

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

Cr1.MC.No. 1094 of 2015

AGAINST C.P NO. 36/2002 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, TIRUR (PENDING AS L.P.C NO.1/2005)

CRIME NO. 97/2002 OF CHANGARAMKULAM POLICE STATION , MALAPPURAM

PETITIONER/ACCUSED:

HASSAN, AGED 39 YEARS,
S/O.ABOOBACKER, RESIDING AT MANJARAYIL HOUSE,
OTHALLOOR AMSOM AND DESOM, PADINJATTUMURI, PONNANI,
MALAPPURAM-679 576.

BY ADVS.SRI.NIRMAL V NAIR
SRI.ANEESH JOSEPH
SRI.RILGIN V.GEORGE
SRI.M.ANEESH

RESPONDENT:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031.

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 1094 of 2015

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE A1 : COPY OF THE FINAL REPORT IN C.P.36/2002 ON THE
FILES OF THE JUDICIAL MAGISTRATE OF FIRST CLASS, TIRUR.

ANNEXURE A2 : COPY OF THE JUDGMENT DATED 06-12-2004 IN
S.C.NO.368/2002 ON THE FILES OF THE ASSISTANT SESSIONS JUDGE OF
TIRUR.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.1094 of 2015

Dated this the 12th day of March, 2015

O R D E R

The petitioner herein is the original 4th accused in Crime No.97/2002 of the Changaramkulam Police Station. After investigation the police submitted final report in court under Sections 143, 147, 148, 324, 326 and 307 r/w 149 of the Indian Penal Code. The original accused Nos.2, 3 and 5 to 8 faced trial before the learned Assistant Sessions Judge, Tirur in S.C No.368/2002 and obtained a judgment of acquittal under Section 232 of the Code of Criminal Procedure when all the material witnesses turned hostile to the prosecution in view of an amicable settlement made by the parties out of court. The defacto complainant/injured and the other eye witnesses gave evidence regarding an incident of mob attack. But nobody identified any of the accused. In their cross examination by the learned Public Prosecutor, nothing could be brought out against the accused. In such a circumstance, examination of the other witnesses was dispensed with. Accordingly, those accused were acquitted on 6.2.2004 as per the judgment in S.C No.368/2002. The case against the original accused Nos.1 and 4 was split up and refiled in the committal court itself. The case against the petitioner herein now stands transferred to the register of long pending cases before the

Judicial First Class Magistrate Court, Tirur as L.P.C No.1/2005. He now seeks orders quashing the prosecution as against him on the ground of amicable settlement between him and the defacto complainant.

2. On a perusal of the Annexure 2 judgment in S.C No.368/2002 I find that the very substratum of the prosecution case stands totally lost, and that the prosecution cannot in any manner improve the case against this petitioner. None of the material witnesses supported the prosecution in any manner, or on any aspect during the trial in S.C No.368/2002. It appears that all the witnesses turned hostile in view of an amicable settlement outside. Such a circumstance is reported here also. I am satisfied that continuance of the prosecution against the petitioner herein will not serve any purpose other than wasting the precious time of the Court.

In the result, this petition is allowed. The prosecution against the petitioner in Crime No.97/2002 of the Changaramkulam Police Station (now pending as L.P.C No.1/2005 of Judicial First Class Magistrate Court, Tirur) will stand quashed under Section 482 of the Code of Criminal Procedure.

**P.UBAID
JUDGE**

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