

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

Crl.MC.No. 3000 of 2015

**CC 537/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KANNUR.
CRIME NO. 87/2006 OF VALAPPATTANAM POLICE STATION.**

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PETITIONER/ACCUSED :

**KHALID K., AGED 29 YEARS,
S/O KUNHIPARI, KAAVAYINTAVIDA (HOUSE),
CHELERI, KANNUR DISTRICT.**

**BY ADVS.SRI.G.S.KRISHNAN KARTHA
SRI.LIJIN THAMBAN**

RESPONDENT(S)/COMPLAINANT & STATE:

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. BAPPU, S/O KANJIRAN, AGED 65 YEARS,
THACHAN HOUSE, KADACVATH VAYAL,
PAPPINISSERI, KANNUR DISTRICT, PIN - 670561.**

**R1 BY PUBLIC PROSECUTOR SMT.SREENA GEORGE
R2 BY ADV. SRI.M.RETHEESHKUMAR**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 26-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A1: CERTIFIED COPY OF THE FIR NO.87/2006 OF VALAPPATTANAM
POLICE STATION.

AANNEXURE A2: JUDGMENT IN C.C.537/2012 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT II KANNUR (CERTIFIED COPY).

ANNEXURE A3: AFFIDAVIT SWORN BY THE 2ND RESPONDENT .

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.3000 of 2015

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Dated this the 26th day of May, 2015

O R D E R

The petitioner herein is the accused No.6 in Annexure A1 Crime No.87/2006 of Valapattanam Police Station registered for offences under Sections 143, 147, 148, 448, 435, 427 r/w Section 149 of the IPC. As the petitioner and some other accused did not make available for trial the case against them was split up and the trial has proceeded against A1 and A8 in CC No.537/2012 on the files of the Judicial First Class Magistrate's Court II, Kannur. The court below as per Annexure A2 judgment dated 19/04/2014 acquitted the said two accused. The case against the petitioner is now pending as CC No.578/2014 before the Judicial First Class Magistrate's Court -II, Kannur. It is further stated that the 2nd respondent who is the de facto complainant has settled the matter with the petitioner as born out by Annexure A3 affidavit sworn to by him which is produced in this case. It is accordingly submitted that

the substratum of the prosecution case has been shattered by the acquittal of the co-accused as per Annexure A2 judgment and that therefore the impugned criminal proceedings against the petitioner may be quashed. The submissions are also made to interdict the impugned criminal proceedings on the ground of the aforementioned settlement between the parties.

2. Heard, Sri.Krishnan Kartha learned counsel appearing for the petitioner and Sri.M.Ratheesh Kumar learned counsel appearing for the 2nd respondent/ de facto complainant and the learned Public Prosecutor appearing for the 1st respondent.

3. The 1st respondent reiterated the submissions in the Crl.M.C. The learned counsel for the 2nd respondent/ de facto complainant submitted that in the light of the acquittal of the co-accused and in the light of the settlement arrived at between the parties this Court may consider the quashment and that the de facto complainant is not interested any further to continue with the impugned criminal proceedings against the petitioner. The learned Public Prosecutor submitted that the prayer for quashment may be considered by this Court in the light of the legal position settled in this regard. It is further submitted by

the Public Prosecutor on instructions that there are no criminal cases pending against the petitioner.

4. On a perusal of Annexure A2 judgment it can be seen that PW1 who is the de facto complainant deposed in evidence before the court below by stating that he cannot say any over act of any of the accused and that he had not seen A1 committing any Act. PW2, who is the wife of PW, though supported the prosecution during chief examination, later did not support during cross examination and stated that she has not seen the accused No.8 in the incident. PW3 to PW5 who are the eye witnesses also stated that they cannot identify any of the miscreants. The prosecution witnesses also stated that the case is settled. In this view of the matter the court below found that there is absolutely no evidence to prove any of the prosecution allegation against A1 and A8 in the crime and accordingly acquitted said accused. From a perusal of the said judgment it can be seen that the substratum of the prosecution case has been shattered by the acquittal of the co-accused. Therefore in the light 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, the prayer for quashment could be considered in the light of the acquittal of the co-accused. Moreover the disputes between the parties have been settled as born out by Annexure A3 affidavit sworn to by contesting respondent No.2. There are no other Criminal cases pending against the petitioner. In this view of the matter the impugned criminal proceedings pending against the petitioner in CC No. 578/2014 on the files of the Judicial First Class Magistrate's Court- II, Kannur arising out of Annexure A1 crime No. 87/2006 of Valapattanam Police Station and all further proceedings arising therefrom pending against the petitioner stand quashed in the interest of justice. Petitioner will produce certified copy of this order to the Station House Officer concerned and before the court below concerned.

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

Sd/- ALEXANDER THOMAS, JUDGE