

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

Cr1.MC.No. 215 of 2014 ()

(AGAINST THE ORDER/JUDGMENT IN CC 1377/2011 of
J.M.F.C., PARAPPANANGADI CRIME NO. 313/2011 OF THENHIPALAM POLICE
STATION , MALAPPURAM)

PETITIONER(S)/ACCUSED NO 1 TO 6:

1. MOHAMMED YAHYA, AGED 29 YEARS
S/O MOHAMMED MOULAVI, SAFA MANZIL, MADATHILAMTHODI
PARAMMAL, MAVOOR P.O, KOZHIKODE.

2. ANEESH KUMAR, AGED 25 YEARS
S/O RAMAN, AMBATTUPARAMBU HOUSE, MOORIYAD P.O
THRISSUR.

3. SHABEER A. AGED 32 YEARS
S/O KUNHIBAVA.A, SUBHA, ANDIPATTIL HOUS
E MULLOORKARA P.O, THRISSUR.

4. IRSHAD IBRAHIM, AGED 25 YEARS
S/O IBRAHIM, RASHEEDAS, PATTANNUR
KANNUR.

5. HAFEES AGED 25 YEARS
S/O ASSAIN, THAVANOOR HOUSE, KODUVALLI P.O
KOZHIKODE.

6. MAROLI JITHESH, AGED 24 YEARS
S/O DIVAKARAN, UDAYA NIVAS, KOOTHUPARAMBU P.O
KANNUR DISTRICT.

BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA

RESPONDENT(S/ STATE/ COMPLAINANT:

1. STATE PF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

2. THE S.I OF POLICE,
THENHIPALAM POLICE STATION, MALAPPURAM DISTRICT

R BY PUBLIC PROSECUTOR SAREENA GEORGE.P.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07-
01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 215 of 2014 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE A CERTIFIED COPY OF THE FIR IN CRIME NO 313/2011 OF
THENHIPALAM POLICE STATION
ANNEXURE B CERTIFIED COPY OF THE FINAL REPORT IN CC NO 1377/2011 ON
THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT I
PARAPPANANGADI

RESPONDENT(S) ' EXHIBITS

NIL

/TRUE COPY/

P.S. TO JUDGE

P.UBAID, J.

Crl.M.C.No. 215 OF 2014

Dated this the 7th day of January, 2015

O R D E R

A protest made by a group of students including the petitioners herein in connection with a student strike in the Calicut University on 11/10/2010 led to the registration of Crime No.313/2010 against them under Sections 143,147 & 148 IPC and under Section 3(1) of PDPP Act. After investigation, the police submitted final report under Sections 143,147 and 148 IPC read with Section 149 IPC. The offence alleged under the PDPP Act was deleted during investigation. On the final report submitted by the police, the learned Judicial First Class Magistrate, Parappanangadi took cognizance as C.C. No. 1377/2011. This prosecution is sought to be quashed under Section 482 of Crl.P.C. Without much probe or thought, it can be seen that this prosecution is illegal and unsustainable. Of course, Section 149 Cr.P.C. cannot be applied to Sections 143,147 and 148 IPC. Practically, the allegation against the

petitioner is that, as part of a student protest, the petitioners and some others made an attempt to enter the AD Block of the Calicut University. It is not known how this will constitute the offence of unlawful assembly or rioting as defined under the law. The FIR or the final report submitted by the police does not contain the essentials of the offence of unlawful assembly or rioting. A mere assembly in protest will not constitute unlawful assembly. Of course, it is alleged in the FIR that as part of the protest, the petitioners and others did some mischief, but that charge stands now deleted. Then, it is not known what further remains to prosecute them as offenders on a charge of unlawful assembly or rioting. I find that this prosecution cannot proceed further because it cannot be sustained under law. Continuance of this prosecution will definitely be a sheer abuse of legal process.

In the result, the petition is allowed. The prosecution against the petitioners in C.C. No.1377/2011 of Judicial First Class Magistrate Court 1, Parappanangadi will stand quashed under Section 482 of the Crl.P.C. Accordingly, the petitioners will stand released from prosecution, and the bail bond, if any,

executed by them will stand discharged.

Sd/-

P.UBAID, Judge.

dpk

/true copy/ PS to Judge.