

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

CrI.MC.No. 2246 of 2015 ()

AGAINST LP 33/2014 of J.M.F.C.-II,THAMARASSERY

PETITIONER(S)/2ND ACCUSED:

ASIF, S/O.ABUTTY AGED 21 YEARS
POOLAKKAPARAMBAN, PAHAMPARAMBU HOUSE
KEEZHPARAMBU KOZHIKODE DISTRICT.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR
SMT.V.P.SATHI

RESPONDENT(S)/DEFACTO COMPLAINANT & STATE:

1. AHAMMEDKUTTY
S/O.MUHAMMED, KANDANGAL HOUSE
CHULLIKKAPARAMBU KODIYATHOOR
KOZHIKODE DISTRICT- 673 602.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, KOCHI-682 031.

R2 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.P

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
07-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CrI.MC.No. 2246 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNX.I - A TRUE COPY OF THE DEPOSITION OF PW1 IN CC 530 OF 2013 OF THE JUDICIAL FIRST CLASS MAGISTRATES COURT-II, THAMARASSERY.

ANNX.II - A TRUE COPY OF THE DEPOSITION OF PW1 IN CC 530 OF 2013 OF THE JUDICIAL FIRST CLASS MAGISTRATES COURT-II, THAMARASSERY.

ANNX.AIII - A TRUE COPY OF THE DEPOSITION OF PW1 IN CC 530 OF 2013 OF THE JUDICIAL FIRST CLASS MAGISTRATES COURT-II, THAMARASSERY.

ANNX.IV - A TRUE COPY OF THE DEPOSITION OF PW1 IN CC 530 OF 2013 OF THE JUDICIAL FIRST CLASS MAGISTRATES COURT-II, THAMARASSERY.

ANNX.V - A TRUE COPY OF THE JUDGMENT DATED 31.10.2013 IN CC 530 OF 2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT-II THAMARASSERY

ANNX.VI - A TRUE COPY OF THE DIARY EXTRACT OF CC.1401/2013 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, THAMARASSERY.

RESPONDENT(S)' EXHIBITS

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.

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**Crl.M.C No.2246 of 2015**

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Dated this the 7th April, 2015

ORDER

The petitioner herein is the original second accused in C.C No.530 of 2013 of the Judicial First Class Magistrate's Court-II, Thamarassery involving the offences under Sections 143, 147, 148, 452, 323, 324 and 427 read with Section 149 of Indian Penal Code. The other five accused faced trial before the learned Magistrate in C.C 530 of 2013 and obtained a judgment of acquittal on 31.10.2013 when the de facto complainant could not give any satisfactory evidence and the other material witnesses turned hostile to the prosecution. The case against the petitioner herein was split up and refiled as C.C No.1401 of 2013. He now seeks orders quashing the pending prosecution against him 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 him will not serve any purpose. Annexure -V is the copy of the judgment of the trial court in C.C 530 of 2013. The prosecution examined four witnesses and marked Ext.P1 in the said case. Of the four witnesses examined, PW1 is the de

facto complainant, and PWs 2 to 4 are the material witnesses examined by the prosecution. PWs 2 to 4 did not support the prosecution. PW1 gave some evidence, but it was not acceptable to the trial court. As regards this evidence and the prosecution case, and also as regards the material inconsistencies in evidence, the learned Magistrate found thus in paragraph 8 of Annexure V judgment.

“The case of the prosecution that house trespass, mischief, rioting etc had occurred is not supported by the evidence let in through the prosecution witnesses. When the prosecution case is that the incident happened at 12.30 a.m on 1.1.13, the case put forth by PW1 is that the incident happened on 19.12.12. The material particulars of the offences were generally spoken about, but he did not identify any of the accused in the dock. He had a contention that the accused are not the persons who assaulted him and it was claimed by him that the names of the accused were mentioned in Ext.P1 F.I Statement on the basis of hearsay information. The other occurrence witnesses pleaded total ignorance about the incident. The prosecution has not been able to prove any of the ingredients of the alleged offences and therefore there can only be one finding and it has to be against the prosecution.

2. On a perusal of the Annexure-V judgment and the findings made by the learned Magistrate, I find that the prosecution cannot in any manner improve the case, as against the petitioner herein, when the case goes to trial. It is definite that the witnesses also cannot in any manner help the prosecution to proceed against the petitioner herein. Thus, I find that the very substratum of the prosecution case stands lost by the acquittal of the other accused. I find further that continuance of prosecution against the petitioner herein will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioner herein in C.C No.1401 of 2013 of the Judicial First Class Magistrate's Court-II, Thamarassery which now stands transferred to the register of long pending cases as L.P.33 of 2014, will stand quashed under Section 482 of the Code of Criminal Procedure.

**Sd/-
P.UBAID
JUDGE**

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/True copy/ P.S to Judge