

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

Cr1.MC.No. 3338 of 2013 ()

CC 821/2011 of J.M.F.C.-II, KOCHI

PETITIONER(S)/ACCUSED 1 TO 5:

1. BALACHANDRAN, AGED 52 YEARS,
S/O.PARAMESWARAN PILLAI, KRISHNA HOUSE, SMRITHI NAGAR
EDAPPALLY NORTH VILLAGE, AMRITHA HOSPITAL ROAD
EDAPPALLY.P.O, ERNAKULAM.
2. LAIJU JAMES, AGED 35 YEARS
S/O.JAMES JACOB, KATTAKAYAM HOUSE, CHALA.P.O
KOTTAYAM DISTRICT.
3. NARAYANA DAS, AGED 41 YEARS,
S/O.NANDALAL, THATTUPURAKKAL HOUSE
PALLURUTHI NADA BHAGAM, THAMESWARAM VILLAGE.
4. XAVIER, AGED 64 YEARS
S/O.MATHEW, KALATHIL HOUSE, AROOR VILLAGE
AROOR.P.O.
5. JAYADEVAN.V.P, AGED 48 YEARS
S/O.PARAMESWARAN, VEZHAKKATTU HOUSE, EDAKOCHI VILLAGE
PALLURUTHY.P.O, KOCHI.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.VIPIN NARAYAN
SRI.P.M.RAFIQ

RESPONDENT(S)/RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682021.

BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 3338 of 2013 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE-A TRUE COPY OF THE CHARGE SHEET IN CRIME NO.234/2011 OF
KOCHI KASABA POLICE STATION,PALLURUTHY TAKEN ON THE FILE AS
C.C.821/2011 ON THE FILE OF THE COURT OF JUDICIAL FIRST CLASS
MAGISTRATE-II,KOCHI.

ANNEXURE-B TRUE COPY OF THE CERTIFICATE ISSUED BY THE PETITIONER OF
THE FACTORIES AND BOILERS DATED 28.02.2011.

ANNEXURE-C TRUE COPY OF THE DISCHARGE SUMMARY OF CW2 ISSUED FROM
GAUTHAM HOSPITAL,KOCHI,DATED 10.02.2011.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

ami/

V.K.MOHANAN, J.

Crl.M.C.No.3338 of 2013

Dated this the 26th day of March, 2015.

ORDER

The petitioners are accused nos.1 to 5 in Crime No.234/11 and the offence alleged against them are under sections 269 and 278 of Indian Penal Code. The prosecution case is that on 9.2.2011 at about 14.30 hours, while shutting down process in Choice canning company was carried out, there was a leakage of ammonia from the ammonia plant in the said company and as a result of the same, it polluted the environment and atmosphere. Consequently, by the breathing of the same, Cws.2 to 5 developed headaches, vomiting, itching irritations and breathing troubles. The 1st accused is the Director and the 2nd accused is the Manager and 3rd accused is the Plant Engineer, the 4th and 5th accused are the Plant Operators of the said company. On completing the investigation, charge

was laid in the court of Judicial First Class Magistrate-II, Kochi, upon which cognizance was taken and thus instituted C.C.No.821/11 on the file of the court of Judicial First Class Magistrate-II, Kochi. It is against the said proceedings, the accused therein preferred this Crl.M.C. under section 482 of Cr.P.C.

2. Heard Sri.P.M.Rafiq, the learned counsel for the petitioners and the learned Public Prosecutor.

3. The learned counsel after taking me through Annexure A charge sheet, submitted that even according to the doctor, who cited as CW2, presence of ammonia was not detected and therefore the prosecution case is false and is liable to be quashed. On the other hand, the learned Public Prosecutor submitted that as the trial is not commenced, it is immature to come into a conclusion that whether there is sufficient evidence to prosecute the accused or not.

4. I have carefully considered the submissions made by the learned counsel for the petitioners as well as the learned Public Prosecutor.

5. I have perused Annexure A charge. As per Annexure A charge sheet, Cws.2 to 5 are the victims, consequent to the negligence of the accused in operating the ammonia plant in the factory run by the accused. The substance of the prosecution allegation is that due to the negligent approach of the accused in the operation of the ammonia plant, the ammonia gas was leaked out, which was spread in the atmosphere and the environment and the victims Cws.2 to 5 who happened to breath the same, had developed headaches, vomiting, itching irritations and breathing troubles. The correctness of the said allegation has to be examined on the basis of the evidence yet to be adduced during the trial of the case. The question to be considered by the trial court is that on the basis of the available evidence, whether the prosecution has succeeded

in establishing the ingredients of sections 269 and 278 of IPC. Even if for the time being, the report of the doctor is taken as true, that there is no presence of ammonia, which is according to me, is not sufficient to absolve the accused from the criminal liability. The next question to be considered is whether the suffocation, itching, omitting, headache etc. suffered by Cws.2 to 5 were due to the negligence of the accused in handling the ammonia plant. The said fact has to be ascertained only on the basis of the evidence yet to be adduced in this case. Therefore, I find no merit in this Crl.M.C. and Annexure A charge sheet cannot be quashed.

6. As this Court is not inclined to interfere with Annexure A charge sheet, the learned counsel for the petitioners submitted that the petitioners may be exempted from appearing before the court below during the trial of the case. It is for the petitioners to make appropriate application before the trial court for their exemption and in

case such an application is filed, I am sure that the court will consider the same on merit and will not insist for the presence of the petitioners/accused unless their presence are indispensable.

Subject to the above observation, this Crl.M.C. is dismissed.

Sd/-
V.K.MOHANAN,
Judge.

ami/

//True copy//

P.A.to Judge