

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. 267 of 2015

IN SC 27/2010 of ADDL.SESSN.COURT (ADHOC-II) KASARAGODE

CRIME NO. 30/2009 OF HOSDURG POLICE STATION , KASARGOD

PETITIONERS/ACCUSED 1,2 AND 4:

1. K.P.KABEER, AGED 27 YEARS,
S/O ASSAINAR,
RESIDING AT K.P. KABEER MANZIL, KALLURAVI,
KANHANGAD VILLAGE, HOSDURG TALUK,
KASARGOD DISTRICT
2. SALAM @ KOYI SALAM, AGED 31 YEARS,
S/O KHADER @ ABDUL KHADER, RESIDING AT KALLURAVI
KANHANGAD VILLAGE, HOSDURG TALUK,
KASARGOD DISTRICT
3. K.P. IBRAHIM, AGED 29 YEARS,
S/O ASSAINAR, RESIDING AT ISMAIL MANZIL, KALLURAVI,
KANHANGAD VILLAGE, HOSDURG TALUK,
KASARGOD DISTRICT

BY ADVS.SRI.T.MADHU
SMT.C.R.SARADAMANI

RESPONDENT/STATE:

THE STATE OF KERALA
THROUGH THE STATION HOUSE OFFICER
HOSDURG POLICE STATION
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031

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. 267 of 2015

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE A1: COPY OF THE FIR IN CRIME NO.30/2009 OF HOSDURG
POLICE STATION.

ANNEXURE A2; COPY OF THE FINAL REPORT IN CRIME NO.30/2009 OF
HOSDURG POLICE STATION.

ANNEXURE A3: COPY OF THE JUDGMENT DATED 6-3-2013 IN S.C.
NO.27/2010 ON THE FILE OF THE ADDITIONAL SESSSION'S COURT (ADHOC-
II) KASARGOD

ANNEXURE A4: COPY OF THE JUDGMENT DATED 21.01.2014 IN CRL.M.C.
NO. 746/2014 ON THE FILE OF THIS HON'BLE COURT.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.267 of 2015

Dated this the 15th day of January, 2015

O R D E R

The petitioners herein are the original accused Nos.1, 2 and 4 in Crime No.30/2009 of the Hosdurg Police Station, registered under Sections 143, 147, 148, 332 and 308 r/w 149 of the Indian Penal Code, on the complaint of one Narayanan, the then Sub Inspector of Police, Hosdurg. The original accused Nos.5 and 6 faced trial in S.C No.27/2010 before the learned Additional Sessions Court (Adhoc II), Kasaragod, and obtained a judgment of acquittal when any of the material witnesses including the complainant Sub Inspector did not support the prosecution. The case against the others was split up. Later the case against the original accused No.3 was quashed by this Court as per order dated 21.1.2014 in Crl.M.C No.746/2014. The case against these three petitioners was split up during the process, and it is now pending as S.C. No.770/2014 as against the first petitioner as L.P No.104/2012 as against the 2nd petitioner herein, and as L.P No.45/2012 as against the 3rd petitioner. These three petitioners now seek

orders quashing the prosecution as against them on the ground that continuance of prosecution in the above circumstance of acquittal of the others on the ground of amicable settlement, will not serve any purpose. Annexure A3 judgment in S.C. No.27/2010 shows that the material witnesses including the first informant Sub Inspector turned hostile in view of an amicable settlement made out of court, on the intervention of some persons. This Court quashed the proceeding against the 3rd accused on the finding that in the above circumstance of amicable settlement, which lead to the acquittal of those who faced prosecution, continuance of proceeding will not serve any purpose. These petitioners also seek orders on the same ground. I find from Annexure A3 judgment that the parties have really come to terms out of court. Though a settlement as such could not be reported to court when the complainant is a Sub Inspector in service, he practically turned hostile. No doubt, the prosecution cannot in any manner improve the case now if the case against these petitioners goes to trial. I find the very substratum of the prosecution case stands totally lost. Continuance of prosecution against these petitioners in these circumstances will be a sheer waste of time. It is submitted that

the original 8th accused is still absconding.

In the result, this Criminal Miscellaneous Case is allowed. The prosecution against the petitioners herein, now pending as S.C. No.770/2014 as against the 1st petitioner as L.P.C No.104/2012 as against the 2nd petitioner, and L.P.C No.45/2012 as against the 3rd petitioner, before the learned Additional Session's Judge (formerly Adhoc II), Kasaragod, will stand quashed under Section 482 of the Code of Criminal Procedure.

**P.UBAID
JUDGE**

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Session's Case number "S.C No.770/2014" occurring in the 14th and 15th lines of 1st paragraph and in the 3rd line of last paragraph of the final order in Crl.M.C No.267/2015 is corrected as "S.C No.720/2014" vide order dated 26.5.2015 in Crl.M.A No.4733/2015 in Crl.M.C No.267/2015.

Sd/-
Registrar (Judicial)