

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

Cri.MC.No. 1908 of 2012 ()

C.C.NO.267/2015 of JUDICIAL FIRST CLASS MAGISTRATE COURT, KUNNAMANGALAM

CRIME NO.76/2005 OF KUNNAMANGALAM POLICE STATION, KOZHIKODE

PETITIONER(S)/ACCUSED NO.3:

**RENJITH,
S/O.BHASKARAN, AGED 45 YEARS, VINTERGREEN HOUSE,
NAGARAMCHALIL, KALOOR P.O., NOOLPUZHA VIA,
SULTHANBATHERI.**

BY ADV. SRI.K.M.FIROZ

RESPONDENT(S)/COMPLAINANT AND STATE:

- 1. SUNIL KUMAR T,
S/O.GOPALAN, KUNNAMANGALAM,
KOZHIKODE DISTRICT - 673 005**
- 2. THE STATE OF KERALA,
REPRESENTED (BY THE STATION HOUSE OFFICER
KUNNAMANGALAM POLICE STATION, KOZHIKODE)
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - 682 031**

R2 BY PUBLIC PROSECUTOR SMT.V.H.JASMINE.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 27-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS:

**ANNEXURE A1 : A TRUE COPY OF THE FINAL REPORT DATED 11/8/2005
IN CRIME NO.76 OF 2005 OF KUNNAMANGALAM POLICE
STATION.**

**ANNEXURE A2 : A TRUE COPY OF THE JUDGMENT PASSED BY THE
LEARNED JUDICIAL FIRST CLASS MAGISTRATE
KUNNAMANGALAM IN CC.NO.697 OF 2005 DATED
27/2/2008.**

RESPONDENTS' EXHIBITS:

NIL

//True Copy//

P.A. To Judge

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K. Ramakrishnan, J.

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Crl.M.C.No.1908 of 2012

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Dated this, the 27th day of March, 2015.

ORDER

This is an application filed by the third accused in C.C.No. 86/2008 of Judicial First Class Magistrate Court, Kunnamangalam in Crime No.76/2005 of Kunnamangalam police station and sole accused in L.P.No.1/2009 to quash the proceedings as against him on the ground of acquittal of other accused persons under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that petitioner has been arrayed as third accused in Crime No.76/2005 of Kunnamangalam police station which was registered on the basis of a private complaint filed by first respondent against three persons including the petitioner alleging offences under Sections 468, 420 and 120B read with Section 34 of Indian Penal Code which was forwarded to the police for investigation by the Judicial First Class Magistrate, Kunnamangalam under Section 156(3) of Code of Criminal Procedure. The allegation in the complaint was that the accused conspired together with

an intention to cheat the de facto complainant and the petitioner, who is the third accused in this case, handed over his cheque to the second accused who in turn handed over the same to the first accused and first accused put his signature in the cheque as though it was the cheque drawn from his account and handed over the same to the de facto complainant which, when presented was dishonoured for the reasons "signature and name differs" and thereby, all of them have committed for the offence punishable under Sections 468, 420, 120B read with Section 34 of Indian Penal Code. After investigation, final report was filed and it was taken on file as C.C.No.697/2005 on the file of the Judicial First Class Magistrate Court, Kunnamangalam. Since the present petitioner could not appear, the case against him was split up and the case was proceeded against accused Nos. 1 and 2 and since the matter has been settled between the parties and the complainant did not support the case of the prosecution by Annexure A2 Judgment, accused Nos.1 and 2 were acquitted under Section 248(1) of Code of Criminal Procedure and the case against the present petitioner was split up and refiled as C.C.No.86/2008 and since he did not appear, the case was

transferred to register of long pending cases as L.P.No.01/2009. Later, as directed by this court, he appeared before the court below and it was refiled as C.C.No.267/2015 and he was enlarged on bail. Since the matter has been settled between the parties and case against the main accused persons ended in acquittal, there is no scope for any conviction of the present petitioner and proceeding with the case against the petitioner will only amount to abuse of process of court. The substratum of the prosecution case has been shattered on account of the acquittal of other accused persons. So, the petitioner has no other remedy except to approach this court seeking the following relief:

"To call for the records pursuant to Annexure A1 in Crime No.76 of 2005 of Kunnamangalam Police Station, Kozhikode and all proceedings pursuant to it in C.C.No.86 of 2008 on the files of Judicial First Class Magistrate Court, Kunnamangalam leading to LP No.1 of 2009 initiated against the petitioner and quash Annexure I and stay all proceedings pursuant thereto."

3. Heard the Counsel for the petitioner Smt.Shajna Firoz representing the Counsel for the petitioner Shri.Firoz K.M. and Public Prosecutor Smt.V.H.Jasmine appearing for the

second respondent. In spite of notice issued, first respondent did not enter appearance.

4. The Counsel for the petitioner submitted that the main allegation was that the cheque of the third accused was handed over to the first accused and the first accused had forged his signature and handed over the cheque to the complainant as though it is a cheque drawn from his account towards discharge of his liability to the complainant and thereby, all of them have committed the offence punishable under Sections 468, 420 and 120B read with Section 34 of Indian Penal Code. Since the matter has been settled and main accused persons were acquitted, there is no purpose in proceeding with the case. So, she prayed for allowing the application.

5. On the other hand, the learned Public Prosecutor submitted that acquittal of other accused persons is not a ground for quashing the proceedings.

6. It is an admitted fact that Crime No.76/2005 of Kunnamangalam police station was registered on the basis of a private complaint filed by the first respondent against three accused persons including the petitioner before the Judicial

First Class Magistrate Court, Kunnamangalam alleging offences under Sections 468, 420 and 120B read with Section 34 of Indian Penal Code which was forwarded to the police for investigation by the learned magistrate under Section 156(3) of Code of Criminal Procedure. After investigation, Annexure A1 final report was filed against all the three accused persons alleging the above said offences and it was taken on file as C.C.No.697/2005 on the file of the Judicial First Class Magistrate Court, Kunnamangalam. Accused Nos. 1 and 2 alone appeared in that case and the present petitioner who was arrayed as third accused did not appear. So, the learned magistrate decided to proceed against accused Nos.1 and 2 with the trial of the case. During trial, the de facto complainant was examined as PW1 and he did not support the case of the prosecution. He had further stated that the matter has been settled between the parties. So, examination of other witnesses were dispensed with and 313 examination was also dispensed with and the learned magistrate acquitted the other accused persons namely., accused Nos. 1 and 2 under Section 248(1) of Code of Criminal Procedure vide Annexure A2 Judgment. The case against the present petitioner was

split up and refiled as C.C.No.86/2008 and thereafter, since he did not appear, it was transferred to register of long pending cases as L.P.No.01/2009. As directed by this court, the petitioner surrendered before the court below and the case was refiled as C.C.No.267/2015 and he was enlarged on bail.

7. In the decision reported in **Moosa Vs. Sub Inspector of Police [2006 (1) KLT 552]**, the Full Bench of this court has observed that acquittal of other accused persons is not a ground for quashing the proceedings as against the co-accused who did not face trial invoking the power under Section 482 of Code of Criminal Procedure. But, in the same decision, the Full Bench has observed that, if the High Court is satisfied that the substratum of the prosecution case has been shattered and no purpose will be served by trying the accused who did not face trial and it will only amount to abuse of process of court and waste of judicial time, then, court can invoke the power under Section 482 of Code of Criminal Procedure to quash the proceedings as against the accused person who did not face trial on the basis of acquittal of other accused persons. In this case, the case of the prosecution was that third accused had handed over his cheque to the

second accused which in turn was handed over to the first accused who filled up the cheque and put his signature and handed over the same to the complainant as though it was issued from his account maintained in the bank and this was done, according to the complainant, due to the conspiracy hatched between the three accused persons including the petitioner. Further allegation was that when the cheque was presented, it was dishonoured for the reason "name and signature of the drawee differs" and when it was known to the complainant that first accused had no account and the cheque was issued from the account of the third accused, he had filed the above complaint. It is seen from Annexure A2 Judgment that though the de facto complainant was examined as PW1, he did not support the case of the prosecution and further stated that the matter has been settled between the parties. It is on that basis, examination of other witnesses and examination of the accused who appeared namely., accused Nos.1 and 2 under Section 313 of Code of Criminal Procedure were dispensed with and accused Nos.1 and 2 were acquitted for the offences alleged under Section 248(1) of Code of Criminal Procedure and they were set at liberty. Since the

main accused persons have been acquitted on the basis of settlement and as the complainant did not support the case of the prosecution and the only allegation against the present petitioner was that he had handed over the cheque leaf issued to him from the account maintained by him in the bank and there is no allegation that he had induced the complainant that the cheque given by first accused was that of the first accused. Even if the case is allowed to continue, no purpose will be served as the substratum of the prosecution case has been shattered and PW1 himself had not supported the case of the prosecution. It was on that basis that the other accused persons were acquitted against whom the main allegation of forgery and cheating were alleged. So, under the circumstances, this court feels that no purpose will be served by proceeding with the case as against the present petitioner in view of the acquittal of the other accused persons on the basis of settlement arrived at between the parties and in spite of notice issued, the first respondent did not appear which shows that he has no interest in prosecuting the case as well and it is a fit case where the power under Section 482 of Code of Criminal Procedure has to be invoked to quash the

proceedings as against the petitioner giving him the benefit of the order of acquittal of other accused persons.

So, the petition is allowed and further proceedings in C.C.No.267/2015 (old C.C.No.86/2008 split up from C.C.No.697/2005 in Crime No.76/2005 of Kunnamangalam police station) of Judicial First Class Magistrate Court, Kunnamangalam as against the petitioner is quashed.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge