

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

Cr1.MC.No. 2589 of 2015 ()

CMP 85/2015 IN CC 467/2011 OF J.F.C.M.COURT, ERATTUPETTA
CRIME NO. 37/2011 OF MELUKKAVU POLICE STATION , KOTTAYAM

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PETITIONER/ACCUSED:

SUNNY MATHEW, AGED 55 YEARS,
S/O.MATHEW, ELANJIKKAL HOUSE, MUTHALAKKODAM KARA,
THODUPUZHA VILLAGE.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENT/COMPLAINANT:

STATE OF KERALA
(S.I OF POLICE, MELUKAVU POLICE STATION)
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF EKRALA, ERNAKULAM, KOCHI-682 031.

BY PUBLIC PROSECUTOR SRI. JUSTINE JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
05-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 2589 of 2015 (G)

APPENDIX

PETITIONER(S) ' EXHIBITS :

ANNEXURE -1: CERTIFIED COPY OF THE PETITION FILED BEFORE THE MUNSIFF
COURT, EERATTUPETTA AS C.M.P NO. 1683/2014 DATED 18-02-14

ANNEXURE -II: CERTIFIED COPY OF THE ORDER DATED 17-09-2014 IN C.M.P NO
1683/2014 IN C.C NO. 467/2011 OF THE JUDICIAL FIRST
CLASS MAGISTRATE, ERATTUPETTA.

ANNEXURE III: CERTIFIED COPY OF THE PETITION DATED 08-01-2015 FILED
BY THE ASSISTANT PUBLIC PROSECUTOR UNDER SECTION 173(8)
OF THE CR.P.C.

ANNEXURE IV: CERTIFIED COPY OF THE ORDER DATED 02-02-2015 IN C.M.P
NO.85/2015 IN C.C NO 467/2011

RESPONDENT(S) ' EXHIBITS: NIL

OKB

True copy

P.A. to Judge

K.HARILAL, J.

Crl.M.C. No.2589 of 2015

Dated this the 5th day of June, 2015.

O R D E R

Petitioner is the accused in C.M.P.No.85/2015 in C.C.No.467/2011 on the files of the Judicial First Class Magistrate's Court, Erattupetta. The above case arises out of Crime No.37/2011 dated 14.2.2011 of Melukavu Police Station alleging offences punishable under Sections 447 & 427 of the Indian Penal Code. The allegation against the petitioner, in brief, is that he trespassed into the property belonging to the Government, constructed a road and cultivated different types of trees etc. The petitioner appeared before the court pursuant to summons and thereafter a charge was framed against him as early on 19.12.2012 alleging offences under Sections 447 & 427 of the IPC and on 8.10.2013 examination of witnesses started and thus the trial of the case is at the fag end. Now the Assistant Public Prosecutor filed a petition under

Section 173(8) of the Cr.P.C. praying that offence under Land Conservancy Act is also attracted in the case and a further investigation is required to investigate the offence under Land Conservancy Act. After considering the objection filed by the petitioner, highlighting the illegality of a further investigation, for a fresh offence, required by the prosecution, the court below allowed the application as prayed for. The legality, propriety and correctness of the order directing further investigation under Section 173(8) of the Cr.P.C. are under challenge in this revision petition.

2. The learned counsel for the revision petitioner drew my attention to the stage of the proceedings and submitted that charge was framed as early on 12.9.2012 and the examination of the witnesses was started on 8.10.2013 and trial is at the fag end. So far the de facto complainant has no case alleging offence under the Land Conservancy Act. Secondly, the learned counsel drew my attention to Annexure-II order passed by the very same court and contended that earlier the very same prayer was rejected by the court below on a finding that there

is no ample evidence to show that the offence as per Land Conservancy Act is made out against the accused. Thus the present order under challenge is passed in contravention of the earlier Annexure-II order passed by the very same court.

3. Going by the impugned order, it is seen that as rightly submitted by the learned counsel for the petitioner, now the trial is at the fag end. The de facto complainant was examined as P.W.7. Going by Annexure-II order dated 17.9.2014 passed by the very same court in C.M.P.No.1683/2014, it is seen that the said application was filed seeking transfer of the case to the Chief Judicial Magistrate's Court on the allegation that the accused has committed offence under Land Conservancy Act and hence the case is triable by CJM court only. That petition was dismissed on the ground that the petitioner has approached the case only at the fag end of the trial and almost all witnesses were examined in the case and considering the evidence adduced by the witnesses, it is found that no offence under Land Conservancy Act is made out against the accused. But

the present order goes contrary to the findings in the earlier order. Needless to say, both orders are mutually destructive and opposite. Indisputably, the Assistant Public Prosecutor has approached the court at the fag end of the trial only. Further investigation could have been sought before the fag end of the trial.

4. In view of the findings of the court below in C.M.P.No.1683/2014 that no offence has been made out against the petitioner under Land Conservancy Act, a further investigation is not required and it is unwarranted. Therefore, I find that the findings in Annexure-IV order dated 2.2.2015 are illegal and unsustainable. Consequently, the impugned order under challenge will stand set aside. The learned Magistrate is directed to proceed with the case from the stage at which the further investigation is ordered and pass order as early as possible.

In the result, this Crl.M.C. is disposed of.

Sd/-
K. HARILAL, JUDGE

okb.