

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

FRIDAY, THE 26TH DAY OF JULY 2013/4TH SRAVANA, 1935

Crl.MC.No. 2351 of 2013 ()

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CC No.672/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT, CHAVAKKAD
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PETITIONER/ACCUSED NO.1:

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SHINOJ N.P, AGED 39 YEARS
S/O PARAN, NAIRUSSERY HOUSE, ERATTAPUZHA
CHAVAKKAD, THRISSUR-680 506.**

BY ADV. SRI.K.R.VINOD

RESPONDENT/COMPLAINANT:

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- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
 - 2. CHANDRABOSE, AGED 43 YEARS
S/O KUNJATIMU, CHENNAKARA HOUSE, ERRATTAPUZHA
CHAVAKKAD, THRISSUR-680 506.**

BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26-07-2013,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE A1: THE CERTIFIED COPY OF THE PRIVATE COMPLAINT FILED BY
 THE 2ND RESPONDENT HEREIN BEFORE THE JUDICIAL FIRST
 CLASS MAGISTRATE COURT, CHAVAKKAD.**

**ANNEXURE A2: THE COPY OF THE FINAL REPORT IN CRIME NO.380/2012 OF
 CHAVAKKAD POLICE STATION.**

RESPONDENT(S)' EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

SD

V.K. MOHANAN, J.

Crl.M.C.No. 2351 OF 2013

Dated this the 26th July, 2013.

O R D E R

The petitioner is the 1st accused in C.C.No.672/2012 on the files of the Judicial First Class Magistrate Court, Chavakkad. His grievance is that the 2nd respondent herein filed a complaint against him and the then Sub Inspector of Police, Chavakkad, alleging offence under Section 379 IPC, as he is infuriated by the complaint filed by the petitioner and the Sub Inspector of Police while discharging his duty in seizing motor vehicle which was used by the 2nd respondent herein, while committing the offence in crime No. 380/2012 of Chavakkad Police Station. The present petition under Section 482 is filed with a prayer to quash Annexure-A1 complaint.

2. Heard the counsel for the petitioner and the learned Public Prosecutor.

3. Though notice is issued to the the 2nd respondent and received by him, nobody is turned up and no argument is advanced against allowing the petition.

4. The State has already filed a statement dated 24.06.2013.

5. In the statement filed by the police, it is stated that on 19.04.2013 at about 8.30 PM, the accused in crime No. 380/2012 of Chavakkad Police Station trespassed into the property of the petitioner herein, who is the de facto complainant in the above crime and entered into the sit-out and took away the emergency lamp and again he came back and demolished the compound wall by using an iron rod, causing a damage of ₹40,000/- and also shouted obscene words towards the brother of the petitioner herein. According to the police on commencement of the investigation in the above crime, they attempted to question the accused but he was absconding and therefore though notice for his appearance was also issued, he neglected. It is also the case of the police that the motor cycle of the accused in crime No.380/2012, which he used to escape from the scene of occurrence after committing the offence, has been seized from the front side of the house bearing building No.XV/161 of Kadappuram Panchayath, and produced before the court under

Section 151-A of Cr.P.C. and the same was released to the accused as per vehicle katchheet. It is against the said seizure, the 2nd respondent herein filed Annexure-A1 complaint based upon which the court below took cognizance for the offence punishable under Section 379 read with Section 34 IPC.

6. The learned counsel for the petitioner vehemently submitted that the petitioner herein launched an information before the Chavakkad Police Station, who in turn registered a crime as crime No.380/2012 and towards the discharge of the duty, being an investigating officer, the Sub Inspector of Police, Chavakkad, who is the 2nd accused in the Annexure-A1 complaint, seized the vehicle. The lawful act of the 2nd respondent in Annexure-A1 complaint at no stretch of imagination can be termed as a theft to implicate him as an accused in the above complaint. So, according to the learned counsel, taking cognizance for the offence under Section 379 read with Section 34 IPC, against the petitioner as well as the 2nd accused therein, are totally illegal and unwarranted.

7. In the light of the statement filed by the Sub Inspector

of Police, Chavakkad and in the light of the facts and circumstances involving in the case, which are spell out from the materials produced in this Crl.M.C., I am fully satisfied that the learned Magistrate committed wrong in taking cognizance for the offence punishable under Section 379 read with Section 34 of IPC against the petitioner as well as against the Sub Inspector of Police, Chavakkad, while he was discharging his official duty is per se illegal and incorrect. Therefore, Annexure-A1 complaint is liable to be quashed against the petitioner.

8. In this given facts and circumstances of this case, this Court is of the opinion that Annexure-A1 complaint is vexatious and frivolous in nature due to the 2nd respondent's animosity towards the petitioner. As long as Annexure - A1 complaint is liable to be quashed as the same is tainted due to its vexatious and frivolous nature, I find no reason not to quash the same against the 2nd accused as well, though he is not a party to the present proceedings. Therefore, he is also entitled to get the benefit of this order and the complaint against him is also liable to the quashed.

In the result, the above petition is allowed quashing Annexure-A1 complaint, and all proceedings against the petitioner, who is the 1st accused as well as the 2nd accused in the above complaint and quashing all proceedings pending against both the accused in C.C.No.672/2012 on the files of the Judicial First Class Magistrate Court, Chavakkad.

Sd/-
V.K. MOHANAN, JUDGE

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