

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

Crl.MC.No. 2829 of 2015

**CRL.M.P.NO.1718/2015 IN S.C.NO.234/2014 OF III ADDITIONAL SESSIONS COURT,
THRISSUR**

PETITIONER(S)/9TH ACCUSED :

**SAJEESH, AGED 26 YEARS,
S/O.VIJAYAN, ECHARATH HOUSE, TEMPLE AVENUE ROAD,
AYYANTHOLE, THRISSUR.**

BY ADV. SRI.RAJIT

RESPONDENT(S)/STATE & ACCUSED 1 TO 8 :

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. VYSAKH, AGED 24 YEARS,
S/O.MANIKUTTY, KOTTAPPURATH HOUSE, AIKYA NAGAR,
AYYANTHOLE, THRISSUR(CUSTODY)- 680 001.**
- 3. RIJESH, AGED 33 YEARS,
S/O.ASHOKAN, KODAMPARAMBIL HOUSE, AIKYA NAGAR,
AYYANTHOLE, THRISSUR(CUSTODY)- 680 001.**
- 4. PRASATH, AGED 28 YEARS,
S/O.KUNJUKUTTAN, KOTTAPURATH HOUSE, KARTHYANI TEMPLE,
AYYANTHOLE, THRISSUR- 680 001.**
- 5. SATHEESAN @ DINESAN,
S/O.RAMU, AKATHEPARAMBIL HOUSE, NADATHARA P.O.,
NADATHARA(SC 264/2015)(CP 62/14 OF JFCM NO.II, THRISSUR- 680 506.**
- 6. ANOOP,
S/O.RAJAN, MADATHIL PARAMBIL HOUSE,
WINTAGE ROYAN APARTMENTS, MACHINGAL LANE, THRISSUR- 680 506.**
- 7. RAVI @ BANNARAVI,
S/O.GOVINDANKUTTY, PANNIKARA VARANAMKUDATH HOUSE
AYYANTHOLE, THRISSUR DISTRICT- 680 001.**

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- 8. RAJESH,
S/O.GOPLAKRISHNAN, ECHARATH HOUSE, AYYANTHOLE,
THRISSUR- 680 001.**
- 9. RAJENDRAN,
S/O.VELAYUDHAN, ECHARATH HOUSE, NEAR KARTHIYANI TEMPLE,
AYYANTHOLE, THRISSUR- 680 001.**

R1 BY PUBLIC PROSECUTOR SRI.C.RASHEED

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 12-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE-A:** A TRUE COPY OF THE FINAL REPORT FILED BY THE THRISSUR WEST POLICE STATION IN CRIME NO.1180/2013.
- ANNEXURE-B:** A TRUE COPY OF THE ORDER DATED 15.01.2015 IN CRL.M.P.NO.4505/2014 IN S.C.NO.234/2014 OF THE LEARNED III ADDITIONAL SESSIONS JUDGE,THRISSUR
- ANNEXURE-C:** A TRUE COPY OF THE APPLICATION FILED BY THE PUBLIC PROSECUTOR IN SC.NO.234/2014.
- ANNEXURE-D:** A TRUE COPY OF THE OBJECTION FILED BY THE ACCUSED IN ANX-C APPLICATION.
- ANNEXURE-E:** A TRUE COPY OF THE ORDER DATED 24.04.2015 IN CRL.M.P.NO.1718/2015 IN SC.NO.234/2015 OF THE III ADDITIONAL SESSIONS JUDGE,THRISSUR
- ANNEXURE-F:** A TRUE COPY OF THE ORDER PASSED BY THIS HON'BLE COURT IN BA NO.7759/2014 DATED 04.11.2014.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. ABRAHAM MATHEW, J.

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CrI.M.C.No. 2829 of 2015

Dated this the 12th day of August, 2015

ORDER

Petition filed under Section 482 Cr.P.C.

2. Petitioner is the 9th accused in Sessions case No. 234 of 2014 on the file of the III Additional Sessions Judge, Thrissur. He is charged with having committed the offences under Sections 109, 120B, 212 and 302 of the Indian Penal Code. In the course of the trial, the Public Prosecutor filed an application for permission to conduct further investigation by Annexure-E Order. The learned Judge allowed it. The correctness of the order is challenged.

3. Heard.

4. The wife of the deceased had filed an application for directing further investigation. The learned Sessions Judge by Annexure-B Order dismissed it. But later, he allowed the application filed by the Public Prosecutor by Annexure-E order. Learned counsel submits that this amounted to review, which is prohibited under Section 362 Cr.P.C. and it is hit by the principle of *res judicata* also. The order did not amount to review of the earlier order. It was on the basis of subsequent development the impugned order was passed by the learned Sessions Judge. The

principle of *res judicata* also is not applicable.

5. The occurrence witnesses examined by the prosecution failed to support its case, which was why the Public Prosecutor filed an application for further investigation. It appears that the murder took place in the presence of several people. But the Investigating Officer cited only very few occurrence witnesses to prove the case. It is alleged that those witnesses were one over by the accused. In this circumstance, the Prosecutor was fully justified in filing an application for further investigation. That was necessary for doing justice to the society. Public interest demanded further investigation.

6. Normally, an accused is not entitled to challenge an order passed for further investigation. But this Crl.M.C. was entertained only because the petitioner has been in judicial custody. So, I do not find any merit in this Crl.M.C.

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

Sd/-
K. ABRAHAM MATHEW,
JUDGE

DST

//True copy//

P.A. To Judge