

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

Crl.MC.No. 2950 of 2015 ()

**CC.NO. 850/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -I,HOSDURG
CRIME NO. 220/2011 OF AMBALATHARA POLICE STATION , KASARGOD DISTRICT**

PETITIONER(S)/2ND AND 3RD ACCUSED:

1. NITHIN @ KUTTAN.P.V., AGED 27 YEARS,
S/O.THAMBAN, PULIKKODAN VEEDU, ERALAL,
ELLAL, KALICHANDUKAM, THAYANNUR GRAMAM,
KASARAGOD DISTRICT.
2. UNAIS.K.M, AGED 23 YEARS,
S/O MOIDEEN, VENGACHERI HOUSE, VENGACHERI,
KALICHANDUKAM, THAYANNUR GRAMAM,
KASARAGOD DISTRICT.

**BY ADVS.SRI.P.K.SUBHASH
SMT.K.REEHA KHADER**

RESPONDENTS/STATE/DEFACTO COMPLAINANT:

1. STATE,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.
2. JABIR.M.A,AGED 30 YEARS,
S/O.ABDUL RAHIMAN, ERALAL HOUSE, KALICHANDUKKAM,
THAYANUR VILLAGE, VELLARIKUNDU TALUK,
KASARAGOD DISTRICT-671 121.

**R1 BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB
R2 BY ADV. SRI.A.ARUNKUMAR**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 28-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 2950 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX A1 A TRUE COPY OF THE F.I.R.IN CRIME NO.220 OF 2011 OF
 AMBALATHARA POLICE STATION, KASARAGOD DISTRICT**
- ANNEX-AII A TRUE COPY OF THE FINAL REPORT**
- ANNEX-AIII A TRUE COPY OF THE JUDGMENT DATED 13-2-2015 IN C.C.850 OF
 2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,HOSDURG**
- ANNEX-AIV A TRUE COPY OF THE SAID AFFIDAVIT OF THE 2ND RESPONDENT
 ENDORING THE FACTUM OF COMPOUNDING OF THE SAID
 OFFENCES AND THE STATEMENT OF THE DISPUTES.**

RESPONDENT(S)' ANNEXURES: **NIL**

/TRUE COPY/

P.S.TO JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C.No. 2950 of 2015

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Dated this the 28th day of May, 2015

O R D E R

The petitioners herein are accused Nos.2 and 3 in Anx.A-1 Crime No.220/2011 of Ambalathara Police Station, Kasargod district, registered for offences under Secs.143, 147, 148, 341, 323, 324, 506(ii) read with Sec.149 of the I.P.C. The Police, after investigation submitted the impugned Anx.A-II final report/charge sheet, which led to the pendency of Calendar Case, C.C.No. 327/2013 on the file of the Judicial First Class Magistrate's Court-I, Hosdurg. The prosecution allegation is that on 27.5.2011, at about 19.30 Hrs., the accused themselves constituted into an unlawful assembly at Nambiarkochi in Thayannur village and in furtherance of their common object, the accused restrained the 2nd respondent defacto complainant and attacked him with hand and iron rod and caused simple hurt after threatening him and thereby committed the above said offence.

2. The petitioners herein, who are A-2 and A-3, did not

participate in the trial and the case against them was split up. The remaining accused Nos.A-1, A-4, A-5 and A-6, who faced trial, were acquitted by Anx. A-III judgment. It is further stated that the entire disputes between the petitioners and the 2nd respondent defacto complainant have been settled as borne out by Anx.A-IV affidavit. The petitioners, who were the remaining accused, later appeared before the court below and the matter was re-numbered as C.C.No.327/2015 on the file of the Judicial First Class Magistrate's Court-I, Hosdurg. The plea is that the substratum of the prosecution case is shattered by the acquittal of the co-accused as per Anx.A-III judgment. The plea for quashment is made on the basis of decisions of this Court in the cases 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, reported in 2013 (2) KLT 976, and in view of the settlement arrived at between the parties as per Anx. A-IV affidavit.

3. Heard Sri.P.K.Subhash, learned counsel for the petitioners, Sri.A.Arun Kumar, learned counsel appearing for the 2nd respondent and the learned Public Prosecutor appearing for the 1st respondent State of Kerala.

4. The learned counsel for the petitioners reiterated the submissions and contentions in the CrI.M.C. The learned counsel appearing for the 2nd respondent submitted that the matter has been settled and that the 2nd respondent has no further grievances against the petitioners and that the prayer for quashment of the impugned criminal proceedings may be considered in the light of the acquittal of the co-accused and the settlement arrived at between the parties as borne out by Anx.A-IV affidavit. The learned Public Prosecutor submitted that the prayer for quashment of the impugned criminal proceedings may be considered in the light of the legal principles laid down by the Apex Court and by this Court on the subject.

5. Taking into consideration the facts and circumstances of this case, it can be seen from a perusal of Anx. A-III judgment that PW-1, the injured, deposed before the court below that he sustained simple hurt and that since there was no sufficient light, he could not identify the culprits and that the impugned FIR was lodged due to misunderstanding against the accused. PWs-2 and 3, who were the alleged eye witnesses to the incident, deposed that they did not see the incident as alleged by the prosecution. PW-1 stated that the

matter was settled out of court. The prosecution has not examined any other ocular witnesses to prove the incident. On a meticulous assessment of the materials on record and the evidence adduced, the court below came to the conclusion that there is not even an iota of evidence to connect the said accused with the crime and accordingly, acquitted the other accused as per Anx.A-III judgment. From the perusal of Anx.A-III judgment it can be seen that the substratum of the prosecution case has been shattered by the acquittal of the co-accused. This Court in the decisions 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*, reported in 2013 (2) KLT 976, has held that where the substratum of the prosecution case is shattered by the previous judgment of acquittal of the co-accused, that could be taken into account while considering the request to quash the impugned criminal proceedings against the accused concerned. Moreover the matter has been settled between the parties.

6. In this view of the matter, this Court is of the considered opinion that the prayer for quashment of the impugned proceedings against the petitioners could be considered in the light of the legal

principles laid down by this Court and the settlement arrived at between the parties. Accordingly, it is ordered in the interest of justice that the impugned Anx. A-II final report/charge sheet filed in Anx.A-1 Crime No.220/2011 of Ambalathara Police Station, Kasargod Police Station, which has led to the pendency of C.C.No.850/2011 (now pending as C.C.No. 327/2015) on the file of the Judicial First Class Magistrate's Court-I, Hosdurg and all further proceedings arising therefrom pending against the petitioners stand quashed.

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

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge