

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

Crl.MC.No. 604 of 2015

IN CP 159/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
VADAKARA

CRIME NO. 108/2009 OF EDACHERY POLICE STATION, KOZHIKODE

PETITIONER/ACCUSED NO.2:

SAJEEVAN, AGED 46 YEARS,
S/O.CHATHU, VALAPPIL HOUSE,
KUNNUMMAKKARA P.O,
VADAKARA TALUK, KOZHIKODE DISTRICT.

BY ADVS.SRI.K.B.ARUNKUMAR
SRI.RANJIT BABU

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED THROUGH THE SUB INSPECTOR OF POLICE,
EDACHERY POLICE STATION, KOZHIKODE DISTRICT
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, PIN-682031.

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 05-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 604 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE 1: COPY OF THE FINAL REPORT FILED PURSUANT TO CRIME
NO.108/2009 OF EDACHERY POLICE STATION.

ANNEXURE 2: COPY OF THE DEPOSITION OF PW1 IN SC 216/2010 ON THE
FILE OF ASSISTANT COURT, VATAKARA.

ANNEXURE 3: COPY OF THE JUDGMENT DT.26-6-13 IN SC 216/2010.

ANNEXURE 4: COPY OF THE ORDER DT.1-10-14 IN CRL.M.C NO.2516/2014.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

Crl.M.C No.604 of 2015

Dated this the 5th day of February, 2015

O R D E R

The petitioner herein is one of the 15 accused, against whom the Edachary Police submitted final report in court in Crime No.108/2009 of the said police station, registered under Sections 143, 147, 148, 341, 323, 324 and 308 IPC. The said crime was registered on the complaint of one Dayanandan that the 15 accused assaulted him, and inflicted injuries on his body with weapon, with the knowledge that the injuries they inflicted may cause death. Out of the 15 accused, 13 persons faced trial before the learned Assistant Sessions Judge, Vatakara in S.C No.216/2010. The case against this petitioner was split up, and it is now pending as C.P No.159/2014 before the Judicial First Class Magistrate Court, Vatakara. The defacto complainant Dayanandan and the other material witnesses did not support the prosecution during trial in S.C No.216/2010. The said Dayanandan gave evidence before the court that somebody had assaulted him but he could not identify them. He also stated that he preferred complaint against some persons on some

misapprehension. The material witnesses also gave evidence that they could not identify the assailants, and they did not say anything implicating the accused. In such a circumstance the 13 accused who faced trial got acquittal under Section 232 of the Code of Criminal Procedure by judgment dated 26.6.2013 in S.C No.216/2010. In view of the acquittal of 13 accused, the case against the original 5th accused was quashed by this Court by order dated 1.10.2014 in Crl.M.C No.2516/2014. Now the petitioner seeks orders under Section 482 of the Code of Criminal Procedure quashing the prosecution against him.

2. The petitioner seeks orders on the ground that continuance of prosecution will only waste the precious time of the court. Annexure 3 is the judgment in S.C No.216/2010 of the learned Assistant Sessions Judge, Vatakara. This judgment shows that the injured person and the material witnesses did not in any manner support the prosecution, and that they fully turned hostile during trial. PW1 gave a definite statement that he could not identify any of the assailants. Thus he did not state anything against any of the accused, and he even stated that he preferred the complaint on some misapprehension. In such a situation, I feel that continuance of the prosecution against the

petitioner herein in the split up case will be a sheer waste of time, and it will not serve any purpose. The learned Public Prosecutor also submitted that no purpose will be served in proceeding against the petitioner herein, when all the other accused stand acquitted, under Section 232 of the Code of Criminal Procedure in the absence of any material or incriminating circumstance, or in view of the definite statement given by the material witnesses including the defacto complainant that none of assailants could be identified on the spot. I find that this is a case where the prosecution can be closed. On a perusal of the case records, I find that Section 308 of the Indian Penal Code was in fact incorporated in the FIR and charge sheet on some hypothetical statement, and not on the basis of any definite material for a prosecution under Section 308 of the Indian Penal Code. In so many decisions the Hon'ble Supreme Court has held that the High Court can exercise the powers under Section 482 of the Code of Criminal Procedure to quash the prosecution, if the Court is well satisfied that continuance of prosecution will not serve any purpose, whether it is settled or not.

In the result, this Criminal Miscellaneous Case is allowed. The prosecution pending against the petitioner herein in C.P No.159/2014 of the Judicial First Class Magistrate Court, Vatakara, will stand quashed under Section 482 of the Code of Criminal Procedure, and the petitioner will stand released from prosecution.

**P.UBAID
JUDGE**

ab