

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

CrI.MC.No. 2836 of 2013

M.C.NO.10 OF 2013 OF SUB DIVISIONAL MAGISTRATE, OTTAPPALAM

PETITIONER(S)/PETITIONERS:

- 1. HANEEFA @ MANOOTTY,
S/O.KOYA, VADAKKETHARA HOUSE, THALAKKASSERY P.O.,
PALGHAT-679 534.**
- 2. BASHEER.K.V.,
S/O.MOHAMMEDKUTTY, KUNNUMPURATHU VALAPPIL HOUSE,
THALAKKASSERY.P.O, THRITHALA VIA, PALAKKAD-679 534.**

**BY ADVS.SRI.JOHNSON MANAYANI
SRI.BENHUR JOSEPH MANAYANI
SRI.JEEVAN MATHEW MANAYANI**

RESPONDENT(S) :

- 1. SUB INSPECTOR OF POLICE,
THRITHALA POLICE STATION, THRITHALA.P.O.,
PALAKKAD-679 534.**
- 2. THE SUB DIVISIONAL MAGISTRATE,
OTTAPPALAM, OTTAPPALAM.P.O, PALAKKAD DISTRICT- 679 130.**
- 3. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM- 682 031.**

BY PUBLIC PROSECUTOR SMT.BINDU GOPINATH

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 25-05-2015, ALONG WITH CrI.MC.No.3321 OF 2013 AND
CONNECTED CASES, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1:** THE TRUE COPY OF THE SUMMONS AND ORDER PASSED UNDER SECTION 111 OF THE CRIMINAL PROCEDURE CODE ISSUED BY THE 2ND RESPONDENT TO THE 2ND PETITIONER.
- ANNEXURE A2:** TRUE COPY OF THE ORDER IN B.A.NO.616 OF 2013 DATED 28.01.2013 OF THIS HON'BLE COURT.
- ANNEXURE A3:** THE TRUE COPY OF THE MEMORANDUM OF BAIL APPLICATION WITHOUT THE ANNEXURES IN B.A.NO.1040 OF 2013 OF THIS HON'BLE COURT.
- ANNEXURE A4:** THE TRUE COPY OF THE ORDER IN B.A.NO.1040 OF 2013 OF THIS HON'BLE COURT DATED 05.02.2013.
- ANNEXURE A5:** THE TRUE COPY OF THE MEMORANDUM OF CONTEMPT OF COURT CASE FILED UNDER SECTION 12 OF THE CONTEMPT OF COURTS ACT WITHOUT THE ANNEXURES THEREIN.
- ANNEXURE A6:** TRUE COPY OF THE ORDER IN CONT.CASE (C) NO.247/2013 OF THIS HON'BLE COURT DATED 20.02.2013.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.Nos.2976/2015, 2979/2015, 2989/2015,
2992/2015, 2996/2015, 3321/2013 & 2836/2013

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Dated this the 25th day of May, 2015

ORDER

Heard learned Advocates appearing for the petitioners and the learned Public Prosecutor appearing for the official respondents in all these cases.

2. The matter in issue is covered against the official respondents in view of the ratio decidendi laid down in the decision of this Court in the case Santhosh v. State of Kerala reported in 2014 (3) ILR (Ker.) 993 and in the common order dated 19.12.2014 of this Court in Crl.M.C.No. 7259/2014 and connected cases. It was held by this Court in para 17 of the above said reported decision of this Court in Santhosh's case that there is nothing in the impugned order regarding the reason for the authority to come to the conclusion that the activities of the counter petitioners in those proceedings gain a reasonable apprehension in the mind of the authority that they are likely to cause breach of peace and disrupt

public tranquility at a particular time at a particular place, which requires the immediate intervention of the authorities to prevent such activities and for that purpose, they have to be called upon to enter on a bond to keep good behaviour for a particular stipulated period. It was held that the authority therein has not mentioned as to how far the alleged crime cases mentioned in the order is relevant for the purpose of considering the question as to whether the counter petitioners have to be called upon to enter on bonds to prevent breach of public tranquility and peace in the locality. That the very purpose of initiating proceedings under Sec.107 of the Code of Criminal Procedure is to prevent breach of public tranquility and peace expected to be committed by the counter petitioners at a particular place and at the particular time or period of time and it is intended to prevent that they are called upon to enter on a bond for a good behaviour for a particular stipulated period so that they can be prevented from participating in any act causing anticipated breach of public tranquility or breach of peace in a particular locality or a particular time. That the impugned orders therein will go to show that there is nothing in that order even to infer, the reason for the Sub Divisional Magistrate to come to such a conclusion that the

counter petitioners must be asked to enter into such a bond for the purpose mentioned in Sec.107 of the Cr.P.C. That the authority has simply extracted the case numbers of the crime, in which the counter petitioners were made accused. That it is well settled that merely because the counter petitioner was made an accused in a case, by itself is not sufficient to initiate proceedings against him under Sec.107 of the Code and the purpose behind the initiation of the proceedings is that there is apprehension in the mind of the authorities that the particular person or set of persons involved in certain activities, are likely to create breach of peace and disrupt public tranquility in a particular place and presence of such person in that place itself will be sufficient for the purpose and in public interest that has to be prevented and for that purpose, proceedings have to be initiated on the basis of the specific information received by the Sub Divisional Magistrate from the police or from other reliable sources and on that he will have to be satisfied the existence of such imminent necessity to initiate proceedings against the particular person, who is called upon to execute bond to keep good behaviour for a particular period so as to prevent that person causing any breach of peace or public tranquility in a particular

period. For this purpose, the substance of the information from which the Sub Divisional Magistrate can clearly be fully satisfied that there is likely to be breach of peace and disruption of public tranquility and the substance of such information has to be conveyed to the person, who is issued notice so that he is called upon to show cause why he should not be proceeded against under Sec. 107 Cr.P.C. etc. and in the absence of conveying the substance of the information with its particulars, the affected person will not be in a position to show cause to such notice, etc. This Court held that a reading of the impugned order of the Sub Divisional Magistrate will go to show that there was no application of mind by the Sub Divisional Magistrate in all those cases, but simply extracted more or less followed the format and quoted some crime numbers. Accordingly, it was held that the initiation of proceedings under Sec.107 of the Cr.P.C. is illegal and without application of mind and that the same are liable to be quashed as it is not passed in terms of provisions under Secs.107 and 111 of the Code and that the petitioners are entitled to the relief claimed in those petitions.

3. It is also pertinent to note that the impugned order considered by this Court in the reported decision in Santhosh' case

supra reads as follows:

“Preliminary Order U/Sec 111 Cr.P.C

WHEREAS it appears to me on the basis of the credible information received from the S.I of Police, Payandai Police Station that counter petitioner residing within the local limits of my jurisdiction is likely to create breach of peace and disturb public tranquility within the local limits of my jurisdiction and as I consider it is necessary that he should be called upon to show cause why he should not be proceeded against u/s 107 of Cr.P.C. They are hereby required to appear before me on 31.7.13 at 10.30 am at my court at Thalassery to show cause why hey/he should not be ordered to execute a bond of Rs.25,000/- (Rupees twenty five thousand only) with two solvent securities each for the like amount for keeping peace for a period of one year.

The counter petitioner involved in following crimes at Payangadi Police Station.

1. Cr.No.789/12 u/s 143,147,148,448,427,436 r/w 149 IPC

2.Cr.No.792/12 u/s 143,145,147,148,341,353,308 r/w 149 IPC & 117 (e) of KP Act & 3(1) of PDPP Act.

The petitioner has reported that the Counter Petitioner is continuously involving in criminal activities and thereby disturb public tranquility in the Crl.M.C.No.3207/13& Con.Cases 34 locality. The petitioner apprehends further breach of peace from the Counter Petitioner and has requested to invoke action u/s.107 of Cr.P.C against the Counter petitioner in order to maintain peace and tranquility in the locality.”

4. The impugned orders in these cases are also broadly similar to the one considered by this Court in the reported decision in Santhosh' case supra and in the order dated 19.12.2014 of this Court in Crl.M.C.No. 7259/2014 and connected cases.

5. Though the language employed in the impugned order produced in Crl.M.C.Nos.2976/2015, which arises out of

proceedings initiated by the Sub Divisional Magistrate at Kasargod, is slightly different, it can be seen that the said orders also suffer from same illegality and infirmities as in all the other cases, which arose out of the proceedings of the Sub Divisional Magistrate, Thalassery, Kannur district. The substance of the information is not properly conveyed in all the impugned orders, wherein the affected parties are called upon to showcause as to why they should not be proceeded under Sec.107 of the Cr.P.C. Accordingly, the impugned orders in all these Crl.M.Cs are liable to be interfered with in the light of the legal position laid down by this Court in Santhosh' case supra. More over the period of one year mentioned in the impugned order dated 23.07.2013 in Crl.M.C.No.3321/2013 and the impugned order dated 19.6.2013 in Crl.M.C.No.2836/2013 has expired long back. In this view of the matter, all these petitions stand disposed of in accordance with the relief granted by this Court in the reported decision in Santhosh' case supra. Accordingly, the impugned orders in these cases are quashed. However, it is made clear that this will not be a bar for the Sub Divisional Magistrate to initiate fresh proceedings against the petitioners, if the authority concerned is satisfied that situation prevails so as to initiate

proceedings against them under Sec.107 of the Code of Criminal Procedure after strict compliance with all the procedures and guidelines in the order in Santhosh' case supra and in the order dated 19.12.2014 in Crl.M.C.No.7259/2014 and connected cases and in accordance with law.

With these observations and directions, the Criminal Miscellaneous Cases stand finally disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge