

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

Crl.MC.No. 5419 of 2015 ()

CRIME NO. 473/2013 OF EDAKKARA POLICE STATION , MALAPPURAM DISTRICT

PETITIONER/ACCUSED:

**SATHEESH KUMAR B.R., S/O.BALAKRISHNAN
RATNALAYAM, EDAKKARA PO, MALAPPURAM DISTRICT**

**BY ADVS.SRI.BABU S. NAIR
SRI.R.RANJITH (K/489/2011)**

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

**1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
KOCHI- 682031, FOR THE SUB INSPECTOR OF POLICE
EDAKKARA POLICE STATION, MALAPPURAM DISTRICT**

**2. TP.VARGHESE, S/O.POULOSE, THANNIKKAL HOUSE
KATTICHIRA, POOKOTTUMANNA PO, CHUNGATHARA
MALAPPURAM DISTRICT, PIN 679334**

R1 BY PUBLIC PROSECUTOR SRI. JUSTIN JACOB

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23-09-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE A: TRUE COPY OF THE FIR IN CRIME NO.473/2013 OF THE EDAKKARA
POLICE STATION DATED 14.09.2013**

**ANNEXURE B: TRUE COPY OF THE REPORT SUBMITTED BY THE INSPECTOR OF
POLICE NILAMBUR IN CRIME NO.473/2013**

**ANNEXURE C: TRUE COPY OF THE REPRESENTATION SUBMITTED BY 54 PLUS TWO
STUDENTS OF CLASS S2 OF PETITIONER'S SCHOOL**

RESPONDENTS' EXHIBITS

NIL

TRUE COPY

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.5419 of 2015

Dated this the 23rd day of September, 2015

O R D E R

The petitioner herein is the sole accused in Crime No.473/2013 of the Edakkara Police Station registered under Section 379 IPC, Section 118(d) of the Kerala Police Act, and Section 66A of the Information Technology Act. Later, Section 379 IPC was deleted and report to that effect was filed by the investigating officer before the learned Magistrate on 18.10.2013. Annexure-B is the copy of the said report. Now, what remains is Section 118(d) of the Kerala Police Act and Section 66A of the Information Technology Act. Recently, the Honourable Supreme Court has declared these two Sections unconstitutional. In such a situation, investigation in the said crime cannot proceed. Now, it is submitted by the learned Public Prosecutor, on instructions, that the police has been thinking of submitting report before the learned Magistrate for investigation under Section 500 IPC. The police cannot make investigation into such an offence, because cognizance under Section 500 IPC is clearly barred under the law.

A prosecution under Section 500 IPC is possible only on a complaint made by the aggrieved person. The police cannot submit final report under Section 500 IPC, when cognizance is barred under the law. In short, this crime cannot proceed further, when the two sections now remaining for investigation stand declared unconstitutional by the Honourable Supreme Court.

In the result, this petition is allowed. The FIR and further proceedings in Crime No.473/2013 of the Edakkara Police Station, Malappuram District will stand quashed under Section 482 Cr.P.C.

Sd/-

P. UBAID, JUDGE

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