

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

CrI.MC.No. 1110 of 2015 ()

CP 15/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT- I, OTTAPPALAM

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PETITIONER/ACCUSED NO.7:

**KUNJUBAVA @ BABU, S/O.LATE ABDUL REHMAN
AGED 44 YEARS, KALLUVETTUKUZH VEEDU
KADAMPAZHIPURAM, PALAKKAD**

BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENTS/DEFACTO COMPLAINANT/CWS 2 TO 6 AND STATE:

- 1. KUNJALAVI, S/O.ABDULLA, PUNNASSERY VEEDU
AGED 28 YEARS, VETTEKARA POST
KADAMPAZHIPURAM, OTTAPALAM, PALAKKAD - 679 101.**
- 2. VEERANKUTTY, S/O.KUNJALAVI, , AGED 38 YEARS
PUNNASSERY VEEDU, VETTEKARA POST, KADAMPAZHIPURAM
OTTAPALAM, PALAKKAD - 679 101.**
- 3. SULAIMAN, S/O.KUNJALAVI, AGED 27 YEARS
PUNNASSERY VEEDU, VETTEKARA POST, KADAMPAZHIPURAM
OTTAPALAM, PALAKKAD - 679 101.**
- 4. HUSSAIN, S/O.ABDULLA, AGED 30 YEARS
PUNNASSERY VEEDU VETTEKARA POST
KADAMPAZHIPURAM, OTTAPALAM, PALAKKAD - 679 101.**
- 5. SHAMEER, S/O.KOYA, AGED 23 YEARS
KORAMKULAM VEEDU, VETTEKARA POST
KADAMPAZHIPURAM, OTTAPALAM, PALAKKAD - 679 101.**
- 6. SAKEER, S/O.KOYA, AGED 30 YEARS
KORAMKULAM VEEDU, VETTEKARA POST
KADAMPAZHIPURAM, OTTAPALAM, PALAKKAD - 679 101**
- 7. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

R1-R6 BY ADV. SRI.P.M.RAFIQ

R7 BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10-03-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- ANNX A- COPY OF THE FINAL REPORT IN CRIME NO.251/2011 OF
SREEKRISHNAPURAM POLICE STATION, IN PALAKKAD DISTRICT IN
C.P.NO.15/2012 ON THE FILE OF THE COURT OF JUDICIAL FIRST
CLASS MAGISTRATE, OTTAPALAM**
- ANNX B- TRUE COPY OF THE JUDGMENT IN S.C.NO.143/2012 OF THE COURT
OF SESSION, PALAKKAD DIVISION DATED 1.4.14**
- ANNX C- AFFIDAVIT SWORN BY THE 1ST RESPONDENT HEREIN EVIDENCING
THE AFORESAID SETTLEMENT**
- ANNX D- AFFIDAVIT SWORN BY THE 2ND RESPONDENT HEREIN EVIDENCING
THE AFORESAID SETTLEMENT**
- ANNX E- AFFIDAVIT SWORN BY THE 3RD RESPONDENT HEREIN EVIDENCING
THE AFORESAID SETTLEMENT**
- ANNX F- AFFIDAVIT SWORN BY THE 4TH RESPONDENT HEREIN EVIDENCING
THE AFORESAID SETTLEMENT**
- ANNX G- AFFIDAVIT SWORN BY THE 5TH RESPONDENT HEREIN EVIDENCING
THE AFORESAID SETTLEMENT**
- ANNX H- AFFIDAVIT SWORN BY THE 6TH RESPONDENT HEREIN EVIDENCING
THE AFORESAID SETTLEMENT**

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.1110 of 2015

Dated this the 10th day of March, 2015

O R D E R

The petitioner herein is the 7th accused in S.C .143/2012 of Court of Session, Palakkad. The offences involved in this case are under Sections 143,147,148,341,323,324 and 308 read with 149 IPC. The other accused faced trial before the learned IIIrd Additional Sessions Judge, Palakkad, and obtained a judgment of acquittal under Section 235(1) Cr.P.C., when the prosecution failed to adduce evidence establishing and proving the charge leveled against the accused. The prosecution examined thirteen witnesses in the said case including the de facto complainant, and also marked Exts.P1 to P8. 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 Magistrate acquitted the other accused. The case against the petitioner herein was split up and refiled, and it is now pending as C.P.No.15/2012. 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 S.C.143/2012 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. The counter case registered against the defacto complainant and others also stands settled.

In the result, this petition is allowed. The prosecution against the petitioner in C.P.15/2012 of the Judicial First Class Magistrate Court, Ottappalam will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioner will stand released from prosecution.

Sd/-

P. UBAID, JUDGE

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