

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

Crl.MC.No. 4494 of 2015

C.P.NO.33/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, HOSDURG

CRIME NO. 1462/2011 OF HOSDURG POLICE STATION , KASARAGOD DISTRICT

PETITIONER(S)/ACCUSED NO.1 :

**ANDA @ ABDULLA, AGED 32 YEARS,
S/O.ABDUL RAHIMAN HAJI, RESIDING AT THAYAL HOUSE,
MUKKOD, CHITTARI VILLAGE, KASARAGOD DISTRICT.**

BY ADV. SRI.C.K.SREEJITH

RESPONDENT(S)/COMPLAINANT, STATE & DEFACTO COMPLAINANT :

- 1. STATION HOUSE OFFICER,
HOSDURG POLICE STATION,
KASARAGOD DISTRICT, PIN- 671 315.**
- 2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682 031.**
- 3. ABDUL LATHEEF, AGED 26 YEARS,
S/O.KUNHAHAMMED, RESIDING AT MALIKAYIL HOUSE,
JILANI NAGAR, MUKKOD IN PALLIKARE VILLAGE,
HOSDURG TALUK, KASARAGOD DISTRICT- 671 316.**

R1 & R2 BY PUBLIC PROSECUTOR SRI.R.GITHESH

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 17-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1: THE TRUE COPY OF THE FIR IN CRIME NO.1462/2011 ON
THE FILE OF HOSDURG POLICE STATION.**
- ANNEXURE A2: THE TRUE COPY OF THE FINAL REPORT IN
CRIME NO.1462/2011 ON THE FILE OF HOSDURG POLICE
STATION.**
- ANNEXURE A3: THE TRUE COPY OF THE JUDGMENT IN
CRL.M.C NO.6911/2014 DATED 08/01/2015.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No.4494 of 2015

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Dated this the 17th day of July, 2015

ORDER

The petitioner and six others were accused 1 to 7 respectively in impugned Annexure A-1 Crime No.1462/2011 of Hosdurg Police Station for offences registered under Sections 143, 147, 148, 324, 308, 326 r/w Section 149 of the IPC. The police after investigation had filed the impugned Annexure A2 final report/charge sheet in the impugned Annexure A1 crime 1462/2011 of Hosdurg Police Station. The petitioner did not appear before the jurisdictional Magistrate court concerned viz. Judicial First Class Magistrate Court No.I, Hosdurg whereas the other six accused appeared. The case pertaining to accused 2 to 7 were duly committed by the Magistrate court to Sessions Court wherein it is numbered as Sessions Case No.52/2013 on the file of the Court of Additional Sessions Judge-III, Kasaragod. As the aforestated committal was done by the Magistrate Court without including the present petitioner (A1), he was not arrayed as an accused in the aforestated

SC 52/2013. The entire disputes between all the seven accused in the crime and the de facto complainant were settled, whereby the de facto complainant had agreed for quashment of the impugned criminal proceedings against all the accused. Thereupon the petitioner and other six accused had preferred Crl.M.C.No. 6911/2014 before this Court praying for quashment of the impugned criminal proceedings on the ground of settlement. The said plea for quashment of the impugned criminal proceedings was allowed by Annexure-A3 order dated 08/01/2015 rendered by this Court in Crl.M.C.6911/2014. The fact that the petitioner was not actually included in the accused array in SC 52/2013 was not brought to the notice of this Court, though he was included in the accused array in the crime. This Court quashed the impugned criminal proceedings arising out of SC 52/2013 as per Annexure-A3 order. It is stated by the petitioner that though the petitioner's case was not initially committed to the Sessions Court, later jurisdictional Magistrate court concerned has numbered the committal proceedings pertaining to the petitioner in the impugned crime 1462/2011 of Hosdurg Police Station, as CP No.33/2015 on the file of Judicial First Class Magistrate Court No.I, Hosdurg. It is pointed

out that since what was quashed in Annexure A3 was technically the impugned criminal proceedings with reference to SC No.52/2013, due to this reason, the Magistrate court is treating as if the impugned criminal proceedings against the petitioner pertaining to Crime No.1462/2011 have not been closed. Therefore this Crl.M.C. has been filed seeking for quashment of the entire criminal proceedings pending against the petitioner in C.P.No.33/2015 on the file of the Judicial First Class Magistrate Court No.I, Hosdurg arising out of the impugned Annexure A1 Crime No.1462/2011 of Hosdurg Police Station. The petitioner prays that the impugned criminal proceedings in CP 33/2015 may be quashed in the light of Annexure A3 Order of this Court.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

3. Though what has been technically quashed in Annexure A3 is the impugned criminal proceedings referred to in SC 52/2013 of the Court of Sessions, Kasaragod, this Court is of the considered opinion that the very root of the impugned criminal proceedings arose out of the impugned Crime No.1462/2011 of Hosdurg Police Station. Therefore the quashment of the same criminal proceedings

may not really be necessary and warranted. However, for the sake of clarity and to ensure avoidance of any further doubts or confusion as to whether the impugned committal proceedings in CP 33/2015 now pending against the petitioner would legally survive, it will be only in the interest of justice that necessary orders are passed by this Court. The entire confusion has been brought about by the negligent omission on the part of the petitioner in not precisely stating before this Court in the previous round of litigation in Crl.M.C.6911/2014 that petitioner herein is the accused No.1 in the crime had not appeared before the Magistrate Court at that point of time and that his name was excluded from the committal proceedings which led to the institution of SC 52/2013 on the file of the Sessions Court, Kasaragod. This Court is of the considered opinion that in view of allowing of the plea for quashment on the ground of settlement as per Annexure A3, the very root of the impugned criminal proceedings will not survive. However, in the interest of justice it is clarified that all further proceedings arising out of the impugned Annexure-A2 final report/charge sheet filed in the impugned Annexure-A1 Crime No.1462/2011 of Hosdurg Police Station, which has led to the institution of CP No.33/2015 on

the file of the Judicial First Class Magistrate Court No.I, Hosdurg pending against the petitioner and all further proceedings arising therefrom pending against the petitioner will also stand quashed, in the light of Annexure-A3 judgment.

The Crl.M.C. stands finally disposed of accordingly.

Sd/- ALEXANDER THOMAS, JUDGE

MJL

