

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

Crl.MC.No. 3444 of 2014 ()

**IN CC 373/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT,PAYYANNUR
CRIME NO. 34/1997 OF PERINGOME POLICE STATION, KANNUR**

PETITIONER(S)/ACCUSED NO 1 & 2:

- 1. ABOOBACKER, AGED 39 YEARS
S/O ASSAINAR, MADAMBILLATH, THRIKKARIPUR
KASARGOD DISTRICT**
- 2. SHAMSUDHEEN 2 SHAMSU, AGED 39 YEARS
S/O AHAMMED NORTH KOVVAL, THRIKKARIPUR
KASARGOD DISTRICT**

**BY ADVS.SRI.SALIM V.S.
SRI.SHANAVAS.S
SRI.H.NUJUMUDHEEN**

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY S.H.O PERINGOME POLICE STATION
KANNUR DISTRICT THROUTH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM**

R BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13-01-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 3444 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1 CERTIFIED COPY OF THE FIR

ANNEXURE A2 CERTIFIED COPY OF THE FINAL REPORT

ANNEXURE A3 TRUE COPY OF THE JUDGMENT IN CC 362/01

ANNEXURE A4 TRUE COPY OF THE JUDGMENT IN CC 85/2008

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 3444 of 2014

Dated this the 13th day of January, 2015.

ORDER

The petitioners herein are the original accused Nos. 4 and 5 in C.C No.362/2001 of the Judicial First Class Magistrate Court, Payyannur. The offence alleged by the prosecution against the six accused in the crime suo motu registered by the police is under Section 27 of the Arms Act, on the allegation that on 4.2.1997 the six accused were found carrying some weapons in a car in suspicious circumstance. The original accused Nos. 2 and 3 faced trial before the learned Magistrate in C.C No.362/2001, and obtained a judgment of acquittal under Section 248 (1) Cr.P.C on 31.3.2005, on the finding that the prosecution has not been able to prove the case satisfactorily, and that the weapons alleged to have been carried by the accused do not require any license. The case against the accused Nos. 1, 4, 5 and 6 was split up and refiled, when they remained absent. Later, the original accused No.1 faced

trial before the learned Magistrate in C.C No.85/2008. In that case also the prosecution examined the material witnesses including the Sub Inspector who detected the offence, and marked the weapons. The first accused also obtained a judgment of acquittal on 6.12.2011, on the finding that there is absolutely no evidence to incriminate the accused under Section 27 of the Arms Act, and that the weapons alleged to have been carried by them do not require any license under the law. The State did not file appeal against the judgment of acquittal in C.C No.362/2001 or in C.C No.85/2008. The case against these petitioners was again split up and refiled in the trial court. Now it is pending as C.C No.373/2012. The petitioners now seek orders quashing the prosecution as against them on the ground that continuance of the prosecution will not serve any purpose, when the very substratum of the prosecution case stands totally lost by the acquittal of the other accused at two stages. The learned Magistrate has now reported that the case now stands posted for evidence, and that the material witness has not so far turned up in spite of coercive steps.

2. The Annexure A3 judgment in C.C No.362/2001 and the Annexure A4 judgment in C.C No.85/2008 will show that the material witnesses examined by the prosecution in those cases

could not satisfactorily proved the case, and the prosecution could not convince the court that the weapons involved in the crime are weapons requiring license or permit under the Arms Act. The learned Public Prosecutor submitted that the State has not preferred appeal against the acquittal of the other accused, and that the acquittal has thus become final. On a perusal of the Annexure A3 and Annexure A4 judgments I find that the trial court acquitted the others in the absence of any incriminating evidence or circumstance against them. The trial court has also found that the weapons produced by the prosecution and identified during trial are only iron pipes and sticks, which in fact do not require any license or permit under the law. Thus I find that the very substratum of the prosecution case stands lost. No doubt, in such a circumstance the prosecution cannot in any manner improve the case as against the petitioners herein, and the witnesses also cannot help the prosecution positively, when the case proceeds for trial. I find that continuance of prosecution in the above circumstances, against the petitioners will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioners in C.C No. 373/2012 of the Judicial First Class Magistrate Court, Payyannur (Crime No.34/1997 of the Peringome

Police Station), will stand quashed under Section 482 Cr.P.C. Accordingly, the petitioners will stand released from prosecution, and the bail bond, if any, executed by them will stand discharged.

P.UBAID,
JUDGE

sab