

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

Cri.MC.No. 1725 of 2015 ()

**CC.NO. 690/2003 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -II, ALUVA
CRIME NO. 43/2003 OF KALAMASSERY POLICE STATION,ERNAKULAM DISTRICT**

PETITIONER(S)/ACCUSED 1 AND 5 :

1. SHABEER, S/O.ABOOTTY, AGED 33 YEARS,
CHOONDAPARAMBIL HOUSE, ATTUPURAM KARA,
POTHIYOORKULAM VILLAGE, CHAVAKKAD TALUK.
2. ARUNKUMAR, S/O.KESAVAN, AGED 31 YEARS, ARUN NIVAS,
KARIYILAKULANGARA KARA, PATHIYOOR VILLAGE,
KAYAMKULAM TALUK.

**ADVS.SRI.K.B.DAYAL
SRI.SIBI KARUN**

RESPONDENT(S)/STATE AND 2 TO 6 DEFACTO COMPLAINANTS :

1. STATE OF KERALA,
THE STATION HOUSE OFFICER, THROUGH KALAMASSERY POLICE
STATION, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31
2. SUNIL, S/O.V.P.CHANDRAN, AGED 32 YEARS,
VILAKKITHALA VEEDU, CHEMBANNOOR KARA,
NEDUMBASSERY VILLAGE-683 585
3. SHAHIN, AGED 31 YEARS, S/O.P.A.SAIDUMUHAMMAD,
ALFATHI HOUSE, NEAR UDAYAGIRI HOSPITAL,
CHANGANASSERRY KARA, CHANGANASSERRY TALUK-686 101
4. NIXON FERNANDEZ, AGED 31 YEARS, S/O.LUCKOSE FERNANDEZ,
SHYAM NIVAS, SOUTHERN SIDE OF ST.XAVIER'S COLLEGE,
ATTIPRAKARA, PALLITHURA POST,
THIRUVANANTHAPURAM DISTRICT-695 586
5. BINESH, AGED 34 YEARS, S/O.BALAKRISHNAN NAIR,
SURABHI HOUSE, KOLLANPADY, NEAR REFINERY,
THIRUVANKULAM KARA, THIRUVANKULAM VILLAGE-682 305
6. ANTONY JOSE, AGED 35 YEARS, S/O.JOSE XAVIER,
CHITTUPARAMBU HOUSE, ASSISSI JUNCTION, ALUVA KARA,
ALUVA VILLAGE-683 101

R1 BY SR PUBLIC PROSECUTOR SMT. SAREENA GEORGE.P.

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

CRMC.NO.1725/2015

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEX A1 COPY OF THE FINAL CHARGE SUBMITTED BEFORE THE LEARNED
COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS-II, ALUVA IN
CRIME NO.43/2003 OF KALAMASSERY POLICE STATION.**

**ANNEX A2 COPY OF THE JUDGMENT IN C.C.NO.690/2003 DATED 30/10/2007 ON
THE FILE JUDICIAL MAGISTRATE OF FIRST CLASS-II, ALUVA.**

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.S.TO.JUDGE

sts

P.UBAID, J.
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**Crl.M.C No.1725 of 2015**  
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Dated this the 18th March, 2015

ORDER

The petitioners herein are the original accused Nos.1 and 5 in C.C 690 of 2003 of the Judicial First Class Magistrate's Court-II, Aluva. The offences involved in this case are under Sections 143, 147, 141 and 323 read with Section 149 of Indian Penal Code. The original accused Nos.2,3,4,6,7 and 8 faced trial before the trial court and obtained a judgment of acquittal under Section 255 (1) of Cr.P.C when the material witness turned hostile to the prosecution in view of an amicable settlement made by the parties out of court. The prosecution examined one witness in the said case and also marked Ext.P1 complaint. PW1 did not support 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 trial judge acquitted all the accused therein. The case against the petitioners herein was split up and refiled as C.C No.858 of 2007. The petitioners now seek orders quashing the

prosecution as against them on the ground that the very substratum of the prosecution case is totally lost by the acquittal of the others, and continuance of the prosecution against them will not serve any purpose. Annexure -A2 judgment in C.C 690 of 2003 shows that the the material witness 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 witness also cannot in any manner help the prosecution, if the case against the petitioners goes to trial. In short, such proceeding will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioners herein in C.C No.858 of 2007 before the Judicial First Class Magistrate's Court-II, Aluva will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioners will stand released from prosecution.

Sd/-
P.UBAID
JUDGE

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/True copy/
P.S to Judge