

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

Crl.MC.No.1090 of 2015

**CC NO.338/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE,PONNANI.
CRIME NO.26/2005 OF PERUMPADAPPU POLICE STATION,MALAPPURAM**

PETITIONER/ACCUSED:

**HAMZA,S/O.MOMU,ALUNGAL HOUSE,AYIROOR,
PUTHIYIRUTHI,MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

- 1. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM,KOCHI-682031,
FOR THE SUB INSPECTOR OF POLICE,
PERUMBADAPPU POLICE STATION,
MALAPPURAM DISTRICT.**
- 2. NARENDRAN,S/O.GOPALAN,EACHARN HOUSE,
AYIROOR AMSOM DESOM,PALAPETTY,PONNANI TALUK,
MALAPPURAM DISTRICT,PIN-679579.**

**R1 BY SENIOR PUBLIC PROSECUTOR SMT.SAREENA GEORGE.P
R2 BY ADV.SMT.M.LISHA**

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

pk

Crl.MC.No.1090 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE-A:TRUE COPY OF THE CHARGE IN CRIME NO.26/2005 OF THE
PERUMBADAPPU POLICE STATION.**

**ANNEXURE-B:TRUE COPY OF THE JUDGMENT IN C.C.366/2010 ON THE FILES OF
THE J.F.C.M.PONNANI DATED 7-6-2014.**

**ANNEXURE-C:TRUE COPY OF THE AFFIDAVIT SWORN TO BY THE 2ND
RESPONDENT DATED,13-2-2015.**

RESPONDENT'S ANNEXURES: **NIL**

//TRUE COPY//

P.S. TO JUDGE

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P.UBAID, J.

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**Crl.M.C No.1090 of 2015**

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Dated this the 23rd February, 2015

ORDER

The petitioner herein is the original third accused in C.C No.366 of 2010 of the Judicial First Class Magistrate's Court, Ponnani. The offences involved in this case are under Sections 143, 147, 148, 452, 427 read with Section 149 of Indian Penal Code. The accused Nos.1,2,4 and 6 to 10 faced trial before the trial court and obtained a judgment of acquittal under Section 248 (1) of Cr.P.C when the 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 the de facto complainant and also marked Ext.P1. The material witness examined in the case did not support 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.1,2,4 and 6 to 10. The case against the petitioner herein was split up and refiled as C.C 338 of 2014.

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 prosecution against him will not serve any purpose. Annexure -B judgment in C.C 366 of 2010 shows that the material witness 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 herein in C.C No.338 of 2014 before the Judicial First Class Magistrate's Court, Ponnani 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.

**Sd/-
P.UBAID
JUDGE**

ma

/True copy/

P.S to Judge