

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Crl.MC.No. 211 of 2013 ()

CC.NO. 829/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-1, HARIPAD

**CRIME NO. 65/2007 OF THRIKKUNNAPPUZHA POLICE STATION,
ALAPPUZHA DISTRICT**

PETITIONER(S)/ACCUSED NOS 1 TO 5 :

1. AJAYAN,S/O.VASUDEVAN,
RESIDING AT MANIVELIL CHIRAYIL HOUSE,
KIZHAZHAKKEKKARA SOUTH, VALIYAPARAMBU P.O.,
KARTHIKAPPALLY, ALLEPPEY DISTRICT.
2. V.BABU,S/O.LATE VASUDEVAN,
CHITHIRA, KIZHAKKEKKARA SOUTH,
VALIYAPARAMBU P.O., KARTHIKAPPALLY,
ALLEPPEY DISTRICT.
3. KISHOR, S/O.V.BABU,
CHITHIRA, KIZHAKKEKKARA SOUTH,
VALIYAPARAMBU P.O., KARTHIKAPPALLY,
ALLEPPEY DISTRICT.
4. PONNAPPAN @ PONNAN,
S/O.MADHAVAN, SANDHYA BHAVANAM,
KIZHAKKEKKARA SOUTH, VALIYAPARAMBU P.O.,
KARTHIKAPPALLY, ALLEPPEY DISTRICT.
5. SAJAN,
S/O.PURUSHAN, MANIVELICHIRAYIL,
KIZHAKKEKKARA SOUTH, VALIYAPARAMBU P.O.,
KARTHIKAPPALLY, ALLEPPEY DISTRICT.

BY ADV.SRI.M.T.SURESHKUMAR

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

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2. SOMAN,
S/O.PADMANABHAN, MANGALASSERIL HOUSE,
WARD NO.5,THRIKKUNNAPUZHA PANCHAYATH,
THRIKKUNNAPUZHA VILLAGE.

R1 BY PUBLIC PROSECUTOR SMT. P.MAYA
R2 BY ADVS. SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 29-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

sts

CRL.MC.NO.211/2013

APPENDIX

PETITIONER'S ANNEXURES:

- | | |
|----------------|---|
| ANNEX 1 | COPY OF THE FIR IN CRIME NO.65 OF 2007 OF THE THRIKKUNNAPPUZHA POLICE DATED 14/4/2007 |
| ANNEX 2 | COPY OF THE FINAL REPORT DATED 4/6/2012 IN CRIME NO.65 OF 2007 OF THE THRIKKUNNAPPUZHA POLICE STATION |
| ANNEX 3 | COPY OF THE PROTEST COMPLAINT DATED 9/7/2012 FILED AS CMP NO.3730 OF 2012 BEFORE THE JFMC-1, HARIPAD BY THE 2ND RESPONDENT |
| ANNEX 4 | COPY OF THE ORDER SHEET IN C.C.NO.829 OF 2012 ON THE FILE OF THE JFMC-I, HARIPAD. |

RESPONDENT'S ANNEXURES: **NIL**

/TRUE COPY/

P.A.TO JUDGE

sts

B.KEMAL PASHA, J.

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Crl.M.C. No. 211 of 2013

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Dated this the 29th day of October, 2015

ORDER

The Police has referred the case involved in Crime No.65 of 2007 of the Thrikkunnappuzha Police Station registered on investigation, as false. The crime was registered for the offences under Sections 143, 147 and 341 IPC read with Section 149 IPC.

2. Aggrieved by the same, the defacto complainant has filed a protest complaint before the court below. The court below has recorded the sworn statement of the complainant and has taken cognizance of the offences under Sections 143, 147, 294(b) and 506(i) IPC read with Section 149 IPC against the petitioners herein. Presently, the matter is pending as

C.C.No.829 of 2012 before the Judicial First Class Magistrate's Court-I, Haripad. The proceedings in the said case are sought to be quashed.

3. According to the petitioners, the court below ought to have considered the materials collected by the Police, to refer the case for taking cognizance of the offences, based on the private complaint. In such case, the protest complaint will be of no use at all. The courts are not expected to take the versions given by the Police to refer the crimes, as gospel truth.

4. It seems that the court below has taken cognizance of the offences after recording the sworn statement of the complainant and after recording statements of CW2 and CW3. The court below became satisfied that *prima facie* case was made out and there were sufficient grounds to proceed.

5. It is too premature to say anything with regard to the merits or otherwise of the allegations against the petitioners. The contentions put forwarded by the learned counsel for the

petitioners are based on evidence in the matter. The petitioners will get sufficient opportunity to defend the allegations against them in the trial. Matters being so, this Crl.M.C. is devoid of merits and is only to be dismissed and I do so.

In the result, this Crl.M.C. is dismissed.

Sd/-

**B.KEMAL PASHA
JUDGE**

DSV/30/10/15

// True Copy //

P.A. To Judge