

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

CrI.MC.No. 2117 of 2015 ()

**AGAINST THE ORDER IN MC.NO. 570/2014 OF SUB DIVISIONAL MAGISTRATE COURT,
KOLLAM
CRIME NO. 2011/2014 OF PUNALUR POLICE STATION, KOLLAM DISTRICT**

PETITIONER/ACCUSED :

**SYAM SASI
S/O.SASIDHARAN NAIR, AGED 24 YEARS
BEENA MANDIRAM, ARAMPUNNA
PUNALUR, KOLLAM.**

BY ADV. SRI.B.MOHAN LAL

RESPONDENTS/COMPLAINANT :

**1. STATE
REPRESENTED BY THE STATION HOUSE OFFICER
PUNALUR POLICE STATION, PUNALUR
KOLLAM DISTRICT
THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

**2. THE SUB DIVISIONAL MAGISTRATE
CIVIL LINES, CUTCHERY P.O., KOLLAM -691 013.**

R1 & R2 BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05-10-2015,
ALONG WITH CRL.M.C NO.2118/2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:**

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...2/-

Crl.MC.No. 2117 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES :

- ANNEXURE-A1:** THE TRUE COPY OF THE FIR IN CRIME NO.2011/2014 OF PUNALUR POLICE STATION IN KOLLAM DISTRICT.
- ANNEXURE-A2:** THE TRUE COPY OF THE ORDER NO.570/2014/MC ISSUED BY THE 2ND RESPONDENT.
- ANNEXURE-A3:** THE TRUE COPY OF THE FIR AND FIS IN CRIME NO.1827/2014 OF PUNALUR POLICE STATION IN KOLLAM DISTRICT.
- ANNEXURE-A4:** THE TRUE COPY OF THE FINAL REPORT IN CRIME NO.1827/2014 OF PUNALUR POLICE STATION IN KOLLAM DISTRICT PENDING AS C.C.NO.2001/2014 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT - III, PUNALUR.

RESPONDENT(S)' ANNEXURES : NIL

//TRUE COPY//

P.S. TO JUDGE

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B. KEMAL PASHA, J.

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Crl.M.C. Nos. 2117 & 2118 of 2015
.....

Dated this the 5th day of October, 2015

ORDER

Petitioners are challenging Annexure-A2 order passed by the learned Sub Divisional Magistrate, Kollam, whereby proceedings under Section 107 Cr.P.C. has been initiated have been against the petitioners. The petitioners happened to be two among accused in Crime No.1827/2014 of the Punalur Police Station, registered for the offences punishable under Sections 143, 147, 323 and 324 read with Section 149 IPC.

2. The Sub Inspector of Police, Punalur Police Station

has filed a report before the learned Sub Divisional Magistrate seeking proceedings under Section 107 Cr.P.C. as against the petitioners. According to the petitioners, unnecessarily proceedings under Section 107 Cr.P.C. have been initiated against them, only because of political vengeance. When the Executive Magistrate receives information that any person is likely to commit the breach of peace or disturb the public tranquility or to do any wrongful act that may probably occasion the breach of piece or disturb the public tranquility and is of opinion that there are sufficient grounds for proceeding, he may require such person to show cause why he should not be ordered to execute a bond for keeping the peace for such period not exceeding one year, as per S.107(1) Cr.P.C.

3. Here, at the time of initiating the proceedings under Section 107 Cr.P.C., the petitioners were accused in only one case. Any immediate threat to the society from their part has not been reported at all. According to the petitioners,

they are associated with politics and that is why they happened to be accused in the case. Simply because of the fact that a person happened to be an accused in a criminal case, proceedings under Section 107 Cr.P.C. cannot be initiated against him. The Executive Magistrate shall have the satisfaction that there is sufficient ground for proceeding, for which he shall have to assess the available materials against the petitioners. Here, the only reason shown in the order is that the petitioners are accused in a crime. The order does not reflect the satisfaction of the learned Sub Divisional Magistrate that there are sufficient grounds for proceeding in the matter. The report of the Sub Inspector of Police alone should not have been considered as a gospel truth as against the petitioners. Matters being so, it is evident that the learned Sub Divisional Magistrate is not justified in passing Annexure-A2 orders. Annexure-A2 orders are bad in law and are only to be quashed.

In the result, these Crl.M.Cs. are allowed and

Crl.M.C. Nos.2117 of 2015 & con. case

-: 4 :-

Annexure-A2 orders passed by the Sub Divisional
Magistrate are hereby quashed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge