

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

Crl.MC.No. 3109 of 2015

**C.C.NO.1159/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
KUNNAMANGALAM**

PETITIONER(S)/ACCUSED :

**YASER, AGED 26 YEARS,
S/O.MUHAMMED, PARAMBIL, CHAKKALAMKUNNU,
PAZHOOOR, KOZHIKODE DISTRICT.**

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S)/COMPLAINANT AND STATE :

**1. THE SUB INSPECTOR OF POLICE,
MAVOOR POLICE STATION, KOZHIKODE DISTRICT- 673 001.**

**2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM- 682 031.**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 29-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

ANNEXURE-A1: CERTIFIED COPY OF THE JUDGMENT DATED 30.08.2015 IN C.C.NO.448/2012 PASSED BY THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS, KUNNAMANGALAM.

ANNEXURE-A2: TRUE COPY OF THE MEMO DATED 21.04.2014 ISSUED BY THE JUDICIAL FIRST CLASS MAGISTRATE, KUNNAMANGALAM.

ANNEXURE-A3: TRUE COPY OF THE FINAL REPORT IN C.C.NO.1159/2013 OF THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, KUNNAMANGALAM.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3109 of 2015

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Dated this the 29th day of May, 2015

O R D E R

The petitioner herein is the sole accused in Calendar Case, C.C.No.1159/2013 on the file of the Judicial First Class Magistrate's Court, Kunnamangalam. The petitioner and others were accused in Crime No.378/2011 of Mavoor Police Station, for offences alleged under Secs.143, 147, 148, 323, 324 and 149 of the I.P.C. The Police, after investigation submitted the impugned Anx.A-3 final report/charge sheet in the above said crime, which led to the pendency of Calendar Case, C.C.No.448/2012 on the file of the above said Magistrate's court. As the petitioner did not appear before the court below, the case against him was split up and the trial as against the other remaining 13 accused proceeded, which led to Anx.A-1 judgment dated 30.10.2013 in C.C.No.448/2012 of the Judicial First Class Magistrate's Court, Kunnamangalam, which resulted in the acquittal of all the remaining 13 accused. The case against the petitioner has now been re-filed as C.C.No.1159/2013

on the file of the above said Magistrate's court. Taking up the plea that the substratum of the entire prosecution case has been shattered by the acquittal of the co-accused as per Anx.A-1 judgment, the petitioner has instituted this Crl.M.C. with the prayer to quash the impugned criminal proceedings pending against him.

2. Heard Sri.Sunny Mathew, learned counsel for the petitioner and the learned Public Prosecutor appearing for the official respondents.

3. From a perusal of Anx.A-1 judgment, it can be seen that PW-1, who gave statement to the Police regarding the alleged attack, deposed before the court below against the prosecution and stated that he did not know the persons, who assaulted him and that he has settled the matters and he had no subsisting grievances against the accused. Though PW-2 stated that he along with PWs 1 and 3 were assaulted by some persons, etc., he deposed before the court below that he did not know the persons who assaulted them and that the matter has been settled and that they have no further grievances against the accused persons. PW-3 categorically stated that he had not witnessed the incident in this case at all. PWs 4 to 6 also, who were stated to be the witnesses to the incident, turned

hostile and deposed before the court below that they had not witnessed the incident at all. The court below therefore came to the conclusion that on an appraisal of the entire evidence on record that there are no materials to prove the offences alleged against the said 13 accused persons. Accordingly, the court below acquitted all of them. Therefore, it is crystal clear that the substratum of the prosecution case remains totally demolished by the acquittal of the these 13 co-accused persons as per Anx.A-1 judgment.

4. In this view of the matter, this Court is of the considered opinion that 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 should 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.A-3 final report/charge sheet filed in Crime No. 378/2011 of Mavoor Police Station, which has led to the pendency of C.C.No.1159/2013 on the file of the Judicial First Class Magistrate's Court, Kunnamangalam and all further proceedings arising therefrom pending against the petitioner stand quashed.

The Crl.M.C. is disposed of as above.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge