

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

Crl.MC.No. 2350 of 2014

LPC 138/2007 IN CC 510/2007 OF CHIEF JUDICIAL MAGISTRATE, KASARAGOD

CRIME NO. 251/2005 OF KUMBLA POLICE STATION, KASARGOD
.....

PETITIONER(S)/3RD ACCUSED:

**SUNIL, AGED 32 YEARS, S/O.SUBBA POOJARI,
PRATHAP NAGAR HOUSE, PRATHAP NAGAR, MANGALPADY VILLAGE,
KASARAGOD**

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENT(S)/COMPLAINANT/STATE:

- 1. STATION HOUSE OFFICER,
KUMBLA POLICE STATION - 673 122.**
- 2. STATE, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

*** ADDITIONAL R3 IMPLEADED**

- 3. NAZIR, 27 YEARS, S/O.RAFIQ,
BADHARIYA MANZIL, PRATHAP NAGAR,
MANGALPADY VILLAGE, KASARAGOD DISTRICT.**

*** IS IMPLEADED AS ADDITIONAL 3RD RESPONDENT AS PER ORDER
DTD.13.6.2014 IN CRL.MA.4933/2014 IN CRL. M.C.2350/2014.**

R1 & R2 BY PUBLIC PROSECUTOR SMT.S.HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
17-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE 1:-TRUE COPY OF THE FINAL REPORT IN CC 510/2007.

**ANNEXURE II:-COPY OF THE JUDGMENT IN SC 572/2007 OF ADDITIONAL DISTRICT
AND SESSIONS JUDGE (ADHOC III) KASARAGODE.**

**ANNEXURE III:-COPY OF THE PROCEEDINGS OF THE CHIEF JUDICIAL MAGISTRATE
COURT IN CC 510/07 AND LPC 138/07.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.UBAID, J.

Crl.M.C No.2350 of 2014

Dated this the 17th March, 2015

O R D E R

The petitioner herein is the original 3rd accused in Crime No.251/2005 of the Kumbbla Police Station. The offences involved in this case are under Sections 143, 147, 148, 341, 323 and 324 read with 149 IPC. The other nine accused in the crime faced trial in S.C.No.572/2007 of the Additional District and Sessions Court, Kasaragod, and obtained a judgment of acquittal when prosecution failed to procure the presence of the defacto complainant in spite of repeated processes issued from the court, and repeated opportunities granted from the court. Now, it is submitted that the said witness is still out of India, and the prosecution cannot procure his presence. The prosecution examined four witnesses in the said case and also marked Exts. P1 to P3. 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 accused. The case against the petitioner was split up in the committal court, and now it stands transferred to the register of long pending cases as L.P.C.No.138/2007. The petitioner now seeks orders quashing the prosecution as 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 prosecution against him will not serve any purpose. Annexure-II judgment in S.C.572/07 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 petitioner 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 petitioner in L.P.C.No.138/2007 of the Chief Judicial Magistrate Court, Kasaragod will stand quashed under Section 482 of the Code of Criminal Procedure.

Sd/-

P.UBAID, JUDGE

sd