

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

Cr1.MC.No. 920 of 2015

AGAINST CC 6015/2010 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT
II, ERNAKULAM

PETITIONER:

SHANAVAS, AGED 31 YEARS,
S/O.SALI, KARIVELITHUNDIYIL HOUSE,
PONNARIMANGALAM
MULAVUKAD.

BY ADVS.SRI.SANTHOSH G. PRABHU
SRI.S.KANNAN
SMT.A.ASWATHY

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE STATION HOUSE OFFICER,
CENTRAL POLICE STATION, ERNAKULAM,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA,
ERNAKULAM

2. PHILIPKUTTY, AGED 43 YEARS,
S/O.KUNJUKUTTY, PERAVEETIL,
NEAR KODUVILA JUNCTION,
KODUVILA, KOLLAM - 691 502.

R1 BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 13-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 920 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1. COPY OF FIR IN CC 6015/10 ON THE FILES OF HONOURABLE
JUDICIAL FIRST CLASS MAGISTRATES COURT II, ERNAKULAM.

ANNEXURE A2. COPY OF THE CHARGE SHEET IN CC 6015/10 ON THE FILES
OF HONOURABLE JUDICIAL FIRST CLASS MAGISTRATE COURT II,
ERNAKULAM.

ANNEXURE A3. COPY OF THE JUDGMENT DATED 23.05.11 OF THE JUDICIAL
FIRST CLASS MAGISTRATE COURT II ERNAKULAM IN CC 1824/02.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

Crl.M.C No.920 of 2015

Dated this the 13th day of February, 2015

O R D E R

The petitioner herein is the original 2nd accused in C.C No.1824/2002 of the Judicial First Class Magistrate Court II, Ernakulam. The offences involved in this case are under Sections 323 and 324 r/w 34 of the Indian Penal Code. The original accused Nos.1, 3 and 4 faced trial before the trial court and obtained a judgment of acquittal under Section 248(1) of the Code of Criminal Procedure when the prosecution failed to procure the presence of the very material witness. The prosecution examined four witnesses in the said case and also marked Exts.P1 to P6. PW1 is the police officer who recorded the FI statement, PW2 is the medical officer, who examined the injured, and PW4 is an attestor to the mahazar. PW3 examined as incident witness turned hostile to the prosecution. In spite of 50 opportunities granted from the court, the prosecution failed to procure the presence of the defacto complainant cited as CW1. Now also the prosecution has no explanation for such failure. It was in such a circumstance the court below acquitted

the others. The case against the petitioner herein was split up and refiled as C.C No.6015/2010, and it is now pending before Judicial First Class Magistrate Court II, Ernakulam. It is quite definite that the prosecution cannot in any manner improve the case, if the case against the petitioner goes to trial. I find that the very substratum of the prosecution case is totally lost by the acquittal of the others, and continuance of prosecution against him will not serve any purpose. In short, such proceeding will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioner in C.C No.6015/2010 before the Judicial First Class Magistrate Court II, Ernakulam will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioner will stand released from prosecution, and the bail bond, if any, executed by him will stand discharged.

**P.UBAID
JUDGE**

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