

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

Crl.MC.No. 3431 of 2015 ()

MC. NO.40/2014 OF SUB DIVISIONAL MAGISTRATE, OTTAPPALAM.

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PETITIONERS/ACCUSED:-

**MADHU C.C.,
S/O.CHANDRAN, CHOLAKKAL (H),
KATTUKULAM, POOKOTUKAVU - 679 515.**

BY ADV. SRI.KALEESWARAM RAJ.

RESPONDENTS/COMPLAINANTS:-

- 1. MURALEEDHARAN V.S.,
SUB INSPECTOR OF POLICE,
SREEKRISHNAPURAM POLICE STATION,
PALAKKAD - 678 001.**
- 2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

R2 BY PUBLIC PROSECUTOR SRI.C. RASHEED.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

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| ANNEXURE I. | TRUE COPY OF THE ORDER DATED 09.02.2015 IN MC.NO.40/2014. |
| ANNEXURE II. | TRUE COPY OF THE FIR DATED 13.10.2014. |
| ANNEXURE III. | TRUE COPY OF THE ORDER DATED 25.02.2010 IN B.A.NO.918/2010. |
| ANNEXURE IV. | TRUE COPY OF THE JUDGMENT DATED 17.10.2011 IN W.P(C)NO.23248/2011. |
| ANNEXURE V. | TRUE COPY OF THE JUDGMENT DATED 19.01.2015 IN W.P(C)NO.8383/2013. |

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

//TRUE COPY//

PA. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Crl.M.C.No.3431 of 2015

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Dated this the 12th day of June, 2015

O R D E R

The order dated 09/02/2015 under challenge is the impugned Annexure I proceedings initiated by the Sub Divisional Magistrate, Ottappalam in support of exercise of powers under Section 107 of the Cr.P.C. The basis of the impugned action is came to be with reference to 3 crimes mentioned in the said order and the gist of the same as averred in Malayalam in Annexure I order, has been reproduced in English on paragraph 4 of the Crl.M.C. on pages 3 and 4 thereof which reads as as follows:

“Allegation No. 1. Cr. No. 25/10 U/S 323, 294 (b) and 3 (I) of the SC/ST Act :- On 16.10.2010, the accused is alleged to have verbally abused and assaulted one Mrs. Padmavati, Mother of Mohan Das, after having been questioned by her about the quarrel which the petitioner had with Mohan Das on 15.10.2010. Padmavathi filed a complaint before the Sreekrishnapuram Police Station. The same is registered as Cr. No. 25/10. Charge sheet was filed before Judicial First Class Magistrate Court, Ottappalam. The case is under trial as SC 685/2010.

Allegation No. 2. Cr. No. 759/12 U/S 341/323,294 (b), 506 (I) IPC.
In the aforesaid case, the accused is alleged to have verbally abused one Vasu and his wife Pathmavathi while

they were coming out of their home and assaulted Vasu when he tried to stop the petitioner. Complaint was filed by Sri. Vasu and FIR was registered bearing number 759/2012. Charge sheet was filed. The case is now pending before judicial first class Magistrate Court, Ottappalam.

Allegation No. 3. Cr. No. 453/2013 U/S 376, 376 (ii) and S.67 of the IT Act, 2000.

In the aforesaid case, the petitioner is alleged to have raped one Mrs. Vijayalakshmi at her residence at Kattukalam for a period from 1.10.2011 to 30.4.2013, after reaching there on the pretext of collecting the money which she had promised to give him to have it doubled by investing it in real estate business. The Petitioner along with two of his friends have been alleged to have sexually abused her by threatening her that they would publish those photographs on the internet if she refused to cooperate. Investigation in the said case has not been completed."

2. A reading of the impugned order would make it clear that it has been issued more or less on similar identical lines as the impugned orders considered by this Court in the case Santhosh M.V. v. State of Kerala reported in 2014(3) ILR (Ker.)993 as well as in the common judgment dated 19/12/2014 of this Court in Crl.M.C. Nos.7259 of 2014 and connected cases in Sajeesh K. v. State of Kerala reported in (2014) SCC Online Ker 27899.

3. This court is of the considered opinion that the reasonings followed in those reported rulings are applicable in the facts of this case. Accordingly the impugned order is set aside. The Sub Divisional Magistrate will be at liberty to pass fresh orders if really call for, provided that there is strict compliance with all the

procedural formalities and there is strict compliance with legal principles laid down by this Court in reported decisions as in Ahammad Kabeer v. State of Kerala reported in ILR 2014 (2) Ker.152 and in Sajeesh K. v. State of Kerala reported in (2014) SCC online Ker 27899 and in accordance with law.

4. Before parting with this case, this court is constrained to take note of specific averment made by the petitioner in this case that the de facto complainant Vasu and his wife Padmavathy referred to in Allegation No.2 in the impugned order herein are the 3rd petitioner and 1st petitioner in Annexure V W.P.(C) No. 8383 of 2013 wherein the said parties had unsuccessfully litigated against the present petitioner (R4 therein), which is in respect of a civil dispute between the parties. It is averred in this petition that the name of the 1st petitioner in Annexure V W.P.(C) No.8383 of 2013 is Sulochana P.P.(wife of Vasu) and that the name of wife of Vasu is wrongly shown as Padmavathy in allegation No.2 of the impugned order herein. It appears from Annexure IV judgment that the petitioner had initiated WP(C) 23248 of 2011, projecting certain grievances out of civil disputes between those parties. If the Sub Divisional Magistrate is intending to proceed any further in a matter

like this, it would be advisable for him to make specific and detailed enquiries to ensure that private interests of rival disputants are not masquerading as public interest to form the basis for such judicial proceedings as envisaged in Section 107 of the Cr.P.C., as such adverse orders passed under Section 107 would be detrimentally affecting the fundamental freedoms and rights of the affected parties. This court would also remind all concerned that the power conferred on the Executive Magistracy under Section 107 to 111 of the Cr.P.C is indeed a part of the Judicial power of the State and such judicial powers conferred on a instrumentality of the state like the Executive Magistracy, the exercise of which has the effect of detrimentally affecting fundamental freedoms and rights of the affected parties as mentioned by the Apex Court in the celebrated case Ram Manohar Lohia v. State of Bihar & Another reported in AIR 1966 SC 740= 1966 Cri. LJ 608 has to be exercised with lot of judicious and judicial circumspection and discretion.

5. It is also averred in the present petition that the basis mentioned in allegation No.1 of the impugned order is in respect of an offence under Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is alleged against the

petitioner in which this Court had the occasion to comment in Annexure III order dated 25/02/2010 in B.A.No.918/2010 that the petitioner also indeed belongs to Scheduled Caste community and had rendered necessary directions to release him on bail.

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

Sd/- ALEXANDER THOMAS, JUDGE

MJL