

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

CrI.MC.No. 1860 of 2015 ()

**LPC 70/2010 of J.M.F.C.-II,HOSDRUG
CRIME NO. 146/2009 OF BEKAL POLICE STATION , KASARGOD**

PETITIONER(S):

**SUBASH K. AGED 29 YEARS
S/O.PRABHAKARAN, RAVANESWARAM, KASARAGOD DISTRICT**

BY ADV. SRI.I.V.PRAMOD

RESPONDENT(S):

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, 682031.**

R BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Imp

Crl.MC.No. 1860 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE A1:A TRUE COPY OF THE CHARGE IN CRIME NO.146/2009 OF BEKAL
POLICE STATION**

**ANNEXURE A2:A TRUE COPY OF THE JUDGMENT IN SC.NO.367/2009 DATED
07.06.2012**

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

PA TO JUDGE

Imp

P.UBAID, J.

Crl. M.C No. 1860 of 2015

Dated this the 9th day of April, 2015.

O R D E R

The petitioner herein is the original second accused in Crime No.146 of 2009 of the Bekal Police Station, registered under Sections 143, 147, 148, 332, 308 r/w 149 pf IPC. The crime was registered on the report of the Sub Inspector of Police Bekal. The original accused Nos. 1 and 3 faced prosecution before the Court of Session, Kasaragod in S.C No.367 of 2009, and obtained a judgment of acquittal on 7.6.2012 when the prosecution could not adduce any satisfactory evidence proving the alleged offences or even proving the exact identity of the accused involved in the crime. The Sub Inspector and the other police officers could not identify anybody during trial. The other material witnesses examined by the prosecution turned hostile. The case against the petitioner herein was split up and refiled when he remained consistently absent during trial, and it now stands transferred to the register of long pending cases as L.P.C No.70 of 2010 before the Judicial First Class Magistrate Court-II, Hosdurg (Committal Court). He now 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 others, and the findings made by the learned Additional Sessions Judge in S.C. No.367 of 2009. It is reported that there is no appeal or revision against the acquittal in S.C No.367 of 2009. Annexure A2 is copy of the judgment in the said case. The prosecution examined 7 witnesses including the Sub Inspector who registered the crime suo motu, and marked Exts. P1 to P6 documents and also two material objects. A perusal of the judgment shows that the Sub Inspector who registered the crime, or the other witnesses, could not identify anybody during trial. The Sub Inspector could not even explain how or on what material he registered the crime, or how he could identify the accused. In Paragraph 13 of the Annexure 2 judgment the learned trial judge found thus:

“The manner in which the prosecution has attempted to give evidence centering round the identity of the accused persons cannot be appreciated at all. According to prosecution itself about 300 mm gathered at the spot. If prosecution has a case that accused 2 in number who are facing trial now also had been there at the spot there must be reliable evidence to establish their identity. It is this aspect which is lacking in this case. The only possible conclusion that can be arrived at in the above said context is that prosecution has not been successful in establishing the involvement of the

accused in the commission of the crime”.

I find on a perusal of the judgment that the very substratum of the prosecution case stands lost, and that continuance of the prosecution against the petitioner will not serve any purpose, other than wasting the precious time of the court.

In the result, this petition is allowed. The prosecution against the petitioner in L.P.C No.70 of 2010 of the Judicial First Class Magistrate Court-II, Hosdurg will stand quashed under Section 482 Cr.P.C.

Sd/-

P.UBAID,
JUDGE

sab