

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

Crl.MC.No. 7174 of 2015

LP 25/2006 of J.M.F.C.-II, HOSDURG

CRIME NO. 327/2001 OF BEKAL POLICE STATION, KASARAGOD

PETITIONER(S)/1ST ACCUSED:

**MUHAMMED SHAFFI, AGED 47 YEARS,
S/O.LATE ABDUL RAHIMAN @ ANTHAYI, THOTTI,
PALLIKKARA PO, KEEKKAN VILLAGE, HOSDURG TALUK,
KASARAGOD DISTRICT.
NOW RESIDING AT VALIYAPRAMBIL HOUSE, POOCHAKKAD,
PALLIKKARA VILLAGE, KEEKKAN PO, HOSDURG TALUK,
KASARAGOD .**

BY ADV. SRI.T.MADHU

RESPONDENT(S)/STATE:

- 1. THE STATE OF KERALA,
THROUGH THE STATION HOUSE OFFICER,
BEKAL POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682031.**
- 2. THAHIRA, AGED 43 YEARS,
D/O.VP.KUNHAMU AND W/O.MUHAMMED SHEFFI, KEEKKAN,
THEKKEPURAM KEEKKAN VILLAGE AND POST, HOSDURG TALUK,
KASARAGOD DISTRICT.
NOW RESIDING AT VALIYAPRAMBIL HOUSE, POOCHAKKAD,
PALLIKKARA VILLGE, KEEKKAN PO, HOSDURG TALUK,
KASARAGOD DISTRICT.**

R2 BY ADV. SMT.G.SANGEETHA

R1 BY SRI.JUSTIN JACOB, PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' ANNEXURES :-

ANNEXURE A1 : THE TRUE CERTIFIED COPY OF THE FIR IN CRIME NO.327/2001 OF BEKAL POLICE STATION.

ANNEXURE A2 : THE TRUE CERTIFIED COPY OF THE PRIVATE CRIMINAL COMPLAINT IN CMP.NO.4893/2001 ON THE FILES OF THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE'S COURT- II, HOSDURG.

ANNEXURE A3 : THE TRUE CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.327/2001 OF BEKAL POLICE STATION.

ANNEXURE A4 : THE TRUE CERTIFIED COPY OF THE JUDGMENT DATED 31.07.2004 IN CC.NO.91/2002 ON THE FILES OF THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE'S COURT- II, HOSDURG.

ANNEXURE A5 : THE AFFIDAVIT DATED 04.11.2015 SWORN IN BY THE 2ND RESPONDENT.

RESPONDENT(S)' ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

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P.UBAID, J.

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Crl.M.C.No.7174 of 2015

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Dated this the 12th day of November, 2015

ORDER

The petitioner herein is the original first accused in C.C.No. 91 of 2002 of the Judicial First Class Magistrate Court-II, Hosdurg. The other accused faced trial before the trial court, and obtained a judgment of acquittal on 31.07.2004. The offence involved in this case is under Section 498(A) read with Section 34 of the Indian Penal Code. The other accused obtained a judgment of acquittal under Section 248(1) Cr.P.C. when all the material witnesses turned hostile to the prosecution in view of an amicable settlement made by the parties out of court. The prosecution examined three witnesses in the said case, and also marked Ext.P1. None of the witnesses examined in the case supported 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.2 to 4. The case against the petitioner was split up and re-filed as C.C.No.466 of 2004, and it is now pending as L.P.No.25 of 2006. 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. Annexure-4 judgment in C.C.No. 91 of 2002 shows that all the witnesses 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. The victim has also filed affidavit to the effect that the whole dispute now stands settled, and that she has no grievance or complaint.

In the result, this petition is allowed. The prosecution against the petitioner in C.C.No.466 of 2004(L.P.No.25 of 2006) of the Judicial First Class Magistrate Court-II, Hosdurg 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/-

**P.UBAID
JUDGE**

rkj

//TRUE COPY//

P.A. TO JUDGE