

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

Crl.MC.No. 679 of 2015 ()

IN CP 53/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT -I, CHANGANASSERRY

PETITIONER(S)/THE ACCUSED:

**SHERIN VARGHESE AGED 19 YEARS
S/O.T.K.VARGHESE, EDEN GARDEN, PERUNNA DISTRICT
CHANGANASSERRY.**

**BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.NANDAGOPAL S.KURUP**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
- 2. DEVUMON
SASHI MANDIRAM, PUZHAVATHU, NEAR ELAMKUNU CHURCH
CHANAGANASSERRY P.O., KOTTAYAM.**
- 3. RAHUL
SASHI MANDIRAM, PUZHAVATHU, NEAR ELAMKUNU CHURCH
CHANAGANASSERRY P.O., KOTTAYAM.**
- 4. VISHNUMON
SASHI MANDIRAM, PUZHAVATHU, NEAR ELAMKUNU CHURCH
CHANAGANASSERRY P.O., KOTTAYAM.**
- 5. RANJU
KURUTHIKKALAM HOUSE, VAZHAPPALLY EAST VILLAGE
VAZHAPPALLY EAST KARA-686 001.**
- 6. SHARATH
MANJIPPUZHA HOUSE, NEAR SNBP BHAGOM, PUZHAVATHU KARA
CHANAGANASSERRY P.O., KOTTAYAM.**
- 7. RATHEESH M.K.
MUNDAKATHU HOUSE, MOOLAYIL, PUDUVEL
PANACHICKAVU, CHANAGANASSERRY P.O., KOTTAYAM**
- 8. SHANU MOHAN
KOTTARACHIRA HOUSE, PUZHAVATHU KARA
CHANAGANASSERRY P.O., KOTTAYAM**

**R2 -R 8 BY ADV. SRI.K.ASHIS
R1 BY PUBLIC PROSECUTOR SMT. P. MAYA**

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-A. COPY OF THE LETTER DATED 25/10/2014 ISSUED FROM THE ARMY RECRUITING OFFICER, TRIVANDRUM.

ANNEXURE-B. CERTIFIED COPY OF THE FINAL REPORT DATED 4/5/2012 IN CC NO.244/2012 ON THE FILE OF THE JFCMC-III, KOTTAYAM.

ANNEXURE-C. AFFIDAVIT DATED 19/1/2015 SWORN BY THE 2ND RESPONDENT/DEFACTO-COMPLAINANT.

ANNEXURE-D. AFFIDAVIT DATED 19/1/2015 SWORN BY THE 3RD RESPONDENT/DEFACTO-COMPLAINANT.

ANNEXURE-E. AFFIDAVIT DATED 19/1/2015 SWORN BY THE 4TH RESPONDENT/DEFACTO-COMPLAINANT.

ANNEXURE-F. AFFIDAVIT DATED 19/1/2015 SWORN BY THE 5TH RESPONDENT/DEFACTO-COMPLAINANT.

ANNEXURE-G. AFFIDAVIT DATED 19/1/2015 SWORN BY THE 6TH RESPONDENT/DEFACTO-COMPLAINANT.

ANNEXURE-H. AFFIDAVIT DATED 19/1/2015 SWORN BY THE 7TH RESPONDENT/CW.6

ANNEXURE-I. AFFIDAVIT DATED 19/1/2015 SWORN BY THE 8TH RESPONDENT/CW.7

ANNEXURE-J. COPY OF THE LETTER DATED 20/12/2014 ISSUED FROM THE ARMY RECRUITING OFFICE, TRIVANDRUM.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No.679 of 2015

Dated this the 10th day of February, 2015.

O R D E R

The petitioner herein is the 9th accused in C.P No.53 of 2014 of the Judicial First Class Magistrate Court – I, Changanasserry. He seeks orders quashing the prosecution as against him on the ground of amicable settlement between him and the de facto complainant. The offences involved are under Sections 143, 147, 148, 149, 447, 294(b), 308, 324 and 323 of IPC. The said crime was registered on the complaint of one Devumon who is the second respondent herein. The respondents 3 to 8 are the other persons who sustained injuries in the alleged incident. All the injured persons have come to terms with the 9th accused now. They have filed affidavit to the effect that they have settled the dispute with the 9th accused, and they have no grievance or complaint as against him. On a perusal of the final report I find that there is no definite allegation against the 9th accused. I am well satisfied that orders in favour of the 9th accused quashing the prosecution will not in any manner affect the prosecution against the other accused, when it proceeds. Of course, whether necessary elements of the offence

under Section 308 IPC are there in the prosecution records will be decided by the trial court during trial. In so many decisions, the Hon'ble Supreme Court has held that even in the case of non compoundable offences the High court can quash prosecution, if the parties have come to terms amicably. It is also settled that quashing prosecution in part is possible, if the complainant has come to terms with one or the other accused. However the court will have to examine whether such order will adversely affect the prosecution against the others. Here I find that orders in favour of the petitioner herein will not adversely affect the prosecution against the other accused. I am inclined to accept the settlement between the injured persons and the petitioner.

In the result, this petition is allowed. The prosecution against the petitioner herein alone in C.P No.53 of 2014 of the Judicial First Class Magistrate Court-I, Changanasserry will stand quashed under Section 482 Cr.P.C. Accordingly, he will stand released from prosecution, and the bail bond, if any, executed by him will stand discharged. The learned Magistrate will take necessary steps to commit the case as against the others to the court of Session.

P.UBAID,
JUDGE