

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

CrI.MC.No. 1351 of 2015

CC 349/2009 of J.M.F.C.,TALIPARAMBA

PETITIONER(S)/ACCUSED NO.2:

P.MURALEEDHARAN
A.S.I. OF POLICE, KUDIYANMALA.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY

RESPONDENT(S)/COMPLAINANT & STATE:

1. PRAKASH.K.PAUL, AGED 35 YEARS
S/O.PAILY, K.J.KIZHAKKAYIL, ADVOCATE
TALIPARAMBA AMSOM, KUTTIKOL DESOM, KUTTIKOL P.O.
TALIPARAMBA TALUK, KANNUR- 673011.

2. STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM-682031.

BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
10-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CrI.MC.No. 1351 of 2015 ()

APPENDIX

ANNEXURES

ANNEXURE-I: CERTIFIED COPY OF COMPLAINT CMP NO.3151/2009.

/True copy/

P.S to Judge

RAJA VIJAYARAGHAVAN.V. J

Crl.M.C. 1351 of 2015

Dated 10th July 2015

ORDER

1. This petition is filed u/s 482 of the Code of Criminal Procedure (for short "the Code") by the petitioner, an Assistant Sub Inspector of Police of the Taliparamba Police Station, who is arraigned as the 2nd accused in C.C.349 of 2009 on the files of the Judicial Magistrate of First Class, Taliparamba. The prayer is to quash all further proceedings against him in the said case.

2. C.C. 349 of 2009 has arisen on the basis of a complaint preferred by the 1st respondent before the learned Magistrate raising the following allegations:-

The complainant is an advocate and member of the Taliparamba bar. On 28.3.2009, while the complainant was on his way to his family house in his Maruti car bearing registration No.KL13 A 6561, there was a collision with a bike. Some damages were caused to the

car of the complainant and he also sustained injuries to his right hand. The bike was not stopped and later in the day on his way back , the bike was seen parked on the road side. When the complainant attempted to take down the number of the bike, the 3rd accused came out of a auto-rickshaw parked on the road side and caught the complainant on the scruff of his neck and abused him. The accused No 3 to 5 are alleged to have assaulted him and the 3rd accused is alleged to have taken a knife and attempted to stab the complainant and when the same was evaded, the complainant sustained injuries on the left index finger and face. A sum of Rs. 5000/- was taken away by the 5th accused and the complainant also lost a gold chain weighing three sovereigns. The complainant was admitted in the Lourdes hospital, Taliparamba and based on the statement filed by the complainant crime No.39 of 2009 was registered u/s 341, 294(b), 506(ii), 323, 324, 308, 394 r/w S. 34 of the IPC against the accused Nos.3 to 5.

3. It is the further case of the complainant that he was called to the Taliparamba police station by the 2nd accused / petitioner herein and was taken to the room of the 1st accused. The complainant was asked by the 1st accused as to whether he was amenable for settling the matter with accused Nos. 3 to 5. The 1st accused thereafter, is alleged to have stated to the complainant that they would be forced to settle the dispute if the complainant was not amenable. Thereafter, the complainant was wrongfully restrained and the 1st accused is alleged to have abused the complainant.

4. Thereafter, with a view to cause injury to the complainant, the 1st accused submitted a report before the Sessions Court, Thalassery, when the bail application filed by the accused Nos.3 to 5 had come up for consideration of the learned Sessions Judge. The report revealed that the main allegations raised by the complainant in Cr. No 39 of 2009 was not made out and in the said report as the 1st accused had deleted S.324,

394, 308, 506(ii) of the IPC and diluted the allegations. Identical report was submitted before the Judicial Magistrate of First Class, Taliparamba, by the 2nd accused at the instance of the 1st accused. According to the complainant, the statements given by him and the witnesses were not truly and correctly recorded and a statement was furnished by diluting the actual allegations. On these allegations, it is alleged that the acts of the accused would amount to offence punishable u/s 342 , 294(b), 506(ii), 120 B of the IPC and the 1st and 2nd accused are further liable u/s 166, 167, 218 of the IPC and u/s 109 of the IPC.

5. The learned Magistrate took cognizance of the offence after examining the complainant and witnesses after after satisfying himself that a prima facie case was made out .

6. I have heard the learned counsel for the petitioner and the learned Public Prosecutor. Though notice was

served on the counsel appearing for the 1st respondent, there is no representation.

7. The learned counsel for the petitioner has submitted that as per Judgment dated 2.6.2014 in Crl.M.C.961 of 2010, this Court has quashed all proceedings against the 1st accused in C.C.No.349 of 2009. There is a specific finding in the said judgment that no ingredients attracting offence u/s 166, 167, 218 and 120B of the IPC were attracted against the 1st accused, who is the primary accused. Holding that *prima facie* case was not made in the complaint, powers u/s 482 of the Code was exercised and all proceedings against the 1st accused was quashed. It is the further contention that in so far as the petitioner/ the 2nd accused is concerned, there is absolutely no allegation in the complaint and the continuance of the proceeding is nothing but an abuse of process.

8. I have perused the complaint and it appears that the

allegation against the petitioner/2nd accused is that he had ushered the complainant on his arrival at the police station to the office of the 1st accused, who is the superior officer. It is the 1st accused who is alleged to have asked the complainant to settle the matter. The allegation of abuse is also directed against the 1st accused. The only other allegation is that on the directions of the superior officer, the petitioner had submitted a report before the Judicial Magistrate of First Class, Taliparamba, in which substantive offenses made out against the accused Nos. 3 to 5 in Cr. No 39 of 2009 was deleted.

9. S. 166 of the IPC is attracted when a public servant knowingly disobeys any direction of the law as to the way in which he is to conduct himself as a public servant, intending or knowing it to be likely to cause , by such disobedience, injury to any person. S 167 of the IPC is attracted when a public servant who is charged with the preparation or translation of any document frames or prepares such document with knowledge that it is

incorrect with intent to cause of knowing it to be likely to cause injury to any person. S. 218 of the IPC is attracted when the public servant, who is charged with preparation of any record or other writing frames that record or writing in a manner which he knows to be incorrect with intent to save person from punishment or property from forfeiture so as to cause injury to person or public. It does not appear from the averments in the complaint that the act of the petitioner would fall within the mischief of S. 166, S.167 or S.218 of the IPC.

10. Admittedly, the investigation was conducted by the the 1st accused who is the superior officer of the petitioner. The question is whether the petitioner can be found fault with, for submitting a report based on directions issued by his superior officer who was conducting investigation. There is no allegation that the petitioner was charged with the preparation of any record or document or that he had framed or fabricated an incorrect document. Moreover, If the de facto complainant

was in any way aggrieved by the investigation conducted by the police in any matter, there are ample ways under law to bring this aspect to the notice of the concerned Court and to remedy the situation. I do not think offences u/s 166, 167 or S.218 of the IPC are attracted in so far as the petitioner is concerned. When the officer conducting the investigation, who was much superior in rank, directs the petitioner to submit a report stating his version of the case before the jurisdictional Court, the subordinate officer cannot be held liable under the said provisions on the ground that he had obeyed the directions of the superior officer. On that sole ground, it can very well be seen that the intention of the complainant was to harass the petitioner. As far as the other allegations are concerned, there is nothing in the complaint so as to attract the offence u/s 294(b), 506(ii) or S.342 of the IPC against the petitioner herein.

11. I take note that the proceedings against the primary accused have already been terminated by this Court in

Crl.M.C.961 of 2010 which weakens the case of the 1st respondent even further. Therefore, once the 'crux' of the allegation in the complaint is destructed, and when it appears that the process of law is being used as a harassment, the prosecution becomes a futile exercise. The materials available do not show that an offence is made out as against the petitioner .

12. It need to be asserted again and again that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course.(See Pepsi Foods Limited and Another v. Special Judicial Magistrate and Others, 1998 (5) SCC 749). The process of the Criminal Court shall not be permitted to be used as a weapon of harassment. Once it is found that there is no material on record to connect an accused with the crime, there is no meaning in prosecuting him. It would be a sheer waste of public time and money to permit such proceedings to continue against such a person.

13. It is trite that the powers under S. 482 of the Code is wide and extraordinary. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed. The saving of the High Court's inherent powers, is designed to achieve a salutary public purpose, which is that, a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has not to be administered according to laws made by the legislature (See - State of Karnataka V L Muniswamy AIR 1977 SC 1489).

14. In view of the above and after anxiously considering the facts , I am of the considered opinion that in the facts and circumstances, it would be an abuse of process to permit the prosecution against the petitioner in C.C. 349 of 2009 on the files of the Judicial Magistrate of First Class, Taliparamba, to continue.

15. In the result, Crl.M.C is allowed. All further proceedings in C.C.No.349 of 2009 on the file of the Judicial Magistrate of First Class, Taliparamba, is hereby quashed.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

//True Copy//

P.S.ToJudge