

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

**MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937**

**Crl.MC.No. 4308 of 2015**  
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**C.P.NO.119/1998 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, ATTINGAL**  
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**PETITIONER(S)/A3 :**  
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**JAYAPRAKASH S., AGED 56 YEARS,  
S/O.LATE PONNAMMA, VILAYIL VEEDU, NEAR KAKKATTUMADAM,  
MARKET ROAD, ATTINGAL, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.SUMAN CHAKRAVARTHY  
SMT.K.R.RIJA**

**RESPONDENT(S)/COMPLAINANT :**  
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**STATE OF KERALA,  
REPRESENTED BY ITS PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM- 682 031.**

**BY PUBLIC PROSECUTOR SMT.R.GITHESH**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 13-07-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:**

Msd.

**APPENDIX**

**PETITIONER(S)' ANNEXURES :**

**ANNEXURE A: TRUE COPY OF THE JUDGMENT DATED 22.10.1998 IN  
S.C NUMBER 226/1995.**

**ANNEXURE B: TRUE COPY OF THE JUDGMENT DATED 28.01.2009 IN  
S.C.NO. 925/2007.**

**RESPONDENT(S)' ANNEXURES :**

**NIL**

**//TRUE COPY//**

**P.A.TO JUDGE.**

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No.4308 of 2015

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Dated this the 13<sup>th</sup> day of July, 2015

ORDER

The petitioner herein was arrayed as accused No.3 in Crime No.314/1993 of Attingal Police Station registered for offences punishable under Sections 323, 324, 307, 302 read with Section 34 of IPC. The brief of the prosecution case is that all the accused (four in numbers) stabbed the deceased with the bottle due to previous enmity in front of a bar. Accused Nos.1 and 4 in the final report faced trial before the 1<sup>st</sup> Additional Sessions Court, Thiruvananthapuram in SC No.226/1995 and by Annexure A judgment the learned Sessions Judge after elaborate consideration of the evidence on record disbelieved the entire prosecution witnesses, and even the prosecution case and accordingly acquitted accused 1 and 4. The learned counsel for the petitioner has taken attention of this Court to paragraph 16, 17 and 18 of Annexure A judgment rendered on 22/10/1998. Later accused No.2 in the crime also faced trial before the Additional Sessions Judge (Fast Track-III),

Thiruvananthapuram in S.C.No.925/2007 in which also the accused was acquitted with the finding that the witnesses did not turn up and that there is nothing to believe in the prosecution story as per Annexure B judgment rendered on 28/01/2009. The learned counsel for the petitioner has taken attention of this Court to paragraphs 5,6,7 and 10 of Annexure B judgment. The contention of the petitioner is that going by Annexures A and B judgments there cannot be any conviction against the petitioner and that the proceedings against him is liable to be quashed. But that such a prayer is not advanced by him in the present proceedings for the simple reason that one of the offences involved is the capital offence under Section 302 of the IPC.

2. It is further pointed out by the learned counsel for the petitioner that immediately after the incident the petitioner had obtained employment abroad and he left for such employment and that the petitioner was never put to notice that he was made an accused in the said crime for reason that only A1 and A2 are the only named accused in the FIR. The prayer of the petitioner is that he seeks to appear before the court below in which event he may be released on bail. It is pointed out that the petitioner would

appear before the competent court below concerned and that he would submit appropriate application for bail and produce Annexures A and B judgments to convince that court about such contentions, etc.

In a matter like this, this Court is not inclined to exercise its extra ordinary jurisdiction conferred under section 482 of the Cr.P.C. and issue any directions to the court below, on matters which are eminently within their domain. Accordingly this Crl.M.C. is closed with liberty to the petitioner to proceed in the manner known to law.

Sd/- ALEXANDER THOMAS, JUDGE

MJL

