

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

Crl.MC.No. 4505 of 2014 ()

**AGAINST THE ORDER/JUDGMENT IN SC 93/2009 of SUB COURT, QUILANDY DATED
03-11-2011
CRIME NO. 179/2007 OF ELATHUR POLICE STATION , KOZHIKODE**

PETITIONER(S):

**ANOOP, AGED 23 YEARS,
S/O.ASOKAN, KUPPAKALTHIL HOUSE, ELATHOOR,
KOZHIKODE.**

BY ADV. SRI.MANJERI SUNDERRAJ

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY STATION HOUSE OFFICER,
ELATHOOR POLICE STATION,
CRIME FIR NO.179/2007, KOZHIKODE - 673 303.**
- 2. THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- * 3. RANJITH,
KUPPAKALTHIL HOUSE, ELATHOOR,
KOZHIKODE.**
- * 4. ABHILASH @ THAMPI,
KUPPAKALTHIL HOUSE, ELATHOOR,
KOZHIKODE.
(R3 & R4 IMPEADED AS ADDITIONAL RESPONDENTS AS PER ORDER DATED
27-08-2014 IN CRL M.A.NO.8094/2014)**

R1 & R2 BY SMT.P.MAYA, PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
06-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

DG

Crl.MC.No. 4505 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS:

ANNEXURE 1.

**JUDGMENT OF ACQUITTAL DATED 03.11.11 PASSED IN
SESSIONS CASE NO.93/2009 BY ASSISTANT SESSIONS
JUDGE, QUILANDY.**

RESPONDENT(S)' EXHIBITS

- NIL

//TRUE COPY//

P.A TO JUDGE

P. UBAID, J.

Crl.M.C.No.4505 of 2014

Dated this the 6th day of February, 2015

O R D E R

Eleven members of a large family were arraigned as accused in a prosecution under Sections 143,147,148,447,324 and 307 IP/C read with 149 IPC by the Elathur police in 2009. The said prosecution was initiated on the complaint of one member of the rival family. The other ten accused faced trial before the learned Assistant Sessions Judge, Koyilandy in S.C.No.93/2009, and obtained a judgment of acquittal on merits on the finding that the whole prosecution case is artificial. The case against the petitioner herein, who was the original 4th accused, was split up and refiled when he consistently remained absent during trial. Now, it is pending as S.C.No.1018/2012 before the learned Assistant Sessions Judge, Koyilandy. The petitioner seeks orders quashing the prosecution on the ground that the very substratum of the prosecution case stands totally lost by the acquittal of the others.

2. Annexure-I is copy of the judgment of the trial court in S.C.No.93/2009. It shows that the prosecution examined ten

witnesses in S.C.No.93/2009. It is not known why allegation was made under Section 307 IPC. The necessary elements for a prosecution under Section 307 IPC were not in fact in any manner brought out by the prosecution during trial. Practically, the prosecution could prove only some simple injuries on the body of PWs 1 and 2. One of the independent witnesses examined by the prosecution fairly conceded during trial that he had not in fact witnessed the incident. On an analysis of the evidence of PWs 1 and 2 who are the main witnesses, the learned trial Judge found thus, "On going through the evidence of PW1 in toto, it can be seen that he has made embellishments and improvements in his evidence to back up a good case. He had narrated about 2 more incidents of attack against him and his family members by the accused persons prior to this incident. According to him, one incident was on the previous day night against which his mother preferred a complaint and the second incident was at about 6 a.m. from the tarwad house in which he himself, his wife and mother sustained injuries, and both his mother and wife were admitted in Government General Hospital, Kozhikode against which he himself had preferred a complaint in

Elathur on the same day at about 8.30 a.m. But prosecution did not care to produce any material to substantiate the same. It is pertinent to note that PW1's wife and mother are the material witnesses who could have thrown sufficient light into the said aspect. But prosecution did not care to examine them for the reasons best known to them. PW2 also made improvements on various aspects including the starting of incident, manner of attack, place of injury etc. So, on going through the evidence of PWs 1 and 2, it can be seen that they have added embroidery to the prosecution story for the fear of being disbelieved".

2. PW4 examined by the prosecution as an independent witness stated before the court that he is not in a position to narrate the overtact committed by each accused, as there was a group fight. The learned trial Judge observed further, "admittedly there is bonafide dispute regarding right of the property between both the parties".

3. In para 24 of the trial court judgment, the learned trial Judge found thus: "On a threadbare analysis of the entire evidence and circumstances in this case it can be seen that the case of the defence of false implication by PWs 1 and 2 making

use of the minor injuries sustained in the altercation when they tried to attack the accused persons is more probable. In that circumstance, I can safely conclude that the evidence adduced on the side of the prosecution is highly uninspiring and is not sufficient to prove the guilt of the accused beyond reasonable doubt". Thus, on an examination of Annexure-I judgment by which the learned trial Judge acquitted the other accused, I find that the prosecution cannot in any manner improve the case as against the petitioner herein, if it goes to trial. Admittedly, the State has not preferred appeal against acquittal of the others in the main case. Thus, I find that the very substratum of the prosecution case stands totally lost. In such a situation, continuation of the prosecution case against the petitioner will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioner in S.C.No.1018/2012 before the learned Assistant Sessions Judge will stand quashed under Section 482 Cr.P.C.

Sd/-

P. UBAID, JUDGE

sd