

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

Cr1.MC.No. 2176 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN CC 902/2010 of J.M.F.C., VADAKKANCHERRY
CRIME NO. 24/2004 OF CHELAKKARA POLICE STATION , TRISSUR

PETITIONER(S) /ACCUSED:

FIROSE BABU
S/O.AMINAKKUTTY, AMBALATH HOUSE, KALTHOTTI
MEPPADAM DESOM, MALAPPURAM DISTRICT.

BY ADVS.SRI.SANTHOSH P.PODUVAL
SMT.R.RAJITHA
SRI.K.D.SREEVISAKH

RESPONDENTS/STATE:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

2. THE SECRETARY
CHELAKKARA GRAMA PANCHAYATH, CHELAKKARA
THRISSUR - 680 586.

SMT.SAREENA GEORGE.P PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
01-04-2015, ALONG WITH CRL.M.C.NO.2177/15, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

RKC

Cr1.MC.No. 2176 of 2015 ()

APPENDIX

PETITIONERS' EXHIBITS

ANNEXURE-A: CERTIFIED COPY OF F.I.R IN CRIME NO.24/04 OF CHELAKKARA POLICE STATION.

ANNEXURE-B: CERTIFIED COPY OF FINAL REPORT IN CRIME NO.24/04 OF CHELAKKARA POLICE STATION.

ANNEXURE-C: CERTIFIED COPY OF THE JUDGEMENT DATED 31.12.2008 IN C.C.225/2004 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, WADAKKANCHERRY.

ANNEXURE-D: TRUE COPY OF DEPOSITION OF PW1 IN C C 225/2004 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATRE COURT, WADAKKANCHERRY.

RESPONDENT(S) ' EXHIBITS : NIL

RKC

TRUE COPY

PA TO JUDGE

P.UBAID, J.

Crl.M.C.Nos.2176 & 2177 of 2015

Dated this the 1st day of April, 2015

ORDER

The petitioner in Crl.M.C.No.2176 of 2015 is the original 2nd accused in C.C.No.225 of 2004 of the Judicial first Class Magistrate Court, Wadakkanchery and the petitioner in Crl.M.C.No.2177 of 2015 is the original 6th accused in the said case. The said prosecution was brought on the complaint of the Secretary of Chelakkara Grama Panchayat, under section 143, 147, 506 (ii) r/w 149 IPC and under section 3(1) of the P.D.P.P.Act, 1984. The original accused 1, 4 and 5 faced prosecution before the learned Magistrate in C.C.No.225 of 2004 and obtained a judgment of acquittal on 31.12.2008. The material eye witnesses cited by the prosecution, except the Secretary of the Panchayat, turned hostile to the prosecution. In the said case, the prosecution examined 10 witnesses including the defacto complainant (Secretary of the Panchayat) and marked Ext.P1 complaint. Only the Secretary of the Panchayat

examined as PW1, stated something about the allegations in the complaint, but the other material witnesses examined as PW2 to PW5 did not support the prosecution.

2. As regards the evidence of PW1, the trial court found that it is not acceptable and believable without independent corroboration. In the absence of satisfactory evidence proving the allegations the learned Magistrate acquitted accused Nos.1, 4 and 5. The case against these petitioners was split up and refiled. Now the case against the original 2nd accused is pending as C.C.No.902 of 2010 and the case against the original 6th accused is pending as C.C.No.804 of 2008. They now seek orders quashing the prosecution as against them on the ground that the very substratum of the prosecution case stands lost by the acquittal of the others and the definite findings of the trial court. Annexure-C is copy of the judgment of the trial court in C.C.No.225 of 2004. This judgment shows that all the material witnesses cited by the prosecution except the Secretary of the Panchayat turned hostile, in view of a settlement made by the parties out of court. The Secretary of the Panchayat, could not give evidence in favour of the accused. However, he did not say

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anything definite against them. As regards his evidence, the learned Magistrate found thus, in paragraph 20 of Annexure-C judgment:

20. It is clear from the evidence that PW1 is the only witness who was given direct evidence regarding the involvement of A1, A4 and A5 in the commission of the offences. The other occurrence witnesses have not supported the prosecution case. The evidence of PW1 is to the effect that on 23.1.2004 and 28.1.2004 A1, A4 and A5 obstructed the construction works. His evidence shows that it is the said at which he had attributed on the part of A1, A4 and A5. In his cross-examination, he stated that he witnessed the alleged obstruction made on 28.1.2004. The question is whether the uncorroborated testimony of PW1 to the effect that he had witnessed A1, A4, and A5 allegedly making the obstruction on 28.1.2004 is sufficient to bring out the involvement of the accused in the commission of the alleged offences. In this regard, I have carefully gone through Ext.P1 petition. Ext.P1 does not specifically state that PW1 had witnessed the incident. Apart from that Ext.P1 states that on 28.1.2004 about 15 persons under the leadership of A1 obstructed the work. The identity of the remaining persons is not brought out. Further, it is not clear as to how A1 alone could be named while others could not be named. On the whole PW1 does not appear to me as a reliable and trustworthy witness. In my opinion, his evidence required corroboration and his uncorroborated

*testimony is not sufficient to bring out the involvement
of A1, A4 and A5 in the incident.*

3. On a perusal of Annexure-C judgment, I find that the substratum of the prosecution case stands lost. Definite it is, that the prosecution cannot in any manner improve the case as against these petitioners, if it goes to file. Admittedly there is no appeal or revision against the judgment of acquittal in C.C.No.225 of 2004. I find that continuance of prosecution against these petitioners will be a sheer waste of time in the above circumstances.

In the result these two petitions are allowed. The prosecution now pending against the petitioners C.C.No.902 of 2010 and C.C.No.804 of 2008 of the Judicial first Class Magistrate Court, Wadakkanchery, will stand quashed under section 482 of Cr.P.C.

Sd/-
P.UBAID,
JUDGE.

rkc.