

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

Cr1.MC.No. 6233 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN CC 64/A/2013 of J.M.F.C-I., VARKALA in
CRIME NO.105/2008 OF KADAKKAVOOR POLICE STATION, THIRUVANANDAPURAM.

PETITIONER(S)/A1 TO A3:

1. CHIMINI ANI @ ANILKUMAR,
S/O. SUKUMARAM THAMPURAN VELAKOM VEEDU, THOTTAVARAM,
ATTINGAL VILLAGE, TRIVANDRUM.
2. LIJU,
S/O. KUTTAN, SUBHAVIHAR, PUVANATHU VEEDU,
ELAMBA VILLAGE, TRIVANDRUM.
3. RATHEESH,
S/O. PRASANAN, KATTIVEEDU, KEZHATTEGAL VILLAGE,
TRIVANDRUM.

BY ADV. SRI.M.R.SARIN PANICKER

RESPONDENT(S)/COMPLAINANT:

1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM
2. SOMANADAN, AGED 77 YEARS,
S/O. VELU, ASWATHI HOUSE, NEAR LOVE DALE SCHOOL,
THOTTIKAL, MANAMBOOR VILLAGE, CHIRAYINKIL TALUK,
TRIVANDRUM.
3. MANU, AGED 43 YEARS,
S/O. SOMANADAN, ASWATHI HOUSE, NEAR LOVE DALE SCHOOL,
THOTTIKAL, MANAMBOOR VILLAGE, CHIRAYINKIL TALUK,
TRIVANDRUM.

R1 BY ADV. SRI.AJAYA KUMAR. G
R2 BY PUBLIC PROSECUTOR SMT. HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
23-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

:2:

Crl.MC.No. 6233 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE A1 THE CERTIFIED COPY OF THE FIR NO 105/08 OF KADAKKAVOOR
POLICE STATION.

ANNEXURE A2 CERTIFIED COPY OF THE FINAL REPORT IN CC NO 64(A) /
2013 BEFORE JUDICIAL FIRST MAGISTRATE COURT-1 VARKALA
FILED BY SUB INSPECTOR OF POLICE KADAKKAVOOR IN CR NO
105/08 OF KADAKKAVOOR POLICE STATION.

ANNEXURE A3 THE TRUE COPY OF THE JUDGMENT IN CC NO 640/09 ON THE
FILE OF JFMC COURT-1 VARKALA.

ANNEXURE A4 AFFIDAVIT SIGNED BY THE 2ND RESPONDENT.

ANNEXURE A5 AFFIDAVIT SIGNED BY THE 3RD RESPONDENT.

RESPONDENT(S) ' EXHIBITS

: NIL

// True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

Crl. M.C.No.6233 of 2015

Dated this the 23rd day of September, 2015

ORDER

This criminal miscellaneous case is filed by accused Nos. 1 to 3 in C.C.No.64/A/2013 pending before the Judicial First Class Magistrate Court-I, Varkala, for quashing the proceedings under Section 482 of the Code of Criminal Procedure on the basis of settlement and also acquittal of other accused persons.

2. It is alleged in the petition that the petitioners were arrayed as accused Nos.1 to 3 in Crime No.105/2008 of Kadakkavoor police station, which was registered on the basis of the statement given by the 2nd respondent against the petitioners and others alleging commission of the offence under Section 143, 147, 451, 341, 323, 294(b) and 506(i) read with Section 149 of the Indian Penal Code.

3. After investigation, final report was filed against all the accused persons before the Judicial First Class Magistrate Court-I, Varkala, where it was taken on file as C.C.No.640/2009. The present petitioners did not appear. So case against them was split up and case was proceeded against accused Nos. 4 and 5 and that ended in acquittal evidenced by Annexure-III judgment. Now the matter has been settled between the parties. The defacto-complainant has no grievance against the present petitioner who are the remaining accused in the case. They appeared before the court below and the case was refiled as C.C.No.64/A/2013. On account of the settlement, there is no possibility of conviction. Since some of the offences are non-compoundable in nature, they could not file the application before the court below. So the petitioners have no other remedy except to approach this court seeking the following relief:

“This Hon'ble Court may be pleased to exercise the inherent powers vested under Section 482 of the Code of

Criminal Procedure, 1973 and quash all further proceedings as against petitioners in Annexure-A1 to Annexure-A2”.

4. 2nd respondent appeared through counsel and submitted that the matter has been settled between the parties and the incident occurred due to some monitory dispute between the defacto-complainant, his son and the accused persons, which has been settled amicably between them. So the defacto-complainant does not want to prosecute the case. They have filed Annexure-A4 and A5 affidavits stating these facts. The counsel for the petitioner also submitted that in view of the settlement and also acquittal of other accused persons on merit, no purpose will be served by proceeding with the case. So he prayed for allowing the application.

5. Learned Public Prosecutor Smt.Hyma appearing for the first respondent submitted that, there is no other case against the petitioners and accused Nos. 4 and 5 were acquitted by the lower court, but opposed the

application on the ground that it is not a fit case to invoke the power under Section 482 of the Code of Criminal Procedure to quash the proceedings.

6. It is also an admitted fact that on the basis of the statement given by the 2nd respondent, a case was registered against the petitioners and others as Crime No.105/2008 of Kadakkavoor police station alleging offences under Section 143, 147, 451, 341, 323, 294(b) and 506(i) read with Section 149 of the Indian Penal Code against some identifiable persons. During investigation, it was revealed that five persons including the present petitioners have involved in the crime and Annexure-2 final report was filed implicating only five accused persons for the offence alleged and it was originally taken on file as C.C.No.640/2009 on the file of the Judicial First Class Magistrate Court-I, Varkala. Accused Nos. 4 and 5 alone appeared and they were tried and acquitted by the trial court evidenced by Annexure-A3 judgment. It will be seen

from Annexure-A3 judgment that none of the witnesses have identified the accused persons and they did not support the case of the prosecution and the case is ended in acquittal. Since the present petitioners did not appear, case against them was split up and refiled as C.C.No.64/A/2013 and thereafter they appeared and they were released on bail. Now the matter has been settled between the defacto-complainant and his son who were the injured in the case. Even as per the allegations in the final report, it is seen that there was some monitory dispute between the 3rd respondent and the accused persons which resulted in the incident and now the matter has been settled between them. They have filed affidavit stating these facts. In view of the settlement there is no possibility of conviction. Further since the substratum of the prosecution case has been shattered as per Annexure-A3 judgment, as none of the witnesses have supported the case of the prosecution as against co-accused, no purpose will be served by

proceeding with this case and that will only amount to wastage of judicial time. If the substratum of the prosecution case has been shattered on the basis of evidence in a proceedings against co-accused, then court can invoke the power under Section 482 of the Code of Criminal Procedure to quash the proceedings as against the remaining accused. This was so held in the decision reported in **Moosa v. Sub Inspector (2006(1) KLT 552)**. Further since the matter has been settled between the parties and on account of the settlement there is no possibility of conviction and proceeding with the case will only amount to wastage of judicial time, this court feels that it is a fit case where the power under Section 482 of the Code of Criminal Procedure can be invoked to quash the proceedings as against the petitioners as well.

So the application is allowed and further proceedings in C.C.No.64/A/2013 (Crime No.105/2008 of Kadakkavoor police station) of Judicial First Class

Magistrate Court-I, Varkala, as against the petitioners are hereby quashed.

Office is directed to communicate this order to the concerned court, immediately.

Sd/-

K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge

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