

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

CrI.MC.No. 4247 of 2013

MC 140/12/C of SUB.DVL.MAGI.COURT,FORT COCHI

PETITIONER(S)/ACCUSED NO 1-6:

1. RIBIN, AGED 28,
S/O RAVEENDRAN, VISAKH BHAVAN, VIJAYA NAGAR COLONY
CHOONDI, ALUVA

2. PRAVEEN, AGED 29,
S/O RAVEENDRAN, VISAKH BHAVAN, VIJAYA NAGAR COLONY
CHOONDI, ALUVA

3. CHANDRIKA, AGED 49,
W/O RAVEENDRAN, VISAKH BHAVAN, VIJAYA NAGAR COLONY
CHOONDI, ALUVA

4. BHAVANI, AGED 58,
W/O STANLEY, CHAKKAMKULANGARA HOUSE
VIJAYANAGAR COLONY, CHOONDI, ALUVA

5. STANLEY, AGED 63,
S/O JOSEPH, CHAKKAMKULANGARA HOUSE
VIJAYANAGAR COLONY, CHOONDI, ALUVA

6. RAVEENDRAN, AGED 62,
S/O RAVEENDRAN MALLAN ACHARI, VISAKH BHAVAN
VIJAYA NAGAR COLONY, CHOONDI, ALUVA

BY ADVS.SRI.K.S.MADHUSOODANAN
SRI.THOMAS CHAZHUKKARAN
SRI.M.M.VINOD KUMAR
SRI.P.K.RAKESH KUMAR
SRI.K.S.MIZVER

RESPONDENTS/ FORMAL PARTY/ COMPLAINANT :

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682031

2. SUB INSPECTOR OF POLICE,
ALUVA EAST POLICE STATION, ALUVA

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09-
07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CrI.MC.No. 4247 of 2013

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE I PHTOCOPY OF THE ORDER OF THE EDATHALA GRAMA PANCHAYATH
DATED 27-12-2011 TO THE SMT. GRACY

ANNEXURE II PHOTOCOPY OF THE FIR IN CIRME NO 3797/2011 DATED 28-12-
2011

ANNEXURE III PHOTOCOPY OF THE REPORT SUBMITTED BY THE 2ND
RESPONDENT DATED 18-01-2012 AS AGAINST THE PETITIONER FOR
INITIATING SECURITY PROCEEDINGS

ANNEXURE IV PHOTOCOPY OF THE PRELIMINARY ORDER UNDER SEC 111 CR P.C
PASSED IN M.A 140/12/C DATED 22-10-2012

//True Copy//

P.S.To Judge

RAJA VIJAYARAGHAVAN.V. J

Crl.M.C. 4247 of 2013

Dated 9th July, 2015

ORDER

1. This petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) by accused Nos. 1 to 6 in M.C.No.140/12/C of Sub Divisional Magistrate, Fort Kochi. The petitioners herein seek to quash the proceedings initiated against them under Section 107 Cr.P.C, and pending as M.C.140/12/C before the Sub Divisional Magistrate, Fort Kochi.

2. I have heard the learned counsel for the petitioners and also the learned Public Prosecutor.

3. Admittedly it is as per Annexure IV notice dated 22.10.2012, that the petitioners were called upon to show cause why they shall not be required to execute a bond for Rs.20,000/- each and also to furnish security of

two solvent sureties for the like sum each, for keeping peace for a term of one year. On the date fixed as above, the petitioners entered appearance through counsel. The case was thereafter, posted on 15.1.2013 on which day the petitioners personally appeared and the order was read over to them and explained. The case was posted later to 19.2.2013 , 13.3.2013 , 25.6.13 , 16.7.13, 27.8.13 and finally to 1.10.13 for executing the interim bond.

4. The grievance of the petitioners is that despite the mandate under Section 116(6) that the person against whom proceedings has been initiated shall, unless terminated earlier, stand terminated on the expiry of six months from the date of appearance before Court the proceedings are being dragged on. Placing reliance on **(Muhammed Kutty @ Thomas V State of Kerala 2007 (2) KLT 820)** it was pointed out by the learned counsel that, the inquiry envisaged under Section 116 of Cr.P.C having commenced on the date of appearance, same would be deemed to be terminated within six

months.

5. The learned Public Prosecutor was directed to get instructions in the matter with regard to this specific contention raised by the petitioner. It is submitted, on instructions, that the inquiry under S. 116 is still continuing before the Sub Divisional Magistrate, Fort Kochi, though more than 2 years have elapsed after the date of appearance before Court.

6. As per the Code, as mandated under S. 116, the Magistrate has to inquire into the truth of the information and for that purpose, he has to follow the procedure for recording evidence in summons cases. S. 116 (1) of the Code says that when an order under S. 111 has been read or explained under S. 12 to a person present in Court or when any person appears or is brought before a Magistrate in compliance with, or in execution of a summons or warrant issued under S. 113, the Magistrate shall proceed to inquire into the truth of the information

upon which action has been taken, and to take such further evidence as may appear to be necessary. After commencement and before the completion of the inquiry under sub section (1), the Magistrate, if he considers that immediate measures are necessary for prevention of a breach of peace, may direct the person to execute a bond with or without sureties for keeping peace or maintaining good behavior until the inquiry is concluded . S 116 (6) mandates that the inquiry shall be completed within a period of 6 months from the date of its commencement, and if such inquiry is not so completed, the proceedings under chapter VIII of the Code, shall terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs.

7. A division bench of this Court in **Mohammed Kutty @ Thomas V State of Kerala (2007 Cr.L.J 3016)** , putting at rest the divergence of views on the subject and approving the ratio of the judgment rendered by a single Judge of this court in **Saju Varghese and others V**

State of Kerala (2007 (2) KLT 820) has held that inquiry would commence with the appearance of the person and the Magistrate putting the question or appearance as provided under section 110 or 112 , as the case may be, and it is the duty of the magistrate to read out the order, and from that point onward, the inquiry starts. The same principle has been reiterated in **Shameer and others V State of Kerala (ILR 2008 (4) Ker 238)** as well .

8. In other words, curtains for the inquiry contemplated under S. 116 (6) should fall within six months from the date of appearance of the petitioners , which in this case is on 15.1.2013. In other words, the proceedings cannot continue on or after 15.7.2013 unless, before the expiration of the said period, the Magistrate directs for special reasons recorded in writing, that the inquiry be conducted beyond the said period. No such special reasons have been recorded in writing on or before 15.7.2013 as per the instructions received.

9. I am of the considered opinion that, in view of the facts and circumstances, the continuance of proceedings against the petitioners before the Sub Divisional Magistrate , Fort Kochi, as M.C.140/12/C is nothing but an abuse of process of Court and the same is liable to be quashed.

Criminal Miscellaneous Case is allowed .

Sd/-
RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

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