

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

Crl.MC.No. 6393 of 2015 ()

CRIME NO. 756/2011 OF KOTHAMANGALAM POLICE STATION , ERNAKULAM DISTRICT
=====

PETITIONER/ACCUSED NO.(30 IN CRIME NO.756/11)2 IN S.C.237/15 :

**ABDUL SALAM, AGED 32 YEARS
S/O. ALIYAR, KANJJIRAKKATTUKUDY HOUSE, NELLIKUZHY KARA
ERAMALLOOR VILAGE, KOTHAMANGALAM TALUK.**

**BY ADVS.SRI.A.CHERIAN
SRI.NAVEEN THOMAS**

RESPONDENTS/STATE:

**1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

**2. DEPUTY SUPERINTENDENT OF POLICE
CRIME DETACHMENT UNIT, ALUVA - 683 101.**

BY PUBLIC PROSECUTOR SMT. SHEEBA M.T.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12-11-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- | | |
|--------------------|---|
| ANNEXURE A1 | CERTIFIED COPY OF FIR IN CRIME 756/11 OF KOTHAMANGALAM
POLICE STATION DATED 2.7.2011 |
| ANNEXURE A2 | CERTIFIED COPY OF THE CHARGE SHEET IN S.C.NO.237/14 OF
THE ADDITIONAL DISTRICT & SESSIONS COURT AT
ERNAKULAM FOR TRIAL OF OFFENCE AGAINST WOMEN &
CHILDREN |
| ANNEXURE A3 | CERTIFIED COPY OF THE STATEMENT OF VICTIM UNDER
SECTION 164 OF CR.P.C. DATED 14.6.2012 |
| ANNEXURE A4 | PHOTOCOPY OF THE STATEMENT OF VICTIM UNDER SECTION
164 OF CR.P.C. DATED 14.9.2012 |
| ANNEXURE A5 | CERTIFIED COPY OF THE REPORT O THE IDENTIFICATION
PARED CONDUCTED BY HONO0URABLE MAGISTRATE AT
MUVATTUPUZHA DATED 2.4.2012 |
| ANNEXURE A6 | CERTIFIED COPY OF THE RENT AGREEMENT ENTERED IN
BETWEEN THE PETITIONER AND THE CW2 IN SC 234/14 |

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY //

P.A.TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.6393 of 2015

Dated this the 12th day of November, 2015

O R D E R

The petitioner herein is the 30th accused in Crime No.756/2011 of the Kothamangalam Police Station. The police has submitted final report in the said crime under Sections 366 A, 373 and 376 read with 109 IPC. The case is now pending as S.C.No.237/2014 before the Additional Sessions Court for trial of the Offences against Women and Children, at Ernakulam. The petitioner seeks orders quashing the prosecution against him on the ground that the prosecution does not have any definite materials to implicate him, and that he was not properly identified by the victim during the process of investigation. The petitioner relies on some alleged inconsistencies in the statements of the victim.

2. On hearing both sides and on a perusal of the materials including the statements given by the victim of offence, I find that the prosecution as against the petitioner cannot be now quashed under Section 482 Cr.P.C. He is being prosecuted as an abettor, who made necessary arrangements for the other accused to commit the offence of rape. As regards the question as to whether the room wherein the alleged rape was committed, was locked from outside by the petitioner, there does not appear to be much inconsistency. Any way,

the main ground argued by the petitioner is that he was not properly identified by the victim during the investigation. The question of identification of the accused during investigation or acceptability of such identification, cannot be decided by the High Court under Section 482 Cr.P.C. When materials are otherwise there to show that commission of offence by the other accused was facilitated or abetted by the petitioner herein, it is a matter for decision by the trial court during trial, whether the petitioner had in fact abetted, the commission of offence in any manner, or whether he was properly identified by the victim during investigation. The role of the trial court cannot be assumed by the High Court under Section 482 Cr.P.C. Let the matters proceed for trial, and let the questions raised by the petitioner be looked into and decided by the trial court. I find no reason or ground to quash the case as against the petitioner at this stage.

In the result, this Crl.M.C. is dismissed.

Sd/-

P. UBAID, JUDGE

sd12/11

// True Copy //

P.A. to Judge