

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

Crl.MC.No. 6030 of 2015

**LP.NO.5/12 ADDITIONAL DISTRICT COURT FAST TRACK COURT NO.I, THRISSUR
ARISING FROM SC.733/2008 ARISING FROM SC.847/2007 ARISING FROM
SC.NO.712/2005
CRIME NO. 493/2001 OF CHAVAKKAD POLICE STATION, THRISSUR
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PETITIONER(S)/ACCUSED:

**MANSOOR, AGED ABOUT 39 YEARS,
S/O HAMSA, KOZHIPURATHAYIL HOUSE, PUNNA DESOM,
MANATHALA VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT.**

BY ADV. SRI.RAJIT

RESPONDENT(S)/STATE:

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. SHAMSUDHEEN,
S/O SULAIMAN, THAZHATHVEETIL, CHAVAKKAD P.O.,**

**R1 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE
R2 BY ADV. SRI.V.V.JOY**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
11-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A: TRUE COPY OF THE FINAL REPORT FILED BY THE CHAVAKKAD POLICE BEFORE THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT, CHAVAKKAD.

ANNEXURE B: TRUE COPY OF THE JUDGMENT DT. 8/7/10 IN SC 733/08 OF THE ADDL. SESSIONS COURT FAST TRACK COURT NO. I, THRISSUR.

ANNEXURE C: AFFIDAVIT FILED BY THE 2ND RESPONDENT EVIDENCING THE FACT OF SETTLEMENT.

ANNEXURE D: THE TRUE COPY OF THE ORDER DTD.18.8.2015 IN CRL.MP.NO.2913/2015 IN LP.5/2012 BEFORE THE HON'BLE ADDITIONAL DISTRICT & SESSIONS COURT FAST TRACK-I.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K.RAMAKRISHNAN, J.

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Crl. M.C. No.6030 OF 2015

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Dated this the 11th day of September, 2015

ORDER

This is an application filed by the accused in SC No.733/2008, who is the 2nd accused in Crime No.493/2001 of Chavakkad Police Station, Thrissur District to quash the proceedings on the basis of settlement under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner was arrayed as the 2nd accused in Crime No.493/2001 of Chavakkad Police Station along with six other persons alleging commission of the offences under Sections 143,147 148, 342, 326 and 307 read with Section 149 of Indian Penal Code. After investigation, final report was filed and the case was committed to the Sessions court by the Judicial First Class Magistrate, Chavakkad as per order in CP No.69/2006. After committal, the case was originally taken

on file as SC No.847/2007 before the Sessions Court and it was made over to Additional Sessions Court (Adhoc)-1,Thrissur for disposal. Since three accused persons including the present petitioner did not appear, the case against the other accused persons were proceeded with and they were acquitted as per judgment in SC No. 847/2007 and the case against three accused persons who were absconding including the petitioner was split up and re-filed as SC No. 733/2008. Thereafter accused Nos.1 and 3 in that case faced trial and they were also acquitted by Annexure B judgment. Though the petitioner was shown as 2nd accused and he was also acquitted, in fact he did not face trial and the case against him was transferred to register of long pending cases and now pending as L.P No.5/2012 on the file of the 3rd Additional Sessions Court, Thrissur. Though he filed an application for recall the warrant on the ground that he was acquitted by the court by Annexure D order that the petition was dismissed. Since the matter has been settled between the parties, no purpose

will be served by proceeding with the case. So he has no option except to approach this court for quashing the proceedings on the basis of settlement and also on the basis of acquittal of other accused persons.

3. Heard the counsel for the petitioner Sri. Rejit and learned Public Prosecutor Smt. Serena George appearing for the State who opposed the appellant. The 2nd respondent also entered appearance and submitted that the matter has been settled and he had no objection in quashing the proceedings.

4. It is seen from the allegations in the petition that also the documents produced on the basis of the statement given by the 2nd respondent, a case was registered as Crime No.493/2001 against six persons arraying the present petitioner as 2nd accused alleging offences under Sections 143,147, 148, 342, 326 and 307 read with Section 149 of Indian Penal Code. After investigation, final report was filed before the Judicial First Class Magistrate's Court, Chavakkad and it was taken on file as CP.No.69/2006. Later the case

was committed to the Sessions court Thrissur by the Learned Magistrate under Section 209 of Code of Criminal Procedure. After committal the case was originally taken on file by the Sessions Court as SC No.712/2005 and some of the accused persons absconded and some of them faced trial and they were acquitted after trial. Thereafter the case against absconding persons was re-filed as SC No.847/2007 and in that case also the present petitioner did not appear. Some of the accused persons other than three accused persons mentioned in SC No.733/2008 appeared in that case and they were also acquitted and the case against other three absconding accused was refiled as SC No.733/2008 and the present petitioner was arrayed as 2nd accused in that case. In that case also only accused Nos. 1 and 3 appeared and they were acquitted as per Annexure B judgment. Though the present petitioner was arrayed as 2nd accused did not appear, the court below had by passing Annexure B judgment acquitted all the accused without noticing the fact that the present petitioner did not face trial

and he was an absconding accused. The case against the present petitioner was split up and after completing the formalities it was transferred to register of long pending cases as LP No.5/2012 and warrant is pending against him. Further the offences alleged are punishable under Sections 326 and 307 of Indian Penal Code. Though it is a matter settled between the parties, considering the nature of offences alleged, this court feels that it is not a fit case to invoke power under Section 482 of Code of Criminal Procedure to quash the proceedings on the basis of settlement. Then the remedy of the petitioner is to surrender before the concerned Court to face trial. So if the petitioner surrenders before the 3rd Additional Sessions Court, Thrissur and moves for bail after recalling the warrant, the learned Additional Sessions Judge is directed to consider and dispose of the bail application on the date of filing itself considering the fact that the matter has been settled and other accused persons were already acquitted and refile the case and dispose of the case as expeditiously

as possible. The petitioner is directed to surrender before the concerned court within two weeks.

With the above directions and observations the petition is disposed of.

Sd/-
K.RAMAKRISHNAN, JUDGE

SKV