

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYASHTA, 1937

Crl.MC.No. 2815 of 2015 ()

**SC 819/2012 of ADDL. SESSIONS COURT - III, MAVELIKKARA
CRIME NO. 274/2009 OF MAVELIKKARA POLICE STATION, ALAPPUZHA**

PETITIONER/5TH ACCUSED :

**DEVAPRASAD, AGED 35 YEARS,
S/O.SHEELA, VISHNU NANDANAM VEEDU,
KAITHATHEKKU MURI, KANNAMANGALAM, ALAPPUZHA**

**BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL**

RESPONDENTS/COMPLAINANT/CW-1 & 2 :

- 1. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.**
- 2. SUNEESH BABU, AGED 28 YEARS, S/O.KOCHUKUNJU,
SUNEESH BHAVANAM, KANNAMANGALAM MURI,
ALAPPUZHA-688 001.**
- 3. BIJITH, AGED 29 YEARS, S/O.SIVARAMAN,
BIJITH BHAVANAM, KANNAMANGALAM,
ALAPPUZHA-688 001.**

**R1 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE
R2 & R3 BY ADV. SRI.BINNY.A.THOMAS**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 04-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

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APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE 1 : COPY OF THE FINAL REPORT.

ANNEXURE 2 : AFFIDAVIT FILED BY THE 2ND & 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

ALEXANDER THOMAS, J.

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Dated this the 4th day of June, 2015.

ORDER

The petitioner is the accused in Crime No.274/2009 of Mavelikkara Police Station registered for offences under Secs.143, 147, 148, 149, 324, 427 & 308 IPC. The police after investigation submitted Annexure-A1 Final Report/Charge Sheet in the above said crime. The prosecution allegation is that the petitioner along with accused Nos.1 to 4 had attacked the defacto complainant (2nd respondent) and CW2 and thereby caused hurt and injury to his right hand and caused damage to the motor bike of the defacto complainant and if the defacto complainant had not evaded the attack death could have been resulted etc. The petitioner was not available for trail and the case against other remaining co-accused A1 to A4 had proceeded in S.C.No.151/2010 on the file of the Additional Sessions Court-II, Mavelikkara. The Sessions Court as per Annexure-A3 judgment dated 28.3.2015 had acquitted all the

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said co-accused persons. The case against the petitioner is re-numbered as S.C.No.819/2012 on the file of the Additional Sessions Court-III, Mavelikkara. It is also submitted that now the entire disputes between the petitioner and the 2nd respondent (defacto complainant) and the 3rd respondent have been fully resolved and that the contesting respondents 2 & 3 have sworn to affidavits stating these aspects and also stating that they have no objection in quashment of the impugned criminal proceedings against the petitioner. It is in the light of these aspects that the petitioner has sought prayer for quashment of the impugned criminal proceedings.

2. Heard Sri.R.Sunil Kumar, learned counsel for the petitioner, Sri.Benny A.Thomas, learned counsel for contesting respondents 2 & 3 and the learned Public Prosecutor appearing for the 1st respondent-State.

3. On a perusal of Annexure-A3 judgment of acquittal it can be seen that the court below found from the evidence of PW6 (R2) that the alleged incident occurred on 2.6.2009 at 8:45 p.m.

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whereas in Ext.P2 FI Statement and Ext.P5 FIR, the case projected by the prosecution is that the incidents had occurred on 3.6.2009 at 10:30 am. PW6 (R2) stated that the names of culprits are stated in FI statement; this was done as per the information received from the people who gathered there. According to PW6 somebody alighted from a van and attacked him and PW7 and his bike was damaged and that the culprits had vanished from the place of occurrence. PW6 deposed clearly that he did not identify any of the weapons allegedly used by the culprits. The court below found that in the evidence of PW6, there is nothing to connect the accused in the crime. Though PW2 stated about the alleged incident that somebody had alighted from the van and made attack, PW2 clearly stated that none of the accused attacked them. PW7 deposed that he stated to have given the names of the culprits as per the information received from the people who gathered at the time of occurrence. PW8 is an independent witness who did not support the prosecution case and he deposed that though he had stated the names of culprits, none among such culprits are therein

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the attack of the accused. PW3 is an independent witness, who also did not support the prosecution case. PW4 is also an independent witness who also turned hostile to all the material statement. The court below found that the injured and all the independent witness did not support the prosecution to connect the accused with the alleged criminal culpability. Accordingly, the court below acquitted all the above said accused. From a reading of Annexure-A3 judgment it is clear that the substratum of prosecution case is demolished by the acquittal of the co-accused. No meaningful purpose will be subserved in continuing the impugned criminal proceedings as the petitioner has to go abroad. Moreover, the matter has been settled as between the petitioner and the defacto complainants (R2 & R3) as borne out by Annexure-A2 affidavit filed by respondents 2 & 3. In view of the legal principles laid down by this Court in Moosa v. Sub Inspector of Police reported in 2006 (1) KLT 552 (FB), and in Ashraf Kancheriyil v. State of Kerala reported in 2011 (2) KHC 812 and in Abbas v. State of Kerala reported in 2013 (2) KLT 976 =2013 KHC 336 and in the

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light of the acquittal of the co-accused and settlement between the parties, the prayer of the petitioner could be considered.

4. Accordingly, the impugned Annexure-A1 Final Report filed in Crime No.274/2009 of Mavelikkara Police Station which has now led to the pendency of S.C.No.819/2012 on the file of the Additional Sessions Court-III, Mavelikkara and all further proceedings arising therefrom pending against the petitioner shall stand quashed. The petitioner shall produce a certified copy of this order before the Station House Officer concerned as well as before the court below concerned.

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

ALEXANDER THOMAS,
Judge.

bkn/-