

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

Crl.MC.No. 4884 of 2015 ()

**-----
CC 57/2009 of JUDICIAL FIRST CLASS MAGISTRATE COURT, KUNNAMKULAM
CRIME NO. 624/2008 OF PERAMANGALAM POLICE STATION, TRISSUR DISTRICT
=====**

PETITIONER/ACCUSED NO.4:

**-----
SUMESH, AGED 32 YEARS
S/O.BALAN, PUZHAKKAL HOUSE
MYLADUMKUNNU DESOM
AVANOOR VILLAGE, THRISSUR DT.**

**BY ADVS.SRI.MAHESH V.MENON
SRI.PRAMJI PAUL VAZHAPPILLY**

RESPONDENTS/STATE/COMPLAINANT:

**-----
1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682 031.**

**2. S.I.OF POLICE
PERAMANGALAM POLICE STATION, THRISSUR DT. 681 019.**

BY PUBLIC PROSECUTOR SRI. JUSTIN JACOB

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02-12-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE A - TRUE COPY OF THE FIR IN CRIME NO.624 OF 2008 OF
PERAMANGALAM POLICE STATION**

**ANNEXURE B- TRUE COPY OF THE FINAL REPORT DATD 29.11.2008 ALONG WITH
STATEMENTS OF THE WITNESSES IN CRIME NO.624 OF 2008 OF
PERAMANGLAM POLICE STATION.**

**ANNEUXRE C- TRUE COPY OF THE JUDGMENT IN CC NO.57/2009 DATED 10.7.14 OF
JFCM COURT, KUNNAMKULAM, THRISSUR.**

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.4884 of 2015

Dated this the 2nd day of December, 2015

O R D E R

The petitioner herein is the original 4th accused in C.C.No.57/2009 of the Judicial First Class Magistrate Court, Kunnankulam involving the offences under Sections 143, 147, 447, 354, 323 and 149 IPC. Pending the proceeding the second accused died, and the charge against him thus abated. The accused Nos.1,3 and 5 faced trial before the learned Magistrate in C.C.No.57/2009, and obtained a judgment of acquittal on 10.07.2014, when the complainant and other witnesses did not effectively support the prosecution. Everybody disowned the earlier statement, and thus deposed against the prosecution case. Finding that there is absolutely no satisfactory material to incriminate the accused Nos.1,3 and 5, the learned Magistrate acquitted them under Section 248(1) Cr.P.C. The case against the petitioner was split up and refiled as C.C.No.1362/2014, when he remained consistently absent during trial. He now seeks orders quashing the prosecution on the ground that the

substratum of the prosecution case stands totally lost by the acquittal of the others, and that continuance of the prosecution against them will not serve any purpose.

2. On a perusal of Annexure-C judgment in C.C.No.57/2009 of the court below, I find that the learned Magistrate acquitted the others when all the material witnesses including the defacto complainant practically turned hostile to the prosecution. Of course there is nothing to show that it was in terms of the settlement made out of court. Every witness gave evidence before the learned Magistrate disowning his earlier statements, and practically against the prosecution case. The defacto complainant or the independent witnesses could not depose what act of offence was committed by each of the accused, and how exactly or at whose hands exactly the complainant and her son sustained injuries. On an examination of the entire evidence given by the complainant and the material witness, the learned Magistrate found thus in paragraph 14 of the Annexure-C judgment.

“14. According to PW1 the 2nd accused kicked her on her

stomach. 2nd accused himself caught hold her maxi. Admittedly 2nd accused is no more, hence charge is abated against him. Then the question arise for consideration is A1, A3 and A5 attacked her. During examination itself she affirmed that 1st and 3rd accused were not involved in the incident. During cross examination on behalf of A5 the learned counsel for A5 suggested to the effect that A5 is innocent. She also not answered to the said question. She has also not narrated what was the act done by A5. During examination PW2 also stated that 2nd accused attacked PW1. The learned counsel for A5 also pointed out that she has no case to the effect that A5 attacked PW2. The name of the assailants also not mentioned before the doctor. The evidence of PW3 doctor would indicate that the alleged history of assault by a group of people. In this juncture it is the duty of the prosecution to prove that what are the act done by each and every accused. Whereas during cross examination PW4 also admitted that the relatives of the 1st accused and other local people came there. According to him about 50 person came to the said spot. He further affirmed that he did not able to state that what are the act done by each and every accused. The learned counsel for A5 also give suggestion to the effect that A5 was not involved in the incident. He has also no answer to the said question. He affirmed that A1 and A3 were not involved in the incident. PW5 also deposed that the accused No.1 and 3 were not involved in the incident.

They stated the names of the said accused due to misunderstanding. He also deposed that in the chief examination itself he did not able to state that what are the act done by the accused. He did not able to state which accused kicked on the stomach of PW1. According to him he stated the name of 3 accused before the police. Hence he declared hostile. After declared hostile he affirmed that he did not state before the police to the effect that A1 and A3 involved in the incident. Hence the learned counsel for the accused pointed out that they have no consistent case before the police as well as during the time of incident. All the witnesses categorically stated that accused 1 and 3 were not involved in the incident."

3. On an examination of the Annexure-C judgment and the deposition given by the material witnesses, I find that continuance of the prosecution as against the petitioner will not serve any purpose. It will be a sheer waste of time because the prosecution cannot improve the case in any manner, and the witnesses also cannot help the prosecution, when they once disowned the case at the first round of trial. I find that the very substratum of the prosecution case stands totally lost by the acquittal of the other accused as per the Annexure-C judgment.

In the result, this petition is allowed. The prosecution against the petitioner herein in C.C.No.1362/2014 of the Judicial First Class Magistrate Court, Kunnankulam will stand quashed under Section 482 Cr.P.C.

Sd/-
P. UBAID, JUDGE

sd

// True Copy //

P.A. to Judge