

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

Crl.MC.No. 1416 of 2015

C.P.NO.1/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT (NO-5), KOCHI

PETITIONER(S)/ACCUSED :

**K.A.PALANIAPPAN PILLAI, AGED 65 YEARS,
S/O.P.ARUNACHALAM PILLAI, C.C.X/845, SANGHEETHA BHAVAN,
MANTHRA ROAD, FORTKOCHI, ERNAKULAM DISTRICT, PIN- 682 001.**

BY ADV. SRI.SAJAN MANNALI

RESPONDENT(S)/COMPLAINANT/DEFACTO COMPLAINANT :

- 1. STATE OF KERALA,
REPRESENTED BY THE ASST. COMMISSIONER OF POLICE,
MATANCHERRY, REPTD. THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT, ERNAKULAM - 682 031.**
- 2. SELVI KISHORE,
W/O.KISHORE, HOUSE NO.10/842, AKHILA NIVAS,
MANTHRA ROAD, KOCHI - 682 002.**

R1 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 11-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1:** A TRUE COPY OF UNDERTAKING FILED BY THE 2ND RESPONDENT BEFORE THE ASST. COMMISSIONER OF POLICE, MATTANCHERRY, DATED 13.06.2013, MARKED AS ANNEXURE A1.
- ANNEXURE A2:** A TRUE COPY OF THE F.I.R IN CRIME NO.403/2013 OF FORTKOCHI POLICE STATION, DATED 26.04.2013 MARKED AS ANNEXURE A2.
- ANNEXURE A3:** A TRUE COPY OF THE F.I. STATEMENT IN CRIME NO.403/2013 OF FORTKOCHI POLICE STATION, DATED 26.04.2013, MARKED AS ANNEXURE A3.
- ANNEXURE A4:** A TRUE COPY OF THE FINAL REPORT/CHARGE SHEET NO.18/2013 OF FORTKOCHI POLICE STATION, DATED 27.05.2013, MARKED AS ANNEXURE A4.
- ANNEXURE A5:** A TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE SUB INSPECTOR OF FORTKOCHI POLICE STATION DATED 08.04.2013, MARKED AS ANNEXURE A5.
- ANNEXURE A6:** A TRUE COPY OF THE NOTICE ISSUED BY THE ASST. ENGINEER, CORPORATION OF KOCHI, DATED 27.04.2014, MARKED AS ANNEXURE A6.
- ANNEXURE A7:** A TRUE COPY OF THE UNDERTAKING FILED BY THE 2ND RESPONDENT/DEFACTO COMPLAINANT, DATED 13.06.2013, BEFORE THE SECRETARY, CORPORATION OF KOCHI, MARKED AS ANNEXURE A7.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

.....
Crl.M.C. No.1416 of 2015

.....
Dated this the 11th day of March, 2015.

O R D E R

The petitioner who is the accused in Crime No.403/2013 of the Fort Kochi Police Station presently pending as C.P 1/2015 before the Judicial First Class Magistrate's Court-5 Kochi, has come up under Section 482 Cr.P.C for getting the proceedings against him in the said case, quashed. It seems that the final report has been filed by the police alleging the offences punishable under Sections 341, 294 (b) and 506(2) IPC and Section 3(1)(X) of the Schedule Castes and Scheduled Tribes Prevention of Atrocities Act, 1989.

2. On going through the materials before me, it seems that there are possible reasons on the part of the petitioner to argue that the offence under Section 3(1)(X) of the Schedule Castes and Scheduled Tribes Prevention of

Atrocities Act, 1989 is presently advanced in order to see that the petitioner is unduly harassed. There were litigations between the parties earlier as the de-facto complainant had made an illegal construction protruding into the compound wall of the petitioner as against the Building Rules for which he had taken actions against him. Even though stop memo was issued by the local authority, violating the said direction, the construction was completed by the de-facto complainant. It seems that the case advanced by the petitioner is that it is in order to make him mute in that matter, the present allegations are levelled against him.

3. At the same time, when an offence under the said Special Act has been alleged in the matter and allegations for constituting such offence have been set forth, the provisions under Section 438 Cr.P.C is not applicable in a case like this. In such situations, even though the petitioner cannot have recourse to the provisions under Section 438 Cr.P.C, the learned Magistrate before whom the matter is pending is not powerless to grant bail to the petitioner. See

Ali vs. State of Kerala (2002 (2) KLT 280) , Shanu vs. State of Kerala (2000(3) KLT 452) etc. In a catena of decisions, this Court has repeatedly held that even though the offence has to be tried by a Special Court which is the court of Session, the Judicial First Class Magistrate's Court are not powerless to grant bail in such offences in appropriate cases.

This Crl.M.C is disposed of with a direction to the court below to rely on the decisions noted above and to dispose of the application seeking bail that may be filed by the petitioner on his surrender before the court below, on the date of surrender itself, provided advance notice is served on the Assistant Public Prosecutor in charge of the case. The court below shall hear the petitioner and pass orders in tune with the decisions noted above.

Sd/-

B.KEMAL PASHA, JUDGE

smm

