

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

Cr1.MC.No. 257 of 2015

L.P NO.166/2011 IN C.C NO.904/2008 OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT, MALAPPURAM

CRIME NO. 166/2000 OF KONDOTTY POLICE STATION , MALAPPURAM

PETITIONER/7TH ACCUSED:

MUHAMMED SHEREEF VAMBADAN
S/O. MUHAMMED, ATHIKKATTUPARAMBU HOUSE, ALINCHUVADU.
KUZHIMANNA P.O., MALAPPURAM DISTRICT

BY ADV. SRI.U.K.DEVIDAS

RESPONDENTS/STATE/COMPLAINANTS:

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM
 2. HYDROSKUTTY,
S/O ALAVIKUTTY, KANHIRANGADAN HOUSE, KUZHIMANNA P.O,
THADAPARAMBU, MALAPPURAM DISTRICT-673641
 3. PARTHASARADHI,
S/O GOPALAKRISHNAN, THAZHATHUVEETIL HOUSE
KUZHIMANNA PO, THADAPARAMBU,
MALAPPURAM DISTRICT-673641
 4. LATHA P.P.,
W/O. GOPALAKRISHNAN, THAZHATHUVEETIL HOUSE,
KUZHIMANNA P.O., THADAPARAMBU,
MALAPPURAM DISTRICT-673 641

R2-4 BY ADV. SMT.P.M.SHAHIDA
R1 BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 15-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 257 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE 1: COPY OF THE REPORT OF THE RESPONDENT NO.2 TO 4

ANNEXURE II: COPY OF THE JUDGMENT IN C.C. NO. 604/2007 DATED
31.08.2008

ANNEXURE III: THE ORIGINAL OF THE AFFIDAVIT DATED 07.11.2014
EXECUTED BY THE RESPONDENT NO 2 TO 4

ANNEXURE IV: COPY OF THE DEATH CERTIFICATE DATED 11.05.2011

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

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**Crl.M.C No.257 of 2015**

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Dated this the 15th day of January, 2015

O R D E R

The petitioner herein is the original 7th accused in C.C No.604/2007 of the Judicial First Class Magistrate Court, Malappuram. The offences involved in this case are under Sections 147, 148, 447, 427, 324 and 506(2) r/w 149 of the Indian Penal Code. The original accused Nos.2 and 5 faced trial before the trial court and obtained a judgment of acquittal under Section 248(1) of the Code of Criminal Procedure when all the material witnesses including the de facto complainant turned hostile to the prosecution in view of an amicable settlement made by the parties out of court. The prosecution examined four witnesses in the said case including de facto complainant and also marked Ext.P1. None of the material witnesses examined in the case supported the prosecution. In such a circumstance, examination of the others was dispensed with, and evidencing was closed by the trial court. In the absence of any evidence or incriminating circumstance, the learned trial Magistrate acquitted the accused Nos.2 and 5. The case against the petitioner herein was split up and refiled as C.C No. 904/2008 and it is now transferred to the register of long pending cases as L.P No.166/2011 before the Judicial First Class Magistrate Court, Malappuram. The petitioner now seeks orders quashing the prosecution as against him on the ground that the

very substratum of the prosecution case is totally lost by the acquittal of the others, and continuance of prosecution against him will not serve any purpose. Annexure II judgment in C.C No.604/2007 shows that all the material witnesses examined by the prosecution in the said case turned hostile in view of an amicable settlement made by the parties out of court. 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 petition is allowed. The prosecution against the petitioner in C.C No.904/2008 before the Judicial First Class Magistrate Court, Malapuram, which stands transferred to the register of long pending cases as L.P No.166/2011, will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioner will stand released from prosecution, and the bail bond, if any, executed by him will stand discharged.

**P.UBAID
JUDGE**

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