

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

Crl.MC.No. 5307 of 2015 ()

CC 1338/2015 of JUDICIAL FIRST CLASS MAGISTRATE COURT - I, CHALAKUDY

PETITIONER/ACCUSED IN C.C.NO.1338/2015 :

**CIJI MATHEW, W/O.SHAJU,
THEKINIYATHU HOUSE, KORATTY SOUTH,
MANGALASSERY(PO), THRISSUR DISTRICT.**

**BY ADVS.SRI.T.K.AJITH KUMAR
SRI.P.VINODKUMAR
SRI.K.T.SIDHIQ
SMT.M.A.JINSA MOL**

RESPONDENTS/COMPLAINANTS/DE FACTO COMPLAINANTS :

**1. FOOD INSPECTOR, CHALAKKUDY CIRCLE,
CHALAKKUDY(PO), THRISSUR DISTRICT
PIN-680 307.**

**2. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682031**

BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 18-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A: TRUE COPY OF THE MAHAZAR DATED 29.11.2006.

**ANNEXURE B: TRUE COPY OF THE REPORT OF THE PUBLIC ANALYSIS
DATED 27.12.2006.**

ANNEXURE C: CERTIFIED COPY OF THE COMPLAINT DATED 7.03.2007.

ANNEXURE D: TRUE COPY OF CMP 16459/2014, DISCHARGE PETITION.

**ANNEXURE E: TRUE COPY OF JUDGMENT OF HON'BLE SUPREME COURT IN
PEPSICO INDIA HOLDING PRIVATE LTD V. FOOD INSPECTOR AND
ANOTHER REPORTED IN 2010 (4) KHC 767(SC).**

**ANNEXURE F: CERTIFIED COPY OF JUDGMENT DATED 29-04-2015 IN CMP
16459/2014 IN C.C.396/2007 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT- I, CHALAKKUDY.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

ALEXANDER THOMAS, J.

Crl.M.C.No.5307 Of 2015

Dated this the 18th day of August, 2015.

ORDER

The petitioner was the 1st accused in C.C.No.396/2007 on the file of the Judicial First Class Magistrate Court, Chalakudy. Out of the 3 accused, accused Nos.2 & 3 have already discharged by the court below as per Anx-F order dated 29.4.2015 in C.M.P.No.16459/2014 in C.C.No.396/2007. Accused No.2 is the owner of the shop and accused No.3 is the manufacturer of the product. As the petitioner (A1), who is the sales girl in the shop, did not appear before the court below, the case against her was split up and re-numbered as C.C.No.1338/2015 on the file of the Judicial First Class Magistrate Court, Chalakkudy.

2. The learned counsel for the petitioner submits that it is well settled principle that the benefit of acquittal shall be given to all must be extended to the co-accused, similarly situated, if the substratum of the prosecution is shattered by such acquittal. The learned counsel for the petitioner also relied on the decision in the

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case Pepsico India Holding Private Ltd. v. Food Inspector & anr., reported in 2010 (4) KHC 767 (SC), for seeking the plea of discharge before the court below.

2. The learned Public Prosecutor has no objection to this course of action provided the stage for consideration of discharge has not yet been over.

3. In the light of these submissions made on either side, it is ordered in the interest of justice that it will be open to the petitioner to move application seeking the remedy of discharge before the court below and the court below shall consider the same on merits without any further delay after granting opportunity to both sides. However, it is made clear that such consideration may be effected by the court below only if the stage for consideration of the plea of discharge is not yet over.

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

ALEXANDER THOMAS,
Judge.

bkn/-