

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

Crl.MC.No. 5034 of 2015

CC 1059/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,KOCHI

PETITIONER(S):

1. DISNI, AGED 39 YEARS,
W/O.STEPHEN PONISAKE, VALAPPILLY HOUSE, CHATHIATH,
VADUTHALA PO, KOCHI-23.
2. STEPHEN PONISAKE, AGED 46 YEARS,
S/O.JOSEPH PONISAKE, VALAPPILLY HOUSE, CHATHIATH,
VADUTHALA PO, KOCHI-23.

BY ADV. SRI.T.K.AJITHKUMAR (VALATH)

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA-682031.
2. JOSEPH J.VAYALAD, AGED 48 YEARS,
S/O.V.T.JOSEPH, VAYALAD HOUSE, HOUSE NO.II/419/B,
VT J ENCLAVE, MARADU P.O-682310.

BY PUBLIC PROSECUTOR SRI.GITHESH. R.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07-08-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

Crl.MC.No. 5034 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES

**ANNEXURE 1 : THE COPY OF FINAL REPORT DATED 6-4-2015 ISSUED TO THE
PETITIONERS.**

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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Crl.M.C.No. 5034 of 2015

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Dated this the 7th day of august, 2015

ORDER

This Crl.M.C. has been filed to impugn Anx.I final report/charge sheet in Crime No.567/2014 of Maradu Police Station, Kochi City, registered against the petitioners for the offences under Secs. 66A (b) of the Information Technology Act read with Sec.109 (Abetment) of the IPC. Shorn of the factual details in this case, it is to be noted that the impugned provision in Sec. 66A of the Information Technology Act, 2000 has already been struck down by the Apex Court in the celebrated case *Shreya Singal v. Union of India* reported in 2015 (5) SCC 1=2015 (2) KLT 1 (SC), wherein it has been held that the said provision is unconstitutional, ultra vires and unenforceable. In this view of the matter the continued prosecution of the petitioners for the offences under Sec.66A(b) of the Information Technology Act has become legally untenable and unenforcible. The only other remaining offence alleged in Anx.1 is one under Sec.109 of the I.P.C., which deals with

abetment, which is not an offence which can be independently prosecuted as it is not a substantive offence. Therefore, the impugned criminal proceedings have no further legs to stand. Accordingly, the impugned criminal proceedings in Anx. I final report/charge sheet filed in the impugned Crime No.567/2014 of Maradu Police Station, which has led to the institution of Calendar Case, C.C.No.1059/2015 on the file of Judicial First Class Magistrate Court-I, Kochi and all further proceedings arising therefrom pending against the petitioners herein stand quashed.

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

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge