

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

Crl.MC.No. 5931 of 2014

**CC 144/2014 OF CHIEF JUDICIAL MAGISTRATE COURT, MANJERI.
CRIME NO. 85/2011 OF EDAVANNA POLICE STATION, MALAPPURAM DISTRICT.**
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PETITIONER/4TH ACCUSED:

**NAZEEM P., AGED 39 YEARS,
S/O.ALI, PALLIPARAMBAN HOUSE,
OTHAYI, PERKAMANNA P.O,
EDAVANNA, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.K.M.SATHYANATHA MENON
SMT.KAVERY S THAMPI**

RESPONDENT(S)/COMPLAINANT & STATE:

- 1. THE SUB INSPECTOR OF POLICE,
EDAVANNA POLICE STATION,
EDAVANNA, MALAPPURAM DISTRICT, PIN - 679 329.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
KOCHI - 682 031.**

BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 04-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEXURE A.** CERTIFIED COPY OF THE STATEMENT GIVEN BY THE DEFACTO
COMPLAINANT ON 12.3.11 BEFORE THE IST RESPONDENT.
- ANNEXURE B.** CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.85/11 OF
EDAVANNA POLICE STATION SUBMITTED BY THE
IST RESPONDENT BEFORE THE CHIEF JUDICIAL MAGISTRATE
COURT, MANJERI.
- ANNEXURE C.** CERTIFIED COPY OF THE JUDGMENT IN CC 97/2011 OF THE
CHIEF JUDICIAL MAGISTRTE COURT, MANJERI.

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C.No.5931 of 2015

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Dated this the 4th day of August, 2015

O R D E R

The petitioner is arrayed as the 4th accused in the impugned Crime No.85/2011 of Edavanna Police Station, registered for offences punishable under Secs.143, 147, 148, 341, 323, 324 read with Sec.149 of the I.P.C., on the basis of a complaint filed by one Sri.Ibrahim. It is alleged that in the said complaint the defacto complainant stated that on 10.3.2011 at about 7 p.m., while he was standing in front of Pulliyil Textile at Othayi, he was attacked by Shakkeer and Ibrahim with wooden reaper and that the 2nd respondent Sri.Ibrahim attempted to stake the defacto complainant with a knife. The Police after investigation submitted the impugned Anx. B final report/charge sheet in the above said crime, which led to the pendency of Calendar Case, C.C.No. 97/2011 on the file of the Chief Judicial Magistrate's Court, Manjeri. As the petitioner herein had gone to the Gulf country for his employment, the trial proceeded as against the other accused (A-2, A-3 and A-5) who

were found not guilty as per Anx.C judgment dated 15.5.2015 of the Chief Judicial Magistrate's Court, Manjeri rendered in C.C.No. 97/2011. The case against the petitioner has subsequently been re-numbered as C.C.No.144/2014 on the file of the Chief Judicial Magistrate's Court, Majeri. The petitioner contends that the substratum of the prosecution case has been shattered by the acquittal of the co-accused as per Anx.C judgment and therefore prays for quashment of the impugned proceedings as against him.

2. Heard Sri.K.M.Sathyanatha Menon, learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

3. From a perusal of materials on record it can be seen that the role of the petitioner as alleged in Anx.A statement of the defacto complainant and Anx.B charge sheet is that the petitioner prevented the defacto complainant from escaping the place of incident and helped others to attack him, etc. The main issues that were raised for determination by the court below in Calendar Case are as follows:

- "1. Whether the prosecution could prove the unlawful assembly constituted by these accused along with the absconding accused with common object to cause hurt to PW1 as alleged ?

- 2) Whether the prosecution could prove the riot with dangerous weapon on the part of accused No.1 and 2, in prosecution of the common object of the unlawful assembly constituted by the above said accused along with the absconding accused as alleged ?”

4. On a perusal of the Anx.C judgment it can be seen that the grounds on which the other accused were acquitted by the court below are given in paragraphs 10 and 11 of Anx.C judgment of acquittal, the relevant portion of which reads as follows:

“10. On going through the evidence tendered by PW1 before this court it can be seen that the same is in conflict with the case advanced on the part of the prosecution on material particulars. The specific case of the prosecution is that the accused who are now facing trial along with two others in prosecution of the common object of the unlawful assembly constituted themselves attacked him in such a manner that A1 with MO1 stick caused injury on his right forearm and stamped on his chest. Apart from such act A2 fisted on his nose and stamped on his hip which resulted injuries, A5 also stamped on his neck. According to PW3 and PW4, in chief examination, both of them have witnessed the incident. According to PW3 he witnessed the attack by the miscreants with their hands. The specific case advanced on the part of PW4 would indicate that what he witnessed was the attack of A2 on PW1. He never witnessed any overtact by other accused.

11. Admittedly the case advanced on the part of the prosecution is seen not supported by any of the material witnesses including the defacto complainant PW1. PW5 denied his presence at the place of occurrence and testified that never witnessed such an occurrence alleged by the prosecution. So nothing has been brought out from him connecting the accused with the alleged occurrence. On going through the evidence tendered by PW1, his evidence before this court is quite contradicting with the prosecution case on material particulars. No effort is seen taken on the part of the prosecution to explain such discrepancies. In such circumstance the discrepancies brought out in evidence that has not been explained by the prosecution become fatal to the prosecution case. Evidence of PW1 is silent about the overtact on the part of A3 to A5. In the final report submitted by PW8 after completing investigation would divulge that PW1 has attacked by A1 with MO1 stick which caused injury on his right forearm. But according to PW1, he sustained injury on account of such attack on the part of A1 with MO1

above his right elbow. No explanation has tendered on the part of the prosecution regarding such discrepancy. According to PW1 apart from such beat he attacked with MO1 stick and caused injury on his neck. But as per the prosecution case apart from such injury A1 caused hurt on the chest of PW1 by stamping. His specific case before this court is that A2 stamped on his chest. But according to prosecution, A2 caused injury by fisting on his nose and stamped on his hip. Apart from that he abetted A1 by supplying MO2 knife to inflict injury on his body. Such an allegation is seen absent in the prosecution case.”

5. In paragraph 12 of Anx.C judgment it is concluded that in short the evidence of PWs.1, 3 and 4 are seen contradicting to the case of the prosecution and all material particulars and so the prosecution has failed to prove the case against the accused beyond reasonable doubt. In this view of the matter, it is ordered in the interest of justice that the impugned Crime No.85/2011 of Edavanna Police Station, which has led to the pendency of C.C.No. 144/2014 on the file of the Chief Judicial Magistrate's Court, Manjeri, and all further proceedings arising therefrom pending against the petitioner herein stand quashed.

With these observations and directions, the Criminal Miscellaneous Case stands finally disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE
///True copy///

P.S. to Judge

