

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

Crl.MC.No. 303 of 2013 ()

AGAINST THE ORDER IN MC 136/2012 OF SUB DIVISIONAL MAGISTRATE COURT,
FORT KOCHI

PETITIONER(S)/COUNTER PETITIONER:

IBRAHIMKUTTY AGED 72 YEARS
S/O.MUHAMMED ANTHROLIPARAMBIL HOUSE,
ASOKAPURAM, ERUMATHALA KARA
ALUVA WEST VILLAGE ALUVA TALUK

BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENT(S)/STATE & COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT
OF KERALA ERNAKULAM 682031

2. SUB INSPECTOR OF POLICE
ALUVA EAST POLICE STATION 683101

R1 & R2 SMT.JASMINE, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
07-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE-A1-TRUE COPY OF STATEMENT GIVEN BY BROTHER RAHIM BEFORE ALUVA POLICE STATION ON 26.08.2011.

ANNEXURE-A2-TRUE COPY OF FIR IN CRIME 2384/2011 OF ALUVA POLICE STATION DATED 26.8.2011.

ANNEXURE-A3-TRUE COPY OF ACCIDENT REGISTER CUM WOUND CERTIFICATE OF BROTHER RAHIM ISSUED FROM KAROTHUKUZHYPOLY HOSPITAL.

ANNEXURE-A4-TRUE COPY OF FINAL REPORT FILED BY 2ND RESPONDENT IN CRIME NO.2384/2011 BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT, ALUVA ON 2.9.2011.

ANNEXURE-A5-CERTIFIED COPY OF PRELIMINARY ORDER ISSUED BY SUB DIVISIONAL MAGISTRATE FORT KOCHI IN M.C.136/2012 DATED 22.10.2012.

ANNEXURE-A6-CERTIFIED COPY OF CHARGE SHEET FILED BY 2ND RESPONDENT IN ANNEXURE A5 PROCEEDING BEFORE THE SUB DIVISIONAL MAGISTRATE FORT KOCHI ON 27.8.2011.

ANNEXURE-A7-TRUE COPY OF SALE DEED NO.180/97 DATED 14.1.97.

ANNEXURE-A8-TRUE COPY OF THE PLAINT IN O.S.231/11 OF MUNSIFF'S COURT, ALUVA.

RESPONDENT'S EXHIBITS

NIL

R.AV

//TRUE COPY//

PA TO JUDGE

Crl.MC.No. 303 of 2013 ()

K.RAMAKRISHNAN, J

CRL.M.C.NO.303 OF 2013

Dated this the 7th day of April, 2015

ORDER

Counter petitioner in MC.No.136/2012 on the file of the Sub Divisional Magistrate, Fort Kochi, has filed this criminal miscellaneous case to quash the proceedings under section 482 of the Code of Criminal Procedure (hereinafter called the Code).

2. It is alleged in the petition that the petitioner has a permanent residence at Aluva and residing there with his family. He had a property dispute with his brother Rehim, who filed Annexure-8 Suit as O.S.No.231/2011 before the Munsiff Court, Aluva against the present petitioner, claiming right of way through the property permitted to them as per Annexure-7 document. Thereafter, on the basis of the statement given by the said Rehim, a crime was registered as Crime No.2384/2011 of Aluva East Police Station and along with the registration of the crime, another crime was registered as Crime No.2404/2012 by the second respondent under section 107 of the Code of Criminal Procedure and sent Annexure-6 report to the Sub Divisional Magistrate and on that basis the Sub Divisional Magistrate passed Annexure-5 order purporting to be

one under section 111 of the Code of Criminal Procedure.

3. Except the present case there is no other case against the petitioner and he is not having any criminal background or his presence is not a threat to the society as well. So, initiating proceedings under section 107 of the Code of Criminal Procedure under the circumstances is unwarranted and the procedure for initiating proceedings under section 107 of the Code has not been properly followed as well. So, the petitioner has no other remedy except to approach this court seeking the following relief:-

"to call for the records leading to Annexure-A5 order and A6 charge sheet and quash the same in the interest of justice".

4. Heard Sri.V.Rajendran, Perumbavoor, the counsel appearing for the petitioner and Smt.Jasmine, public prosecutor appearing for the respondents.

5. The counsel for the petitioner submitted that there is no application of mind on the part of the Sub Divisional Magistrate before initiating proceedings under section 107 of the Code of Criminal Procedure, which was intended to prevent public tranquillity and keep public order. Further, it is a civil dispute between brothers, which resulted in the registration of the crime and civil suit is pending in respect of the same as well. There is no satisfaction recorded

by the Magistrate before passing an order under section 111 of the Code of Criminal Procedure. So, the court below was not justified in initiating proceedings and the same is liable to be quashed.

6. On the other hand, the learned public prosecutor submitted that before the initiating proceedings, on account of the property dispute there were quarrel between the brothers, which caused public tranquillity and that prompted the registration of the crime and also initiation of the proceedings under section 107 of the Code of Criminal Procedure and after the initiating the above proceedings, there is no other incident occurred.

7. It is an admitted fact that the petitioner and the defacto complainant in Crime No.2384/2011 of Aluva East Police Station are brothers and it is seen from Annexure-7 document produced by the petitioner that there is a civil suit pending between them before the Munsiff Court, Aluva as O.S.No.231/2011 and the dispute is in respect of a path way said to have been permitted to be used as per Annexure-7 document. Whether he has got a right of way or not is a matter to be considered by the civil court, while considering the recitals in Annexure-7A document. Section 107 of the Code of Criminal Procedure is intended to prevent public

tranquillity and maintain public order and peace in the society. It is not intended to be used to prevent private vengeance between the relatives.

8. It is true that in order to initiate proceedings under section 107 of the Code of Criminal Procedure, there is no necessity for any crime being registered. Even if, the Sub Divisional Magistrate feels that a presence of a person at a particular time at a particular place is likely to affect the public tranquillity and in order to avoid that calamity as a preventive measure proceedings under section 107 of the Code of Criminal Procedure can be invoked against such person. But for that purpose, there must be material available for the Sub Divisional Magistrate to apply his mind and come to a prima facie opinion that such an order is highly necessary to prevent public tranquillity and it should not be mechanically applied. A perusal of Annexure-5 order will go to show that except Annexure-A2 crime namely, Crime No.2384/2011 of Aluva East Police Station, there is no other crime registered against him. Further, a reading of Annexure-1 First Information statement will go to show that it was a dispute between siblings in respect of away claimed through the property, now in the possession of the petitioner claiming that they have got a right of way provided as per

Annexure-7 document in respect of which a civil suit has been filed as Annexure-8 and that is pending before the Munsiff Court, Aluva. Further, except the report, there is no other material collected by the Sub Divisional Magistrate to independently come to a conclusion or form an opinion that preliminary order under section 111 of the Code of Criminal Procedure has to be passed to keep public peace in that locality, which is required to be followed by the Sub Divisional Magistrate before initiating proceedings under section 107 of the Code of Criminal Procedure and failure to exercise that power and non-application of mind and mechanically initiating proceedings and passing an order under section 111 of the Code of Criminal Procedure is illegal and the same is liable to be set aside on that ground alone. So, under the circumstances and in view of the discussions made, this court feels that there is no application of mind as required under section 107 of the Code of Criminal Procedure for initiating proceedings against the petitioner and passing an order under section 111 of the Code of Criminal Procedure requesting the petitioner to execute a bond to keep public tranquillity and security and so the same is liable to be quashed and I do so. In the result, the criminal miscellaneous case is allowed and further proceedings in MC.No.136/2012 of Sub Divisional

Magistrate, Fort Kochi against the petitioner is quashed.
Office is directed to communicate this order to the concerned
court immediately.

Sd/-

K.RAMAKRISHNAN, JUDGE

R.AV

//TRUE COPY//

PA TO JUDGE