

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

Crl.MC.No.3226 of 2015

**CC NO.1593/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I,KANNUR.
CRIME NO.279/2009 OF KANNAPURAM POLICE STATION.**

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PETITIONER/ACCUSED:

**PRASHOB.V.V AGED 30 YEARS,
S/O.BASKARAN,KUNHIVALAPPIL HOUSE,
OTHAYAMADAM,CHERUKUNNU,KANNUR DISTRICT.**

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

RESPONDENTS/COMPLAINANT & STATE:

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM.**
- 2. P.K.ABDULLA,S/O.MUHAMMED KUNHI,
AGED 30 YEARS,KANNAPURAM,CHERUKUNNU.P.O,
KANNUR DISTRICT,PIN-670301.**

**R1 BY PUBLIC PROSECUTOR SMT.S.HYMA.
R2 BY ADV.SRI.M.RETHEESHKUMAR.**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 03-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

pk

Crl.MC.No.3226 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE A1:-CERTIFIED COPY OF THE FIR NO.279/2009 OF KANNAPURAM
POLICE STATION.**

**ANNEXURE A2:-JUDGMENT IN CC 1968/2012 OF JFCM COURT I KANNUR
(CERTIFIED COPY).**

**ANNEXURE A3:-JUDGMENT IN CC 85/2011 OF JFCM COURT I KANNUR
(CERTIFIED COPY).**

ANNEXURE A4:-AFFIDAVIT SWORN BY THE 2ND RESPONDENT.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3226 of 2015

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Dated this the 3rd day of June, 2015

O R D E R

The petitioner herein is the 2nd accused in the impugned Anx. A-1 FIR in Crime No.279/2009 of Kannapuram Police Station registered for offences punishable under Secs.143, 147, 148, 341, 323, 324 and 325 read with Sec.149 of the I.P.C. The brief of the prosecution case is that on 15.12.2009 at about 19.45 hrs. the petitioner at Pallichal Cherukunnu, along with the other accused persons wrongfully restrained CW-1 (R-2 defacto complainant) and voluntarily caused grievous hurt to him and thereby committed the above said offences. As the petitioner was not available for trial as he was employed abroad, the case against the petitioner was split up. Trial as against A-4 and A-5 proceeded in C.C.No.85/2011 on the file of Judicial First Class Magistrate's Court-I, Kannur, which led to the said court acquitting those accused as per Anx.A-3 judgment rendered on 29.10.2012. Later trial as against A-1, A-3 to A-6 also proceeded in trial in C.C.No.1968/2012 on the file of the Judicial

First Class Magistrate's Court-I, Kannur, which led to the acquitting of those accused also as per Anx.A-2 judgment rendered on 7.11.2014. The case against the petitioner herein has now been re-numbered as C.C.No.1953/2014. This Crl.M.C. has been filed seeking quashment of the impugned criminal proceedings against the petitioner in the light of the acquittal of the co-accused as per Anxs.A-3 and A-2 judgments.

2. Heard Sri.Krishanan Kartha, learned counsel for the petitioner, Sri.M.Radhakrishnan learned counsel for the 2nd respondent and learned Public Prosecutor appearing for the 1st respondent-State of Kerala.

3. On a perusal of Anx.A-3 judgment it can be seen that though PW-1 defacto complainant stated generally about the incident of attack, he did not support the prosecution case that it was the accused who had attacked him. According to him, he could not identify the assailants at the time of the incident. It has been brought to the notice of the court below that the disputes between the petitioner and the 2nd respondent have been settled between the parties. On a consideration of the materials on record and the evidence adduced, the court below held that there is no evidence

whatsoever to connect the said co-accused with the impugned criminal charges. Anx.A-2 judgment dated 7.11.2014 also shows that PW-1 defacto complainant clearly stated that he does not know who had attacked him and that he had not mentioned the names of the persons before the doctor. He also stated that he had not mentioned the names of the accused persons before the Police also. On a consideration of the materials on record and the evidence adduced, the court below held that there is no iota of evidence to connect the petitioners therein with the criminal charges and acquitted them. On a reading of the Anxs.A2 and A-3 judgment it can be seen that the substratum of the prosecution case has been shattered by the acquittal of the co-accused in these cases. In this view of the matter this Court of the considered opinion that no meaningful purpose would be subserved by the continuance of the impugned criminal proceedings against the petitioner herein. 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. Moreover, the disputes between the petitioner and the 2nd defacto complainant have been settled as borne out by Anx.A-4 affidavit before this Court, wherein the defacto complainant has stated that he has no objection in the quashment of the impugned criminal proceedings against the petitioner. Taking into consideration these aspects 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 final report/charge sheet filed in the impugned Anx.A-1 FIR in Crime No.279/2009 of Kannapuram Police Station, which has led to the pendency of C.C.No.1593/2014 on the file of the Judicial First Class Magistrate's Court-II, Kannur, 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

