

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

Cr1.MC.No. 117 of 2015  
-----

IN CC 135/2008 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT  
MALAPPURAM

CRIME NO. 863/2007 OF MALAPPURAM POLICE STATION , MALAPPURAM

PETITIONERS/ACCUSED:  
-----

1. MOHAMMEDALI, AGED 42 YEARS,  
S/O.MOHAMMED, CHAKKAYIL HOUSE, PARUNTHOOR AMSOM,  
PALLIPURAM, PATTAMBI, PALAKKAD DISTRICT.
2. JAMAL, AGED 39 YEARS,  
S/O.MOIDU, PANNIKKAVIL HOUSE, PARUNTHOOR AMSOM,  
PALLIPURAM, PATTAMBI, PALAKKAD DISTRICT.
3. MOHAMMED SHAREEF, AGED 39 YEARS  
S/O.ALI, PARUNTHOOR AMSOM, PALLIPURAM  
PATTAMBI, PALAKKAD DISTRICT.
4. BEENA, AGED 33 YEARS,  
W/O.SAJI, KARINGATUPARAMBIL HOUSE, PAZHAYIDOM AMSOM,  
KANJIRAPPALLI.

BY ADVS.SRI.P.SAMSUDIN

SRI.K.C.ANTONY MATHEW

SRI.JITHIN LUKOSE

RESPONDENTS/COMPLAINANT:  
-----

1. STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA  
ERNAKULAM - 682 031. (CRIME NO.863/2007  
OF MALAPPURAM POLICE STATION  
MALAPPURAM DISTRICT).
2. SUB INSPECTOR OF POLICE,  
MALAPPURAM POLICE STATION, MALAPPURAM P.O. - 676 505  
MALAPPURAM DISTRICT.

R1 & R2 BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 14-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 117 of 2015  
-----

APPENDIX

PETITIONERS' ANNEXURES:  
-----

ANNEXURE A1. CERTIFIED COPY OF THE FIR IN CRIME NO.863/2007 OF  
MALAPPURAM POLICE STATION.

ANNEXURE A2. CERTIFIED COPY OF THE FINAL REPORT AND MEMORANDUM OF  
EVIDENCE IN CRIME NO.863/2007 OF MALAPPURAM POLICE STATION.

ANNEXURE A3. COPY OF THE ORDER DATED 09.11.2010 IN  
CRL.M.C.NO.3912/2010 OF THIS HON'BLE COURT.

RESPONDENTS' ANNEXURES:  
-----

NIL

//TRUE COPY//

P.A TO JUDGE

ab

**P.UBAID, J.**

-----  
**Crl.M.C No.117 of 2015**  
-----

Dated this the 14<sup>th</sup> day of January, 2015

**O R D E R**

The petitioners herein are the accused Nos.1, 2, 3 and 5 in Crime No.863/2007 of the Malappuram Police Station, registered under Sections 3 and 4 of the Immoral Traffic (Prevention) Act 1956. They seek orders quashing the prosecution as against them on the ground that detection in the said case was made by the Sub Inspector of Police, who is not a special officer authorised by the Government under the law. Cognizance on the final report was originally taken in court as C.C No.135/2008. The case against the petitioners now stands split up and refiled as C.C.No.859/2011. As per order dated 9.11.2010 in Crl.M.C No.3912/2010 this Court has already quashed the prosecution as against the original 4<sup>th</sup> accused on the ground that such a prosecution on the basis of search and arrest made by an unauthorised officer cannot be legally sustained. Following the earlier decisions of this Court on the point in **Sinu Sainudheen v. Sub Inspector of Police (2002 (1) KLT 693)** and **Muhammed Ali v. Sub Inspector of Police**

**(2005(3) KLT 527)**, this Court quashed the said prosecution on the finding that such a prosecution cannot proceed.

2. It is submitted by the learned Public Prosecutor that the Sub Inspector made such search and arrest as authorised by the Sub Inspector, who is the authorised officer. What is pointed out is a general authorisation made by the Circle inspector, authorising his subordinate to conduct search and make arrest within his jurisdictional limits. Such a general authorisation is not possible under the law, because the authorised officer cannot, by a general order or authorisation delegate the powers given to him under the law. What is permissible under the law is authorisation in specific cases or specific instances where the authorised officer is not in a position to discharge his functions due to some justifiable reasons like leave, or involvement in other unavoidable official functions. An authorised officer cannot make a general authorisation, authorising the Sub Inspector to make detection and arrest generally under the provisions of Immoral Traffic (Prevention) Act. Thus, I find that this is not a case where the Sub Inspector who detected the offence was properly and legally, authorised by the authorised officer. I find that the prosecution

against these petitioners is also liable to be quashed on the legal question involved in the matter. Being a case of detection and arrest made by an unauthorised officer, this prosecution cannot legally proceeded, and it will have to be quashed as done by this Court in the case of 4<sup>th</sup> accused, in Crl.M.C No.3912/2010.

In the result, this Criminal Miscellaneous Case is allowed. The prosecution against the petitioners in C.C No.859/2011 before the Judicial First Class Magistrate Court, Malappuram, 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

**P.UBAID  
JUDGE**

ab