

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

Crl.MC.No. 6189 of 2014 ()

**CC 476/2010 of JUDICIAL FIRT CLASS MAGISTRATE COURT, KASARAGOD
CRIME NO. 250/2005 OF KASARAGOD POLICE STATION , KASARGOD DISTRICT**
=====

PETITIONER/ACCUSED:

**MUHAMMED RAFEEQ B.S, AGED 31 YEARS
S/O.ABDULSATAR, RESHMA MANZIL, KELUGUDDE ROAD
OLD CHOORI, ADUKKATH BALI VILLAGE, P.O., RD NAGAR
KASARAGOD.NOW RESIDING AT OLD CHOORI, IZZAT NAGAR
P.O.RD NAGAR, KASARAGOD.**

BY ADV. SRI.V.TEKCHAND

RESPONDENTS/COMPLAINANT & STATE:

**STATE OF KERALA
THROUGH SI OF POLICE, KASARAGOD POLICE STATION
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, KOCHI-31.**

BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18-02-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE A1: CERTIFIED COPY OF THE CHARGE SHEET IN CRIME NO.250/2005 OF
KASARAGOD POLICE STATION**

**ANNEXURE A2 : CERTIFIED COPY OF THE COPY OF THE JUDGMENT IN CC 960/2005
DATED 26TH APRIL 2010**

**ANNEXURE A3: CERTIFIED COPY OF THE JUDGMENT IN CC 960/2005 DATED 13TH
DECEMBER 2011.**

ANNEXURE A4 CERTIFIED COPY OF THE DEPOSITION OF PW2

ANNEXURE A5 CERTIFIED COPY OF THE DEPOSITION OF PW3

RESPONDENT'S EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.6189 of 2014

Dated this the 18th day of February, 2015

O R D E R

The petitioner herein is the original 2nd accused in Crime No.250/2005 of the Kasaragod Police Station registered under Sections 278 and 353 IPC. The original accused Nos.1 and 3 faced trial before the learned Magistrate having jurisdiction, and obtained a judgment of acquittal on 13.12.2011 under Section 255(1) Cr.P.C. They were initially convicted by the court on trial, but the conviction was set aside by the appellate court, and the case was remanded to the trial court for decision afresh. At the second round on an appreciation of the entire evidence including the cross examination of the material witnesses subsequently made, the learned Magistrate found them not guilty. The case against the petitioner herein was split up and refiled as C.C.No.476/2010. The petitioner now seeks orders quashing the prosecution against him on the ground that the very substratum of the prosecution case stands totally lost by the acquittal of the others, and that continuance of the prosecution against them will

not serve any purpose.

2. Annexure A3 judgment in C.C.No.960/2005 shows that the learned Magistrate acquitted the other accused on the ground that the prosecution failed to adduce any satisfactory evidence to prove the guilt of the accused Nos. 1 and 2. The alleged incident happened in the night. During trial, the material witnesses failed to adduce any satisfactory evidence regarding the identity of the accused and they did not state anything regarding the source of light or presence of light.

3. In paragraph 18 of the Annexure A3 judgment the learned Magistrate found thus:

".....In the case on hand there is no evidence available with regard to the duties of PW2 and 3. Even if it is assumed that PW2 and 3 are in the execution of their duty, there is no independent corroboration for the incident. Admittedly PW1 is the witness to Ext.P1 arrest memo. The time of alleged offence is 1.10 am. The accused were arrested at 1.30 AM from the place of occurrence. If the evidence of PW2 is believable, the occurrence must have taken place near the Alukkas Jewellery. If so PW1 who was the security of the said shop would have seen the incident. But either PW2 or PW3 has no case that PW1 has seen the incident. So the evidence of PW2 and 3 is highly suspicious.

It may be true that at the alleged time of occurrence no independent witness would be available. But the evidence in this case clearly shows that PW1 was available there near the place of occurrence."

In paragraph 19 of Annexure A3 judgment learned Magistrate found thus:

"It is pertinent to note that there is no evidence as to the source of light to identify the accused persons at the spot. It is also to be noted that either PW2 or PW3 had no previous acquaintance with the accused persons. In such circumstances it cannot be said that PW2 and 3 could identify A3. No test identification parade was conducted to identify A3."

4. On a perusal of the Annexure 3 judgment, I find that the prosecution cannot in any manner improve the case as against the petitioner herein, if the case goes to trial. Prosecution examined six witnesses and marked Ext.P1 to P8 in the case against the others. The material witnesses could not give any satisfactory evidence proving the complicity of anybody in the alleged incident. They failed to identify anybody during trial, and they did not explain how they could see the accused in the night. I am definite that the substratum of the prosecution case stands

totally lost, and the prosecution cannot in any manner improve the case against the petitioner herein. The witnesses who gave evidence in favour of the prosecution in C.C.No.960/2005 also cannot in any manner help the prosecution, if the case against the petitioner goes to trial. In short, continuance of the prosecution against the petitioner will be a sheer waste of time.

In the result, this petition is allowed. Prosecution as against the petitioner in C.C.No.476/2010 of the Judicial First Class Magistrate Court-I, Kasaragod will stand quashed under Section 482 Cr.P.C.

Sd/-

P. UBAID, JUDGE

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