

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

Crl.MC.No. 5479 of 2014 ()

**IN SC 104/2013 of ADDL. D.C. & SESSIONS COURT - II, PATHANAMTHITTA
CRIME NO. 351/2008 OF KONNI POLICE STATION , PATHANAMTITTA**

PETITIONER(S)/3RD ACCUSED:

**SUSHEELA
D/O.LAKSHMY, KUNAMPALAVILAYIL VEEDU, THUVAYUR NORTH
MANAKKALA P.O., ADOOR, PATHANAMTHITTA DISTRICT-54.**

BY ADV. SMT.G.VIDYA

RESPONDENT(S)/COMPLAINANT:

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

**R1 BY ADV. PUBLIC PROSECUTOR
R2 BY PUBLIC PROSECUTOR SMT. P.MAYA**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16-01-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 5479 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE 1: COPY OF THE FIR IN CRIME NO.351/2008 OF KONNI POLICE STATION IN PATHANAMTHITTA DISTRICT DT.13-6-2008.

ANNEXURE 2: COPY OF THE FINAL REPORT IN CRIME NO.351/2008 OF KONNI POLICE STATION IN PATHANAMTHITTA DISTRICT, DT.13-6-2008.

ANNEXURE 3: COPY OF THE JUDGMENT IN SC 104/13 DT.10-10-13 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS COURT II, PATHANAMTHITTA.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No.5479 of 2014

Dated this the 16th day of January, 2015.

O R D E R

The petitioner herein is the original third accused in crime No.351/2008 of the Konni Police Station, involving the offences under Sections 328 and 392 IPC. Robbery of a gold ornament belonging to 'somebody' is alleged by the prosecution. The petitioner herein was arraigned as third accused during investigation on the basis of a statement made by the first accused, which the police would call 'confession statement'. The alleged stolen ornament was pledged in bank by somebody by name Susheela, and the said ornament was recovered by the police during investigation. The accused Nos. 1 and 2 faced trial before the learned Additional Sessions Judge – II, Pathanamthitta in S.C No.104/2013, and obtained a judgment of acquittal on 10.10.2013 on the finding that there is absolutely no evidence or circumstance to incriminate them. The case against the petitioner herein was split up at the committal stage itself, and it is now pending as C.P no.67/2012 before the Judicial First Class Magistrate Court -II, Pathanamthitta. The petitioner now seeks orders quashing the

prosecution against him on the ground that the very substratum of the prosecution case stands totally lost by the acquittal of the others, and that continuance of the prosecution will not serve any purpose.

2. The Annexure 3 judgment in S.C No.104 of 2013 shows that the prosecution examined 10 witnesses in the said case, and marked Exts. P1 to P16 and also MO1 gold chain. This gold chain was recovered by PW10 during investigation. It came out in evidence that this gold chain was pledged in a bank by one Susheela. The petitioner herein is Sushseela. PW1 gave evidence during trial that one Susheela had pledged MO1 ornament in his bank. However, the police could not find out the owner of the alleged stolen article. Nobody was examined as the owner of the property, and nobody turned up during the process, claiming the said property. Thus it is a fact that the alleged stolen property stands not proved as stolen property. The question of convicting the accused for the offence of theft or robbery comes only when there is a stolen property. In spite of earnest efforts during investigation the police could not find out the real owner of the property. Just because, this petitioner, or one Susheela pledged the

ornament in bank, she cannot be found guilty by the court. It might be that Susheela pledged her own ornament. So long as the said ornament is not identified as stolen property the prosecution cannot proceed against Susheela. Thus I find that the prosecution has no material at all to implicate or incriminate the petitioner herein, except the statement alleged to have been given by the first accused during investigation. Confession made by a co-accused to the police will not in any circumstance bind the others. Confession of a co-accused will have certain value, only if it is a confession made before the court, or an extra judicial confession made to somebody other than police. Here, it is alleged that confession was made by the first accused to the police against the petitioner herein. Such a statement will have no value under the law. That apart the prosecution has no material against the petitioner herein. Thus I find that continuance of prosecution against the petitioner herein in such a situation will not serve any purpose at all.

In the result, this petition is allowed. The prosecution against the petitioner herein in Crime No.351/2008 of the Konni police station, now pending in committal proceedings,

before the Judicial First Class Magistrate Court -II, Pathanamthitta as C.P No.67/2012 will stand quashed under Section 482 Cr.P.C. Accordingly, the petitioner will stand released from prosecution, and the bail bond, if any, executed by her will stand discharged. The petitioner has another grievance that her property stands attached. Of course, she will have to make claim before the learned Magistrate, who will consider her grievance and claim, in view of the orders quashing the prosecution as against her. As regards the property also appropriate orders can be passed by the trial court under Section 452 Cr.P.C.

P.UBAID,
JUDGE

sab