

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

Crl.MC.No. 1298 of 2015 ()

CRIME NO. 741/2014 OF MUKKOM POLICE STATION, KOZHIKODE DISTRICT

PETITIONERS/ACCUSED :

1. **ABDUL RAZAK, AGED 48 YEARS**
S/O.KUNJASSAN, KUTHOTH HOUSE, NELESWARAM P.O.
KOZHIKODE
2. **K.P.ABOOBACKER, AGED 42 YEARS**
S/O.MOHAMMED, MALAMKUNNATH, POOLAPPOYIL
KOZHIKODE.
3. **K.MOHAMMED, AGED 46 YEARS**
S/O.KUNJOOYI HAJI, MALAYIL HOUSE, NEELESWARAM P.O.
KOZHIKODE.
4. **V.P.SHAREEF, AGED 40 YEARS**
S/O.MUHAMMED, THAYYIL HOUSE, OMASSERY P.O.
NEELESWARAM VILLAGE, KOZHIKODE.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRA KRISHNAN
SRI.V.VINAY

RESPONDENT/STATE/COMPLAINANT :

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM - 682 031
(CRIME NO.741/2014 OF MUKKOM POLICE STATION
KOZHIKODE DISTRICT)

BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 03-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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...2/-

Crl.MC.No. 1298 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES :

**ANNEXURE I: COPY OF THE FIRST INFORMATION REPORT IN CRIME
NO.741/2014 OF MUKKOM POLICE STATION.**

**ANNEXURE II: COPY OF THE FIRST INFORMATION REPORT IN CRIME
NO.742/2014 OF MUKKOM POLICE STATION.**

**ANNEXURE III: COPY OF ORDER DATED 24/02/2015 IN CRL.MC NO.326/15
PASSED BY THE COURT OF SESSIONS, KOZHIKODE.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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B.KEMAL PASHA, J.

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Crl.M.C. No. 1298 of 2015

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Dated this the 3rd day of March, 2015

O R D E R

Petitioners are the accused in Crime No.741/2014 of the Mukkom Police Station, registered for the offences punishable under Sections 143, 147, 341, 321, 294(b) and 354 read with Section 149 IPC and Section 3(1)(xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'the Act'). There is a dispute with regard to the erection of a mobile tower. Some local people reacted against the installation of the tower, which culminated in a push and pull and a quarrel between the persons associated with the erection of the mobile tower and the local public. In the incident, injuries have occurred to both the sides and two crimes were registered. One crime was registered as noted above and the other crime was registered as Crime No.742/2014 of the said police station for the offences under Sections 143, 147, 148, 323, 324 and 341 read with Section 149

IPC.

2. It seems that there was no pre-planned actions in the matter and the incident has arisen momentarily. In fact, it seems that the incident cannot invite an offence under Section 3(1)(xi) of the Act. At the same time, the petitioners cannot have recourse to the provisions of 438 Cr.P.C, based on the clear bar contained in Section 18 of the Act.

3. Even though, the offences under the said Act are triable only by a special court which is the Sessions Court, time and again, this Court has held that the learned Magistrate is not powerless in granting bail in such offences. See *Ali v. State of Kerala* [2000 (2) KLT 280], *Shanu v. State of Kerala* [2000 (3) KLT 452] and other similar decisions. The court below is directed to consider and dispose of the application seeking bail, if any, filed by the petitioners before the court below on the date of filing itself, provided, advance notice is served on the Assistant Public

Prosecutor in charge of the case. The court below shall be guided by the dictum contained in the aforesaid decisions.

With the said directions, this Crl.M.C is disposed of.

Sd/-
B.KEMAL PASHA, JUDGE

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//True copy//

P.A to Judge