

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

Crl.MC.No. 1503 of 2015 ()

**LPC. NO.9/2012 OF ADDITIONAL SESSIONS COURT-II, KASARAGOD.
CRIME NO. 90/2008 OF BEKAL POLICE STATION, KASARAGOD DISTRICT.**

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PETITIONER/ACCUSED NO.1:

**VINODKUMAR. V., AGED 30 YEARS,
S/O. VIJAYAN, PAKYARA HOUSE, PAKYARA,
UDMA, UDMA VILLAGE, P.O. BEKAL,
HOSDURG TALUK.**

BY ADV. SRI.A.ARUNKUMAR.

RESPONDENT/COMPLAINANT/STATE :

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

BY SR. PUBLIC PROSECUTOR SMT.SAREENA GEORGE. P.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 10-03-2015, ALONG WITH CRL.MC. NO.1506 OF 2015, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE AI :** COPY OF THE FIR IN CRIME NO.90 OF 2008 BY THE BEKAL POLICE STATION, KASARAGOD.
- ANNEXURE AII:** COPY OF THE FINAL REPORT IN CRIME NO.90 OF 2008 BY THE BEKAL POLICE STATION, KASARAGOD.
- ANNEXURE AIII:** COPY OF THE JUDGMENT IN SC NO.264 OF 2010 ON THE FILES OF ADDITIONAL DISTRICT AND SESSIONS COURT-II, KASARAGOD, DATED 24.09.2014.
- ANNEXURE AIV:** COPY OF THE ORDER DATED 05.01.2015 IN CRL.MC NO.7388 OF 2014.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

P. UBAID, J.

Crl.M.C.Nos.1503 and 1506 of 2015

Dated this the 10th day of March, 2015

O R D E R

The petitioner in Crl.M.C.No.1503/2015 is the original first accused in Crime No.90/2008 of the Bekal Police Station registered under Sections 143,147,148,332,324 and 308 IPC read with 149 IPC and under Section 3(2)(c) of the PDPP Act, and Section 2 of the Kerala Prevention of Disturbance of Public Meeting Act, and the petitioner in Crl.M.C.No.1506/2015 is the 16th accused in the crime. This Court has already quashed the proceeding against the accused No.15 as per order in Crl.M.C.No.7388/2014, prosecution against the accused No.20 was quashed as per order in Crl.M.C.No.997/2015, and prosecution against accused No.12 was quashed as per order in Crl.M.C.No.1008/2015. The case against the original first accused is now pending before the Additional Sessions Court-II, Kasaragod, and now it stands transferred to the register of long pending cases as L.P.No.9/2012. The case against the accused No.16 is yet to be committed. It is pending as committal

proceeding before the learned Judicial First Class Magistrate Court-II, Hosdurg, and it stands now transferred to the register of long pending cases as L.P.C.No.77/2010. The prosecution case is that at about 5.30 pm on 8/2/2008 a mob of political activists, including the accused in the crime, formed themselves into an unlawful assembly with the object of causing disturbance to the public meeting held by the rival political group at the locality, assaulted the police officers deputed for duty at the place, inflicted injuries on their body, and when the police party took steps for dispersal of the mob, the accused damaged a KSRTC bus. Nine among the eighteen accused in the crime faced trial before the learned Additional Sessions Judge Adhoc II, Kasaragod in SC No. 264/2009 and obtained a judgment of acquittal on merits, on the finding that the prosecution miserably failed to prove the case. The petitioners now seek orders quashing the prosecution against them on the ground that the very substratum of the prosecution case stands lost by the acquittal of others on merits and that continuance of the prosecution against them will not serve any purpose.

2. Annexure A4 judgment of the trial Court in S.C. No.264/2009 shows that the prosecution examined 11 witnesses in the case including the police officers, who sustained injuries in the alleged incident, and also marked Exts.P1 to P14. The accused did not adduce any oral evidence. However, Exts.D1 and D2 were marked in defence. Of the eleven witnesses examined by the prosecution, PWs 1 to 3 are the police officers who sustained injuries in the alleged incident and PW4 is the doctor who examined them in the hospital and issued wound certificate. PW5 is the village officer who prepared the scene plan and PW7 is an attester to the scene Mahazar. PW6 is the Sub Inspector who was on duty at the place of incident and who also sustained some injuries. PWs 8 and 9 are the two independent eye witnesses examined by the prosecution. They are nearby shop owners. The independent witnesses examined by the prosecution turned hostile during trial. PWs 1 to 3 stated during trial that they had sustained injuries in a mob attack. But, they could not identify the persons who inflicted injuries on them. PW6 also could not identify anybody during trial. All the

material witnesses stated about a mob attack in which they sustained injuries, but none of the witnesses identified any of the accused during trial. In the absence of any evidence or incriminating circumstance against the accused, the learned Trial Judge acquitted 9 among 18 accused on 20/5/2013.

3. Copy of the deposition given by the material witnesses was perused by me in this proceeding. On examination of the depositions, I find that none of the material witnesses has stated anything against any accused. I find that the very substratum of the prosecution case stands lost, and the prosecution cannot, in any manner, improve the case against these petitioners. The independent witnesses, who turned hostile, cannot in any manner help the prosecution during trial. I find that continuance of the prosecution will be sheer waste of time because the prosecution cannot in any manner improve the case. In such a situation, the prosecution against the petitioners can be quashed under section 482 of the Criminal procedure Code.

In the result petition is allowed. The prosecution against the petitioners herein, as accused in crime No.90/2008 of Bekal

Police station, will stand quashed under Section 482 of the Criminal Procedure Code.

Sd/-

P. UBAID, JUDGE

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