

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. 4642 of 2014 ()

AGAINST CP 41/2012 of J.M.F.C.-II, ERNAKULAM

PETITIONER(S)/ACCUSED:-:

P.PAULOSE, AGED 70 YEARS
S/O.PAPPU NADAR, C/O.BEENA, GANDHINAGAR
UDAYA COLONY, HOSUE NO.17, COCHIN - 20
ERNAKULAM DISTRICT
HAVING HIS PERMANENT ADDRESS AS
FOLLOWS:- PONGUVILA PUTHENVEEDU
PANACHAMOODU, NEYYATTINKARA TALUK
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SRI.ARUN BOSE

RESPONDENT(S)/COMPLAINANT:-:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
REPRESENTING THE SUB INSPECTOR OF POLICE
CENTRAL POLICE STATION, ERNAKULAM, ERNAKULAM DISTRICT
PIN - 682 031.

2. RAJAN,, AGED 57 YEARS
S/O.RAGHAVA KURUP, RESIDING AT UDAYA COLONY
HOUSE NO.P/2, GANDHINAGAR, ERNAKULAM DISTRICT
KOCHI - 20.

R1 BY PUBLIC PROSECUTOR SMT.S.HYMA
R2 BY ADV. SRI.K.V.ANIL KUMAR

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. 4642 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1. CERTIFIED COPY OF THE FIR IN CRIME NO.3904/2011 OF THE ERNAKULAM CENTRAL POLICE STATION.

ANNEXURE A2. CERTIFIED COPY OF THE FINAL REPORT IN C.P.NO.41/2012 ON THE FILE OF THE JFCM-II, ERNAKULAM.

ANNEXURE A3. COPY OF THE AFFIDAVIT SWORN BY THE 2ND RESPONDENT/DEFACTO COMPLAINANT.

ANNEXURE A4. TRUE COPY OF THE MEDICAL CERTIFICATE DATED 21.07.2014 ISSUED BY THE CIVIL SURGEON.

RESPONDENT(S)' EXHIBITS

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.

~~~~~  
**Crl.M.C No.4642 of 2014**  
~~~~~

Dated this the 13th January, 2015

ORDER

The petitioner herein is the sole accused in Crime No.3904 of 2011 of Ernakulam Central Police Station, registered under Sections 326 and 308 of Indian Penal Code. The case is now pending in committal proceeding before the Judicial First Class Magistrate Court-II, Ernakulam as C.P. No.41 of 2012. The defacto complainant, on whose complaint the crime was registered, is one Rajan. Now the petitioner seeks orders under Section 482 of the Code of Criminal Procedure quashing the prosecution against him on the ground that he and Rajan have come to terms amicably out of court. The de facto complainant Rajan is the 2nd respondent in this proceeding. He has filed affidavit to the effect that he has settled the dispute with the accused, and he has no grievance or complaint. Of course, there are materials to attract Section 326 of I.P.C, but I find no definite material for a prosecution under Section 308 of I.P.C in this case. There is reason to believe that the said section was incorporated by the Police on the basis of a

hypothetical statement.

2. In so many decisions, the Hon'ble Supreme Court has held that even in cases involving non-compoundable offences, the High Court can quash prosecution, if the parties have really settled the dispute, and continuance of prosecution will not serve any purpose. Here, I find a real and genuine settlement between the parties. In such a situation, it is definite that continuance of prosecution will be a sheer waste of time, because nobody will support the prosecution, if the case goes to trial.

In the result, this petition is allowed. The prosecution against the petitioner herein in Crime No.3904 of 2011 of Ernakulam Central Police Station, now pending in committal proceeding before the Judicial First Class Magistrate Court-II, Ernakulam as C.P. No.41 of 2012, 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.

ma

/True copy/

**Sd/-
P.UBAID
JUDGE**

P.S to Judge