

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

Crl.MC.No. 3418 of 2015

CC 1009/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PERUMBAVOOR

PETITIONER(S)/COMPLAINANT:

**M.P.CHOTHY, AGED 65 YEARS
S/O PAINKAN, MACHERIKKUDY HOUSE, PATTAL-PANKULAM ROAD,
IRINGOLE PO, PIN-683 548.**

BY ADV. SRI.P.P.JACOB

RESPONDENT(S):

- 1. SUB INSPECTOR OF POLICE,
PERUMBAVOOR POLICE STATION, ERNAKULAM DISTRICT-683542.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.GITHESH. R.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 06-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' ANNEXURES

ANNEXURE 1 TRUE PHOTOCOPY OF THE LOG BOOK ENTRIES SUPPLIED BY THE ASSISTANT COMMANDANT 1 WING, ARMED RESERVE CAMP, KALAMASSERY DATED 15/2/2012 AND 19/2/2012

ANNEXURE 2 THE PHOTOCOPY OF THE MAHAZER DATED 15/2/2012

ANNEXURE 3 TRUE PHOTOCOPY OF THE DEPOSITION DATED 4/8/2012 & 19/1/2013 ISSUED BY THE JFCM, 1, PERUMBAVOOR

ANNEXURE 4 TRUE PHOTOCOPY OF THE REFER REPORT DATED 16/5/2012 ISSUED BY THE JFCM, 1 PERUMBAVOOR

ANNEXURE 5 TRUE PHOTOCOPY OF THE PROTEST COMPLAINT NO 980/2012 DATED 18/5/2012 ISSUED BY THE JFCM, 1 PERUMBAVOOR

ANNEXURE 6 TRUE PHOTOCOPY OF THE FIR NO 1339/12 DATED 5/6/2012 ISSUED BY THE JFCM, 1 PERUMBAVOOR

ANNEXURE 7 CERTIFIED COPY OF THE CHARGE SHEET DATED 19/6/2013 ISSUED BY THE JFCM, 1 PERUMBAVOOR

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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Crl.M.C.No.3418 of 2015

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Dated this the 6th day of August, 2015

O R D E R

The prayer in this Criminal Miscellaneous Case instituted under Sec.482 of the Code of Criminal Procedure praying for invocation of the inherent powers conferred on this Court as per that provision, is for an order to quash the impugned proceedings, which have led to the institution of Calendar Case, C.C.No. 1009/ 2013 on the file of the Judicial First Class Magistrate's Court-I, Perumbavoor, and all further proceedings arising therefrom pending against the petitioner.

2. It is the case of the petitioner that he had earlier submitted a petition before the Police alleging disclosure of certain cognizable offence and that the Police had refused to register crime in that regard. Thereafter, the petitioner was constrained to approach the jurisdictional Magistrate's court concerned for necessary action to get the crime registered by taking resort to the remedy under Sec.156(3) of the Cr.P.C., upon which, the learned

Magistrate had directed the Police to register a crime and investigate the same. In pursuance of this, the Police registered a crime and investigated the same and referred the same as false as per Anx.4 proceedings dated 16.5.2012. At this juncture, the petitioner was constrained to file Anx.5 protest compliant before the jurisdictional Magistrate which the Magistrate is in seizin, in pursuance of which, Calendar Case, C.C.No.509/2013 is now pending on the file of the Judicial First Class Magistrate's Court-1, Perumbavoor. While so, the Police has initiated the impugned Anx.6 FIR by registering Crime No.1339/2012 for the alleged offence under Sec.182 of the I.P.C. against the petitioner alleging that on account of the fact that Anx.4 refer report has been submitted by the Police, it automatically leads to the situation of the petitioner has made false statement to the Police and that it amounts to offence under Sec. 182 of the I.P.C.. Now pursuant to the impugned Anx.6 crime, the Police has submitted the impugned Anx.7 final report/ charge sheet, which has led to the pendency of the impugned criminal proceedings at Calendar Case, C.C.No.1009/2013 on the file of the Judicial First Class Magistrate's Court-I, Perumbavoor.

3. Heard Sri.P.P.Jacob, learned counsel appearing for the

petitioner and the learned Public Prosecutor appearing for the respondents.

4. The 1st respondent Sub Inspector of Police has filed a statement dated 6.7.2015 in this case, which reads as follows:

“1. It is humbly submitted that a crime case has been registered as cr.355/12 U/s.47, 427, 34 I.P.C. at Perumbavoor Police Station on 14.02.2012 as per the complaint given by Adv.M.P.Chellappan, alleging that they destroyed a drumstick tree (Hyterathera Moringa) by injecting Mercury and their by (sic) made a loss of Rs. 25,000/- to the complainant on 01.02.2012.

2. Investigation of this case was conducted by the P.K.Sreedharan, Sub Inspector of Police Perumbavoor. From the witness statement and by verifying the facts and circumstances of the case during investigation it is revealed that the matter in the complaint is not true, hence final report was submitted to the Hon'ble J.F.C.M. Court Perumbavoor as false on 16.05.2012.

3. The protest complaint filed by Adv.Chothi against the above Crime is pending before the Hon'ble Judicial First Class Magistrate Court at Perumbavoor as CC 509/13.

4. It is humbly submitted that a case in Cr.1339/12 was registered U/s.182 I.P.C. against Adv.M.P.Chothi for giving false information. The case investigated by Sri.George, Sub Inspector of Police, Perumbavoor and the charge sheet has been submitted to the Judicial First Class Magistrate Court, Perumbavoor on 26.09.2012 and the case is under trial as CC No.1009/13. In this circumstances, it is humbly submitted that police shall obey any other order passed by the Hon'ble Court in this regard.”

5. In the light of aforestated facts and circumstances, Sri.P.P.Jacob, learned counsel appearing for the petitioner urges that the impugned criminal proceedings at Anxs.6 and 7 to prosecute the petitioner for the alleged offence under Sec.182 of the I.P.C. merely on account of Anx.4 final report/charge sheet is nothing but

an abuse of the process of the court.

6. Having considered the submissions on both sides, it is to be noted that though Anx.4 refer report has been filed by the Police in those proceedings, the petitioner has already filed Anx.5 protest compliant before the jurisdictional Magistrate, in pursuance of which, the jurisdictional Magistrate has numbered the matter as Calendar Case, C.C.No. 1009/2013 on the file of the Judicial First Class Magistrate's Court-I, Perumbavoor. Therefore, to initiate the impugned criminal proceedings at Anxs.6 and 7, which have now culminated in the impugned C.C.No. 1009/2013 on the file of the Judicial First Class Magistrate's Court-I, Perumbavoor on account of Anx.4 refer report, appears to be vexatious and an abuse of the process of the court. It can be seen from the indisputable materials on record as well as the statement given by the 1st respondent that the whole dispute in relation to the initial Crime No. 355/2012 has arisen on account of certain allegations made regarding the alleged damage caused to drumstick tree. The allegations and counter allegations have been made by the rival parties and even if refer report has been filed thereon and as the protest complaint thereon is pending, the initiation of the present impugned criminal proceedings directed against the petitioner is not fair or proper.

Accordingly, it is ordered in the interest of justice that the impugned Anx.7 final report/charge sheet filed in the impugned Anx.6 Crime No.1339/2012 of Perumbavoor Police Station, which has now led to the pendency of the impugned C.C.No.1009/2013 on the file of the Judicial First Class Magistrate's Court-I, Perumbavoor, pending against the petitioner and all further proceedings arising therefrom pending against the petitioner are quashed.

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

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Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge