

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

Crl.MC.No. 2817 of 2014 ()

AGAINST CC 41/2014 of CHIEF JUDICIAL MAGISTRATE'S COURT, THRISSUR

PETITIONER(S)/ACCUSED NO.2:-:

JIBY ANTONY, AGED 30 YEARS,
W/O.SAJEEV RAGHAVAN, ANAKKALLUNGAL VEEDU
VYNTHALA DESOM, KALLUR VADAKKUMMURI, MALA
THRISSUR.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENTS/DEFACTO COMPLAINANT/STATE:-:

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1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031
(CRIME NO.67/2013 OF THRISSUR TOWN EAST POLICE STATION
THRISSUR DISTRICT).
 2. CYRIAC JACOB MALANA,, AGED 55 YEARS
S/O.JACOB MALANA, OOTTY GARDENS, THRISSUR - 680 005.

R2 BY ADV. SRI.K.B.GANGESH
R1 BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
20-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 2817 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE I. CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.67/2013 WHICH IS NOW PENDING AS CC.NO.41/2014.

ANNEXURE II. COPY OF THE COMPLAINT SUBMITTED BY THE FATHER OF THE PETITIONER BEFORE THE SUB INSPECTOR OF POLICE, MALA.

ANNEXURE III. COPY OF THE RECEIPT ISSUED FROM MALA POLICE STATION.

ANNEXURE-IV: ATTESTED COPY OF THE COMPLAINT DATED 11.12.2012 FILED BY ONE CYRIAC JACOB BEFORE THE CHIEF JUDICIAL MAGISTRATE'S COURT, THRISSUR

RESPONDENT(S)' EXHIBITS

P.UBAID, J.
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**Crl.M.C No.2817 of 2014**  
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Dated this the 20th, March 2015

ORDER

The petitioner herein is the 2nd accused in C.C No.41 of 2014 of the Chief Judicial Magistrate's Court, Thrissur. Crime in this case was registered by the police on the basis of a complaint preferred by one Cyriac Jacob through his power of attorney holder. His complaint was forwarded to the police for investigation. The Police registered the crime under Sections 406, 420, 463 and 468 of Indian Penal Code against the sole accused arraigned in the complaint. After investigation, the police submitted final report against two persons including the petitioner herein. She is the wife of the 1st accused. She seeks orders quashing the prosecution as against her on the ground that there is absolutely no material to implicate her, or even to suggest her complicity in the alleged act of offence.

2. I heard both sides and perused the materials including the complaint that led to the crime. The complaint filed by the de facto complainant through his

power of attorney holder does not contain anything, or any allegation, against this petitioner. Everything stated and alleged in the complaint is against the 1st accused. The final report submitted by the police contains only a casual allegation. It is not known, and it is not explained, what was the actual complicity of the petitioner in the alleged act of offence. The final report does not reveal how, or on what material, the petitioner should be prosecuted. The final report does not contain any such material. The final report does not show who among the witnesses gave statement against this petitioner, or what material was collected against this petitioner during investigation. When the complaint does not allege anything against the petitioner, and the complainant does not have any case against the petitioner in his complaint, the Investigating Officer is duty bound to explain how he arraigned the petitioner as the second accused, or on what definite material, she was arraigned as the 2nd accused. I find that the Investigating Officer built a case of his own which the complainant does not have. He, due to some reasons known to him alone,

collected something or found out something to make a case against the petitioner and to arraign her, only because she is the wife of the 1st accused. I find that the present prosecution against the petitioner is clear abuse of legal process and it is liable to be quashed.

In the result, this petition is allowed. The prosecution against the petitioner herein as the 2nd accused in C.C No.41 of 2014 of the Chief Judicial Magistrate's Court, Thrissur will stand quashed. Accordingly, the prosecution will continue against the 1st accused.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge