

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

Cr1.MC.No. 7689 of 2015 ()

AGAINST CC 773/2015 of JUDICIAL FIRST CLASS MAGISTRATE COURT, PONNANI
CRIME NO. 279/2002 OF PONNANI POLICE STATION, MALAPPURAM

PETITIONER(S)/ACCUSED:-:

RAFEEQ AGED 38 YEARS
S/O.SIDHIQUE, MAYINKUTIKANAKATHU HOUSE
PONNANI NAGARAM, AMSOM, DESOM
P.O.PONNANI, MALAPPURAM DISTRICT.

BY ADVS.SRI.P.U.SHAILAJAN
SRI.M.SURESH KUMAR
SMT.K.GEETHA (PONKUNNAM)

RESPONDENT(S)/COMPLAINANT:-:

STATE OF KERALA
REPRESENTED BY STATION HOUSE OFFICER
PONNANI POLICE STATION
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - 682 031.

BY PUBLIC PROSECUTOR SMT.SHEEBA M.T

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
09-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 7689 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE I. CERTIFIED COPY OF THE F.I.R. AND CHARGE SHEET IN CRIME
NO.279/2002 OF PONNANI POLICE STATION (C.C.NO.773/2015
BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
PONNANI) .

ANNEXURE II. TRUE COPY OF THE JUDGMENT IN C.C.NO.144/2003 DATED
07.01.2011 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
PONNANI .

RESPONDENT(S) ' EXHIBITS NIL

//TRUE COPY//

P.A TO JUDGE

vdv

P.UBAID, J.

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Crl. M.C No.7689 of 2015
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Dated this the 9th day of December, 2015

ORDER

Petitioner herein is the original 5th accused in C.C No.144/2003 of the Judicial First Class Magistrate Court, Ponnani, involving the offences under Sections 143, 147, 448, 323, 324 and 506(ii) of the Indian Penal Code. The other six accused faced trial before the learned Magistrate and obtained a judgment of acquittal when the prosecution could not prove the case satisfactorily and beyond reasonable doubt. The case against the petitioner herein was split up and re-filed when he remained consistently absent during the trial process. It is now pending as C.C No.773/2015. The petitioner seeks orders quashing the said prosecution on the ground that the very substratum of the prosecution case stands totally lost by the acquittal of the others.

2. Annexure II judgment in C.C No.144/2003 shows that the prosecution examined ten witnesses and marked Exts.P1 to P6 in the said case. The material witnesses including the de facto complainant gave evidence regarding the incident alleged, but the witnesses practically turned hostile. As regards evidence given by

the complainant and the material witnesses the learned Magistrate examined the evidence and found thus in paragraph 11 of Annexure II judgment:

“The testimony of injured witnesses would show that they have not gone to the hospital after the incident. Immediately after the incident they convened a meeting and took a decision as to the next step to be taken. It was due to the decision taken on the meeting, they have been admitted to the hospital. The above aspect would show that, it was a political decision to admit into the hospital. Further the evidence of the injured witnesses would show that there was an altercation followed by a fight. The evidence adduced would show that the alleged intention of the accused was to attack PW2. It is pertinent that PW2 turned hostile to the prosecution case. Similarly PW3 and 5 are also turned hostile to the prosecution case.”

3. On an appreciation of the entire evidence, the learned Magistrate found that there is no satisfactory material or evidence to show that the complainant had sustained any injury, and if at all the complainant had sustained any injury, it was, in fact, very trivial in nature. On the finding that the prosecution does not have any evidence to prove the case, the learned Magistrate acquitted the others.

4. On a perusal of Annexure II judgment and the findings made by the trial court therein, I find that the very substratum of the prosecution case stands lost by the acquittal of the others, and that the prosecution cannot in any manner improve the case against the petitioner herein if it goes to trial. The material witnesses, who once disowned their statements, cannot improve their versions at the second round when the case goes to trial against the petitioner herein. I find that continuance of the prosecution against the petitioner will be a sheer waste of time.

In the result, this petition is allowed. The prosecution against the petitioner in C.C No.773/2015 of the Judicial First Class Magistrate Court, Ponnani will stand quashed under Section 482 of the Code of Criminal Procedure.

Sd/-
P.UBAID, JUDGE

vdv