

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

Crl.MC.No. 6687 of 2015 ()

**SC 788/2013 of ADDITIONAL DISTRICT & SESSIONS COURT, VADAKARA
CRIME NO. 747/2006 OF VATAKARA POLICE STATION , KOZHIKODE DISTRICT**

PETITIONER/ACCUSED:

**NIDHEESH, AGED 34 YEARS
S/O.KUNHIKKANNAN, MUKKOLI MALAYAIL HOUSE
NADAKKUTHAZHA AMSOM, PUTHUPPANAM DESOM, VATAKARA
KOZHIKODE, PIN 673104**

**BY ADVS.SRI.BINU GEORGE
SMT.HEMALATHA**

RESPONDENTS/STATE/DE-FACTO COMPLAINANT AND INJURED PERSONS:

- 1. STATE OF KERALA
THROUGH C I OF POLICE, VATAKARA POLICE STATION
VATAKARA, KOZHIKODE DISTRICT
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 31**
- 2. SUDHEESH, AGED 34 YEARS, S/O.SURENDRAN
MUDIRAKKALIL HOUSE, NADAKKUTHAZHA AMSOM
PUTHUPPANAM DESOM, VATAKARA, KOZHIKODE DISTRICT
PIN 673104**
- 3. SURENDRAN, AGED 56 YEARS, S/O.KELAN
MUDIRAKKALIL HOUSE, NADAKKUTHAZHA AMSOM
PUTHUPPANAM DESOM, VATAKARA
KOZHIKODE DISTRICT PIN 673104**
- 4. SANTHA, AGED 53 YEARS, W/O.SURENDRAN
MUDIRAKKALIL HOUSE, NADAKKUTHAZHA AMSOM
PUTHUPPANAM DESOM, VATAKARA, KOZHIKODE
DISTRICT PIN 673104**

**R2 - R4 BY ADV. SMT.MARY RANZOM LOUIZ
R1 BY PUBLIC PROSECUTOR SMT. SHEEBA M.T.**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13-10-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE I:-CERTIFIED COPY OF THE FINAL REPORT FILED BY VATAKARA POLICE
IN CRIME NO 747/2006 NOW PENDING BEFORE ADDL.DISTRICT
COURT, VATAKARA AS SC 788/2013 AGAINST THE PETITIONER**

**ANNEXURE II:-TRUE COPY OF THE JUDGMENT DTD 28/9/2013 IN SC 100/2013 OF
ADDL-DISTRICT AND SESSIONS COURT, VATAKARA**

ANNEXURE III:-ORIGINAL OF THE AFFIDAVIT SWORN BY THE RESPONDENT NO 2

ANNEXURE III(A):-ORIGINAL OF THE AFFIDAVIT SWORN BY THE RESPONDENT NO 3

ANNEXURE III(B):-ORIGINAL OF THE AFFIDAVIT SWORN BY THE RESPONDENT NO 4

RESPONDENTS' EXHIBITS

NIL

TRUE COPY

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.6687 of 2015

Dated this the 13th day of October, 2015

O R D E R

The petitioner herein is the original 8th accused in Crime No.747/2006 of the Vadakara Police Station. After investigation the police submitted final report in the crime under Sections 143,147, 148, 450, 324, 326, 427 and 307 IPC read with 149 IPC, and also under Sections 3 and 5 of the Explosive Substances Act. Pending the proceedings, the original 6th accused died, and thus the charge against him abated. During the trial proceedings before the learned Judicial First Class Magistrate, Vadakara, the petitioner herein absconded. In such a situation, the case against him was split up and refiled, and the learned Magistrate committed the case against the others to the Court of Session. The original accused Nos.1 to 5, 7 and 9 entered appearance and faced trial before the learned Additional Sessions Judge, Vadakara in S.C.No.100/2013. The case against the petitioner was later committed to Court of Session, and it is now pending as S.C.No.788/2013 before the learned Additional Sessions Judge,

Vadakara.

2. The original accused Nos.1 to 5, 7 and 9 faced trial before the learned trial Judge, and obtained a judgment of acquittal on 28.09.2013 when nobody supported the prosecution. The petitioner now seeks orders quashing the prosecution as against him on the ground that the very substratum of the prosecution case stands totally lost by the acquittal of the others, and also on the ground that he and the victim of offence have come to terms amicably out of court.

3. In S.C.No.100/2013 the prosecution examined eight witnesses including the material witnesses, and also marked Exts.P1 and P2. All the material witnesses turned hostile to the prosecution, and the learned Public Prosecutor could not bring out anything in their cross examination to incriminate the accused. In such a situation, the learned trial Judge closed the evidence and proceeded to dispose of the case. The disposal is practically under Section 232 Cr.P.C., though Section 235(1) Cr.P.C. seen wrongly mentioned. Annexure A2 judgment in S.C.No.100/2013 shows that the material witnesses turned hostile to the prosecution in view of an amicable settlement made by the parties out of court. The victim of offence including the first

informant have filed affidavit to the effect that the whole dispute stands settled and resolved forever, and that they have no grievance or complaint now. They are the respondents 2 to 4 herein. In view of Annexure-II judgment it is definite that the prosecution cannot improve the case in any manner against the petitioner herein, if the case goes to trial. Definite it is, that continuance of the prosecution against the petitioner herein will be a sheer waste of time. The very substratum of the prosecution case stands totally lost.

In the result, this Crl.M.C. is allowed. The prosecution against the petitioner in S.C.No.788/2013 of the Additional Sessions Court, Vadakara, will stand quashed under Section 482 Cr.P.C.

P. UBAID, JUDGE

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