

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

Crl.MC.No. 479 of 2015 ()

**IN CC 882/2003 of JUDICIAL FIRST CLASS MAGISTRATE COURT-III, NEYYATTINKARA
CRIME NO. 300/2003 OF BALARAMAPURAM POLICE STATION ,
THIRUVANANTHAPURAM**

PETITIONER(S)/ACCUSED 7 & 8:

- 1. ABDUL SALAM
S/O ABOOBACKER, THERIYILKUZHIVILAKATHU VEEDU
VAZHIMUKKU, THIRUVANANTHAPURAM**
- 2. DASTHAKKIR
S/O MOHAMMAD, PACHIKKODU PUTHEN VEEDU, VAZHIMUKKU
THIRUVANANTHAPURAM**

BY ADV. SRI.RAJESH P.NAIR

RESPONDENT(S):

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR HIGH
COURT OF KERALA ERNAKULAM
KOCHI-682031**

R BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02-02-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 479 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE A: CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.300/2003 OF
BALARAMAPURAM POLICE STATION**

**ANNEXURE B: CERTIFIED COPY OF THE JUDGMENT DATED 24.9.2007 IN C.C.
NO.882/2003 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-III,
NEYYATTINKARA**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 479 of 2015

Dated this the 2nd day of February, 2015.

O R D E R

The petitioners herein are the original accused Nos. 7 and 8 in C.C No.882/2003 of the Judicial First Class Magistrate – III, Neyyattinkara. The offences involved in the case are under Sections 143, 145, 188, 149, 283 of IPC r/w Section 52 of Kerala Police Act. The prosecution case is that the petitioners and the others obstructed a public road in connection with some protest, and disobeyed the direction of the police to disperse. The accused Nos. 1 to 6 faced trial before the learned Magistrate in C.C No.882/2003, and obtained a judgment of acquittal, when the material witnesses examined by the prosecution including the police officers could not identify anybody. The case against the petitioners herein was split up and refiled as C.C No.1077/2009. Now it stands transferred to the register of long pending cases as L.P 45/2009. They seek orders quashing the prosecution on the ground that the very substratum of the prosecution case stands lost by the acquittal of the others, and so continuance of the prosecution will not serve any purpose. The Annexure B judgment in C.C No.882/2003 shows that

the prosecution examined three witnesses in the said case including the police constable who reported the incident. But nobody could identify any of the accused. In the absence of any incriminating material in the evidence of the material witnesses the learned Magistrate found the other accused not guilty. In fact, the prosecution under Section 188 IPC is unsustainable in view of the bar under Section 195 Cr.P.C. As regards the other offences also I find that the police cannot in any manner improve the case against the petitioners herein. No doubt, the material witnesses examined by the prosecution in C.C 882/2003 cannot in any manner improve the case against these petitioners, if their case goes to trial. Nobody could identify any of the accused, and nobody could bring out anything, or the essentials of the unlawful assembly alleged. I find that the substratum of the prosecution case stands totally lost by the acquittal of the others on merits, and I find that continuance of prosecution in such a situation against these petitioners will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioners in C.C 1077/2009 of the Judicial First Class Magistrate Court- III, Neyyatinkara, which stands transferred to the register of long pending cases as L.P No. 45/2009 will stand quashed under Section 482 Cr.P.C.

P.UBAID,
JUDGE

sab