

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.997 of 2015 ()

**CRIME NO.90 OF 2008 OF BEKAL POLICE STATION, ORIGINALLY NUMBERED AS
S.C.NO.264 OF 2009, RE-FILED AS S.C.NO.864 OF 2012 AND NOW PENDING AS
L.P.C.NO.04 OF 2013 ON THE FILES OF THE ADDITIONAL SESSIONS COURT-II,
KASARAGOD**

PETITIONER(S)/ACCUSED NO.20 :

**DERIK D, AGED 28 YEARS
S/O. DENSON, KARIPODI, PALAKKUNNU
P.O.BEKAL, HOSDURG TALUK.**

BY ADV. SRI.A.ARUNKUMAR

RESPONDENT(S)/COMPLAINANT/STATE :

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

BY PUBLIC PROSECUTOR SMT.P.MAYA

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
03-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

Crl.MC.No.997 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

- ANNEXURE AI : COPY OF THE FIR IN CRIME NO.90 OF 2008 BY THE BEKAL POLICE STATION, KASARAGOD.**
- ANNEXURE AII : COPY OF THE FINAL REPORT IN CRIME NO.90 OF 2008 BY THE BEKAL POLICE STATION, KASARAGOD.**
- ANNEXURE AIII : COPY OF THE JUDGMENT IN SC NO.264 OF 2010 ON THE FILES OF ADDITIONAL DISTRICT AND SESSIONS COURT-II, KASARAGOD, DTD.20.5.2013.**
- ANNEXURE AIV : COPY OF THE ORDER DTD.5.1.2015 IN CRL.MC NO.7388 OF 2014.**

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

P.UBAID, J

Crl.M.C.No.997 &1008 of 2015

Dated this the 3rd day of March, 2015

ORDER

The petitioner in Crl.M.C.No.997/15 is the original accused No.20 in Crime.No.90/08 of the Bekal Police Station, registered under Sections 143, 147, 148, 332 and 308 r/w 149 of IPC, under Section 3(2)(c) of PDPP Act, and under Section 2 of Kerala Prevention of Disturbance of Public Meeting Act, 1961, and the petitioner in Crl.M.C.No.1008/15 is the accused No.12 in the said crime. 9 among the 20 accused in the crime faced trial before the learned Additional Sessions Judge-II, Kasaragod, in S.C.No.264 of 2009 and obtained a judgment of acquittal on merits, on the finding that the prosecution miserably failed to prove the case. The case against the original 15th accused was quashed by this court, as per the order dated 5.1.2015 in Crl.M.C.No.788 of 2014. The case against these two petitioners was split up and refiled- The case against the accused No.12 is now pending in the committal court itself as C.P.No.101/14,

and the case against the accused No.20, refiled as S.C.No.864/2012, in the Court of Sessions, now stands transferred to the Registrar of Long Pending Cases as L.P.C.No.4/2013, before the learned Additional Sessions Judge-II, Kasaragod. The petitioners now seek orders to quashing prosecution against them, on the ground that, the very substratum of the prosecution case stands lost by the acquittal or the others, and that continuance of the prosecution as against them will serve no purpose.

2. Annexure A4 judgment of the trial Court in S.C.No.264/2009 shows that the prosecution examined 11 witnesses in the case including the police officers, who sustained injuries in the alleged incident, and also marked Exts.P1 to P14. The accused did not adduce any oral evidence. However, Exts.D1 and D2 were marked in defence. Of the eleven witnesses examined by the prosecution, PW1 to 3 are the police officers who sustained injuries in the alleged incident and PW4 is the doctor who examined them in the hospital and issued wound certificate. PW5 is the village officer who prepared

the scene plan and PW7 is an attester to the scene Mahazar. PW6 is the Sub Inspector who was on duty at the place of incident and who also sustained some injuries. PWs 8 and 9 are the two independent eye witnesses examined by the prosecution. They are nearby shop owners. The independent witnesses examined by the prosecution turned hostile during trial. PW1 to 3 stated during trial that they had sustained injuries in a mob attack. But, they could not identify the persons who inflicted injuries on them. PW6 also could not identify anybody during trial. All the material witnesses stated about a mob attack in which they sustained injuries, but none of the witnesses identified any of the accused during trial. In the absence of any evidence or incriminating circumstance against the accused, the learned Trial Judge acquitted 9 among the accused on 20.5.2013.

3. I find that the substratum of the case stands lost and that continuance of the prosecution will not serve any purpose. The prosecution cannot in any manner prove the case.

In the result, the two petitions are allowed. The prosecution against the petitioners in Crl.M.C.No.997/15, now pending before the learned Additional Sessions Judge-II, Kasaragod, in L.P.C.No.4/2013 and also the case against the petitioner in Crl.M.C.No.1008/15, now pending before the learned Judicial First Class Magistrate-II, Hosdurg, as C.P.No.101/14 will stand quashed under Section 482 Cr.P.C.

Sd/-
P.UBAID
JUDGE

/TRUE COPY/

PA TO JUDGE

VS