

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 363 of 2014 ()

**AGAINST THE ORDER DATED 19.08.2013 IN CMP 2740/2013 IN CC 61/2011 ON THE
FILEE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KANNUR**

REVISION PETITIONER(S)/PETITIONERS/ACCUSED NO.1 TO 3:

- 1. VALSAN, S/O KRISHNAN, AGED 60 YEARS
SHUBHA VILLA, KEECHERI, PAPPINISSERI,
KANNUR**
- 2. SHOBHANA PUTHIYA PURAYIL, W/O VALSAN
SHUBHA VILLA, KEECHERI, PAPPINISSERI
KANNUR**
- 3. SHYNI, D/O VALSAN
SHUBHA VILLA, KEECHERI, PAPPINISSERI,
KANNUR**

**BY ADVS.SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA**

RESPONDENT(S)/COMPLAINANT & STATE:

- 1. JISHA, D/O RAJAN, AGED 23 YEARS
E.K.HOUSE, KALLIASSERY, ANCHAMPEEDIKA
KANNUR - 670 001**
- 2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM**

**R1 BY ADV. SRI.C.P.PEETHAMBARAN
R2 BY ADV.JUSTIN JACOB, PUBLIC PROSECUTOR**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
18-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

P. UBAID, J.

Crl.R.P.No.363 of 2014

Dated this the 18th day of December, 2015

O R D E R

The revision petitioners Nos.2 and 3 herein are the accused Nos.3 and 4 in C.C.No.61/2011. Pending the revision, the first petitioner died, and the fact of death was recorded in the proceedings. The offence involved in the prosecution before the trial court is under Section 498-A IPC. The complainant therein is the 1st respondent herein. C.C.No.61/2011 is a complaint case. The learned Magistrate has recorded evidence on the side of the complainant under Section 244 Cr.P.C. At that juncture, the petitioners and the deceased accused filed an application seeking discharge. The said application filed as C.M.P.No.2740/2013 was dismissed by the learned Judicial First Class Magistrate-I, Kannur, on 19.08.2013. The said order is under challenge in this revision, and it is sought to be set aside.

2. On hearing both sides, and on a perusal of the impugned order, I find that decision will have to be taken afresh by the learned Magistrate on the request for discharge, after cross examination of the witnesses by the accused. The witnesses were

not cross examined by the defence when they adduced pre-charge the evidence under Section 244 Cr.P.C. Of course, they can defer it to the next stage. On the basis of the unchallenged pre-charge evidence adduced by the complainant and others, the learned Magistrate decided to frame a charge against the accused, and accordingly, the application for discharge was disallowed. Now, the petitioners seek an opportunity to cross examine the complainant and the witnesses before the framing of charge. I am told that the learned Magistrate has not so far framed charge against the accused. If so, an opportunity can be granted to the revision petitioners to cross examine the complainant and her witnesses on the pre-charge evidence adduced by them. Thereafter, the learned Magistrate can take decision afresh in C.M.P.No.2740/2013. The 1st respondent has also no serious objection to this course.

In the result, this revision petition is disposed of as follows:

- a) The order of the learned Judicial First Class Magistrate-I, Kannur in C.M.P.No.2740/2013 in C.C.No.61/2011 will stand set aside and C.M.P.No.2740/2013 will stand revived.
- b) The learned Magistrate shall grant an opportunity to the petitioners to cross examine the complainant and her witnesses on the pre-charge evidence given by them

under Section 244 Cr.P.C..

- c) After such cross examination, the learned Magistrate shall take decision afresh on C.M.P.No.2740/2013.

Sd/-

P. UBAID, JUDGE

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P.A. to Judge