

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

Crl.MC.No. 471 of 2015 ()

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SC 628/2005 of SUB COURT, NEDUMANGAD
CRIME NO. 202/2000 OF NEDUMANGAD POLICE STATION , THIRUVANANDAPURAM
DISTRICT
=====**

PETITIONERS/ACCUSED 7, 12 AND 15:

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- 1. UNNI, AGED 39 YEARS, S/O.KRISHNAN KUTTY
NAGAR COTTAGE, AYANIKADU
PURAVOORKONAM, KARAKULAM
THIRUVANANTHAPURAM - 695 564.**
 - 2. GHOSH LAL AGED 40 YEARS
S/O.VELAYUDHAN PILLAI, JAYA BHAVAN, KALLUPALAM
AYANIKADA, PURAVOORKONAM, KARAKULAM
THIRUVANANTHAPURAM - 695 564.**
 - 3. BAIJU, AGEED 40 YEARS, S/O.NELSON
CHARUVILA VEEDU, BACKSIDE OF BREAD COMPANY
PULLIKONAM, CHEKKAKONAM, KARAKULAM
THIRUVANANTHAPURAM - 695 564.**

BY ADV. SRI.A.S.SHAMMY RAJ

RESPONDENTS:

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- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**
 - 2. RAJESWARI AMMA, AGED 58 YEARS
D/O.LAKSHMI KUTTI, MAKAYIRAM VEEDU, KARAKULAM
THIRUVANANTHAPURAM - 695 564.**

**R2 BY ADV. SRI.K.RAJESH KANNAN
R1 BY PUBLIC PROSECUTOR SMT. SHEEBA M.T.**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16-12-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS

**ANNEXURE 1: CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO. 202/2000 OF
NEDUMANGADU POLICE STATION.**

**ANNEXURE 2: CERTIFIED COPY OF THE JUDGMENT IN S.C.NO. 628/2005 DATED
28/11/2013, ON THE FILE OF ASST. SESSIONS COURT, NEDUMANGADU.**

ANNEXURE 3: COMPROMISE AFFIDAVIT SWORN BY THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY //

P.A.TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.471 of 2015

Dated this the 16th day of December, 2015

O R D E R

The petitioners herein are the original accused Nos.7,12 and 15 in S.C.No.628/2005 of the Court of Session, Thiruvananthapuram. The other accused faced trial before the learned Assistant Sessions Judge, Nedumangad, and obtained a judgment of acquittal under Section 232 Cr.P.C., when the material witnesses including the defacto complainant turned hostile to the prosecution. The prosecution involves the offences under Sections 143, 147, 148, 149, 452 and 427 IPC, Section 27 of the Arms Act and Section 5 of the Explosive Substance Act. The case against these petitioners was split up and refiled as S.C.No.479/2014, when they consistently remained absent during trial. They now seek orders quashing the prosecution against them, on the ground of amicable settlement out of court with the complainant, and also on the ground that the very substratum of the prosecution case stands lost by the acquittal of the other accused. The 2nd respondent herein is the defacto

complainant, who made complaint against the petitioners and others. She has filed affidavit to the effect that the whole dispute stands settled and resolved forever, and she has no grievance or complaint now. Annexure-II judgment of the trial court in S.C.628/2005 shows that the prosecution examined four witnesses in the said case and marked Ext.P1 document. PW1 is the defacto complainant. She and the other witnesses turned hostile to the prosecution. It appears that the witnesses did not support the prosecution in view of an amicable settlement made by the parties out of court. One of the material witnesses could not be produced in court by the police due to serious illness. Any way, the defacto complainant herein disowned her case during trial. I am well satisfied that the very substratum of the prosecution case stands lost by the acquittal of the others as per Annexure-II judgment. Definite it is, that the prosecution cannot, in any manner, improve the case, if it goes to trial. The defacto complainant and the material witnesses, who once disowned the statements and complaint, cannot later improve their versions at the second round, if the case against the

petitioners goes to trial. Continuance of the prosecution in such a situation will be a sheer waste of time. Moreover, the parties have also come to terms amicably out of court. In such a situation, following the decisions of the Honourable Supreme Court on the point, the prosecution can be quashed.

In the result, this petition is allowed. The prosecution against the petitioners in S.C.No.479/2014 of the learned Assistant Sessions Judge, Nedumangad will stand quashed under Section 482 Cr.P.C.

Sd/-

P. UBAID, JUDGE

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// True Copy //

P.A. To Judge