

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

Crl.MC.No. 3304 of 2014 ()

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CC 1054/2013 of JUDICIAL FIRST CLASS MAGISTRATE COURT, OTTAPPALAM
CRIME NO. 242/2001 OF SHORNUR POLICE STATION , PALAKKAD DISTRICT
=====**

PETITIONER:

**ANOOP
S/O.VALTERNADHAN, 254-B, RAILWAY QUARTERS
GANESHGIRI, SHORNUR, OTTAPALAM TALUK
PALAKKAD DISTRICT**

BY ADV. SRI.P.JAYARAM

RESPONDENT:

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

Addl.R2. SELVARAJ

**S/O. ANNAMALA MUTHALIAR, METTIL VEEDU
MUTHALIAR THERUVU, SHORNUR 679 121.IS IMPEADED AS ADITIONAL R2
AS PER ORDER DATED 25.06.2014 IN CRL.M.Z NO.5806/2014**

R1 BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24-02-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

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| ANNEXURE A1 | CERTIFIED COPY OF FIRST INFORMATION STATEMENT AND FIRST INFORMATION REPORT IN CRIME NO 242 OF 2001,SHORNUR POLICE STATION |
| ANNEXURE A2 | CERTIFIED COPY OF FINAL REPORT IN CRIME NO 242 OF 2001 SUBMITTED BEFORE JUDICIAL FIRST CLASS MAGISTRATE,OTTAPALAM IN C.C NO 742/2001 BY SHORNUR POLICE |
| ANNEXURE A3 | CERTIFIED COPY OF THE TESTIMONY OF PW1-SELVARAJ DATED 19-05-2009 IN C.C NO 742/2001,JUDICIAL FIRST CLASS MAGISTRATE,OTTAPALAM |
| ANNEXURE A4 | CERTIFIED COPY OF THE DEPOSITION DATED 19-05-2009 OF PW2-SASI IN C.C NO 742/2001 JUDICIAL FIRST CLASS MAGISTRATE,OTTAPALAM |
| ANNEXURE A5 | CERTIFIED COPY OF THE DEPOSITION DATED 19-05-2009 OF PW3-SURESH IN C.C NO 742/2001,JUDICIAL FIRST CLASS MAGISTRATE,OTTAPALAM |
| ANNEXURE A6 | CERTIFIED COPY OF THE DEPOSITION DATED 19-05-2009 OF PW4-MOHANDAS IN C.C NO 742/2001 JUDICIAL FIRST CLASS MAGISTRATE,OTTAPALAM |
| ANNEXURE A7 | CERTIFIED COPY OF THE JUDGMENT DATED 30-09-2009 IN C.CNO 742/2001,ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE,OTTAPALAM |
| ANNEXURE A8 | CERTIFIED COPY OF THE TESTIMONY DATED 05-03-2012 OF PW1-SELVARAJ IN C.C NO 728/2009,ON THE FILES OF JUDICIAL FIRST CLASSMAGISTRATE,OTTAPALAM |
| ANNEXURE A9 | CERTIFIED COPY OF THE TESTIMONY DATED 05-03-2012 OF PW2-SASI IN C.C NO 728/2009,ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE,OTTAPALAM |
| ANNEXURE A10 | CERTIFIED COPY OF THE TESTIMONY DATED 05-03-2012 OF PW3-SURESH IN C.C NO 728/2009,ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE,OTTAPALAM |
| ANNEXURE A11 | CERTIFIED COPY OF THE TESTIMONY DATED 05-03-2012 OF PW4-VASUDEVAN NAIR,IN C.C NO. 728/2009,ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE,OTTAPALAM |
| ANNEXURE A12 | CERTIFIED COPY OF THE TESTIMONY DATED 05-03-2012 OF PW5-MOHANDAS,IN C.C NO 728/2009,ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE,OTTAPALAM |
| ANNEXURE A13 | CERTIFIED COPY OF THE JUDGMENT DATED 31-07-2013 IN C.C NO 728/2009,ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE,OTTAPALAM |

RESPONDENT'S EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.3304 of 2014

Dated this the 24th day of February, 2015

O R D E R

The petitioner herein is the original 2nd accused in C.C.No.742/2001 of the Judicial First Class Magistrate Court, Ottappalam. The offences involved in the case are under Sections 341, 427, 448, 506(II) read with 34 IPC. The original 3rd accused faced trial before the learned Magistrate in C.C.No.742/2001, and obtained a judgment of acquittal on 30.09.2009 on the finding that the prosecution case is not believable at all in view of the material inconsistencies and contradictions in the evidence of the material witnesses. In C.C.No.742/2001, the prosecution examined four witnesses and marked Exts. P1 to P4 and also MO1 to MO5 material objects. On an analysis of the entire evidence including the first informant, the learned Magistrate found thus in paragraph 8 of the judgment:

“Prosecution evidence in this case suffers a serious set back due to the non production of independent

witnesses who were very much available. The witnesses produced by the prosecution are only the defacto complainant and his close relatives who are admittedly on enmical terms with the accused. As such their evidence cannot be accepted without corroboration from independent witnesses. MO4 and MO5 series produced in this case are also clouded by reasonable doubt on the ground that there was a prior case charged against the accused for the very same offences alleged in this case. Taking into account all those aspects of the prosecution evidence this court holds that the prosecution could not prove its case beyond the point of reasonable doubt."

Thus, on the finding that there is no satisfactory and believable evidence, and also on the finding that the evidence given by the material witnesses is really unbelievable in view of the admitted hostility between the two groups the learned Magistrate acquitted the 3rd accused.

2. The case against the accused Nos.1 and 2 was split up and refiled as C.C.No.728/2009. In the said case the original first accused faced trial and he also obtained a judgment of acquittal from the learned Magistrate on 31.07.2013. In that case the prosecution examined five witnesses and marked Exts.P1 to P3, and MO1 to MO5 objects. The defence marked

Exts.D1 to D3. In the said case also the learned Magistrate found that the prosecution case is not believable and that the evidence given by the material witnesses is full of contradictions and inconsistencies. In paragraph 11 of the said judgment in C.C.No.728/2009 the learned Magistrate found thus:

"..... Therefore it becomes quite evident that at the time of evidence PW1 has given a totally deviated version from the statement given to the police which cannot be accepted especially on considering the fact that he is not in good terms with the accused."

again in paragraph 13, the learned Magistrate found thus:

" 13. Thus on a consideration of the evidence on record it can be seen that as discussed above the evidence of PWs 1 to 3 is found to be not believable one due to the contradictions in their version and also on considering the fact that they are not in good terms with the accused. PWs 1 and 2 are close relatives and even though there are a number of adjacent houses situated near to the place of occurrence and it is a thickly populated area prosecution has failed to produce an independent eye witness to prove the alleged incident. Therefore, according to me this is a fit case in which accused deserved to get benefit of doubt in this case due to lack of cogent evidence to prove the prosecution allegation."

3. The case against the petitioner was again split up and

refiled as C.C.No.1054/2013. The petitioner now seeks orders quashing the prosecution as against him in the said case on the ground that the very substratum of the prosecution case stands totally lost by the acquittal of the others at two stages.

4. On a perusal of the Annexure 7 and Annexure 13 judgments, and also the findings made by the learned Magistrate in the two cases, I find that the prosecution cannot in any manner improve the case as against the petitioner herein. The witnesses also cannot help the prosecution by improving their evidence in view of the very serious contradictions and inconsistencies found by the learned Magistrate on trial. At both the stages, the learned Magistrate made a definite finding that the prosecution case is not believable, and there is admitted hostility between the complainant and the accused. In view of the definite findings of the court below at the two stages acquitting the accused Nos.1 and 3, I find that continuance of the prosecution against the petitioner herein will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioner in C.C.No.1054/2013 of the Judicial First

Class Magistrate Court, Ottappalam will stand quashed under
Section 482 Cr.P.C.

Sd/-

P. UBAID, JUDGE

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