

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

Crl.MC.No. 5291 of 2014

CC 298/2011 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, THIRUVANANTHAPURAM

PETITIONER(S)/ACCUSED NO.1 TO 6:

1. MITHUN MOHAN, AGED 29 YEARS,
S/O.MOHAN KUMAR, VIDYA NIKETHAN, TC.11/59,
CNRA 60, CHEMPAKASSERI NAGAR, PATTOM,
THIRUVANANTHAPURAM.
2. KRISHNAN, AGED 49 YEARS,
S/O.SADANANDAN, DIVYA BHAVAN, CHEMPASSERI NAGAR,
PATTOM, THIRUVANANTHAPURAM.
3. RAJAN,
S/O.SADANANDAN, DIVYA BHAVAN, CHEMPAKASSERI NAGAR,
PATTOM, THIRUVANANTHAPURAM.
4. NITHYA MOHAN, AGED 24 YEARS,
D/O.MOHAN KUMAR, VIDYA NIKETHAN, TC.NO.11/59,
CNRA 60, CHEMPAKASSERY NAGAR, PATTOM,
THIRUVANANTHAPURAM.
5. SUKUMARI, AGED 56 YEARS,
W/O.MOHAN KUMAR, TC.11/59, CNRA 60,
CHEMPAKASSERY NAGAR, PATTOM, THIRUVANANTHAPURAM.
6. OMANA, AGED 60 YEARS,
W/O.STEPHEN, PANAYAVILA PUTHEN VEEDU, DIVYA NAGAR,
NALANCHIRA, THIRUVANANTHAPURAM.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENT(S)/COMPLAINANT & STATE:

1. THOMAS ,
S/O.JOSEPH, T.S.HOUSE, CONVENT LANE,
NALANCHIRA, THIRUVANANTHAPURAM.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADVS. SRI.R.SUNIL KUMAR

SMT.A.SALINI LAL

R2 BY PUBLIC PROSECUTOR SMT.MAYA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
15-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 5291 of 2014

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-A CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.152/2010

ANNEXURE-B CERTIFIED COPY OF THE REFER REPORT IN CRIME NO.152/2010

**ANNEXURE-C CERTIFIED COPY OF THE PROTEST COMPLAINT FILED IN
C.C.298/2011**

**ANNEXURE-D CERTIFIED COPY OF THE ORDER DATED 6/6/2014 IN
C.M.P.NO.3079/2012 IN C.C.298/2011.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B. KEMAL PASHA, J.

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Dated this the 15th day of December, 2015

ORDER

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Heard learned counsel for the petitioners, learned counsel for the 1<sup>st</sup> respondent and learned Public Prosecutor.

2. Challenge is with regard to the taking of cognizance by the learned Magistrate in CC No.298/2011 of the Additional Chief Judicial Magistrate's Court, Thiruvananthapuram.

3. Initially, a final report was filed alleging offences under Sections 188, 294(b), 447, 341, 323 and 324 read with Section 34 IPC in Crime No.152/2010 of Medical College Police Station, Thiruvananthapuram. The said crime was registered as counter case to Crime No.151/2010 of the said Police Station. The petitioners are the accused. After the filing of the final report, a further investigation was

ordered at the request of the higher ups in the police and after a so-called further investigation under Section 173(8) Cr.P.C., the investigating officer filed a further final report by referring the case against the petitioners.

4. When the further final report came before the learned Magistrate, the learned Magistrate has passed Annexure-D order, whereby the learned Magistrate has chosen to reject the further final report, and took cognizance of the aforesaid offences.

5. True that the offence under Section 188 IPC is not legally sustainable in this case as it was not the result of a complaint from the appropriate authority. With regard to the other offences, it seems that the learned Magistrate has applied his mind in the matter before him and he had chosen to reject the further final report filed by the police, and took cognizance of the offences against the petitioners. In fact, the court below ought not to have taken cognizance of the offence under Section 188 IPC. But, with regard to

the other offences, I do not find fault with the learned Magistrate in taking cognizance of those offences, when the learned Magistrate has applied his mind. The burden is on the prosecution to prove those offences against the petitioners. When it is a case and counter, both the cases have to be considered simultaneously by the court and pass separate judgments.

Matters being so, this CrI.M.C. is disposed of accordingly. It is made clear that an offence under Section 188 IPC will not lie in the matter. With regard to the other offences, the court below shall proceed with the matter.

Sd/-  
**(B.KEMAL PASHA, JUDGE)**

aks/17/12

*// True Copy //*

*PA to Judge*