

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 17TH DAY OF APRIL 2015/27TH CHAITHRA, 1937

Crl.MC.No. 2479 of 2015

**MC 355/2014 OF SUB DIVISIONAL MAGISTRATE, THIRUVANANTHAPURAM.
CRIME NO.1188/2014 OF KAZHAKOOTTAM POLICE STATION,
THIRUVANANTHAPURAM.**
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PETITIONER(S)/COUNTER PETITIONERS 1 & 3:

- 1. RAJESH @ ADHARAM RAJESH,
S/O.ANIYAN, VYKUNDAM VEEDU,
CHITTATTUMUKU, KAZHAKOOTTAM,
THIRUVANANTHAPURAM.**
- 2. SHIJU @ BLACKYSHIJU, S/O.RAVI,
PUTHUVALPUTHEN VEEDU,
CHIRAYARIKATHU, KALPANA COLONY,
MENAMKULAM, THIRUVANANTHAPURAM.**

BY ADV. SRI.V.S.THOSHIN

RESPONDENT/COMPLAINANT:

**STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE,
KAZHAKOOTTAM,
THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

BY SENIOR PUBLIC PROSECUTOR SMT.RAZIYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 17-04-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

Crl.MC.No. 2479 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

- ANNEXURE A :** THE TRUE COPY OF THE ORDER DATED 5.12.2014 IN
M.C.NO.355/2014 OF THE SUB DIVISIONAL MAGISTRATE,
THIRUVANANTHAPURAM.
- ANNEXURE B :** THE CERTIFIED COPY OF THE FIR IN CRIME NO.1002/2014 OF
KAZHAKOOTTAM POLICE STATION, THIRUVANANTHAPURAM.
- ANNEXURE C :** THE CERTIFIED COPY OF THE FIR IN CRIME NO.1188/2014 OF
KAZHAKOOTTAM POLICE STATION, THIRUVANANTHAPURAM.

RESPONDENT'S ANNEXURES: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

K.SURENDRA MOHAN, J.

Crl.M.C.No.2479 of 2015

Dated this the 17th day of April, 2015

ORDER

The petitioners are counter petitioners No.1 and 3 in M.C.No.355/2014, proceedings initiated by the Sub Divisional Magistrate under Section 107 of the Code of Criminal Procedure. As per Annexure A order, the Sub Divisional Magistrate has directed the petitioners to appear before the Court and to show cause why they should not be directed to execute a bond for ₹20,000/- with two solvent sureties each for the like amount for keeping peace in the locality for a period of one year. The order has been passed for the reason that, the petitioners have been arrayed as accused in Crime Nos.1002/2014 and 1188/2014 of Kazhakkootam Police Station.

2. According to the learned counsel for the petitioners, Annexure A order is unsustainable for the reason that, the same does not disclose the substance of the information received by the Sub Divisional Magistrate. It is contended that, it is necessary to disclose the substance of such information, in accordance with the mandate of Section 111 of the Code of Criminal Procedure. The counsel also places reliance on the decisions of this Court in **Henry Vijayakumar v. State of Kerala [2009 (4) KLT 495]** and **Girish P. and Others v. State of Kerala and Another [2009 (4) KHC 929]** in support of his contention. The learned Public Prosecutor

appears for the respondent.

3. Heard. A perusal of Annexure A order does not disclose the substance of the information received. The order merely says that, the SHO has submitted a copy of FIR and records in Crime Nos.1002/2014 and 1188/2014 of Kazhakkootam Police Station and that, on a perusal of the report and the records, the Sub Divisional Magistrate is satisfied that the petitioners are likely to indulge in further acts of criminal activities involving breach of peace. This Court has in paragraph 5 of the decision reported in **2009 (4) KHC 929**, considered a similar order and has held as follows :

“5. S.107 of Code of Criminal Procedure enables an executive Magistrate on receiving information that a person is likely to commit breach of peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, to require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping peace for such period not exceeding one year as the Magistrate thinks fit. S.111 mandates that when a Magistrate acting under S.107, deems it necessary to require any person to show cause, he shall make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties, if any required, the necessity to set forth 'the substance of the information' in the order under S.111 is not an empty formality and is with a purpose. It is to enable the person against whom the order is passed, to appear and

show cause before the Magistrate that the allegations are not correct. Unless that information is furnished to the person against whom the order is passed, he cannot defend the allegation as against him."

4. Since the substance of the information received has not been disclosed in Annexure A order, the same is unsustainable. Therefore, the petitioners are entitled to succeed.

This Crl.M.C is accordingly allowed. Annexure A is quashed. It is made clear that, the Sub Divisional Magistrate shall be at liberty to pass fresh orders, in accordance with law, if circumstances still warrant the issue of any such order.

Sd/-
K.SURENDRA MOHAN, JUDGE.

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