

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

Cr1.MC.No. 557 of 2013 ()

AGAINST THE ORDER IN MC 188/2012 of SUB DVL.MAGI.COURT,
TRIVANDRUM DATED 01-10-2012
CRIME NO. 621/2012 OF THUMBA POLICE STATION, THIRUVANANDAPURAM

PETITIONER/COUNTER PETITIONER:

ANTO ALIAS, AGED 42 YEARS,
S/O ALIAS, NIRAJAN, UNIT NO.6
VALIYAVELI P.O., THIRUVANANTHAPURAM.

BY ADVS.SRI.K.C.ELDHIO
SRI.JIJO THOMAS
SRI.SURAJ.S

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.V.H. JASMINE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
22-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-A: A TRUE COPY OF THE FIR NO.621/12 REGISTERED BY THE THUMBA POLICE AGAINST THE PETITIONER.

ANNEXURE-B ICATING THE PETITIONER, BEFORE THE SUB DIVISIONAL MAGISTRATE, THIRUVANANTHAPURAM SEEKING ACTION AGAINST HIM U/S 107 CR.P.C.

ANNEXURE-C A TRUE COPY OF THE ORDER DATED 1.10.12 IN MC.NO.188/12 PASSED BY THE SUB DIVISIONAL MAGISTRATE, THIRUVANANTHAPURAM.

ANNEXURE-D A TRUE COPY OF THE FIR IN CRIME NO.789/11 OF THUMBA POLICE STATION, THIRUVANANTHAPURAM DISTRICT.

ANNEXURE-E A TRUE COPY OF THE FIR IN CRIME NO.543/12 OF THUMBA POLICE STATION.

/TRUE COPY/

P.S. TO JUDGE

K.RAMAKRISHNAN, J

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CRL.M.C.NO.557 OF 2013

.....
Dated this the 22nd day of January 2015

O R D E R

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The counter petitioner in M.C.No.188/2012 on the file of the Sub Divisional Magistrate Court, Thiruvananthapuram is the revision petitioner herein and he filed the above petition to quash the proceedings against him in the above case under section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' for short).

2. On the basis of Annexure-A First Information Report and Annexure-B final report submitted by the Sub Inspector of Police, Thumbal police station, the learned Sub Divisional Magistrate passed Annexure-C impugned order under section 107 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' for short) directing the petitioner to appear and execute a bond for keeping peace in the locality for a period of one year or to show cause why the order should not be executed. This order is being challenged by the revision petitioner by filing the above petition.

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

4. The counsel for the revision petitioner submitted that a reading of Annexure-C impugned order will go to show that the ingredients of section 107 of Code have not been attracted and the details of the information have not been specifically mentioned in the order as required under section 111 of the Code before proceeding against the petitioner under section 107 of the Code. He had relied on two decisions reported in **Ahammad Kabeer Vs. State of Kerala and another (ILR 2014 (2) Kerala 152)** and **Girish P and Others v. State of Kerala and Another** (2009 (4) KHC 929) in support of his case.

5. The learned Public Prosecutor submitted that the petitioner is a trouble maker in the locality and the report submitted by the Sub Inspector shows the conduct of the revision petitioner and the order also shows there is subjective satisfaction.

6. It is seen from the documents produced that Annexure-A First Information Report was registered as Crime No.621/2012 of Thumba police station by the Sub Inspector

of Police, Thumba police station against the present petitioner requesting to initiate proceedings under section 107 of the Code alleging that he was causing threat to the society by threatening the people in the locality and he was likely to repeat the same as well and also filed Annexure-B final report reiterating the same aspect. It is on the basis of this that Annexure-C order has been passed. In the decision reported in **Girish P and Others v. State of Kerala and Another** (2009 (4) KHC 929) and **Ahammad Kabeer v. State of Kerala and another (ILR 2014 (2) Kerala 152)**, this Court has held that the Sub Divisional Magistrate is expected to record the substance of the information received in the order passed under section 107 of the Code and if it is not recorded, then the order is bad in law and merely because a crime was registered is not a ground to initiate proceedings under section 107 of the Code. It is seen from Annexure A and also Annexure B that the offences alleged were bailable offences. Further the petitioner was granted bail by the police themselves as the offences are bailable offences. Further, in Annexure-C what is stated is that two crimes have been registered against the petitioner and the Sub Divisional Magistrate was satisfied

from the report and the records that the petitioner would likely to indulge in further acts of criminal activities involving breach of peace. What is the information mentioned in the report as required under section 107 of the Code has to be considered for passing the order under section 111 of the Code before calling upon the person mentioned therein to execute a bond has not been specifically mentioned in the order. In such circumstances it cannot be said that the Sub Divisional Magistrate had applied his mind and satisfied that the presence of the petitioner was likely to cause danger to the peace in the locality so as to initiate proceedings under section 107 of the Code as observed in the decisions mentioned above. So under the circumstances, non compliance of the provisions of law and non compliance of the observations and directions given in the above decisions in passing the order makes the order illegal and the same is liable to be set aside and further proceedings initiated in MC.No.188/2012 on the file of the Sub Divisional Magistrate, Thiruvananthapuram against the petitioner is liable to be set aside.

7. So, the revision petition is allowed and further proceedings in MC.No.188/2012 of Sub Divisional Magistrate

Court Thiruvananthapuram is quashed.

Office is directed to communicate a copy of this order to the concerned court immediately.

Sd/-

K.RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge