

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

Crl.MC.No. 4530 of 2015 ()

CC 1707/2015 of JUDICIAL FIRST CLASS MAGISTRATE COURT, ANGAMALY

PETITIONER/ACCUSED NO.2 :

**ELDHO A.A., AGED 40 YEARS,
S/O. ALIAS, ATHIKKAKUZHI HOUSE,
AZHAKOM.P.O.,ERNAKULAM.**

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

RESPONDENTS/DEFACTO COMPLAINANT & STATE :

**1. POULOSE, AGED 60 YEARS, S/O. ANTONY,
MALIYEKKAL HOUSE, KUNNAPPILLISSERI KARA,
PARAKKADAVU VILLAGE. 683 572.**

**2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

R2 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 01-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

Crl.MC.No. 4530 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE A: TRUE COPY OF THE F.I.R IN CRIME NO.3257/2014 OF ANGAMALY
POLICE STATION, ERNAKULAM RURAL.**

**ANNEXURE B: TRUE COPY OF THE FINAL REPORT IN CRIME NO.3257/2014 OF
ANGAMALY POLICE STATION, ERNAKULAM RURAL NOW PENDING AS
C.C.NO.1707 OF 2015 PENDING ON THE FILES OF THE COURT OF THE
JUDICIAL MAGISTRATE OF THE FIRST COURT, ANGAMALY.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

B. KEMAL PASHA, J.

.....
CRL. M.C. No. 4530 of 2015
.....

Dated this the 1st day of October, 2015

ORDER

Petitioner is the 2nd accused in C.C.No.1707/2015 of the Judicial First Class Magistrate's Court, Angamaly, which has arisen from Crime No.3257/14 of the Angamaly Police Station, registered for the offences punishable under Sections 279, 283 and 304A of the Indian Penal Code.

2. The lorry driven by the first accused, allegedly in a rash and negligent manner, hit on the rear side of the scooter being ridden by the brother of the defacto complainant, with a pillion rider. The petitioner, who is the 2nd accused, has allegedly parked his Gipsy car at the road side. Due to the impact of the hit, the scooter hit on the Gipsy car and the rider of the scooter fell on the road. The

lorry driven by the first accused ran over the rider, which resulted in his imminent death.

3. The complaint of the petitioner is that at any stretch of imagination, the petitioner cannot be made liable for any of the offences alleged against him.

4. Heard the learned Senior Counsel for the petitioner and the learned Public Prosecutor.

5. It is true that the Gipsy car owned by the petitioner was allegedly parked by the petitioner negligently at the road side. At the same time, the mahazar or any of the records do not reveal that it was a 'no parking area'. Whatever it is, it is a fact that the Gipsy car was parked at the portion of the public road. It is true that the petitioner cannot be roped into the offences under Sections 279 IPC and 304A IPC. At the same time, it cannot be said that he cannot be made liable for the offence punishable under Section 283 IPC. Of course, whether an offence under Section 283 IPC will lie or not against the petitioner is some

thing to be proved. At any stretch of imagination, he cannot be held liable for the offences punishable under Sections 279 and 304A IPC.

In the result, this Crl.M.C. is allowed in part and it is declared that the offences under Sections 279 and 304 IPC are not sustainable as against the petitioner herein.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge