

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

Crl.MC.No. 698 of 2013

CRIME NO. 743/2008 OF PERUMBAVOOR POLICE STATION , ERNAKULAM

PETITIONER(S)/ACCUSED :

- 1. GEORGE V.MANGALY, S/O.VARKEY, AGED 63 YEARS,
MANGALI HOUSE, SANTHINAGAR, MANJAPPRA, PIN-683 581.**
- 2. REJITH, S/O.GEORGE. AGED 27 YEARS.
MANGALI HOUSE, SANTHINAGAR, MANJAPPRA. PIN-683 581.**

**BY ADVS.SMT.SARITHA THOMAS
SRI.SAJEEVAN KURUKKUTTIYULLATHIL**

RESPONDENT(S)/COMPLAINANT :

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
THROUGH SUB INSPECTOR OF POLICE,
KALADY POLICE STATION, ERNAKULAM.**
- 2. POULOSE, S/O. VAREETHU,
PALATTI HOUSE, MANJAPPRA KARA, MANJAPPRA-683 581**

R1 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 03-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE-A1:** TRUE COPY OF THE FIR IN CRIME NO.743/2008 IN KALADY POLICE STATION.
- ANNEXURE-A2:** TRUE COPY OF THE FINAL REPORT DATED 13-12-2008 IN CRIME NO.743/2008.
- ANNEXURE-A3:** A TRUE COPY OF THE NOTICE UNDER SECTION 157(2) AND 173(1) OF CODE OF CRIMINAL PROCEDURE .
- ANNEXURE-A4:** A TRUE COPY OF THE CHARGE SHEET DATED 25-06-2012 IN CRIME NO.743/2008 OF PERUMBAVOOR POLICE STATION.
- ANNEXURE-A5:** THE TRUE COPY OF THE AFFIDAVIT SWORN BY KUNJAPPAN BEFORE NOTARY PUBLIC.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

PA.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

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Crl.M.C. No. 698 of 2013

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Dated this the 3rd day of November, 2015

ORDER

The petitioners are the accused in C.P.No.65 of 2012 of the Judicial First Class Magistrate's Court, Perumbavoor, for the offences punishable under Section 436 read with Section 34 IPC. The same has arisen from Crime No.743 of 2008 of the Kalady Police Station.

2. According to the petitioners, at first, a report was filed under Section 173(1) Cr.P.C. by the Police, after investigation, referring the crime as undetected. Thereafter, the Police conducted a further investigation and filed the present further Final Report in the matter.

3. According to the petitioners, the shop allegedly gutted in

fire was only a petty shop and therefore, it will not come within the meaning of 'building' as contemplated under Section 436 Cr.P.C. Even when, it is a petty shop, it cannot be said that it is not a building, which was used for keeping properties. When such a construction is there, in which the properties are kept, it has to be treated as a building.

4. The further argument is that it was by recording the statement of CW2, that the Police have allegedly received fresh materials for enabling them to have a further investigation in the matter. At the same time, CW2 has filed an affidavit affirming that he had not furnished any statement to the Police. Those matters do not weigh this Court at this stage.

5. The learned Public Prosecutor has pointed out that a further investigation was conducted under Section 173(8) Cr.P.C. in the matter and a further Final Report has been filed. Annexure-A4 Final Report can be treated as a further Final Report in the matter. When the Police obtained fresh materials,

they could conduct further investigation in the matter and file a further Final Report. This Court, at this stage cannot go into the intrinsic particulars of the evidence collected by the investigating officer and decide the merits or otherwise of the allegations against the petitioners. At the same time, the petitioners can bring those matters to the notice of the concerned Sessions Court dealing with the matter, at the stage of 227 Cr.P.C. In such case, such Sessions Court shall pass appropriate orders in accordance with the law.

With the said liberty to the petitioners, this Crl.M.C. is disposed of. The affidavit of CW2 produced by the petitioner, shall be returned to the petitioner.

Sd/-

**B.KEMAL PASHA
JUDGE**

DSV/3/11/15

// True Copy //

P.A. To Judge