

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Crl.MC.No. 5239 of 2014 ()

CC. NO.613/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, MUVATTUPUZHA.

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PETITIONER/2ND ACCUSED:

**ELDHOSE V.SUNNY,
S/O.SUNNY, VELLAPPAKUZHIL HOUSE,
MEKKADAMPU. P.O., MUVATTUPUZHA.**

BY ADV. SRI.M.V.PAULOSE.

RESPONDENT/COMPLAINANT:

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

*** ADDL. R2 IMPEADED**

**2. POULOSE, S/O CHACKO, AGE 50 (CW-1),
ATTIKUDIYILL, VALOKOM VILLAGE,
MEKKADAMPU, MUVATTUPUZHA-682 316.**

*** IS IMPEADED AS ADDITIONAL R2 AS PER ORDER DATED 24/11/2014
IN CRL.MA. NO.10409/2014 IN CRL.MC. NO.5239/2014.**

**R1 BY PUBLIC PROSECUTOR SMT.P. MAYA.
R2 BY ADVS. SRI.BECHU KURIAN THOMAS,
SRI.S.SREEDEV.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 29-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE I- TRUE COPY OF THE INJUNCTION ORDER NO.2049/2012 IN OS.285/2012 DATED 16.08.2012 OF THE HON'BLE MUNSIFF COURT, MUVATTUPUZHA.**
- ANNEXURE II- TRUE COPY OF THE STATEMENT GIVEN BY CW-2 DATED 07.11.2012.**
- ANNEXURE III- TRUE COPY OF THE STATEMENT GIVEN BY CW-3 DATED 23.10.2012.**
- ANNEXURE IV- TRUE COPY OF THE ORIGINAL CHARGE IN CRIME NO.928/2012 SUBMITTED BEFORE THE JFCM COURT, MUVATTUPUZHA DATED 12.11.2012.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

B.KEMAL PASHA, J.

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Crl.M.C. No. 5239 of 2014

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Dated this the 29th day of October, 2015

ORDER

The petitioner is the 2nd accused in C.C.No.613/2012 of the Judicial First Class Magistrate's Court, Muvattupuzha, for the offences punishable under Sections 294(b) and 326 read with Section 34 IPC.

2. On going through the case in the final report and the versions of CWs.1 and 2, it can be seen that the injury, which resulted in grievous hurt to the de facto complainant was allegedly done by the 1st accused. It was after the said incident, in which, the injury was resulted, the petitioner allegedly rushed to the spot. The only allegation against the petitioner is that he abused the de facto complainant and nothing more. Even though the exact term allegedly used by the petitioner to abuse the de facto complainant is reproduced by the de facto complainant, it seems that the

same cannot attract an offence under Section 294(b) IPC. At any stretch of imagination, the petitioner cannot be dragged into the offence of Section 326 IPC with the aid of Section 34 IPC, since there was no presence and participation from the part of the petitioner in such an offence.

3. From what is discussed above, it seems that the prosecution against the petitioner is quiet unnecessary and therefore, the proceedings against the petitioner herein in C.C.No. 613/2012 of the Judicial First Class Magistrate's Court, Muvattupuzha, based on Annexure -IV final report are liable to be quashed.

In the result, this Crl.M.C is allowed and C.C.No. 613/2012 of the Judicial First Class Magistrate's Court, Muvattupuzha, based on Annexure -IV final report, are hereby quashed

Sd/-
B.KEMAL PASHA, JUDGE

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