

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

Crl.MC.No. 6571 of 2014 ()

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CC. NO.1430/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II,
ERNAKULAM.**

CRIME NO. 1286/2008 OF ERNAKULAM CENTRAL POLICE STATION.

PETITIONER/ACCUSED NO.5:

**ABDUL MANAF. P.A., S/O.M. ALI,
AGED 34 YEARS, PADINJARE PARAMBIL HOUSE,
THAIKKATTUKARA. P.O., ALUVA.**

**BY ADVS.SRI.T.H.ABDUL AZEEZ,
SRI.V.A.AJMAL.**

RESPONDENTS/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY SUB INSPECTOR OF POLICE,
CENTRAL POLICE STATION, ERNAKULAM,
THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 05-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

ANNEXURE 1- TRUE COPY OF CHARGE SHEET IN CRIME NO.1286/2008 IN C.C.NO.1430/2014 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, ERNAKULAM.

ANNEXURE 2- TRUE COPY OF THE JUDGMENT IN C.C. NO.1505/2009 PASSED BY JFCM-II, ERNAKULAM.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 6571 of 2014

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Dated this the 5th day of June, 2015

O R D E R

The petitioner herein is accused No.5 in the impugned Crime No.1286/2008 of Ernakulam Central Police Station for offences alleged under Secs.143, 147, 188, 283 read with Sec.149 of the I.P.C. The Police after investigation submitted the impugned Anx.1 final report/charge sheet in the aforesaid crime, which earlier led to the pendency of Calendar Case, C.C.No.1505/2009 on the file of the Judicial First Class Magistrate's Court-II, Ernakulam. Except A-6, all the other accused including the petitioner herein (A-5) had not participated in the trial and so the cases as against those accused persons were split up and the trial as against A-6 had proceeded and the Judicial First Class Magistrate's Court-II, Ernakulam, as per Anx.2 judgment dated 29.8.2014 in C.C.No.1505/2009 acquitted the said co-accused (A-6) of the criminal charges. The case against the petitioner has been re-numbered as C.C.No.1430/2014 on the file of the Judicial First Class Magistrate's Court-II, Ernakulam. It is

further pointed out that though the prosecution earlier alleged that there were about 30 persons in the above said case, the final report has been submitted arraying only 10 accused persons. It is pointed out that apart from the allegation involving the alleged unlawful assembly, the only major offences involved in the case are those under Secs.188 and 283 of the I.P.C.

2. It is alleged that the substratum of the prosecution case has been shattered by the acquittal of the co-accused as per Anx.2 judgment. Further it is stated there are no proper allegations in the final report as to which order promulgated by the public servant has been disobeyed, so as to attract the offence under Sec.188 of the I.P.C. More importantly it is urged that the charge under Sec.188 of the I.P.C. could not have been lawfully taken cognizance of by the court below, in view of the specific bar contained in Sec.195 of the Code of Criminal Procedure and that taking cognizance of the said offence under Sec.188 of the I.P.C. on the basis of the Police charge sheet, without following the specific procedure mandated in Sec.195 of the Cr.P.C. is ultra vires and unlawful. Further, the only other subsisting offence is under Sec. 283 of the I.P.C., which is in the matter of creating danger or obstruction on public way or line of

navigation. It is in the light of all these aspects, the petitioner urges that the impugned criminal proceedings pending against him may be quashed.

3. Heard Sri.T.H.Abdul Azeez, the learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

4. On a perusal of Anx. 2 judgment of acquittal, it can be seen that the court below seriously noted the fact that though 30 persons alleged to be involved initially by the prosecution, in the final report only 10 accused persons were included and no explanation is offered by the prosecution for the deletion of the remaining persons and none of the accused were arrested from the spot of occurrence. The court below took judicial cognizance of the social fact that there is a normal practice of obtaining a list issued by the leaders of political parties for the purpose of making them as the accused in certain offences involving procession and protest of political parties and absence of apprehension of the accused from the spot of occurrence makes a circumstance that the present accused were arrayed as mentioned above. Nothing on record to show the grievance on the part of the public in causing obstruction

to their right of way because of the act of the accused. On all these basis, the court below held that the evidence adduced in the case is not reliable to convict the accused for the criminal charges. Accordingly, on a meticulous analysis of the evidence on record, the court below held that the accused persons cannot be connected with the criminal charges alleged and acquitted him. On a reading of the said judgment, it is crystal clear that the substratum of the prosecution case has been shattered.

5. It is also to be noted that the other subsisting offences are only those under Secs.188 and 283 of the I.P.C.. Sec.188 of the I.P.C. reads as follows:

“Sec.188. Disobedience to order duly promulgated by public servant.— Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

Sec.195(1) of Cr.P.C. reads as follows:

“Sec.195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.– (1) No court shall take cognizance–

- (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the India Penal Code (45 of 1860), or
- (ii) of any abetment of, attempt to commit, such offence, or
- (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;
- (b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
- (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
- (ii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause(ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.”

The offence under Sec.188 of the I.P.C. is specifically included in the bar created by the Legislature while engrafting Sec.195(1) of the Cr.P.C., wherein it is mandated that no court shall take cognizance of any the offences enumerated therein including the offence under

Sec.188 of the I.P.C., except on a complaint in writing of the court concerned as mentioned in that provision or by such officer of the court concerned as the court concerned may authorise in writing in this behalf or some other court, which that court is subordinate, etc. Indisputably the said provision mandated in Sec.195(1) of the Code of Criminal Procedure has not been followed in the instant case of offence alleged under Sec.188 of the I.P.C. Therefore, the court below could not have lawfully taken cognizance of the offence under Sec.188 of the I.P.C. based on Police charge sheet. Therefore, the prosecution on the basis of the alleged offence under Sec.188 of the I.P.C. is liable to quashed.

6. The only other subsisting offence alleged against the petitioner is one under Sec.283 of the I.P.C., which reads thus:

“Sec.283. Danger or obstruction in Public way or line of navigation. – Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.”

Taking note of the fact the court below has already concluded in Anx. 2 judgment of acquittal that the reduction of accused from 30 in number to just 10 in number in the final report, it has been held that it goes to the root of the prosecution case. Moreover, not even

one among the accused has been arrested from the site though the offence alleged is in relation to having caused obstruction in a public way. There is no whisper in the prosecution case that any of the member of the public had allegedly any complaint or grievance regarding the alleged obstruction of the public way as per the above said alleged incident.

7. In view of all the aforementioned aspects, this Court of the considered opinion that continuance of the impugned criminal proceedings against the petitioner would amount to mere wastage of time and public resources. In this view of the matter, it is ordered in the interest of justice that the impugned Anx.1 final report/ charge sheet filed in Crime No.1286/2008, which has led to the pendency of Calendar Case, C.C.No.1430/2014 on the file of the Judicial First Class Magistrate's Court-II, Ernakulam, and all further proceedings arising therefrom pending against the petitioner stand quashed.

The Crl.M.C. stands finally disposed of accordingly.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

Cr1.M.C.6571/14

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