

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

Crl.MC.No. 1424 of 2015 ()

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CC 37/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I, NORTH PARAVUR
CRIME NO. 6/1999 OF ELOOR POLICE STATION, ERNAKULAM DISTRICT
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PETITIONER/ACCUSED:

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RAFEEQ, AGED 35 YEARS, S/O.SAITHUMUHAMMED
KALLEPADATHU VEEDU, VADAKKUMBAGHAM
KARA, ELOOR, ERNAKULAM DISTRICT.**

BY ADV. SRI.MANSOOR.B.H.

RESPONDENT/STATE:

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STATE OF KERALA, REPRESENTED
BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA REPRESENTING
THROUGH STATION HOUSE OFFICER
ELOOR POLICE STATION, ERNAKULAM DISTRICT.**

BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24-03-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.M.C.No.1424/2015

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE A COPY OF THE FINAL REPORT IN CRIME NO.6/1999 OF ELOOR POLICE
STATION**

**ANNEXURE B COPY OF THE JUDGMENT DATED 17.02.2005 IN C.C.No.228/2000 OF
JUDICIAL FIRST CLASS MAGISTRATE COURT, N.PARAVUR**

RESPONDENT'S EXHIBITS

NIL

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

SD

P. UBAID, J.

Crl.M.C.No.1424 of 2015

Dated this the 24th day of March, 2015

O R D E R

The petitioner herein is the original 2nd accused in C.C.No.228/2000 of the Judicial First Class Magistrate Court, North Paravur. The offences involved are under Sections 323 and 324 IPC. The other three accused faced trial before the learned Magistrate, and obtained a judgment of acquittal on 17.02.2005, when the material witnesses failed to adduce proper, satisfactory and convincing evidence, and the prosecution failed to prove the case beyond reasonable doubt. The case against the petitioner was split up and refiled as C.C.No.37/2005. The petitioner seeks orders quashing the prosecution against him on the ground that the substratum of the prosecution case stands totally lost by the acquittal of the others, on merits. Annexure-B is copy of the judgment in C.C.No.228/2000. It shows that the prosecution examined nine witnesses in the case, and also marked Exts.P1 to P7. MO1 and MO2 objects were also marked during trial. On an appreciation of the evidence, the trial court found that the evidence given by the complainant and the other witnesses is not believable at all. In paragraphs 14 to 16 of the Annexure-B

judgment, the learned Magistrate found thus:

- "14. On going through the evidence of PWs 1 to 4, the injured and the eye witnesses examined by the prosecution to prove the incident, it can be seen that their evidence does not corroborate interse. PW1 and 2 stated to the doctor, who proved Exts.P3 and P4 wound certificate that they were attacked by a group of about 10 people. The FIR arrayed A1 and A2 and 2 other identifiable persons and the case was charge sheeted against 4 accused persons. Admittedly, PW1 has no prior acquaintance with the accused. He had not shown the accused to the police nor the police shown them to him. He identified the accused for the first time before the court while giving evidence in 2004. PW2 gave evidence that the incident took place when he got down from the stop, ie; outside the bus. Whereas PW1 deposed that the incident took place inside the bus. PW2 and 3 deposed that PW1 was hit by A2 with an idikkatta. PW1 has no case that he was beaten with idikkatta. Their evidence differs even with regard to the weapon of offence.
15. The witnesses examined by the prosecution to prove the incident are the workers of the bus who are interested witnesses. Admittedly, there were passengers in the bus. No independent witnesses have been examined to prove the incident.
16. On analysing the entire evidence adduced in this case, I come to a conclusion that the prosecution has not succeeded in establishing the guilt of the accused beyond

the shadow of doubt and this is a fit case where in the benefit of doubt is to be given to the accused.”

On a perusal of the Annexure-B judgment and on hearing both sides, I find that the prosecution cannot, in any manner, improve the case as against the petitioner herein, if it goes to trial. I find that the substratum of the prosecution case stands totally lost. The material witnesses including the defacto complainant could not give any satisfactory or convincing evidence. In such a situation, continuance of the prosecution will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioner in C.C.No.37/2005 of the Judicial First Class Magistrate Court, North Paravur, will stand quashed under Section 482 Cr.P.C.

Sd/-

P. UBAID, JUDGE

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