

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

Crl.Rev.Pet.No. 844 of 2015

AGAINST THE JUDGMENT IN CC 641/2014 OF C.J.M., KASARAGOD
CRIME NO. 967/2013 OF KASARAGOD POLICE STATION, KASARGOD

REVISION PETITIONER/ACCUSED:

SHAMSEER P.A, AGED 27 YEARS,
S/O. ABBAS P.M, SHAMSEER MANZIL,
MOGRAL PUTHUR VILLAGE,
KASARAGOD

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS/COMPLAINANT & STATE:

1. SUB INSPECTOR OF POLICE,
KASARAGOD - 671 121
2. CIRCLE INSPECTOR OF POLICE,
KASARAGOD - 671 121
3. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682 031

* ADDL.R4

SABIR.A.Y, AGED 30 YEARS,
S/O.YOUSEFF, MUMMY HAJI HOUSE,
KEZHOOOR P.O, CHANDRAGIRI,
KALANADU VILLAGE, KASARAGOD DISTRICT.

* ADDL.R4 IS IMPEADED AS PER ORDER DATED 28.7.2015 IN
CRL.M.A NO.4099/2015

ADDL. R4 BY ADV. SRI.KODOTH SREEDHARAN
R1 TO R3 BY PUBLIC PROSECUTOR SRI.ABHIJITH LESSLIE

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 20-11-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE I: COPY OF THE FINAL REPORT.

ANNEXURE II: COPY OF THE ORDER OF THE LEARNED MAGISTRATE IN
C.C NO.641/014 DATED 16.6.2015

ANNEXURE AIII: COPY OF THE COURT CHARGE OF C.J.M, KASARAGOD
DATED 16.6.2015.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.R.P No.844 of 2015

Dated this the 20th day of November, 2015

O R D E R

The petitioner herein is the sole accused in C.C . No.641/2014 of the Chief Judicial Magistrate Court, Kasaragod. He is aggrieved by the charge framed by the learned Magistrate under Section 66(D) of the Information Technology Act (for short the 'IT Act'). The police submitted final report in the case under Section 66 of the IT Act, without specifying the exact clause. The offence defined under the 66(A) IT Act stands struck off by the Hon'ble Supreme Court. Finding that the allegation will constitute the offence defined and punishable under Section 66 (D) of the IT Act, the learned Magistrate has framed such a charge. The revision petitioner seeks orders quashing the said charge and seeking discharge on two grounds. One is that the local police has no authority to investigate an offence under the IT Act. Section 78 of the IT Act provides that the offences under the said Act shall not be investigated by any officer below the rank of Inspector. It is submitted that the Government has issued notification defining the jurisdiction of the Cyber police, that the

Cyber Police will have jurisdiction through out Kerala. This does not mean that said the notification will exclude the powers and authority of the other police wings in Kerala. There cannot be such a notification against the provisions of the IT Act or against the provisions of the Code of Criminal Procedure. In fact such a notification only defines the jurisdiction of the Cyber Police and does not exclude the jurisdiction of the other wings of the police. The other ground urged by the revision petitioner is that the allegations will not come under Section 66(D) of the IT Act. Of course this will have to be examined by the learned Magistrate properly and legally. If that is the grievance, an application can be filed by the revision petitioner for alteration of charge under Section 216 of the Code of Criminal Procedure. The learned Magistrate will examine the allegations properly and thoroughly and see whether the allegations will come under Section 66(D) or any other provision like 66(C) of the IT Act. On such application being made, proper decision can be taken by the learned Magistrate. The petitioner's further grievance is that when the police has not specified the specific section, it was not proper for the learned Magistrate to frame a charge under Section 66(D) of the IT Act. This also cannot be accepted. The

Court's concern is only the allegations made by the prosecution in the material documents including the FIR and final report. If the allegations make out a definite offence, charge for the said offence can be well framed by the trial court.

In the result, this revision petition is dismissed, without prejudice to the right of the revision petitioner to make appropriate application under Section 216 of the Code of Criminal Procedure for alteration of charge, which the learned Magistrate shall properly and legally consider.

**Sd/-
P.UBAID
JUDGE**

//True Copy//

P.A to Judge

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