

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

Crl.MC.No. 4917 of 2014 ()

(AGAINST THE ORDER/JUDGMENT IN CC 709/2005 of J.M.F.C.-II, KOLLAM DATED
30-04-2008 CRIME NO. 102/2005 OF KOTTIYAM POLICE STATION , KOLLAM)

PETITIONER(S)/ACCUSED NOS.4 & 7:

1. AJI, AGED 30 YEARS
S/O.YAHIYA, KELAMANGALAM THODIYIL VEEDU, MUKKAM,
MAYYANAD VILLAGE, MAYYANAD.P.O., KOLLAM.

2. SHAMEER AGED 35 YEARS
S/O.ABUBAKKER, ERANAM MOOD VEEDU, MAYYANAD VILLAGE
MAYYANAD.P.O., KOLLAM.

BY ADV. SRI.JOSEPH SEBASTIAN (KOLLAM)

RESPONDENT(S)/STATE:

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

2.'Fr. JOLLY, S/O. JOSEPH, AGED 39,
ROSE DALE, KANJIRACODE CHERI, MULAVANA VILLAGE,
KUNDUR P.O., PIN - 691 504,KOLLAM DISTRICT.
KERALA.

(ADDL. R2 IS IMPEADED AS PER ORDER IN CRL.M.A.NO.11572/2014
DATED 5/1/2015)

R1 BY ADV. PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05-
01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 4917 of 2014 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE A1- CERTIFIED COPY OF THE CHARGE SHEET IN C.C.NO.709/2005 IN KOTTIYAM POLICE STATION CRIME NO.102/05 WHICH IS NOW PENDING AS L.P.NO.52/14 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOLLAM.

ANNEXURE A2- CERTIFIED COPY OF THE JUDGMENT IN C.C.NO.709/2005 OF THE JUDICIAL FIRST CLASS MAGISTRATE-II, KOLLAM DATED 30.4.2008 ACQUITTING THE ACCUSED OTHER THAN THE PETITIONERS.

RESPONDENT(S) ' EXHIBITS

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/ P.S. TO JUDGE.

P.UBAID, J.

CrI.M.C..No. 4917 OF 2014

Dated this the 5th day of January, 2015

O R D E R

The petitioners herein are the original accused Nos.4 & 7 in C.C. No.709/2005 of the Judicial First class Magistrate Court- II, Kollam. Of the eleven accused seven faced trial before the Learned Magistrate and obtained judgment of acquittal on 30/4/2008 when all the material witnesses turned hostile during trial in view of an amicable settlement made by the parties out of court. The case against the accused Nos.4,6,7 & 9 was split up and refiled as C.C. 1111/2008. Now it is pending as L.P. No.52/2014 as against the petitioners herein before the Judicial First Class Magistrate Court II, Kollam. The petitioners now seek orders quashing the prosecution against them on the ground that in the above situation, where everybody turned hostile during trial, continuance of the prosecution will not serve any purpose. Annexure II judgment shows that the prosecution examined two material witnesses in C.C. No.709/2005, but they did not

in any manner support the prosecution. Offence involved in the case are under Sections 143,147,148,447,427 and 506 (ii) read with Section 149 I.P.C. and under section 27 of Arms Act. A perusal of Annexure II judgment shows that the material witness turned hostile in view of a settlement made by the parties. In such a situation, the prosecution cannot, in any manner, improve the case against the petitioners herein because if their case goes to trial, those witnesses will not support the prosecution. I find that continuance of the prosecution against the petitioners will be a sheer waste of time.

In the result, CrI.M.C is allowed. The prosecution against the petitioners, as original accused Nos. 4 & 7 in C.C. No.709/2005 now pending as L.P. No.52/2014 of the Judicial First Class Magistrate Court-II, Kollam will stand quashed under Section 482 of the Code of Criminal Procedure.

Sd/-

P.UBAID, Judge.

dpk

/true copy/ PS to Judge.

