

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 15TH DAY OF MAY 2015/25TH VAISAKHA, 1937

CrI.MC.No. 2236 of 2015 ()

**-----
CC.NO. 1170/2014 & CC.NO.1442/2013 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT -II, PERINTHALMANNA
CRIME NO. 1228/2011 OF PERINTHALMANNA POLICE STATION,
MALAPPURAM DISTRICT
-----**

PETITIONER(S)/ACCUSED NO.1 TO 4 :

-
- 1. BASHEER, S/O. MOIDEEN,
KUNNUMMAL, MEKKARA VEEDU,
AMMINIKKAD, MALAPPURAM DISTRICT.**
 - 2. SHAFI, S/O. HAMSA, KOZHIKKOD KUNNUMML HOUSE,
MEKKARAVU, MALAPPURAM DISTRICT.**
 - 3. NOUSHAD, S/O. ALI, VELLOOR KAVIL HOUSE,
MEKKARAVU, MALAPPURAM DISTRICT.**
 - 4. HARRIS, S/O. ABDUL SALAM, KARIMBANTHODI HOUSE,
AMMINIKKAD, KUNNUMMAL, MALAPPURAM DISTRICT.**

BY ADV. SRI.P.M.RAFIQ

RESPONDENT(S)/DEFACTO COMPLAINANT, INJURED & STATE :

-
- 1. MUHAMMED SAJEER, S/O. BASHEER,
CHEMMAN KUZHIYIL HOUSE, VALAMKULAM AMSOM, ODAMALA,
ANAMANGAD VILLAGE, MALAPPURAM DISTRICT-679 357.**
 - 2. ASIYA, W/O. BASHEER, CHEMMAN KUZHIL HOUSE,
VALAMKULAM AMSOM, ODAMALA, ANAMANGAD VILLAGE,
MALAPPURAM DISTRICT-679 357.**
 - 3. SHEREEFA, W/O. RASHEED, CHEMMAN KUZHIL HOUSE,
VALAMKULAM AMSOM, ODAMALA, ANAMANGAD VILLAGE,
MALAPPURAM DISTRICT-679 357**
 - 4. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031**

**R1 TO R3 BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)
R4 BY PUBLIC PROSECUTOR SRI.C.K.JAYAKUMAR**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 15-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S ANNEXURES:

- | | |
|----------------|--|
| ANNEX A | COPY OF THE FINAL REPORT IN CC.NO.1442/2013 OF THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS-II, PERINTHALMANNA. |
| ANNEX B | COPY OF THE JUDGMENT IN CC.NO.1442/2013 OF THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS-II, PERINTHALMANNA DATED 31/12/2014. |
| ANNEX C | COPY OF THE AFFIDAVIT SWORN BY THE DEFACTO COMPLAINANT/1ST RESPONDENT BEFORE THIS HON'BLE COURT INFORMING THE FACTUM OF SETTLEMENT. |
| ANNEX D | COPY OF THE AFFIDAVIT SWORN BY CW2/2ND RESPONDENT BEFORE THIS HON'BLE COURT INFORMING THE FACTUM OF SETTLEMENT |
| ANNEX E | COPY OF THE AFFIDAVIT SWORN BY CW3/3RD RESPONDENT BEFORE THIS HON'BLE COURT INFORMING THE FACTUM OF SETTLEMENT. |

RESPONDENT'S ANNEXURES:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

P.UBAID, J.

Crl.M.C No.2236 of 2015

Dated this the 15th day of May, 2015

O R D E R

The petitioners herein are the original accused Nos.2 to 5 in C.C No.1442/2013 of the Judicial First Class Magistrate Court II, Perinthalmanna. The offences involved in the case are under Sections 143, 147, 294(b), 448, 354, 323 and 427 r/w 149 of the Indian Penal Code. The original accused Nos.1 and 6 faced trial before the trial court and obtained a judgment of acquittal under Section 248(1) of the Code of Criminal Procedure when all the material witnesses including the first informant turned hostile to the prosecution in view of an amicable settlement made by the parties out of court. The prosecution examined three witnesses in the said case including the first informant/injured, and also marked Exts.P1. 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 Nos.1 and 6. The case against the petitioners herein was split up and refiled, and it is now pending as C.C No.1170/2014 before the Judicial First Class Magistrate Court II,

Perinthalmanna. 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 prosecution against them will not serve any purpose. Annexure B judgment in C.C No.1442/2013 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 in C.C No.1170/2014 before the Judicial First Class Magistrate Court II, Perinthalmanna will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioners will stand released from prosecution.

**P.UBAID
JUDGE**

ab