

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

Cr1.MC.No. 1387 of 2012 ()

AGAINST THE JUDGMENT IN SC 12/2010 of ADDL. SESSIONS COURT, FAST
TRACK (ADHOC-I), KOZHIKODE DATED 30-08-2010

CRIME NO. 375/1995 OF KUTTIYADI POLICE STATION, KOZHIKODE

PETITIONER/ACCUSED NO.13:

DR. SAIDALAVI, AGED 52 YEARS,
S/O.MOIDEENKUTTY HAJI, KOTTA HOUSE, DANY MAHAL,
KURUPATH, KONDOTTY, KOZHIKODE DISTRICT

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA

RESPONDENT/COMPLAINAT:

THE STATE OF KERALA
(THE STATION HOUSE OFFICER)
KUTTIYADI POLICE STATION, KOZHIKODE REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT. V.H.JASMINE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
26-02-2015, ALONG WITH CRL.MC. 1222/2013, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

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APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1 TRUE COPY OF THE JUDGMENT DATED 30-08-2010 PASSED IN SESSION CASE NOS.687 OF 2008, 359 OF 2009 AND 12 OF 2010 BY THE ADDITIONAL SESSION'S COURT, FAST TRACK(ADHOC-1), KOZHIKODE.

ANNEXURE A2 TRUE COPY OF THE FINAL REPORT SUBMITTED BY THE CIRCLE INSPECTOR OF POLICE, KUTTIADI DATED 20-06-2002 IN CRIME NO.375 OF 1995 OF KUTTIADY POLICE STATION KOZHIKODE.

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.S. TO JUDGE

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K. RAMAKRISHNAN, J.

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&

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Dated this the 26th day of February, 2015.

O R D E R

Crl.M.C.No.1387/2012 was filed by the 13th accused in Crime No.375/1995 of Kuttiady police station while Crl.M.C.No.1222/2013 was filed by the original 10th accused in the same crime for quashing the proceedings on the basis of the order of acquittal passed against the other accused persons under section 482 of the Code of Criminal Procedure.

2. The common case of the petitioners in both the cases was that the petitioner in Crl.M.C.No.1222/2013 was working as a doctor in Portland Hospital at Calicut and the petitioner in Crl.M.C.No.1387/2012 was working as a doctor in Mercy Hospital at Kondotty. The case of the prosecution was that on 13.12.1995 the original accused 1 and 2 in the crime in furtherance of their common intention to assassinate the accused in Aboobacker murder case had manufactured and carried explosive substances and while handling the same in a careless and negligent manner, an explosion had taken place in

a room used by the ladies in the mosque and thereby they sustained injuries and with the help of accused 4 to 7, they were taken to different hospitals and attempted to conceal the crime and accused 8 to 14 in the original crime have concealed the real factum of injuries and did not inform the same to the police and gave treatment and the original first accused died on account of the injuries and thereby all of them have committed the offences punishable under sections 201, 286, 304(A) of the Indian Penal Code and section 9(1)(b) of Explosives Act and sections 3 and 5 of the Explosive Substances Act. Accused 1 to 4, 5 to 9 and 11 appeared on different occasions and the cases against them were committed to the Sessions Court and they were numbered as SC.Nos.687/2008, 359/2009 and 12/2010 and the case against the 4th accused was committed and numbered as SC.No.529/2010 on the file of the Sessions Court, Kozhikode respectively and all those cases were made over to Additional Sessions Court (Adhoc-1), Kozhikode for disposal and the learned Additional Sessions Judge by judgments dated 30.8.2010 and 18.3.2011 disposed of those cases by acquitting the accused persons

holding that the prosecution has not proved the case against the accused beyond reasonable doubt. Since the petitioners in both the cases did not appear, the case against them was split up and refiled and after taking coercive steps, since their presence could not be procured, the same was transferred to long pending cases as L.P.No.136/2010. Since the substratum of the prosecution case has been shattered and the main accused were already acquitted by the court below, no purpose will be served by proceeding with the case against the petitioners in both the cases, who are doctors and gave only first aid and the injured (accused 1 and 2 in the original First Information Report) were referred to Medical College Hospital. Thereafter, the original first accused in the crime died later. So according to them, no purpose will be served by proceeding with the case against them and they are entitled to get the benefit of the judgments and so they have no other option except to approach this Court seeking the following reliefs:

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- i. call for the records pursuant to Annexure A1 and A2 in Crime No.375 of 1995 of Kuttiyadi police station and quash Annexure A2 final report as against the

petitioner herein and all proceeding pursuant to that as against the petitioner herein.

ii. to grant such other relief in favour of the petitioner as this Hon'ble Court may deem fit to grant.

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Hence it is most respectfully prayed that this Hon'ble Court may be pleased to quash the entire proceedings as against the petitioner/accused No.2 in L.P.No.136/2010 on the files of the JFCM Court, Nathapuram and further proceedings initiated in pursuance thereto in the interest of justice.

3. Heard the learned counsel appearing for the petitioners in both the cases and the learned Public Prosecutor.

4. The counsel for the petitioners in both the cases submitted that as per the directions of this Court, both the petitioners surrendered and the case was refiled and now pending as SC.No.1209/2014 on the file of the IVth Additional Sessions Court, Kozhikode and C.P.No.319/2014 on the file of the Judicial First Class Magistrate Court-I, Nadapuram respectively. Both the counsel submitted that since the Additional Sessions Court had already found that the prosecution

has failed to prove the case and the main accused, who alleged to have involved in the manufacture and careless handling of the explosion substances, have been acquitted, no purpose will be served by proceeding against the petitioners as the allegation against them was that they suppressed the cause of injury and given treatment to the injured and the allegation against them was that they committed the offence under section 201 of the Indian Penal Code. They have no case that they were responsible for the handling of the explosive substances or they were responsible for the preparation or manufacture of the articles. So they are entitled to get the benefit of the dictum laid down in the decision reported in **Moosa v. Sub Inspector of Police** (2006 KHC 180). Further, they have not committed any offence and being the doctors when the patients approached them, they gave only first aid and thereafter they were referred to higher hospital. In fact, they had gone to several hospitals and they came to the hospitals mentioned above as well. So, according to the petitioners, they are entitled to get the relief prayed for in both the petitions.

5. On the other hand, the learned Public Prosecutor

opposed both the petitions on the ground that merely because some of the accused persons were acquitted is not a ground for quashing the proceedings and they are expected to face trial and the nature of evidence to be adduced also will be different and it is for the court to independently appreciate the evidence and have to an independent conclusion regarding the involvement of the petitioners.

6. It is an admitted fact that on the basis of the paper report, Crime No.375/1995 of Kuttiady police station was registered and after investigation, it was revealed that the original first accused Majeed and the present first accused Gafoor had manufactured the explosive substances and while they were handling the same in a negligent manner, an explosion had taken place and they sustained injuries and the real cause of incident was suppressed and with the help of accused 3 to 9, they were taken to different hospitals and with the help of accused 10 to 14 treatments were given, but later the original first accused died and thereafter final report was filed against 13 accused persons including the present petitioners alleging offences under sections 201, 286, 304 A of the Indian Penal

Code and section 9(1)(b) of the Explosives Act and sections 3 and 5 of the Explosive Substances Act. Since the original first accused, Majeed died during the crime stage itself, charge against him was abated and after deleting the name of the original first accused, the accused were re-arrayed as accused 1 to 13 of which, accused 1 to 3, 5 to 9 and 11 appeared and their cases were committed to the Sessions Court and then tried by the Additional Sessions Court (Adhoc-1), Kozhikode and they were acquitted by Annexure-A1 judgment dated 30.8.2010. The re-arrayed 4th accused appeared and his case was also committed and he was tried in SC.No.529/2010 and he was also acquitted by the Additional Sessions Judge by virtue of Annexure-A2 judgment in Crl.M.C.No.1222/2013. In both these cases, on the basis of the evidence, the Additional Sessions Judge came to the conclusion that the prosecution had failed to prove the case against the accused persons as the place of occurrence was different and no sanction was obtained for filing the case under the Explosives and Explosive Substances Act and all of them were acquitted.

7. The case against the petitioners in both the cases was

that they had given treatment to the injured suppressing the real cause of injury and thereby they along with the other doctors arrayed as accused committed the offence under section 201 of the Indian Penal Code. Since some of the doctors, who were tried for the same offence, have been acquitted by the Additional Sessions Judge after trial holding that the prosecution has failed to prove the case against them, even if trial is conducted, there is no possibility of any different conclusion being arrived as against the present petitioners also. Further, only if the main offence is proved, then only the question of concealing that offence arises so as to convict the present petitioners for the offence under section 201 of the Indian Penal Code. By virtue of the judgments mentioned above, the Additional Sessions Judge had come to a definite conclusion on the basis of the evidence that the prosecution has failed to prove the case against the main accused persons, who were said to have committed the offence of using explosives in a negligent manner and acquitted them of that charge. Once those accused persons were acquitted, then there is no question of convicting the doctors, who treated the injured for the offence under section 201 of the Indian Penal

Code, arises.

8. It is true, in the decision reported in **Moosa's case** (cited supra), the Full Bench of this Court has held that merely because co-accused were acquitted is not a bar for trial of the case of other accused persons and this Court cannot quash the proceedings invoking the power under section 482 of the Code on that ground. But, in the same decision, the Full Bench has observed that, if substratum of the prosecution case has been shattered and no purpose will be served by proceeding against the other accused persons, then in order to avoid abuse of process of court, the power under section 482 can be invoked to quash the proceedings. In this case, a reading of the judgments of the trial court as against the persons, who were tried and acquitted, show that the court has come to the conclusion that the prosecution has failed to prove the case against the main accused person and acquitted the main accused person and also some other persons including some doctors, who alleged to have concealed the real cause and treated them as well. So under the circumstances, the substratum of the prosecution case has been shattered and no

purpose will be served by allowing the prosecution to proceed as against the present petitioners, who were also placed in the same position of the doctors, who have been tried and acquitted by the court below after appreciation of evidence and there is no possibility of a different conclusion being arrived at as regards the petitioners as well. Further, since the main offence has been found to be not proved, there is no question of convicting the petitioners for the offence under section 201 of the Indian Penal Code arises. So this Court feels that it is a fit case where power under section 482 of the Code has to be invoked to quash the proceedings as against the present petitioners giving them the benefit of order of acquittal given to the co accused as substratum of the prosecution case has been shattered and no purpose will be served by proceeding with the case as against them and that will amount to abuse of process of court. So both the petitions are allowed and the case against the petitioners who are accused in S.C.No.1209/2014 of IVth Additional Sessions Court, Kozhikode and C.P.No.319/2014 of Judicial First Class Magistrate Court, Nadapuram (Crime No.375/1995 of Kuttiady Police Station) respectively are

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quashed.

Office is directed to communicate a copy of this order to
the concerned court immediately.

Sd/-
K. RAMAKRISHNAN, JUDGE.

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/true copy/

P.S to Judge

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