

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

CrI.MC.No. 4836 of 2013 ()

**Bail Appl. 1289/2009 of HIGH COURT OF KERALA
SC 41/2011 of ADDL. DISTRICT COURT (ADHOC-III), KASARAGODE**

PETITIONERS/ACCUSED 2 & 3 :

- 1. VALSALAN P.D. @ BABU, AGED 49 YEARS,
S/O. DIVAKARAN, PUNNAPOIKAYIL HOUSE, PALLAPPARA,
CHENNALAM, KALICHAMARAM, KARINDALAM VILLAGE,
KASARAGOD DISTRICT.**
- 2. C.NARAYANAN, AGED 57 YEARS,
S/O KUMARAN, BINEESH NIVAS, CHAYYOM,
KINANNOOR VILLAGE, KASARGOD DISTRICT.**

**BY ADVS.SRI.C.P.PEETHAMBARAN
SMT.MINI.V.A.
SRI.S.SREEKUMAR (SR.)**

RESPONDENTS/COMPLAINANTS :

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.**
- 2. THE DEPUTY SUPERINTENDENT OF POLICE,
KANHANFGAD, KASARAGOD DISTRICT-671 121.**

BY PUBLIC PROSECUTOR SMT. LILLY LESSLEY

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 28-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- ANNEXURE A1:** CERTIFIED COPY OF THE FIR IN CRIME NO.30/2009 OF VELLARIKUNDU POLICE STATION.
- ANNEXURE A2:** TRUE COPY OF THE ORDER DATED 18.3.2009 IN BAIL APPLICATION NO.1289/2009 OF THIS HON'BLE COURT.
- ANNEXURE A3:** CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.30/2009 OF VELLARIKUNDU POLICE STATION.
- ANNEXURE A4:** TRUE COPY OF THE SUMMONS IN S.C.NO.41/2011 SENT TO THE ACCUSED BY TEH ADDL. SESSIONS COURT (ADHOC III), KASARGOD.
- ANNEXURE A5:** CERTIFIED COPY OF THE PROCEEDINGS DATED 21.4.2013 IN S.C.NO.41/2011 OF THE ADDITIONAL SESSIONS COURT, ADHOC III, KASARGOD.
- ANNEXURE A6:** CERTIFIED COPY OF THE REPORT DATED 26.6.2013 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE ADDITIONAL SESSIONS COURT, ADHOC III, KASARGOD.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

[CR]

B.KEMAL PASHA, J.

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CRL. M.C. No. 4836 of 2013
.....

Dated this the 28th day of September, 2015

ORDER

Petitioners are A2 and A3 in S.C.No.41/2011 of the Additional Sessions Court-III, Kasaragod registered for the offences punishable under Sections 304, 308 and 201 of the Indian Penal Code, read with Section 34 IPC and Section 3 of the Explosive Substances Act, 1908.

2. Originally, there was only one accused in the crime. On investigation, a final report was filed. The learned Magistrate has chosen to commit the case to the Court of Sessions. On getting the case committed, the same was made over to the Additional Sessions Court for trial and disposal. The learned Additional Sessions Judge,

through Annexure A5 order has directed the Deputy Superintendent of Police, Kanhangad to conduct a further investigation under Section 173(8) Cr.P.C. The said order was passed *suo motu* and not on any application by the investigating officer. The same is under challenge.

3. Heard the learned Senior Counsel for the petitioners and the learned Public Prosecutor.

4. Following the decision in ***Hemant Dhasmana v. Central Bureau of investigation***[(2001) 7 SCC 536] in ***Abdul Latheef v. State of Kerala***[2014(3) KLT 905] it was held that the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the Court. At the same time, it has to be taken note of that the said power can be exercised only at the time of taking cognizance on the final report. After taking cognizance, either the Magistrate or the Sessions Court has no power of its own to order further investigation under Section 173(8) Cr.P.C.

5. In this case, on getting such an order from the learned Additional Sessions Judge, the Dy.S.P. of Kanhangad has chosen to conduct further investigation and to file a further final report, by arraigning the present petitioners as A2 and A3 in the case. Of course, in the course of evidence, if the complicity of these petitioners comes to light, it is open to the court below to exercise the power conferred on it under Section 319 Cr.P.C. The court below ought not to have invoked the power under Section 173(8) Cr.P.C. and instead, it should have invoked the power under Section 319 Cr.P.C. In a sessions case, when the case has been committed, there is no option for the Sessions Court to exercise the power under Section 173(8) Cr.P.C., as cognizance has already been taken in the matter by the learned Magistrate by accepting the final report. Even if the order of committal is wrong, the Sessions Court cannot order further investigation in the matter on its own under Section 173(8) Cr.P.C..

6. Matters being so, Annexure A5 order passed by the court below ordering a further investigation under Section 173(8) Cr.P.C. is totally erroneous and therefore, the same is liable to be quashed.

In the result, the CrI.M.C. is allowed and Annexure A5 order and all further proceedings based on it are quashed. It is open to the court below to exercise the power under Section 319 Cr.P.C., if there is evidence with regard to the complicity of the petitioners or any other persons.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge