

**Shafi Vs. The State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/52038](http://sooperkanoon.com/52038)

**Court :** Kerala

**Decided On :** May-26-2015

**Judge :** Honourable Mr. Justice Alexander Thomas

**Appellant :** Shafi

**Respondent :** The State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS TUESDAY, THE 26<sup>H</sup> DAY OF MAY 2015 5<sup>TH</sup> JYAISHTA, 1937 CrI.MC.No. 1341 of 2015 ----- CC1332015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, MALAPPURAM CRIME NO. 215/2010 OF VAZHAKKAD POLICE STATION , MALAPPURAM ..... PETITIONER(S)/ACCUSED: ----- SHAFI, S/O.ALAVIKUTTY, CHALAKKATHODI HOUSE, CHEEKODE, PONNAD, MALAPPURAM DISTRICT. BY ADVS.SRI.BABU S. NAIR SRI.K.RAKESH RESPONDENT(S)/STATE & DEFACTO COMPLAINANT & INJURED: ----- 1. THE STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 031, FOR THE SUB INSPECTOR OF POLICE, VAZHAKAD POLICE STATION, MALAPPURAM DISTRICT.

2. PAREEKUTTY, S/O.UNNIYALI, CHALAKATHODI HOUSE, PONNAD, OMANAOR DESOM, CHEEKODE, MALAPPURAM DISTRICT, PIN:

673. 640.

3. USMAN, S/O.PAREEKUTTY, CHALAKATHODI HOUSE, PONNAD OMANAOR DESOM, CHEEKODE, MALAPPURAM DISTRICT PIN:

673. 640.

4. UMMACHUKUTTY, W/O.PAREEKUTTY, CHALAKATHODI HOUSE, PONNAD, OMANAOR DESOM, CHEEKODE, MALAPPURAM DISTRICT, PIN:

673. 640. R1 BY PUBLIC PROSECUTOR SMT.S.HYMA R2 - R4 BY ADV. SMT.M.LISHA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON2605-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: msv/ CrI.MC.No. 1341 of 2015 -----  
APPENDIX PETITIONER(S)' ANNEXURES: ANNEXURE A: TRUE COPY OF THE CHARGE IN CRIME NO.215/2010 OF THE VAZHAKKAD POLICE STATION. ANNEXURE B: TRUE COPY OF THE

#### JUDGMENT

IN CCNO.1534/2010 ON THE FILES OF THE J.F.C.M, MALAPPURAM DATED311/2015. ANNEXURE C: TRUE COPY OF THE AFFIDAVIT SWORN TO BY THE2D RESPONDENT DATED102/2015. ANNEXURE D: TRUE COPY OF THE AFFIDAVIT SWORN TO BY THE3D RESPONDENT DATED102/2015. ANNEXURE E: TRUE COPY OF THE AFFIDAVIT SWORN TO BY THE4H RESPONDENT DATED102/2015. RESPONDENT(S)' ANNEXURES: NIL //TRUE COPY// P.S.TO JUDGE Msv/ ALEXANDER THOMAS, J.

----- CrI.M.C. No.1341 of 2015 ----- Dated this the 26th day of May, 2015

#### ORDER

The petitioner was 2nd accused in Annexure A crime No. 215/2010 of Vazhakkad police station registered for the offences under Sections 341, 323, and 324 r/w

Section 34 IPC. The gist of the allegation of the prosecution is that on 23/10/2010 the accused attacked the contesting respondents 2 to 4 herein due to the inimical relationship that arose out of diversion of flow of water to the property and thus they committed the above said offences etc. The police after investigation submitted the impugned Annexure A final report/charge sheet in Crime No.215/2010 of Vazhakkad Police Station which led to the pendency of CC No.1534/2010 on the files of the Judicial First Class Magistrate's Court, Malappuram. As the petitioner did not appear for trial the case against him was split up and the trial proceedings remaining against accused (A1 and A3), proceeded. After the trial, the court CrI.M.C. No.1341 of 2015 2 below as per Annexure B judgment rendered on 31/01/2015 in CC15342010 acquitted the aforementioned two co-accused. Thereafter the petitioner appeared and the case was refiled as CC No.133/2015 on the files of the above said court. It is further submitted that the contesting respondents 2 to 4 have now settled the entire matter with the petitioner as evidenced from Annexure C to E affidavit sworn by them before this Court wherein it is stated by them that the entire disputes have been settled and that the other co-accused have already been acquitted and that they have no objection in the quashment of the impugned criminal proceedings pending against the petitioner. It is in the light of these facts and circumstances that the CrI.M.C. has been filed seeking the prayer for quashment of the impugned criminal proceedings against the petitioner.

2. Heard Sri.Babu S Nair learned counsel appearing for the petitioner and Smt.Lisha M learned counsel appearing for contesting respondents 2 to 4 and learned Public Prosecutor appearing for the 1st respondent State of Kerala.

3. The petitioner reiterated the submission in the CrI.M.C. The contesting respondents 2 to 4 submitted that in view of the CrI.M.C. No.1341 of 2015 3 settlement of the matter between the parties and in view of the acquittal of other co-accused, this Court may in the interest of justice consider the prayer of quashment etc. The learned Public Prosecutor submitted that this Court may consider the prayer for quashment in the light of the legal position settled by the Apex Court and by this Court on the subject matter.

4. Having given anxious consideration of the facts and circumstances of the case, it is seen that the other co-accused have already been acquitted as per Annexure B judgment rendered on 31/01/2015. The court below has found in Annexure B judgment that all the three main prosecution witnesses have stated that they cannot say as to who are the persons to have beat them and that the names of the accused were mentioned to the police only on suspicion and that the matter has been settled with the accused etc. The court below found that there is no eye witnesses to connect the said accused with the crime in any manner accordingly acquitted the said co-accused persons. Moreover disputes have already been settled as discernible from Annexures C to E sworn affidavits filed by contesting respondents 2 to 4. From a reading of Annexure B CrI.M.C. No.1341 of 2015 4 judgment it could be seen that substratum of the prosecution has been shattered by the acquittal of the co-accused. Hence in the light of law and legal position settled by this Court in the case as in Moosa v. Sub Inspector of Police reported in 2006 (1) KLT552(FB), Ashraf Kancheriyil v. State of Kerala reported in 2011 (2) KHC812 and Abbas v. State of Kerala 2013 (2) KLT9762013KHC336 So this Court is inclined to consider the prayer of quashment. Moreover taking into account the settlement between the parties, principles laid down in the reported decision by Apex Court in cases as in Gian Singh Vs. State of Punjab reported in [(2012)10 SCC3032012(9) SCALE257 could be applied in the facts and circumstances of the case. In this view of the matter, it is ordered in the interest of justice that the impugned Annexure A final report/charge sheet filed in impugned Crime No.215/2010 of the Vazhakkad Police Station against the petitioner which led to the pendency of CC No. 133/2015 on the files of the Judicial First Class Magistrate's Court, Malappuram and all further proceedings arising therefrom pending against the petitioner stand quashed. The petitioner will produce the certified copies of this order to the Station CrI.M.C. No.1341 of 2015 5 House Officer concerned and before the court below concerned. The CrI.M.C.stands finally disposed of accordingly. Sd/-ALEXANDER THOMAS JUDGE MJL