

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

Crl.MC.No. 321 of 2015 ()

**IN LP 14/2009 of SUB COURT, VADAKARA
CRIME NO. 36/2004 OF NADAPURAM POLICE STATION , KOZHIKODE**

PETITIONER(S)/ACCUSED:

**ISMAIL AGED 32 YEARS
S/O MOITHU, KOROTHU VEEDU, NADAPURAM AMSOM
KUMMAMGODE DESOM, KOZHIKODE DISTRICT**

**BY ADVS.SRI.K.B.ARUNKUMAR
SRI.RANJIT BABU**

RESPONDENT(S)/STATE:

**STATE OF KERALA
REPRESENTED THROUGH THE SUB INSPECTOR OF POLICE
NADAPURAM POLICE STATION, KOZHIKODE DISTRICT
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, PIN-682031**

R BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22-01-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 321 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE 1: THE CERTIFICATE COPY OF THE FIR IN CRIME NO.36/2004 OF NADAPURAM POLICE STATION

ANNEXURE 2: THE CERTIFIED COPY OF THE FINAL REPORT

ANNEXURE 3: THE CERTIFIED COPY OF THE DEPOSITION OF THE PW6 IN S.C.NO.10/2009 ON THE FILE OF ASSISTANT SESSIONS COURT, VATAKARA

ANNEXURE 4: THE CERTIFIED COPY OF THE JUDGMENT IN S.C. NO. 10/2009 ON THE FILE OF THE ASSISTANT SESSIONS COURT, VATAKARA

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PATO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 321 of 2015

Dated this the 22nd day of January, 2015.

O R D E R

The petitioner herein is the original first accused in Crime No.36/2004 of the Nadapuram Police Station, registered under Sections 3 and 5 of the Explosive Substances Act. The original second accused faced trial before the learned Assistant Sessions Judge, Vatakara in S.C No.10/2009, and obtained a judgment of acquittal. The case against the petitioner herein was split up and refiled, and it now stands transferred to the register of long pending cases as L.P No.14/2009 of the Court of Session, Kozhikode. The petitioner now seeks orders quashing the prosecution on the ground that the very substratum of the prosecution case stands lost, and continuance of prosecution against him will not serve any purpose. The Annexure 4 judgment in S.C No. 10/2009 of the learned Assistant Sessions Judge, Vatakara shows that the prosecution examined 8 witnesses in the said case, and marked Exts.P1 to P7, and MO1 property. Of course, the police officers and other seizure

witnesses proved the alleged seizure of gun powder, but the very material witness examined by the prosecution as PW6 to identify the accused did not in any manner support the prosecution. In the absence of any material to connect the accused, or any of the accused with the alleged seizure of gun powder, or when the only material witness examined by the prosecution fully turned hostile the learned trial Judge acquitted the second accused, on the finding that he is not guilty. On a perusal of the judgment I find that the very substratum of the prosecution case stands totally lost. It is definite that the prosecution cannot in any manner improve the case as against the petitioner herein, and the witnesses also cannot in any manner support the prosecution. When the only witness is fully against the prosecution, continuance of prosecution against the petitioner will not serve any purpose. It will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioner herein as the second accused in Crime No.36/2004 of the Nadapuram Police Station, now pending before the court of Session, and which stands transferred to the register of long pending cases as L.P No.14/2009 before the learned Assistant Sessions Court, Vatakara will stand quashed under Section 482

Cr.P.C. Accordingly, the petitioner will stand released from prosecution, and the bail bond, if any, executed by him will stand discharged.

P.UBAID,
JUDGE

sab