

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

**PRESENT:**

**THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V**

**WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937**

**Crl.MC.No. 4241 of 2013 ()**  
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**L.P.C.NO.30/1994 of ADDL.CHIEF JUDICIAL MAGISTRATE, THALASSERY**

**PETITIONER(S)/2ND ACCUSED:**  
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**PUTHANPURAKKAL MOIDU, AGED 63 YEARS,  
S/O.ABDUL RAHIMAN, 'NAZAL', KOTTAYAM ANGADI,  
KOTTAYAM MALABAR.P.O., KOOHUPARAMBA, KANNUR DISTRICT.**

**BY ADVS.SRI.M.SASINDRAN  
SRI.A.ARUNKUMAR**

**RESPONDENT(S)/COMPLAINANT/STATE:**  
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- 1. STATE - REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM-682031.**
- 2. THE FOOD INSPECTOR,  
THALASSERY CIRCLE, THALASSERY-670101, KANNUR DISTRICT.**

**R1 BY PUBLIC PROSECUTOR SMT.LISHA M.G.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01-07-2015,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ANNEXURE-A1</b>    | <b>A TRUE COPY OF THE RELEVANT PAGES OF THE PASSPORT NO.J514260 OF THE PETITIONER</b>                                                                 |
| <b>ANNEXURE-A1(a)</b> | <b>A TRUE COPY OF THE RELEVANT PAGES OF THE PASSPORT NO.T736954 OF THE PETITIONER</b>                                                                 |
| <b>ANNEXURE-A1(b)</b> | <b>A TRUE COPY OF THE RELEVANT PAGES OF THE PASSPORT NO.L160121 OF THE PETITIONER</b>                                                                 |
| <b>ANNEXURE-A1(c)</b> | <b>A TRUE COPY OF THE RELEVANT PAGES OF THE PASSPORT NO.E3154358 OF THE PETITIONER</b>                                                                |
| <b>ANNEXURE-AII</b>   | <b>A TRUE COPY OF THE JUDGMENT DATED 21.3.1995 IN C.C.NO.12 OF 1992 OF THE ADDL.CHIEF JUDICIAL MAGISTRATE, THALASSERY</b>                             |
| <b>ANNEXURE-AIII</b>  | <b>A TRUE COPY OF THE ORDER DATED 30.09.1996 IN CRIMINAL REVISION PETITION (SUO MOTU) NO.140 OF 1995 OF THE PRINCIPAL SESSIONS JUDGE, THALASSERY.</b> |

**RESPONDENT(S)' EXHIBITS**  
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**NIL**

**//True Copy//**

**P.A. To Judge**

**Bb**

**RAJA VIJAYARAGHAVAN V, J.**

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**Crl.M.C.No.4241 of 2013**  
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**Dated this the 01<sup>st</sup> day of July, 2015**

**O R D E R**

This petition filed under Section 482 of Code of Criminal Procedure is preferred by the sole accused in L.P.C.No.30/1994 on the file of the Additional Chief Judicial Magistrate, Thalassery. Originally he was arrayed as the second accused in C.C.No.12/1992 of the Additional Chief Judicial Magistrate Court, Thalassery. Since the petitioner was employed abroad, he could not face the trial along with the first accused and therefore, case against him was split up and refiled.

2. The offence alleged against the petitioner who was arrayed as the second accused in the complaint is under Sections 16(1-A) (i) read with Section 2(1a) and under Section 7(i) of the Prevention of Food Adulteration Act, 1954 and under Rule 5 Appendix B.A.18.O6 of the Prevention of Food Adulteration Rules, 1955.

3. The gist of the complaint is that, on 12.11.1991, at 11.10.a.m., the Food Inspector, Thalassery Circle (Kadambur

Panchayath) inspected the Kadambur Super Market at Edakkad bearing Door No.K.P.IX/300 owned by the petitioner and purchased Bengal gram after complying with the necessary formalities for the purpose of sending it for analysis. After properly sampling and sealing the same, the sample was forwarded to the Public Analyst as per law. The report of the Public Analyst revealed that the food sample was insect infested. It was held by the Analyst that the sample did not confirm to the standards of Bengal gram as per the Prevention of Food Adulteration Rules. It was based on the said analysis report that the complaint was preferred. Later based on the application filed by the accused, the sample was forwarded to the Central Laboratory which also revealed that the food sample was insect infested.

4. Prosecution proceeded against the first accused who is the sales man and as per judgment dated 21.03.1995, the learned magistrate, on an appreciation of facts and law, came to the conclusion that the insect infestation noted by the Central Food Laboratory was subsequent to the taking of the samples and the accused cannot be held liable for it. It was noted by the learned magistrate that the sample was taken on 12.11.1991 and

it was analyzed by the Central Food Laboratory on 24.03.1992 which was after 4 months. Relying on various precedents and the evidence let in by the defence by examining DW1- Professor of Entomology and DW2 - Director of FSL, Pune, the learned magistrate came to the conclusion that the evidence revealed that the condition inside the sample bottle was conducive for multiplication of insects and the possibility of infestation of insects in the sample after taking of the sample cannot be ruled out. Holding so, the accused was extended the benefit of doubt and the first accused was acquitted under Section 255(1) of Code of Criminal Procedure.

5. It appears that the learned Sessions Judge, Thalassery initiated Suo Motu revision against the acquittal of the accused in C.C.No.12/1992 by the learned Additional Chief Judicial Magistrate Thalassery. After evaluating the facts and circumstances, the learned Sessions Judge in Crl.R.P.(Suo Motu) No.140/1995 came to the conclusion that in view of the admission made by PW1 and also the evidence adduced by the defense, it was not possible to hold that the view taken by the learned magistrate that there is a possibility of infestation of insects in the food article after taking of the sample was illegal.

The learned Sessions Judge concluded that the view taken by the magistrate is correct and there was also the possibility that on the date of taking of the sample, the sample was unadulterated. But, due to subsequent developments, the same happened to become insect infested. Holding so, the learned Sessions Judge has concluded that the order of acquittal passed by the learned magistrate against the first accused - sales man was proper and refused to interfere.

6. It is on the strength of the judgments passed by the learned magistrate as confirmed by the learned Sessions Judge that the second accused, the owner of the shop from where the samples were taken has come before this court contenting that the prosecution as against him is nothing, but, an abuse of process of court. According to the learned counsel, both the trial court as well as the revisional court has concluded that there is no merit in the complaint filed by the Food Inspector. Specific finding has been rendered by the learned magistrate as well as the learned Sessions Judge that the sampling conducted by the learned Food Inspector was not proper and that insect infestation might have happened after the sample was taken by the Food Inspector and prior to analysis of the sample by the Public

Analyst and also the Central Laboratory. In view of the said findings in Annexure 2 and 3 orders, the learned counsel for the petitioner has submitted that the case of the prosecution has been shattered and there was no rhyme or reason to proceed against the petitioner that too after a lapse of more than 2 decades. Reliance was also placed in Para.No.15 of the judgment reported in **Moosa Vs. Sub Inspector of Police [2006 (1) KLT 552]** and also **Ashraf Kancheriyil Vs. State of Kerala [2011 (2) KHC 812]** to substantiate his contention that the pendency of the prosecution as against the petitioner herein when the substratum of the case is demolished is nothing, but, an abuse of process of court.

7. I have heard the counsel for the petitioner and also the Public Prosecutor.

8. I have anxiously gone through the judgments rendered by the learned magistrate as well as the learned Sessions Judge. It appears to me that the contention raised by the petitioner is tenable and there is absolutely no reason why the petitioner who is the owner of the premises from where sample was taken should be proceeded against at this stage in view of Annexures 2 and 3 Judgments. According to me, the

conclusive findings by the learned magistrate and the learned Sessions Judge has sealed the issue in so far as the case is concerned. It cannot be said that it was due to the act of the petitioner or the salesman that insect infestation has taken place in the sample.

9. After having gone through the judgments passed I am of the considered opinion that this is one of those exceptional cases where prayer for invocation of the extraordinary inherent jurisdiction can be justifiably invoked to serve the ends of justice. The bona fides of the petitioner in approaching this court with the prayer cannot be doubted as the substratum of the case has been destroyed. I am of the considered opinion that premature termination of proceedings pending against the petitioner is warranted on the facts of this case.

This Criminal Miscellaneous case is allowed and proceedings as against the petitioner in L.P.C.No.30/1994 on the file of the Additional Chief Judicial Magistrate, Thalassery are quashed.

Sd/-  
**RAJA VIJAYARAGHAVAN V,  
JUDGE.**

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*[True copy]*

*P.A to Judge*