

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

Crl.MC.No. 3972 of 2014

CRIME NO. 169/2010 OF RAMAMANGALM POLICE STATION , ERNAKULAM

PETITIONERS/ACCUSED NO.1 TO 3:

1. **SUNILKUMAR, AGED 45 YEARS,
S/O. THANKAPPAN, MAILAMATTATHIL HOUSE,
PATHAMMILE BHAGAM, VADAYAMBADI KARA,
AIKKANARANDU SOUTH P.O., ERNAKULAM DISTRICT.**
2. **ANILKUMAR, AGED 39 YEARS,
S/O THANKAPPAN, MAILAMATTATHIL HOUSE,
PATHAMMILE BHAGAM, VADAYAMBADI KARA,
AIKKANARANDU SOUTH P.O., ERNAKULAM DISTRICT.**
3. **DHINILKUMAR, AGED 29 YEARS,
S/O THANKAPPAN, MAILAMATTATHIL HOUSE,
PATHAMMILE BHAGAM, VADAYAMBADI KARA,
AIKKANARANDU SOUTH P.O., ERNAKULAM DISTRICT.**

BY ADV. SRI.PAUL K.VARGHESE

RESPONDENTS/STATE/DEFACTO COMPLAINANT:

1. **STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
RAMAMANGALAM POLICE STATION,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
2. **JOSHI JOSEPH, AGED 45 YEARS,
S/O JOSEPH, KUTTITHOTTATHIL HOUSE, KAYANADUKARA,
MEMURY VILLAGE NEAR MUVATTUPUZHA
ERNAKULAM DISTRICT.**

**R1 BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN
R2 BY ADV. SMT.P.DEEPTHI**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21-07-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' ANNEXURES

ANNEXURE I: A TRUE COPY OF JUDGMENT IN OS NO.82/2000 ON THE FILE OF SUB COURT, MUVATTUPUZHA DATED 11.10.2004.

ANNEXURE II: A TRUE COPY OF PLAINT IN 96/98 ON THE FILE OF MUNSIFF COURT MUVATTUPUZHA DATED 17.2.1998.

ANNEXURE III: A TRUE COPY OF THE JUDGMENT IN OS NO.96/98 ON THE FILE OF MUNSIFF COURT MUVATTUPUZHA DATED 21.6.2001.

ANNEXURE IV: A TURE COPY OF THE CHARGE IN CRIME NO.169/10 ON THE FILE OF RAMAMANGALAM POLICE STATION DATED 31.10.2010.

ANNEXURE V: A TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE SUPERINTENDNET OF POLICE ALUVA DATED 31.12.2010.

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3972 of 2014

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Dated this the 21st day of July, 2015

O R D E R

The prayer in this Criminal Miscellaneous Case filed under Sec. 482 of the Code of Criminal Procedure seeking the invocation of the inherent powers conferred on this Court as per that provision, is for an order seeking to quash the impugned Anx.A-IV final report/charge sheet filed in Crime No.169/2010 of Ramamangalam Police Station, which has led to the institution of Calendar Case, C.C.No. 279/2011 on the file of the Judicial First Class Magistrate's Court, Kolencherry, pending against the petitioners and all further proceedings arising therefrom pending against the petitioners. The main ground urged by the petitioners is that the impugned criminal proceedings are nothing short of grave abuse of the process of the court insofar as the issues thereunder are mainly connected with civil disputes between the rival parties concerned.

2. Heard Sri.Paul K.Varghese, learned counsel for the petitioners, learned Public Prosecutor appearing for the 1st

respondent State of Kerala and Smt.P.Deepthi, learned counsel appearing for contesting respondent No.2.

3. The 1st petitioner herein is the power of attorney holder of his uncle, one Sri.Sukumaran, S/o.Kanda, Puthenpurayil House, Vengaloorkara, Kumarapuram village, Edukki district, who is having properties in Memuri village purchased as per document No.117/1979 of Piravom Sub Registrar's office. The petitioners herein are brothers. It is stated that the 1st petitioner, on the strength of the said power of attorney, has been managing the affairs of the property. It is pointed out that in the year 1992, an agreement for sale has been executed between the above said Sri.Sukumaran and the contesting respondent No.2 with respect to a portion of the property . But that sale deed could not be executed and registered, due to the alleged breach of the agreement for sale by contesting respondent No.2. That thereupon, contesting respondent No.2 had filed a civil suit for specific performance of the agreement for sale as Original Suit, O.S.No.82/2000 before the Sub Court, Muvattupuzha, which has been dismissed as Anx.I judgment dated 11.10.2004 in O.S.No. 82/2000. ===== It is further stated that earlier when respondent No.2 had attempted to trespass into the

said property in question, the above said Sri.Sukumaran, had then filed Anx. II O.S.No.96/1998 before the Munsiff's Court, Muvattupuzha and the same was decreed in terms of Anx.A-III judgment dated 21.6.2001 in O.S.No.96/1998, whereby the contesting respondent No.2 herein (defendant therein) was restrained by a permanent prohibitory injunction from trespassing upon the property, committing any waste and preventing the peaceful possession of the same by the plaintiff (Sri.Sukumaran, who later executed the power of attorney to the present 1st petitioner herein) and subject to the decision of O.S.No. 82/2000 pending before the Sub Court, Muvattupuzha. It is common ground that this decree has become final and conclusive and that no appeal has been filed by contesting respondent No.2 herein as against Anx.III decree. Anx.III judgment was rendered on 21.6.2001 making it clear that it is subject to the result of the final result of O.S.No.82/2000. It was after rendering of Anx.III judgment on 21.6.2001, that Anx.I judgment was passed in O.S.No.82/2000, whereby the said suit for specific performance filed by the contesting respondent No.2 herein against Sri.Sukumaran as defendant therein, was dismissed as per Anx.I judgment dated 11.10.2004. It is also

common ground that even the delay condonation application in the restoration petition filed against Anx.I dismissal of O.S.No. 82/2000 due to non-prosecution was ordered only quite recently as late as on 2.7.2015, after condoning a long delay of 2523 days and that even now the restoration petition is pending and further that the defendant therein is taking steps to challenge the said order of delay condonation in the restoration of Anx.I O.S.No. 82/2000, etc. The facts remains that these proceedings are initiated long after the initiation of the present impugned criminal proceedings.

4. It is after the rendering of the civil court decisions as per Anx.I and Anx.III in favour of the above said Sri.Sukumaran that the present impugned criminal proceedings have been set in motion at the instance of contesting respondent No.2, whereby Crime No.169/2010 of Ramamangalam Police Station, Ernakulam Rural district was registered at the instance of the contesting respondent No.2 herein as defacto complainant against the petitioners on 21.9.2010. The gist of the prosecution case is that the accused (petitioners 1 to 3) had trespassed into the landed property in question of contesting respondent No.2 and damaged tapioca grown on the property and committed theft of some tapioca causing a loss of Rs. 1.4 lakhs to

the contesting respondent No.2 due to their spite over their failure to regain possession of the said property. The Police after investigation has submitted the impugned Anx.IV final report/charge sheet against the three accused, who are the three petitioners herein, which has led to the pendency of Calendar Case, C.C.No.279/2011 on the file of the Judicial First Class Magistrate's Court, Kolencherry. .

5. To a specific question to both sides, it has been specifically admitted by them before this Court that the scene of occurrence of the alleged incidents in the impugned crime have occurred in the property covered by Anx.I and Anx. II judgments rendered by the competent civil courts on 11.10.2004 and 21.6.2001 respectively. The date of incident in the impugned crime registered on 21.9.2010 is admitted by the respondents as 20.9.2010. The petitioners are nephews of the above said Sri.Sukumaran, who has executed a power of attorney in favour of the 1st petitioner to man the affairs of his properties including those covered by Anxs.I and III judgments. A copy of the said power of attorney was made available to this Court by the petitioners' counsel for perusal. As on the date of the incident on 20.9.2010,

indisputably, contesting respondent No.2 has suffered Anx.III decree, whereby he has been restrained by a permanent prohibitory injunction from trespassing upon the said property in question, committing any waste and preventing the peaceful possession of the same by the plaintiff therein, but subject to the decision of O.S.No. 82/2000 pending of the Sub Court, Muvattupuzha. Anx. III is rendered on 21.6.2001. later O.S.No. 82/2000 was dismissed as can be seen from Anx. I judgment rendered by the Sub Court, Muvattupuzha on 11.10.2004. Therefore, the versions of the 2nd respondent that the power of attorney holder of the above said Sri.Sukumaran had trespassed into the property in question and that said property was possessed by contesting respondent No.2 and that the power of attorney holder of the successful plaintiff had committed theft in the said property, etc. are too farfetched to be countenanced in law, at least for the purpose of initiating the impugned criminal proceedings, as the foundation for issues has been adjudicated then and decided by the competent civil courts as can be seen from Anxs.I and III judgments respectively. The only main argument put forward by the respondents is that the title deed owner of the property in question, Sri.Sukumaran in his Sec.161

statement given before the Police in the impugned crime had admitted before the Police that the property in question was in possession with contesting respondent No.2 from the date of the agreement and that he was doing farming, etc. So long as the the issues already decided by the civil courts are not reversed in the manner known to law by the competent civil courts, initiation of such impugned criminal proceedings is nothing short of abuse of the process of court. Further the petitioners have also produced before this Court an affidavit of the above said Sri.Sukumaran, wherein it is stated in paragraphs 2 to 6 thereof as follows:

“2. I along with other relatives purchased property having an extent of 5.38 acres of land in Maymuri Village, Muvattupuzha Taluk in the year 1979.

3. Later on 21.11.1992 an agreement for sale has been executed between me and Sri. Joshi in respect of said property. But he failed to comply this promise and terms and conditions in the agreement, thereby agreement fell down. Later by raising false and frivolous contentions he filed O.S. No. 82/2010 before the Sub Court, Muvattupuzha. But so far he didn't get any order.

4. However when he attempted to trespass into my property I filed a suit as O.S. No. 96/1998 before the Munsiff Court, Muvattupuzha and got an order of injunction restraining the 2nd respondent herein from trespassing into my property.

5. Hence it is clear that the 2nd respondent herein has no right title or interest in the said property. The 1st petitioner herein is my power of attorney holder. The petitioners have not committed any offence. But to coerce us to settle the case as per the demand of the 2nd respondent herein, the petitioners herein were falsely implicated the crime and remanded to jail. The same has been done by the 2nd respondent by influencing the police. I didn't give any statement before the police against them. The police without my

knowledge or consent prepared 161 statements in favour of the 2nd respondent herein, and produced it before the court.

6. Hence this Hon'ble Court may pleased to consider the said case is false one and acquit the petitioners in the interest of justice.”

Even without taking account the averments in the affidavit sworn to by Sri.Sukumaran, this Court is of the considered opinion that the initiation of the impugned criminal proceedings in the facts and circumstances of this case, at the instance of the 2nd respondent as defacto complainant after having suffered Anxs.I and III judgments, would be an abuse of the process of the court. Accordingly, the impugned Anx.IV final report/charge sheet filed in the impugned Crime No.169/2010 of Ramamangalam Police Station, Ernakulam Rural district, which has led to the pendency of Calendar Case, C.C.No.279/2011 on the file of the Judicial First Class Magistrate's Court, Kolencherry, and all further proceedings arising therefrom pending against the petitioners stand quashed. It is made clear that the observations and findings of this order are made only in the limited context to decide whether or not the impugned criminal proceedings at Anx.IV would amount to abuse of the process of court and it is further made clear that the observations and findings in this order shall not in any trammel or influence any other

proceedings as between these rival parties concerned including the proceedings between them before the civil courts.

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

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge