

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

Cr1.MC.No. 7998 of 2015

IN C.C 57/2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, HARIPAD
CRIME NO.67/2007 OF KANAKAKUNNU POLICE STATION, ALAPPUZHA

PETITIONER/ACCUSED:

JAYAKRISHNAN, AGED 30 YEARS,
S/O.JAYACHANDRAN, JAYA BHAVANAM,
MUTHUKULAM
ALAPPUZHA.

BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 23-12-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

Cr1.MC.No. 7998 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE 1- COPY OF THE FINAL REPORT.

ANNEXURE 2- COPY OF THE JUDGMENT IN C.C.NO.372/07.

ANNEXURE 3- COPY OF THE DEPOSITION OF PW-1 & 2.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.7998 of 2015

Dated this the 23rd day of December, 2015

O R D E R

The petitioner herein is the original sixth accused in C.C No.372/2007 of the Judicial First Class Magistrate Court I, Haripad, involving the offences under Sections 447, 423 and 323 of the Indian Penal Code. The other five accused faced trial before the trial court and obtained a judgment of acquittal on 17.3.2011. The case against the petitioner herein was split up and refiled when he remained consistently absent during trial. It is now pending as C.C No.57/2013 before the learned Magistrate. The petitioner now seeks orders quashing the prosecution as against him on the ground that the very substratum of the prosecution case is totally lost by the acquittal of the others. Annexure A2 is a copy of the judgment in C.C No.372/2007. The prosecution examined five witnesses in the said case, including the defacto complainant, and marked Exts.P1 to P4 documents. Exts.D1 to D8 documents were marked on the side of the defence. On an appreciation of the evidence the learned Magistrate found that the prosecution

has no material to prove that the defacto complainant has actual possession over the subject matter in dispute, and the defacto complainant sustained some simple injuries in an accidental fall. As regards the claim of possession and the allegation of mischief the learned Magistrate found thus in paragraph 11 of the Annexure 2 judgment:

11. "All these show that PW1 was not in the alleged place of occurrence on 14.4.2007. Hence the testimony of PW1 as if she was an ocular witness has to be discarded. The further point to be considered is whether PW1 was having possession over property where mischief was allegedly committed. It is true that mischief has been committed in the property by uprooting certain trees as evidenced by Ext.P2, the scene mahasar. In order to fasten the accused with criminal liability u/s 447 IPC, the victim has to prove that the accused entered upon the property over which the former has possession. The accused has produced Ext.D2, a certified copy of a gift deed as per which PW1 was having ownership over 3 ares (about 7.5 cents) of property only. But PW1 claims that she was having ownership over 12 cents of property. That means, there is dispute as to the extent of property over which PW1 is claiming right. She does not know as to the extent for which she is paying land tax. Unless PW1 proves that she was having exclusive possession over the property over which the overtacts were allegedly committed, no criminal liability can be fastened upon the accused."

2. The court's finding is that the complainant had not in fact witnessed the alleged incident, she has nothing in her hands to prove possession of the subject matter in dispute, and

she does not even know whether she has so far paid land revenue. As regards the offence under Section 323 IPC, the learned Magistrate found thus in paragraph 12 of the judgment.

“When the various statements of PW2 are analysed, it can be seen that the intention of any of the accused to push her so as to make her fall to the ground has not been brought out. PW2 has no case that the accused pushed her and such pushing caused any pain to her. So if at all PW2 feel down, such falling was accidental. The testimony of PW2 does not at all bring out the ingredients of section 319 IPC so as to fasten the accused with criminal liability u/s 323 IPC.”

3. The court's finding is that there is no evidence to prove that the injury sustained by the complainant was inflicted by the accused, and probably she sustained injuries when she was accidentally fell down. On a perusal of the Annexure 2 judgment, I find that continuance of the prosecution as against the petitioner herein will be a sheer waste of time, because the prosecution cannot in any manner improve the case if the case against the petitioner goes to trial. I find that the very substratum of the prosecution case is totally lost by the acquittal of the others accused.

In the result, this petition is allowed. The prosecution against the petitioner in C.C No.57/2013 before the Judicial

First Class Magistrate Court I, Haripad 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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