

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

CrI.MC.No. 1448 of 2013

OS 194/2012 of MUNSIFF COURT, NADAPURAM
CRIME NO. 542/2012 OF NADAPURAM POLICE STATION , KOZHIKODE

PETITIONER(S)/ACCUSED NO.1 TO 3:

1. E.K.MUHAMMEDALI, AGED 23 YEARS
S/O.HAMEED HAJI
EDAVATHKANDY HOUSE, IYYAMKODE AMSOM DESOM
VADAKARA TALUK.

2. ABDUL LATHEEF, AGED 32 YEARS,
S/O.KUNHALI HAJI, MALAYANTANKANDY HOUSE, P.O.KALLACHI
NADAPURAM, VADAKARA TALUK.

3. ISMAYIL, AGED 33 YEARS
S/O.IBRAHIM, MEETHALEPARAMBATH HOUSE IYYAMKODE AMSOM
NADAPURAM, VADAKARA TALUK.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S)/RESPONDENT AND STATE:-:

1. MOIDU KOLARA,
S/O.KUNHABDULLA, KIZHAKKAYIL VEEDU, IYYAMKODE AMSOM
KAKKATTIL DESOM, VADAKARA TALUK.

2. THE SUB INSPECTOR OF POLICE,
NADAPURAM POLICE STATION, KOZHIKODE DISTRICT.

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

BY PUBLIC PROSECUTOR SRI.N. SURESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21-
07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CrI.MC.No. 1448 of 2013

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1. TRUE COPY OF THE COMPLAINT PREFERRED BY THE 1ST
RESPONDENT BEFORE THE JUDICIAL MAGISTRATE OF FIRST CLASS,
NADAPURAM.

ANNEXURE A2. TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME
NO.542/2012 OF THE NADAPURAM POLICE STATION.

ANNEXURE A3. TRUE COPY OF THE LEASE AGREEMENT ENTERED INTO BETWEEN
THE OWNER OF THE BUILDING AND THE 1ST PETITIONER.

ANNEXURE A4. TRUE COPY OF THE PLAINT IN O.S.194/2012 SUBMITTED BY
THE 1ST PETITIONER BEFORE THE MUNSIF COURT, NADAPURAM.

ANNEXURE A5. TRUE COPY OF AD INTERIM ORDER OF INJUNCTION GRANTED BY
THE MUNSIF COURT, NADAPURAM IN I.A.NO.1239/2012.

TRUE COPY

P.S TO JUDGE

RAJA VIJAYARAGHAVAN.V. J

Crl.M.C. 1448 of 2013

Dated 21st July, 2015

ORDER

1. In this proceeding u/s 482 of the Code of Criminal Procedure (for short “the Code”), the petitioners, who are accused Nos.1 to 3 in Crime No.542 of 2012 of Nadapuram police station, Kozhikode, seek to quash Annexure-A2 FIR in the said crime.

2. The 1st respondent herein has preferred Annexure-A1 complaint before the Judicial Magistrate of First Class, Nadapuram, on 12.11.2012 stating the following facts:-

The 1st respondent is the Secretary of the Muslim League and the office of the Muslim League situated in room No.NP II/226 within the limits of Nadapuram Grama Panchayath. On 4.11.2012 at 9.00 pm, accused Nos.1 to 3 who are members of a rival party had trespassed into the aforesaid room and after breaking the lock, took

away the banners and flags and destroyed some furniture as a result of which, a loss of Rs.50,000/- was sustained. Based on the above complaint, Crime No.542 of 2012 was registered on 14.11.2012 u/s 427, 447 and 379 r/w 34 of the Indian Penal Code.

3. The learned counsel for the petitioner would submit that the registration of the crime is *mala fide* and for the sole purpose of vexing the petitioners. It was contented on the strength of Annexure-A3 lease agreement, that the same was executed by Muhammed Nazar , the owner of shop room No NP II/ 226 situated in the 1st floor of the double storied building bearing Nos.626, 627 and 628 in favour of the 1st petitioner on 15.10.2012. It was submitted that the premises, from where it is alleged that the flags and banners were taken, was already in the possession of the 1st petitioner by virtue of Annexure-A3 lease deed. It was also pointed out that the 1st petitioner had preferred a Suit before the Munsiff Court, Nadapuram, seeking relief of injunction restraining one

Abdul Rahman and three others from interfering with the rights of the 1st petitioner over the premises and from causing any obstruction to the peaceful occupation and as per order dated 6.11.2012 in I.A.1239 of 2012 in O.S.194 of 2012, the learned Munsiff had passed an order of interim injunction restraining the respondents and their men from trespassing into the plaint schedule premises, from committing waste therein and interfering in the independent possession of the same by the petitioner until further orders. The de facto complainant in the instant case is the 3rd defendant in the said suit. On the strength of Annexure-A3 to A5, it is submitted by the learned counsel for the petitioner that the complaint lodged on the basis of alleged possession of the premises is for the sole purpose of implicating the petitioners in a false criminal proceeding with malicious intention. It is submitted that the complaint was lodged much after the execution of the lease deed to make it appear that the 1st respondent had some right over the premises. According to the learned counsel, the dispute is pending before the

Civil Court and the institution of the complaint and registration of FIR is with a view to give a criminal flavour to the pure civil transaction between the parties. It is also pointed out that the allegation in the complaint was frivolous and in view of the lease deed executed in favour of the 1st petitioner by the owner of the premises, the allegations can only be *prima facie* false.

4. Though notice was served on the 1st respondent, none appeared for and on his behalf.

5. I have anxiously considered the contentions of the learned counsel on the strength of the lease agreement, the order of injunction passed by the Munsiff Court and also the affidavit and pleadings in the said Court. As is evident from the lease deed executed on 15.10.2012, the building bearing No.NP II/226 has been leased in favour of the 1st petitioner by its owner Abdul Nazar. It is also evident that the 1st petitioner, when faced with obstruction from the 1st respondent and others had

instituted O.S.194 of 2012 before the Munsiff Court, Nadapuram, and had obtained an order of injunction in his favour. These records would reveal that the 1st petitioner was in absolute possession of the premises on and from 15.10.2012 and if that be the case, the contention of the 1st respondent in the private complaint filed on 4.11.2012 that the petitioners had trespassed into the premises, cannot be true. At any rate, in spite of receipt of notice from this Court, the 1st respondent has not cared to appear before this Court and state his version. In that view of the matter, I am of the considered opinion that the 1st respondent had nothing to say in respect of the contentions raised in the matter. When the petitioners are in absolute possession of premises, it cannot be said that they had stolen the banners and flags from the said premises and have, therefore, committed offence punishable u/s 427, 447 and 379 of the IPC. It appears that the said complaint was preferred solely to cause hardship to the petitioners. In view of the above, I am of the considered opinion that the allegations in Annexure-2

FIR cannot stand in view of the facts and circumstances of the instant case.

6. In the result, Crl.M.C stands allowed. Annexure-2 FIR in Crime No.542 of 2012 of Nadapuram police station is quashed.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

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