

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

Crl.MC.No.4492 of 2015 ()

CC 62/2015 of J.M.F.C.-IX, ERNAKULAM (TEMPORARY)
CRIME NO.262/2015 OF CHERANELLOOR POLICE STATION, ERNAKULAM

PETITIONERS/ACCUSED:

1. AMAL TONY,
S/O.T.P.TONY, THYKOOTTATHIL HOUSE, 1ST CROSS ROAD
DIVINE NAGAR, SOUTH CHITTOOR, COCHIN 27.
2. ABRAHAM
S/O.GEORGE, NADUVILA, MANALKKAD
CHITTOOR, CHERANALLUR.
3. ALDRIN JOY, S/O.JOY,
MANAYIL (H), CHITTOOR, CHERANALLUR.

BY ADV. SRI.SHERRY J. THOMAS

RESPONDENT(S)/STATE:

STATE OF KERALA
REPRESENTED BY SUB INSPECTOR
CHERANALLUR POLICE STATION
ERNAKULAM BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
19-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:

- A1: THE TRUE COPY OF THE MARK LIST OF 1ST PETITIONER
- A2: THE TRUE COPY OF THE BUS CONCESSION CARD OF THE 3RD PETITIONER
- A3: THE TRUE COPY OF THE HALL TICKET OF THE 2ND PETITIONER
- A4: THE TRUE COPY OF THE SUMMONS ISSUED TO THE 1ST PETITIONER
- A5: THE TRUE COPY OF THE SUMMONS ISSUED TO THE 3RD PETITIONER
- A6: THE TRUE COPY OF THE SUMMONS ISSUED TO THE 2ND PETITIONER
- A7: THE TRUE COPY OF THE JUDGMENT IN CRL MC 6165/2014.

RESPONDENT(S)' EXHIBITS:

NIL

// TRUE COPY //

P.A TO JUDGE.

ALEXANDER THOMAS, J.

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Dated this the 19th day of August, 2015.

ORDER

The petitioners herein are arrayed as accused in C.C.No.62/2015 on the file of the Judicial First Class Magistrate Court-IX, Ernakulam. Petitioners are students, who belong to same locality and belong to same parish viz, Catholic Church, Chittur and were active in parish youth activities, etc. On the day of the incident, which led to the impugned Crime, as the petitioners were returning from their church, the respondent-Sub Inspector of Police, Cheranellur Police Station had arrested the petitioners and charged them with the offence under Sec.118(e) of the Kerala Police Act and Sec.132(1) r/w 179 & 188 of the Motor Vehicles Act. It is contended that none of the offences are attracted against petitioners 2 & 3 and the offence under Sec.132(1) of the Motor Vehicles Act will not be attracted against the 1st petitioner. It is contended that the person who is running as pillion rider cannot

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be charged with an offence under Sec.118(e) of the Kerala Police Act, that the offence under Sec.188 of the Motor Vehicles Act will not be attracted as against the 1st petitioner as there is no allegation of the offence under Secs.184, 185 & 186 of the Motor Vehicles Act as envisaged under Sec.188 thereof, therefore, there is no abutment if he is the sole accused, etc.

2. It is pointed out that the case is now pending as C.C.No.62/2015 on the file of the Judicial First Class Magistrate Court-IX, Ernakulam. Anxs-A4 to A6 are the summons received by the petitioners 1 to 3 respectively. Petitioners have placed reliance on Anx-A7 order of this Court dated 11.2.2015 in Crl.M.C.No.6165/2014. In that case the offences alleged were under Secs.279 of the IPC and Secs.185, 188 & 119(1) r/w 179 of the Motor Vehicles Act. The 1st petitioner therein was the rider of the motor cycle and the petitioners 2 & 3 were pillion riders. They sought quashment of the impugned crime registered against them for the aforesaid offences. This Court in Crl.M.C.No.6165/2014 held that if the rider was found in a drunken condition or riding

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rashly and negligently, only the rider can be proceeded against and the pillion riders cannot be prosecuted against and that it is not known how a prosecution is possible against the pillion riders for the offence under Sec.279 IPC or under Sec.185 of the Motor Vehicles Act. It was held that the since 1st accused was found driving the vehicle, he will have to face the prosecution as there was result of breath analysis indicating the presence of alcohol in his blood. Accordingly, the impugned criminal proceedings directed against the pillion riders were quashed.

3. It is to be noted that the offence under Sec.132 of the Motor Vehicles Act is relating to duty of driver to stop in certain cases. Sec.179 of the Motor Vehicles Act relates to disobedience of orders, obstruction and refusal of information, etc. Sec.188 of the Motor Vehicles Act is in relation to punishment for abetment of certain offences under Secs.184, 185 & 186. In the instant case, there are no allegations involving offences under Secs.184, 185 & 186 of the Motor Vehicles Act and therefore, the question of Sec.132 of the Motor Vehicles Act does not arise at all. In the light

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of the view taken by this Court in Anx-A7 order, it is ordered in the interest of justice that the impugned criminal proceedings arising out of C.C.No.62/2015 on the file of the Judicial First Class Magistrate Court-IX, Ernakulam to the extent it is directed against the petitioners 2 & 3 (A2 & A3) are quashed. Further, it is ordered that the impugned criminal proceedings in the above said Calender Case to the extent it is directed as against the 1st petitioner (A1) for offence under Sec.188 of the Motor Vehicles Act would also stand quashed. It is made clear that the 1st petitioner (A1) will have to face the prosecution for the remaining offences.

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

ALEXANDER THOMAS,
Judge.

bkn/-