

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

Crl.MC.No. 2034 of 2015 ()

IN LP 60/2008 of J.M.F.C.-II, NEYYATTINKARA

PETITIONER(S)/3RD ACCUSED:

**AYOOB AGED 45 YEARS
S/O.ABDUL RASHEED, TC NO.45/1939, NEAR TAYKKAPALLI
AZAD NAGAR, MANIYAVILAKOM, MUTTATHARA VILLAGE
THIRUVANANTHAPURAM.**

BY ADV. SRI.KANDAMPULLY RAHUL

RESPONDENT(S)/STATE AND DEDFACTO COMPLAINANT:

- 1. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA ERNAKULAM**
- 2. ABDUL KHADER, S/O.MEERA SAHIB, MANSKAR MANZIL, PACHALLOOR,
THIRUVANANTHAPURAM DISTRICT , AGED 60 YEARS
695001.**

**R2 BY ADV. SRI.P.G.PRAMOD
R1 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE. P.**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27-03-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 2034 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE A1- CERTIFIED COPY OF THE CHARGE SHEET IN CRIME NO.15/1996 OF
THIRUVALLOM POLICE STATION**

**ANNEXURE A2- TRUE COPY OF COMMON JUDGMENT IN SESSIONS CASE NO. 607/05
AND SESSIONS CASE NO.1954/2006 DATD 30.8.2014**

ANNEXURE A3- AFFIDAVIT FILED BY THE 2ND RESPONDENT

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No.2034 of 2015

Dated this the 27th day of March, 2015.

O R D E R

The petitioner herein is the original third accused in Crime No.15 of 1996 of the Thiruvallom Police Station involving the offence under Sections 120(b) and 395 of IPC. The accused Nos. 2, 4, 5 and 6 faced trial before the learned Assistant Sessions Judge, Neyyattinkara in S.C No.607 of 2005, and obtained a judgment of acquittal, when the material witnesses examined by the prosecution did not in any manner support the prosecution. In the said case the prosecution examined 13 witnesses including the de facto complainant. But the material witnesses turned hostile in view of an amicable settlement made by the parties out of court. The case against the first accused was split up and refiled. He is still absconding. The case against the petitioner as the

third accused was split up in the committal court itself. It continued in committal proceedings, when he absconded, and now it stands transferred to the register of long pending cases as L.P No. 60 of 2008 before the Judicial First Class Magistrate Court -II, Neyyatinkara. He now seeks orders quashing the prosecution on the ground of amicable settlement made out of court, and also on the ground that substratum of the prosecution case stands totally lost. Annexure A2 judgment shows that the material witnesses turned hostile in view of an amicable settlement made out of court. The de facto complainant in the case is the second respondent herein. He has filed affidavit to the effect that he has settled the whole dispute with the petitioner and the others, and he has no grievance or complaint now. In the above situation, I find that continuance of prosecution against the petitioner will be a sheer waste of time. The prosecution cannot in any manner improve the case as against him, if the case goes to trial. The material witnesses who did not support the prosecution at the first round, will not support the prosecution when the case against the petitioner goes to trial. I find that the

prosecution is liable to be quashed.

In the result, this petition is allowed. The prosecution against the petitioner in L.P 60 of 2008 of the Judicial First Class Magistrate Court-2, Neyyattinkara will stand quashed under Section 482 Cr.P.C.

Sd/-

P.UBAID,
JUDGE

sab