

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

Cr1.MC.No. 3107 of 2013 ()

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CC 83/2013 of J.M.F.C.-1, PEERUMEDU

PETITIONER(S)/2ND ACCUSED:

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PAUL THOMAS AGED 46 YEARS  
S/O.THOMAS, AERATHU HOUSE, UPPUTHARA  
IDUKKI DIST

BY ADVS.SRI.T.A.UNNIKRISHNAN  
SRI.K.S.PRAVEEN

RESPONDENT(S)/COMPLAINANT:

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STATE OF KERALA  
REP BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA  
ERNAKULAM, REPRESENTING SUB INSPECTOR OF POLICE  
UPPUTHARA

BY PUBLIC PROSECUTOR SMT.LILLY LESLIE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30-03-2015,  
ALONG WITH CRMC. 1350/2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

Cr1.MC.No. 3107 of 2013 ()  
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APPENDIX

PETITIONER(S) ' EXHIBITS  
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ANNEXURE:-I:-TRUE COPY OF THE FINAL REPORT IN CC NO 83/2013 OF THE  
JFCM COURT I, PEERUMEDU.

RESPONDENT(S) ' EXHIBITS  
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NIL

//TRUE COPY//

P.A.TO JUDGE

ami/

**V.K.MOHANAN, J.**

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**Crl.M.C.Nos.3107 of 2013 and  
1350 of 2015**  
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**Dated this the 30<sup>th</sup> day of March, 2015.**

**ORDER**

The petitioner in Crl.M.C.No.3107/13 is the 2<sup>nd</sup> accused in C.C.No.83/13 pending before the JFCM court-I, Peerumedu, whereas the petitioners in Crl.M.C.No.1350/15 are accused nos.1 and 3 to 9 in the above connected case. As the question of facts and law involved are identical and the above two MCs. are arising out of the same proceedings, pending before the court below, the above M.Cs. are heard together and being disposed by this common order.

2. Crime No.304/11 is registered in the Upputhara Police station for the offences punishable under sections 143, 145 and 149 of IPC and under Rule 5(a) of the Kerala Noise Pollution (Regulation and control) Rule 2000. On completing the investigation in the above crime, the Sub

Inspector of Upputhara Police station has filed final report in the above crime, which is produced along with this M.C. as Annexure I, upon which, the court below took cognizance and instituted C.C.No.83/13 on the file of the court of JFCM-I, Peerumedu. It is against the above proceedings, the accused therein preferred the above M.Cs.

3. The allegation against the petitioners is that on 11.11.2011 at about 10.30 a.m., the accused people staged a march and dharna in front of the Kerala State Electricity Board office in Upputhara Panchayat and during such dharna, they used sound amplifier without obtaining prior permission from the competent authority and shouted slogans through such mike set and thus according to the prosecution, the petitioners have committed the afore mentioned offences. According to the petitioners, no complaint is filed before the court below by any competent authority as envisaged by section 19 of the Environmental

Protection Act, 1986 and therefore the court below is not justified in taking cognizance upon Annexure I final report and instituting C.C.No.83/13 against the petitioners.

4. Heard Sri.T.A.Unnikrishnan, the learned counsel for the petitioners and Smt.Lilly Leslie, the learned Public Prosecutor.

5. The learned counsel for the petitioners after taking me through Section 19 of the Environmental Protection Act, 1986, it is submitted that the court below has no jurisdiction to take cognizance upon Annexure I final report, since the same is not filed either by Central Government or by any authority or officer authorised in this behalf by the Central government. The learned Public Prosecutor, resisting the above contentions, it is submitted that the petitioners have to face the prosecution and they can raise the contentions before the competent court at appropriate time and this Court will not be justified in quashing the proceedings at the threshold of the institution

of the proceedings.

6. I have carefully considered the submissions of the learned counsel for the petitioners and the learned Public Prosecutor. I have also perused Annexure I final report produced along with the M.C.

7. Going by Annexure I final report it appears that, while preferring Annexure I final report, the Sub Inspector of Upputhara police station forwarded the following records along with Annexure I final report, namely, FIR, Mahazar, seizure mahazar, witness notes, 3<sup>rd</sup> party kaichit and report dated 12.11.2011. Further, going by Annexure I final report it appears that the police has filed final report as a usual report upon a crime after investigation and there is no claim for the Sub Inspector that himself or any other police officers have been authorised by the Central Government in terms of section 19 to file such a complaint.

8. Section 19 of the Environmental Protection Act, 1986, reads as follows :

**"Cognizance of offences** -- No court shall take cognizance of any offence under this Act except on a complaint made by --

(a) the Central Government or any authority or officer authorised in this behalf by that Government, or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid."

On a reading of section 19, it appears that the court can take cognizance only upon a complaint filed by the Central Government or the competent authority or officer as authorised by the Central Government. But in the present case, Annexure I report is a report presumably filed under section 173(2) of Cr.P.C. and there is no claim that Annexure I is a complaint as contemplated under section 19 of the Environmental Protection Act, 1986.

9. At this juncture, it is relevant to note that when Crl.M.C.No.3107/13 came up for consideration on 26.7.2013, considering the importance of question of law raised and the jurisdiction of the learned Magistrate to take

cognizance upon a report filed as contemplated under section 173(2) of Cr.P.C., especially when Section 19 of the Environmental Protection Act, 1986, contemplates of filing complaint by a competent or authorised officer, this Court directed the learned Public Prosecutor to get instruction as to whether the Sub Inspector of Police is authorised to file complaint or police report. Though several adjournments were obtained, no report is so far filed on the above aspect. Now also, the learned Public Prosecutor has no contention that the Sub Inspector of Upputhara Police station or any SHO or officer not below the rank of Sub Inspector has been authorised to file a complaint as contemplated under section 19 of the said Act. It is pertinent to note that, a Division Bench of this Court had occasion to consider the fate of a complaint or a trial, on the basis of the complaint filed by an incompetent officer. In **Varkey vs. State of Kerala (1993(1) KLT 72)** wherein it is found that, Excise Inspectors who filed the complaints in the cases had no

authority to file such a complaint and the result is that the Sessions court or the Special Court had no jurisdiction to take cognizance of the same. They could not have framed charge against the accused and the charge framed by them was without jurisdiction. It is further held that the trial which followed the said charge must be treated as nonest, because it was done without jurisdiction and if the trial was one held without jurisdiction, it cannot end in either conviction or acquittal. The court below ought to have discharged the accused under Section 227 of Code of Criminal Procedure. In the very same decision it has also held that, if the Excise Inspector who filed the complaints in those cases were not specifically authorised by the State Government to file the complaint, the complains filed by them cannot be treated as valid complaints coming within the purview of Section 36-A(1)(d) of the NDPS Act. In the present case also, according to me, the position is the same and there is no much difference. As per Section 19 of the

the Environmental Protection Act, 1986, the court can take cognizance only upon a validly constituted complaint filed by a competent or authorised officer. As per section 19, Central Government is the competent authority to empower its officer or any other officer. In the present case, along with Annexure I final report, no such notification or authorisation is produced and there is no claim that the Sub Inspector of Upputhara police station is authorised to file complaint, as contemplated under section 19 of the Act. If that be so, especially when the learned Public Prosecutor has failed to produce any notification or document to show the competency of the Sub Inspector of Upputhara police station to file such a complaint, the court below is wrong in taking cognizance upon a complaint filed by an incompetent officer in view of section 19 of the said Act and therefore the proceedings instituted against the petitioners are liable to be quashed.

In the result, these M.Cs. are allowed, quashing C.C.No.83/13 of the court of JFCM-I, Peerumedu and all further proceedings thereto.

Sd/-  
**V.K.MOHANAN,**  
**Judge.**

ami/

//True copy//

P.A.to Judge