

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

Crl.MC.No. 6916 of 2014 ()

CRIME NO. 570/2009 OF NADAKKAVU POLICE STATION , KOZHIKODE

PETITIONER(S)/ACCUSED:

**MOHAMMED HIJAS
S/O. ABUBACKER, RESIDING AT 25/09
PILLAVANCHALIL HOUSE, KODUVALLY P.O., KOZHIKODE.**

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S)/COMPLAINANT/STATE:

**1. THE SUB INSPECTOR OF POLICE
NADAKAVU POLICE STATION, KOZHIKODE.**

**2. STATE OF KERALA
REPERSENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

R BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08-01-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 6916 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**A1 - TRUE COPY OF THE FINAL REPROT IN CRIME NO. 570/2009 OF THE NADAKKAVU
POLICE STATION.**

A2 - TRUE COPY OF THE DEPOSITION OF PW2.

A3 - TRUE COPY OF THE DEPOSITION OF PW3.

A4 - TRUE COPY OF THE DEPOSITION OF PW4.

**A5 - TRUE COPY OF THE JUDGMENT PASSED BY THE PRINCIPAL ASSISTANT
SESSION JUDGE, KOZHIKODE IN SC 47/2013.**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No.6916 of 2014

Dated this the 8th day of January, 2015.

O R D E R

The petitioner herein is the original accused No.4 in Crime No.570/2009 of the Nadakkavu Police Station of Kozhikode District, registered under Sections 143, 147, 148, 448, 323 and 324 r/w 149 IPC on the complaint of one Thaslim Arif, that the petitioners and his co accused assaulted him and his friend Musthafa, and inflicted injuries on their body with weapons. The above of crime was registered as a counter case to another crime involving a sessions offence. Being a counter case to the other crime involving a sessions offence committal to the court of Session was required. The original accused Nos. 1 and 2 faced trial before the learned Principal Assistant Sessions Judge, Kozhikode in S.C No.47/13, and obtained a judgment of acquittal under Section 232 Cr.P.C, when none of the material witnesses examined by the prosecution supported the prosecution. The case against the accused Nos. 3 and 4 was split up and refiled. Now the case against the petitioner herein is pending in the register of long pending cases as L.P No.2/2014. The petitioner now seeks orders quashing the prosecution as against him on the ground that in the above circumstances of acquittal of the others in the absence of any incriminating circumstance, continuance of the

prosecution as against him will not serve any purpose. The Annexure A5 judgment in S.C No.47/2013 shows that the prosecution examined 7 witnesses in that case including the de facto complainant Thaslim Arif, and marked Exts. P1 to P6. Of course, the prosecution could not procure the presence of the other injured witness cited as CW2. It was reported to the trial that he is not available for examination, and that his whereabouts are not known. The de facto complainant (first informant) Thaslim Arif examined as PW2 did not in any manner support the prosecution. The occurrence witnesses examined by the prosecution also did not support the prosecution during trial. The judgment shows that they all turned hostile during trial, in view of a settlement arrived at out of court by the parties.

2. This court directed the Station House Officer to report whether CW2 cited by the prosecution is now available at the locality for examination. On instruction, the learned Public Prosecutor submitted that he is still not available, and that his whereabouts are not known. The substratum of the prosecution case stands totally lost by the acquittal of the others under Section 232 Cr.P.C. No doubt, the prosecution cannot in any manner improve the case as against the others, and the material witnesses also will not in any manner help the prosecution, if the case against the others goes to trial. Practically, continuance of prosecution against the others will be a sheer waste of time. That the petitioner absconded, or that the case now stands transferred to the register of long

pending cases cannot be a ground to deny relief, when the court is well satisfied that continuance of the trial process against him will not serve any purpose.

In the result, this petition is allowed. The prosecution against the petitioner herein in crime No.570/2009 of the Nadakavu Police Station, which is now pending before the court of Session, Kozhikode in L.P No.2/2014 will stand quashed under Section 482 Cr.P.C.

P.UBAID,
JUDGE

sab