

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

Crl.MC.No. 2076 of 2015

**CC 142/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, AMBALAPUZHA.
CRIME NO. 717/2009 OF AMBALAPPUZHA POLICE STATION, ALAPPUZHA.**
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PETITIONER/2ND ACCUSED:

**SALIM, AGED 33, S/O ALIYAR KUNJU,
DARUSLAM HOUSE, WARD NO.2,
AMBALAPPUZHA NORTH PANCHAYATH,
ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P**

RESPONDENT/COMPLAINANT-STATE:

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

BY SENIOR PUBLIC PROSECUTOR SMT.SAREENA GEORGE.P

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 30-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

Crl.MC.No. 2076 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE I: TRUE COPY OF THE FINAL REPORT DATED 28.12.2009.

**ANNEXURE II: TRUE COPY OF THE JUDGMENT PASSED BY THE JUDICIAL
FIRST CLASS MAGISTRATE, AMBALAPPUZHA IN
C.C.NO.142/2010 DATED 30.4.2013.**

RESPONDENT(S)' ANNEXURES: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

P. UBAID, J.

Crl.M.C.No.2076 of 2015

Dated this the 30th day of March, 2015

O R D E R

The petitioner herein is the original 2nd accused in C.C.No.142/2010 of the Judicial First Class Magistrate Court, Ambalapuzha. The offences involved in the crime are under Sections 143,149 and 353 read with 149 IPC. The prosecution case is that the petitioner and the co-accused formed an unlawful assembly with the object of disturbing an annual celebration at the S.N. Auditorium, Valanjavazhi, and they assaulted the police persons deployed there for duty in connection with the function. The original accused Nos.1 and 3 to 5 faced trial, and obtained a judgment of acquittal on 30.04.2013, when nobody supported the prosecution. The prosecution examined six witnesses, and marked Exts.P1 and P2. The case against the petitioner herein was split up and refiled as C.C.No.1212/2013. He now seeks orders quashing the prosecution on the ground that the very substratum of the prosecution case stands totally lost. Annexure A2 is copy of the judgment of the trial court in C.C.No.142/2010. PWs 1 and 2 examined by the prosecution are the independent

witnesses. They turned fully hostile during the prosecution. PWs 3 and 4 are the police constables examined to prove the incident, and PW6 is the investigating officer. PWs 3 and 4 could not give satisfactory evidence to prove the alleged incident or the alleged assault on the police. As regards their evidence, the learned Magistrate found thus in paragraph 12 of the judgment.

“12. Thus regarding the occurrence PW3, 4 and 6 has adduced contradictory evidence and hence they cannot be believed and their evidence cannot be based upon to arrive at a conclusion. On a perusal of the entire evidence of PW3, 4 and 5, there is reasonable suspicion about the case put forward by the prosecution. None of the witnesses has properly identified the accused. From the above, these points are answered against the prosecution.”

I find that the substratum of the prosecution case stands lost by the acquittal of the others, on merits. PWs 3 and 4 could not identify the accused, and they could not say anything implicating the accused, before the trial court. Definite it is, that continuance of prosecution against the petitioner herein will not serve any purpose other than wasting the precious time of the court. The prosecution cannot, in any manner improve the case as against the petitioner herein, if the case goes to trial.

In the result, this petition is allowed. The prosecution against the petitioner in C.C.No.1212/2013 of the Judicial First Class Magistrate Court, Ambalapuzha will stand quashed under Section 482 Cr.P.C.

Sd/-

P. UBAID, JUDGE

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