

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

Crl.MC.No. 3144 of 2015 ()

CC 1496/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT.-V,KOZHIKODE

PETITIONER/ACCUSED:

MITHUN SHAMSUDDEEN
S/O. K.P.SHAMSUDDEEN, KOTTILPARAMBIL HOUSE, P.O. PALA
KANCHIRAPPALLY, KOTTAYAM.

BY ADVS.SRI.M.RAMESH CHANDER (SR.)
SRI.P.RAGHUNATH
SRI.ANEESH JOSEPH
SMT.DENNIS VARGHESE

RESPONDENTS/COMPLAINANT/STATE:

1. P.TKRISHNAN
S/O IMBICHUNNI, "SOUPARNIKA", ALEXANDER LANE
KOVOOR, KOZHIKODE.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.

R1 BY ADV. SRI.NIRMAL. S
R2 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02-12-2015,
ALONG WITH CRL.M.C NO.3695/2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Crl.MC.No. 3144 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1: COPY OF COMPLAINANT.

ANNEXURE A2: COPY OF THE SWORN STATEMENT OF COMPLAINANT

ANNEXURE A3: COPY OF THE JUDGMENT IN OS 154/2010.

RESPONDENT(S)' EXHIBITS:NIL

/TRUE COPY/

P.A. TO JUDGE

SKV

'CR'

K.RAMAKRISHNAN, J.

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Crl.M.C. No.3144 OF 2015

AND

Crl.M.C. No.3695 OF 2015

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Dated this the 2nd day of December, 2015

ORDER

Crl.M.C. No.3144/2015 was filed by the original fifth accused in CC No.283/2013 while Crl.M.C.No.3695/2015 was filed by the fourth accused in the same case pending before the Judicial First Class Magistrate Court-V, Kozhikode for quashing the proceedings under Section 482 of the Code of Criminal Procedure.

2. The common case of both the petitioners is that first respondent filed a private complaint against five accused persons alleging commission of the offences under Sections 143, 144, 149, 447 and 427 of the Indian Penal Code.

3. The case of the complainant in the complaint was that the accused persons formed themselves into an unlawful assembly and criminally trespassed into the property of his wife and widened the existing road by

causing damage to the property. After taking evidence, the court below had taken cognizance of the case as against all the accused persons originally as CC No.283/2013 for the offences under Sections 143, 144, 149, 447 and 427 of the Indian Penal Code. Since no steps were taken for service of summons as against the original third accused viz. Assain Master, the complaint against him was dismissed by the trial court and it was re-filed as CC No.1496/2014 as against remaining accused persons. It is also averred in the petition that in respect of the same incident, a civil suit was filed by the wife of the complainant as OS No.154/2010 before the Additional Munsiff Court-II, Kozhikode and as per Annexure 4 judgment, the civil suit was dismissed. No appeal has been preferred against the same and that has become final. Since the civil suit filed by the wife of the petitioner has been dismissed on the basis of the evidence, proceeding with the above case is nothing, but an abuse of process of court and they prayed for quashing the proceedings as against them by filing the above petitions.

4. Heard the Senior Counsel Shri.Ramesh Chander, counsel appearing for the petitioner in Crl.M.C.3144/2015 and Shri. Salil Naryanan K.A counsel appearing for the petitioner in Crl.M.C.3695/2015 and Shri. S. Nirmal counsel appearing for the 1st respondent in both cases and Smt. Seena Ramakrishnan learned Public Prosecutor appearing for the 2nd respondent in both cases.

5. The counsel appearing for the petitioners in both the cases submitted that in view of the fact that civil suit has been ended in their favour on the ground that identity of the property has not been established, no offence under Sections 447 and 427 of the Indian Penal Code will be attracted even assuming that there was a widening of road made. Further according to the counsel for the petitioner in Crl.M.C.3144/2015, he was not connected with the incident and he was not present and at that time he was working abroad.

6. On the other hand, the learned counsel for the 1st respondent submitted that it is a matter for evidence and it

is not proper at this stage to quash the proceedings invoking the power under Section 482 of the Code of Criminal Procedure.

7. The case of the petitioners in both the cases was that there was a public road formed on the basis of the co-operation of the public including the first respondent by surrendering land and on account of some misunderstanding, a false case has been filed against the accused persons. But according to the complainant, though he had surrendered only a portion of the property for the purpose of widening of the road, the accused persons further trespassed into the property which was not surrendered and committed mischief and thereby they have committed the above said offences. Since police did not take any case in respect of the incident, the complainant filed Annexure-A1 complaint which was forwarded to the police for investigation under Section 156(3) of the Code of Criminal Procedure and after investigation, refer report was filed by the investigating officer and thereafter he filed

Annexure–A3 protest complaint in which he was examined evidenced by Annexure–A2 deposition and after taking evidence, the learned Magistrate had taken cognizance of the case originally as CC No.283/2013 against all the the five accused persons including the petitioners alleging offences under Sections 143,144,147,447,427 read with Section 149 of Indian Penal Code and since no steps was taken by the complainant to serve notice on the original 3rd accused in the complaint, the court below dismissed the complaint as against him under Section 204 of the Code of Criminal Procedure and re–filed the case as CC No.1496/2014 as against the remaining accused persons.

8. It is also an admitted fact that the wife of the first respondent had filed a suit as OS No.154/2010 against three defendants who are accused Nos.1 to 3 in the original complaint for mandatory injunction directing them to restore the property to the original position. The present petitioners were not arrayed as defendants in the case. There is no allegation in the case also that these persons

have trespassed into the property and committed the mischief and the relief was claimed only against original accused Nos. 1 to 3 in the original complaint. It is seen from Annexure 4 judgment that after trial, that suit was dismissed by the civil court holding that the plaintiff had failed to prove the identity of the property and as such she is not entitled to get the relief claimed. The question of identity is the relevant factor to be considered by the criminal court also to consider the question as to whether the offence of criminal trespass and mischief has been committed in the property of the wife of the complainant.

9. If something has been done on the basis of bonafide dispute regarding the title, which has to be considered and decided by the civil court and there is a cloud regarding the title of the complainant, then it cannot be said that any criminal offence of trespass or mischief has been made out. In this case the competent civil court has entered a finding that the wife of the complainant who is the owner of the property has failed to prove her title to the

property in dispute and the identity of the property where the mischief was committed has not been properly established and dismissed the suit and that finding in that civil suit in respect of the identical matter is binding on the criminal court as well. This is the principle laid down by Three Judges Bench of Supreme Court in Prem Sankar v I.G. Of Police [2002 (3) KLT 389]. It is fairly conceded by the counsel for the 1st respondent that though Annexure-4 judgment was passed on 19.12.2011, no appeal has been preferred against that judgment. So that has become final as well. So the dictum laid down in Prem Sankar's Case Supra will squarely apply to this case. So under the circumstances, proceeding with the case as against the petitioners is nothing, but an abuse of process of court and no purpose will be served by allowing the case to continue in the file of the court below as well and it is a fit case where the power under Section 482 of the Code of Criminal Procedure has to be invoked to quash the proceedings as against the petitioners in CC 1496/2014 pending before the

Judicial First Class Magistrate's Court-V, Kozhikode.

So the petitions are allowed and further proceedings in CC 1496/2014 pending before the Judicial First Class Magistrate Court-V, Kozhikode as against the petitioners is quashed.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.RAMAKRISHNAN, JUDGE

SKV