

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

CrI.MC.No. 3591 of 2015 ()

ST.NO. 1567/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
KOTHAMANGALAM, ERNAKULAM DISTRICT

PETITIONERS/ACCUSED NO. 1 TO 6 :

1. MOHAMMED
S/O. BAVA, AGED 62 YEARS
ALAKKADA HOUSE, NELLIKUZHI KARA, ERAMALLOOR VILLAGE
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT
2. ALIKUNJU
S/O.BAVA, AGED 56 YEARS,
ALAKKADA HOUSE, NELLIKUZHI KARA
ERAMALLOOR VILLAGE, KOTHAMANGALAM TALUK
ERNAKULAM DISTRICT
3. ABDUL KHADER
AGED 59 YEARS, S/O.BAVA,
ALAKKADA HOUSE, NELLIKUZHI KARA
ERAMALLOOR VILLAGE, KOTHAMANGALAM TALUK
ERNAKULAM DISTRICT
4. ANEER
S/O.MOHAMMED, AGED 28 YEARS
ALAKKADA HOUSE, NELLIKUZHI KARA
ERAMALLOOR VILLAGE, KOTHAMANGALAM TALUK
ERNAKULAM DISTRICT
5. AKBERSHA
S/O.ABDUL KHADER, AGED 23 YEARS
ALAKKADA HOUSE, NELLIKUZHI KARA
ERAMALLOOR VILLAGE , KOTHAMANGALAM TALUK
ERNAKULAM DISTRICT.
6. JASEEL
S/O.ABDUL KHADER, AGED 23 YEARS
ALAKKADA HOUSE, NELLIKUZHI KARA
ERAMALLOOR VILLAGE, KOTHAMANGALAM TALUK
ERNAKULAM DISTRICT.

BY ADVS.SRI.S.U.NAZAR
SRI.MANSOOR B.H.
SRI.K.V.SASIDHARAN

RESPONDENTS/COMPLAINANT :

1. KHABEER

**S/O.ABOOBACKER, ALAKKADA HOUSE, NELLIKUZHI KARA
ERAMALLOOR VILLAGE, KOTHAMANGALAM TALUK
ERNAKULAM DISTRICT.**

2. STATE OF KERALA

**REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031**

R1 BY ADVS. SRI.M.A.BASHEER

SRI.ANANDAN PILLAI

R2 BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11-12-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Mn

...3/-

Crl.MC.No. 3591 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES :

ANNEXURE A1	THE TRUE COPY OF THE FIR ALONG WITH STATEMENT DATED 8/4/2013.
ANNEXURE A2	TRUE COPY OF THE REFER REPORT IN CRIME NO. 361/2013 DATED 8/6/2013.
ANNEXURE A3	CERTIFIED COPY OF THE COMPLAINT IN S.T NO 1567/2014 PENDING BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KOTHAMANGALAM.
ANNEXURE A4	A TRUE COPY OF THE FINAL REPORT FILED AGAINST 1ST RESPONDENTS IN CRIME NO 356/2013 OF KOTHAMANGALAM POLICE.

RESPONDENT(S)' ANNEXURES : **NIL**

//TRUE COPY//

P.A. TO JUDGE

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B.KEMAL PASHA, J.

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Crl.M.C. No.3591 of 2015

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Dated this the 11th day of December, 2015

ORDER

Heard the learned counsel for the petitioners.

2. Initially the crime was registered by the Police, relating to the incident, as Crime No.361 of 2013 of the Kothamangalam Police Station, for the offences punishable under Sections 143, 147, 323 and 324 read with Section 149 IPC. The crime was registered as counter to Crime No.356 of 2013 of the Kothamangalam Police Station. After investigation, the Police referred Crime No.361 of 2013. Aggrieved by the same, the 1st respondent has filed a protest complaint before the court below. Annexure-A3 is the said private complaint.

3. It seems that the court below has proceeded with the matter under Section 200 Cr.P.C. and conducted an inquiry under Section 202 Cr.P.C. On 202 Cr.P.C. inquiry, the court below has taken cognizance of the offence under Section 323 read with Section 34 IPC against the petitioners herein.

4. On hearing the learned counsel for the petitioners and on a perusal of the records, this Court is of the view that the present stage is too premature to consider whether an offence under Section 323 IPC has been committed or not. According to the learned counsel for the petitioners, the court below has committed a grave error in not considering the refer report and the appended statements filed by the Police. The court is not bound by the refer report at all. On getting a refer report, three courses are open to the learned Magistrate:

(i) The learned Magistrate can accept the refer report and treat the matter as closed.

(ii) The learned Magistrate can reject

the refer report and take cognizance of the offences involved.

(iii) The learned Magistrate can reject the refer report and order a further investigation, under Section 173(8) Cr.P.C.

5. In this case, the learned Magistrate has accepted the refer report. In such an instance, it is open to the defacto complainant, who is the aggrieved, to prefer a protest complaint.

6. When cognizance have been taken on such an inquiry by proceeding with Sections 200 and 202 Cr.P.C., the matter has to be considered on merits. Otherwise, there should have been some technical defects in the matter. True that the Magistrate has accepted the refer report. It cannot be said that the learned Magistrate has not applied his mind when cognizance was taken on the private complaint. The Magistrate need not rely on the versions in the refer report as such. If that be the case, there will not be any meaning in filing a protest complaint. The learned Magistrate need not swallow all what has been said by

the investigating officer. When conducting an inquiry, if the Magistrate is satisfied that there are grounds to proceed, that means a *prima facie* case, it is open to the Magistrate to take cognizance of the offences.

7. Matters being so, the present stage is too premature to say anything on the merits of the matter. 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. As far as practicable, the court below shall not insist the personal presence of the petitioners. Their presence need only be insisted on posting dates on which their personal presence is actually required.

Sd/-

**B.KEMAL PASHA
JUDGE**

DSV/11/12/15

// True Copy //

PA. To Judge