

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

Crl.MC.No. 4908 of 2015

**SC 1062/2015 OF III ADDITIONAL DISTRICT & SESSIONS COURT, KOZHIKODE
CRIME NO. 35/2012 OF KAKKUR POLICE STATION , KOZHIKODE**

PETITIONER(S)/2ND ACCUSED:

**LIGESH K, AGED 31 YEARS,
S/O.BALACHANDRAN, KOLLERI, KAKKODI,
KIZHAKKUMURI, KOZHIKODE 673611.**

BY ADV. SMT.BIMALA BABY

RESPONDENT(S)/STATE:

**STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
KAKKOOR POLICE STATION, KOZHIKODE DISTRICT,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERLA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.GITHESH

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 04-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

Crl.MC.No. 4908 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES

**ANNEXURE 1: CERTIFIED COPY OF THE CHARGE SHEET IN CRIME NO.35/2012 OF
KAKKOOR POLICE STATION**

ANNEXURE 2: CERTIFIED COPY OF THE DIARY NOTE OF DECEASED SHIJILAL

RESPONDENT(S)' ANNEXURE

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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Crl.M.C.No. 4908 of 2015

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Dated this the 4th day of August, 2015

ORDER

The prayer in this Crl.M.C. is to quash the impugned Anx.1 final report/charge sheet in the impugned Crime No.35/2012 of Kakkoor Police Station, Kozhikode Rural District. The matter is now pending as Sessions Case, S.C.No.1062/2015 on the file of the IIIrd Addl. Sessions Judge, Kozhikode, wherein the petitioner herein is arrayed as accused No.2. It is also common ground that the petitioner has never sought to challenge the impugned criminal proceedings at any point of time after the registration of the FIR on 18.2.2012 or even after the submission of the final report on 29.6.2012 or even after the case was taken cognizance or at the stage of committal proceedings or at any point of time prior to the framing of the charges to seek any prayer for discharge, etc. Indisputably, the petitioner is attempting to challenge the impugned crime for the first time by instituting this petition as late as on 30.7.2015, just two days before the commencement of the trial

yesterday (3.8.2015).

2. The prosecution allegation is that on 16.2.2012, the 1st accused in the crime has sexually abused the wife of one Shajilal, viz., Archana, that A-1 had subjected her to illicit sexual intercourse, as part of a criminal design hatched by the four accused to abuse the said lady sexually, the other accused also made sexual advancements and that this factum came to the knowledge of her husband, Shajilal when he came from abroad. That when he realised that such life of his wife would not be better for the future of his daughters due to the allegedly loose ways of his wife, the said Shajilal committed murder of his wife and daughters and committed suicide.

3. It is also alleged that the persons named in Anx.A-2 which said to be the diary note of deceased, are responsible for the act of suicide by the deceased Shajilal, wherein the names all the accused, except that of the petitioner (who is A-2), are allegedly involved and it is pointed out that the name of the petitioner (A-2) was not mentioned in the said diary note. However, it is not in dispute that the name of the other three accused and the name of another name, viz. Kochu Oottukulam, was found therein, etc. It is

the case of the petitioner that he is not actually the person named as “Oottukulam Kochu” in Anx. A-2 dairy note and it is alleged by the petitioner that it is only on the basis of this totally wrong understanding of the identity of that name, that the petitioner has been sought to be implicated in the crime as accused No.2. The petitioner tries to make out a case that Oottukulam is the name of a local place in Chelannur Grama Panchayat, while that the petitioner belongs to another place, viz., Kolleru in Kakkodi Grama Panchayat. Therefore, it is pointed out that the impugned criminal proceedings now pending before the Sessions Court concerned are liable to be interdicted by this Court in exercise of its extraordinary discretion conferred as per Sec.482 of the Code of Criminal Procedure.

4. The sheet anchor of the petitioner's contention has been pin pointed in grounds B and C urged in the memorandum of this Criminal Miscellaneous Case, which read as follows:

- “B. There is no evidence to prove that the person named Kochu Ootukulam in Annexure 2 is the petitioner. Oottukulam is a local place in Chalannur Grama Panchayat while the petitioner belongs to another place namely Kolleru in Kakkodi Grama Panchayat. Further, the petitioner has no pet name as Kochu. So the presumption of the investigating agency that the petitioner is the person named as Kochu Oottukulam in Annexure 2 is absolutely false and incorrect.
- C. The petitioner is wrongly implicated on a mis-identity. For abetment of suicide under section 306, there must be instigation, co-operation or intentional assistance given to the

victim. But here in this case such instigation or cooperation or intentional assistance by the petitioner is not evident. Moreover, the investigation agency has never traced out any proof of telephone contact or messages in order to render the petitioner liable as an abettor. The abettor should have done something in order to drive the victim to commit suicide. Here in this case, there was neither any intention nor any positive act on the part of the petitioner to instigate the victim to commit suicide. “

It is on the basis of these averments and contentions that the petitioner seeks to project his case in support of his prayer for quashment of the impugned proceedings.

5. Heard Smt.Bimala Baby, learned counsel appearing of the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

6. The learned counsel for the petitioner reiterated the averments and contentions raised on behalf of the petitioner in this Crl.M.C. and urged that it is only on the basis of misunderstanding that the petitioner has been arrayed as an accused. Apart from these grounds, the learned counsel for the petitioner would also urge that she may be permitted to amend this Crl.M.C. to urge certain new grounds on the ground that no incriminating act is imputed against the petitioner so as to rope him in any of the acts he has involved in the impugned crime.

7. Sri.R.Githesh, learned Public Prosecutor appearing for the

respondent State of Kerala, submitted that this is not a fit case for this Court to invoke extraordinary discretion, more so, in view of the nature of the contentions sought to be urged and adjudicated by these proceedings and also in view of the fact of long delay and also in view of the fact that the trial in this case has commenced on 3.8.2015 even going by the submission made by the petitioner's counsel. In aid of this submission, the Prosecutor has also raised contra contentions to rebut the grounds urged by the learned counsel for the petitioner.

8. On an anxious consideration of the rival contentions of the both sides, this Court is of considered opinion that having regard to the nature and character of the extraordinary discretionary jurisdiction conferred on this Court as per Sec.482 of the Code of Criminal Procedure and also having regard to the purpose and functions sought to be achieved by the conferment of such extraordinary powers, this Court is of the considered opinion that the allegations and contentions sought to be urged, should not be permitted to be urged in proceedings like the one involving inherent powers of this Court. For those are matters which eminently fall within the domain of the trial court. This is more so,

as the court is also reinforced in its view not to exercise discretion on the ground that the FIR was registered as early as on 18.2.2012, the final report/charge sheet was filed as early as on 29.6.2012 and that at those points of time the petitioner had not sought to make any challenge as the against the impugned proceedings. Even after cognizance was taken by the learned Magistrate and the committal proceedings and committed to the Sessions Court, the petitioner has not even sought to move an appropriate discharge application before the competent court below concerned. Therefore trial has commenced two days back and this petition is filed just two days prior to the commencement of the trial. Therefore, this Court does not want to upset the appplecart of the trial mechanism and its procedures envisaged in the finely crafted provisions of the Code of Criminal Procedure enacted by the Parliament. This Court is therefore constrained to hold that the attempted persuasion of the petitioner cannot be countenanced so as to invoke this Court's extraordinary discretionary jurisdiction conferred by way of inherent powers as envisaged under Sec.482 of the Code of Criminal Procedure. In the result, the Crl.M.C. stands dismissed. However, it is made clear that the observations and findings of this order shall

not in any way trammel or influence the outcome of the pending trial of the court below and these contentions may be permitted to be urged by the petitioner in the manner known to law before the court below at the appropriate time in the trial, provided it is urged in a manner contemplated by law.

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Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge