

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

Crl.MC.No. 6482 of 2014

CC 201/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KOLENCHERRY
.....

PETITIONER(S)/ACCUSED 2 TO 7:

1. **POULOSE,**
S/O VARGHESE, KEENELIL HOUSE,
PARIYARAM KARA, AICKARANADU SOUTH VILLAGE.
2. **VARGHESE,**
S/O POULOSE, VELLACHALIL HOUSE, ATHANIBHAGATHU,
CHEMMANADU KARA, THIRUVANIYOOR VILLAGE.
3. **GEORGE,**
S/O VARGEHSE, KADAMBANATTU HOUSE, MEEMBARA,
DO. DO.
4. **ALIYAS,**
S/O KURIAKOSE, KALLITHIRIYIL, VENKIDA KARA,
DO. VILLAGE.
5. **K.V.THOMAS,**
S/O VARGHESE, KADAMMANATTU HOUSE, KURINJI,
PARIYARAM KARA, AICKARANADU SOUTH VILLAGE.
6. **CHACKO,**
S/O CHACKO, AMMATTUKUZHIIYIL, MARANGATTULLY KARA,
THIRUVANIYOOR VILLAGE.

BY ADVS.SRI.N.SUKUMARAN (SR.)
SRI.S.SHYAM
N.K KARNIS

RESPONDENT(S)/COMPLAINANT AND IST ACCUSED :

1. **STATE OF KERALA,**
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

Msv/

Crl.MC.No. 6482 of 2014

2. SUB INSPECTOR OF POLICE,
PUTHENCROUZ POLICE STATION, PUTHENCROUZ P.O.,
PIN:682 308.
3. THAMBU GEORGE THUKALAN,
S/O GEORGE, THUKALAN HOUSE, MULANTHURUTHY KARA,
MULANTHURUTHY VILLAGE-682 314.

R1 & R2 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE
R3 BY ADV. SRI.SAJI VARGHESE KAKKATTUMATTATHIL

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
09-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

msv/

Crl.MC.No. 6482 of 2014

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE A1: ATTESTED COPY OF THE FIRST INFORMATION REPORT
DATED 16.12.2012 SUBMITTED BY THE 2ND RESPONDENT IN
C.C.NO.201 OF 2014 OF HIS POLICE STATION.**

**ANNEXURE A2: ATTESTED COPY OF THE FINAL REPORT DATED 15.1.2013 FILED IN
C.C.NO.201 OF 2014 OF JUDL. FIRST CLASS MAGISTRATE'S COURT,
KOLENCHERRY.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B. KEMAL PASHA, J.

.....
Crl.M.C. No.6482 of 2014
.....

Dated this the 9th day of December, 2015

ORDER

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Heard learned counsel for the petitioners and learned Public Prosecutor.

2. The petitioners are A2 to A7 in CC No.201/2014 of the Judicial First Class Magistrate's Court, Kolenchery which has arisen from Crime No.507/2012 of Puthencruz Police Station for the offences under Sections 143, 147, 153, 188 read with Section 149 IPC. The allegation against the petitioners and the other accused is that on 16.12.2012 at 3 p.m. they had entered in the St.Peters' and St.Paul's Church, Kurinji by violating the order passed by the learned Sub Divisional Magistrate, Muvattupuzha and remained there, thereby not giving way for the Orthodox faction to conduct worship at the Church.

3. Heard learned Senior Counsel for the petitioners

and learned Public Prosecutor.

4. On going through the allegations, it seems that any of the offences alleged against the petitioners cannot be attracted in the matter. As far as the offence under Section 188 IPC is concerned, the court below could not have taken cognizance of the said offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Here, it is only a police report and therefore, the offence under Section 188 IPC is not legally sustainable as per Section 195(1)(a) Cr.P.C.

5. With regard to the offences of unlawful assembly, rioting and the offence under Section 153 IPC also, it seems that there are no sufficient materials to attract the said offences. The assembly inside a Church cannot normally be termed as unlawful assembly unless otherwise expressly shown. Here, the persons have assembled in the Church for worship, and the prosecution has no case that it was not

for worship. The only case is that they have not given way for the Orthodox faction to conduct worship in the Church as they have not vacated voluntarily from the Church. There was no positive action from the part of the petitioners to prevent the other faction from conducting worship in the Church. Only thing is that they had remained in the Church and they had not vacated the Church. There was no lawful command on them to go out of the Church. There is absolutely nothing to show that they have deliberately caused any hindrance or obstruction to the conduct of worship by the Orthodox faction in the Church. Matters being so, the aforesaid offences also will not lie.

6. No doubt, there cannot be a successful prosecution in the matter even if the case is continued and the same will only be a waste of time. Therefore, all further proceedings as against the petitioners in CC No.201/2014 of the Judicial First Class Magistrate's Court, Kolenchery which has arisen from Crime No.507/2012 of Puthencruz Police

Station, can be quashed.

In the result, this Crl.M.C. is allowed and all further proceedings as against the petitioners in CC No.201/2014 of the Judicial First Class Magistrate's Court, Kolenchery which has arisen from Crime No.507/2012 of Puthencruz Police Station, are quashed.

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

aks/10/12

*// True Copy //*

*PA to Judge*