

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

Crl.MC.No. 5583 of 2015 ()

**CC.NO. 361/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOTTARAKKARA
CRIME NO. 106/2003 OF POOYAPALLY POLICE STATION, KOLLAM DISTRICT**

PETITIONER/ACCUSED :

**UDAYAKUMAR
S/O. PHALGUNAN, AGED 47 YEARS, NIRAPPUVILA HOUSE
CHERIYAVELINALLOOR MURI, VELINALLOOR, KOTTARAKKARA
KOLLAM DISTRICT.**

BY ADV. SRI.SAJU S.A.

RESPONDENT/STATE :

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

BY PUBLIC PROSECUTOR SMT. V.H. JASMINE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 19-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 5583 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES :

- ANNEXURE 1 - A TRUE COPY OF THE FIR AND FIS IN POOYAPPALLY POLICE
CRIME NO. 106/2003.**
- ANNEXURE 2 - A TRUE COPY OF THE FINAL REPORT FILED IN POOYAPPALLY
POLICE CRIME NO. 106/2003.**
- ANNEXURE 3 - TRUE COPY OF AGREEMENT DT. 19.10.2010.**
- ANNEXURE 4 - TRUE COPY OF JUDGMENT OF FAMILY COURT,
KOTTARAKKARA DT. 29.6.2012.**
- ANNEXURE 5 - TRUE COPY OF JUDGMENT OF JFCM COURT - II,
KOTTARAKKARA DT. 6-5-2010 IN CC.NO. 664/2004.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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P.UBAID, J.

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Crl.M.C.No.5583 of 2015

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Dated this the 19th day of August, 2015

ORDER

The petitioner herein is the original accused No.4 in C.C.No. 664 of 2004 of the Judicial First Class Magistrate Court-II, Kottarakkara. The other accused faced trial before the trial court, and obtained a judgment of acquittal on 6.5.2010. The offences involved in this case are under Section 498(A) read with Section 34 of the Indian Penal Code. The other accused obtained a judgment of acquittal under Section 248(1) Cr.P.C. when all the material witnesses turned hostile to the prosecution in view of an amicable settlement made by the parties out of court. The prosecution examined three witnesses in the said case, 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 trial court acquitted the accused Nos.1, 3 and 5 to 8. The case against the petitioner was split up and re-filed as C.C.No.361 of

2011. 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-5 judgment in C.C.No.664 of 2004 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.361 of 2011 of the Judicial First Class Magistrate Court-II, Kottarakkara 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.

Sd/-
P.UBAID
JUDGE

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//TRUE COPY//

P.A. TO JUDGE