

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Crl.MC.No. 2645 of 2013 ()

MC. NO.97/2013 OF SUB DIVISIONAL MAGISTRATE COURT, PALAKKAD.

.....

PETITIONER/RESPONDENT IN MC NO.97/2013:

**GIRIJA NAMBIAR, AGED 54 YEARS,
W/O LATE KRISHNANUNNI, CHERUKATTE HOUSE,
KANIMANGALAM, NENMARA, NENMARA VILLAGE,
CHITTUR TALUK, PALAKKAD DISTRICT.**

**BY ADVS.SRI.VARGHESE C.KURIAKOSE,
SRI.P.V.VARGHESE (KANJIRAMATTOM).**

RESPONDENTS/STATE:

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

BY PUBLIC PROSECUTOR SMT.P. MAYA.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 15-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE A1 TRUE PHOTOCOPY OF THE ORDER UNDER SECTION 111
CR P.C ISSUED BY THE SUB DIVISIONAL MAGISTRATE
DATED 03/05/2013.
- ANNEXURE A2 TRUE PHOTOCOPY OF THE SUMMONS ISSUED UNDER
SECTION 113 OF THE CODE OF CRIMINAL PROCEDURE
DATED 03/05/2013.
- ANNEXURE A3 TRUE PHOTOCOPY OF THE EXPLANATION DATED 16-05-2013.
- ANNEXURE A4 TRUE PHOTOCOPY OF THE APPLICATION TO THE DISPENSE
WITH PERSONAL APPEARANCE UNDER SECTION 115 OF
CR.P.C DATED 16/05/2013.
- ANNEXURE A5 TRUE PHOTOCOPY OF THE C.C NO.5/2013 DATED 13-06-2008.
- ANNEXURE A6 TRUE PHOTOCOPY OF THE FIR STATEMENTS AND WOUND
CERTIFICATE DATED 12/02/2012.
- ANNEXURE A7 TRUE PHOTOCOPY OF THE FINAL REPORT INCLUDING
MEDICAL CERTIFICATE DATED 17/03/2012.
- ANNEXURE A8 TRUE PHOTOCOPY OF THE DISCHARGE SUMMARY FROM
ALATHUR COMMUNITY HEALTH CENTRE.
- ANNEXURE A9 TRUE PHOTOCOPY OF THE COMPLAINT AGAINST THE SUB
INSPECTOR (2ND RESPONDENT) GIVEN BEFORE DY.S.P
ON 17-03-2012.
- ANNEXURE A10 TRUE PHOTOCOPY OF THE COMPLAINT GIVEN BEFORE
THE PRESS.
- ANNEXURE A11 TRUE PHOTOCOPY OF THE COMPLAINT GIVEN TO
SUPERINTENDENT OF POLICE DATED 20-09-2011.
- ANNEXURE A12 TRUE PHOTOCOPY OF THE POSTAL RECEIPT ALONG WITH
LETTER OF DELIVERY DATED 17/05/2013.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

B. KEMAL PASHA, J.

.....
CRL. M.C. No. 2645 of 2013
.....

Dated this the 15th day of October, 2015

ORDER

The petitioner, woman, who is a widow residing alone, became an accused in two criminal cases; one is Crime No.112/12 of the Nenmara Police Station, registered for the offences punishable under Sections 341, 323 and 294(b) IPC and the same is pending before the Judicial First Class Magistrate's Court, Alathur as C.C.No.610/2012. The other one is Crime No.220/12 for the offences punishable under Sections 447, 294(b), 324, 506(ii) IPC alleging that she has caused a simple hurt to the left index finger of the defacto complainant. Based on the said two crimes, it seems that the Sub Inspector of Police, Nenmara Police Station has

chosen to initiate Section 107 Cr.P.C. proceedings against the petitioner through Annexure A1 and a report was filed before the learned Sub Divisional Magistrate, Palakkad. In turn, as if it was a show cause notice, the learned Sub Divisional Magistrate, Palakkad has issued Annexure A2 order, virtually under Section 117 Cr.P.C.

2. Annexure A2 is not at all a show cause notice, under Section 111 Cr.P.C.; whereas it was passed as an order under Section 117 Cr.P.C. No grounds were there for the satisfaction of the learned Sub Divisional Magistrate that the acts of the petitioner had occasioned a breach of peace or affected the public tranquility. Based on the aforesaid two crimes, the learned Sub Divisional Magistrate ought not to have issued Annexure A2. Much discussion is not required to conclude that Annexure A2 is *per se* illegal and therefore, the same is liable to be quashed.

In the result, this Crl.M.C. is allowed and Annexure A2 notice and all proceedings in M.C.No.97/2013 on the file of

the Sub Divisional Magistrate's Court, Palakkad are hereby
quashed.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge