

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

CrI.MC.No. 2103 of 2015 ()

AGAINST CC 155/2013 of C.J.M.,KOZHIKODE
CRIME NO. 619/2010 OF KASABA POLICE STATION , KOZHIKODE

PETITIONER(S)/ACCUSED NOS.2 & 4:

1. ASHRAF K, AGED 50 YEARS
S/O. KUNHIKOYA, JUMANA HOUSE, WEST MANGAVE
THIRUVANNUR, KOZHIKODE.
2. MUSTHAFA AGED 43 YEARS
S/O. MUHAMMEDKOYA, RANEELA MANZIL HOUSE
KUNIYILPARAMBU, THOTTUMMARAM P.O., POKKUNNU
KOZHIKODE.

BY ADV. SMT.V.P.SATHI

RESPONDENT(S)/DEFACTO COMPLAINANT & STATE :

1. K M IBRAHIM
S/O. ABOOBACKER, K.M.HOUSE, PALLITHAZHAM
MANGAVE, KOZHIKODE-673 017.
2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R2 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
31-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 2103 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE I : A COPY OF THE FINAL REPORT DTD.17.11.2010 IN CRIME NO.619/2010.

ANNEXURE II: A COPY OF THE COURT CHARGE AGAINST OTHER ACCUSED EXCEPT 2 AND 4 IN CC 217/2010 DTD.25.2.2011.

ANNEXURE III: A COPY OF THE JUDGMENT DTD.4.7.2013 IN CC 217/2010 OF THE CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE.

ANNEXURE IV: A COPY OF THE DEPOSITION OF PW1 IN CC 217/2010 DTD.1.7.2013.

ANNEXURE V: A COPY OF THE DEPOSITION OF PW2 IN CC 217/2010 DTD.1.7.2013.

RESPONDENT(S)' EXHIBITS

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.
~~~~~  
**Crl.M.C No.2103 of 2015**  
~~~~~  
Dated this the 31st March, 2015

ORDER

The petitioners herein are the accused Nos.2 and 4 in C.C No.155 of 2013 of the Chief Judicial Magistrate's Court, Kozhikode. The offences involved in this case are under Sections 120(B), 386, 467, 468, 471, 506 (ii), 511 and 420 read with 149 of Indian Penal Code. The original accused Nos.1,3, and 5 to 10 faced trial before the trial court and obtained a judgment of acquittal under Section 248 (1) Cr.P.C when the material witnesses including the first informant/de facto complainant turned hostile to the prosecution in view of an amicable settlement made by the parties out of court. The prosecution examined two witnesses in the said case including the first informant/de facto complainant and also marked Ext.P1 complaint. None of the material witnesses examined in the case supported the prosecution. In such a circumstance, examination of the others was dispensed with, and evidence was closed by the trial court. In the absence of any evidence or incriminating

circumstance, the learned Magistrate acquitted the accused Nos1,3, & 5 to 10. The case against the petitioners herein was split up and refiled as C.C No.155 of 2013. The petitioners now seek orders quashing the prosecution as against them on the ground that the very substratum of the prosecution case is totally lost by the acquittal of the others, and continuance of the prosecution against them will not serve any purpose. Annexure -III judgment in C.C No.210 of 2010 shows that all the material witnesses examined by the prosecution in the said case turned hostile in view of an amicable settlement made by the parties out of court. In such a situation, it is quite definite that the prosecution cannot in any manner improve the case and the witnesses also cannot in any manner help the prosecution, if the case against the petitioners goes to trial. In short, such proceeding will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioners herein in C.C No.155 of 2013 of the Chief Judicial Magistrate's Court, Kozhikode will stand quashed under Section 482 of the Code of Criminal

Procedure. Accordingly, the petitioners will stand released from prosecution.

**Sd/-
P.UBAID
JUDGE**

ma

/True copy/

P.S to Judge