

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

Crl.MC.No. 3697 of 2013 ()

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CC. NO.155/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
CHANGANACHERRY.**

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PETITIONERS/ACCUSED NOS.2 & 3 :

- 1. ELIZABETH @ ALEYAMMA, AGED 26 YEARS,
D/O.ABRAHAM, PUTHENPURACKAL HOUSE,
THOTTAKAD, NOW RESIDING AT PUTHENPURACKAL HOUSE,
VALAYAMATTOM AREA, MANARCADU, KOTTAYAM.**
- 2. ELVIN, AGED 24 YEARS,
S/O.ABRAHAM, PUTHENPURACKAL HOUSE,
THOTTAKAD, NOW RESIDING AT PUTHENPURACKAL HOUSE,
VALAYAMATTOM AREA, MANARCADU, KOTTAYAM.**

BY ADV. SRI.M.J.THOMAS.

RESPONDENTS/STATE & COMPLAINANT:

- 1. SUB INSPECTOR OF POLICE,
VAKATHANAM, KOTTAYAM,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. GEORGEKUTTY ABRAHAM, S/O.ABRAHAM,
PUTHENPURACKAL HOUSE, ERAVUCHIRA, THOTTAKAD,
KOTTAYAM, NOW RESIDING AT NO.6, 2ND MAIN ROAD,
ELANGO NAZAR, PONDICHERRY-605 001.**

**R1 BY PUBLIC PROSECUTOR SRI.N. SURESH.
R2 BY ADVS. SRI.ANIL SIVARAMAN,
SMT.RAJI VINCENT.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 16-07-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE 1:** CERTIFIED COPY OF THE CHARGE SHEET IN C.C. NO.155/2012 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, CHANGANACHERRY.
- ANNEXURE 2:** TRUE COPY OF THE COMPLAINT CMP NO.324/2012 FILED BY THE DEFACTO COMPLAINANT.
- ANNEXURE 3:** TRUE COPY OF THE FIR IN CRIME NO.47/2012 OF VAKATHANAM POLICE STATION.
- ANNEXURE 4:** TRUE COPY OF THE 162 STATEMENT OF JACOB CHACKO, SON OF CHACKO, CW2.
- ANNEXURE 5:** TRUE COPY OF THE 162 STATEMENT OF JACOB CHACKO, SON OF CHACKO.
- ANNEXURE 6:** TRUE COPY OF THE STATEMENT OF ANTONY CHACKO, SON OF CHACKO WHO IS CW4.
- ANNEXURE 7:** TRUE COPY OF THE COMMUNICATION SENT BY THE DEPUTY SECRETARY OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA DATED 27/04/2012.
- ANNEXURE 8:** TRUE COPY OF THE ADMIT CARD ISSUED TO THE 2ND PETITIONER.
- ANNEXURE 9:** TRUE COPY OF THE JUDGMENT IN OS .55/2010 OF THE SUB COURT, KOTTAYAM.
- ANNEXURE 10:** TRUE COPY OF THE APPLICATION SUBMITTED JOINTLY BY MYSELF AND THE BRIDEGROOM, SEEKING PERMISSION TO CONDUCT THE MARRIAGE.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3697 of 2013

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Dated this the 16th day of July, 2015

ORDER

The prayers in this Crl.M.C. are as follows:

“..... to call for the records relating to Annexure 1 charge sheet in C.C.No. 155/2012 of the Judicial First Class Magistrate Court, Changanacherry and to quash the same as against the petitioners or to pass such other order which this Hon'ble Court deems fit and necessary in the interest of justice.”

2. The petitioners herein are arrayed as accused Nos.2 and 3 in Calendar Case, C.C.No.155/2012 on the file of the Judicial First Class Magistrate's Court, Changanacherry. Accused No.1 is the father of the petitioners. Interestingly, the 1st petitioner is the sister of the 2nd petitioner. It is stated that the 1st petitioner (A-2) has completed her course in Chartered Accountancy and that she intends to travel abroad to join her husband. More interestingly, the defacto complainant is the brother of the father of the petitioners. The impugned final report/charge sheet, which led to the institution of C.C.No.155/2012 was filed on the basis of Crime No.47/2012 of Vakathanam Police Station, registered at the instance of the defacto complainant for offences under Secs.447, 341, 506(ii), 294(b), 188

read with Sec.34 of the I.P.C. The first allegation in the impugned final report/charge sheet is that the accused trespassed into the property comprised in Resurvey No.265/2 of Thottackadu village belonging to the wife of the defacto complainant and further that the 1st accused had wrongly restrained the defacto complainant and used obscene words and criminally intimidated the defacto complainant showing a chopper and that accused Nos.2 & 3 measured the land. It is further alleged that the accused had done the above act in furtherance of their common intention. It is also alleged that the accused had done the above act, when an injunction order restraining the 1st accused from trespassing into the above property was in force. It is common ground that the learned Magistrate had not taken cognizance of the offence under Sec.294 (b) and that he has taken cognizance only for offences under Secs.447, 341, 506(ii), 188 and 34 of the I.P.C. It is interesting to note that in the impugned Anx.1 final report/charge sheet neither the time of the alleged occurrence of the incident nor the date is shown. But from the complaint filed by the defacto complainant, it can be seen that the offence alleged to have been committed was on 24.1.2012. It is these impugned criminal proceedings that is under

challenge in this Crl.M.C.

3. Heard Sri.M.J.Thomas, learned counsel for the petitioner, the learned Public Prosecutor appearing for the 1st respondent State of Kerala and Smt.Anil Sivaraman, learned counsel appearing for the 2nd respondent.

4. It can be seen that the impugned Crime No.47.2012 of Vakathanam Police Station was registered on the basis of Anx.2 complaint on Crl.M.P.No.324/2012 filed by the defacto complainant before the jurisdictional Magistrate concerned. Though the alleged occurrence is said to be on 24.1.2012, Anx.2 is seen filed only on 4.2.2012. The reason for the delay is not seen explained in Anx.2. It is on basis of the directions issued under Sec.156(3) by the learned Magistrate, that Anx.3 Crime No.47/2012 of Vakathanam Police Station was registered.

5. Anxs.4, 5 and 6 are the Sec.162 statements recorded from the charge witnesses, CW-2, CW-3 and C-4 respectively. Whether any serious offences are made out, even if the versions in Anxs.4, 5 & 6 statements of charge witnesses 2 to 4 are assumed to be true, is to be examined by this Court. The statements of CWs 2 and 4 would show that at about 11 a.m., A-1, the father of accused

2 and 3 (petitioners), came to the property in question and stood in front of the defacto complainant and that he is said to have criminally intimidated his brother. As per the statements of these witnesses, it is stated that the people, who had assembled there were disbursed by A-1 to go his house. The witnesses would further state that in the afternoon, A-1 alone came to the property and criminally intimidated the defacto complainant and that again in the evening all the accused, A-1, A-2 and A-3, came and measured the land and took photo. So the only allegation against the A-2 and A-3 (two petitioners herein) is that they had taken measurement and taken photo. As per the statements of CWs 2 to 4, the petitioners herein are not present when the alleged act of the 1st accused were said to have been done at around 11 a.m. on that day and also the acts imputed against them immediately thereafter. Thus the roping in of accused Nos.2 and 3 (petitioners herein) to the acts alleged to have been done after lunch are in respect of the events, when the petitioners were not at all present even going by the versions of CWs 2, 3 and 4. Therefore imputing the criminal culpability in respect of such incidents which have taken place at the former point of time for connecting the petitioners and roping them in under Sec.

34 is not legally sustainable. Therefore, this is against the mandate provided under Sec.218 of the Code of Criminal Procedure. The learned counsel for the petitioners is right in contending that Sec.219 is also not attracted to the facts of this case. Therefore, even if the versions given by CWs 2 to 4 are assumed to be the only alleged act that can be attributed against A-2 and A-3 (daughter and son of A-1) is that they took measurement and took photo of the property. This cannot be said to be an offence. At any rate, roping in for any offences in such innocuous charges would amount to abuse of process of court. So also with regard to the alleged wrongful restraint, criminal intimidation etc., the petitioners were not at all present at the scene of occurrence at the relevant time going by the versions projected by CWs 2 to 4. Therefore, accused Nos.2 and 3 (petitioners herein) cannot be fastened with any liability in that regard. Viewed in this fashion, even if the versions given by CWs 2 to 4 are assumed be correct, no offence under Secs.341 (wrongful restraint) and 506(ii) (criminal intimidation) can be said to have been made out as against accused Nos.2 and 3 (two petitioners herein) who are son and daughter of accused No.1. So also as regards the allegation under Sec.447 of the

I.P.C., prima facie this Court is convinced that no offence whereunder was made out against accused as simple entry into another property and taking photo will not itself lead to a situation of arraying these petitioners for the offence under Sec.447 of the I.P.C. Even if technically another view may be taken, this Court is of the considered opinion that arraying these two petitioners for the offence under Sec.447 of the I.P.C. in the facts of this case as borne out by the versions of CWs 2 to 4 would be nothing but an abuse of process of court.

6. Moreover, to attract offence under Sec.447, there should be criminal intention as envisaged under Sec.441 of the I.P.C. Only when a person enters the property in the possession of another with the intent to commit an offence or to intimidate, insult or annoy any person in possession of the property, will the offence under Sec.441 of the I.P.C. normally be attracted. The prosecution has not projected any such case. Moreover, taking measurement of the property by itself in the facts of this cases especially in view of pending civil cases between the defacto complainant and the accused No.1 who are brothers, cannot justify the impugned criminal proceedings against them.

7. Still further, taking cognizance of the offence under Sec.188 of the I.P.C. on the basis of a Police report is unsustainable, as it amounts to flagrant violation of the specific bar engrafted in Sec. 195(1)(a)(i) of the Code of Criminal Procedure, which reads as follows:

“Sec.195.

(1) No Court shall take cognizance;-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), ..”

Indisputably in the instant case, there is no complaint as stipulated in Sec.195(1)(a)(i) of the Code. Therefore, the action of the learned Magistrate in taking cognizance of the said offence under Sec. 188 of the I.P.C. merely on the basis of the Police report is ultra vires under the provisions in Sec.195(1)(a)(i) of the Code. Indisputably, there are at least three civil cases pending between these rival brothers, the details of which are not necessary for the disposal of this case. On going through the factual aspects made available, this Court is the considered opinion that arraying these two petitioners, who are daughter and son of the Accused No.1, is nothing short of abuse of the process of the court. Accordingly, the impugned Anx. final report/charge sheet in Crime No. 47/2012 of

Vakathanam Police Station, to the extent it is directed against the petitioners herein (A-2 and A-3), and all further proceedings arising therefrom in Calendar Case, C.C.No.155/2012 on the file of the Judicial First Class Magistrate's Court, Changanacherry, to the extent it directed against the petitioners herein will stand quashed.

With these observations and directions, the Crl.M.C. stands finally disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge