

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

Cr1.MC.No. 4698 of 2015

AGAINST THE ORDER DATED 6.6.2015 OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT, THALIPARAMBA

CRIME NO. 355/2015 OF THALIPARAMBA POLICE STATION, KANNUR

PETITIONER/PETITIONER:

DIVYA, AGED 26 YEARS,
D/O. THANKA RAJAN, AMBAPURAM HOUSE,
BARA P.O,
UDUMA, KASARGOD.

BY ADV. SRI.C.P.UDAYABHANU

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE S.I. OF POLICE, THALIPARAMBA
(CRIME NO.355/15) POLICE STATION
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 10-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Cr1.MC.No. 4698 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE I: PHOTOCOPY OF THE FIR IN CRIME 1559/2012 OF THALIPARAMBA POLICE STATION FILED BEFORE THE JFCM COURT, THALIPARAMBA.

ANNEXURE I(A): PHOTOCOPY OF THE FIS GIVEN BY THE DE FACTO COMPLAINANT AGAINST THIS PETITIONER.

ANNEXURE II: PHOTOCOPY OF FINAL REPORT SUBMITTED BY THE RESPONDENT.

ANNEXURE III: PHOTOCOPY OF PETITION FILED BY THE RESPONDENT SEEKING PERMISSION OF THE COURT TO INTIMATE PROCEEDINGS AGAINST DE FACTO COMPLAINANT U/S. 182 OF IPC.

ANNEXURE IV: PHOTOCOPY OF THE FIR IN CRIME 355/2015 OF THALIPARAMBA POLICE STATION FILED BEFORE THE JFCM COURT, THALIPARAMBA.

ANNEXURE V: PHOTOCOPY OF THE FINAL REPORT SUBMITTED BY THE RESPONDENT.

ANNEXURE VI: COPY OF THE ORDER DATED 6.6.2015 SUBMITTED BY THE JFCM COURT, THALIPARAMBA.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.4698 of 2015

Dated this the 10th day of August, 2015

O R D E R

On a complaint made by the petitioner's mother-in-law a crime was registered against the petitioner under Section 324 of the Indian Penal Code by the Taliparamba Police, as Crime No.355/2015. On investigation, the police found that it is a false complaint. Accordingly, the crime was referred, and the Sub Inspector of Police sought permission of the learned Magistrate to investigate into the offence under Section 182 of the Indian Penal Code. Without noticing the bar of cognizance under the law, the learned Magistrate mechanically granted permission to investigate. After investigation, the police submitted final report against the mother-in-law under Section 182 of the Indian Penal Code. By order dated 6.6.2015, the learned Magistrate declined to take cognizance on the said final report on the ground that there is bar of cognizance under Section 195(1)(a)(i) of the Code of Criminal Procedure. The daughter-in-law now challenges the said order passed by the learned Magistrate.

2. On hearing the learned counsel, and on a perusal of the impugned order, I find that the decision of the learned Magistrate is quite right under the law. It appears that the petitioner has some confusion regarding “cognizance” and “cognizable”. Just because the learned Magistrate granted permission to investigate into the non-cognizable offence, cognizance cannot be taken on the basis of final report, if there is clear bar of cognizance under the law. So far as the offence under Section 182 of the Indian Penal Code is concerned, cognizance is possible only on a complaint made by the concerned public servant. In this case, instead of making a complaint, alleging the offence under Section 182 of the Indian Penal Code, the Sub Inspector submitted a final report under Section 173(2) of the Code of Criminal Procedure. In view of the clear bar of cognizance under the law, the learned Magistrate could not have taken cognizance on the final report. It is made clear that remedy is still open to the Sub Inspector to file a proper complaint against the accused under Section 182 of the IPC subject to limitation. I find that decision was rightly taken by the learned Magistrate not to take cognizance on the final report brought by the Sub Inspector. In this matter the

petitioner herein cannot have any grievance. If at all the Sub Inspector is aggrieved, and if he wants to prosecute the accused under Section 182 of IPC, he will have to file a proper complaint, without which cognizance is not possible. I find that this Crl.M.C is liable to be dismissed in limine.

In the result, this Crl.M.C is dismissed in limine, without being admitted to files.

**P.UBAID
JUDGE**

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