

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA,
1937

Cr1.MC.No. 7763 of 2015

IN SC 736/2011 of II ADDL.SESIONS COURT II,
THIRUVANANDAPURAM
CRIME NO.465/2009 OF VENJARAMOODU POLICE STATION,
THIRUVANANDAPURAM

PETITIONER/2ND ACCUSED:

ANIL RAJ, AGED 52 YEARS,
S/O.SUSEELAN, THUNDIL VEEDU, KUTTIMOODU,
VAMANAPURAM VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.A.RAJASIMHAN

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM

2. ATHIRA, AGED 23 YEARS,
D/O.VALSALA, LAKSHMI VILASOM, PANAYIL,
KUTTIMOODU, VAMANAPURAM,
THIRUVANANTHAPURAM

R2 BY ADV. SRI.K.NIRMALAN

R1 BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 18-12-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

Cr1.MC.No. 7763 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1:- COPY OF THE FIR IN CRIME NO.465/2009 OF
VENJARAMOODU POLICE STATION.

ANNEXURE A2:- CERTIFIED COPY OF THE FINAL REPORT IN S.C
NO.736/2011 ON THE FILES OF ADDL. SESSIONS COURT II,
THIRUVANANTHAPURAM

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.7763 of 2015

Dated this the 18th day of December, 2015

O R D E R

The petitioner herein is the second accused in S.C No.736/2011 of the Court of Session, Thiruvananthapuram. The matter is now pending before the II Additional Sessions Judge. The offence involved is under Section 366(A) of the Indian Penal Code, on the allegation that the first accused kidnapped a girl from the legal custody of her guardian, and the said act of offence was facilitated and abetted by the accused Nos.2 and 3. The petitioner seeks orders quashing the prosecution as against him on the ground that the prosecution materials do not contain anything against him, or any circumstance against him, and that the complainant has also practically abandoned the case against him. The complainant is the second respondent herein. She has filed affidavit to the effect that the matter stands settled between her and the petitioner herein, and that she has no complaint as against him.

2. Even otherwise I find that the prosecution as against the petitioner herein is liable to be quashed. The final

report submitted by the police does not show how this petitioner is being prosecuted; either as principal offender, or as an abettor. If he is being prosecuted as an abettor there must be a specific final report against him. It appears from the final report submitted by the police that the petitioner is also being prosecuted as principal offender, though there is an isolated sentence that the petitioner help the other accused. The final report does not show how this petitioner helped the other, or how he facilitated the commission of offence by the other accused. The statement given by the victim under Section 161 Cr.P.C shows that she went with the first accused on her own, and the only statement or material against the petitioner herein is that he provided a mobile phone to her to call the first accused.

3. The learned counsel submitted that apart from one sentence, she does not in any manner implicate the petitioner herein, and the prosecution does not have any material against this petitioner. On a perusal of the whole prosecution records I find that the prosecution is not certain as to what exactly is the role of the petitioner herein or how he is being implicated or prosecuted. Being a case of kidnapping

made by the first accused, there is no question of the petitioner being prosecuted as principal offender. If he is being prosecuted as an abettor the prosecution is bound to explain how he abetted the offence or how he facilitated the commission offence by the principal offender. Just providing a mobile phone to the victim on her request will not amount an act of abetment as defined under the law. It appears that the petitioner only helped the victim when she sought his help. There is nothing to show that this petitioner had in any manner helped the first accused in committing the alleged act of offence. I find that in the above circumstance, continuance of the prosecution against the petitioner herein will be an abuse of process of law.

In the result, this petition is allowed. The prosecution against the petitioner herein as the second accused in S.C No.736/2011 before the learned II Addl. Sessions Judge, Thiruvananthapuram will stand quashed under Section 482 of the Code of Criminal Procedure. The prosecution will proceed against the other accused.

Sd/-
P.UBAID
JUDGE

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