

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

Cr1.MC.No.2964 of 2014 ()

AGAINST THE ORDER/JUDGMENT IN CC 1242/2014 of J.M.F.C.-I,
NORTH PARAVUR.

&

AGAINST THE JUDGMENT IN CC 220/2000 of J.M.F.C. - I,
NORTH PARAVUR, DTD 17.11.2004 IN CRIME NO.8/1995 OF
BINANIPURAM POLICE STATION, ERNAKULAM.

PETITIONER(S)/5TH ACCUSED:

NOUSHAD, AGED 44 YEARS,
S/O.SAIDU MUHAMMED, KOCHUPARAMBIL VEETIL, PANAYIKULAM,
ALANGAD, ERNAKULAM DISTRICT.

BY ADVS.SRI.R.KRISHNAKUMAR (CHERTHALA)
SRI.P.A.IBRAHIM

RESPONDENT(S)/COMPLAINANT & VICTIMS:

1. STATE OF KERALA,
REP. BY SUB INSPECTOR OF POLICE (CRIME NO.8/1995),
BINANIPURAM POLICE STATION, BINANIPURAM,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682 031.

2. THOMAS,
S/O.PAULOSE, THALIYAN VEETIL, VATHAKKAD KARA,
THURAVOOR - 688 532.

3. BINEESH,
S/O.SUKUMARAN, PUTHUVELI VEETIL, VALLUVALLI KARA,
KOTTUVALLI, NORTH PARAVUR-683 518.

4. LALU,
S/O.SUDHAKARAN, MADAKKARAPPILLI VEETIL, MANJUMEL,
ELOOR VILLAGE, ERNAKULAM DISTRICT-683 501.

R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
02-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

:2:

Crl.MC.No. 2964 of 2014 ()

APPENDIX

PETITIONER(S) ' EXHIBITS:

ANNEXURE-A1: COPY OF THE FIR IN CRIME NO.8/1995 OF BINANIPURAM POLICE
STATION DT.19.1.1995.

ANNEXURE-A2: COPY OF THE FINAL REPORT IN CRIME NO.8/1995 OF BINANIPURAM
POLICE STATION.

ANNEXURE-A3: COPY OF THE JUDGMENT DT.17.11.2004 IN C.C.NO.220/2000 ON
THE FILE OF THE HON'BLE JUDICIAL MAGISTRATE OF THE FIRST
CLASS, NORTH PARAVUR.

RESPONDENT(S) ' EXHIBITS:

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P.A. to Judge

SS

K. RAMAKRISHNAN, J.

Crl. M.C.No.2964 of 2014

Dated this the 2nd day of December, 2015

ORDER

This is an application filed by the 5th accused in Crime No.8/1995 of Binanipuram police station to quash the proceedings in C.C.No.1242/2014 of Judicial First Class Magistrate Court, North Paravur, on the ground that co-accused were acquitted under Section 482 of the Code of Criminal Procedure (hereinafter called the Code).

2. It is alleged in the petition that the petitioner has been arrayed as 5th accused in Crime No.8/1995 of Binanipuram police station on the basis of the statement given by the defacto-complainant, alleging that the petitioner along with four other persons formed themselves into an unlawful assembly with deadly weapons and inflicted injuries on CWs 1 to 3 and also caused damage to the articles and thereby they have committed the offence

punishable under Section 143, 147, 148, 341, 323, 324, 427 read with Section 149 of Indian Penal Code. After investigation final report was filed before the Judicial First Class Magistrate Court, North Paravur, where it was originally taken on file as C.C.No.220/2000. Since the petitioner was working abroad in connection with his employment, he did not appear and accused Nos. 1 to 4 appeared and faced trial and after considering the evidence, the learned magistrate by Annexure-A3 order acquitted the accused under Section 248(1) of the Code of Criminal Procedure, alleging that the prosecution has failed to prove their case. The case against him was split up and refiled as C.C.No.736/2004 and thereafter it was transferred to the register of long pending cases as L.P.No.8/2010. When he came to know about the pendency of the case, he surrendered before the court and it was refiled as

C.C.No.1242/2014 and he was granted bail. A perusal of Annexure-A3 judgment will go to show that, the substratum of the prosecution case has been shattered and no purpose will be served by proceeding with the case against the 5th accused. Further in the first information statement, names of none of the accused persons were mentioned, though it was mentioned that there was some previous enmity between them, it was on account of that enmity that the present incident occurred. So no purpose will be served by proceeding with the case against the petitioner. So he is entitled to get the benefit of the order of acquittal of other accused persons and so he prayed for quashing the proceedings.

3. Heard the counsel for the petitioner Sri.Krishnakumar (Thiruvalla) and Smt.Seena Ramakrishnan, Public Prosecutor appearing for the first

respondent. Though notice has been served on respondents 2 to 4, they remained absent.

4. The counsel for the petitioner submitted that in view of the dictum laid down in the decision reported in **Moosa v. Sub Inspector of police [2006(1) KLT 552 (F.B.)]** and **T.K.Abbas v. State of Kerala (ILR 2013(1) Kerala 861) = 2013(2) KLT 976)**, no purpose will be served in proceeding with the case against the petitioner, as the substratum of the prosecution case has been shattered on account of the acquittal of other accused persons. Even as per the allegations accused Nos.1 to 4 were the main accused persons and they were found to be not guilty by the court below on the basis of the presumption of evidence, so he prayed for allowing the application.

5. On the other hand, learned Public Prosecutor submitted that he was an absconding accused and the

acquittal of other accused is not a ground for quashing the proceedings as against the non-appearing accused.

6. It is an admitted fact that on the basis of the statement given by the defacto-complainant, the 2nd respondent herein, Annexure-1 crime was registered as Crime No.8/1995 of Binanipuram police station against five identifiable persons, alleging offences under Section 143, 147, 148, 341, 323, 324, 427 read with Section 149 of the Indian Penal Code. After investigation, Annexure-2 final report was filed against five identifiable persons including the petitioner alleging the same offences mentioned in Annexure-A1. After filing the final report, the case was taken on file as C.C.No.220/2000 on the file of the Judicial First Class Magistrate Court, North Paravur, and it is seen from Annexure-A3 judgment that accused Nos.1 to 4 in the case entered appearance and faced trial and after

fulfledged trial, they were acquitted by the court below under Section 248(1) of the Code of Criminal Procedure. The case against the 5th accused who is the petitioner herein was split up and refiled as C.C.No.736/2004. It is also seen from the allegations in the petition itself that, since the petitioner did not appear, the case was originally transferred to the register of long pending cases as L.P.No.8/2010 and thereafter it was refiled on surrender of the petitioner as C.C.No.1242/2014 and it is pending before the Judicial First Class Magistrate Court, North Paravur.

7. In the decision reported in **Moosa v. Sub Inspector of Police, [2006(1) KLT 552 (F.B.)]**, the Full Bench of this court held that, merely because co-accused were acquitted after trial, is not a ground for quashing the case against the non-appearing accused. But in the same decision it has been observed that, if the court is satisfied,

that on the basis of evidence, the prosecution case has been shattered in the earlier case and no purpose will be served by proceeding the case against the non-appearing accused, then court has got power under Section 482 of the Code of Criminal Procedure to quash the proceedings as against the non-appearing accused, giving the benefit of acquittal of other co-accused in the case. The same view has been reiterated in the decision reported in **T.K. Abbas v. State of Kerala (ILR 2013(1) Kerala 861) = 2013(2) KLT 976).**

8. It is seen from Annexure-A1 first information report that at the time when the first information statement was given, the defacto-complainant had not identified any of the accused persons by name, but it was only mentioned that five identifiable persons who can be identified on sight. It is only after investigation, these accused persons were

implicated as accused. It is also seen from Annexure-A3 judgment that, court below had disbelieved the case of PWs 1 and 2, who were the defacto-complainant and injured in the case respectively and came to the conclusion that, their evidence is not inspiring confidence for the purpose of coming to the conclusion that prosecution was able to establish the case against the accused persons beyond reasonable doubt as except the interested testimonies of PWs 1 and 2, no independent witnesses were examined in this case. So court below while appreciating the evidence, came to the conclusion that, it is not safe to rely on the evidence of PWs 1 and 2 without corroboration from independent witnesses and came to the conclusion that the case of the prosecution is not believable and acquitted the accused persons. Further there is contradictions in the evidence of PWs 1 and 2 regarding the number of persons

who entered into the bus and attacked PWs 1 and 2. According to them only four persons entered into the bus, whereas five accused persons are now implicated in the case.

9. Considering the circumstances, since the substractum of the prosecution case has been lost and no purpose will be served by allowing the petitioner to face the trial again on the basis of the same set of facts and nature of evidence adduced, no purpose will be served and that will only amount to abuse of process of court and wastage of judicial time. So this court feels that, it is a fit case where the power under Section 482 of the Code can be invoked to quash the proceedings as against the petitioner, who is the 5th accused in the case, giving him the benefit of the order of acquittal passed by the trial court as against all the other co-accused persons, who have been charge sheeted along

with the petitioner as accused in the case. So the petition is allowed and further proceedings in C.C.No.1242/2014 (Crime No.8/1995 of Binanipuram police station), pending before the Judicial First Class Magistrate Court, North Paravur, 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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P.A. to Judge

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