

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 28<sup>TH</sup> DAY OF FEBRUARY 2022 / 9TH PHALGUNA, 1943

CRL.L.P. NO. 79 OF 2022

CRIME NO.181/2014 OF Sasthamcotta Police Station, Kollam

AGAINST THE JUDGMENT DATED 28.3.2018 IN CC 1210/2014 OF

JUDICIAL MAGISTRATE OF FIRST CLASS, SASTHAMCOTTA

PETITIONER/APPELLANT/COMPLAINANT:

STATE OF KERALA  
REPRESENTED BY THE SUB INSPECTOR OF POLICE,  
SASTHAMCOTTA POLICE STATION.

BY PUBLIC PROSECUTOR SMT. SHEEBA THOMAS

RESPONDENTS/RESPONDENTS/ACCUSED NOS. 2 & 3:

- 1 RATHEESH, S/O. NADESHAN ACHARY, RATHEESH BHAVANAM,  
VILANTHARA, VALIYAPADAM MURI, WEST KALLADA  
VILLAGE, PIN 691500.
- 2 RADHA, W/O. NADESHAN ACHARY, RATHEESH BHAVANAM,  
VILANTHARA, VALIYAPADAM MURI, WEST KALLADA  
VILLAGE, PIN 691500.

BY ADVS. KALEESWARAM RAJ R1  
SRI.B.MOHANLAL R2  
VARUN C.VIJAY  
THULASI K. RAJ

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR  
ADMISSION ON 28.02.2022, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

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**ORDER**

Dated this the 28<sup>th</sup> day of February, 2022

This Criminal Leave Petition has been filed by the State seeking leave to prefer appeal against the judgment of acquittal dated 28.3.2018 in C.C.No.1210/2014 passed by the Judicial First Class Magistrate Court, Sasthamcotta.

2. The respondent Nos. 1 and 2 herein are the accused Nos. 2 and 3 respectively in C.C.No.1210/2014. They along with the accused No.1 were tried for the offences punishable under Sections 341, 294(b), 323, 324, 506(ii) read with 34 of IPC.

3. The prosecution case in short is that on 31.1.2014 at 2.15 pm, accused Nos.1 to 3 in furtherance of their common intention attempted to restrain CW1(PW1) and local people from using the pathway proceeds through eastern side of the property owned by the accused towards northern side. When PW1 questioned the said act, the accused No.1 with an axe gave a blow on the head of PW1, the accused No.2/1<sup>st</sup> respondent herein

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hit on the back of PW1 with a stick and the accused No.3/2<sup>nd</sup> respondent herein uttered obscene words towards PW1 and threatened to cause death.

4. The court below after a full-fledged trial found that the prosecution established the guilt against the accused No.1 only, that too, under Section 324 of IPC alone. Accordingly, he was convicted for the said offence. The accused Nos. 2 and 3 who are the respondent Nos. 1 and 2 herein were found not guilty of all the offences charged against them and they were acquitted. The accused No.1 was sentenced to undergo simple imprisonment till the rising of court and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for one month.

5. Now this Criminal Leave Petition has been filed by the State to grant special leave to prefer appeal against the acquittal of the accused Nos.2 and 3.

6. I have heard Smt. Sheeba Thomas, the learned Public Prosecutor for the petitioner, Sri. Kaleeswaram Raj, the learned counsel for the 1<sup>st</sup> respondent and Sri. B. Mohanlal, the learned

counsel for the 2<sup>nd</sup> respondent.

7. The learned counsel for the 1<sup>st</sup> respondent Sri. Kaleeswaram Raj submitted that the court below after analysis of evidence found that the prosecution failed to prove the case as against the accused Nos.2 and 3 and accordingly they were acquitted. The counsel further submitted that the petitioner has not made out a prima facie case or failed to raise even an arguable point so as to grant leave. The learned counsel also pointed out that the 1<sup>st</sup> respondent got an employment as Police Constable and he also underwent training and his appointment is denied only on account of the pendency of this Criminal Leave Petition. Per contra, the learned Public Prosecutor Smt. Sheeba Thoma submitted that there are sufficient evidence to prove the guilt of the accused Nos. 2 and 3 and the court below was not correct in acquitting the accused. She further submitted that prosecution witnesses, PW1 to PW5 clearly deposed the overt act of the accused Nos. 2 and 3. The prosecutor also submitted that prima facie case has been made out so as to grant leave.

8. The definite case of the prosecution is that the

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accused No.2 used stick to beat PW1. No serious overt act has been alleged against the accused No.3. The allegation as against her is that she only uttered obscene words against PW1 and criminally intimidated her. The learned counsel for the 1<sup>st</sup> respondent Sri. Kaleeswaram Raj invited my attention to the paragraph '8' of the judgment of the court below wherein it was found that even though in the 161 statement of PW2 to PW5, they specifically stated that the accused No.2 has used only stick to assault PW1, but at the dock they stated that the accused used an iron rod to assault PW1. This vital contradiction has been brought out in cross examination as well. That apart, PW2 to PW5 could not say from where the accused No.2 got the weapon to assault PW1. The learned counsel also invited my attention to the medical evidence at paragraph '13' of the judgment. The court below found that there is no medical evidence to support any injury upon the back of PW1's body and hence there is no clarity regarding, through what means the accused No.2 caused hurt to PW1. As against the accused No.3 also there are no sufficient evidence. I am of the view that the court below has

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correctly appreciated the evidence of PW1 to PW5 who are loyal to the prosecution and found that no convincing evidence has been brought out to connect the accused Nos. 2 and 3 with the crime. That apart, as stated already, the accused No.2 has got appointment as Police Constable in the Kerala Police. It is borne out from the records that he underwent training also. But he was denied appointment in view of the pendency of this Criminal Leave Petition. The 1<sup>st</sup> respondent has challenged the same before the Kerala Administrative Tribunal (KAT) in O.A.No.1266/2018. The KAT disposed of the said OA as per order dated 1.11.2021, with a direction to the Additional Director General of Police (ADGP), Intelligence, Police Head Quarters, Vazhuthacaud, Thiruvananthapuram to submit a report regarding the character and antecedents of the accused No.2 to the Government within two weeks from the date of receipt of a copy of the order. A further direction was given to the Government to pass orders on the suitability of the accused No.2 for appointment. The learned counsel for the 1<sup>st</sup> respondent submits that due to the pendency of this Criminal Leave Petition,

the ADGP is not passing any order and virtually employment to the 1<sup>st</sup> respondent is denied.

9. The Apex Court in ***State of Maharashtra v. Sujay Mangesh Poyarekar*** [(2008) 9 SCC 475] has held that, "in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a *prima facie* case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside." It was further held that, "it cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be "perverse" and, hence, no leave should be granted."

The above decision has been followed by the Apex Court in ***State***

***of Maharashtra v. Shankar Ganapati Rahatol & Others***  
[(2020) 11 SCC 608].

For these reasons recorded above, I am of the view that the petitioner/State has failed to make out a prima facie case or even arguable case. Hence the leave sought for is declined.

Sd/-

**DR. KAUSER EDAPPAGATH**

**JUDGE**

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**True copy**

P.A. To Judge