

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

CrI.MC.No. 5698 of 2014 ()

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AGAINST THE ORDER/JUDGMENT IN SC 1167/2003 of THE ASSISTANT SESSIONS
COURT,ATTINGAL DATED 29.11.2008.**

CRIME NO. 519/2001 OF VARKALA POLICE STATION , THIRUVANANDAPURAM

PETITIONER(S)/ACCUSED:

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- 1. SHAJAHAN,
S/O. ABDUL RAHMAN, SHAJAHAN MANZIL, EDAVA,
THIRUVANANTHAPURAM DISTRICT.**
 - 2. AZEEZ,
S/O. NAMAL MUHAMMED, CHARUMOODU VEEDU, ODAYAM,
THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/STATE & COMPLAINANT:

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- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI -682 031.**
 - 2. THE ASSISTANT SUB INSPECTOR OF POLICE,
VARKALA POLICE STATION,
THIRUVANANTHAPURAM DISTRICT - 695 141.**

R BY SMT.P.HYMA,PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
06-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

DG

Crl.MC.No. 5698 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS:

**ANNEXURE A - CERTIFIED COPY OF THE FINAL REPROT IN CRIME NO.
519/2001 OF THE VARKALA POLCIE STATION.**

**ANNEXURE B - CERTIFIED COPY OF THE JUDGMENT OF THE ASSISTANT
SESSIONS COURT, ATTINGAL IN SC NO.1167/03 DT. 29.11.08.**

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A TO JUDGE

P. UBAID, J.

Crl.M.C.No.5698 of 2014

Dated this the 6th day of February, 2015

O R D E R

The petitioners herein are the original accused Nos.2 and 3 in S.C.No.1167/2003 of the Court of Session, Attingal. The prosecution case is that the accused Nos 3 to 5 were found selling liquor illicitly in a restaurant on 26.11.2001. The first accused is the proprietor of the restaurant, and the 2nd accused is its manager. The offence was detected by the Sub Inspector of Police, Varkala. After investigation, he submitted final report under Section 55(a)(1) and Section 15 and 64A of the Kerala Abkari Act. The accused Nos. 1, 4 and 5 faced trial before the learned Assistant Sessions Judge, Attingal in S.C.No.1167/2003, and obtained a judgment of acquittal when the prosecution miserably failed to prove the case. In the said case, the prosecution examined three witnesses including the Sub Inspector who detected the offence. The independent witness who attested to the seizure mahazar turned hostile. The Sub Inspector and the Police Constable could not give any satisfactory

evidence proving the alleged offence. What the police seized and produced in court is some empty bottles. The police could not seize any bottle containing any quantity of liquor. In the absence of any evidence or circumstance against the other accused in the deposition given by the Sub Inspector of Police and the Police Constables, the learned Assistant Sessions Judge found the other accused not guilty. The learned Judge found that the prosecution story is really artificial. The learned Assistant Sessions Judge also commented on the irresponsible way in which the police proceeded to prove the prosecution case.

2. The case against the petitioner herein was split up and refiled, when they consistently remained absent. Now, it stands transferred to the register of long pending cases as L.P.No.21/2009. The petitioners seek orders quashing the prosecution on the ground that the very substratum of the prosecution case stands totally lost by the acquittal of the others, and continuance of prosecution will not serve any purpose.

3. On a perusal of Annexure-B judgment of the trial court in S.C.No.1167/2003, I find that the prosecution cannot in fact in

any manner improve the case against the petitioners, when their case goes to trial. No doubt, the The Sub Inspector of Police who detected the offence, or the Police Constable who accompanied him in the process of detection will not be able to improve the case, or to say anything against these petitioners, when they failed to prove the case satisfactorily at the first round. The learned trial Judge has even found that the whole prosecution story is really artificial. The Sub Inspector who detected the case did not care to seize necessary documents and materials to prove the case properly and satisfactorily. In such a circumstance, the others obtained judgment of acquittal from the trial court. I am well satisfied that the very substratum of the prosecution case stands lost in view of the findings made by the learned trial judge at the first round, and I am definite that the prosecution cannot in any manner improve the case as against the petitioners herein.

In the result, this petition is allowed. The prosecution against the petitioners in Crime No.519/2001 of the Varkala Police Station which is now pending before the learned Assisant Sessions Judge, Attingal transferred to the register of long

pending cases as L.P.No.21/2009, will stand quashed under
Section 482 Cr.P.C.

Sd/-

P. UBAID, JUDGE

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