

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

Cr1.MC.No. 1071 of 2015

IN SC 319/2008 of I ADDL.ASSISTANT SESSIONS COURT, KOZHIKODE

CRIME NO. 228/2003 OF MUKKOM POLICE STATION , KOZHIKODE

PETITIONER/ACCUSED NO 6:

POOLAKKACHALIL BAISAM @ KHAISAM, AGED 32 YEARS,
S/O.ABDULLA POOLAKKACHALIL ,
POOLAKKACHALIL HOUSE,
POST KARASSERY, NORTH KARASSERY,
KOZHIKODE DIST-673602

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENT/RESPONDENT:

THE STATE OF KERALA
REP. BY THE STATION HOUSE OFFICER,
MUKKOM POLICE STATION, KOZHIKODE
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM-682031

BY SR.PUBLIC PROSECUTOR SMT.SAREENA GEORGE.P

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 23-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 1071 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1:- COPY OF THE FINAL REPORT SUBMITTED BY THE SUB INSPECTOR OF POLICE, MUKKOM POLICE STATION BEFORE THE JFCM COURT II, THAMARASSERY IN CRIME NO 228 OF 2003 OF MUKKOM POLICE STATION

ANNEXURE A2:- COPY OF THE JUDGMENT DTD 14/8/2013 IN SC NO 319/2008 PASSED BY THE IST ADDITIONAL ASSISTANT SESSIONS COURT, KOZHIKODE

ANNEXURE A3:- COPY OF THE RELEVANT PAGES OF THE PASSPORT OF THE PETITIONER.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.1071 of 2015

Dated this the 23rd day of February, 2015

O R D E R

The petitioner herein is the original 6th accused in S.C No.319/2008 of the 1st Additional Assistant Sessions Court, Kozhikode. The offences involved in the case are under Sections 143, 147, 148, 353 and 308 r/w 149 of the Indian Penal Code. The original accused Nos.1 to 5 and 7 to 9 faced trial before the trial court and obtained a judgment of acquittal under Section 235 of the Code of Criminal Procedure, when the prosecution failed to adduce any satisfactory evidence. The material witnesses examined by the prosecution turned hostile. The first informant is now in London. The prosecution examined PW1 to PW8 in the said case and also marked Exts.P1 to P6. 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 trial judge acquitted the accused Nos.1 to 5 and 7 to 9. The case against the petitioner herein was split up and refiled, and it is now pending as L.P No.3/2014 before the 1st Additional Assistant Sessions Court, Kozhikode. The petitioner now seeks orders quashing

the prosecution as against him on the ground that the very substratum of the prosecution case is totally lost by the acquittal of the others, and continuance of the prosecution against him will not serve any purpose. I find that Section 308 IPC was incorporated by the police on the basis of some hypothetical statement. Annexure 2 judgment in S.C No.319/2008 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 petitioner goes to trial. In short, such proceeding will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioner in Crime No.228/2003 of the Mukkom Police Station (now pending as L.P No.3/2014 of the 1st Additional Assistant Sessions Court, Kozhikode) will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioner will stand released from prosecution.

**P.UBAID
JUDGE**

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