

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

Cr1.MC.No. 2144 of 2014 (E)  
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PETITIONER(S) :  
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BEJOY K V  
S/O.VIJAYAN, KADAVIL VEETIL, TKC ROAF  
VADUTHALA, KOCHI 23.

BY ADVS.SRI.C.A.CHACKO  
SMT.C.M.CHARISMA

RESPONDENT(S) :  
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1. STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM.
2. THE SUB INSPECTOR OF POLICE  
ERNAKULAM TOWN NORTH POLICE STATION, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.MADHU BEN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
18-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 2144 of 2014 (E)  
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APPENDIX

PETITIONER(S) ' EXHIBITS  
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ANNEXURE A1. COPY OF THE ORDER DATED 30.03.14 IN MC NO.165/14/C OF SUB  
DIVISIONAL MAGISTRATE COURT, KOCHI.

ANNEXURE A2. COPY OF ORDER DATED 28.1.14 IN CRLMC 131/14 OF SESSIONS  
COURT, ERNAKULAM.

RESPONDENT(S) ' EXHIBITS                      NIL  
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//TRUE COPY//

P.A TO JUDGE

vdv

'C.R'

Mary Joseph, J.

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Crl.M.C No.2144 of 2014  
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Dated this the 18<sup>th</sup> day of September, 2015.

ORDER

The counter petitioner in M.C No.165/2014/C on the file of Sub Divisional Magistrate, Kochi has moved this petition under Section 482 of the Code of Criminal Procedure, (hereinafter referred to as Cr.P.C, for short) seeking to quash Annexure A1 preliminary order issued on 30.03.2014 against him pursuant to proceedings initiated under Section 107 Cr.P.C.

2. By issuing Annexure A1 order, the Sub Divisional Magistrate directed the petitioner to attend in person before him at 11 a.m on 08.04.2014 and to show cause why he should not be required to enter into a bond for Rs.25,000/- and also furnish security by executing a bond with two solvent sureties each for the like sum, for keeping peace for a period of one year. Annexure A1 order is sought to be quashed on the reason that it is improper and illegal.

3. Smt.C.N.Charisma the learned counsel appearing for the petitioner and Smt.Madhu Ben, the learned Public Prosecutor representing the State are heard in detail.

4. Smt.Charisma contented on behalf of the petitioner that it was the 2<sup>nd</sup> respondent who is none other than the Sub Inspector of Police, Town North Police Station, Ernakulam who had recommended the Sub Divisional Magistrate to initiate action against the petitioner under Section 107 Cr.P.C and reported pendency of C.C No.1349 of 2001 on the file of Judicial First Class Magistrate – II, Ernakulam and Crime No.30/2014 registered at Ernakulam North Police station as the basis for the proposal to initiate action. According to the counsel, C.C No.1349/2001 was originated from Crime No.134/2000 of Ernakulam Town North Police Station registered for the offences under Sections 324 and 326 r/w Section 34 of the Indian Penal Code and the petitioner who faced trial in the case was acquitted for the offences charged against him vide judgment dated 30.09.2005. It is urged by the counsel that Crime No.30/2014 was registered against the petitioner and three others alleging commission of the offences punishable under Sections 143, 147, 148, 341, 294(b) and 323 r/w

Section 149 of the Indian Penal Code. Petitioner is the 2<sup>nd</sup> accused in the crime . According to the counsel, on 15.01.2014 the passengers travelled in a taxi car driven by him had an altercation with a person which culminated in the physical assault of the latter. He was the driver of the car at the relevant time and despite his non involvement in the alleged transaction he was implicated into the crime as the second accused. According to him his implication into the crime as accused was without any proper investigation being held in the matter. He obtained anticipatory bail on 28.01.2014 vide order in Crl.M.C No.131/2014 from the Court of Sessions, Ernakulam, the true copy of which is appended with as Annexure A2. It is vehemently contended that the petitioner is a driver leading a peaceful life in the locality and his name is included in the goonda list by the respondent unnecessarily despite the fact that crimes have not been registered against him till 2014. It is also urged that in view of the contentions raised supra the impugned order will not sustain in the eye of law being incorrect, illegal and improper.

5. Annexure A1 is the proceedings of the Sub Divisional Magistrate under challenge. It was initiated under Section 111Cr.P.C, which reads:-

“111.Order to be made.- When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.”

6. Annexure A1 is to the following effect:-

“Whereas information has been received in this court as per the reference read above that the counter petitioner named above is committing acts leading to breach of peace within the jurisdiction of this court which are likely to endanger public tranquility and that the Sub

Inspector of Police, Ernakulam Town North Police Station has reported that the counter petitioner is still continuing the criminal activities and there is no other source to prevent him from his criminal activities other than the proceedings u/s 107 Cr.P.C.

The Sub Inspector has stated that the following cases were also registered against the counter petitioner in Ernakulam Town North Police Station.”

7. In Annexure A1 reference is made about a report dated 19.03.2014 in Crime No.325/2014 of Sub Inspector of Police, Ernakulam Town North Police Station under Section 107 Cr.P.C. In paragraph 2 of Annexure A1 it is stated,

“The Sub Inspector has stated that the following cases were also registered against the counter petitioner in Ernakulam Town North Police Station.

1. Crime No.134/2000 u/s 324, 326, 34  
IPC 2. Crime No.30/14 u/s 341, 294(b), 323,  
326, 34 IPC.”

8. Therefore, evidently the Sub Inspector of Police of Ernakulam Town North Police Station has reported to the Sub Divisional Magistrate vide Annexure A1 that two crimes stood registered against the petitioner as Crime No.134/2000 and Crime No.30/2014. It is also evident from Annexure A1 that the report of the Sub Inspector of Police was also countersigned by the Assistant Commissioner of Police, Ernakulam.

9. Admittedly of the petitioner the crimes referred supra are registered against him. According to him, he was chargesheeted by the police in Crime No.134/2000 registered for the offences punishable under Sections 324, 326 r/w 34 of I.P.C and it was taken on file by the Judicial First Class Magistrate –II, Ernakulam as C.C No.1349/2001. Admittedly of him, after a full fledged trial in C.C No.1349/2001, he was found not guilty and consequently acquitted under Section 248(1) Cr.P.C. vide judgment dated 30.09.2005. The photocopy of the certified copy of the said judgment is also

appended with this petition for reference.

10. With respect to the 2<sup>nd</sup> crime registered as Crime No.30/2014 of Ernakulam Town North Police Station, the allegation of the learned counsel was that the petitioner was implicated into the same on baseless allegations and accordingly the Sessions Judge, Ernakulam has granted anticipatory bail to him on 28.01.2014, vide Annexure A2 order.

11. This court is convinced of the veracity of the submissions supra, upon a perusal of the copy of the judgment of the Judicial First Class Magistrate – II, Ernakulam in C.C No.1349/2011 and Annexure A2 produced along with this petition. C.C No.1349/2011 is related to Crime No.134/2000 and Annexure A2 is related to Crime No.30/2014 referred to by the 2<sup>nd</sup> respondent in its report and those formed the basis for the Sub Divisional Magistrate to initiate proceedings under section 107 Cr.P.C. and issue the impugned order under section 111 Cr.P.C.

12. The impugned order was issued by the Sub Divisional Magistrate consequent to his entering upon action under Section 107 of the Code. Section 107 of the Code is quoted for convenient

reference.

“107. Security for keeping the peace in other cases.– (1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local

jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.”

13. Therefore, the Sub Divisional Magistrate upon receiving information under Section 107 Cr.P.C has to be convinced of the veracity of the information and see whether sufficient grounds likely to cause breach of the peace and disturbance to the public tranquility are existing warranting him to call upon the petitioner to execute the bond for securing peace and public tranquility for a specific period.

14. In the case on hand the circumstances reported by the 2<sup>nd</sup> respondent to contend that the petitioner has involvement in actions affecting the breach of peace and public tranquility are the two crimes registered against him in the Police Station where he is the Station House Officer. i.e., Crime Nos.134/2000 and 30/2014.

15. Petitioner has produced the judgment of Judicial First Class Magistrate – II, Ernakulam and convincingly established that

he was implicated in Crime No.134/2000 and chargesheeted, but was acquitted after a full fledged trial . By producing Annexure A2, the petitioner has also successfully established that the Sessions Court has granted him anticipatory bail in Crime No.30/2014 observing in the order that criminal antecedents are lacking.

16. It is held by this court in B.Moosa Mohammad v Amin (A.I.R 1967 KER 194), that initiation of proceedings under Section 107 Cr.P.C is not accusation of an offence. Therefore, apprehension of breach of peace can only be based on the conduct of a party, either present or in immediate past. The proceeding under Section 107 Cr.P.C is not to be initiated on police report or a statement of a police officer. The Sub Divisional Magistrate on receipt of the information regarding the commission of an offence affecting the breach of peace or disturbing the public tranquility or the likelihood of a person doing a wrongful and affecting breach of peace or disturbing public tranquility, must be satisfied in mind that circumstances are existing justifying the initiation of proceedings. If the Sub Divisional Magistrate is convinced on such enquiry conducted by him on the basis of the information received, he

should state clearly about those circumstances in the order passed by him under Section 111 Cr.P.C, calling upon the person against whom information has been received, to show cause against the execution of bond as envisaged by the provision. If the order of the Magistrate does not mention about the way in which satisfaction has been arrived at by him regarding the apprehension of breach of peace or disturbance of public tranquility, the person calling upon to show cause against, would not be able to understand the allegations against him. In such circumstances the purpose contemplated by Section 107 Cr.P.C could not be achieved and on the ground itself the proceedings initiated under the provision is vitiated.

17. Therefore, it is mandatory that an order issued under Section 111 Cr.P.C by a Sub Divisional Magistrate exercising jurisdiction under Section 107 Cr.P.C, to set forth the substance of information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and type of securities, if any are required. The order must also reflect that the Magistrate has assessed the truth of the information and the need for taking action under Section 107 Cr.P.C for preservation of peace

and that thereupon he has passed such an order. An order issued under Section 111 Cr.P.C calling upon the person to show cause against execution of bond without disclosing therein the substance of information received and upon which satisfaction was arrived at by him, will not sustain in the eye of law. The order must contain all particulars relevant and sufficient to inform him about the accusation against him. This is because, the party calling upon must have to explain the circumstances against him or defend the proceedings and only on sufficient and satisfactory information being furnished, he will be able to answer the same. Therefore, the Sub Divisional Magistrate empowered with the authority to exercise the authority under Section 107 Cr.P.C to initiate proceedings must be vigilant and conscious while exercising the power and should bear in mind that the spirit envisaged by the Section is preservation of peace and public tranquility. The Sub Divisional Magistrate must see that the information supplied to him proposing action, was not one intended with a view to satisfy his personal vendetta. He must bear in mind that with the exercise of the power a man is called upon to execute a bond undertaking to preserve peace and tranquility for a

period specified in the proceedings and therefore, it is likely to cast a stigma upon such a person that he was instrumental in breaching the peace or disturbing the public tranquility. If such a stigma is allowed to be fell upon an innocent person without any basis, that stigma cannot be removed later and the person would not be relegated to his real status of innocence, ultimately when such person was found irresponsible for any such alleged acts.

18. The Apex Court has held in (Madhu Limaye v S.D.M. Monghyr) reported in (A.I.R 1971 SC 2486) that

“the information required under the Section must be of clear and definite character directly affecting the person against whom the process is issued and should disclose tangible details so that he may come prepared to meet the allegations against him.”

19. The impugned Annexure A1 order would reveal that the Sub Divisional Magistrate has acted solely on the basis of the information of the 2<sup>nd</sup> respondent which reports that two crimes are registered against the petitioner at his Police Station. When viewed

in the light of the status of the said two crimes, it can possibly be concluded that the Sub Divisional Magistrate has not applied his mind on the circumstances disclosed from the information furnished by the 2<sup>nd</sup> respondent. Had mind been applied by the Sub Divisional Magistrate to the circumstances, he ought not to have passed Annexure A1 order. Only when circumstances are there which convincingly indicate that a person is engaged or indulged or likely to indulge or engage in activities that would endanger public peace or disturb public tranquility that an order of the nature as Annexure A1 is required to be passed under Section 107 Cr.P.C.

20. In the case on hand, in the cases reported against the petitioner, he was acquitted in a case after facing trial and the other is pending investigation. Moreover, the allegations in Crime No.30/2014 are indicative of a spontaneous action resulted while questioning some incident occurred on the road. The circumstances enumerated against the petitioner in the information furnished by the 2<sup>nd</sup> respondent are not sufficient enough to draw the impression that the petitioner was instrumental in endangering public peace and disturbing public tranquility.

21. If the Sub Divisional Magistrate had conducted any enquiry and applied his mind on the revelations from the said enquiry for arriving at the satisfaction about the circumstances informed by the 2<sup>nd</sup> respondent, the real situation must have been noticed by him and he would not have been instrumental in issuing Annexure A1 order. In the case on hand the circumstances disclosed from the information supplied clearly indicate that the petitioner herein dragged into the proceedings under Section 107 Cr.P.C without any basis and therefore, Annexure A1 order which is the outcome of such information would not sustain in the eye of law. The situation undoubtedly warrants interference by this court and this court is inclined to do so.

In the result, Crl.M.C is allowed and Annexure A1, the Preliminary Order issued by the Sub Divisional Magistrate under Section 111 of the Code is hereby quashed.

Sd/–  
Mary Joseph, Judge.

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