

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

Crl.MC.No. 371 of 2015

C.C.NO. 1579/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KANNUR

CRIME NO. 990/2011 OF BALIAPATTAM POLICE STATION , KANNUR

PETITIONER(S)/ACCUSED 3 & 4 :

**VIPIN E.K,
S/O.PAVITHRAN, CHAPPI VILLA, EENTHOD,
AROLI P.O., KANNUR.**

**BY ADVS.SRI.LIJIN THAMBAN
SRI.G.S.KRISHNAN KARTHA**

RESPONDENT(S)/STATE & DEFACTO COMPLAINANTS 2 TO 5 :

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.**
- 2. KIRAN RAJ,
S/O.RAJAN, SANDRA NIVAS, PEELERI KANDAL,
KANNUR-670 003.**
- 3. LIJIN PRAKASH,
S/O.PRAKASHAN, PALIYAPARAMBIL HOUSE, KOTTIYOOR,
KANNUR-670 003.**
- 4. SHIBI D.,
S/O.RAJAN, PAZHAYAKKAN HOUSE, KARINGALKKUZHI,
KANNUR-670 003.**
- 5. SHIBIN P.,
S/O.SARVAJNAN, MOOLAYA HOUSE, KANTHAL BAKKALA,
KANNUR-670 003.**

**R1 BY PUBLIC PROSECUTOR SMT.P.MAYA
R2 TO R5 BY ADV. SRI.M.RETHEESHKUMAR**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 21-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1 :** TRUE COPY OF THE FIR IN CRIME NO.990/2011 OF
BALIAPATTAM POLICE STATION.
- ANNEXURE A2 :** CERTIFIED COPY OF THE JUDGMENT DATED 21-10-2013 OF
THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KANNUR.
- ANNEXURE A3 :** TRUE COPY JUDGMENT IN CRL.M.C.3708/2014
DATED 09-07-2014.
- ANNEXURE A4 :** AFFIDAVIT SWORN BY THE RESPONDENTS 2 TO 5.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

P.UBAID, J.
~~~~~  
**Crl.M.C No.371 of 2015**  
~~~~~  
Dated this the 21st January, 2015

ORDER

The petitioners herein are the accused Nos 3 and 4 in C.C No.384 of 2012 of the Judicial First Class Magistrate's Court -II, Kannur. The offences involved in this case are under Sections 143, 147, 148, 324, 448 and 149 of Indian Penal Code. The original accused Nos.1 and 2 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 first informant 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 the first informant and also marked ExtP1 F.I Statement. None of the material witnesses examined in the case supported the prosecution. In such a circumstance, examination of the others was dispensed with and evidence was closed by the trial court. In the absence of any evidence or incriminating circumstance, the learned

Magistrate acquitted the accused Nos. 1 and 2. The case against the petitioners herein was split up and refiled as C.C No.1579 of 2013 and it is now pending before the Judicial First Class Magistrate's Court-II, Kannur. The petitioners now seek orders quashing the prosecution as against them 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 them will not serve any purpose. Annexure -A2 judgment in C.C 384 of 2012 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 petitioners 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 petitioners in C.C No.1579 of 2013 before the Judicial First Class Magistrate's Court-II, Kannur 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**

ma