

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

Crl.MC.No. 163 of 2014 ()

IN WP(C) 27084/2008 of HIGH COURT OF KERALA

PETITIONER(S)/PETITIONER:

**SAJU THURUTHIKUNNEL, AGED 43 YEARS
S/O. THANKAPPAN, THURUTHIKKUNNEL HOUSE
VADAYAMPADI P.O., AIKKARANADU SOUTH VILLAGE
ERNAKULAM DISTRICT.**

BY ADV. SRI.PAUL K.VARGHESE

RESPONDENT(S)/RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY (HOME DEPARTMENT)
GOVERNMENT SECRETARIAT, TRIVANDRUM-01.**
- 2. THE SUB INSPECTOR OF POLICE
PUTHENCROUZ POLICE STATION, PUTHENCROUZ, ERNAKULAM
PIN-682308.**
- 3. JIJIMON
DEPUTY SUPERINTENDENT OF POLICE, MUVATTUPUZHA
ERNAKULAM, PIN-686661.**
- 4. SHIVAKUMAR @ SHIVANKUTTAN
S/O. NANAPPAN NAIR, KAPPLINGATTU, VADAYAMPADI P.O.
VADAYAMPADI, ERNAKULAM, PIN-682308.**

BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
31-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- ANNEXURE I- A TRUE COPY OF THE ORDER OF HIGH COURT OF KERALA IN WPC NO. 27084/2008 DATED 17-10-2011.
- ANNEXURE II- A TRUE COPY OF THE ORDER OF THE HON'BLE HIGH COURT OF KERALA IN WPC(C)NO. 27084/2008 DATED 8-11-2012.
- ANNEXURE III- A TRUE COPY OF THE REPORT OF THE DEVASWOM OFFICER TO THE ASSISTANT COMMISSIONER OF DEVASWOM DATED 22-3-3012.
- ANNEXURE IV- A TRUE COPY OF THE FIR IN CRIME NO. 144/2013 OF PUTHENCruz POLICE STATION DATED 13-3-2013.
- ANNEXURE V- A TRUE COPY OF THE JUDGMENT IN CC NO. 217/2002 OF THE JUDICIAL FIRST CLASS MAGISTRATE KOTHAMANGALAM.
- ANNEXURE VI- A TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT KOLENCHERY DATED 7-3-2000.
- ANNEXURE VII- A TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE DIRECTOR OF VIGILANCE TRIVANDRUM DATED 24-3-2010.
- ANNEXURE VIII- A TRUE COPY OF THE ORDER IN CRL.M.C. 622/13 OF THE SESSIONS COURT ERNAKULAM DATED 5-4-2013.
- ANNEXURE IX- A TRUE COPY OF THE FIR IN CRIME NO. 311/2013 OF PUTHENCruz POLICE STATION DATED 9-5-13.
- ANNEXURE X- A TRUE COPY OF THE LETTER SENT BY THE PRESIDENT POOTHRIKKA GRAMA PANCHAYTH TO THE SUB INSPECTOR OF POLICE PUTHENCruz DATED 11-5-2013.
- ANNEXURE XI- A TRUE COPY OF THE LAWYER NOTICE ISSUED BY THE PETITIONER DATED 14-5-2013.
- ANNEXURE XII- A TRUE COPY OF THE FIR IN CRIME NO. 176/2013 OF PUTHENCruz POLICE STATION DATED 26-3-2013.
- ANNEXURE XIII- A TRUE COPY OF THE PLAINT IN OS NO. 674/13 ON THE FILE OF MUNSIFF COURT ERNAKULAM DATED 5-7-2013.

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

ALEXANDER THOMAS, J.

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Crl.M.C.No.163 of 2014

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Dated this the 31st day of July, 2015

ORDER

The challenge in this case is directed as against the impugned Annexure XII First Information Report in Crime No.176/2013 of Puthencuruz Police station, Ernakulam Rural district registered under Section 118(d) of the Kerala Police Act (hereinafter referred to 'the Act' for short) and Section 506(i) of the Indian Penal Code.

2. Heard Sri.Paul K.Varghese, learned counsel for the petitioner and the learned Public Prosecutor.

3. The Apex Court in Sherya Singhal v. Union of India reported in 2015 (5) SCC 1 has already held that the provisions of Section 118(d) of the Act is unconstitutional, ultra vires and unenforceable. In this view of the matter, the continued prosecution on the basis of that provision is untenable. Accordingly the prosecution to that effect is only to be dealt with this. The other remaining offence in the impugned F.I.R is under Section 506(i) of the I.P.C which indisputably is a non-cognizable

offence, which cannot independently investigated or prosecuted by the police, in the absence of a prior permission from the Magistrate, as mandated in Section 155(2) of the Code of Criminal Procedure. The respondents have no case that such permission of the Judicial Magistrate court concerned was obtained for investigating the non-cognizable offence envisaged in Section 506(i) of the IPC. In this view of the matter, the impugned criminal proceedings in Annexure XII are quashed.

With these observations and directions this Crl.M.C. is stands finally disposed of as above.

Sd/-
ALEXANDER THOMAS
JUDGE

VS