

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

Cr1.MC.No. 6952 of 2014  
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IN ST 3883/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,  
VAIKOM

PETITIONERS/ACCUSED NO.1-5:  
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1. MAHESH, AGED 29 YEARS,  
S/O.SIVAN, R/O.PADINJAREKURICHIYIL,  
VADEKKEMURI VILLAGE, UDAYANAPURAM, VAIKOM.
2. HARIKRISHNAN, AGED 25 YEARS,  
S/O.RAJENDRAN, R/O.PUTHENVEEDU, NEAR KANIYAMTHODU,  
NADUVILE VILLAGE, UDAYANAPURAM, VAIKOM.
3. SHIJO, AGED 29 YEARS,  
S/O.M.K.CHANDRAN, R/O.AMBATTU HOUSE,  
NEAR KARUVALLIPADI, UDAYANAPURAM, VAIKOM.
4. SHYAMLAL, AGED 29 YEARS,  
S/O.PRABHAKARAN, R/O.KUNNUMPURATHU, NADUVILE VILLAGE,  
UDAYANAPURAM, VAIKOM.
5. SHANKARLAL, AGED 27 YEARS,  
S/O.PRABHAKARAN, R/O.KUNNUMPURATHU, NADUVILE VILLAGE,  
UDAYANAPURAM, VAIKOM.

BY ADVS.SRI.P.HARIDAS  
SMT.S.SIKKY  
SRI.P.C.SHIJIN

RESPONDENTS/STATE & COMPLAINANT:  
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1. STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM - 682 031.
2. SUB INSPECTOR OF POLICE  
JANAMYTHRI POLICE STATION, VAIKOM,  
KOTTAYAM DISTRICT - 686 143.

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 07-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 6952 of 2014

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APPENDIX

PETITIONERS' ANNEXURES:

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ANNEXURE 1- COPY OF THE FIR NO.1611/2014 OF VAIKOM POLICE  
STATION.

RESPONDENTS' ANNEXURES:

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NIL

//TRUE COPY//

P.A TO JUDGE

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**P.UBAID, J.**

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**Crl.M.C No.6952 of 2014**  
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Dated this the 7<sup>th</sup> day of April, 2015

**O R D E R**

The petitioners herein are the five accused in S.T No.3883/2014 of the Judicial First Class Magistrate Court, Vaikom, facing a prosecution under Section 15(c) of the Kerala Abkari Act, on the allegation that at about 6.30 pm on 28.9.2014 these petitioners were found consuming liquor in a public place. They were arrested on spot by the Sub Inspector of Police, Vaikom, and a crime was registered against them. The petitioners now seek orders quashing the prosecution on the ground that the whole prosecution is artificial and suspicious, and that the police has in fact brought a false case against them. The petitioners challenge the final report on two important grounds. One is that the First Information Statement suo motu made by the Sub Inspector, and which lead to the crime is in a printed form. The other ground is that even the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure are in printed form. Of course the FIR can be in printed form, and in the case of final report also it is

permissible to an extent. But there also, whether final report in printed form is acceptable or not, will depend upon the facts of the case and nature of the case. But in no circumstance can the statement of witnesses under Section 161 of the Code of Criminal Procedure be in printed form. As regards the first information statement also it must be a statement voluntarily made by the first informant. The contents of such statement must come from the mouth of the informant, and it cannot be in a printed form. The position is covered by a decision of this Court in **Premchand V. State of Kerala (2015(1) KLT 32.**

2. The very fact that even the first information statement in this case is in a printed form makes the whole prosecution case suspicious. Nothing more is required to find that the whole case is in fact artificial. The genuineness and acceptability of the first information statement itself is really suspicious here, and even the statements of the material witnesses are seen in some printed form. The statement given by a witness under Section 161 of the Code of Criminal Procedure must be his own statement voluntarily made by him, and it cannot be something filled in by the investigating officer in a printed form. Here I find that the whole prosecution case is

really artificial and suspicious. Continuance of this prosecution will be sheer abuse of legal process.

In the result, this Criminal Miscellaneous Case is allowed. The prosecution against the petitioner in S.T No.3883/2014 will stand set aside.

**P.UBAID  
JUDGE**

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