

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1260 of 2015 ()

CRL.R.P. NO. 61/2014 of SESSIONS COURT, ERNAKULAM
CRL.M.P. 729/2011 of J.M.F.C.-I, MUVATTUPUZHA

REVISION PETITIONERS/RESPONDENTS 2 AND 3 /ACCUSED:

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1. JIMMY PARIYARATH
THIRUMARADY, MUVATTUPUZHA, ERNAKULAM DISTRICT
 2. FRANCIS
OOROTH HOUSE, ERUMELIKKARA, KUMARAPURAM (PO)
KIZHAKKAMBALAM, ERNAKULAM DISTRICT
- BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENTS/PETITIONER/COMPLAINANT & STATE:

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1. JOLLY.P.C., AGED 47 YEARS
S/O. CHACKO, MUNDICKAL HOUSE, THIRUMARADY(PO)
MUVAATTUPUZHA, ERNAKULAM DISTRICT PIN 686 662
 2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI 682 031
- R1 BY ADV. SRI.T.N.SURESH & ADV. SRI.V.S.ANU MON
R2 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
27-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.1260 of 2015

Dated this the 27th day of November 2015

O R D E R

The revision petitioners are the accused persons in Crl.M.P. No.729 of 2011 on the files of the Court of the Judicial Magistrate of First Class-1, Muvattupuzha. The first respondent filed a protest complaint against the revision petitioners before the court below as Crl.M.P. No.729 of 2011.

2. The allegation is that the accused persons committed theft of a motor cycle belonging to the first respondent on 3.2.2011.

3. It is borne out from the records that originally a crime was registered as Crime No.76 of 2011 of

Koothattukulam police station in connection with the incident in this case. Thereafter, a refer report was filed by the police after completing the investigation. The first respondent, thereafter filed CrI.M.P. No.729 of 2011 before the court below as a protest complaint. The learned Magistrate dismissed the said complaint after conducting inquiry under Section 202 of the Code. Against the said order, the first respondent filed a revision petition before the Sessions Court, Ernakulam. The learned Sessions Judge set aside the order of the learned Magistrate and directed the learned Magistrate to conduct further enquiry. Aggrieved by the said order, this revision petition has been filed.

4. Heard.

5. When this matter has been taken up for hearing, the

learned counsel for the revision petitioners has submitted that even though notice was given to the revision petitioners herein at the time of condonation of delay in filing the revision petition, no notice was thereafter given to the revision petitioners in the revision petition and consequently, the revision petitioners were not able to make their appearance before the revisional court at the time of hearing. In the said circumstances, the learned counsel has prayed for granting an opportunity to the revision petitioners of being heard. It is borne out from paragraph No.4 of the order impugned that the revision petitioners herein were not heard before passing the order impugned. Since the order impugned was passed without hearing the revision petitioners herein, I am of the view that it is only just and proper to grant an opportunity to the

revision petitioners to contest the matter before the court below. For the said reason, the order impugned cannot be sustained.

In the result, this revision petition stands allowed, setting aside the order impugned and the matter is remitted to the Sessions Court, Ernakulam for fresh consideration of the matter, in accordance with law, affording reasonable opportunity to both sides of being heard.

Both the parties are directed to appear before the Sessions Court, Ernakulam on 22.12.2015 through counsel.

SD/-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/28.11.2015

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PA to Judge