

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

CrI.MC.No. 1693 of 2013

CC 1990/2012 of J.M.F.C., VADAKKANCHERRY

PETITIONER/ACCUSED NO.2

JOSE, AGED 62 YEARS,
S/O.KURIYAPPAN, CHALISSERY HOUSE, CHITTANDA VILLAGE
P.O KUNDANNUR, THRISSUR DISTRICT.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN
SRI.VIPIN NARAYAN

RESPONDENTS/DEFACTO COMPLAINANT AND STATE

1. SUBRAMANYAN
S/O.RANGASWAMY, KUNNATH PUTHEN VEEDU, KANIPPAYUR
SECRETARY (ERUMAPETTY GRAMA PANCHAYAT) 680 517.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, KOCHI - 682 031

BY SRI.SHOBY K.FRANCIS
BY PUBLIC PROSECUTOR SMT. M.G. LISHA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01-
07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 1693 of 2013

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A. TRUE COPY OF THE FINAL REPORT IN CRIME NO. 486/2011 OF ERUMAPETTY POLICE STATION, THRISSUR DISTRICT.

ANNEXURE B. TRUE COPY OF THE FIR IN CRIME NO.486/2011 OF ERUMAPETTY POLICE STATION IS ALONG WITH THE COMPLAINT OF THE 1ST RESPONDENT.

ANNEXURE C. TRUE COPY OF THE COMPLAINT PREFERRED BY THE PETITIONER BEFORE THE DIRECTOR OF PANCHAYATH TRHIRUVANANTHAPURAM, DATED 30.09.2011.

//True Copy//

P.S.To Judge

RAJA VIJAYARAGHAVAN.V. J

Crl.M.C. 1693 of 2013

Dated 1st July, 2015

ORDER

“CR”

1. The petitioner is arraigned as the 2nd accused in C.C.No.1990/2012 on the files of the Judicial Magistrate of First Class, Wadakkancherry. He is charged for having committed offence punishable under Section 506(1) r/w Section 34 of the IPC.

2. The said case arose on the basis of a complaint given by the 1st respondent, the then Panchayat Secretary of Erumappetty Grama Panchayat, before the Sub Inspector of Police, Erumappetty police station. Annexure B crime was registered for offense punishable under Sections 452 , 353 , 506(1) r/w Section 34 of the IPC . Later, investigation was conducted and final report was laid under Section 506 (1) r/w Section 34 of the IPC alone on finding that no offense under Sections 452 and 353 IPC was made out . The learned Magistrate took

cognizance and the case was numbered as C.C.No.1990 of 2012.

3. The instant petition is filed before this Court seeking to invoke powers under Section 482 of the code on the ground that the prosecution against him has to be brought to a premature termination as the necessary and vital ingredients of the alleged offense is not made out against him

4. The gist of the charge is that on 30.9.2011 at 11.30 AM , the accused 1 and 2 entered the cabin of the defacto complainant, who is the secretary of the Erumapetty Grama Panchayath and he was threatened that if permit is not granted to the petitioner/2nd accused for commencing a hollow brick factory, the defacto complainant would be implicated in a vigilance case.

5. In view of the specific contention that the

ingredients of the offense is not made out, I have perused Annexure A and B , which are the final report and FIR in the crime .The primary question, which arises for consideration in this proceeding is whether the allegations in the final report, even if they are taken at their face value and accepted in its entirety, makes out a case against the petitioner.

6. I have heard Sri Revi Krishnan, the learned counsel for the petitioner and Sri Shoby . K. Francis, the learned counsel for the 1st respondent and also the public prosecutor.

7. It is contended by the learned counsel for the petitioner that there is not even a whisper of an allegation against the petitioner herein, either in the complaint furnished by the 1st respondent for the purpose of getting the crime registered or in his 161 statement later given to the Investigating Officer. There was also no prayer to

proceed against the petitioner in the complaint. I was taken through the 161 statement to bring home the point that there is not even a semblance of an allegation that he had threatened the complainant with the injury to his reputation or property. According to the learned counsel, the ingredients of Section 506(1) is not attracted in the facts of the case and the complaint is liable to be quashed. It was also submitted that the allegations are centered against the 1st accused, one Puzhankara Raju, who is a social worker and he is no more. Elaborating further, the learned counsel for the petitioner submitted that perusal of the complaint will only reveal that the above social worker had demanded the 1st respondent to consider the application submitted by the petitioner for permit to commence a hollow bricks Factory and he has not done any act with a view to cause injury to the person or the property of the 1st respondent. Basing on Annexure C it was pointed out that several complaints had already been preferred by the petitioner against the 1st

respondent for insisting that his palms should be greased if he wanted the permit for the hollow bricks factory. According to the learned counsel, the mere fact that offense under S 452 and Section 353 was not found committed by itself would reveal the falsity of the complaint.

8. Per contra, the learned counsel for the 1st respondent has contended that the allegation against the 2nd respondent is that he has acted in tandem with the 1st accused and as Section 34 is also incorporated, the petitioner cannot escape the consequences and will have to face the prosecution. It was submitted that there are ample indications in the statement furnished by the complainant to reveal the complicity of the petitioner as well.

9. For determination of this question it becomes relevant to note the nature of the offence alleged, and its

ingredients, viz a viz the averments made in the complaint.

10. As noticed earlier, it is on the basis of a complaint filed by the de facto complainant that Annexure 2 crime was initially registered . The said complaint has also been produced which would reveal the following facts :-

The petitioner herein had filed W.P.(C).28302 of 2010 before this Court seeking for a direction to be issued to the Panchayath of which the *de facto* complainant is the secretary to consider and pass orders in the application for permit submitted by him for commencing a hollow bricks unit. Based on directions issued by this Court , the said application was considered and decided against the petitioner by the *de facto* complainant. The 1st accused one Puzhankara Raju, who is a social worker, went to the office of the 1st informant at 11.40 am on 30.09.2011 and informed the 1st respondent that there

are allegations of corruption as against him and similar complaints have been received from other Panchayats where the *de facto* complainant had earlier worked. Thereafter, the 1st accused is alleged to have demanded that the license be granted to the hollow bricks factory of the petitioner herein. It is further alleged that, after some time the petitioner and the 1st accused had come in together to his office and the 1st accused demanded that the 1st respondent inspect the property of the 2nd respondent again. Then the 1st accused is alleged to have reminded him that he is not a 'Supreme Court Judge' and used words so as to denigrate him. According to the 1st informant, the acts of the 1st accused was with a view to deter him from discharging his duty as a public servant. Finally the prayer in the complaint was to initiate action against Puzhankara Raju, the 1st accused.

11. I have anxiously perused the complaint given by the 1st respondent before the Sub Inspector of police. I have

also gone through the 161 statement of 1st respondent produced along with the final report. The only reference made as against the petitioner herein is that he was also present when the 1st accused had entered the room and had asked him to re-consider the application for permit submitted by the 1st petitioner. There is no mention in the complaint of any act committed by the petitioner so as to attract Section 506 of the IPC .

12. Criminal intimidation has been defined under Section 503 of the IPC . The section reads as follows :

503.Criminal intimidation - Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the

execution of such threat, commits criminal intimidation.

13. S.503 contemplates threatening another with any injury to his person, reputation or property or to the person or reputation of any one in whom the person is interested, with an intention to cause alarm to that person or to cause that person to do an act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, as a means of avoiding the execution of such a threat.

14. It is to be appreciated that the only allegation is that the petitioner had approached the 1st respondent for permit as directed by this court for the purpose of commencing the hollow bricks factory. Merely because the de facto complainant was told that the Ombudsman and the Vigilance authorities would be approached on his failure to reconsider the application for permit, according to me, will not attract the penal provision as defined

under Section 503 of the Act. Even this allegation was absent in the original complaint preferred by the 1st respondent. A threat in order to be indictable must be made with intent to cause alarm to the complainant and a mere allegation that proceedings would be preferred before the higher authorities against the actions of a person cannot amount to criminal intimidation. Mere expression of words, without any intention to cause alarm, would not suffice. No such allegation is directed against the petitioner. No honest public servant will be alarmed if a citizen tells him that on his failure to act as per his diktats the higher authority will be approached. Such claims if made, cannot be said to have been made to cause injury to person or property.

15. Even if the allegations in the complaint are read as a whole, and are accepted in their entirety as true, the ingredients of S.506 IPC are not attracted insofar as the petitioner herein is concerned. Further more, there is not

even a mention of the act committed by the petitioner in the initial complaint. The only request of the 1st respondent was to initiate proceedings against the 1st accused Puzhankara Raju.

16. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made, prima facie, establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit the prosecution to continue. Where, in the opinion of the court, the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may quash the proceeding even though it may be at a preliminary stage.

17. In **M/s. Zandu Pharmaceutical Works Ltd. v. Md. Sharaful Haque (2004 (8) SCC 31)**, the Apex court has held thus :

"In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under S.482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal....."

When the ingredients of the offence under Section 506(1) of IPC is not attracted, it will not be the interest of justice to permit the prosecution to continue any further.

18. For the aforesaid reasons, I am of the considered opinion that pendency of the criminal proceedings as against the petitioner will be nothing but an abuse of process of law and the same is liable to be terminated.

19. In the result, Crl.M.C is allowed. All further proceedings in C.C.1990 of 2012 on the file of the Judicial First Class Magistrate Court, Wadakkanchery is hereby quashed.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

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