

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

Crl.MC.No. 3184 of 2015

**SC 10/2011 OF SUB COURT, QUILANDY DATED 01-08-2013
CRIME NO. 291/2006 OF PAYYOLI POLICE STATION , KOZHIKODE**

PETITIONER(S)/ACCUSED:-:

**MUHAMMED RAFI, AGED 44 YEARS,
S/O.IBRAHIM, UNIKARIKANDY HOUSE, MUTHAYAM,
KOLANI P.O., KADALLOOR.**

BY ADV. SMT.K.DEEPA (PAYYANUR)

RESPONDENT(S)/STATE/COMPLAINANT:-:

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT.S.HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 02-06-2015, ALONG WITH CRL.MC.NO.3195/2015, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:**

PJ

Crl.MC.No. 3184 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES

**ANNEXURE I. PHOTO COPY OF THE FINAL REPORT OF CRIME NO.291/2006 OF THE
PAYYOLI POLICE STATION, KOZHIKODE.**

**ANNEXURE II. TRUE COPY OF THE JUDGMENT DATED 01.08.2013 IN S.C.NO.10/2011
OF THE ASSISTANT SESSIONS JUDGE KOYILANDY.**

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3184 & 3195 of 2015

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Dated this the 2nd day of June, 2015

O R D E R

The petitioner in Crl.M.C.No.3184/2015 is the 6th accused in Crime No.291 /2006 of Payyoli Police Station, registered for offences punishable under Secs.143, 147, 148, 323, 307 read with Sec.149 of the I.P.C. The petitioner in Crl.M.C.No. 3195/2015 is the accused No.1 in the aforementioned crime. The Police, after investigation submitted the impugned Anx.I final report/charge sheet in the impugned crime. The gist of the prosecution case is that the accused persons in the company of other unidentified persons had formed themselves into an unlawful assembly on 21.8.2006 at about 6.30 p.m. at a place called Thikkodi Meethalekandi in the Thikkodi village of Koyilandy Taluk, near the gateway of the Juma Mazjid of Thikkodi Meethal, in furtherance of their common object of such assembly, attempted to commit murder of CW2 with deadly weapons after arriving at the spot in a motor cycle. The petitioners herein were not available for trial and the case against them were

split up. The trial as against two other accused had proceeded in S.C.No.10/2011 on the file of the Assistant Sessions Court, Koyilandy. The said court below as per Anx.II judgment rendered on 1.8.2013 in S.C.No.10/2011 acquitted the said accused holding that there is no evidence to connect the accused with the criminal charges.

2. The case against the petitioner in Crl.M.C.No.3184/2015 has now been re-numbered as S.C.No.1050/2013 on the file of the above said Assistant Sessions Court. The case against the petitioner in Crl.M.C.No.3195/2015 has been included in the long pending list as L.P.C.No.15/2012 on the file of the Assistant Sessions Court, Koyilandy. Both the petitioners seek quashment of the impugned criminal proceedings pending against them on the ground that the substratum of prosecution case has been shattered by the aforementioned acquittal of the co-accused as per Anx.II judgment.

3. Heard Smt.K.Deepa, learned counsel for the petitioners and the learned Public Prosecutor appearing for the respondent-State of Kerala.

4. On a perusal of Anx.II judgment it can be seen that

though PW-1 had (defacto complainant) had deposed about the attacks suffered by him, regarding the identify of particular persons in respect of the alleged act of violence, the said witness had given a different version. The court below in paragraph 14 of Anx.II judgment observed that at first he stated that such and such persons did such and such acts upon him and later he clearly stated that he cannot precisely say as to who had attacked him. In the re-examination, he stated that what he spoken in the chief examination had been true and that matter had been settled. The court below clearly held that the witness does not have a clear stand on what happened regarding the incidents. Probabilities may be there that he is won over by the accused persons, either upon promises of threats and that the witness does not seem to speak the truth. At any rate, the court below held that PW-1 could not give any cogent version regarding the identity of the accused persons, who attacked him. PW-11 who is the mother of PW-1, stated that she had not seen the incident and that she only identified chappal worn by her son (PW-1). Other witnesses were mainly official witnesses. After meticulous appraisal of the evidence on record, the court below held that the evidence adduced in the case not are sufficient

to connect the accused persons with the crime alleged against them and acquitted the other three accused. On a perusal of the Anx.II judgment, 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 could 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.1 final report/charge sheet filed in the impugned Crime No. 291/2006 of Payyoli Police Station, which has led to the pendency of C.C.No.1050/2013 on the file of the Assistant Sessions Court, Koyilandy, against the petitioner in Crl.M.C.No.3184/2015 and L.P.No.15/2012 on the file of the said

Assistant Sessions Court, Koyilandy, against the petitioner in Crl.M.C.No.3195/2015 and all further proceedings arising therefrom pending against these petitioners herein stand quashed.

The Crl.M.Cs. are disposed of as above.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge