IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

Crl.MC.No. 7215 of 2014 ()

IN CC 436/2002 of J.M.F.C.,THALASSERY
CRIME NO. 262/2001 OF THALASSERY POLICE STATION , KANNUR

PETITIONER(S)/PETITIONERS/ACCUSED 1 & 2:

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1. **GOPINATHAN**
   S/O PADMANABHAN, KADAMBOOR AMSOM, P.O.KADAMBOOR
   KANNUR DISTRICT.

2. **MADHUSOODANAN**
   S/O. PADMANABHAN, KADAMBOOR AMSOM, P.O.KADAMBOOR
   KANNUR DISTRICT.

   BY ADV. SRI.CIBI THOMAS

RESPONDENT(S)/RESPONDENTS/COMPLAINANT/STTE:

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1. **SUB INSPECTOR OF POLICE**
   THALASSERY POLICE STATION-670101.

2. **STATE**
   REPRESENTED BY THE PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM-682031.

   R BY ADV. PUBLIC PROSECUTOR SMT. S. HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 7215 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE I: TRUE COPY OF THE CHARGE IN CRIME NO.262/2001 OF THALASSERY POLICE STATION.

ANNEXURE II: TRUE COPY OF THE JUDGMENT DATED 14.10.2004 IN CC NO.436/2002 OF THE JFCM, THALASSERY.

ANNEXURE III: TRUE COPY OF THE DEPOSITION OF PW1 IN CCNO.436/2002 OF JFCM, THALASSERY.

ANNEXURE IV: TRUE COPY OF THE DEPOSITION OF PW2 IN CCNO.436/2002 OF JFCM, THALASSERY.

ANNEXURE V: TRUE COPY OF THE DEPOSITION OF PW3 IN CCNO.436/2002 OF JFCM, THALASSERY.

ANNEXURE VI: TRUE COPY OF THE DEPOSITION OF PW4 IN CCNO.436/2002 OF JFCM, THALASSERY.

ANNEXURE VII: TRUE COPY OF THE DEPOSITION OF PW5 IN CCNO.436/2002 OF JFCM, THALASSERY.

ANNEXURE VIII: TRUE COPY OF THE DEPOSITION OF PW6 IN CCNO.436/2002 OF JFCM, THALASSERY.

ANNEXURE IX: TRUE COPY OF THE DEPOSITION OF PW7 IN CCNO.436/2002 OF JFCM, THALASSERY.

ANNEXURE X: TRUE COPY OF THE DEPOSITION OF PW8 IN CCNO.436/2002 OF JFCM, THALASSERY.

ANNEXURE XI: TRUE COPY OF THE DEPOSITION OF PW9 IN CCNO.436/2002 OF JFCM, THALASSERY.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No.7215 of 2014

Dated this the 9th day of April, 2015.

O R D E R

The petitioners herein are the original accused Nos. 2 and 3 in C.C No.436 of 2002 of the Judicial First Class Magistrate Court, Thalassery. The original accused No.1 faced trial before the learned Magistrate, and obtained a judgment of acquittal on merits on 14.10.2004, when the prosecution could not adduce any sort of satisfactory evidence during trial. The case against the petitioners herein was split up and refiled when they remained consistently absent, and now it is pending as C.C No. 503 of 2004. They now seek orders quashing the prosecution on the ground that the very substratum of the prosecution case stands totally lost by the acquittal of the others, and the findings made by the learned Magistrate on the merits of the prosecution case, and also on the shabby nature of investigation made by the police. Annexure 2 is the judgment of the trial court in C.C No.436 of

2002 wherein the prosecution examined 9 witnesses and marked Exts. P1 to P6. The judgment shows that the police could not seize any of the material documents during investigation, and the police submitted final report in court without any definite material for a successful prosecution. As regards the nature of evidence and also the investigation the learned Magistrate found thus in paragraph 7 of the judgment.

> "At the outset, I may lay it down that investigation in this case was so shabby that it did not stuck even to the basics. The basic foundation of the prosecution case is forgery of the tax receipt alleged to have committed by the accused. The other part of the allegations such as it was forged with the intention of cheating CW1 and that it was used as genuine also lay on this foundation. Curiously enough the prosecution agency, more specifically the investigation officers in this case, have not even seen the alleged forged document involved in this case. The tax receipt allegedly forged by the accused is not even seen by any of the investigation officers in this case is admitted by PW5 and 9. So needless to say said tax receipt was neither seized by them nor produced before this court. They were only keen in setting rid of the investigation of this case from one station to another on the basis of jurisdictional aspect. This has also resulted in registering of 3 'FIRs' in this case. It is very evident that ultimately as a result of this jugglery no effective steps have been taken during the investigation to really collect material evidence connecting the accused with the crime. Ext.P2 to P3 (a) tax receipts of Pattuvam Village

> office would show that 3 sets of tax receipts have been issued for the land of CW1 for the same period. This is admitted by PW2 and 3 also. One among such tax receipts is alleged to have been forged and produced by the accused before Addl. Chief Judicial Magistrate Court. The prosecution agency has not collected any iota of evidence to prove this aspect. As observed earlier, the tax receipt alleged to have been forged is not seized or produced by the investigation officer. No one is examined or any other materials placed to show that such tax receipt was produced by the accused before Addl. Chief Judicial Magistrate Court. In brief, there is absolutely no evidence at all before this court to show that the accused in this case (A1) together with the other accused (A2 and 3), in furtherance of their common intention and as a result of conspiracy entered between them, forged any tax receipt with the intention of cheating CW1 and used it as genuine by producing it before A.C.J.M Court. In the absence of any piece of evidence to prove this I can only hold that the prosecution has failed to prove any of the charges leveled against the accused. Points answered accordingly".

These discussion and findings will convince the court that the police submitted final report without any definite material for a successful prosecution. The shabby nature of investigation is also seen very well discussed by the learned Magistrate in paragraph 7. I find that the prosecution cannot in any manner improve the case against these petitioners, if it goes to trial. The very substratum of the prosecution case stands lost by the acquittal of the others. Admittedly, there is no appeal or revision against the judgment of acquittal.

In the result, this petition is allowed. The prosecution against the petitioners in C.C No.503 of 2004 of the Judicial First Class Magistrate Court, Thalassery will stand quashed under Section 482 Cr.P.C.

Sd/-

P.UBAID,
JUDGE

sab