

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.UBAID**

**WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936**

**Crl.MC.No. 1223 of 2015 ()**

**CC 1262/2013 of JUDICIAL FIRST CLASS MAGISTRATE COURT-II, PERINTHALMANNA**

**PETITIONER/ACCUSED :**

**VINAYAN, S/O. BALAKRISHNAN,  
VADAKKETHIL HOUSE, PATHAKKARA,  
PERINTHALAMANNA.**

**BY ADV. SRI.C.M.KAMMAPPU**

**RESPONDENT/STATE :**

**ASSISTANT SUB INSPECTOR OF POLICE,  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

**BY PUBLIC PROSECUTOR SMT. P. MAYA**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 18-03-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:**

**bp**

**CrI.MC.No. 1223 of 2015 ()**

**APPENDIX**

**PETITIONER'S ANNEXURES :**

**ANNEXURE 1: COPY OF ORDER DT 20/11/2013 C.C. NO. 639/2013 IS RENUMBERED AS  
CC.1262/2013 BEFORE THE JFCM C - II, PERINTALMANNA.**

**RESPONDENT'S ANNEXURES :                      NIL.**

**//TRUE COPY//**

**P.A. TO JUDGE**

**bp**

P. UBAID, J.

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Crl.M.C.No.1223 of 2015  
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Dated this the 18<sup>th</sup> day of March, 2015

O R D E R

The petitioner herein is the original 3<sup>rd</sup> accused in C.C.No.639/2013 of the Judicial First Class Magistrate Court-II, Perinthalmanna. The offences involved in the case are under Sections 341, 323, 324 and 506(i) IPC. The 2<sup>nd</sup> accused faced trial before the learned Magistrate in C.C.No.639/2013, and obtained a judgment of acquittal on merits when the material witnesses including the injured could not adduce any convincing and satisfactory evidence, and the prosecution failed to prove the case beyond reasonable doubt. The case against the petitioner herein and the 1<sup>st</sup> accused was split up and refiled as C.C.No.1262/2013. The petitioner now seeks orders quashing the prosecution against him on the ground that the very substratum of the prosecution case stands lost by the acquittal of the 2<sup>nd</sup> accused. Annexure-I is the copy of the judgment of the trial court in C.C.No.639/2013. On a perusal of this judgment and copy of the deposition given by the material witnesses, made available

during this proceeding, I find that the prosecution cannot, in any manner, improve the case against the petitioner, if it goes to trial. The learned Magistrate found on trial that the evidence given by the material witnesses is not believable at all. As regards the scene of offence also, the learned Magistrate found the material discrepancy. In cross examination, the defacto complainant/injured gave inconsistent statements regarding actual incident, and also the persons involved in the incident of assault. In paragraph 16 of the Annexure-I judgment, the learned Magistrate concluded the findings thus:

“16. The crucial question is whether the injuries noted on PW1 by PW4 were inflicted by the accused. As far as the over acts and circumstances, the evidence of PW1 is inconsistent. So I am satisfied that the evidence tendered by PW1 and 2 is not at all sufficient to prove the guilt of A2 beyond reasonable doubt. Apart from that by the version of PWs 1 and 2 A1 came first and subsequently after 5 minutes A2 and A3 came to the room. At the same time the case of the prosecution is that A1 to A3 in furtherance of their common intention committed the assault. Sharing of common intention is not at all proved in this case from the evidence of PWs 1 and 2. So the evidence on record it is not proved the offence of the ingredients of the S.34 IPC. On a perusal of the evidence as a whole there is no convincing evidence to prove the guilt of the accused beyond reasonable doubt.”

Definite it is that the witness who failed to give satisfactory evidence at the first round will not, in any manner, help the prosecution, and it is definite that the prosecution cannot, in any manner, improve the case as against the petitioner, if it goes to trial. No doubt, continuance of the prosecution against the petitioner will be a sheer waste of time. I find that the very substratum of the prosecution case stands totally lost by the acquittal of the 2<sup>nd</sup> accused, on merits.

In the result, this petition is allowed. The prosecution against the petitioner herein in C.C.No.1262/2013 of the Judicial First Class Magistrate Court-II, Perinthalmanna, will stand quashed under Section 482 Cr.P.C. However, the case will proceed against the other accused.

Sd/-

P. UBAID, JUDGE

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