

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

Crl.MC.No. 6866 of 2015 ()

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CC 1/2007 of JUDICIAL FIRST CLASS MAGISTRATE COURT - I, NORTH PARAVUR
CRIME NO. 2/2002 OF ELOOR POLICE STATION , ERNAKULAM DISTRICT
=====**

PETITIONER/ACCUSED:

**SHIBU @ SHIHAB, S/O. ISMAIL, AGED 33 YEARS
KAVALACKALVEEDU, METHANAMBHAGAM
VADAKKUMBHAGAMKARA, ELOOR VILLAGE
ERNAKULAM DISTRICT**

BY ADV. SRI.SHERRY J. THOMAS

RESPONDENTS/RESPONDENTS:

- 1. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - 682031**
- 2. SUHARA, D/O. IBRAHIMKUTTY, AGED 43 YEARS
KOOTUGALVEEDU, VADAKKUMBHAGANKARA
NEAR METHANAM BUS STOP, ELOOR VILLAGE
NOW RESIDING AT PWRA 160, MEENCHIRA ROAD
PONEKKARA, AIMS POST, ERNAKULAM DISTRICT**

R2 BY ADV. SRI.VIPIN VARGHESE

R1 BY PUBLIC PROSECUTOR SRI. JUSTIN JACOB

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26-10-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

CRL.M.C.NO.6866/2015

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE A1 CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.2/2002

ANNEXURE A2 CERTIFIED COPY OF THE JUDGMENT IN C.C.NO.1022/2002

**ANNEXURE A3 ORIGINAL OF AFFIDAVIT DATED 20.10.2015 FILED BY THE 2ND
RESPONDENT**

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C. No. 6866 of 2015

Dated this the 26th day of October, 2015

O R D E R

The petitioner herein is the original 2nd accused in C.C.No.1022/2002 of the Judicial First Class Magistrate Court, North Paravur. The offences involved are under Sections 143, 147, 448, 294(b), 427 read with 149 IPC. The original accused Nos.1 and 3 to 5 faced trial before the trial court, and obtained a judgment of acquittal under Section 255(1) Cr.P.C., when all the material witnesses including the first informant/de facto complainant turned hostile to the prosecution in view of an amicable settlement made by the parties out of court. The prosecution examined one witness in the said case, and also marked Exts.P1. But the witnesses did not support the prosecution. In such a circumstance, examination of the others was dispensed with, and evidence was closed by the trial court. In the absence of any evidence or incriminating circumstance, the learned Magistrate acquitted the accused Nos.1 and 3 to 5. The case against the 2nd accused was split up and re-filed as

C.C.No.1/2007, when he absconded during trial. The petitioner now seeks orders quashing the prosecution as against him on the ground that the very substratum of the prosecution case is totally lost by the acquittal of the others, and continuance of prosecution against him will not serve any purpose. The 2nd respondent has filed affidavit to the effect that the whole dispute stands settled. Annexure-A2 judgment in C.C.No.1022/2002 shows that the material witness examined by the prosecution in the said case turned hostile in view of an amicable settlement made by the parties out of court. In such a situation, it is quite definite that the prosecution cannot in any manner improve the case, and the witnesses also cannot in any manner help the prosecution, if the case against the petitioner goes to trial. In short, such proceeding will be a sheer waste of time. Even otherwise, the prosecution can be quashed, because the whole dispute stands now settled amicably out of court.

In the result, this petition is allowed. The prosecution against the petitioner in C.C.1/2007 before the Judicial First Class Magistrate Court, North Paravur, 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.

sd

Sd/-
P. UBAID, JUDGE

// True Copy //

P.A. to Judge