

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

Crl.MC.No. 6258 of 2013 ()

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CRL. MP. NO.1440/2012 IN CC. NO.38/2010 OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE COURT (E&O), ERNAKULAM.**

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PETITIONER/ACCUSED NO.4:

**VIPIN DAS, S/O. DEVADAS,
NO. 10 -C, REGAL AVALONE FLAT,
CHEMBUMUKKU, VAZHAKKALA,
COCHIN - 682 035.**

BY ADV. SRI.P.SATHISAN.

RESPONDENTS/COMPLAINANT AND STATE:

- 1. THE C.I. OF POLICE,
ERNAKULAM TOWN NORTH POLICE STATION,
ERNAKULAM.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 13-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

ANNEXURE A1 COPY OF THE DISCHARGE PETITION.

**ANNEXURE A2 COPY OF THE ORDER DATED 07/11/2013 IN CRL.MP. NO.1440/2012
IN C.C.38/2010 OF THE ADDITIONAL CJM (EO), ERNAKULAM.**

**ANNEXURE A3 COPY OF THE CHARGE SUBMITTED BY THE 2ND RESPONDENT
UNDER SEC. 3, 4, 5 AND 7 OF THE IMMORAL TRAFFIC
(PREVENTION) ACT, 1956, BEFORE ADDITIONAL CJM (EO),
ERNAKULAM.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

B.KEMAL PASHA, J.

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Crl.M.C. No. 6258 of 2013

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Dated this the 13th day of October, 2015

O R D E R

Through Annexure - A3 final report, the petitioner has been indicted as the 4th accused for the offences punishable under Sections 3, 4, 5 and 7 of the Immoral Traffic (Prevention) Act, 1956 (for short 'the Act'). The date of incident was 02.11.2009. The investigation was conducted by the Circle Inspector of Police, Fort Kochi as per the orders of the Deputy Commissioner of Police, Cochin City. The final report has been filed by the Circle Inspector of Police, Ernakulam Town North Police Station.

2. Both the Police Officers, who conducted the investigation as well as filed final report are not special Police Officers within the meaning of Sections 13(1) and (2) of the Act. As per Section 13(1) of the Act, for each area, a

special Police Officer has to be appointed by the Government. The learned Public Prosecutor has also pointed out that, during the period in question, the concerned area was not coming within the jurisdiction of the Circle Inspector of Police, Fort Kochi. Therefore, the Circle Inspector of Police, Fort Kochi was not competent under Sections 13(1) and 13(2) of the Act to investigate the said crime.

3. Similarly, the area, wherein the crime was allegedly committed was not included in the notification for the area to which the Circle Inspector of Police, Ernakulam Town North Police Station was appointed as the special Police Officer. Matters being so, the said officer is also not competent to file the final report in question.

4. By detailing all above deficiencies, Annexure - A1 was filed before the court below under Section 239 Cr.P.C. Through Annexure - A2 order, without speaking anything regarding these aspects, the court below has passed an order showing that the court below has decided to frame

charge against the petitioner on 01.08.2013. Annexure - A2 order is per se illegal. It is not a speaking order. From what is discussed above, it seems that the proceedings initiated against the petitioner are not sustainable in the eye of law.

5. Consequently, Annexure A3 final report in Crime No.1927/2009 of Ernakulam Town North Police Station, presently pending as C.C.No.38/2010 before the Additional Chief Judicial Magistrate's Court (Economic Offences), Ernakulam as against the petitioner herein, are liable to be quashed.

In the result, this Crl.M.C is allowed and Annexure A3 final report in Crime No.1927/2009 of Ernakulam Town North Police Station, presently pending as C.C.No.38/2010 before the Additional Chief Judicial Magistrate's Court (Economic Offences), Ernakulam as against the petitioner herein, are hereby quashed.

Sd/-
B.KEMAL PASHA, JUDGE