

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

Cr1.MC.No. 6242 of 2015

IN LP 6/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, VADAKARA
CRIME NO. 57/2009 OF CHOMBALA POLICE STATION , KOZHIKODE

PETITIONER/ACCUSED NO.9:

T.P.PAVITHRAN, AGED 42 YEARS,
S/O.CHOYI, 'NANDANAM', THEKKAYIL PARAMBATH,
ONCHIYAM P.O., KOZHIKODE DISTRICT.

BY ADVS.SRI.VINOD SINGH CHERIYAN
SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENTS/STATE & COMPLAINANT:

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
 2. STATION HOUSE OFFICER,
CHOMBALA POLICE STATION,
CHOMBALA, VADAKARA
KOZHIKODE-673101.

R1 & R2 BY PUBLIC PROSECUTOR SMT.M.T SHEEBA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 21-10-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-A1: CERTIFIED COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.57 OF 2009 CHOMBALA POLICE STATION, KOZHIKODE DATED 4.5.2009.

ANNEXURE-A2: CERTIFIED COPY OF THE FINAL REPORT SUBMITTED BY THE 2ND RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE VADAKARA, KOZHIKODE IN CRIME NO.57 OF 2009 OF CHOMBALA POLICE STATION, KOZHIKODE DATED 30.9.2009.

ANNEXURE-A3: CERTIFIED COPY OF THE DEPOSITION OF PW1 IN S.C.NO.87 OF 2010 ON THE FILE OF THE SPECIAL JUDGE FOR THE TRIAL OF SC/ST (PA) ACT CASES/SESSIONS JUDGE, KOZHIKODE.

ANNEXURE-A4: CERTIFIED COPY OF THE DEPOSITION OF PW2 IN S.C.NO.87 OF 2010 ON THE FILE OF THE SPECIAL JUDGE FOR THE TRIAL SC/ST (PA) ACT CASES/SESSIONS JUDGE, KOZHIKODE.

ANNEXURE-A5: CERTIFIED COPY OF THE DEPOSITION OF PW3 IN S.C.NO.87 OF 2010 ON THE FILE OF THE SPECIAL JUDGE FOR THE TRIAL OF SC/ST (PA) ACT CASES/SESSIONS JUDGE, KOZHIKODE.

ANNEXURE-A6: CERTIFIED COPY OF THE DEPOSITION OF PW9 IN S.C.NO.87/2010 ON THE FILE OF THE SPECIAL JUDGE FOR THE TRIAL OF SC/ST (PA) ACT CASES/SESSIONS JUDGE, KOZHIKODE.

ANNEXURE-A7: CERTIFIED COPY OF THE MEMORANDUM OF EVIDENCE IN CRIME NO.57/2009 OF CHOMBALA POLICE STATION, KOZHIKODE DATED 30.9.2009.

ANNEXURE-A8: CERTIFIED COPY OF THE JUDGMENT IN S.C.NO.87 OF 2010 ON THE FILE OF THE SPECIAL JUDGE FOR THE TRIAL OF SC/ST (PA) ACT CASES/SESSIONS JUDGE, KOZHIKODE DATED 31.03.2015.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

P.UBAID, J.

Crl.M.C No.6242 of 2015

Dated this the 21st day of October, 2015

O R D E R

The petitioner herein is the original 9th accused in Crime No.57/2009 of the Chombala Police Station. The said crime was registered under Sections 143, 147, 341, 294(b) and 354 of the Indian Penal Code and also under Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. The other eight accused faced trial before the learned Special Judge for the trial of offence under the SC/ST Act, Kozhikode in S.C No.87/2010 on the charge framed by the trial court under Section 341 of the Indian Penal Code and under Section 3(1)(xi) of the SC/ST Act, and obtained a judgment of acquittal on 31.3.2015, on the finding that the whole case is fully suspicious and that the prosecution does not have any satisfactory evidence to prove the allegation against the accused. The case against the petitioner herein was split up and refiled in the committal court itself, and it was later transferred to the register of long pending cases as L.P No.6/2014. It is still pending before the Judicial First Class Magistrate Court, Vadakara. The petitioner now seeks orders quashing the split up

prosecution as against him on the ground that the very substratum of the prosecution case is totally lost by the acquittal of the others, on merits.

2. The Station House Officer was required by this Court to report whether the State has preferred appeal against the judgment of acquittal dated 31.3.2015 in S.C. No.87/2010. Now it is submitted that the government has not preferred such an appeal, and that on verification of the records it is found that there is no scope for such an appeal.

3. Annexure A8 is copy of the judgment of the trial court in S.C No.87/2010. It shows that the prosecution examined 11 witnesses and proved Exts.P1 to P16 documents in S.C No.87/2010. The witnesses examined by the prosecution included two very important material witnesses. On trial against the other accused, the learned trial judge concluded thus in paragraph 22 of the Annexure A8 judgment:

“22. On going through the entire evidence and circumstances in this case, a serious doubt is created in the mind of the court as to whether the incident took place as spoken to by PW1. When there is doubt with regard to the guilt of a person, certainly he is entitled to get the benefit of doubt and get himself absolved from his indictment. There is no satisfactory and trustworthy evidence to show that the accused committed the offences alleged against them. Prosecution failed to establish the case put forward against the accused and therefore I find that the accused are not guilty of the offences.”

4. The question of identification of the accused was raised very much during trial by the defence. On an appreciation of the evidence, the learned trial judge found that the evidence given by the material witnesses examined as PW1 and PW2 regarding identification of the accused is really unbelievable. The learned trial judge also found that the very complaint in this case is really suspicious. Discussing the evidence given by the defacto complainant examined as PW1, the trial court found thus in paragraph 19 of the Annexure A8 of the judgment.

“The names of the accused were given by PW9 Beena who is admittedly not an eye witness. It is also stated by PW1 that she did not read Ext.P1 nor it was read over to her. The endorsement in Ext.P1 that she read Ext.P1 was written by her daughter CW3 and not by her, PW1 further states. Neither PW1, PW2, PW3 nor PW9 pointed out any of the accused to the Investigating Officer.”

5. As regards the evidence given by the other material witness examined as PW2 regarding identification of the accused, the learned trial judge found thus in paragraph 19 of the judgment:

“It is stated by PW2 that there was darkness in the evening at the time of the alleged incident and hence she could not see the houses, if any, on either side of the road there. Then how PW1 and PW2 identified the accused is yet to be known.”

6. Again in the very same paragraph the learned

trial judge found thus:

“It is stated by PW2 that immediately after the incident, about 10-20 persons gathered there and they told the incident to them and it was only thereafter PW3 and PW9 came there. But none of those 10-20 persons was cited as witness and examined in this case and there is no explanation for that.”

7. As regards the strong suspicion regarding the very complaint itself, and also regarding identification of the accused made in court, the learned trial judge further found thus in paragraph 20 of the judgment:

“20. Further, it is in evidence that the local CPM leaders have shown some extra interest in this case. The interest shown by PW3 and PW9 and their presence in the police station along with the CPM local leaders Rajan and Raghavan Master while giving Ext.P1 complaint in this case would only create suspicion regarding the truthfulness of the case put forward by the prosecution. It is further to be stated that different versions have been stated by PW1, PW2 and PW9 before police and court at different stages and the accused could not put questions regarding that to the Investigating Officer as he was not examined. The case of insulting PW1 calling her caste name by A1 is a new case put forward by PW1. She had no case in her Ext.P1 complaint.”

8. As discussed above, I find that the other accused obtained a judgment of acquittal from the trial court when the prosecution miserably failed to prove the case. The learned trial judge found that the whole prosecution case is suspicious, and that the material witnesses could not have identified any of the assailants on the spot. From the Annexure A8 judgment, I am

fully convinced that the prosecution cannot in any manner improve the case if it goes to trial against the petitioner herein. I am well satisfied that the very substratum of the prosecution case stands totally lost by the acquittal of the other accused on merits. Definite it is, that the witnesses who could not effectively support the prosecution at the first round of trial, cannot in any manner improve their versions at the second round if the case goes to trial against the petitioner herein. I find that continuance of the prosecution against the petitioner here will be a sheer waste of time. So the said prosecution can be quashed to save the precious time of the court below.

In the result, this Crl.M.C is allowed. The whole prosecution against the petitioner herein lying as a split up case in L.P No.6/2014 before the Judicial First Class Magistrate Court, Vatakara will stand quashed under Section 482 of the Code of Criminal Procedure.

Sd/-
P.UBAID,
JUDGE

//True Copy//

P.A to Judge

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