

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

Crl.MC.No. 4015 of 2015 ()

CRL.RP. NO. 1/2012 OF SESSIONS COURT, PALAKKAD.
CRL.MP. NO.450/2010 IN CC. NO.127/2008 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, ALATHUR.

**PETITIONERS/PETITIONERS 1 TO 3 & 5/PETITIONERS 1 TO 3 & 5/
ACCUSED 1, 2, 3 & 5:**

- 1. SHAJAHAN, S/O.AK.ABDUL KHADER,
AGED 38 YEARS, PALLATHU HOUSE,
THRIPPALUR, ALATHUR TALUK,
PALAKKAD DISTRICT.**
- 2. ABDUL SALIK, S/O.AK.ABDUL KHADER,
AGED 45 YEARS, PALLATHU HOUSE,
THRIPPALUR, ALATHUR TALUK,
PALAKKAD DISTRICT.**
- 3. SAINABA, W/O.A.K. ABDUL KHADER,
AGED 67 YEARS, PALLATHU HOUSE,
THRIPPALUR, ALATHUR TALUK,
PALAKKAD DISTRICT.**
- 4. T.B. HAMSA, S/O.LATE BAVAKUTTY,
AGED 61 YEARS, BHAVANI NILAYAM,
VAVULYAPURAM, THONIPADAM, ALATHUR TALUK,
PALAKKAD DISTRICT.**

**BY ADVS.SRI.BINOY VASUDEVAN,
SRI.R.MANIKANTAN,
SMT.P.G.BABITHA.**

RESPONDENTS/RESPONDENTS/COMPLAINANT/STATE:

- 1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
- 2. THE SUB INSPECTOR OF POLICE,
ALATHUR POLICE STATION, ALATHUR,
PALAKKAD DISTRICT-678 105.**

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**3. ABDUL NASSER, S/O.LATE MUHAMMED,
AGED 49 YEARS, PALLATHU HOUSE,
THRIPPALUR, ALATHUR TALUK,
PALAKKAD DISTRICT-678 105.**

R1 & R2 BY PUBLIC PROSECUTOR SRI.N. SURESH.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 01-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE A:** TRUE COPY OF THE CRIMINAL MP.NO.1410/2007 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, ALATHUR.
- ANNEXURE B:** TRUE COPY OF THE JUDGMENT DATED 16.09.2009 IN CRL.MC.NO.1197/2009.
- ANNEXURE C:** TRUE COPY OF THE ORDER DATED 24.12.2011 IN CRL.MP.NO.450/2010 IN CC.NO.127/2008 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, ALATHUR.
- ANNEXURE D:** CERTIFIED COPY OF THE ORDER DATED 17.03.2015 IN CRL.RP.NO.1/2012 ON THE FILE OF THE SESSIONS COURT, PALAKKAD.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.
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Crl.M.C.No. 4015 of 2015
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Dated this the 1st day of July, 2015
ORDER

The order under challenge is the one at Anx.D dated 17.3.2015 rendered by the Sessions Court, Palakkad in Crl.R.P.No. 1/2012, whereby the order passed by the trial court refusing to discharge the accused and ordering to frame the charge was upheld, leading to the dismissal of that Criminal Revision.

2. The petitioners (the petitioner herein is the 1st accused) therein were prosecuted on the basis of the private complaint preferred by the 3rd respondent alleging that they committed offences under Secs.143, 147, 452, 341, 323, 294(b), 506(i) read with Sec.149 of the I.P.C. The brief of the case against the accused is that they had trespassed into the property of the complainant and had caused damages, whereby he suffered loss. Pursuant to the complaint, investigation was directed to be conducted, which was completed and the final report/charge sheet was filed before the court concerned against the 2nd petitioner. When the case was pending trial, the 3rd respondent preferred a complaint against the

present petitioners on the basis of the same incident and the learned Magistrate took cognizance of the same, which was the subject matter of challenge before this Court, which led to Anx.B order dated 16.9.2009 in Crl.M.C.No.1197/2009. This Court in Anx. B order held that the petitioners can raise all the contentions in the discharge petition, whereupon application for discharge was moved before the learned Magistrate, which was dismissed by Anx. C order. The challenge against Anx.C order was considered in Crl.R.P.No.1/2012 by the Sessions Court, Palakkad, which led to Anx.D order rendered on 17.3.2015 in that Revision. It is this order at Anx.D that is under challenge in this Crl.M.C.

3. Heard Sri.Binoy Vasudevan, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

4. From a perusal of the impugned Anx.D order it can be seen that cognizance was taken on 21.4.2008 for the offences under Secs.143, 147, 452, 341, 323 read with Sec.149 of the I.P.C, and summons were issued to A-1 to A-5. PW-1 (complainant) was examined and Exts.P-1 and P-2 were marked on his side and

application under Sec.311 Cr.P.C. was allowed. Later PW-2 was examined and the case was posted for hearing on charge to 22.10.2011. Shorn of the other details, subsequently application for discharge was filed, which was dismissed on 24.12.2011 as per Anx.C. The Sessions Court found that the main challenge was against an observation in paragraph 6 of Anx.C order to the effect that, "So I am of the view that, there is ground for presuming that, the accused have committed the offence as alleged". The Sessions Court on a perusal of the evidence of PW-1 and PW-12, who were examined in chief, found that the only question is whether the unchallenged evidence prima facie makes out the alleged offence. True that there is no cross-examination at that stage, but the pin pointed and most crucial relevant issue is as to whether such unchallenged evidence would prima facie disclose the alleged offence. To this, this consideration is fully relevant and germane. To this aspect the courts below have found that there is prima facie case for which charge has to be framed. So it cannot be said that there is any illegality or perversity in the impugned Anxs.C and D orders passed by the courts below. Thus this Court is of the

considered opinion that there is no merit this petition and the
Cr1.M.C. stands dismissed.

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Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge