

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.UBAID**

**WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936**

**Crl.MC.No. 4232 of 2014 ()**  
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**IN CC 239/2014 of J.M.F.C.-II, ALUVA  
CRIME NO. 679/2013 OF KALAMASSERY POLICE STATION , ERNAKULAM**

**PETITIONER(S)/3RD ACCUSED:**  
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**CLINTON JOSEPH AGED 21 YEARS  
S/O.JOSEPH, RESIDING AT THAPPALODATH HOUSE, BTS ROAD  
KEERTHI NAGAR, EDAPPALLY, ERNAKULAM DISTRICT.**

**BY ADV. SRI.C.R.SANISH**

**RESPONDENT(S)/STATE AND DEFACTO COMPLAINANT:**  
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- 1. STATE OF KERALA  
REPRESENTED BY SUB INSPECTOR OF POLICE  
KALAMASSERY POLICE STATION  
(INVESTIGATING OFFICER IN CRIME NO.679/2013 OF KALAMASSERY POLICE  
STATION)  
ERNAKULAM, REPRESENTED BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682031.**
- 2. FAISAL V.M.  
S/O.MAHIN, RESIDING AT VALIYACHETTIPARAMBIL HOUSE  
ECHARANGATT LINE, DESHABHIMANI ROAD, ELAMKULAM VILLAGE  
KALOOR KARA, KANAYANNOOR TALUK  
ERNAKULAM DISTRICT-682018.**
- 3. NAHAS M.T., AGED 28 YEARS  
S/O.M.M.THAHA, RESIDING AT OLEEPARAMBIL HOUSE  
ASHOKA ROAD, KALOOR KARA, KANAYANNOOR TALUK  
ERNAKULAM DISTRICT-682018.**

**R2 BY ADV. SRI.KARTHIK S. ACHARYA  
R3 BY ADV. SRI.JYOTHI.S.MADHU  
R1 BY PUBLIC PROSECUTOR SMT. S. HYMA**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04-03-2015, THE  
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**APPENDIX**

**PETITIONERS ANNEXURES:**

- A1: CERTIFIED COPY OF THE FIRST INFORMATION REPORT DATED 8.4.2013 IN CRIME NO.679 OF 2013 OF KALAMASSERY POLICE STATION**
- A2: AFFIDAVIT SWEARS AND SIGNED BY THE DE FACTO COMPLAINANT / 2ND RESPONDENT IN CRIME NO.679 OF 2013 OF KALAMASSERY POLICE STATION STATING THAT THE PETITIONER /3RD ACCUSED IS NOT INVOLVED IN THE INCIDENT AND HIS NAME IS HAPPENED TO BE INCLUDED DUE TO MISTAKE OF IDENTITY AND MISTAKE OF FACTS**
- A3: AFFIDAVIT SWEARS AND SIGNED BY THE INJURED PERSON/3RD RESPONDENT IN CRIME NO.679 OF 2013 OF KALAMASSERY POLICE STATION STATING THAT THE PETITIONER / 3RD ACCUSED IS NOT INVOLVED IN THE INCIDENT AND HIS NAME IS HAPPENED TO BE INCLUDED DUE TO MISTAKE OF IDENTITY AND MISTAKE OF FACTS**
- A4: CERTIFIED COPY OF FINAL CHARGE DATED 14.05.2013 SUBMITTED BY THE FIRST RESPONDENT AFTER COMPLETING INVESTIGATION IN CRIME NO.679 OF 2013 OF KALAMASSERY POLICE STATION**

**RESPONDENTS ANNEXURES: NIL**

/TRUE COPY/

PA TO JUDGE  
sab

**P.UBAID, J.**

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**Crl. M.C No. 4232 of 2014**  
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Dated this the 4<sup>th</sup> day of March, 2015.

**O R D E R**

The petitioner herein is the third accused in C.C No.239 of 2014 of the Judicial First Class Magistrate Court-II, Aluva. The offences alleged in the final report are under Sections 323, 324, 325, 326 and 34 of IPC. The de facto complainant who sustained serious injuries in the alleged incident is one Faisal. One Nahas who intervened in the incident to avert it also sustained injuries. In the complaint which led to the crime the de facto complainant Faisal has named only one person and he is the first accused. However, there is allegation that other three persons are also involved. But the police submitted final report against five persons. The petitioner seeks orders quashing the prosecution as against him on the ground that he was arraigned as accused on a mistaken identity during investigation, and that he has settled the whole dispute with the de facto complainant and the other injured. The

complainant Faisal and the other injured Nahas who sustained injuries in the incident are the respondents 2 and 3 herein. They have filed affidavit to the effect that they have settled the whole dispute to the petitioner herein, he happened to be arraigned as on a mistaken identity, that the second respondent had not in fact stated anything against him in the FI statement, and that they have no grievance or complaint now. On a perusal of the FI statement I find that the de facto complainant had stated the name of only one assailant, and that is the first accused. All the important allegations of commission of major offences are in fact against the first accused, in the FI statement and also in the final report. I find that orders as sought by the petitioner will not in any manner affect the prosecution against the other accused. The dispute between the petitioner and the injured stands well settled out of court amicably. Definite it is, that they or the other witnesses will not in any manner support the prosecution and implicate the petitioner herein, if he is directed to face trial. In the circumstance of an amicable settlement, I find that the prosecution as against the partitioner herein can be quashed.

In the result, this petition is allowed. The prosecution as

against the petitioner herein in C.C No.239 of 2014 of the Judicial First Class Magistrate Court II, Aluva will stand quashed under Section 482 Cr.P.C. The said case will proceed against the other accused.

P.UBAID,  
JUDGE

sab