

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

Crl.MC.No. 6831 of 2015 ()

**CRIME NO. 309/2006 OF WADAKKANCHERRY POLICE STATION , PALAKKAD DISTRICT
C.C.No.1380/2012 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, ALATHUR**
=====

PETITIONER/ACCUSED NO.11:

**KRISHNADAS, AGED 39 YEARS, S/O.CHINNAN
ORAKUNNAMKADU COLONY, KIZHAKKETHARA,
ANJUMOORTHYMANGALAM, ALATHUR, PALAKKAD.**

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

RESPONDENT/COMPLAINANT &STATE:

**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 23-11-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 6831 of 2015 ()

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE.A . CERTIFIED COPY OF THE CHARGE SHEET IN CRIME NO.309/2006 OF
VADAKKENCHERRY POLICE STATION.**

**ANNEXURE.B . CERTIFIED COPY OF THE JUDGMENT IN CC NO.388/2006 OF THE
COURT OF JFCMC, ALATHUR DATED 15/6/2012.**

RESPONDENT'S EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.6831 of 2015

Dated this the 23rd day of November, 2015

O R D E R

The petitioner herein is the original accused No.11 in C.C.No.388/2006 of the Judicial First Class Magistrate Court, Alathur. The other 13 accused in the case faced trial before the learned Magistrate, and obtained a judgment of acquittal on 15.06.2012, when the material witnesses including the defacto complainant did not effectively support the prosecution. The prosecution examined three witnesses including the complainant, and also marked Exts.P1 and P2 documents and two material objects. Of the three witnesses, PW1 is the defacto complainant, and PW2 is her grandson who witnessed the incident, according to the prosecution. These two witnesses did not give satisfactory evidence proving the prosecution allegations. As regards their evidence, the learned Magistrate found thus in paragraph 12 of the Annexure-B judgment.

“12. Prosecution has not examined any of the independent witnesses. As I stated earlier, the evidence tendered by PW1 and PW2 is not inspired my confidence since they have no idea regarding the name and address of the accused. But it can be seen that they have stated the name and address of the accused to the police. As I stated earlier, PW1 would depose before court that she could not identify

the person who pelted stone due to darkness. The prosecution case is that accused destroyed the water pipe erected by the Panchayath authorities. But MO2 would go to show that it is not the pipe as destroyed by the assailants. In Ext.P2 Scene Mahazar there is no whisper regarding the presence of stones inside the house or damaged tiles of the roof. In short, there is no reliable or consistent evidence to prove the case of prosecution. In such circumstances the accused are entitled to get the benefit of doubt. Hence points are answered against the prosecution”

2. On a perusal of the Annexure-B judgment, I find that the prosecution cannot in any manner improve the case, if the case against the petitioner goes to trial. His case now stands split up and refiled as C.C.No.1380/2012. I find that the very substratum of the prosecution case is totally lost by the acquittal of the other 13 accused, on the finding that the prosecution does not have any satisfactory material to prove the allegations. The defacto complainant and the other witnesses could not identify any of the accused during trial, and they did not give any incriminating evidence against them. Definite it is, that the said witnesses cannot in any manner help the prosecution at the second round when the split up case against the petitioner goes to trial. It will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioner in C.C.No.1380/2012 of the Judicial First Class Magistrate Court, Alathur will stand quashed under Section 482 Cr.P.C.

Sd/-

P. UBAID, JUDGE

sd

// True Copy //

P.A. to Judge