

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

Crl.MC.No. 774 of 2015 ()

AGAINST CC 1153/2011 of J.M.F.C.-I, HOSDRUG
CRIME NO. 165/2001 OF HOSDURG POLICE STATION , KASARGOD

PETITIONER(S)/ACCUSED NOS 1 & 2:

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1. K.VIJAYAN AGED 53 YEARS
S/O.KUNHIRAMAN, KAMBIKANATH VEEDU
ERALAL THAYANUR VILLAGE, HOSDURG TALUK, KASARGOD
. PIN-671 531
 2. V.K. PUSHPARAJAN, AGED 42 YEARS
S/O. PERATTOOR KUNHIRAMAN, ERALAL, ATAKKANDAM
THAYANUR VILLAGE, HOSDURG TALUK, KASARGOD
. PIN-671 531

BY ADVS.SRI.K.J.MOHAMMED ANZAR
SRI.A.D.SURESH BABU

RESPONDENT(S)/STATE &DEFACTO COMPLAINANT & INJURED (CWS 1 TO 3):

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1. STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, PIN: 682031
 2. STATION HOUSE OFFICER,
HOSDURG POLICE STATION HOSDURG, KASARGOD DISTRICT
PIN-671 315
 3. C.V. RAJEEVAN,, AGED 39 YEARS
S/O. NARAYANAN, ATAKKANDAM, THAYANNUR
HOSDURG, KASARGOD, PIN-671 531
 4. P.R. SURESH,, AGED 43 YEARS
S/O. RAMAKRISHNAN, ATAKKANDAM, KALICHANDUKKAM
THAYANNUR VILLAGE, HOSDURG, KASARGOD
PIN-671 531
 5. PRADEEPAN,, AGED 36 YEARS
S/O.KRISHNAN, ATAKKANDAM, THAYANUR VILLAGE
HOSDURG TALUK, KASARGOD, . PIN-671 531

R4,5 BY ADV. SRI.T.B.GAFOOR
R1 & R2 BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
06-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 774 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1: CERTIFIED COPY OF THE FIR IN CRIME NO.165/2001 OF
HOSDURG POLICE STATION

ANNEXURE A2: CERTIFIED COPY OF THE FINAL REPORT FILED IN ANNEXURE A1
CRIME

ANNEXURE A3: CERTIFIED COPY OF THE JUDGMENT I C.C.NO. 933/2001 DATED
8.4.2005

ANNEXURE A4: ORIGINAL AFFIDAVIT DATED 31.1.2015 SWORN BY 4TH
RESPONDENT

ANNEXURE A5: ORIGINAL AFFIDAVIT DATED 31.1.2015 SWORN BY 5TH
RESPONDENT

RESPONDENT(S)' EXHIBITS

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.

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**Crl.M.C No.774 of 2015**

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Dated this the 6th February, 2015

ORDER

The petitioners herein are the accused Nos.1 and 2 in C.C No.933 of 2001 of the Judicial First Class Magistrate's Court-I, Hosdurg. The offences involved in this case are under Sections 143, 147, 148, 323, and 324 read with 149 of Indian Penal Code. The original accused Nos 3 to 6 faced trial before the trial court and obtained a judgment of acquittal under Section 248 (1) of the Code of Criminal Procedure, when all the material witnesses including the first informant/de facto complainant turned hostile to the prosecution in view of an amicable settlement made by the parties out of court. The prosecution examined six witnesses in the said case including the first informant/de facto complainant and also marked Ext.P1. None of the material witnesses examined in the case supported the prosecution. In such a circumstance, examination of the others was dispensed with and evidence was closed by the trial court. In the absence of any evidence or incriminating

circumstance, the learned Magistrate acquitted the accused Nos.3 to 6. The case against the petitioners herein was split up and refiled and it is now pending as C.C No.1153 of 2011 before the Judicial First Class Magistrate's Court-I, Hosdurg. The petitioners now seek orders quashing the prosecution as against them on the ground that the very substratum of the prosecution case is totally lost by the acquittal of the others, and continuance of prosecution against them will not serve any purpose. Annexure-A3 judgment in C.C No.933 of 2011 shows that all the material witnesses examined by the prosecution in the said case turned hostile in view of an amicable settlement made by the parties out of court. In such a situation, it is quite definite that the prosecution cannot in any manner improve the case and the witnesses also cannot in any manner help the prosecution, if the case against the petitioners go to trial. In short, such proceeding will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioners herein in C.C No.1153 of 2011 before the Judicial First Class Magistrate's Court-I, Hosdurg will

stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioners will stand released from prosecution, and the bail bond, if any, executed by them will stand discharged.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge