

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

Crl.MC.No. 3415 of 2015 ()

CRIME NO. 304/2015 OF DHARMADOM POLICE STATION, KANNUR DISTRICT.

.....

PETITIONER/2ND ACCUSED:

**NEELAKANDAN NAMBOODIRI, AGED 60 YEARS,
S/O. BHAVAN NAMBOODIRI, TRIKKANDIYUR, TIRUR,
MALAPPURAM DISTRICT, PIN- 676 104.**

**BY ADVS.SRI.T.KRISHNAN UNNI, SENIOR ADVOCATE.
SRI.P.K.MOHANAN(PALAKKAD)**

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

- 1. SUB INSPECTOR OF POLICE,
DHARMADOM POLICE STATION,
(POST) DHARMADOM, KANNUR DISTRICT- 670 106.**
- 2. MEGHA MOHAN, D/O NOHANAN,
AGED 23 YEARS, 'ARAM', MELUR (POST),
THALASSERY TALUK, THALASSERY,
KANNUR DISTRICT- 670 661.**
- 3. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN- 682 031.**

**R1 & R3 BY PUBLIC PROSECUTOR SRI.P.V.ELIAS.
R2 BY ADVS. SRI.ZUBAIR PULIKKOOL,
SRI.P.S.BINU.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 07-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- | | |
|-------------------|---|
| ANNEXURE 1 | COPY OF THE PRIVATE COMPLAINT DATED 04/04/2015
FILED BEFORE JFCM, COURT, THALASSERY AGAINST
THE PETITIONER AND HIS SON. |
| ANNEXURE 2 | CERTIFIED OF THE FIRST INFORMATION STATEMENT
DATED 13/04/2015 IN CRIME NO. 304/2015 IN DHARMADOM
POLICE STATION. |
| ANNEXURE 3 | TRUE COPY OF PETITION FILED BY THE DE-FACTO
COMPLAINANT BEFORE THE KERALA VANITHA COMMISSION
DATED 03/12/2014 BEARING NO.P3/6505/KNR/2014. |

RESPONDENT'S ANNEXURES:- **NIL.**

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

=====

Crl.M.C.No. 3415 of 2015

=====

Dated this the 7th day of September, 2015

O R D E R

The prayer in this Criminal Miscellaneous Case instituted under Sec.482 of the Code of Criminal Procedure seeking invocation of the inherent powers conferred on this Court, as per that provision is for an order to quash the impugned Anxs.1 and 2 criminal proceedings to the extent the petitioner herein (A-2) is arrayed as accused therein.

2. The gist of the allegations in the impugned Anxs.1 and 2 criminal proceedings as made out in column No.12 of Anx.2 FIS is that accused No.1 and the defacto complainant (R-2 herein) were in love and that accused No.1 and accused No.2 (the petitioner herein, who is the father of accused No.1) had assured the 2nd respondent defacto complainant and her family that accused No.1 would marry R-2 and that accused No.1 had obtained five sovereigns of gold ornaments from defacto complainant (R-2) and that later accused No.2 violated this assurance to marry the defacto complainant and

that thereby both the accused have committed the offence under Sec.420 of the I.P.C.

3. The allegation projected in Anx.1 complaint preferred by the defacto complainant (R-2) before the jurisdictional Magistrate's Court concerned (Judicial First Class Magistrate's Court-II, Thalassery) is that A-1 and R-2 were college mates while undergoing their course for LLB at the School of Legal Studies, Palayad Campus, Thalassery and that though accused No.1 belongs to Brahmin community (Namboothiri) and R-2 belongs to a lower caste community (Thiyya), A-1 had assured R-2 that he would certainly marry R-2 and that they were carrying on an intimate love affair while studying at the above said institution and that at some point of time A-2, who is A-1's father, had also conveyed that he has no objection in A-1 marrying R-2 and that in pursuance thereof, the family members of R-2 had proceeded for conducting marriage and that later, A-1 had obtained five sovereigns of gold ornaments from R-2, etc. That later, A-1 and A-2 informed R-2's family members that the family of A-1 including his mother are not willing for the above said marriage proposal as the boy's family belongs to an upper caste community and as the girl (R-2) belongs

to a backward caste, etc. and that this has caused a lot of mental pain and agony to R-2 and her family, and that the accused have committed the offence of cheating (Sec.420 of the I.P.C.). With these allegations in Anx.1, R-2 had prayed before the jurisdictional Magistrate that directions may be given by the Magistrate to the Dharmadam Police Station to register a crime for offence under Sec. 420 of the I.P.C. against A-1 and A-2 and to investigate the same, etc.

4. In pursuance of the complaint filed as per A-1, the jurisdictional Magistrate had directed the Dharmadam Police authorities to register a crime for offence under Sec.420 of the I.P.C. and to investigate the same, etc. which led to the registration of the impugned Anx.2 FIS on 13.4.2015 (Crime No.304/2015 of Dharmadam Police Station) against A-1 and A-2 for offence under Sec. 420 of the I.P.C. It is these impugned criminal proceedings at Anxs.1 and 2 that are sought to be quashed by the petitioner, who is A-2, to the extent it involves him.

5. The main contention raised by Sri.T.Krishnanunni, learned Senior Counsel instructed by Sri.P.K.Mohanan, learned counsel appearing for the petitioner is that even going by the

allegations raised in Anx.1, it could be seen that no criminal culpability could be alleged against the petitioner herein (A-2). Further it is submitted that earlier the defacto complainant (R-2) had filed a petition before the State Women's Commission as per Anx.3 dated 3.12.2014, with regard to the above said incidents, in which, R-2 had clearly stated about the role of A-2, which does not disclose any criminal culpability. Therefore, it is contended that the version given in the impugned Anx.1 petition dated 4.4.2015 is in contradiction to the earlier version given in Anx.3 dated 3.12.2014. It is also pointed out by the learned counsel for the petitioner that the impugned criminal proceedings at Anxs.1 and 2 are in flagrant violation of the directives issued by the Apex Court in the case, Priyanka Srivastava v. State of U.P. reported in 2015 (2) KLT 451 (SC). On the basis of the legal principles laid down by the Apex Court in Priyanka Srivastava's case supra it is contended that the impugned action in this case, whereby the remedy under Sec.156(3) of the Code of Criminal Procedure is sought straightaway before even making prior application under Secs.154(1) and 154(3) of Cr.P.C. could be initiated. Further, it is contended that the Apex Court in Priyanka Srivastava's case supra held that the complaint/

petition, which seeks remedy under Sec.156(3) of the Cr.P.C. should be supported by an affidavit duly sworn to by the applicant, who seeks invocation of the jurisdiction of the Magistrate and that in the instant case, no such sworn affidavit has been filed along with Anx.1 petition. Yet another contention raised by the learned Senior Counsel for the petitioner is that in Priyanka Srivastava's case supra, the Apex Court after relying on the directives of the Constitution Bench of the Supreme Court in Lalita Kumari v. Government of U.P. reported in 2013 (4) KLT 632 (SC) has held in paragraph 111 (vi)(e) that cases where there is abnormal delay and laches in initiating criminal prosecution, for example, over three months' delay in reporting the matter without satisfactorily explaining the reasons for the delay, are cases where crime need not be registered and it may call for a preliminary enquiry to ascertain whether the information sought to be conveyed reveals any cognizable offence, etc. That in the instance case, even according to the averments in Anx.1 petition, the breach of promise by A-1 had occurred some time in the third week of August, 2014 and that the impugned Anx.1 complaint was filed as late as on 4.4.2015 and that too, without an accompanying affidavit and

without disclosing the crucial aspects in Anx.3 petition filed earlier before the State Women's Commission on 3.12.2014.

6. Per contra, Sri.Zubair Pulikool, learned counsel appearing for the 2nd respondent would contend that the matter has only now reached the stage of First Information Report and that it is for the Police to investigate and find out about the truth or otherwise of the allegations raised therein as to whether any criminal offence is disclosed therein, etc. and that it is too premature for this Court to interfere with the matter at this stage. This, the learned counsel appearing for the 2nd respondent would contend on the basis of the ruling of the Apex Court in KURUKSHETRA UNIVERSITY AND ANOTHER v. STATE OF HARYANA AND ANOTHER reported in (1977) 4 SCC 451.

7. Heard both sides.

8. At the out set it should be borne in mind that as early as on 3.12.2014, the 2nd respondent (defacto complainant) had preferred a petition as Anx.3 before the State Women's Commission and the main allegations directed as against the petitioner herein (A-2 in the crime) are given on the top two paragraphs of page 30 of the paper book, which reads as follows:

“ദേവേഷിന്റെ അച്ഛനെ (നീലകണ്ഠൻ നമ്പൂതിരി) അങ്ങോട്ട് വിളിക്കണം എന്ന ആവശ്യം പറഞ്ഞതിനെ തുടർന്ന് എന്റെ അച്ഛനും അമ്മയും അദ്ധ്യക്ഷതയോട് ഫോണിൽ സംസാരിച്ചു. ദേവേഷ് കാര്യങ്ങളെല്ലാം പറഞ്ഞു എന്നും ആഗസ്റ്റ് 17-ാം തീയതി പുറത്ത് എവിടെയെങ്കിലും വെച്ച് നമുക്ക് നേരിൽ കണ്ട് ബാക്കി കാര്യങ്ങൾ സംസാരിക്കാമെന്നും പറഞ്ഞു.

അടുത്ത ദിവസം അദ്ധ്യക്ഷതയോട് ഫോണിൽ വിളിച്ചപ്പോൾ ദേവേഷിന്റെ അമ്മയ്ക്ക് (ശശികല) ഈ കല്യാണത്തിന് സമ്മതമല്ല എന്നും ദേവേഷ് മേലയെ വിവാഹം ചെയ്യാൽ താൻ ആത്മഹത്യ ചെയ്യുമെന്നും പറഞ്ഞ് ഭീഷണിപ്പെടുത്തിയതായ് ദേവേഷിന്റെ അച്ഛൻ പറഞ്ഞു. ഭാര്യയുടെ വാക്ക് തള്ളിക്കളയാൻ പറ്റില്ല എന്നും നിങ്ങൾ നിങ്ങളുടെ മകളെ പറഞ്ഞ് മനസ്സിലാക്കണം എന്നും അദ്ധ്യക്ഷത എന്റെ അച്ഛനോട് പറഞ്ഞു.”

Therefore, it is clear that from Anx.3 petition filed as early as on 3.12.2014 by the 2nd respondent that the allegations directed by her as against A-2 (father of A-1) is that A-1 (the boy) had informed R-2 and her parents that they should contact A-2 (A-1's father) over telephone regarding his opinion on the marriage proposal in question and thereupon, the parents of R-2 had telephonically contacted A-2 and that it was informed by A-2 that his son, A-1, had informed him about the matters and that they should meet personally on 17.8.2014 in some other outside venue, upon which, the rest of the details would be disclosed, etc. That on the next day, when A-2 was contacted over phone, A-2 informed that A-1's mother, Sasikala (A-2's wife) is objecting to this marriage proposal and that Sasikala has taken the rigid stand that she will commit suicide, if the marriage between A-1 and R-2 takes place and that A-1 is not in a position to outrightly reject the above said stand of his wife, Sasikala and that therefore he requested the parents of R-2

to convince R-2 not to press forward with the marriage proposal with A-1 and that this was conveyed by A-2 to R-2's father, etc. The 2nd respondent does not dispute about the contents of Anx.3 petition filed by her before the State Women's Commission on 3.12.2014. When these specific versions are directed as against A-2 by none other than R-2, it is crystal clear that there is no case set up anywhere in Anx.3 dated 3.12.2014 by R-2 that A-2 had at any point of time agreed to the marriage proposal between A-1 and R-2 and that all that he had conveyed to R-2 and her family members was that since his wife, Sasikala, is taking the rigid stand in opposing the marriage proposal between A-1 and R-2 and that she will commit suicide, if the marriage takes place, etc., he is not in a position to overturn the rigid stand of his wife, Sasikala, and therefore he has only advised R-2's father that R-2 should be prevailed upon so that she does not proceed further with the marriage proposal with A-1, etc. There is no allegation anywhere in Anx.1 that A-2 had any dishonest intention right from the beginning so as to play any deception or fraud on R-2. This is the position even without taking into account the version projected in Anx.3. True that the heart of the objections against the marriage

proposal between A-1 and R-2 appears to be based on narrow and sectarian caste consideration insofar as the boy's family belongs to the upper Brahminical class (Namboodhiri) and the girl (R-2) belongs to the backward Thiyya community. But the narrow question to be answered in this case is only as to whether A-2 should be proceeded with for criminal culpability in view of the aforestated aspects. This Court has no hesitation to hold that in view of the aspects made out in Anx.1 petition and more so, particularly in view of the specific version projected by none other than R-2 in Anx.3 as quoted above, no criminal culpability could be imputed as against A-2 in the facts and circumstances of this case. True that R-2 may be now totally frustrated due to the rejection of the marriage proposal due to such caste consideration. But so long as no dishonest intention right from the commencement of the transaction can be imputed as against A-2, he should not be mulcted with the onerous burden to face the impugned criminal proceedings in view of the aforestated aspects. It is to be borne in mind that the petitioner herein (A-2) is a 59 year old practising Advocate. True that going by the version given in Anx.1, A-2 had earlier conveyed no objections to the marriage proposal. This aspect

is seriously open to doubt as it is contradicted by the earlier version given by none other than R-2 in Anx.3 as quoted above. But still even if the version given in Anx.1 petition is taken as it is, it is seriously open to doubt whether any criminal culpability could be imputed as against A-2 as no dishonest intention has been imputed as against A-2 by the 2nd respondent in Anx.1 petition.

9. In view of these aspects, this Court has no hesitation to conclude that the impugned criminal proceedings border to abuse of the process of the court and is vexatious and has been initiated against the petitioner only due to the personal vendetta of the 2nd respondent.

10. There are still some other dimensions of the matter, which require examination. The Apex Court in Priyanka Srivastava's case *supra* has held that the direct resort to the remedy under Sec.156(3) of the Code of Criminal Procedure is not really warranted and that the aggrieved defacto complainant concerned should set in motion the remedies available under Sec.154(1) and Sec.154(3) of the Code of Criminal Procedure by instituting prior application in that regard before filing a petition seeking remedy under Sec.156 (3). This has not been done in the instant case. Without filing prior

applications under Sec.154(1) and Sec.154(3) Cr.P.C., the 2nd respondent has straightaway sought the remedy under Sec.156(3) of the Code of Criminal Procedure by filing the instant petition as per Anx.1. Still further no sworn affidavit has been filed by the 2nd respondent in respect of the petition in Anx.1. This has been clearly frowned upon by the Apex Court in paragraph 27 of the Priyanka Srivastava's case supra. It is also to be noted that even according to the version projected in Anx.1 petition, the 2nd respondent was appraised about the breach of promise by the accused as early as in third week of August, 2014, whereas the impugned Anx.1 petition/complaint was filed as late as on 4.4.2015. The Apex Court in Priyanka Srivastava's case supra has relied on the directives of the Constitution Bench of the Apex Court in Lalitha Kumari's case supra, wherein it is held in paragraph 111(6)(e) thereof, that cases where there is abnormal delay/laches in initiating criminal prosecution, by over three months' delay in reporting the matter without satisfactorily explaining the reasons for the delay, will not warrant the registration of crime but should be subject to a preliminary enquiry, etc. It is also to be noted that this Court has held in rulings as in Superintendent of Police v. State of Kerala,

reported in 2005 (3) KLT 823, that when the sole prayer in the impugned complaint is to refer the complaint to the Police for investigation and registration of the crime, the jurisdictional Magistrate shall approach the matter with due care and caution and insist for materials to show a prima facie case. In the instant case, though Anx.1 petition is styled to be one instituted as a complaint under Sec.190 read with Sec.200 of the Cr.P.C., the sole prayer in Anx.1 is for a direction from the Magistrate to the Dharmadam Police authorities to register an FIR and to investigate the case, etc, in terms of Sec.156(3) of the Cr.P.C. Therefore, in the light of the view expressed by the Apex Court in Priyanka Srivastava's case supra, the jurisdictional Magistrate should have approached the matter with due care and circumspection, especially when there was no accompanying sworn affidavit in support of the petition etc.

11. In view of these aspects, this Court is of the considered opinion that the impugned criminal proceedings to the extent it involve the petitioner herein, requires interdiction. Accordingly, it is ordered in the interest of justice that all further proceedings pursuant to Anxs.1 and 2 in relation to the impugned Crime No. 304/2015 of Dharmadam Police Station to the extent the petitioner

herein is made an accused therein will stand quashed and all further proceedings pending against the petitioner herein will stand quashed. It is made clear that the observations and findings in this order are only arising out of the issue raised in this case as to whether or not the impugned proceedings as against the petitioner herein require interference and it is accordingly made clear that the impugned criminal proceedings as against other accused will not in any way be trammelled or influenced by the findings and observations in this order.

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

sdk+

///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge