

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

Crl.MC.No. 5303 of 2014 ()

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CC. NO.1005/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
KOTHAMANGALAM.**

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PETITIONER:

**WILSON, AGED 48 YEARS,
S/O.POULOSE, KOLENCHERRY HOUSE,
KUTHUKUZH P.O., KOTHAMANGALAM - 686 691.**

BY ADV. SRI.K.R.VINOD.

RESPONDENTS:

- 1. GIREESH, AGED 38 YEARS, S/O.CHANDRAN,
KUMBALAKKUDIYIL HOUSE, NJAYAPPILLY P.O.,
KUTTAMPUZHA VILLAGE, KOTHAMANGALAM TALUK-686 681.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN-682 031.**

**R1 BY ADV. SRI.PEEYUS A.KOTTAM.
R2 BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 12-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

**ANNEXURE A1:- THE CERTIFIED COPY OF THE WRITTEN COMPLAINT
LODGED BY THE 1ST RESPONDENT BEFORE THE POLICE
DTD. 06/07/2013.**

**ANNEXURE A2:- THE CERTIFIED COPY OF THE FIR NO.988/2013 OF
KOTHAMANGALAM POLICE STATION.**

**ANNEXURE A3:- THE CERTIFIED COPY OF THE FINAL REPORT IN
CC NO.1005/2014 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT, KOTHAMANGALAM.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Crl.M.C.No.5303 of 2014

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Dated this the 12th day of August, 2015

ORDER

The prayer in this Crl.M.C. is for an order from this Court to quash the impugned Anx.A-3 final report/charge sheet filed in the impugned Anx.A-2 Crime No.988/2013 of Kothamangalam Police Station, Ernakulam Rural District, registered for offences under Sec.118(d) of the Kerala Police Act and Sec.506(i) of the Indian Penal Code. The present impugned criminal proceedings have given rise to Calendar Case, C.C.No.1005/2014 on the file of the Judicial First Class Magistrate's Court, Kothamangalam.

2. Heard Sri.K.R.Vinod, learned counsel appearing for the petitioner, Sri.Peeyus.A.Kottam, learned counsel appearing for the 1st respondent and the learned Public Prosecutor appearing for the 2nd respondent State of Kerala.

3. As pointed out above, the only offences alleged in the impugned Anx.A-3 final report/charge sheet are those under Sec. 118(d) of the Kerala Police Act and Sec.506(i) of the I.P.C. The Apex

Court in the celebrated case, *Shreya Singhal v. Union of India* reported in 2015 (5) SCC 1 = AIR 2015 SC 1523 = 2015 (2) KLT 1 (SC) has already struck down the impugned provisions in Sec.118(d) of the Kerala Police Act and has declared as unconstitutional, ultra vires and unenforceable. Therefore, in view of this crucial aspect of the matter, continuance of the impugned proceedings for the offence under Sec.118(d) of the Kerala Police Act are no longer tenable and has also become ultra vires and unenforceable. The only remaining offence in the impugned criminal proceedings is one under Sec.506(i) of the I.P.C., which indisputably is a non-cognizable offence, which cannot be independently prosecuted in a Police charge sheeted case, without the prayer permission mandated in Sec.155(2) of the Cr.P.C. even for initiation of the crime and the commencement of the investigation. The respondents have no case whatsoever that prior permission from the Magistrate as envisaged under Sec.155(2) Code of Criminal Procedure has been secured in this case prior to the commencement of the investigation. In this view of the matter, continuation of the impugned proceedings for these offences is no longer legally justifiable. In this view of the matter, the impugned proceedings at Anx.A-3 final report/charge

sheet filed in the impugned Anx.A-2 Crime No.988/2013 of Kothamangalam Police Station, which has led to the pendency of C.C.No.1005/2015 on the file of the Judicial First Class Magistrate's Court, Kothamangalam, pending against the petitioner and all further proceedings arising therefrom pending against the petitioner are quashed. It is made clear that the quashment is only in relation to the aforestated offences mentioned in the impugned criminal proceedings for the aforestated reasons.

With these observations and directions, the Crl.M.C. stands finally disposed of.

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ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge