

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS**

**TUESDAY, THE 28<sup>TH</sup> DAY OF FEBRUARY 2023 / 9TH PHALGUNA, 1944**

**CRL.MC NO. 1678 OF 2023**

**CRIME NO.136/2021 OF Alakode Police Station, Kannur**

**PETITIONER/S:**

- 1 JOYICHAN MATHEW  
AGED 32 YEARS  
S/O MATHEW, MARUTHIKUNNEL HOUSE, KARTHIKAPURAM, ALACODE,  
KANNUR DISTRICT., PIN - 670571
- 2 CHAKOCHAN MATHEW  
AGED 30 YEARS  
S/O MATHEW, RESIDING AT MARUTHIKUNNEL HOUSE, KARTHIKAPURAM,  
ALACODE, KANNUR DISTRICT., PIN - 670571
- 3 BIBIN KUTHUKALLINGAL  
AGED 34 YEARS  
S/O BABU, RESIDING AT KUTHUKALLINGAL HOUSE, THABORE,  
ALACODE, KANNUR DISTRICT., PIN - 670571
- 4 JOMON  
AGED 23 YEARS  
S/O RAJU BABU, RESIDING AT MANAKUZHIYIL HOUSE,  
MUNDERITHATTU, THABORE, ALACODE, KANNUR DISTRICT., PIN -  
670571
- 5 SHERIN TOMY  
AGED 27 YEARS  
S/O TOMY, RESIDING AT CHEMBAKSSERY HOUSE, MUNDERITHATTU,  
THABORE, ALACODE, KANNUR DISTRICT., PIN - 670571  
BY ADVS.  
P.C.SHIJIN  
P.HARIDAS  
RISHIKESH HARIDAS  
RAJASREE T.R.  
CHINJU P. JOYIES

**RESPONDENT/S:**

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN  
- 682031
- 2 SUB INSPECTOR OF POLICE  
ALACODE POLICE STATION, KANNUR DISTRICT, PIN - 670571

3       ATHUL THOMAS  
          AGED 25 YEARS  
          S/O THOMAS, ILLAMPURAYIDATHIL HOUSE, MUNDERITHATTU,  
          THABORE, ALACODE, KANNUR DISTRICT., PIN - 670571  
          PP SMT.SEETHA.S.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
28.02.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**BECHU KURIAN THOMAS, J.**

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**Crl.M.C.No.1678 of 2023**

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Dated this the 28<sup>th</sup> day of February, 2023

**ORDER**

Petitioners are the accused in S.C.No.641/2021 before the Assistant Sessions Court, Kannur, which arose out of FIR No.136/2021 of Alacode Police Station. The offences alleged against the petitioners are under Sections 447, 294(b), 506(ii), 341, 324, 308 r/w Section 34 of the Indian Penal Code, 1860.

2. According to the prosecution, the accused, had criminally trespassed into the private way of the defacto complainant and after wrongfully restraining him, assaulted him with a wooden rod and also beat the defacto complainant with a nail hammer on the back of his head and thereby committed the offences alleged.

3. Sri.P.Haridas, learned Counsel for the petitioner contended that the entire prosecution allegations are false and that the incident as alleged had not occurred. It was further submitted that even going by the prosecution allegations, the incident occurred on a public way and therefore, there cannot be a criminal trespass. The learned Counsel further submitted that inclusion of Section 308 IPC as an offence is with malafide intentions solely with the objective of arraying the petitioners as

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accused in a Sessions Case. Learned Counsel also asserted that 1<sup>st</sup> and 2<sup>nd</sup> petitioner had sustained serious injuries as is evident from Annexure A8 wound certificate and in fact they had even filed a complaint, though the same was referred as false, against which a protest complaint has already been filed. Learned Counsel further submitted that the entire prosecution against the petitioners is an abuse of the process of court and totally malafide and therefore, this Court ought to interfere under Section 482 of Cr.P.C.

4. Smt.Seetha.S, learned Public Prosecutor opposed the application and submitted that the final report clearly alleges the offences committed by the petitioner and the same requires adjudication after a proper trial. It was further pointed out that the statement of the defacto complainant clearly shows that the offences alleged are maintainable against petitioners and the jurisdiction under Section 482 Cr.P.C. cannot be invoked in the present case.

5. I have perused the final report as well as the statement given by the witnesses. The defacto complainant has stated in unhesitating terms, the manner in which the alleged incident had occurred. Prima facie, on a perusal of the statement of the witnesses, it is revealed that the offences alleged are made out. The allegation that the place of occurrence is a public way is not seen made out from any of the documents produced. On the other hand, the defacto complainant has stated that the incident occurred on the way to his house, which investigation alleges to be a private way. It is further stated that the defacto complainant was

assaulted using a nail hammer on the back of his head, which indicates the commission of an offence under Section 308 IPC also.

6. It is elementary that the jurisdiction exercisable under Section 482 IPC is very limited and only if the uncontroverted allegations in the final report do not make out any of the offences alleged, could this Court exercise the jurisdiction to quash the proceedings.

7. On a perusal of the final report and the attached statements, I am of the view that the offences alleged are seen prima facie made out. Therefore, this is not fit case to exercise the jurisdiction under Section 482 Cr.P.C.

8. Accordingly, I find no merit in this Crl.M.C. However, it is clarified that the observations made in this order, shall not prejudice the accused at the time of trial and the learned Trial Court Judge shall consider the merits of the matter untrammelled by any of the observations made in this order.

This Crl.M.C is dismissed accordingly.

sd/  
**BECHU KURIAN THOMAS**  
**JUDGE**

jm/

**APPENDIX OF CRL.MC 1678/2023**

**PETITIONER ANNEXURES**

Annexure1	CERTIFIED COPY OF THE FIR NO.136/2021 OF ALACODE POLICE STATION, KANNUR DISTRICT DATED 05.05.2021
Annexure2	TRUE COPY OF THE RECEIPT OF COMPLIANT GIVEN BY THE MOTHER OF THE 3RD ACCUSED TO THE 2ND RESPONDENT DATED 11.05.2021.
Annexure3	TRUE COPY OF THE COMPLAINT GIVEN BY THE MOTHER OF THE 3RD ACCUSED TO THE SUPERINTENDENT OF POLICE, KANNUR DISTRICT DATED 06.09.2021.
Annexure4	TRUE COPY OF THE PRIVATE COMPLIANT FILED BY THE MOTHER OF THE 3RD ACCUSED AS CMP NO. 813/22 BEFORE JFCM-I, THALIPARAMBA DATED 18.02.2022.
Annexure5	TRUE COPY OF THE PRIVATE COMPLIANT FILED BY THE MOTHER OF THE 3RD PETITIONER IN R.C.NO.347/22 IN CRIME NO.206/22 OF ALACODE POLICE STATION AS CMP NO.6470/22 DATED 17.08.22
Annexure6	TRUE COPY OF THE DEPOSITION GIVEN BY THE MOTHER OF THE 3RD PETITIONER BEFORE JFCM-I, THALIPARAMBA IN CMP NO.6470/22 DATED 26.08.22
Annexure6(a)	TRUE COPY OF THE DEPOSITION GIVEN BY THE WITNESS/ 2ND PETITIONER HEREIN BEFORE THE JFCM-I, THALIPARAMBA IN CMP NO.6470/22 DATED 05.09.22
Annexure6(b)	TRUE COPY OF THE DEPOSITION GIVEN BY AN ANOTHER WITNESS BEFORE THE JFCM-I, THALIPARAMBA IN CMP NO.6470/22 DATED 26.11.2022.
Annexure7	CERTIFIED COPY OF THE FINAL REPORT NO.139/21 IN FIR NO.0136/21 OF ALACODE POLICE STATION, KANNUR DISTRICT NOW PENDING BEFORE THE ASSISTANT SESSIONS COURT, KANNUR( SUB COURT, KANNUR) AS SC NO.641/21 ALONG WITH THE MEMO OF EVIDENCE AD DEPOSITION OF ALL CHARGE WITNESSES DATED 29.06.21.
Annexure8	TRUE COPY OF THE ACCIDENT REGISTER CUM WOUND CERTIFICATE ISSUED BY THE ASSISTANT SURGEON, COMMUNITY HEALTH CENTRE, ODUVALLITHATTU TO THE 1ST PETITIONER DATED 06.04.21.