

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

Cr1.MC.No. 3648 of 2014 ()

CC 1402/2013 of J.M.F.C. - I, ETTUMANOOR, KOTTAYAM.

PETITIONER(S)/1ST ACCUSED

CYRIAC, AGED 68 YEARS
S/O.UTHUPPAN, MANGATTUPULIKKAL HOUSE, KOODALLUR P O
KIDANGOOR VILLAGE, KOTTAYAM DIST

BY ADV. SRI.P.B.PRADEEP

RESPONDENTS/STATE AND DE FACTO COMPLAINANT :

1. STATE OF KERALA
REP BY THE PUBLIC PROSECUTOR , HIGH COURT OF KERALA
ERNAKULAM-PIN-682 018

2. THOMAS ALIAS RAJU, AGED ABOUT 44 YEARS
S/O.MATHAI,
KALLAM THOTTIYIL (PUNNASSERY KALLAM
THOTTIYIL), KOODALLUR KARA
KIDANGOOR VILLAGE, KOTTAYAM DIST, PIN-686595

R1 BY PUBLIC PROSECUTOR SMT.SAREENA.

R2 BY ADV. SRI.MATHEW PHILIP EDAPPALLIL

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
27-10-2015 ALONG WITH CRL.M.C.4649/2015, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:

Cr1.MC.No. 3648 of 2014 ()

APPENDIX

PETITIONER(S) ' ANNEXURES:

ANNEX A1:-TRUE COPY OF THE DEPOSITION MADE BY PETITIONER BEFORE
ASI ON 27/1/2012

ANNEX A2:-AUTHENTICATED COPY OF THE FIRST INFORMATION REPORT (FIR
NO 50) AND FINAL REPORT (10 SHEETS)

ANNEX A3:-CERTIFIED COPY OF THE REFER REPORT DTD 2/2/2012

ANNEX A4:-CERTIFIED COPY OF PROTEST COMPLAINT FILED BY 2ND
RESPONDENT

ANNEX A5:-CERTIFIED COPY OF DEPOSITION OF CW-1

ANNEX A6:-CERTIFIED COPY OF DEPOSITION OF CW-2

ANNEX A7:-CERTIFIED COPY OF DEPOSITION OF CW-3

ANNEX A8:-TRUE COPY OF COUNTER AFFIDAVIT DTD 8/8/2012 FILED BY
THE 2ND RESPONDENT

ANNEX A9:-TRUE COPY OF COUNTER AFFIDAVIT DTD 31/3/2014 FILED BY
THE 2ND RESPONDENT

RESPONDENT(S) ' EXHIBITS

ANNEX R2(a) : TRUE COPY OF PARTITION DEED NO.1972/2011 OF SRO
KIDANGOOR DATED 26.12.2011.

ANNEX R2(b) : TRUE COPY OF SALE DEED NO.1788/2011 OF SRO
KIDANGOOR DATED 18.11.2011.

ANNEX R2(c) : TRUE COPY OF FIRST INFORMATION STATEMENT OF THE 2ND
RESPONDENT IN CRIME NO.51/2012 OF POLICE STATION,
KIDANGOOR.

//True copy//

P.A to Judge

B.KEMAL PASHA, J.

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Crl.M.C. Nos. 3648 of 2014 & 4649 of 2015

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Dated this the 27th day of October, 2015

O R D E R

Crl.M.C.No.3648/2014 is filed against C.C.No.1402/2013 of the Judicial First Class Magistrate's Court, Ettumannoor. The petitioner is the 1st accused in the said case.

2. Crl.M.C.No.4649/2015 is filed against C.C.No.106/2012 of the Judicial First Class Magistrate's Court, Ettumannoor, in which, the petitioner is the sole accused.

3. In respect of the very same incident, two crimes were registered as Crime No.50/2012 and Crime No.51/2012 of the Kidangoor Police Station, for the offences punishable under Sections 323 and 341 IPC. Crime No.50/2012 was registered against the petitioner in

Crl.M.C.No.4649/2015 as the sole accused; whereas Crime No.51/2012 was registered against the petitioner in Crl.M.C.No.3648/2014 and his nephew as the other accused. Investigation was conducted and the Investigating Officer has chosen to file the final report in Crime No.51/2012 alleging offences under Sections 341 and 323 IPC. At the same time, the Investigating Officer has chosen to refer Crime No.51/2012.

4. Aggrieved by the refer report, the petitioner in Crl.M.C.No.4649/2015 filed a protest complaint before the court below. The court below has taken on file the complaint and recorded the statements of CWs.1 to 3 in the matter. On taking their statements, the court below has taken cognizance of the offences under Sections 323, 324 and 294(b) read with Section 34 IPC. Both the parties have come up for getting the proceedings against them quashed.

5. According to the petitioner in Crl.M.C.No.4649/2015, it was he who had furnished the

statement before the Police at first, and in order to make it appear that it was the petitioner in Crl.M.C No.3648/2014, who had furnished the first information at first, the Investigating Officer has corrected the first information statement. It is true that in the First Information Statement, the time, at which, it was seen recorded is corrected. Whether that was deliberately done or not, is a matter that has to be considered by the court below.

6. On hearing either side, it seems that at this stage, this Court cannot consider the merits or otherwise of the evidence collected by the Investigating Officer in C.C.No.106/2012 which has arisen from Crime No.50/2012. Regarding the other case, it seems that the court below has taken cognizance of the offences on a proper scrutiny of the statements of CWs.1 to 3. Presently, it is too premature to say anything with regard to the merits or otherwise of the allegations against the petitioner and the other accused. The court below has to treat C.C.No. 106/2012 as the main

case and C.C No.1402/2013 as the counter case. The court below shall try both the cases by treating it as case and counter and shall arrive at a correct finding in the matter.

With the said observations, these Crl.M.Cs are closed.

Sd/-

B.KEMAL PASHA, JUDGE

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