

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

Cr1.MC.No. 188 of 2015

IN CC 1309/2007 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
HOSDRUG
CRIME NO. 174/2003 OF HOSDURG POLICE STATION , KASARGOD

PETITIONER/ACCUSED:

T.NOUSHAD, AGED 33 YEARS,
S/O. MOHAMMED, RESIDING NEAR HADDAD MOSQUE,
HOSDURG,
KASARAGOD DISTRICT.

BY ADV. SRI.K.P.HARISH

RESPONDENT/STATE OF KERALA:

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

BY SR. PUBLIC PROSECUTOR SMT.SAREENA GEORGE.P

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 13-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 188 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1: COPY OF THE FIR AND FI STATEMENT DATED 18.4.2003 IN
CRIME NO.174 OF 2003 OF HOSDURG POLICE STATION.

ANNEXURE A2: COPY OF THE FINAL REPORT DATED 23.7.2004 IN CRIME
NO.174/2003 AS NUMBERED AS C.C.NO.599/2005 ON THE FILES OF THE
JUDICIAL FIRST CLASS MAGISTRATE COURT-I, HOSDURG.

ANNEXURE A3: COPY OF THE JUDGMENT IN C.C.NO.599/2005 DATED
7.11.2007 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
HOSDURG.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.188 of 2015

Dated this the 13th day of January, 2015

O R D E R

The petitioner herein is the original 2nd accused in C.C No.599/2005 before the Judicial First Class Magistrate Court I, Hosdurg. This prosecution is brought under Section 326 of the Indian Penal Code on the complaint of one Mohammed Ashraf. The three other accused faced trial before the learned Magistrate in C.C No.599/2005 and obtained judgment of acquittal when all the material witnesses including the first informant turned hostile during trial. The case against the petitioner herein was split up and refiled as C.C No.1309/2007. Now he seeks orders quashing the prosecution on the ground that continuance of the prosecution in the above circumstances will not serve any purpose. Annexure 3 judgment in C.C. No.599/2005 shows that the prosecution examined five material witnesses in the said case including the first informant and also marked Exts.P1 and P2. But nobody supported the prosecution. The first informant Mohammed Asharaf was examined as PW3 and the eye witnesses cited by the prosecution were examined as PWs.1, 4 and 5. The eye witnesses did not in any manner support the prosecution. They stated that they had not in fact witnessed the alleged incident.

The defacto complainant examined as PW3 stated that he had sustained some injuries but he could not identify the assailants, and complaint happened to be filed against the accused on some misapprehension. In such a circumstance, examination of the others was dispensed with, and evidence was closed by the learned Magistrate. In the absence of any evidence or incriminating circumstance, the learned Magistrate acquitted the accused Nos. 1 and 3. In such a situation, it is quite definite that the prosecution cannot in any manner improve the case, and the witnesses also cannot in any manner help the prosecution, if the case against the petitioner goes to trial. In short, such proceeding will be a sheer waste of time.

In the result, this Criminal Miscellaneous Case is allowed. The prosecution against the petitioner herein in C.C No.1309/2007 before the Judicial First Magistrate Court I, Hosdurg will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioners will stand released from prosecution, and the bail bond, if any, executed by them will stand discharged.

**P.UBAID
JUDGE**

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