

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

Cr1.MC.No. 6307 of 2015

IN CC 108/2008 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-
I, THIRUVANANDAPURAM
CRIME NO. 248/2007 OF SREEKARIYAM POLICE STATION,
THIRUVANANDAPURAM

PETITIONER/IMPLEADED AS THE 2ND ACCUSED :

GOKUL RAJ,
S/O. GOPALAN NAIR, ASHTAMI HOUSE,
SAMSKARIKA LANE
PAUDIKKONAM P.O., ULIYAZHTHURA VILLAGE,
THIRUVANANTHAPURAM.

BY ADVS.SRI.B.RAMAN PILLAI (SR.)
SRI.R.ANIL
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.T.ANIL KUMAR
SRI.MANU TOM
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SRI.M.VIVEK
SRIA.RAJESH

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.

BY PUBLIC PROSECUTOR SMT.SHEEBA M.T

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 27-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Cr1.MC.No. 6307 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A : CERTIFIED COPY OF THE POLICE CHARGE (FINAL
REPORT) IN CC NO.108/2009.

ANNEXURE B : COPY OF THE REPORT DTD.19.11.2007.

ANNEXURE C : CERTIFIED COPY OF THE ORDER DTD.14.3.2013.

ANNEXURE D : CERTIFIED COPY OF B DIARY PROCEEDINGS IN CC
NO.108/2008 WHICH CONTAIN THE ABOVE ORDER AT PAGE NO.7.

ANNEXURE E : COPY OF THE JUDGMENT DTD.30.8.2013.

ANNEXURE F : CERTIFIED COPY OF THE ORDER SHEET FROM 15.6.2013
TO 21.7.2015.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

Crl.M.C No.6307 of 2015

Dated this the 27th day of October, 2015

O R D E R

The petitioner herein is the original second accused in C.C No.108/2008 of the Judicial First Class Magistrate Court I, Thiruvananthapuram. Crime in the said case was registered against the petitioner and his father under Sections 323 and 506(ii) of the IPC. After investigation, the police submitted final report against the father alone. On the said final report, the trial court took cognizance as C.C No.108/2008. Subsequently, the petitioner herein was brought on the array of accused under Section 319 of the Code of Criminal Procedure. As he was a juvenile on the date of the alleged incident, his case was transferred to the Juvenile Justice Board, and C.C No.108/2008 continued against the first accused. The first accused faced trial in the said case before the learned Magistrate, and obtained a judgment of acquittal under Section 248(1) of the Code of Criminal Procedure on 30.8.2013. In the said case the prosecution examined five witnesses and also marked Exts.P1 to P5 documents. On an appreciation of the evidence adduced by the prosecution as against the petitioner's

father is the first accused therein, the learned Magistrate found that the evidence given by the complainant is not acceptable without independent corroboration and that the whole prosecution case is doubtful. Accordingly the first accused was found not guilty, and was acquitted by the learned Magistrate. Now the petitioner seeks orders quashing the prosecution as against him before the Juvenile Justice Board on the ground that the very substratum of the prosecution stands totally lost by acquittal of the other accused in C.C. No.108/2008.

2. On hearing both sides and on a perusal of the Annexure E judgment, I find that the prosecution cannot improve the case, if the case goes to trial against the petitioner herein. Regarding the contradictory evidence given by the complainant, and the sole eye witness examined as PW2, the learned Magistrate found thus in paragraph 6 of the Annexure E judgment:

“On going through the oral testimony of PW1 and PW2 it can be seen that, regarding the overt acts they have given mutually contradictory evidence. The oral testimony of PW2 would cast serious doubt as to his presence at the alleged time of occurrence. In chief examination PW1 has no case that the accused and his son have hit on her shoulder. But in cross examination she has given an improved version by saying that the accused hit on her right shoulder and his son hit on her left shoulder. According to PW1 immediately after the incident she was taken to Medical College Hospital. Even though OP ticket was taken, because of heavy rush

she went for Ayurvedic treatment. But no medical evidence was produced in support of her version.”

3. Again in paragraph 9 the learned Magistrate found thus as regards the evidence given by PW1 and PW2:

“But the contention of the learned counsel for the defence by relying on the inconsistent and mutually contradictory version given by PW1 and PW2, that they are wholly untrustworthy witnesses and they cannot be acted upon to prove the case of the prosecution beyond reasonable doubt has to be accepted. The definite case of PW1 is that PW2 came to the scene of occurrence on seeking the incident, but at the same time both of them have given mutually contradictory evidence as to the overt acts. Even though PW1 stated that she had given the O.P ticket to the police that was not produced before court. More over her version that due to heavy rush at the medical college hospital she went for Ayurvedic treatment appears to be unbelievable. According to PW1 she had shown to the police the stones used by the accused. So the non-recovery of stones is also very fatal to the prosecution. The explanation offered by PW1 regarding the delay in lodging the FIR does not appear to be reasonable and satisfactory. Admittedly, civil disputes were pending between PW1 and the accused person. In such a scenario the above discussed discrepancies have to be considered as material. PW1 cannot be acted upon without cogent and convincing independent corroboration. As such benefit of doubt has to be extended to the accused. In the light of the discussions made above, I hold that the prosecution has failed to prove its case against the accused beyond reasonable doubt.”

4. On a perusal of the Annexure E judgment and the findings of the learned Magistrate, I find that the very substratum of the prosecution case stands totally lost by the acquittal of the first accused in C.C No.108/2008. The learned

Magistrate has also found inordinate and unexplained delay in the FIR. On an appreciation of the evidence, the learned Magistrate found that the evidence of the complainant is quite contradictory to that of the material witnesses, and that the prosecution does not have any material to prove that the complainant had sustained any injury in the alleged incident. I find that if the case against the petitioner goes to trial, it will also end in acquittal because the prosecution cannot in any manner improve the case against the petitioner. The material witnesses cannot in any manner help the prosecution in view of the very contradictory evidence given by them at the first round of trial. No doubt, they cannot in any manner improve the case at the second round, if the case goes to trial. It is appropriate that the prosecution against the petitioner be quashed, so that the precious time of the court below can be saved.

In the result, this Crl.M.C is allowed. The prosecution against the petitioner herein in S.T No.80/2013 before the Juvenile Justice Board, Thiruvananthapuram will stand quashed under Section 482 of the Code of Criminal Procedure.

**P.UBAID
JUDGE**

ab