

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

Cr1.MC.No. 4579 of 2015

IN C.C 384/2010 of J.M.F.C.-II, PERINTHALMANNA

CRIME NO. 265/2007 OF PERINTHALMANNA POLICE STATION, MALAPPURAM

PETITIONER/3RD ACCUSED:

ABDUL KHADAR,
S/O.ABBAS BYARI, TILAK NAGAR, SACHERIPETTA,
UDUPPI DISTRICT, KARNATAKA STATE.

BY ADV. SRI.U.K.DEVIDAS

RESPONDENT/COMPLAINANT/STATE:

STATE OF KERALA
REPRESENTED BY THE ADDL.SUB INSPECTOR OF POLICE,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.V.H.JASMINE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 21-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 4579 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE I: COPY OF THE FIR IN CRIME NO.265/2007 OF PERINTHALMANNA POLICE STATION.

ANNEXURE II: COPY OF THE FINAL REPORT IN CRIME NO.265/2007 OF PERINTHALMANNA POLICE

ANNEXURE III: COPY OF THE JUDGMENT ATED 22.6.2010 IN C.C NO.466/2008

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.4579 of 2015

Dated this the 21st day of July, 2015

O R D E R

The petitioner herein is the original 3rd accused in C.C No.466/2008 of the Judicial First Class Magistrate Court II, Perinthalmanna. The offences involved in the case are under Sections 406 and 498A r/w 34 of the Indian Penal Code. The other four accused 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/de facto complainant 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 including the first informant/de facto complainant 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 Magistrate acquitted the accused Nos.1, 2, 4 and 5. The case against the petitioner herein was split up and refiled as C.C No.384/2010. 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 III judgment in C.C No.466/2008 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 C.C No.384/2010 before Judicial First Class Magistrate Court II, Perinthalmanna will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioner will stand released from prosecution, and the bail bond, if any, executed by him will stand discharged.

**P.UBAID
JUDGE**

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