

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. 524 of 2015

**CC 221/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - I, KANNUR
CRIME NO. 164/2007 OF KANNUR TOWN, KANNUR**

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PETITIONER(S)/ACCUSED NO.3:

**JITHIN C.V.,
S/O.JANARDANAN, CHANGATTU VALAPPIL HOUSE, PALLIKUNNU,
TALAP, KANNUR DT.**

**BY ADVS.SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH**

RESPONDENT(S)/DEFACTO COMPLAINANT AND STATE:

- 1. THE STATION HOUSE OFFICER, KANNUR TOWN POLICE STATION,
KANNUR - 670 002.**
- 2. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

BY PUBLIC PROSECUTOR SMT.S.HYMA

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

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE 1: TRUE COPY OF THE FINAL REPORT IN CRIME NO.164/2007 OF KANNUR TOWN POLICE STATION.

ANNEXURE 2: TRUE COPY OF THE JUDGMENT IN CC 371/07 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KANNUR DATED 25/5/2011.

ANNEXURE 3: TRUE COPY OF THE SHEET ENTRY DATED 28/1/2010 AND 2/2/2010 IN CC 371/07

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P. UBAID, J.

Crl.M.C.No.524 of 2015

Dated this the 2nd day of February, 2015

O R D E R

The petitioner herein is the original 3rd accused in C.C.No.371/2007 of the Judicial First Class Magistrate Court-I, Kannur. The offences involved in this case are under Sections 143,147,148,341,323 and 427 IPC read with 149 IPC. This petitioner along with the other four accused faced trial till the stage of examination of the accused under Section 313 Cr.P.C. Thus, all the prosecution witnesses were examined by the prosecution in the presence of all the accused including the petitioner herein. On the date fixed for steps under Section 313 Cr.P.C., the petitioner remained absent, and an application to excuse his absence happened to be disallowed by the learned Magistrate. Accordingly, the other accused were examined under Section 313 Cr.P.C., and the case was posted for defence evidence. As against the petitioner herein the learned Magistrate issued warrant of arrest, and also issued notice to the sureties. By judgment dated 25.05.2011, the learned Magistrate acquitted the other four accused under Section 248(1) Cr.P.C., on the

finding that the evidence adduced by the prosecution is not at all sufficient and satisfactory to find the accused guilty. The case against the petitioner was split up and refiled as C.C.No.221/2011. He now seeks orders quashing the prosecution against him, on the ground that continuance of prosecution will be a sheer waste of time, and it will not serve any purpose. Annexure-A2 judgment in C.C.No.371/2007 shows that in the said case the prosecution examined four witnesses and marked Exts.P1 to P3. All these witnesses were examined in the presence of the petitioner herein also. After examination of all these material witnesses, the petitioner consistently remained absent. So, whatever discussed and analysed by the trial court as regards the evidence given by PW1 to PW4 will practically go to the benefit of the petitioner herein also. The learned Magistrate found that there is absolutely no evidence or material to constitute the offence of unlawful assembly, or to prove the alleged assault. On an examination of Annexure A2 judgment, I am well satisfied that on the evidence given by the PW1 to PW4 in the case, the prosecution cannot in any manner improve the case as against the petitioner herein, if it proceeds. No doubt,

these witnesses, or specifically PW1 examined in C.C.No.271/2007, cannot in any manner improve the evidence as against the petitioner herein. Definite it is, that continuance of prosecution on such evidence as against the petitioner herein will be a sheer waste of time. It is quite definite that on the evidence adduced by the witnesses, the prosecution cannot in any manner improve the case as against the petitioner.

In the result, this petition is allowed. The prosecution against the petitioner in C.C.No.221/2011 of the Judicial First Class Magistrate Court-I, Kannur will stand quashed under Section 482 Cr.P.C.

Sd/-
P. UBAID, JUDGE

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