

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

Crl.MC.No. 7084 of 2014 ()

**IN CC 1616/2013 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KANNUR
CRIME NO. 1111/2013 OF KANNUR TOWN, KANNUR**

PETITIONER(S)/PETITIONER/ACCUSED:

**ZEENATH M. AGED 42 YEARS
W/O.ABDUL AZEEZ, RESIDING AT"KHADEEJA MANZIL"
CHALAD P.O, KANNUR 670 014**

BY ADV. SRI.T.K.SASINDRAN

RESPONDENT(S)/STATE/COMPLAINANT/RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682 030**
- 2. STATION HOUSE OFFICER,KANNUR TOWN POLICE STATION,KANNUR
DISTRICT 670 001**
- 3. SHAMAL VALSAN,, AGED 30 YEARS
S/O.VALSAN, "KOSCHARATH HOUSE, KOSHOR MOOLA
EDAKKAD P.O, KANNUR DISTRICT 670 302**

R1-2 BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18-02-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1 TRUE COPY OF THE F.I.R DTD 11-07-2013 OF THE PAYANGADI POLICE STATION

ANNEXURE A2 TRUE COPY OF THE CHARGE SHEET IN CRIME 1111 OF 2013

ANNEXURE A3 TRUE COPY OF THE BODY MAHAZAR OF THE CAR BEARING REGISTRATION NO KL-13-X-7820

ANNEXURE A4 TRUE COPY OF THE STATEMENT GIVEN BY CW(6) OWNER OF SONA RESTAURANT BEFORE THE POLICE

ANNEXURE A5 TRUE COPY OF THE PETITIN DATED 25-07-2013 SUBMITTED ON BEHALF OF THE PETITIONER BEFORE THE 2ND RESPONDENT

ANNEXURE A6 TRUE COPY OF THE PROCLAMATION ISSUED U/S 82 OF CR.P.C DATED 11.6.2014

ANNEXURE A7 CERTIFIED COPY OF THE JUDGMENT DATED 16-09-2014 IN CRL M.C 5193/2014

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 7084 of 2014

Dated this the 18th day of February, 2015.

O R D E R

The petitioner herein stands arraigned as accused in C.C No.1616 of 2013 of the Judicial First Class Magistrate Court-I, Kannur. The offences alleged against her are under Sections 337 and 427 IPC. The prosecution case is that a part of the petitioner's building collapsed due to poor maintenance, and in the said incident, the third respondent herein sustained some simple injuries. It is alleged that his car was also damaged in the said incident. The police registered a crime on the complaint of the third respondent herein, and without any application of mind submitted final report under Sections 337 and 427 IPC. The definite case of the petitioner is that a portion of the building happened to collapse, when the third respondent took his car in reverse gear rashly and negligently. Due to the said rashness and negligence, the car of the third respondent happened to hit on the building, as a result of which a portion collapsed, and in the said incident the car was damaged. There is reason to believe that the petitioner has a genuine grievance. Anyway, the serious consideration here is whether the alleged incident will

attract a prosecution under Sections 337 and 427 IPC. The offence of mischief punishable under Section 427 IPC is an offence requiring *mens rea*. It is not known how accidental collapse of a small portion of the building, causing some sort of damage to a car parked there will cause a prosecution under Section 427 IPC. Such a prosecution is definitely unsustainable.

2. What is made punishable under Section 337 IPC is some act done rashly or negligently so as to endanger human life, and this act must cause some hurt to any person. Thus, there must be direct nexus between the alleged act and the injury caused. It is not known how such a prosecution is possible here, where portion of a building accidentally collapsed, causing some slight damage to the car of the third respondent. It appears that the third respondent brought such a prosecution quite mischievously without any basis, and there is reason to believe that under some influence the police submitted final report under Sections 337 and 427 IPC. The alleged act if at all the version of the third respondent is acceptable on facts will have only civil consequences. The third respondent can at the most claim compensation from the petitioner. For a prosecution under Section 427 IPC, there must be the required *mens rea*, to cause wrongful loss, and for a

prosecution under Section 337 IPC, there must be some nexus between the alleged act done negligently, and infliction of injuries. Here I find that those essentials are not there, and so the prosecution as a whole will have to be quashed.

3. The third respondent remained absent in spite of notice. It appears that he knows the result of the proceeding brought by him mischievously. Instead of pursuing appropriate civil remedy if at all it is possible, and if the allegations made by him are true he brought an experimental prosecution, which according to me is nothing, but an abuse of legal process.

In the result, this petition is allowed. The prosecution against the petitioner in C.C No.1616 of 2013 of the Judicial First Class Magistrate Court – I, Kannur will stand quashed under Section 482 Cr.P.C. Accordingly, the petitioner will stand released from prosecution, and the bail bond if any executed by her will stand discharged.

P.UBAID,
JUDGE