

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

Crl.MC.No. 1738 of 2015

CC 35/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, MATTANCHERY.
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PETITIONER/ACCUSED:

**ASHIK, S/O.UMMER, AGED 58 YEARS,
PANDATH HOUSE, KODIKUTHUMALA,
ASHOKAPURAM, ALUVA P.O., PIN - 683 101
ERNAKULAM DISTRICT.**

BY ADV. SRI.M.A.SHIHAB

RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, COCHIN - 31,
(NVESTIGATING OFFICER, S.I. OF POLICE,
FORT KOCHI POLICE STATION, KOCHI - 01.**

BY PUBLIC PROSECUTOR SMT.S.HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 25-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A1: TRUE COPY OF THE JUDGMENT IN C.C.1348/02 OF THE COURT
OF THE JUDICIAL 1ST CLASS MAGISTRATE COURT-1, KOCHI.

ANNEXURE A2: TRUE COPY OF THE PLICE CHARGE IN C.C.35/2014 OF THE
COURT OF THE JUDICIAL 1ST CLASS MAGISTRATE COURT,
MATTANCHERY.

ANNEXURE A3: TRUE COPY OF THE STATEMENT OF THE PW2 IN
CC NO.1348/2002 MADE BEFORE THE COURT OF JUDICIAL 1ST
CLASS MAGISTRATE COURT-I, KOCHI.

RESPONDENT(S)' ANNEXURES: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

P. UBAID, J.

Crl.M.C.No.1738 of 2015

Dated this the 25th day of March, 2015

O R D E R

The petitioner herein is the original 2nd accused in C.C.No.1348/2002 of the Judicial First Class Magistrate Court-I, Kochi. The offence alleged against the accused is under Section 420 IPC. The 1st accused faced trial before the learned Magistrate, and obtained a judgment of acquittal on 01.04.2005, when the material witnesses could not adduce any satisfactory or convincing evidence during trial. Prosecution examined eight witnesses including material witnesses, and marked Exts.P1 to P6 in C.C.No.1348/2002. On an appreciation of the evidence, the trial court found that the material witnesses have no consistent and believable case as regards the allegations made in the complaint, which led to the crime. The case against the petitioner was split up and refiled as C.C.No.259/05. It was later transferred to the Judicial First Class Magistrate Court, and again it was refiled as C.C.No.35/2014. The petitioner seeks orders quashing the prosecution against him on the ground that the very substratum of the prosecution case stands totally lost by the acquittal of the

first accused in C.C.No.1348/2002. Annexure A1 is copy of the judgment in C.C.No.1348/2002. The judgment shows that the learned Magistrate acquitted the 1st accused in the absence of any satisfactory or convincing evidence. The learned Magistrate found material inconsistencies and contradictions in the evidence given by the material witnesses, and further found that the prosecution case is really unbelievable. In paragraph 19 of the judgment, the learned Magistrate found thus:

“19. Ext.P1 is dated 04.12.2000. There are 4 parties in it. CW1 is the first party. Ashik is 2nd party. A1 Ibrahim is 3rd party and one Majeed is 4th party. Ext.P1 would read that parties No.2 to 4 together received Rs.2,50,000/- from CW1 on 06.06.2000. Said Majeed was deleted from F.I.R. by Ext.P4 report. Before court the oral testimonies of PW2 is that during July 2000 the accused made the promise and induced her. Ext.P1 describes that during June 2000 the contract was entered in to between PW2 and the accused and one Majeed. Majeed is deleted from F.I.R. without showing any reason. The fact discussed above would show that prosecution story as per Ext.P1 and the oral testimonies of the witnesses are not consistent. The loss of passport not spoken to by any of the witnesses. PW1 and PW4 have deposed that they paid Rs.70,000/- each to PW7 during August. Ext.P1 would show that Rs.2,50,000/- was given to accused during June. The above versions are enough to hold the deposition of PW1 to PW5 are not believable.”

On a perusal of the Annexure A1 judgment, I find that the substratum of the prosecution case stands totally lost, and the prosecution cannot, in any manner, improve the case as against the petitioner herein, if it goes to trial. I am well convinced that continuance of the prosecution against the petitioner will be a sheer waste of time.

In the result, this petition is allowed. The prosecution as against the petitioner in C.C.No.35/2014 of the Judicial First Class Magistrate Court-I, Mattanchery, will stand quashed under Section 482 Cr.P.C.

Sd/-

P. UBAID, JUDGE

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