

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. 7908 of 2015

IN C.C 1592/2015 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-I, HOSDRUG
CRIME NO. 1002/2011 OF THE HOSDURG POLICE STATION ,
KASARGOD

PETITIONERS/ACCUSED 1,3:

1. MUHAMMED SALITH.C, AGED 26 YEARS,
S/O.SHEFIK, CHEENAMADATHIL HOUSE, PUNJAVI,
NJANIKKADAVU, KANHANGAD VILLAGE,
KASARAGOD DISTRICT.
2. MUHAMMED RIFAH C.P, AGED 24 YEARS,
S/O.ABDUL MAJEED, BAITHULLATHEEFYA HOUSE,
SADAM MUKU
PUNJAVI, KANHANGAD VILLAGE, KASARAGOD DISTRICT.

BY ADVS.SRI.RAHUL SASI
SMT.NEETHU PREM

RESPONDENTS/DEFACTO COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.
2. KAMALA K.V, AGED 48 YEARS,
W/O.LATE BALAN, PUNJAVI, KANHANGAD VILLAGE,
KASARAGOD DISTRICT-15.

R2 BY ADV. SRI.NIRMAL V NAIR
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. 7908 of 2015

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE-A1. COPY OF THE CHARGESHEET IN CC 1592/2015 ON
THE FILES OF THE JFCMC-I, HOSDURG

ANNEXURE-A2. COPY OF THE JUDGMENT IN CC 312/2002 OF
JFCMC-1, HOSDURG

ANNEXURE-A3. AFFIDAVIT DATED 15/12/2015 SUBMITTED BY 2ND
RESPONDENT.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.7908 of 2015

Dated this the 18th day of December, 2015

O R D E R

The petitioners herein are the original accused Nos.1 and 3 in C.C No.312/2012 of the Judicial First Class Magistrate Court I, Hosdurg, involving the offence under Sections 143, 147, 148 and 427 of the Indian Penal Code. The other three accused faced trial before the learned Magistrate and obtained a judgment of acquittal on 9.7.2015 when the material witnesses examined by the prosecution turned hostile to the prosecution. The case against the petitioners herein was split up and refiled as C.C No.1592/2015. The petitioners now seek orders quashing the prosecution as against them on the ground that they have come to terms with the legal heirs of the deceased victim and also on the ground that the substratum of the prosecution case is totally lost by the acquittal of the others.

2. Annexure A2 is copy of the judgment in C.C No.312/2012, which shows that the prosecution examined two witnesses before the learned Magistrate. The defacto complainant died pending the proceeding. That was recorded in the proceeding by the learned Magistrate. The two witnesses cited by the prosecution were examined as PW1 and PW2. They did not in any manner support

the prosecution. It appears that they 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, if the case against the petitioners goes to trial, and the witnesses who once gave evidence against the prosecution cannot in any manner improve their versions at the second round when the case goes to trial against the petitioners herein. Of course it is true that the wife of the victim has filed an affidavit. Even without settlement, I find that the petitioners are entitled for an order quashing the prosecution because continuance of the prosecution will not serve any purpose in the present circumstance.

In the result, this petition is allowed. The prosecution against the petitioners in C.C No.1592/2015 of the Judicial First Class Magistrate Court I, Hosdurg will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioners will stand released from prosecution, and the bail bond, if any, executed by them will stand discharged.

**Sd/-
P.UBAID
JUDGE**

//True Copy//

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P.A to Judge