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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

Crl.MC.No. 5776 of 2015 ()

AGAINST THE ORDER IN CC 1484/2014 of J.M.F.C.,MALAPPURAM
CRIME NO. 981/2014 OF MALAPPURAM POLICE STATION, MALAPPURAM

PETITIONER/ACUSED:

SWAMI SIVANANDAYOGI, AGED 49 YEARS
S/O.N.S.KUTTAPPAN NAIR, BRAHMANANDASWAMI
SIVAYOGY SIDHASRAMAM, ALATHUR, PALAKKAD.

BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI.SEENA RAMAKRISHNAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
02-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: CERTIFIED COPY OF THE FINAL REPORT IN C.C. NO.1484/2014 ON
THE FILE OF THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE,
MALAPPURAM.

ANNEXURE B: CERTIFIED COPY OF THE STATEMENT DATED 6/8/2014 GIVEN BY THE
DEFACTO COMPLAINANT.

ANNEXURE C: CERTIFIED COPY OF THE STATEMENT DATED 6/8/2014 GIVEN BY CW2.

ANNEXURE D: CERTIFIED COPY OF THE STATEMENT DATED 6/8/2014 GIVEN BY CW3.

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.S TO JUDGE

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ALEXANDER THOMAS, J.

CrI.M.C.Nos.5776, 5775, 5773 & 5774 Of 2014

Dated this the 2nd day of June, 2015.

ORDER

The petitioner in CrI.M.C.No.5776/2014 is the accused No.1, the four petitioners in CrI.M.C.No.5775/2014 are accused Nos.2, 4, 6 & 7, the petitioner in CrI.M.C.No.5773/2014 is accused No.3 and the sole petitioner in CrI.M.C.No.5774/2014 is accused No.5 respectively in Annexure-B FIR in Crime No.345/2010 of Valanchery Police Station registered for offences under Secs.143, 147, 148, 341, 323, 324, 506(ii) & 308 r/w 149 IPC. The brief of the prosecution case is that on 8.11.2010, the aforesaid petitioners had formed themselves into unlawful assembly and in furtherance of their common object had attacked the 2nd respondent-defacto complainant and caused injuries to him and that accused No.1 had inflicted injury on the head of the defacto complainant using a knife and the other accused persons had kicked and beaten him with hands and that if the 2nd respondent had not evaded, death could have resulted etc. The police after investigation submitted Annexure-C Final Report/Charge Sheet in the above said crime. The case against the sole petitioner in CrI.M.C.No.5776/2014 is

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now pending as S.C.No.49/2013 on the file of the Additional Sessions Court-II, Manjeri. The case against the four petitioners in Crl.M.C.No.5775/2014 is pending as S.C.No.378/2011 on the file of the Additional Sessions Court-II, Manjeri. The case against the petitioner in Crl.M.C.No.5773/2014 is pending as S.C.No.445/2013 on the file of the Additional Sessions Court-II, Manjeri and the case against the petitioner in Crl.M.C.No.5774/2014 is pending as C.P.No.41/2013 on the file of the Judicial First Class Magistrate Court, Tirur. It is pointed out that the accused persons and the 2nd respondent-defacto complainant are residents of the same locality and that there was earlier incident of attack between two rival groups in connection with election to the Local Self Government Institutions. Police investigation is also pending in that incident. It is alleged that political animosity of the earlier incident is the motive behind the present incident which led to the impugned crime. In view of the recurrence of the incident elders in the society including political leaders and respectable personalities of the locality intervened in the matter so as to bring harmony among the rival political groups. The petitioners (accused) and the 2nd respondent are now fully convinced of the necessity to keep cordial relationship among

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them so as to lead a peaceful life in the locality and continuance of the impugned criminal proceedings in this case will not in any way help the peace and harmony attained through such negotiations. Both parties have agreed to settle all their disputes and that the 2nd respondent has no objection in the quashment of the impugned criminal proceedings against the petitioners. Annexure-D is the affidavit sworn to by the 2nd respondent-defacto complainant in all these cases. It is also pointed out that there was some other connected matters in which the petitioners were complainants and the rival group members were the accused and that in order to secure peace and harmony in the locality Government have issued direction for granting permission for withdrawal of those pending cases. It is in the light of these aspects that the petitioners have filed these Crl.M.Cs seeking quashment of the impugned criminal proceedings.

2. Heard Sri.P.Venugopal, learned counsel for the petitioners in all the Crl.M.Cs and Sri.M.Revikrishnan, learned counsel appearing for the 2nd respondent in all these cases and the learned Public Prosecutor appearing for the State of Kerala.

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3. Petitioners have also made available a copy of the Government Letter No.59522/L4/11/Home dated 4.5.2012 issued by Government of Kerala, Home (L) Department wherein Government has given permission for withdrawal of some of the criminal cases which are said to be connected with the tensions between these two rival groups and in some cases the group of the petitioners was said to be the complainants and the defacto complainant's group are stated to be the accused etc. The prosecution has pointed out that the accused in the present impugned Annexure-C crime is also the accused in Crime No.336/2010 of Valanchery Police Station and in Crime No.338/2010 of Valanchery Police Station and that the accused 5 & 6 in the present crime are also accused in Crime No.338/2010 etc. A copy of the above said Government Letter No.59522/L4/11/Home reads as follows:

“I am to inform you that Government have no objection to withdraw with the leave of the court the case in CC No.260/08 of Judicial First Class Magistrate Court, Tirur corresponding to Cr.No.183/08 of Valanchery Police Station, CC 933/10 and its counter case in CC 854/10 of Judicial First Class Magistrate Court, tirur corresponding to Cr.No.337/10 and 336/10 of Valanchaery Police Station, CC 1596/11 and its counter case in CC 934/10 of Judicial First Class magistrate Court, Tirur corresponding to Cr.No.362/10 and 338/10 of Valanchery Police Station under section 321 Cr.P.C.

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Necessary instructions in this regard may be given to the
Public Prosecutor/Assistant Public prosecutor concerned.”

The Public Prosecutor was earlier requested to get instructions and the
Prosecutor confirmed the aforementioned Government Letter.

4. It is pointed out that C.C.No.260/2008 on the file of the
Judicial First Class Magistrate Court, Tirur arising out of Crime
No.183/2008 is not directly connected with the present petitioners. It is
pointed out that in C.C.No.933/2010 on the file of the Judicial First
Class Magistrate Court, Tirur (arising out of Crime No.337/2010) the
petitioners are the complainants and injured and that the matter was
settled and that prosecution witnesses have turned hostile and the
accused persons were acquitted. In the counter case referred to above
in C.C.No.854/2010 on the file of the above said Magistrate Court
(arising out of Crime No.336/2010) the petition for withdrawal of the
prosecution is to be moved by the Assistant Public Prosecutor concerned
immediately. In C.C.No.1596/2011 of the same court (arising out of
Crime No.362/2010), the petitioners are the complainants and the
injured and due to the above settlement, the matter was settled and the
prosecution witnesses have turned hostile and accused belonging to the
rival groups were acquitted. In C.C.No.934/2010 of the same court

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(arising out of Crime No.338/2010), the case against some of the accused was settled. The prosecution witnesses turned hostile and the accused persons were acquitted and the case as against one accused was split up as he was abroad and is pending as C.C.No.2041/2014. Learned counsel for the petitioner submits that all these cases and counter cases involving respective impugned crime as well as the other related crimes referred to in the Government Letter arose out of political rivalry and disputes between the two political parties viz., Muslim League and Peoples Democratic Party (PDP) and even the Government was convinced that the need for securing peace and harmony by granting permission for withdrawal of prosecution as referred to above.

5. On a consideration of overall facts and circumstances emerging in this case, it can be seen that the present impugned crime arose out of political rivalry between the two rival groups and the incident occurred during the time of election to the Local Self Government Institutions. Though the present impugned crime is not included in the Government Letter referred above, it is pointed out that all the incidents were related out of the rivalry between the two political groups. Even the Government was convinced that for securing peace

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and harmony permission was granted to withdraw the prosecution in some of the related matters referred to above. Many of the other cases referred in the Government Letter are said to be those in which the petitioner group are the complainants and the group of the defacto complainant herein are said to be the accused. In those cases, some of the cases accused were acquitted consequent to settlement as the prosecution witnesses have turned hostile. The defacto complainant herein has sworn to separate affidavit in all these cases stating that he has no objection whatsoever for quashing the impugned criminal proceedings as the disputes have been settled between the parties and that he has no grievance against the petitioners. The learned counsel for the defacto complainant submits that this Court may exercise its discretion to consider the prayer for quashment as situation has radically changed and peace and harmony could be substantially achieved by the settlement initiated at the behest of political leaders and respectable personalities of the locality concerned. Taking overall assessment of the totality of the facts and circumstances of these cases, this Court is of the considered opinion that the prayer for quashment could be considered in the light of the legal principles well settled in the

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case Narinder Singh & others v. State of Punjab & another reported in
(2014) 6 SCC 466.

6. Accordingly, it is ordered in Crl.M.C.No.5776/2014 that the impugned Annexure-C Final Report/Charge Sheet filed in Annexure-B FIR in Crime No.345/2010 of Valanchery Police Station which has led to the pendency of S.C.No.49/2013 on the file of the Additional Sessions Court-II, Manjeri and all further proceedings arising therefrom against the petitioner therein shall stand quashed. In Crl.M.C.No.5775/2014 it is ordered that the impugned Annexure-C Final Report/Charge Sheet filed in Annexure-B FIR in Crime No.345/2010 of Valanchery Police Station which has led to the pendency of S.C.No.378/2011 on the file of the Additional Sessions Court-II, Manjeri and all further proceedings arising therefrom against the petitioners therein shall stand quashed. In Crl.M.C.No.5773/2014 it is ordered that the impugned Annexure-C Final Report/Charge Sheet filed in Annexure-B FIR in Crime No.345/2010 of Valanchery Police Station which has led to the pendency of S.C.No.445/2013 on the file of the Additional Sessions Court-II, Manjeri and all further proceedings arising therefrom against the petitioner therein shall stand quashed. In Crl.M.C.No.5774/2014 it

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is ordered that the impugned Annexure-C Final Report/Charge Sheet filed in Annexure-B FIR in Crime No.345/2010 of Valanchery Police Station which has led to the pendency of C.P.No.41/2013 on the file of the Judicial First Class Magistrate Court, Tirur and all further proceedings arising therefrom against the petitioner therein shall stand quashed. The petitioners in respective Crl.M.Cs 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, the above captioned Crl.M.Cs stand finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-