

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

Crl.MC.No. 7129 of 2014 ()

CC 718/2011 of J.M.F.C.-V,KOZHIKODE

PETITIONERS/ACCUSED 1 TO 3:

1. SHIBU, AGED 33 YEARS
S/O.GOPALAN, PARAKANDY HOUSE, P.O.PANTHEERANKAVU
KOZHIKODE.
2. BINDU, AGED 41 YEARS
W/O.SURESH BABU, PARAKANDY HOUSE, P.O.PANTHEERANKAVU
KOZHIKODE.
3. BINEESH, AGED 23 YEARS
S/O.SURESH BABU, PARAKANDY HOUSE, P.O.PANTHEERANKAVU
KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS/COMPLAINANT & STATE:

1. BABY SALI, AGED 36 YEARS
W/O.JAYAPRAKASAN, THACHAMBALATH HOUSE
P.O.PANTHEERANKAVU, KOZHIKODE-673019.
2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCH-682031.

R1 BY ADV. SRI.SUNNY MATHEW
R2 BY PUBLIC PROSECUTOR, SHRI.JIBU P THOMAS

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
25-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

ANNEXURE-A: TRUE COPY OF THE COMPLAINT DATED 4.3.2011 FILED BY THE
1ST RESPONDENT WHICH IS TAKEN ON FILE BY THE JUDICIAL
FIRST CLASS MAGISTRATE COURT-V, KOZHIKODE,
AS C.C.NO.718/2011.

ANNEXURE-B: TRUE COPY OF THE INTIMATION RECEIVED BY THE 2ND
PETITIONER FROM THE SUB INSPECTOR OF POLICE, NALLALAM,
DATED NIL.

ANNEXURE-C: TRUE COPY OF THE COMPLAINT DATED 6.8.12 FILED BY THE
1ST PETITIONER THROUGH PROPER CHANNEL TO THE
DISTRICT POLICE CHIEF WITH COPY TO THE DISTRICT COLLECTOR.

ANNEXURE-D: TRUE COPY OF THE LETTER NO.115/1451/SS/30 DATED
13.6.2013 OF THE POLICE ASSISTANT COMMISSIONER SOUTH,
KOZHIKODE CITY.

ANNEXURE-E: TRUE COPY OF THE ORDER DATED 2.5.14 IN C.M.P.NO.4677/13
IN C.C.NO.718/11 ON THE FILE OF THE JUDICIAL FIRST
CLASS MAGISTRATE COURT-V, KOZHIKODE.

ANNEXURE-F: TRUE COPY OF THE EVIDENCE GIVEN BY COMPLAINANT AND
THE OTHER WITNESS EXAMINED AS PW1 ON 2.8.13.

ANNEXURE-G: TRUE COPY OF THE EVIDENCE GIVEN BY COMPLAINANT AND THE
OTHER WITNESS EXAMINED AS PW2 ON 2.8.13.

RESPONDENTS' EXHIBITS : NIL

// TRUE COPY //

PA to Judge

B.KEMAL PASHA, J.

Crl.M.C.No.7129 of 2014 F

Dated this the 25th day of March 2015

ORDER

The prayer in this petition is to set aside the entire proceedings in C.C. No.718/2011 of the Judicial First Class Magistrate's Court-V, Kozhikode.

2. It seems that the petitioners had filed a petition before the Judicial First Class Magistrate's Court-V, Kozhikode in C.C. No.718 of 2011, seeking discharge. Even though evidence was recorded in that case, the learned Magistrate had disposed of the said application by treating it as one under Section 245(2) Cr.P.C. and an order to that effect has been passed. The main complaint is that the learned Magistrate ought to have passed an order under Section 245(1) of Cr.P.C., when evidence has been recorded.

In the result, the impugned order is set aside and the matter is remitted to the learned Magistrate and the learned Magistrate is directed to consider C.M.P. No.4677 of 2013 in C.C. No.718 of 2011 as one filed under Section 245(1) Cr.P.C and pass appropriate orders on it, in accordance with law. It is made clear that this court has not entered any opinion with regard to the merits of the matter. The learned Magistrate shall pass orders on C.M.P. No.4677 of 2013 in C.C. No.718 of 2011, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this order.

This Crl.M.C. is disposed of as above.

**sd/
B.KEMAL PASHA,
JUDGE**

dl