

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYASHTA, 1937

Crl.MC.No. 2809 of 2015

**C.C.NO.900/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
TALIPARAMBA**

CRIME NO. 435/2010 OF SREEKANDAPURAM POLICE STATION , KANNUR

PETITIONER(S)/ACCUSED :

**CHERIYANDY SASI, AGED 38 YEARS,
S/O.KRISHNAN, RESIDING AT CHUZHALI AMSOM,
NADEL PEEDIKA, ASARIPPADI, TALIPARAMBA TALUK,
KANNUR DISTRICT.**

**BY ADVS.SMT.M.M.DEEPA
SRI.T.P.RAMACHANDRAN**

RESPONDENT(S)/STATE, INJURED & DEFACTO COMPLAINANT :

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
- 2. PAVITHRAN K.,
S/O.KANNAN, RESIDING AT 'KAVINTARIKATH HOUSE',
CHUZHALI AMSOM DESOM, CHUZHALI P.O., TALIPARAMBA TALUK,
KANNUR DISTRICT-673 517.**

**R1 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE
R2 BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 03-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

CrI.MC.No. 2809 of 2015

APPENDIX

PETITIONER(S)' ANNEXURS

- ANNEXURE A :** TRUE COPY OF THE FIR IN CRIME NO.435/2010 OF
SREEKANDAPURAM POLICE STATION.
- ANNEXURE B :** TRUE COPY OF THE CHARGE IN CRIME NO.435/2010 OF
SREEKANDAPURAM POLICE STATION.
- ANNEXURE C :** AFFIDAVIT SWORN BY THE 2ND RESPONDENT.
- ANNEXURE D:** CERTIFIED COPY OF THE JUDGMENT IN
C.C.NO.186 OF 2011 ON THE FILE OF THE COURT OF
THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
TALIPARAMBA DATED 26.08.2014.

RESPONDENT(S)' ANNEXURES

NIL

//TRUE COPY//

P.S.TO JUDGE

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 2809 of 2015

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Dated this the 3rd day of June, 2015

O R D E R

The petitioner is the sole accused in C.C.No.900/2014 on the file of the Judicial First Class Magistrate's Court, Taliparamba. The case arose out of the impugned Anx.A FIR in Crime No.435/2010 of Sreekandapuram Police Station, registered for offences punishable under Secs.143, 147, 148, 341, 323 read with Sec.149 of the I.P.C. The prosecution case is that the petitioner and seven others allegedly restrained and attacked the defacto complainant on 23.10.2010 on account of previous enmity, in which, the defacto complainant (2nd respondent herein) is said to have sustained simple injuries. The Police, after investigation submitted the impugned Anx.B final report/charge sheet in the above said Crime, which led to the pendency of C.C.No.186/2011 on the file of the Judicial First Class Magistrate's Court, Taliparamba, in which, five persons were arrayed including the petitioner herein in the party array. The petitioner did not participate in the trial and therefore the case as against him was split and all the remaining five accused proceeded. Later the case against the petitioner was re-numbered as C.C.No.

900/2014. The court below as per Anx.D judgment dated 26.8.2014 has acquitted all the said remaining co-accused in this case. Now it is stated that the petitioner and the 2nd respondent defacto complainant have settled all their disputes as borne out by Anx.C affidavit sworn to by the 2nd respondent, wherein he has stated that he has no objection in the quashment of the impugned criminal proceedings. It is in the light of these aspects that the petitioner has preferred the instant Crl.M.C. with the prayer to quash the impugned criminal proceedings against them.

2. Heard Smt.M.M.Deepa, learned counsel for the petitioner, Sri.V.A.Johnson Varikkapallil, the learned counsel for the 2nd respondent and learned Public Prosecutor appearing for the 1st respondent State of Kerala.

3. On a perusal of the Anx.B judgment of the court below in C.C.No.186/2011, it is seen that though PW-1 defacto complainant deposed that he sustained injuries by him, he categorically stated that he does not know who are the culprits and that he gave the names of the accused persons on the basis of hearsay knowledge and as there was no evidence on record, the court below held conclusively that the alleged guilt of the accused could not be established and that the said accused persons are thus acquitted.

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 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. Accordingly, it is ordered in the interest of justice that the impugned Anx.B final report/charge sheet filed in Anx.A Crime No. 435/2010 Sreekandapuram Police Station, which led to the pendency of C.C.No.900/2014 on the file of the Judicial First Class Magistrate's Court, Taliparamba, and all further proceedings arising therefrom pending against the petitioner stand quashed.

The Crl.M.C. stands accordingly finally disposed of.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

Cr1.M.C.2809/15

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