

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ALEXANDER THOMAS

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

Crl.MC.No.2849 of 2015

**CC NO.3949/2013 of JUDICIAL FIRST CLASS MAGISTRATE COURT,IRINJALAKUDA
CRIME NO.601/2013 OF PUDUKKAD POLICE STATION,TRISSUR.**

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PETITIONER/PETITIONER:

**PRIYA,AGED 30 YEARS,W/O.ADVOCATE BENNY KALAN,
KALAN HOUSE,NELLAYI DESOM,THRISSUR DISTRICT.**

BY ADV.SRI.G.SREEKUMAR (CHELUR)

RESPONDENT/THE STATE OF KERALA/COMPLAINANT:

**THE STATE OF KERALA,
REP BY THE SUB INSPECTOR OF POLICE,
PUDUKAD POLICE STATION,THRISSUR DISTRICT,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM-682031**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 11-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE I:-A TRUE COPY OF THE FIR IN CRIME NO.601/2013 OF THE
PUDUKAD POLICE STATION DTD 19/4/2013.**

**ANNEXURE II:-A TRUE COPY OF THE WITNESS MEMORANDUM IN CRIME
NO.Z601 OF 2013 OF THE PUDUKAD POLICE STATION DTD 20/4/2013.**

ANNEXURE III:-A TRUE COPY OF THE STATEMENT OF ONE BIJU DTD 19/4/2013.

**ANNEXURE IV:-A TRUE COPY OF THE STATEMENT OF ONE K K RAVI, THE THEN
SUB INSPECTOR OF POLICE PUDUKAD POLICE STATION
DTD 19/4/2013.**

**ANNEXURE V:-A TRUE COPY OF THE COUNCIL DECISION OF THE
AGRICULTUREAL DEVELOPMENT SAMITHI DTD 20/4/2013.**

**ANNEXURE VI:-A TRUE COPY OF THE COUNCIL DECISION OF THE PARAPUKARA
GRAMA PANCHAYATH DTD 5/4/2013.**

**ANNEXURE VII:-A TRUE COPY OF THE FINAL REPORT IN CRIME 601 OF 2013
DTD 30/4/2013 OF THE PUDUKAD POLICE STATION**

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

ALEXANDER THOMAS, J.

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Crl.M.C.No. 2849 of 2015

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Dated this the 17th day of June, 2015

O R D E R

It is averred that in the impugned Anx.VII final report/charge sheet filed in the impugned Anx.1 Crime No.601/2013 of Puthukkad Police Station, registered for offences under Secs.143, 147, 188, 353 read with Sec.149 of the I.P.C., which is now pending as C.C.No.3949/2013 of Judicial First Class Magistrate's Court, Irinjalakuda, the name of accused No.2 therein is shown as one Reshmi, but all the other details are that of the petitioner, whose name is Priya. It is averred that some persons had allegedly indulged in unauthorised reclamation of paddy land in the nearby locality and that the members of the locality had organized themselves against such alleged unlawful action and there was a public agitation. The husband of the petitioner is an Advocate practising in various courts and the people of the locality had constantly approached the petitioner's husband for legal advice and assistance for championing the cause of public grievance against such unlawful reclamation of paddy land. The petitioner's husband

instituted several cases on behalf of several aggrieved persons. It is thus stated that the petitioner's husband was not liked by the persons, who are allegedly responsible for such illegal reclamation of paddy land, who were said to be an organized force. It is pointed out that in pursuance of the judgment of this Court in W.P.(C).No. 8664/2013, the Puthukkad Police was directed to ensure adequate police protection for removing the earth from the land in question on 19.4.2013 and it is alleged by the Police that several persons had obstructed the police from discharging their duties in the grant of police protection for undertaking the reclamation work, which led to the institution of Anx.I Crime No.601/2013 of Puthukkad Police Station. 18 accused persons have been included in that case and that the impugned Anx.VII final report/charge sheet was filed in the above said crime. The name of the 2nd accused shown in the impugned final report/charge sheet is as "Reshmi", aged 28 years, W/o.Benny, Kalan Veedu, Ponkothri Desom. The petitioner became aware about the pendency of the above said criminal proceedings only much after the submission of the impugned final report. As the name shown in A-2 is Reshmi, and since the address except the name, tallied with that of the petitioner, she has instituted the instant Criminal Miscellaneous Case for quashment of the impugned

criminal proceedings. It is stated that the petitioner was not in any way involved with the above said incident, which led to the registration of the impugned crime and that the persons, who were behind the organised reclamation work, had misled the Police to falsely implicate the petitioner just to harass and deter the petitioner's husband, who is an Advocate, from fearlessly carrying out his professional service to the public, who were aggrieved by such illegal reclamation work. Even the name of the petitioner Priya is not shown in the final report/charge sheet inasmuch as the name shown therein is that of one Reshmi, whereas the petitioner's name is Priya. It is in the light of these aspects that the petitioner has filed the instant Crl.M.C. seeking the quashment of the impugned criminal proceedings against her.

2. Heard Sri.G.Sreekumar Chelur, learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

3. If, as a matter of fact, the petitioner was really involved in the incident, which led to the present impugned crime, then the Police authorities and the complainants concerned would have certainly correctly given the name of the petitioner, as the petitioner's husband, who is an Advocate, is well known to all the

persons in the locality including the local Police. Even though there was some mistake in the name, the Police could have corrected such mistake in submitting necessary additional report to correct the name in the FIR by furnishing such report before the jurisdictional Magistrate. That is not done even during the entire process of investigation and even in the impugned Anx.VII final report/charge sheet the name of A-2 is shown as Reshmi and not as Priya. It is only now that the Police had attempted to make a plea that they will make necessary application for correcting the name of accused No.2 as Priya and to delete the name of Reshmi.

4. On evaluation of the entire facts and circumstances of this case, the very initiation of the impugned criminal proceedings purportedly against the petitioner appears to be vexatious and malafide. The version projected by the petitioner that this was done only to harass and deter the petitioner's husband, who was helping the cause of the aggrieved public, appears to be quite credible and more probable than the plea now sought to be made by the Police that they will attempt to make amends at this late stage by correcting the name accused No.2.

5. It has been held by the Apex Court in the case Shakson Belthissor v. State of Kerala and another reported in (2009) 14 SCC

466 that where a complaint is found to be vexatious or frivolous or oppressive, the power under Sec.482 Cr.P.C could be fittingly exercised to quash such impugned criminal proceedings. In the case State of Orissa through Kumar Raghvendra Singh and others v. Ganesh Chandra Jew reported in (2004) 8 SCC 40, the Apex Court has held that the impugned criminal proceedings can be quashed where the complaint involves malafides. In the case Lambodaran Nair v. State of Kerala reported in 2003 (1) KLT SN 115 Case No.83 (SC) it has been held by the Apex Court that the power under Sec.482 Cr.PC can be exercised where criminal proceedings were manifestly attended with malafides or to wreck personal vengeance. In the case Om Prakash v. State of Jharkhand reported in (2012) 12 SCC 72, the Supreme Court has categorically held that if it appears to the trained judicial mind that continuance of a prosecution will lead to abuse of process of law or miscarriage of justice, the power under Sec.482 of Cr.P.C. must be exercised and the proceedings must be quashed. The Supreme Court in the case Ravindran Singh v. Sukbir Singh and others reported in 2013 KHC 4032 (SC), has held that a person cannot be permitted to unleash vendetta to harass another person needlessly and that "*ex dilitio justitiae*" is inbuilt in the inherent powers of the High Court and the

whole idea is to do real, complete and substantial justice, for which the court exists and it becomes the paramount duty of the court to protect an apparently innocent person not to be subjected to prosecution on the basis of wholly untenable complaint. Further, in the case *Bhupendra v. Raj and Anr.* reported in 2013 KHC 2356 (SC) the Supreme Court has held that in a case where it is shown that the prosecution launched is not bonafide and tainted with motive for taking vengeance, the exercise of power by the court under Sec. 482 is well justified in quashing such proceedings.

6. Evaluating the factual matrix that has emerged in this case, in the aforesaid legal framework, this Court is of considered opinion that the impugned criminal proceedings are tainted by vexatiousness and certainly tainted by legal malafides. Accordingly, it is ordered that the impugned Anx.VII final report/charge sheet filed in Anx.1 in Crime No. 602/2013 of Pudukkad Police Station to the limited extent it affects the petitioner herein and all further proceedings arising therefrom to the limited extent it affect the petitioner herein will stand quashed. This Court is constrained to render the findings and directions in this order only in the limited context of the plea made in the case of the petitioner and the findings and directions in this order shall not in any way trammel or

influence the impugned criminal proceedings to the extent it affect the other accused persons and the findings and directions issued in this order shall not in any way be construed to, even remotely, as an expression of opinion of this Court on the merits or otherwise of the impugned criminal proceedings to the extent it affect the other accused persons.

With these observations and directions, the Crl.M.C. stands finally disposed of.

sd/+

///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge