

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

Cr1.MC.No. 1847 of 2015 ()

AGAINST CC 1039/2011 of J.M.F.C.-IV,KOZHIKODE

PETITIONER(S)/ACCUSED NO.1:

P.A ROSHAN MUHAMMED AFSAL AGED 39 YEARS
S/O.MUHAMMED AFSAL
PUTHIYAVEETIL HOUSE NO.17/5 NR.MANOJ THEATURE
CHENTHRAPPINNI P.O.

BY ADVS.SRI.A.N.RAJAN BABU
SRI.P.GOPALAKRISHNAN (MVA)
SRI.A.R.EASWAR LAL

RESPONDENT(S)/COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
2. SUB INSPECTOR OF POLICE
NADAKKAVU, KOZHIKODE.
3. DR. SUNAINA
SAYOS KAINDIL LAY OUT, FLORICAN ROAD
MALAPRAMB CALICUT 673 009.

R3 BY ADV. SRI.C.P.MOHAMMED NIAS
BY ADV. SMT.P.K.SHAKKEELA
R1 BY PUBLIC PROSECUTOR SRI.SHEEBA M.T

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
09-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

- ANNX.A - A TRUE COPY OF THE ORDER IN OP.747/11 OF FAMILY COURT
KOZHIKODE DATED 23-2-12.
- ANNX.B - A TRUE COPY OF THE COMPLAINT WITH FIR BEFORE THE JUDICIAL
1ST CLASS MAGISTRATE COURT, KOZHIKODE.
- ANNX.C - A TRUE COPY OF THE PETITION IN CMP 3540/14 IN CC 1039/11
IN JUDICIAL MAGISTRATE OF FIRST CLASS IV KOZHIKODE.
- ANNX.D - A TRUE COPY OF THE ORDER IN CMP 3540/14 IN CC 1039/11 IN
JUDICIAL MAGISTRATE OF FIRST CLASS IV KOZHIKODE.
- ANNX.E - A TRUE COPY OF THE DEPOSITION OF PW1 IN CC NO.1039/2011
- ANNX.E (A) - A TYPED COPY OF THE DEPOSITION OF PW1 IN CC
NO.1039/2011
- ANNX.F - A TRUE COPY OF THE EMAIL SEND BY 3RD RESPONDENT TO NITESH
KALA

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

P.A TO JUDGE

vdv

P.UBAID, J.

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Crl. M.C No.1847 of 2015
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Dated this the 9th day of December, 2015

ORDER

Petitioner herein is the first accused in C.C No.1039/2011 of the Judicial First Class Magistrate Court IV, Kozhikode involving the offence under Section 406 of the Indian Penal Code. The dispute is concerning appropriation of the gold ornaments belonging to the petitioner's wife. Their marital relationship stands strained. The petitioner seeks orders on the ground that an original petition brought by his wife for return of gold ornaments stands dismissed. His case is that in view of the dismissal of the original petition claiming the ornaments, the prosecution cannot succeed in C.C No.1039/2011 wherein appropriation of ornaments in breach of trust is alleged.

2. On hearing both sides and on a perusal of the materials, I find that this application is in fact a mischievous application. The petitioner had earlier brought Crl.M.C No. 341/2015 before this Court, and the same was disposed of on 24.03.2015 with observation that the petitioner will have to face trial before the trial court. It is submitted that trial has already been commenced in the trial court, and that the de facto complainant has been extensively examined as

part of the trial. In such a situation, or at such a stage the prosecution can be quashed by this Court under Section 482 of the Code of Criminal Procedure. The petitioner's request was once turned down by this Court. It is not known why he has again brought an application to quash the proceeding. The trial court having commenced the trial, the accused will have to face it, and appropriate decision will have to be taken by the trial court. Whether the prosecution is sustainable or not, or whether the prosecution has evidence to prove the offence alleged, or whether the prosecution cannot continue just for the reason that the original petition stands dismissed, are all matters to be looked into and considered by the trial court. This Court having disposed of the petitioner's application once, with observation that he has to face trial and that the prosecution cannot be quashed when trial has already commenced. The petitioner should not have brought a second application.

In the result, this petition is dismissed in liminae without being admitted to files.

Sd/-
P.UBAID, JUDGE