

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Crl.MC.No. 609 of 2013

[AGAINST THE ORDER IN CC 767/2011 of J.M.F.C.-II, KOLLAM
DATED 21.10.2011]

PETITIONER(S)/1ST ACCUSED :

GIREESAN. R., AGED 51 YEARS,
S/O. RAGHAVAN, A1, ARCHA NIVAS
SARAYOO NAGAR-14, ASRAMAM, KOLLAM-691 001.

BY ADV. SRI.ABRAHAM JOHN

RESPONDENTS(S)/STATE AND APPLICANT :

1. STATE OF KERALA
REP.BY THE S.I. OF POLICE, KOLLAM EAST,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

2. SIBI S., AGED 35 YEARS
S/O. SUKUMARAN, SURABHI, BAPUJI NAGAR-36
ASRAMAM, KOLLAM-691 001.

R2 BY ADV. SRI.ALEXANDER GEORGE
R1 BY PUBLIC PROSECUTOR SMT.MADHU BEN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 29-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

MARY JOSEPH, J.

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Crl.M.C No.609 of 2013

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'C.R.'

Dated this the 29th day of October, 2015

ORDER

The petitioner, a businessman is the 1st accused in C.C No.767 of 2011 pending before the Judicial First Class Magistrate Court- II, Kollam. The said case originated from a complaint filed by the 2nd respondent as Crl.M.P.No.5943/2010 under Section190(i)(a) of the Code of Criminal Procedure (for short 'the Code').

2. The allegation in the complaint was that, accused, four in number, restrained the 2nd respondent at 8 p.m on 14.09.2010 while he was moving in a motor cycle through the road near High School Junction, Kollam. It is alleged that the accused attacked the 2nd respondent, questioning him, how he dare to file a case

against a lady named Geethu, who is none other than the 4th accused in C.C No.767 of 2011. The Judicial First Class Magistrate Court- II, Kollam has recorded the statement of the de facto complainant and an occurrence witness and arrived at the conclusion that prima facie grounds are existing for proceeding with the matter further and took cognizance of the case on 21.10.2011. In the said circumstances, the petitioners approached this court seeking to quash the said order on the ground that it will not sustain in law.

3. Sri.Abraham John, the learned counsel appearing for the petitioner, Sri. Alexander George, the learned counsel appearing for the 2nd respondent and the learned Public Prosecutor were heard in detail. The impugned order and the materials produced in support of the averments in the Crl.M.C are perused. It is the argument of Sri.Abraham John, learned counsel for the petitioner that the private complaint, upon which cognizance was taken, was

not supported by any witness list. According to him, the place of incident shown in the private complaint, which was taken cognizance of as C.C No.767 of 2011 by the learned Magistrate is the same as the one shown in Annexure A5 charge sheet filed on the basis of the First Information Report registered by the first respondent, but it was shown as different. According to him, both the cases are registered on the basis of the very same incident occurred on the same day, but since the place was shown as different, there is no scope for the allegations in the private complaint to sustain. It is further stated by the learned counsel that Annexure A6 appended with this Crl.M.C. discloses the involvement of the second respondent in several pending cases. According to him, in view of the pendency of several cases disclosed from Annexure A6, the allegations levelled in the private complaint can only be taken as a malafide measure of the 2nd respondent to trap the petitioner herein. The learned counsel

has submitted on the basis of the dictum laid down by the Apex Court in **State of Haryana and others v Bhajanlal and others** reported in **(AIR 1992 SC 604)** that in a criminal proceeding, when sufficient reason is there to show that the complainant has acted malafide or that a proceeding was maliciously instituted with ulterior motives to wreck vengeance, the court can interfere with the matter to put an end to the proceedings by exercising the power vested on it under Section 482 of the Code of Criminal Procedure. According to the learned counsel, in the case on hand, sufficient reasons are there to establish that the private complaint was lodged by the 2nd respondent out of his malafide intention to trap the petitioner.

4. Per contra, Sri.Alexander George, the learned counsel appearing for the 2nd respondent has contended that the private complaint was the proceeding instituted first in point of time. According to him, Annexure A5 charge sheet was the outcome of

the First Information Report registered after the filing of the private complaint. It is submitted by the learned counsel that going by the averments in the private complaint, it can be seen that the 2nd respondent has approached the court under Section 190(i)(a) of the Code of Criminal Procedure solely on the reason of his complaint having not been entertained by the Police authorities. According to him, the private complaint contains sufficient and satisfactory materials for the court to proceed with further and accordingly that, the Judicial First Class Magistrate Court- II, Kollam has passed the impugned order taking cognizance of the same.

5. The learned Public Prosecutor has also addressed the Court supporting the arguments of the learned counsel for the 2nd respondent.

6. For taking cognizance upon a private complaint, the court has to see from the allegations therein that those if proved would

constitute an offence. Or in other words, the court would decide on the basis of the informations available in the complaint that judicial proceedings could be initiated against the offender referred therein. Going by the statements of the de facto complainant and the witnesses made available before this Court, I am convinced that sufficient materials were available before the Judicial First Class Magistrate-II, Kollam for taking a decision to initiate judicial proceedings against the petitioner, who is the first accused in C.C.No.767/2011 on the files of the said court. From the statements of the de facto complainant as well as the witnesses recorded by the learned Magistrate, it is seen that the ingredients of the offences alleged against the petitioner herein would prima facie, sustain and the court would get jurisdiction to proceed with further. It is on the said revelation that the court below formed its opinion that materials available are sufficient to proceed further with the private complaint and accordingly that the impugned

order was passed. The learned counsel for the petitioner, though has argued strenuously to convince the court that a mala fide intention is involved behind the preferring of the private complaint by the second respondent, this Court could not find any such reason from the materials available. The circumstances to which attention of this Court is drawn by the learned counsel for the petitioner to arrive at a conclusion that the 2nd respondent has acted mala fide are not convincing enough to draw such a conclusion. The court below has acted strictly in accordance with law while passing the impugned order. Moreover the Apex Court has held in the decision relied upon by the learned counsel for the petitioner that the court is empowered to exercise the inherent jurisdiction to quash a complaint on the ground of malafide intention sparingly and in exceptional cases. Therefore, only in a case wherein satisfactory and sufficient grounds are shown by the petitioner evidently indicative of the mala fide

intention of the complainant behind the lodging of a private complaint before a court that the court is justified in exercising the inherent jurisdiction vested on it under Section 482 of the Code to quash the same. In this connection, it is pertinent to have a look at certain decisions wherein the scope of interference with the order taking cognizance by a Magistrate is dealt with.

7. At this juncture it is pertinent to have a look at the meaning of the term 'Cognizance'. According to Black's Law Dictionary, the word 'Cognizance' means 'Jurisdiction' or 'exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of.

8. In ***General Officer Commanding v. CBI and Another*** reported in AIR 2012 SC 1980 the Apex Court held that;

“In Broad and literal sense 'cognizance' means taking notice of an offence as required under Section 190 Cr.PC., 'cognizance' indicates the point when the Court first takes judicial notice of an offence”.

9. The Apex Court in (*State of West Bengal and Another v. Mohammed Khalid and others: Mohammed Rashid Khan and others; State of West Bengal and Another v. Abdul Azeez and another*) laid down the dictum while considering the scope of interference by a court in exercise of writ jurisdiction that:-

“Taking of cognizance by designated court cannot be interfered with under Article 226 of the Constitution of India by analysing materials on record. The fact that order taking cognizance was not a reasoned order, would be of no consequence. Interference by analysing materials on record is not permissible in writ jurisdiction.”

10. The Apex Court in *State of Bihar v. Murad Ali Khan* (1988 (4) SCC 655), while considering the scope of interference by a court in the exercise of inherent jurisdiction with an order taking cognizance by a Magistrate held:-

“It is trite that jurisdiction under Section 482 Cr.P.C., which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any Court

or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the Court or not.”

11. In ***Dr.Subramanian Swamy v. Dr.Manmohan Singh and Another*** reported in AIR 2012 SC 1185, the Apex Court held;

“Before proceeding further, we would like to add that at the time of taking cognizance of the offence, the Court is required to consider the averments made in the complaint or the charge-sheet filed under Section 173. It is not open for the Court to

analyse the evidence produced at that stage and come to the conclusion that no prima facie case is made out for proceeding further in the matter. However, before issuing the process, it is open to the Court to record the evidence and on consideration of the averments made in the complaint and the evidence thus adduced, find out whether an offence has been made out. On finding that such an offence has been made out the Court may direct the issue of process to the respondent and take further steps in the matter. If it is a charge-sheet filed under Section 173 Cr.P.C., the facts stated by the prosecution in the charge-sheet, on the basis of the evidence collected during investigation, would disclose the offence for which cognizance would be taken by the Court. Thus, it is not the province of the Court at that stage to embark upon and shift the evidence to come to the conclusion whether or not an offence has been made out.”

12. In the case on hand, it is contended by the learned counsel for the petitioner that the defacto complainant was in enmity with the petitioner, since long, and with cunning intention had chocked out a game plan and instituted Annexure A1 complaint as Crl.M.P.No.5943/2010 under Section 190(i)(a) of the Code on 20.09.2010. It is further contended that on the basis of

the complaint, a false statement was given before the Judicial First Class Magistrate Court-II, Kollam. According to him, based on the said statement containing false allegations that the learned Magistrate happened to take cognizance upon it. The said contention of the learned counsel for the petitioner has to be viewed in the backdrop of the decisions cited supra.

13. The sum and substance of the dictums in the rulings cited supra was that whether it is in exercise of writ jurisdiction under Article 226 of the Constitution of India or if it is in exercise of the inherent power under Section 482 of the Code, the Superior Court is empowered to interfere with the order taking cognizance on a private complaint or upon a police report by a Magistrate only in a clear case, wherein the accused would be able to establish from the very materials available that there is a mala fide intention for the complainant behind lodging the complaint. Section 190 of the Code is solely meant for a

Magistrate to be exercised. Taking cognizance is solely within the realm of a Magistrate. A Magistrate, while taking cognizance of the offence is required only to consider the averments made in the complaint or the charge sheet filed under Section 173(2) of the Code and when cognizance is taken in that way, the Superior Court is not empowered to intrude into the said jurisdiction of the Magistrate and to opine as to the correctness or falsity involved therein. It is only when a trial is held later on before the said Magistrate that its truth or falsity could be brought to light.

14. In the case on hand, the Judicial First Class Magistrate Court-II, Kollam has arrived at a finding on the basis of the allegations in Crl.M.P.No.5943/2010 dated 20.09.2010 that sufficient grounds are existing, enabling it to proceed with further in the matter and based on that, cognizance was taken and numbered the case as C.C.No.767/2011. The Magistrate is not supposed to look into the correctness or falsity of the allegations

at that juncture. Taking cognizance means to initiate proceedings upon a complaint or police charge. In view of the decisions cited supra, this Court has no jurisdiction to look into the correctness or otherwise of the said order or that the order was supported by reasons or not. Upon a prima facie dealing with the materials available, mala fide intention of the complainant as alleged by the learned counsel for the petitioner could not be made out. In the said circumstances, I am declined to interfere with the impugned order in exercise of the inherent jurisdiction under Section 482 of the Code of Criminal Procedure.

In the result, Crl.M.C is dismissed. The court below is directed to proceed with the case on hand untrammelled by any of the observations made by this court in the judgment.

MARY JOSEPH, JUDGE

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