

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

Crl.MC.No. 2554 of 2015

**CC 1064/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KOLLAM.
CRIME NO. 952/2013 OF KIHAKKEKALLADA POLICE STATION, KOLLAM.**
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PETITIONER/3RD ACCUSED:

**SHANAVAS.S, SAJEEV MANDIRAM,
THAZHATHU MURI, EAST KALLADA P.O.,
KOLLAM-691502.**

**BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SMT.PARVATHY NAIR**

RESPONDENT(S)/STATE & COMPLAINANT:

- 1. STATE OF KERALA,
THROUGH STATION HOUSE OFFICER,
KIZHAKKEKALLADA POLICE STATION,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.**
- 2. PRAKASH, S/O.THANKAPPAN,
EZHIYIL VADAKKATHIL, EAST KALLADA P.O.,
KOLLAM - 691502.**

**R1 BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN
R2 BY ADV. SRI.B.RAMACHANDRAN**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 20-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS :

- ANNEXURE-1:** TRUE COPY OF FIR IN CRIME NO.952/2013 OF KIZHAKKEKALLADA POLICE STATION.
- ANNEXURE-2:** TRUE COPY OF FINAL REPORT FILED IN C.C.1064/13 BEFORE JUDICIAL MAGISTRATE FIRST CLASS COURT-I, KOLLAM.
- ANNEXURE-3:** TRUE COPY OF ADVICE DATED 23.02.2015 OF THE KERALA PUBLIC SERVICE COMMISSION.

RESPONDENTS' ANNEXURES:

- ANNEXURE R2(A) :** A TRUE COPY OF FINAL REPORT DATED 15.7.2013 WHICH IS PENDING AS C.C.1082/2013 BEFORE THE JUDICIAL MAGISTRATE FIRST CLASS-II, KOLLAM.
- ANNEXURE R2(B):** A TRUE COPY OF FINAL REPORT DATED 21.10.2012.

//TRUE COPY//

P.S. TO JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C.Nos.2554 & 4053 of 2015

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Dated this the 20th day of August, 2015
O R D E R

The sole petitioner in Crl.M.C.No.2554/2015 is accused No.3 in the impugned Anx.1 Crime No.952/2013 of Kizhakkekallada Police Station, Kollam district, for offence registered under Secs.323, 324 and 34 of the I.P.C., the instance of the 2nd respondent defacto complainant. The four petitioners in Crl.M.C.No. 4053/2015 are accused Nos.1, 2, 4 and 5 in the aforestated impugned Anx.1 Crime No.952/2013 of Kizhakkekallada Police Station. The Police, after investigation has submitted the impugned Anx.2 final report/charge sheet in the impugned Anx.1 Crime No. 952/2013 of Kizhakkekallada Police Station, which has led to the pendency of Calendar Case, C.C.No.1064/2013 on the file of the Judicial First Class Magistrate's Court-I, Kollam. The main prayer in these Crl.M.Cs. is for an order from this Court to quash the impugned criminal proceedings initiated against the petitioners at the instance of the 2nd respondent defacto complainant on the ground that the said impugned criminal proceedings amount to an

abuse of the process of the court.

2. Heard Sri.George Varghese Perumpallikuttiyl, learned counsel appearing for the petitioners in these Criminal Miscellaneous Cases, Sri.B.Ramachandran, learned counsel appearing for the 2nd respondent defacto complainant and the learned Public Prosecutor appearing of the 1st respondent State of Kerala.

3. The gist of the allegations in the impugned crime is that on 22.5.2013 at about 9 p.m., while the defacto complainant (R-2 herein) was walking to his home from work place, the pet dog belonging to the 1st accused came towards him barking and the defacto complainant pelted a stone at the dog so as to make it run away. Then A-1 came running out of his house asking how R-2 could dare to stone his pet dog and caught R-2 by his neck and pushed him down. That the brother of A-1 beat the 2nd respondent with a wooden plank on his left foot and backside and A-3, who is also the brother of A-1 and A-2, along with A-4 (wife of A-1) and A-5 (the mother of A-1 to A-3) came to the spot and caused hurt to the 2nd respondent defacto complainant by inflicting blows. On the basis of such allegations, the impugned crime was registered for

offences punishable under Secs.323, 324 read with Sec.34 of the I.P.C. The defacto complainant (R-2) is none other than a close relative of the accused petitioners in these cases. It is also pointed out that in relation to certain incidents arising out of the bad relationship between the petitioners herein and the 2nd respondent, a counter case was also registered as Crime No.953/2013 of Kizhakkekallada Police Station, in which, the 2nd respondent herein (defacto complainant) is the accused therein and A-2 herein is the defacto complainant therein. Sri.George Varghese Perumpallikuttiyl, learned counsel appearing for the petitioners submits that the entire impugned proceedings are nothing but vexatious initiation of criminal proceedings initiated at the behest of the defacto complainant and further that the parties are relatives and distant cousins and that the petitioners herein are fully willing to make due settlement of the entire disputes with their close relative, the 2nd respondent herein and are willing for quashment of the impugned proceedings in counter case concerned, viz., Crime No.953/2013, in which R-2 herein is the accused and A-2 herein is the defacto complainant.

4. It is pointed out that due to the initiation of the counter

case in Crime No.953/2013 of Kizhakkekallada Police Station, in which R-2 herein is the accused therein, the 2nd respondent herein had to face loss of employment in the Gulf country. It is further pointed out that the petitioner in Crl.M.C.No.2554/2015 (A-3 herein) is on the verge of getting an offer for advice and appointment for public employment and that the pendency of the present criminal proceedings arising out of Crime No.952/2013 of Kizhakkekallada Police Station, will stand in the way of his getting the public employment, etc. During the course of the hearing on various occasions, this Court had made a serious attempt to ascertain whether complete settlement of the disputes between the parties could be attempted and as to whether even the counter case in Crime No.953/2013, in which, the 2nd respondent herein is the accused, could also be quashed on the ground of settlement between the parties. Sri.George Varghese Perumpallikuttiyl, learned counsel appearing for the petitioners in these Crl.M.Cs. submitted that his parties are willing for such a settlement and that in case the 2nd respondent herein files a separate Crl.M.C. for quashment of the impugned proceedings in Crime No. 953/2013 and consequential proceedings, then the petitioners in these Crl.M.Cs. have no

objection for quashment of the impugned proceedings in that counter case, in which, the 2nd respondent herein is the accused therein, on the ground of settlement, etc.

5. However, Sri.B.Ramachandran, learned counsel appearing for the 2nd respondent submitted, on instructions from the 2nd respondent, that his party is not willing for such a course of action and that his party had suffered grave loss by virtue of the initiation of the counter case in Crime No.953/2013, in which, the 2nd respondent herein is the accused therein. The fact that these rival parties are relatives and distant cousins is not disputed. However, in spite of the aforestated submissions made on behalf of the 2nd respondent herein, Sri.George Varghese Perumpallikuttiyl, learned counsel appearing of the petitioners in these Crl.M.Cs. submitted that his parties would be willing for quashment of the impugned criminal proceedings in the counter case in Crime No.953/2013, in which, the 2nd respondent herein accused therein on the ground of settlement, if the 2nd respondent herein initiates separate proceedings in that regard for quashment of such impugned proceedings. The aforestated submission made on behalf of the petitioners in these Crl.M.Cs. is recorded.

6. Now that the feasibility of a settlement between the parties is not possible in view of the rigid stand taken by the 2nd respondent, the only point to be considered is as to whether the impugned criminal proceedings arising out of the impugned Crime No.952/2013 of Kizhakkekallada Police Station, amounts to vexatious initiation criminal proceedings and amounts to grave abuse of the process of the court.

7. From a mere examination of the undisputed investigation materials it is discernible that the parties are relatives and also living in the same locality and are neighbours. The main allegation is that on 22.5.2013, at about 9 p.m., while R-2 herein was walking to his home from his work place, the pet dog belonging to A-1 came towards him barking and R-2 pelted stone at the dog so as to make it run away and it is on these incidents, that the allegations of the entire family consisting of all the five accused have allegedly committed the aforestated incident of attack on the 2nd respondent. It is stated that A-1 came out of his house asking how the 2nd respondent could dare to stone his pet dog and caught R-2 by his neck and pushed him down and the brother of A-1, beat R-2 with a wooden plank on his left foot and backside and A-3,

who is also the brother of A-1 and A-2, along with A-4 (wife of A-1) and A-5 (the mother of A-1 to A-3) came to the spot and committed the above said offences, etc. It is thus seen that even A-4, who is the wife of A-1, and A-5, who is none other than the mother of A-1 to A-3, are also roped in in these allegations. Evidently, the parties are relatives and it appears that their relationship was far from smooth and it is pointed out by the learned counsel for the petitioners that there were some personal disputes pending between the parties. A counter case in Crime No. 953/2013 of Kizhakkekallada Police Station is also pending, in which, the 2nd respondent herein is the accused therein and A-2 herein is the defacto complainant therein. Thus from an over all appreciation of the incidents, which led to the impugned crime and the counter case, it can be seen that the incidents arisen out of personal petty disputes and the allegations are that the entire incidents originated when R-2 had stoned the pet dog which came barking him, etc. This Court is of the considered opinion that these impugned proceedings are vexatious and borders to abuse of the process of the court and the precious time of the judicial and the Police authorities need not be expended for the

continued prosecution of these impugned criminal proceedings. Accordingly, this Court has no hesitation to hold that the impugned proceedings are vitiated by vexatiousness and abuse of the process of the court. Accordingly, the impugned Anx.2 final report/charge sheet filed in the impugned Anx.1 Crime No.952/2013 of Kizhakkekallada Police Station, Kollam district, which has led to the pendency of C.C.No.1064/2013 on the file of the Judicial First Class Magistrate's Court-I, Kollam pending against the petitioners and all further proceedings arising therefrom pending against the petitioners are quashed. It is made clear that the 2nd respondent will be at liberty to initiate separate proceedings for quashment of the impugned counter case in Crime No.953/2013 of Kizhakkekallada Police Station and in this regard, the undertaking given by the petitioners herein that they are willing for quashment of those criminal proceedings, in which, the 2nd respondent herein is the accused on the ground of settlement, is also recorded.

With these observations and directions, these Crl.M.Cs. stand finally disposed of.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

