

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

Cr1.MC.No. 2798 of 2013 ()

AGAINST THE ORDER IN MC 146/2013 of SUB DVL.MAGISTRATE,
THALASSERY DATED 18-06-2013

PETITIONER(S)/RESPONDENTS:

1. RAJESH.P.V., AGED 29 YEARS
S/O. KESAVAN, PUTHIYA VEETTIL HOUSE, CHUZHALI AMSOM
CHUZHALI.P.O.
2. SHYLESH BABU, AGED 37 YEARS
S/O. KUNHIRAMAN, PUTHIYAPURAYIL HOUSE, CHUZHALI AMSOM
NEDUVALOOR, CHUZHALI.P.O.
3. PROJOSH, AGED 30 YEARS
S/O. T.V.BALAKRISHNAN, THEKKAN RAMATH VEETTIL
CHUZHALI AMSOM DESOM, CHUZHALI.P.O.
4. M.DAMODARAN, AGED 36 YEARS
D/O.OTHERNAN, MOOLAYIL HOUSE, CHUZHALI AMSOM
EDAYANNUR, CHUZHALI.P.O.
5. K.V.BALAKRISHNAN, AGED 60 YEARS
S/O.KANNAN, VALAPPIIL HOUSE, CHUZHALI AMSOM
EDAYANNUR, CHUZHALI.P.O.
6. NARAYANAN.A.V. AGED 36 YEARS
S/O. MUKUNDAN, ARKYATH VEETTIL, CHUZHALI AMSOM DESOM
CHUZHALI.P.O.
7. RAMANKUTTY, AGED 54 YEARS
S/O.SANKUNNI NAIR, CHORPPATH HOUSE
CHUZHALI AMSOM DESOM, CHUZHALI.P.O.
8. PRAKASHAN, AGED 44 YEARS
S/O.BHASKARAN, CHUZHALI AMSOM DESOM, CHUZHALI.P.O.
9. PRAJIL, AGED 23 YEARS
S/O.PREMARAJAN, PULIYULLA VALAPPIL HOUSE
CHUZHALI AMSOM DESOM, CHUZHALI.P.O.
10. PURUSHOTHAMAN AGED 39 YEARS
S/O. NARAYANA, KIZHAKKEPURAYIL HOUSE, KULATHOOR
CHUZHALI AMSOM, CHUZHALI.P.O.
11. PRAMOD.P. AGED 26 YEARS
S/O. NARAYANAN, POONHATHU HOUSE, CHUZHALI AMSOM
KOLATHOOR DESOM, CHUZHALI.P.O.

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12. DHANESH.P., AGED 27 YEARS
S/O.DAMODARAN, PANAMBAYIL HOUSE
CHUZHALI AMSOM KOLATHOOR DESOM, CHUZHALI.P.O.
13. RAGHAVAN, AGED 62 YEARS
S/O. KARIMBAN, KOTTUR VAYAL
NEDIYENGA AMSOM, KANNUR DIST.
14. JACOB JOSEPH, AGED 38 YEARS
S/O. JOSEPH, VAYALIL HOUSE, NEDIYENGA AMSOM
CHEMPANTHOTTY.
15. BALAKRISHNAN.P.V. AGED 55 YEARS
S/O. KANNAN, PARAMBAN VEEDU, NEDIYENGA AMSOM
P.O. NEDIYENGA.
16. RAJESH.M.P. AGED 28 YEARS
S/O. KRISHNAN, CHENICHERI HOUSE, KOTTUR
SREEKANDAPURAM.P.O.
17. P.P.PRAKASHAN, AGED 45 YEARS
S/O.KORAN, PUTHIYA PURAYIL HOUSE,
CHUZHALI AMSOM, KOLATHOOR AMSOM,
CHUZHALI P.O.
18. T.R. NARAYANAN AGED 45 YEARS
S/O. RAJAPPAN, THAYYIL HOUSE, PAYATTIYAL
CHEMPERI.P.O.
19. VALIYA PARAMBATH SURENDRAN AGED 46 YEARS
S/O. KUNHAMBU, PNHEN HOUSE, CHEPPARAMBA
NEDIYENGA.P.O.
20. SAVARAMAN.T.P. AGED 31 YEARS
S/O. KUNHIRAMAN, PADINHARE PURAYIL HOUSE
CHUZHALI AMSOM, CHUZHALI.P.O.
21. KAMALAKSHAN.K.V. AGED 32 YEARS
S/O. GOVINDAN, KALIKKOTTU VEETIL HOUSE
CHUZHALI AMSOM, CHUZHALI.P.O.
22. T.N.RAVEENDRAN, AGED 50 YEARS,
S/O.KUNHIRAMAN, THACHILODIYAN HOUSE, KOTTURVAYAL
SREEKANDAPURAM.P.O.
23. PALAKKEL KUNHIKANNAN, AGED 64 YEARS
S/O.KUNHIRAMAN, PALAKKEEL HOUSE, KOTTUR
SREEKANDAPURAM.P.O.
24. K. JANARDHANAN AGED 57 YEARS
S/O. GOVINDAN, KANIYERI HOUSE, BALANKARI
CHERIKODE.P.O.
25. PAVITHRAN.K.C. AGED 39 YEARS
S/O.T.K.PADMANABHAN, KOLANKADA CHANDROTH HOUSE,
IYCHERI, NEDUNGOME.P.O.

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26. K.V.SUMESH AGED 50 YEARS
S/O. KUNHANANDAN, KALLOORI VALAPPIL HOUSE, NEDUVALOOR
CHUZHALI.P.O.
27. SHYJU.K. AGED 29 YEARS
S/O. BALAN, KUNNIL HOUSE, EDAYANNUR
CHUZHALI.P.O, KANNUR DIST.

BY ADVS.SRI.P.NARAYANAN
SRI.NICHOLAS JOSEPH

RESPONDENT(S) / PETITIONER:

1. STATE OF KERALA
THROUGH STATION HOUSE OFFICER
SREEKANDAPURAM POLICE STATION
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.
2. THE SUB DIVISIONAL MAGISTRATE,
THALASSERY-670102.

BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE 1 : COPY OF THE ORDER IN M.C. NO. 146/2013 DATED 18-6-2013
ISSUED BY THE SUB DIVISIONAL MAGISTRATE THALASSERY.

ANNEXURE 2 : COPY OF THE ORDER WHICH IS QUASHED IN GIRISH.P. & OTHER
V STATE OF KERALA (2009(4) KLT SN 99)

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

ami/

V.K.MOHANAN, J.

Crl.M.C.No.2798 of 2013

Dated this the 26th day of March, 2015.

O R D E R

The petitioners 27 in numbers are counter petitioners in Annexure I proceedings issued under section 111 of Cr.P.C. by the Sub Divisional Magistrate-Thalassery. According to the petitioners, since they belonged to different political parties and opponents to the present ruling Government, they are falsely implicated in the above proceedings without sufficient reasons and materials. So, in the above proceedings instituted under section 482 of Cr.P.C., the prayer is to quash Annexure-1 order issued by the 2nd respondent.

2. Heard Sri.P.Narayanan, the learned counsel for the revision petitioner and Sri.Justin Jacob, the learned Public Prosecutor.

3. The learned counsel for the petitioners vehemently submitted that even as per Annexure I order, the only case of the 2nd respondent is that the petitioners are involved in one crime and the 2nd respondent has no case that the petitioners are habitual offenders or involved in several cases of similar in nature. It is also pointed out by the learned counsel for the petitioners that the 2nd respondent has miserably failed to disclose the substance of information received by him in exercising the jurisdiction under section 111 of Cr.P.C. The learned counsel has pointed out that this Court by order dated 20.11.2009 in **Girish P. and others Vs. State of Kerala and another** reported in **(2009(4) KHC 929)** quashed a similar proceedings. On the other hand, the learned Public Prosecutor submitted that in Annexure 1 order, the 2nd respondent has mentioned that the petitioners are continuously involved in criminal activities and thereby disturbing the public tranquility in the locality. So,

according to the learned Public Prosecutor, the proceedings issued by the 2nd respondent as per Annexure 1 is correct and no interference is warranted.

4. I have carefully considered the submissions made by the learned counsel for the petitioners as well as the learned Public Prosecutor.

5. It is now well settled that unless the substance of the information received by the Officer, in exercise of the jurisdiction under sections 111 and 107 of Cr.P.C., is not stated in the order passed under section 107, the order is not sustainable in law and the mere registration of the crime is not a ground to initiate proceedings under section 107 of Cr.P.C. In paragraph 5 of the decision cited supra, it is held that,

"S.107 of Code of Criminal Procedure enables an executive Magistrate on receiving information that a person is likely to commit breach of peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, to require such person to show cause why he should not be

ordered to execute a bond with or without sureties for keeping peace for such period not exceeding one year as the Magistrate thinks fit. S.111 mandates that when a Magistrate acting under S.107, deems it necessary to require any person to show cause, he shall make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties, if any required, the necessity to set forth "the substance of the information" in the order under S.111 is not an empty formality and is with a purpose. It is to enable the person against whom the order is passed, to appear and show cause before the Magistrate that the allegations are not correct. Unless that information is furnished to the person against whom the order is passed, he cannot defend the allegation as against him."

In the light of the above decision, it can be seen that in Annexure 1 order, there is no reference to the substance received by the 2nd respondent while invoking section 111 of Cr.P.C. Even in Annexure I order, the facts involved in Crime No.476/12 are also not seen stated. The statement contained in the second page of Annexure 1 order is only an observation of the 2nd respondent and that too not on the basis of any materials received by him, since such materials are absent in Annexure 1 order. In Annexure 1 order, there

is no allegation that the petitioners are involved in several crimes of same nature to substantiate the apprehension of the 2nd respondent that the petitioners are likely to indulge in criminal activities. Thus going by Annexure 1 order, it can be seen that the 2nd respondent has miserably failed to refer to the substance of the information received by him so as to invoke section 111 of Cr.P.C. Therefore, according to me, Annexure 1 order is not legally sustainable, particularly in the light of the decision cited supra.

In the result, this Crl.M.C. is allowed quashing Annexure I proceedings in M.C.No.146/13 of the Sub Divisional Magistrate-Thalassery.

Sd/-
V.K.MOHANAN,
Judge.

ami/

//True copy//

P.A.to Judge