

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

Crl.RC.No. 18 of 2015 ()

CRL.A.NO. 302/2013 OF II ADDL.SESIONS COURT, ERNAKULAM

CC.NO. 1007/2003 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -II, ERNAKULAM

**SUO MOTU PROCEEDINGS INITIATED ONA COMMUNICATION
RECEIVED FROM THE IIND ADDL.DISTRICT AND SESSIONS JUDGE,
ERNAKULAM.**

AGAINST :

- 1. NAJEEB RAWTHER S/O.MUHAMMED KUNJU RAWTHER,
PADINJARETHOPPIL HOUSE, CHATTATHODU.P.O.,
VENNIKKULAM, THIRUVALLA.**
- 2. OMANAKKUTTAN, S/O.KOCHUKUNJU NAIR,
PANACHIKKAL HOUSE, NALPATHIYIL, THELLIYOOR MURI,
THELLIYOOR VILLAGE, MALAPPALLY TALUK.**
- 3. THE STATE OF KERALA.**

R3 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS CRIMINAL REVISION CASE HAVING COME UP FOR ADMISSION
ON 30-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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B.KEMAL PASHA, J.

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CRL.R.C. No.18 of 2015

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Dated this the 30th day of September, 2015

ORDER

This is a Criminal Revision initiated under Section 401 Cr.P.C.

2. An appeal was filed by PW1 defacto complainant in C.C.No.1007 of 2003 of the Judicial First Class Magistrate's Court-II, Ernakulam, challenging the acquittal of the accused, as Crl.Appeal No.302 of 2013. The learned Additional Sessions Judge, to whom the appeal was made over, has passed following order on 12.01.2015:

"Heard. This is an appeal against acquittal of the accused. The appeal is not maintainable in the Sessions Court in the light of the decision in Omana Jose V. State of Kerala 2014(2) KLT 504. So the appeal is returned to the appellant for presenting before the Hon'ble High Court of Kerala."

3. The aforesaid order is patently erroneous. The

decision in *Omana Jose (Supra)* is relating to an appeal against acquittal filed by the complainant in a private complaint. C.C.No.1007 of 2003 was the result of a Police report. In such case, the appeal is perfectly maintainable under Section 372 Cr.P.C. Matters being so, the impugned order passed by the learned Additional Sessions Judge is liable to be set aside.

In the result, this Criminal Revision Case is allowed and the impugned order is set aside. The learned Additional Sessions Judge shall proceed with the appeal.

Sd/-

**B. KEMAL PASHA
JUDGE**

DSV/30/9/15

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PA. To Judge