

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

WA.No. 2284 of 2015 IN WP(C).22823/2015

AGAINST THE JUDGMENT IN WP(C) 22823/2015 DATED 17-09-2015

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APPELLANT/PETITIONER :

AZEEZ K.S. AGED 40 YEARS
S/O. SAIDH, KURUPPUTHADATHIL HOUSE, KIZHAKKEKARA
MUVATTUPUZHA - 686 661.

BY ADVS.SRI.JAJU BABU(SR.)
SRI.L.RAM MOHAN
SRI.M.AUBREY ABRAHAM ISAAC

RESPONDENTS/RESPONDENTS :

1. STATE OF KERALA
REPRESENTED BY ADDITIONAL CHIEF SECRETARY
HOME DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM- 695 001.
2. THE STATE POLICE CHIEF,
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM -695 001.
3. THE ADDITIONAL DIRECTOR GENERAL OF
PROSECUTION (CRIMES) CRIME BRANCH, VALLIKADAV
THIRUVANANTHAPURAM - 695 001.
4. SUPERINTENDENT OF POLICE,
CRIME BRANCH (CID) STADIUM ROAD, KALOOR
ERNAKULAM - 682 001.
5. THE DISTRICT POLICE CHIEF,
ERNAKULAM RURAL, ALUVA, ERNAKULAM - 682 001.
6. SUB INSPECTOR OF POLICE,
MUVATTUPUZHA POLICE STATION, MUVATTUPUZHA-686 661.

R1 TO R6 BY SR.GOVERNMENT PLEADER, SRI.P.I. DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 2284 OF 2015

Dated this the 20th day of October, 2015

JUDGMENT

Ashok Bhushan, C.J.

This writ appeal has been filed against the judgment dated 17.09.2015 passed in W.P.(C) No.22823 of 2015 by which the learned Single Judge has disposed of the writ petition with liberty to take recourse of the remedy as provided under law.

2. The appellant/petitioner had filed the writ petition seeking a direction to respondent Nos.1 to 3 to entrust the investigation of Crime No.364/2015 of Muvattupuzha Police Station, registered as per Ext.P3 FIR to the State Crime Branch or to an officer above the rank of Deputy Inspector General of Police.

3. Learned Single Judge noted the fact that final report has already been filed before the Judicial First Class Magistrate Court, Muvattupuzha for the offences punishable under Sections 286 and 338 read with Section 34 IPC. The

petitioner came with a grievance that the investigating officer has not incorporated the serious offence under Section 3(a) of the Explosive Substances Act, 1908. Learned Single Judge made certain observations to the effect that offence under Section 3(a) of the Explosive Substances Act cannot be invited in the matter. Hence the writ petition was dismissed. Learned Single Judge has further observed that further grievance regarding persons who are liable to be made accused are left by the investigating officer, the remedy available to the petitioner is under Section 319 Cr.P.C.

4. Learned counsel for the appellant has placed reliance on the Apex Court judgment reported in **Surjit Singh v. State of Haryana** [(1996) 10 SCC 281] wherein it was held that the possession of hand-grenade and a detonator were sufficient circumstances for upholding sentence of 2 years' Rigorous Imprisonment. The above case relied by learned counsel for the appellant was a case where the accused was convicted after the trial of the case. It appears that the facts of each case and the evidence on the basis of which the Learned Magistrate/Sessions

Judge can record conviction or sentence is different. At this stage in which a crime has been registered, applicability of above said judgment of the Apex Court is not called for.

5. Learned Government Pleader submits that charge sheet has been submitted and CC No. 708 of 2015 is proceeding before the Court. The case being pending before the Court for trial, it is not necessary for this Court to examine any further conduct or express any opinion. There is ample power with the Court under the Code of Criminal Procedure to take such course as permissible by law. We only observe that the Court, while deciding the trial, is not bound by any observation made by learned Single Judge and it shall be free for the trial court to consider the evidence and take such decision as required by law.

With the above observation, the Writ Appeal is dismissed.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**