

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

Crl.MC.No. 537 of 2015 ()

**IN SC 342/2013 of ADDL.DISTRICT COURT, KOZHIKODE
CRIME NO. 147/1998 OF KUTTIYADI POLICE STATION , KOZHIKODE**

PETITIONER(S)/ACCUSED :

**RAJAN AGED 42 YEARS
S/O. KANNAN, THAYYULLATHIL HOUSE, POOLAKOOL P.O.
CHERAPURAM AMSOM DESOM, KOZHIKODE DISTRICT.**

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/COMPLAINANT & STATE :

**STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

R BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18-02-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A : COPY OF THE FINAL REPORT DTD.11.8.2000 WHICH IS NOW PENDING AS AGAINST THE PETITIONER AS SC NO.342/13 ON THE FILE OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE, KOZHIKODE.

ANNEXURE B : COPY OF THE JUDGMENT DTD.31.10.2002 IN SESSIONS CASE NO.8/2001 ON THE FILE OF THE ADDITIONAL SESSIONS JUDGE, KOZHIKODE.

ANNEXURE C : COPY OF THE SUMMONS RECEIVED BY THE PETITIONER AS SC NO.342/2013 ON THE FILE OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE, KOZHIKODE.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 537 of 2015

Dated this the 18th day of February, 2015.

O R D E R

The petitioner herein is the original 16th accused in Crime No.147 of 1998 of the Kuttiadi police Station. The other 16 accused faced trial at different stages before the trial court, and obtained judgment of acquittal on merits, when the prosecution failed to prove the alleged offences beyond reasonable doubt. The case against the petitioner herein was split up and refiled, and now it is pending as S.C No.342 of 2013 before the learned First Additional Sessions Judge, Kozhikode. He seeks orders quashing the prosecution under Section 482 Cr.P.C on the ground that the very substratum of the case stands totally lost by the acquittal of the others, and that continuance of prosecution against him will not serve any purpose. The Annexure B Judgment in S.C No.8 of 2001 shows that the prosecution at the first round examined 14 witnesses, and marked Exts. P1 to P13 and also MO 1 to MO 13. The accused also examined 5 witnesses in defence as DW1 to DW5. On an appreciation of the evidence the court below found that there is no satisfactory evidence at all proving the cause of the

alleged death, and also proving the exact identity of the assailants. In para 32 of the Annexure B judgment the learned trial judge found thus:

“From all the above, it has clearly come out that there was a clash in between two factions and many persons were involved in the incident.

It has come out in evidence that many persons were there on the road and people were running hear and there and a tumult was going on. There was a guge gathering on the road as is evident from the deposition of PW2.

There is no sufficient evidence adduced by PW2 regarding the identity of the persons who pelted stones on his shop as well as the identity of the person, who alleged to have pelted MO4 stone on deceased Ashraf. There is no evidence to show as to who beat Ashraf by using MO3. There is no sufficient evidence to come to the conclusion that the accused formed themselves into an unlawful assembly as alleged by the prosecution. There is no sufficient evidence to show that the accused committed rioting. Further there is no sufficient evidence to show as to who committed house trespass and committed mischief”.

In Para 33 of the Anneuxre B judgment the learned trial judge found thus:

“From the discussions made above, on point Nos.2 and 3, it has clearly come out that there is no evidence to show that any of the accused committed rioting armed with deadly weapons. Further there is no evidence to show as to who caused the injuries found on the body of the deceased. On the question as to whether the injuries found on the body of the deceased have got any connection with the death of the deceased”.

On an appreciation of the Annexure B judgment made by the trail judge at the first round I find that the prosecution

miserably failed to prove the offences alleged against the accused. On the clear benefit of doubt regarding the cause of death, and also the identity of the assailants, the learned trial judge acquitted all the other accused, and now the petitioner herein remains to be tried. It is definite that the prosecution cannot in any manner improve the case as against the petitioner herein, if it goes to trial, and the witnesses also cannot in any manner help the prosecution. Continuance of prosecution against the petitioner herein will be a sheer waste of time when the very substratum of the prosecution case stands totally lost.

In the result, this petition is allowed. The prosecution against the petitioner in S.C No.342 of 2013 of the first Additional Sessions Court, Kozhikode will stand quashed under Section 482 Cr.P.C. Accordingly, the petitioner will stand released from such prosecution.

P.UBAID,
JUDGE