

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

Crl.MC.No. 870 of 2015 ()

**IN LPC 10/2007 of ADDL. DIST. COURT (ADHOC)-II, KALPETTA
CRIME NO. 82/2004 OF KAMBALAKKAD POLICE STATION, WAYANAD**

PETITIONER(S)/ACCUSED:

**SHAJI @ SHAJIMON AGED 37 YEARS
S/O.VELAYUDHAN, KODAKKATTUPARAMBIL, VILAYOOR
PULASSERY PATTAMBI TALUK, PALAKKAD DISTRICT
PIN-679 309**

BY ADV. SRI.R.SREEHARI

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR. HIGH COURT OF KERALA
ERNAKULAM THROUGH THE SUB INSPECTOR OF POLICE
KAMBALAKKAD POLICE STATION, WAYANAD DISTRICT
PIN-673 121**

R. BY ADV. PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03-03-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1: CERTIFIED COPY OF FIR IN CRIME NO.82/2004 OF KAMBALAKKAD POLICE STATION

ANNEXURE A2: CERTIFIED COPY OF FINAL REPORT IN CRIME NO.82/2004 OF KAMBALAKKAD POLICE STATION FILED BEFORE THE CJM COURT, KALPETTA

ANNEXURE A3: CERTIFIED COPY OF JUDGMENT IN SESSINS CASE 120/2006 DT. 29.9.2008 OF ADDL.SESIONS COURT (AD HOC) II, KALPETTA

ANNEXURE A4: CERTIFIED COPY OF DEPOSITION OF PW1 IN SC 120/2006

ANNEXURE A5: CERTIFIED COPY OF DEPOSITION OF PW2 IN SC NO, 120/2006

ANNEXURE A6: CERTIFIED COPY OF DEPOSITION OF PW3 IN SC NO.120/2006

ANNEXURE A7: CERTIFIED COPY OF DEPOSITION OF PW4 IN SC NO.120/2006

ANNEXURE A8: CERTIFIED COPY OF DEPOSITION OF PW5 IN SC NO.120/2006

ANNEXURE A9: CERTIFIED COPY OF DEPOSITION OF PW6 IN SC NO, 120/2006

ANNEXURE A10: CERTIFIED COPY OF SEEN PLAN (OCCURENCE PLACE) IN CRIME NO.82/2004 OF KAMBALAKKAD POLICE STATION

ANNEXURE A11: CERTIFIED COPY OF SEIZURE MAHAR IN CRIME NO. 82/2004 OF KAMBALAKKAD POLICE STATION

ANNEXURE A12: CERTIFIED COPY OF ARREST MEMO IN CRIME NO.82/2004 OF KAMBALAKKAD POLICE STATION

ANNEXURE A13: CERTIFIED COPY OF ARREST MEMO IN CRIME NO.82/2004 OF KAMBALAKKAD POLICE STATION

ANNEXURE A14: CERTIFIED COPY OF OCCURRENCE PLACE DESCRIPTION IN CRIME NO.82/2004 OF KAMBALAKKAD POLICE STATION

ANNEXURE A15: CERTIFIED COPY OF LIST OF PROPERTY IN CRIME NO. 82/2004 OF KAMBALAKKAD POLICE STATION

ANNEXURE A16: CERTIFIED COPY OF FORWARDING NOTE

ANNEXURE A17: CERTIFIED COPY OF CHEMICAL ANALYSIS REPORT

ANNEXURE A18: CERTIFIED COPY OF DEPOSITION OF DW 1 IN SC NO. 120/2006

ANNEXURE A19: CERTIFIED COPY OF EXT. D1 PERMIT

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 870 of 2015

Dated this the 3rd day of March, 2015.

O R D E R

The petitioner herein is the original first accused in S.C No. 120 of 2006 of the Court of Session, Wayanad. The prosecution case is that the petitioner and the co-accused illicitly transported some quantity of toddy in the jeep of this petitioner. The quantity of toddy was seized by the police in the process of unloading in front of the toddy shop of one Ayyappan. The accused were also arrested by the police. The second accused faced trial before the learned Additional Sessions Judge, Kalpetta in S.C No.120 of 2006, and obtained a judgment of acquittal on merits. There is no appeal against the said judgment of acquittal. The case against the petitioner herein was split up and refiled. Now it is pending in the register of long pending cases as L.P.C No.10 of 2007. The petitioner seeks orders quashing the prosecution as against him on the ground that the very substratum of the prosecution case stands lost by the acquittal of the second accused on merits. The first accused was the salesman of the licensee,

Ayyappan, and the second accused was the driver of jeep in which toddy was transported. The prosecution case is that the two accused illicitly transported toddy in the vehicle. But during trial, the defence proved otherwise that toddy was transported under a proper license and permit.

2. On a perusal of the entire records produced before me I find that prosecution was brought against this petitioner and the other co-accused by the police without any basis. DW1 examined in S.C No.120 of 2006 is admittedly the licensee of the toddy shop. He gave evidence during trial that the two accused transported toddy in the alleged vehicle from his toddy shop at Payyampally to the toddy shop at Panamaram. The police found unloading of toddy in front of the toddy shop at Panamaram. Anneuxre A19 is copy of the permit given to the licensee by the Circle Inspector of Excise, Mananthavady for bringing excess quantity of toddy from the toddy shop at Payyampally to the toddy shop at Panamaram. Toddy was transported by the two accused to the toddy shop at Panamaram as permitted under the Anneuxre A19 permit. On an appreciation of the entire evidence including the Anneuxre A19 permit and also the oral evidence given by the licensee of toddy shop the learned trial judge found thus in para 14 of the judgment:

“Apart from the absence of evidence to show that the accused was actually driving the jeep, it could be seen that, even assuming that toddy was being transported by the jeep there is no evidence at all to show that it was being transported unauthorizedly. The police officials had seen toddy in front of the toddy shop. DW1 examined on behalf of the accused has deposed that the toddy was being unloaded at his instance. He stated that he was the contractor of the toddy shop at Panamaram during 2003-04. He had another toddy shop at Payyampally also during the same period. According to DW1 he had brought excess quantity of toddy that was available at Payyampally shop to his shop at Panamaram. According to him the jeep was driven by someone else and not by the accused. The accused was then only a temporary worker of his toddy shop at Panamaram. DW1 also produced Ext.D1 the permit issued to him by the Circle Inspector of Excise Range Mananthavady permitting transport of 50 liters of excess toddy in the shop at Payyampally to the shop at Panamaram. The permit is valid for the period from 2.4.2004 to 30.4.2004. The alleged offence is on 10.4.2004, within this period. Apparently DW1 was given permission to transport toddy by Ext.D1. The jeep was stationed in front of the shop at Panamaram and even according to PWs 1 and 5 toddy was being unloaded at the place”.

3. On a perusal of the Anneuxre A3 Judgment by which the other accused obtained a judgment of acquittal on merits I find that the very substratum of the prosecution case stands lost by the acquittal of the other accused on the definite findings made by the trial court. The definite finding of the trial court is that the whole prosecution is baseless, because the two accused in fact transported toddy under a valid license and permit. PW1 examined in the trial court is

the licensee of the toddy shop, and it came out in evidence that the two accused transported toddy for him to his toddy shop, as permitted by the Excise officer. There is nothing to show that the said transportation of toddy was in any manner illicit or unauthorized. Finding nothing wrong in the process of transportation, the learned trial judge acquitted the co-accused. I am definite that the prosecution cannot in any manner improve the case as against the petitioner herein, if it goes to trial, in view of the definite findings made by the trial judge regarding the merits of the prosecution case. In such a situation, continuance of prosecution will be a sheer waste of time. I find that the prosecution as against the petitioner herein is liable to be quashed.

In the result, this petition is allowed. The prosecution against the petitioner herein in crime No.82 of 2004 of the Kambalakkad police station (now pending in the register of long pending cases of the court of Session, Kalpetta as L.P.C No. 10 of 2007) will stand quashed under Section 482 Cr.P.C.

P.UBAID,
JUDGE