

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

WP(C).No. 22823 of 2015 (C)

PETITIONER :

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

**BY ADVS.SRI.L.RAM MOHAN
SRI.M.AUBREY ABRAHAM ISAAC**

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-686661.**

BY GOVERNMENT PLEADER SMT. MAYA

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE WOUND CERTIFICATE DATED 22/03/2015.

EXHIBIT-P2: TRUE COPY OF THE COMPLAINT DATED 09/02/2015

EXHIBIT-P3: TRUE COPY OF THE FIR DATED 10/02/2015

EXHIBIT-P4: TRUE COPY OF THE FINAL REPORT IN CRIME NO. 364/15

**EXHIBIT-P5: TRUE COPY OF THE PETITION DATED 08/07/2015 SUBMITTED BEFORE
THE 5TH RESPONDENT.**

**EXHIBIT-P6: TRUE COPY OF THE RECEIPT DATED 08/07/2015 ISSUED BY THE 5TH
RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

B. KEMAL PASHA, J.

.....
W.P.(C) No.22823 of 2015 C
.....

Dated this the 17th day of September, 2015

J U D G M E N T

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Fireworks have caused in connection with the festival at a Church, at public place. One of the crackers which did not explode, remained on the road. The 10 year old daughter of the petitioner took the said cracker and played with other children. When she handled it, it exploded, thereby she lost her four fingers of the left hand.

2. Crime has been registered for the offence punishable under Section 286 IPC. After investigation of Crime No.364/2015 of Muvattupuzha Police Station, Ext.P4 final report has been filed before the Judicial First Class Magistrate's Court, Muvattupuzha for the offences punishable under Sections 286 and 338 read with Section 34 IPC. The present grievance of the petitioner is that the investigating officer has not incorporated the serious offence

under Section 3(a) of the Explosive Substances Act, 1908 in the matter.

3. Heard learned counsel for the petitioner and learned Public Prosecutor.

4. Nobody has a case that any of the accused has caused an explosion by making use of that explosive substance by which the injury has been caused to the child. Section 3(a) of the Explosive Substances Act can be invoked only in a case wherein an explosion is caused by the accused, by which the injury is caused. Here, what has been allegedly done by the accused is that they have left an unexploded explosive substance on the road negligently. In such case, the offence that can be invited is one under Section 286 IPC. Further, through such act, when grievous hurt has been caused to the child, the offence under Section 338 IPC can also be invited. At any stretch of imagination, the offence under Section 3(a) of the Explosive Substances Act cannot be invited in the matter. Matters being so, this

writ petition is devoid of merits and is only to be dismissed.

5. In case the petitioner has any further grievance that other persons, who are liable to be made accused, are left by the investigating officer, there is sufficient remedy under Section 319 Cr.P.C.

With liberty to have recourse to such remedy, this writ petition is disposed of.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/17/09

// True Copy //

PA to Judge