

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

Crl.MC.No. 5673 of 2015 ()

**SC 217/2001 of ADDITIONAL SESSIONS COURT FAST TRACK (ADHOC)III, MANJERI
CRIME NO. 64/1994 OF KONDOTTY POLICE STATION , MALAPPURAM DISTRICT**

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PETITIONER/4TH ACCUSED:

**NAJEEB, AGED 43 YEARS, S/O ABDUL MAJEED
SAMTHRIPTI, POST VENGARI, KANNADIKKAL
ELATHOOR, KOZHIKODE DISTRICT.**

**BY ADVS.SRI.C.M.MOHAMMED IQUABAL
SMT.ANJALI G.KRISHNAN**

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

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

**2. LILLY, AGED 55 YEARS, S/O KOLLIKALAVIL
DEVASIYA, POST PULIKKAL, KONDOTTY
MALAPPURAM DISTRICT-679011.**

R1 BY PUBLIC PROSECUTOR SMT. SHEEBA M.T.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12-10-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE A1: THE TRUE COPY OF THE FIR IN CRIME NO.64/94 OF KONDOTTY
POLICE STATION DATED 15.2.1994.**

**ANNEXURE A2: THE TRUE COPY OF THE CHARGE IN S.C.NO.217/01 OF THE
ASSISTANT SESSIONS JUDGE, MANJERI DATED 26.5.04 AND TYPED
COPY.**

**ANNEXURE A3: THE TRUE COPY OF THE JUDGMENT IN S.C.NO.217/2001 OF THE
ADDITIONAL SESSIONS JUDGE, FAST TRACT COURT NO.III (ADHOC),
MANJERI DATED 31.1.2015.**

RESPONDENTS' EXHIBITS

NIL

TRUE COPY

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.5673 of 2015

Dated this the 12th day of October, 2015

O R D E R

The petitioner herein is the original 4th accused in S.C.No.217/2001 of the Court of Session, Manjeri. The accused Nos. 2,3 and 5 obtained a judgment of acquittal from the learned Additional Sessions Judge (Adhoc) III, when the prosecution failed to procure the presence of the material witnesses including the victim of offence. The case against the original 1st accused was already split up and refiled during the proceedings. Repeated opportunities were given to the police by the learned trial Judge, but the police could not produce the material witnesses. In such a situation, the learned trial Judge closed the evidence and acquitted the accused Nos.2,3 and 5 by judgment dated 31.01.2005. The case against the petitioner herein was also split up and refiled. It is submitted that his case is now pending in the register of long pending cases as L.P.No.12/2005. The original 4th accused now seeks orders quashing the prosecution on the ground that the very substratum of the

prosecution case stands lost by the acquittal of the accused Nos.2,3 and 5.

2. This Court directed the Station House Officer to report whether the material witnesses cited as CW1 and CW2 are now available for examination. Now, there is report by the Sub Inspector of Police, Kondotty that the present whereabouts of the material witnesses are not known, and these two witnesses could not be so far located. What is revealed by the report is only that in spite of efforts made by the police, the material witnesses could not be traced out. In such a situation, it will be inappropriate to quash the prosecution. The petitioner will have to face trial before the learned trial Judge, and all possible coercive steps will have to be issued against the material witnesses from the trial court. If the prosecution thoroughly fails to procure the presence of the material witnesses, the learned trial Judge can pass appropriate orders. Without and before taking such necessary steps as part of prosecution process, the prosecution cannot be quashed under Section 482 Cr.P.C., when the police, it appears, is confident that some more efforts can be

made to trace out the witnesses.

In the result, this Crl.M.C. is disposed of, with a direction to the court below that effective steps including coercive steps shall be taken to procure the presence of the material witnesses as part of trial, and if the prosecution again failed to produce the witnesses, appropriate orders can be passed.

Sd/-

P. UBAID, JUDGE

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