

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.UBAID

TUESDAY, THE 5TH DAY OF MAY 2015/15TH VAISAKHA, 1937

CrI.MC.No.2599 of 2015

**SC NO.170/2014 OF THE ADDITIONAL SESSIONS COURT - I,KALPETTA.
CP NO.64/2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT,SULTHANBATHERY.
CRIME NO.316/2012 OF AMBALAVAYAL POLICE STATION,WAYANAD.**

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PETITIONER'S/ACCUSED NOS.5 &7:

1. MUNEER.V,AGED 27 YEARS,S/O.IBRAHIM,
VELLATHOOR HOUSE,NENMENI AMSOM,
WAYANAD DISTRICT.
2. BAPUTTY @ HASSAN,AGED 29 YEARS,
S/O.CHEKKUTTY,THANDAYATH HOUSE,
ANAPPARA,THOMATTUCHAL AMSOM,
WAYANAD DISTRICT.

**BY ADVS.SMT.ASHA ELIZABETH MATHEW
SRI.NIRMAL V NAIR**

RESPONDENT'S/STATE & INJURED (CW1 TO CW3):

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM-682031.
2. BASHEER,AGED 49 YEARS,S/O.ALAVI,
ALANGADAN HOUSE,KADANNAMANNA,
MANGADA AMSOM,PERINTHALMANNA,
MALAPPURAM DISTRICT-678001.
3. ABDUL GAFOOR,AGED 39 YEARS,
S/O.AYAMU,NELLAGARA HOUSE,
MANGADA AMSOM,PERINTHALMANNA,
MALAPPURAM DISTRICT-678001.
4. USMAN,AGED 46 YEARS,S/O.ALAVI,
KODANGATHODY HOUSE,MANGADA AMSOM,
PERINTHALMANNA,MALAPPURAM DISTRICT-678001.

**R1 BY SENIORPUBLIC PROSECUTOR SRI.P.K.ABDUL RAHMAN.
R2 & R4 BY ADV.SRI.ALEX K.JOHN**

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

pk

Crl.MC.No.2599 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE A1: CERTIFIED COPY OF FIR IN CRIME NO.316/2012 OF
AMBALAVAYAL POLICE STATION.**

**ANNEXURE A2: CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.316/2012
OF AMBALAVAYAL POLICE STATION.**

**ANNEXURE A3: CERTIFIED COPY OF THE JUDGMENT 06/02/2015 S.C.
NO.170/2014 OF THE ADDITIONAL SESSIONS COURT-I,
KALPETTA.**

**ANNEXURE A4: THE NOTARIZED AFFIDAVIT SWORN BY THE 2ND AND 3RD
RESPONDENT.**

**ANNEXURE A5: THE AFFIDAVIT SWORN BY THE 4TH RESPONDENT BEFORE THE
NOTARY PUBLIC.**

**ANNEXURE A6: A TRUE COPY OF THE JUDGMENT DATED 10.10.2014 OF THIS
HONOURABLE COURT IN CRL.M.C.NO.7015/2014.**

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

P. UBAID, J.

Crl.M.C.No.2599 of 2015

Dated this the 5th day of May, 2015

O R D E R

The petitioners herein are the accused Nos.5 and 7 in Crime No.316/2011 of Ambalavayal Police Station, Wayanad. The offences involved in this case are under Sections 143, 144, 147, 148, 120(b), 341, 403 and 308 read with 149 IPC. The other five accused faced trial before the learned Additional Sessions Judge-I, Kalpetta in S.C.No.170/2014, and obtained a judgment of acquittal on 06.02.2015, under Section 232 Cr.P.C., when all the material witnesses turned hostile to the prosecution in view of an amicable settlement made by the parties out of court. The prosecution examined five witnesses in the said case and also marked Ext.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 trial judge acquitted the other five accused under Section 232 Cr.P.C. The case against the petitioners herein was split up and refiled in the committal court itself when they absconded,

and it is now pending as C.P.No.30/2014. 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 - A3 judgment in S.C.170/2014 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.P.No.30/2014 before the Judicial First Class Magistrate Court, Sulthan Bathery, will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioners will stand released from prosecution.

Sd/-

P. UBAID, JUDGE

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