

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

CrI.MC.No. 5207 of 2015 ()

**CRIME NO. 705/CR/2012/KTM/EOW2 OF CBCID, KOTTAYAM
CC NO. 106/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PALA**

PETITIONER/ACCUSED NO.3 :

**THAMBI JACOB
S/O.K.C.CHACKO, AGED 56 YEARS
PEEDIYAKKAL HOUSE, KUNNAMANGALAM P.O.,
CALICUT.**

**BY ADVS.SRI.S.RAJEEV
SRI.ARUN B.VARGHESE
SRI.JAYKER K.S.**

RESPONDENTS/STATE & COMPLAINANT :

- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.**
- 2. THE DEPUTY SUPERINTENDENT OF POLICE,
CBCID, KOTTAYAM, PIN-686 001.**

R1 & R2 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 10-08-2015, ALONG WITH CRL.M.C. NO. 5132/2015, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:**

Mn

ALEXANDER THOMAS, J.

Crl.M.C.No.5207 Of 2015

Dated this the 25th day of May, 2015.

ORDER

The petitioner herein was the original 10th accused in Crime No.743/2004 of Valapattanam Police Station for offences registered under 143, 147, 436 & 427 r/w 149 IPC and Sec. 3 of the Explosive Substances Act, 2008. Political rivalry between the accused persons and defacto complainant appears to be the motive for the genesis of the crime. The petitioner, who was accused No.10 and another accused (A6) were not available for trial and the trial against the remaining eight accused had proceeded in S.C.No.1/2008 before the Sessions Court, Thalassery. After detailed trial all the accused were acquitted as per judgment in S.C.No.1/2008. Later, the trial as against one among the two other remaining accused (A6 in the Cime) had proceeded as per S.C.No.112/2011 on the file of the said Sessions Court. The court below found that there was absolutely no evidence to connect the said accused with the offence and accordingly acquitted accused No.6 in the crime as per Annexure-3 judgment in S.C.No.112/2011 on the file of the Sessions Court, Thalassery. The defacto complainant has also settled the

Crl.M.C.No.5207 Of 2015

matter with the petitioner and he has sworn to Annexure-A2 affidavit produced before this Court stating that the matter has been settled between them and that the 1st respondent defacto complainant has no objection for quashment of the impugned criminal proceedings against the petitioner. It is the light of these aspects the petitioner has sought the prayer for quashment of the impugned criminal proceedings.

2. Heard Sri.Ramesh Chander, senior counsel, instructed by Aneesh Joseph, learned counsel appearing for the petitioner and Sri.V.Tek Chand, learned counsel appearing for the 1st respondent-defacto complainant and the learned Public Prosecutor appearing for the 2nd respondent.

3. The petitioner has reiterated his submissions in the Crl.M.C. Sri.V.Tek Chand, learned counsel for the defacto complainant has submitted that the 1st respondent has no objection in granting the prayer for quashing the impugned criminal proceedings and that the matter has been settled and in view of the acquittal of the co-accused, no meaningful purpose will be subserved in the conduct the criminal proceedings against the petitioner.

CrI.M.C.No.5207 Of 2015

4. On a consideration of the totality of the facts and circumstance of the case, it is seen from Annexure-A3 judgment that the court below after trial found that CW1 was not available for trial as he was abroad. All the independent witnesses PWs 1 to 3 were examined, who did not support the prosecution case and that they deposed before the court that they did not see the incident and that they had not given the statement before the police etc. In this view of the matter, the court below also found that CW2, the remaining witness are reported to be dead and the available evidence of PWs 1 to 3 did not reveal any incriminating evidence against the accused and accordingly acquitted the above said co-accused in the case. Moreover, the matter has been settled as between the petitioner and 1st respondent-defacto complainant. On a perusal of Annexure-A3 judgment, it is seen that the substratum of prosecution case has been shattered by the acquittal of the co-accused. In view of the legal principles laid down by this Court in Moosa v. Sub Inspector of Police reported in 2006 (1) KLT 552 (FB), and in Ashraf Kancheriyil v. State of Kerala reported in 2011 (2) KHC 812 and in Abbas v. State of Kerala reported in 2013 (2) KLT 976 =2013 KHC 336 the prayer for quashment of the impugned criminal

Crl.M.C.No.5207 Of 2015

proceedings could be considered in this case. Moreover, since the matter has been settled between the petitioner and 1st respondent no meaningful purpose will be subserved in continuing the impugned criminal proceedings.

5. Accordingly it is ordered in the interest of justice that impugned criminal proceedings against the petitioner as per Annexure-A1 Final Report/Charge sheet filed in Crime No.743/2014 of Valapattanam Police Station which has led to the pendency of C.P.No.22/2014 on the file of the Judicial First Class Magistrate Court-II, Kannur and all further proceedings initiated against the petitioner shall stand quashed. The petitioner shall produce a certified copy of this order before the Station House Officer concerned as well as before the court below concerned.

With these observations and directions, this Crl.M.C stands finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-