

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

Cr1.MC.No. 7060 of 2015 (F)

CRIME NO. 247/2008 OF CHERPU POLICE STATION, THRISSUR

L.P.NO.30/2015 IN C.C.NO.2152/2013 OF JFCM-I, THRISSUR

PETITIONER(S)/ACCUSED :-

GOPIKUTTAN @ GOPINADHAN, AGED 36 YEARS,
S/O. VASUDEVAN NAIR, RESIDING AT 677/V.S NILAYAM,
THANIVILA, THITTAVELIKKARA, TRIVANDRUM.

BY ADV. SRI.G.SANTHOSH KUMAR

RESPONDENT(S)/COMPLAINANT :-

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 31.

R BY SRI.JUSTIN JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
16-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

rkj

Cr1.MC.No. 7060 of 2015 (F)

APPENDIX

PETITIONER(S) ' ANNEXURES :-

ANNEXURE I : TRUE COPY OF THE REPORT DATED 30-11-2008
SUBMITTED BEFEORE THE J.F.C.M -I, THRISSUR.

ANNEXURE II : TRUE COPY OF THE JUDGMENT DATED 29-06-2013.

RESPONDENT(S) ' ANNEXURES :- NIL

//TRUE COPY//

P.A.TO JUDGE

rkj

P.UBAID, J.

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Crl.M.C.No.7060 of 2015

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Dated this the 16th day of December, 2015

ORDER

The petitioner herein is the original third accused in C.C.No.2436 of 2008 of the Judicial First Class Magistrate Court-I, Thrissur involving the offence under Section 5 of the Immoral Traffic (Prevention) Act, 1956. The other two accused faced trial before the learned Magistrate, and obtained a judgment of acquittal on 29.06.2013. The case against the petitioner herein was split up and re-filed as C.C.No.2152 of 2013, and now it stands transferred to the register of long pending cases. The petitioner 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 by the trial court on very important legal ground that the prosecution cannot be sustained under the law, in view of the fact that the investigation was conducted by a wrong person. The Annexure-II

judgment in C.C.No.2436 of 2008 shows that the learned Magistrate acquitted the others on the ground that investigation was not done by a notifying officer. The learned Magistrate relied on **Joseph v. State of Kerala [2011 (3) KLT 292]**, and also **Abdul Rasheed and Another v. State of Kerala [2012 (4) KLT 502]**. This Court has held in so many decisions that investigation under the Immoral Traffic (Prevention) Act can be conducted only by a notified police officer. I find that the prosecution cannot in any manner improve the case as against the petitioner herein, if it goes to trial. Continuance of the prosecution will be a sheer waste of time in the above situation.

In the result, this petition is allowed. The prosecution against the petitioner in C.C.2152/2013 of the court below which now stands transferred to the register of long pending cases, will stand quashed under Section 482 Cr.P.C.

rkj

Sd/-
P.UBAID
JUDGE

//TRUE COPY//

P.A. TO JUDGE