

Roy Vs. Mathew

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Court : Kerala

Decided On : Sep-09-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Roy

Respondent : Mathew

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN MONDAY,THE9H DAY OF SEPTEMBER201318TH BHADRA, 1935 CrI.MC.No. 3742 of 2013 ----- [CR. NO.138/2009 OF KUNNIKKODU POLICE STATION AS C.C. NO.22672012 ON THE FILE OF JUDICIAL FIRST CLASS - MAGISTRATE COURT-III, PUNALUR] PETITIONER/ACCUSED: ----- ROY,AGED42YEARS, S/O.THANKACHAN, ROY BHAVAN, PANDITHITTA MURI, THALAVUR VILLAGE KOLLAM DISTRICT. BY ADV. SRI.SYAM J.SAM. RESPONDENTS/STATE AND DEFACTO COMPLAINANT: ----- 1. MATHEW, AGED44YEARS, CHARUVILA VEEDU, PANDITHITTA, THALAVUR VILLAGE KOLLAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R2 BY PUBLIC PROSECUTOR SMT. S. HYMA. THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION

ON0909-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
Prv. CRL.M.C. NO.3742/2013: APPENDIX PETITIONER'S ANNEXURES:
ANNX.A1 - THE CERTIFIED COPY OF THE CHARGE SHEET IN22672012 ON
THE FILE OF JFCM-III, PUNALUR. ANNX.A2 - THE TRUE COPY OF THE

JUDGMENT

IN CC.NO.945/2009 ON THE FILE OF JFCM-III, PUNALUR. ANNX.A3 - TRUE
COPY OF THE DEPOSITION OF THE 1ST RESPONDENT IN CC.NO.945/2009 ON
THE FILE OF JFCM-III, PUNALUR. RESPONDENTS' ANNEXURES: NIL. //TRUE
COPY// P.A. TO JUDGE. Prv. V.K.MOHANAN, J -----
Crl.M.C.No.3742 of 2013 ----- Dated this the 9th day of
September, 2013

ORDER

The petitioner is the first accused in Crime No.138/2009 of Kunnikkodu Police Station and according to him the trial against an other accused in C.C.No.945/2009 resulted in Annexure-A2 judgment acquitting him and therefore, the petitioner is also entitled to get the benefit of Annexure-A2 judgment especially in view of Annexure-A3 chief examination of PW3 who is the injured.

2. The prosecution case is that on 22/3/2009 at 6.30 p.m. the accused persons, on certain previous enmity towards CW1, with an intention to cause him hurt in furtherance of their common intention attacked CW1 with dangerous weapons. The first accused wrongfully restrained CW1 and uttered obscene words against him on the public road and pulled him out of his vehicle and the accused persons together hit him by using 'edikkatta' and beat him on various parts of his body which resulted in injuries. Thus, the accused persons were alleged to have committed the above mentioned offences punishable under Sections 341, 324, 294(b) and r/w Section 34 of IPC. Crl.M.C.No.3742 of 2013 2 3. In the light of the submission made by the learned counsel for the petitioner, I have carefully perused Annexure- A2 judgment and Annexure-A3 deposition of PW3 the injured. In paragraph 4 of Annexure-A2 judgment, the learned Magistrate who undertaken the trial has recorded that CW1 immediately before he was examined as PW1, filed a compromise petition stating that the entire matter had been settled between

himself and the accused person and that he had no further complaints against him. The learned Magistrate rejected the above compromise petition as the offences alleged are non-compoundable but the learned Magistrate, it is further observed that as the matter was already been settled and injured himself turned against the prosecution version of the case, the learned prosecutor has given up the remaining witnesses thus the prosecution evidence was closed. Further in paragraph 12, the learned Magistrate has found that from the deposition of PWs 1 and 3, that PW3 sustained certain injuries on the date of the alleged occurrence, but the deposition of these two witnesses had not contained any specific allegation with regard to the role played by 'any of the accused'. PW3 has further stated that the accused persons had not attacked him CrI.M.C.No.3742 of 2013 3 on the alleged date of incident. PW2 also turned against the prosecution.

4. In the light of the above facts and circumstances and as the prosecution witnesses turned hostile and the learned Magistrate acquitted the accused who faced the prosecution and in view of the deposition of PWs 3 and 2, which I referred to above, I am of the view that even if the present petitioner is asked to face the trial, there would be no fruitful turn out especially in the light of the settlement arrived between the parties. In the result, this CrI.M.C is disposed of quashing all the proceedings in C.C.No.2267/2012 on the filed of the Judicial First Class Magistrate Court-III, Punalur pending against the petitioner. Sd/- V.K.MOHANAN, JUDGE AS

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