

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

Crl.MC.No. 4318 of 2015

S.C.NO.167/2008 OF ASSISTANT SESSIONS COURT, NEYYATTINKARA

CRIME NO. 194/2004 OF VIZHINJAM POLICE STATION , THIRUVANANTHAPURAM

PETITIONER(S)/1ST ACCUSED :

**RAMKUMAR, AGED 32 YEARS,
S/O.NATARAJAN, RESIDING AT KRISHNA NILAYAM,
PANANGOD, VENGANOOR VILLAGE, VENGANOOR P.O.,
THIRUVANANTHAPURAM- 695 523.**

BY ADV. SRI.AYYAPPAN SANKAR

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM- 682 031.**
- 2. CIRCLE INSPECTOR OF POLICE,
VIZHINJAM POLICE STATION, VIZHINJAM,
THIRUVANANTHAPURAM- 691 005.**
- 3. SUB-INSPECTOR OF POLICE,
VIZHINJAM POLICE STATION, VIZHINJAM,
THIRUVANANTHAPURAM- 691 005.**

BY PUBLIC PROSECUTOR SRI.R.GITHESH

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 29-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE I:** TRUE COPY OF F.I.R IN CRIME NO.194/2004 OF VIZHINJAM POLICE STATION, THIRUVANANTHAPURAM, REGISTERED BY 3RD RESPONDENT.
- ANNEXURE II:** TRUE COPY OF THE REMAND APPLICATION DATED 03.08.2014 SUBMITTED BY 3RD RESPONDENT UPON ARREST AND PRODUCTION OF PETITIONER BEFORE THE MAGISTRATE COURT, NEYYATTINKARA.
- ANNEXURE III:** TRUE COPY OF THE SCENE MAHAZAR PREPARED BY 3RD RESPONDENT ON 03.08.2004.
- ANNEXURE IV:** TRUE COPY OF THE LIST OF PROPERTY SENT O MAGISTRATE PREPARED BY 3RD RESPONDENT.
- ANNEXURE V:** TRUE COPY OF THE VEHICLE MAHAZAR PREPARED BY 2ND RESPONDENT ON 04.08.2004.
- ANNEXURE VI:** TRUE COPY OF THE REPORT SUBMITTED ON 04.05.2005 BY DIRECTOR, FORENSIC SCIENCE LABORATORY BEFORE THE MAGISTRATE'S COURT, CONCERNED.
- ANNEXURE VII:** TRUE COPY OF THE FINAL REPORT DATED NIL, SUBMITTED BEFORE THE JURISDICTIONAL MAGISTRATE'S COURT ON 18.01.2007 IN CRIME NO.194/2004 OF VIZHINJAM POLICE STATION, THIRUVANANTHAPURAM.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 4318 of 2015

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Dated this the 29th day of July, 2015

O R D E R

The petitioner is accused No.1 in the impugned Anx.A-1 FIR in Crime No.194/2004 of Vizhinjam Police Station, Thiruvananthapuram district, registered on 3.8.2004 against the petitioner and two others alleging offences under Sec.308 read with Se.34 of the I.P.C. and Secs.3 and 4 of the Explosives Substances Act, 1908. The Police, after investigation submitted the impugned Anx.VII final report/charge sheet, which has led to the institution of S.C.No. 167/2008 on the file of the Assistant Sessions Court, Neyyatinkara.

2. The brief of the prosecution case is that the petitioner and two other accused, who were the activists of the Bharathiya Janatha Party (BJP), on 3.8.2004, with a view to ensuring the success of the *hartal* called by that party, had obstructed public road by laying granite stones across the road. That on seeing the Police party headed by the 3rd respondent (Sub Inspector of Police, Vizhinjam Police Station) the petitioner set fire to a bomb, which A-2 was holding and A-2 threw towards the Police jeep. That on

hitting the jeep, the bomb got extinguished and had fallen on the ground and did not explode. That thus the petitioner and other two committed the above said offences.

3. The grounds raised by the petitioner in this petition for quashing the impugned Anx.VII final report/charge sheet are as follows:

- '(i) "Causing explosion " is the essential ingredient to constitute offence under Section 3 of the Explosive Substances Act. The specific case of prosecution is that the alleged explosive did not explode. Hence, offence under Section 3 is not at all sustainable on the very face of the prosecution case.
- (ii) Annexure–VI Report of Forensice Science Laboratory clearly shows that the alleged explosive is not one capable to cause 'explosion of a nature likely to endanger life or to cause serious injury to property', which is the essential ingredient for offence under Section 4 of the said Act. Thus the said offence is also not sustainable.
- (iii) The only allegation in Annexure–VII Final Report for charging offence under Section 308 of I.P.C. is that, had the 'Bomb' exploded it would have ignited Diesel in the fuel tank of the police Jeep, which would have lead to explosion causing death of 3rd Respondent and other police personnel. Charging the grave offence as one under Section 308 I.P.C. solely on the basis of the said remotest apprehension which is totally vague and highly improbable by any wildest stretch of imagination, is totally untenable in law and on the very face of the prosecution case, even if accepted in its entirety.
- (iv) 3rd respondent who is the First Informant/De–facto Complainant and against whom the offences are alleged to have been committed, himself has registered Annexure–I F.I.R. and completed all material steps in investigation as revealed from Annexures 1 to IV, thereby causing serious prejudice to the petitioner by denying a fair and impartial investigation.'

4. It is in the light of these aspects that the petitioner prays that the impugned Anx.VII final report/charge sheet filed in the

impugned Crime No.194/2004 of Vizhinjam Police Station, which has led to the institution of S.C.No.167/2008 on the file of the Assistant Sessions Court, Neyyattinkara pending against the petitioner and all further proceedings arising therefrom pending against the petitioner may be quashed.

5. Hearde Sri.Ayyappan Sankar, learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the official respondents.

6. On hearing both sides and going through the materials on record, this Court is of the considered opinion that having regard to the nature of the facts and circumstances of this case as well as the nature of the contentions sought to be raised and adjudicated in this case, it is for the petitioner to seek appropriate remedy like the one for discharge before the competent criminal court, in case the stage for consideration of the plea of discharge is not yet over in this case. It is thus made clear that it will be open to the petitioner to raise the present contentions by filing such appropriate application for seeking the plea of discharge, provided the stage for consideration of such plea of discharge is not yet over and in that eventuality, if the petitioner submits necessary application in that

regard, raising the plea of discharge without any further delay, then the court below concerned will consider such plea meticulously and take a decision thereon after hearing both sides.

With these observations and directions, the Crl.M.C. stands finally disposed of.

sd/-
ALEXANDER THOMAS, JUDGE
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///True copy///

P.S. to Judge