

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

CrI.MC.No. 1227 of 2015 ()

**CP.NO. 12/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KATTAKADA
CRIME NO. 854/2014 OF MALAYINKEEZHU POLICE STATION, THIRUVANANTHAPURAM**

PETITIONER(S)/ACCUSED 2 AND 3:

- 1. ARUNRAJ, AGED 27 YEARS,
S/O.C.S. UNNI, RAJ NIVAS, KUNNATH LANE,
VAVARAYAMBALAM, POTHENCODE P.O., THONNAKKAL VILLAGE,
THIRUVANANTHAPURAM -695 584.**
- 2. VISHNU, AGED 26 YEARS,
S/O.P.N. VIJAYAKUMAR, SREEVILASOM VEEDU,
THUNDATHIL P.O., KARYAVATTOM, AYIROOPARA VILLAGE,
THIRUVANANTHAPURAM - 695 581.**

BY ADV. SRI.AYYAPPAN SANKAR

RESPONDENT(S)/STATE AND COMPLAINANT:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031**
- 2. SUB INSPECTOR OF POLICE,
MALAYINKEEZHU POLICE STATION, THIRUVANANTHAPURAM.**

BY PUBLIC PROSECUTOR SMT. P.MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 08-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

sts

CRL.M.C.NO.1227/2015

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEX 1 CERTIFIED COPY OF THE FIR AND FIRST INFORMATION STATEMENT
DATED 4/11/2014 IN CRIME NO.854/2014 OF MALAYINKEEZHU POLICE
STATION.**

**ANNEX II CERTIFIED COPY OF THE FINAL REPORT CHARGE SHEET DATED
29/12/2014 AND ANNEXED RECORDS IN CRIME NO.854/2014 OF
MALAYINKEEZHU POLICE STATION**

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

P. UBAID, J.

Crl.M.C.No.1227 of 2015

Dated this the 8th day of April, 2015

O R D E R

The petitioners herein are the accused Nos.2 and 3 in C.P.No.12/2015 before the Judicial First Class Magistrate Court, Kattakada. The offences alleged by the prosecution are under Sections 279, 337, 338 and 304 IPC. The final report shows that the first accused in the case caused death of one person in a major motor accident by driving his vehicle in extreme rashness and negligence, fully knowing about its consequence, that it will cause death of pedestrians or passengers. These two petitioners were passengers in the said car driven by the first accused. It is alleged that in the very same transaction the first accused caused three accidents, one after the other, or one following the other. These two petitioners are arraigned as accused on the allegation that they in fact prompted the first accused to cause the accident, or that they did not prevent the first accused appropriately when he drove the vehicle rashly and negligently. The case of the petitioners is that the prosecution against them is really baseless and unsustainable, and if it is allowed to continue, it will amount to sheer abuse of legal process.

2. During the proceeding, the investigating officer was required to explain how or on what material these petitioners were arraigned as accused with the first accused, who actually caused the accident, and thereby caused the death of one pedestrian. Of course, the charge against the first accused can be sustained in the given circumstance, because he is the person, who actually caused the death of a pedestrian by acts of extreme rashness and negligence. But it is unknown in criminal law that the passengers in a vehicle can be arraigned as co-accused in a case, where the driver caused the accident. It is not known whether police will arraign passengers of a bus where the bus driver caused accident, or the passengers of a train where the engine driver caused accident. Any way, the police action does not have any justification or explanation for arraigning passengers as co-accused with the driver, who actually caused the accident.

3. As required by the court, the investigating officer filed an affidavit explaining the circumstance in which final report happened to be submitted against these petitioners as co-accused. This affidavit shows that the investigating officer submitted final report under a bonafide belief or wrong notion. It appears that somebody made him believe, or he wrongly believed

that the passengers also can be proceeded against, on the allegation that they could have averted the accident. Of course, the justification is strange. Any way, in the given circumstance, I am inclined to accept the affidavit that final report happened to be submitted against these petitioners by the investigating officer on a wrong advice or mistaken belief. Just because the passengers were found in a drunken condition and the driver caused all the accidents under the influence of liquor, the passengers cannot be prosecuted. It is submitted that the passengers had in fact prompted the driver to move forward when the vehicle hit down the pedestrian. It is not known how the prosecution will prove this aspect. Any way, I find that final report was wrongly filed by the police against these petitioners as accused Nos.2 and 3. The prosecution against the petitioner, if allowed to continue, will be a sheer abuse of legal process. It is submitted by the learned counsel that one of the petitioners even lost his job due to this wrong prosecution. If it is true, it is really unfortunate. Any way, I am now inclined to accept the affidavit by the investigating officer that final report happened to be filed against these petitioners under a wrong belief or mistaken understanding of the law. I find that the prosecution against

these petitioners is liable to be quashed, accepting the affidavit filed by the investigating officer.

In the result, this petition is allowed. The prosecution against the petitioners herein as accused persons 2 and 3 in C.P.No.12/2015 before the Judicial First Class Magistrate Court, Kattakada will stand quashed. The learned Magistrate will commit the case to the Court of Session against the first accused.

Sd/-

P. UBAID, JUDGE

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