**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS**

**THURSDAY, THE 6TH DAY OF JUNE 2024 / 16TH JYAISHTA, 1946**

**CRL.MC NO. 3143 OF 2021**

**CRIME NO.735/2011 OF HOSDURG POLICE STATION, KASARGOD**

**AGAINST THE ORDER/JUDGMENT DATED IN CC NO.318 OF 2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,HOSDRUG**

**.....**

**PETITIONER/ACCUSED NO.3:**

**FAISAL.P.V, AGED 34 YEARS**
**S/O. MUHAMMEDKUNHI, PALLIVALAPPIL HOUSE,**
**T.B.ROAD, HOSDURG VILLAGE,**
**KASARAGOD-671 531.**
**BY ADV P.K.SUBHASH**

**RESPONDENT/STATE :**

**STATE OF KERALA**
**REPRESENTED BY PUBLIC PROSECUTOR,**
**HIGH COURT OF KERALA, ERNAKULAM-682031.**

**ASHI M.C (PP)**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06.06.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

BECHU KURIAN THOMAS, J

.....

Crl.M.C.No.3143 of 2021

.....

Dated this the 6th day of June, 2024

ORDER

Petitioner was the 3rd accused in C.C.No.1199/2011 on the files of the Judicial First Class Magistrate Court-I, Hosdurg. Since the first accused and the petitioner had absconded, the case against them was split up and re-numbered as C.C.No.1719/2018, while the trial against the second accused continued. By judgment dated 24.12.2018 in C.C.No.1199/2011 the second accused was acquitted. Later the petitioner surrendered before the trial court and obtained bail, and the case is now pending as C.C.No.318/2021 on the files of the Judicial First Class Magistrate Court-I, Hosdurg. Petitioner seeks the benefit of the acquittal of the co-accused.

2. According to the prosecution, accused had on 30.06.2011, in furtherance of their common intention, restrained the de facto complainant and hit him with an iron punch on his face while the second and 3rd accused caused simple hurt by beating with an iron rod, and thereby committed offences punishable under Section 341,

and 324 r/w Section 34 of the Indian Penal Code, 1860.

3. I have heard the learned counsel for the petitioner as well as the learned Public Prosecutor.

4. On a reading of the judgment of acquittal of the second accused in C.C.No.1199/2011, this Court notices that the trial court had disbelieved the prosecution case as against the second accused and came to the conclusion that PW2 had certain previous litigations against the relative of the second accused and a complaint was lodged by PW3 based upon the instructions given by PW2. It is also observed that the discrepancies and inconsistencies in the evidence of the prosecution witnesses make the entire evidence unreliable and the prosecution could not produce any corroborative evidence to prove the case against the second accused. The said finding goes to the root of the prosecution case as against the petitioner as well and no purpose would be achieved by continuing the prosecution.

5. In such circumstances, this Court is of the view that continuance of the proceedings in C.C.No.318/2021 before the Judicial First Class Magistrate Court-I, Hosdurg is an abuse of the process of court.

6. Accordingly, proceedings against the petitioner in C.C.No.318/2021 before the Judicial First Class Magistrate Court-I, Hosdurg, is hereby quashed.

The Crl.M.C.is allowed as above.

sd/-
BECHU KURIAN THOMAS
JUDGE

AMV/07/06/2024

## APPENDIX OF CRL.MC 3143/2021

**PETITIONER ANNEXURES**

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| **ANNEXURE A I** | **CERTIFIED COPY OF THE F.I.R. IN CRIME NO.735/2011 OF HOSDURG POLICE STATION, KASARAGOD DISTRICT.** |
| **ANNEXURE A II** | **CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.735/2011 OF HOSDURG POLICE STATION, KASARAGOD DISTRICT.** |
| **ANNEXURE A III** | **CERTIFIED COPY OF THE JUDGMENT DATED 24.12.2018 IN C.C.NO.1199/2011 BY THE JUDICIAL FIRST CLASS MAGISTRATE I, HOSDURG.** |

TRUE COPY