

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

Crl.MC.No. 2508 of 2014 (F)

**AGAINST THE JUDGMENT IN SC 215/2009 of ADDL.SESIONS COURT (ADHOC)-III,
MANJERI DATED 30-07-2012**

CP 12/2009 of J.M.F.C.,NILAMBUR

CRIME NO. 234/2008 OF EDAKKARA POLICE STATION, MALAPPURAM

PETITIONER(S)/ACCUSED :-

**FIROZ, AGED 30 YEARS, S/O.HAMZA,
MUTTUPARA HOUSE, THAMPURATIKALLU,
MUNDERI NILAMBUR TALUK, MALAPPURAM DISTRICT.**

BY ADV. SRI.P.SHAMSUDIN

RESPONDENT(S)/STATE AND DE-FACTO COMPLAINANT :-

- 1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682 031.
(SUB INSPECTOR OF POLICE EDAKKARA,
MALAPPURAM DISTRICT).**
- 2. SAJNA, AGED 24 YEARS, D/O.HYDERALI,
MANKARATHODI HOUSE, VAZHIKKADAVU-679 333,
NAROKAVU, NILAMBUR TALUK, MALAPPURAM DISTRICT.**

**R1 BY SRI.JUSTIN JACOB, PUBLIC PROSECUTOR
R2 BY ADV. SRI.SUNIL KUMAR A.G**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30-11-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' ANNEXURES :-

- ANNEXURE A1 - A TRUE COPY OF THE FINAL REPORT IN CRIME NO.234/2008 OF EDAKKARA POLICE STATION.**
- ANNEXURE A2 - TRUE COPY OF THE ORDER IN SC NO.215/2009 ON THE FILES OF ADDL. SESSIONS COURT (ADHOC-III) MANJERI DATED 30.07.2012.**
- ANNEXURE A3 - CERTIFIED COPY OF THE FIR, FIS AND 161 STATEMENT OF THE 2ND RESPONDENT IN CRIME NO.234/2008 OF NILAMBUR POLICE STATION.**
- ANNEUXRE A4 - CERTIFIED COPIES OF THE DEPOSITION OF PW1 AND PW2 IN SC 215/2009 ON THE FILES OF SESSIONS COURT (ADHOC-III), MANJERI.**

RESPONDENT(S)' ANNEUXRES :- NIL

//TRUE COPY//

P.A. TO JUDGE

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P.UBAID, J.

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Crl.M.C.No.2508 of 2014
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Dated this the 30th day of November, 2015

ORDER

The petitioner herein is the original 4th accused in Crime No.234 of 2008 of the Edakkara Police Station, Malappuram, involving the offences under Sections 354 and 366 IPC. The case against the other three accused was initially committed to the Court of Session, and it was tried before the learned Third Additional Sessions Judge, Manjeri as S.C.No.215 of 2009. The case against the petitioner herein was split up in the committal court itself, when he remained consistently absent. It was split up as C.P.No.12 of 2009, and now it stands transferred to the register of long pending case as L.P.No.27 of 2012. The other three accused obtained a judgment of acquittal under Section 232 Cr.P.C. on 30.07.2012, when all the material witnesses turned fully hostile to the prosecution in view an amicable settlement

made by the parties out of court. The defacto complainant and the other material witnesses gave evidence before the learned trial Judge that no incident as alleged by the prosecution had occurred, and that nobody had molested or abducted the defacto complainant. Now, the petitioner seeks orders quashing the prosecution as against him on the ground that the very substratum of the prosecution case stands totally lost by the findings of the trial court and the acquittal of the other accused.

2. Annexure - A2 is copy of the judgment of the trial court in S.C.No.215 of 2009. The prosecution examined nine witnesses including the defacto complainant in the said case, and also marked Exts.P1 to P14 documents. Nobody supported the prosecution, and all stated that an incident as alleged by the prosecution had not in fact occurred, and that the complainant was not molested or abducted by anybody. She stated that the accused are her close neighbours, and her evidence indicated that she does not want to prosecute the matter further. The other witnesses also followed suit, and stated consistently that nothing had happened as alleged by the prosecution. As regards the evidence adduced by the

complainant and other witnesses, the learned trial Judge found thus in Paragraph 11 of the judgment.

“11. It is a case in which all the witnesses cited to prove the occurrence alleged in this case have not given oral evidence supporting prosecution case. PW1, victim has categorically stated before court that the accused are her neighbours and that they neither abducted her nor assaulted her or used criminal force to her with an intention to outrage her modesty. She deposed that there was no incident of abduction of PW1 as alleged by the prosecution has occurred. She denied all her statements given to police u/s 161 CrI.P.C. The contradictions in her statement before court are marked as Exts. P1 and P1(a). Pws 2,4,5,6 and 7 are father, grandmother, brother, uncle of PW1 respectively have not given any evidence against the accused. All these witnesses have also stated that no incident as alleged in this case has occurred. xxxx”

3. On an appreciation of the entire evidence adduced by the prosecution, the learned trial Judge came to the following finding in Paragraph 11 of the Annexure-A2 judgment.

“11. xxxx The oral evidence available in this case do not disclose the involvement of the accused in the criminal acts alleged in this case. On the other hand the oral evidence of the material witnesses including PW1 (victim) disproves the prosecution case, because they categorically stated before court that no incident as alleged by the prosecution has occurred. Considering the above, it can be held that

there is no evidence to hold that accused has committed the offence u/s 366 and 354 IPC. xxxx"

4. On a perusal of the Annexure -A2 judgment, I find that continuance of the prosecution against the petitioner herein will not serve any purpose, and it will definitely be a sheer waste of time. The prosecution cannot improve the case in the present circumstances where everybody disowned the case, and it is definite that no witness can in any manner improve the case and help the prosecution, if the case against the petitioner goes to trial. It is appropriate that the pending prosecution be quashed so that the precious time of court below can be saved.

In the result, this petition is allowed. The prosecution against the petitioner in C.P.No.12 of 2009 before the Judicial First Class Magistrate Court, Nilambur (Crime No.234 of 2008 of the Edakkara Police Station) which now stands transferred to the register of long pending case as L.P.No.27 of 2012 will stand quashed under Section 482 Cr.P.C.

Sd/-
P.UBAID
JUDGE

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//TRUE COPY//

P.A. TO JUDGE