has not been carried out properly and that even according to the de facto complainant, the accused is not involved in this case and that he has been mistakenly or falsely implicated as an accused in the present crime and that directions may be given by this Court to ensure the conduct of further investigation in this matter and to ascertain the truth of the matter.

This Court is not able to consider this plea of the petitioner as of now because such averments have not been raised in the present petition and it is for the petitioner to put up such plea before a Superior Police Officer pointing out such deficiencies in the investigation and making necessary requests in that regard including further proper investigation in the matter etc. Giving liberty to the petitioner to seek such remedies as may be open to him in accordance with law, this Crl.M.C. is dismissed.

Sd/- ALEXANDER THOMAS, JUDGE

MJL

