

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYASHTA, 1937

CrI.MC.No. 4192 of 2014 ()

**CP 120/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT, TALIPARAMBA
CRIME NO. 1040/2012 OF TALIPARAMBA POLICE STATION, KANNUR**

PETITIONER/ACCUSED NO.12:-:

**P. SAJESH, AGED 30 YEARS,
S/O.P.SARADA, PANACHIKKAL HOUSE, VAITHALA
KURUMATHOOR AMSOM, P.O., KURUMATHOOR.**

BY ADV. SRI.M.V.AMARESAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANTS:-:

**1. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.**

**2. A.K.BHASKARAN,, AGED 53 YEARS
S/O.KRISHNAN, KOROTH HOUSE, POKKUNDU
KURUMATHUR AMSOM, PRESIDENT
INDIA NATIONAL CONGRESS (I), KURUMATHOOR MANDALAM
P.O.KURUMATHOOR, KANNUR DISTRICT, PIN - 670 142.**

**R1 BY PUBLIC PROSECUTOR SMT.S. HYMA
R2 BY ADV. SRI.PHILJO VARUGHESE PHILIPS**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 16-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE 1: TRUE COPY OF COMPLAINT DATED 02.08.2012 LODGED BY 2ND RESPONDENT BEFORE TALIPARAMBA POLICE STATION.

ANNEXURE 2: TRUE COPY OF FIR IN CRIME NO.1040/2012 OF TALIPARAMBA POLICE STATION.

ANNEXURE 3: TRUE COPY OF FINAL REPORT IN CRIME NO.1040/2012 FILED BY THE POLICE BEFORE HON'BLE JUDICIAL FIRST CLASS, MAGISTRATE, TALIPARAMBA.

ANNEXURE 4: TRUE COPY OF STATEMENT OF 2ND RESPONDENT UNDER SECTION 162 OF CR.PC RECORDED BY THE TALIPARAMBA POLICE.

ANNEXURE 5: TRUE COPY OF STATEMENT OF CW2 RECORDED BY THE TALIPARAMBA POLICE UNDER SECTION 162 OF CR.PC.

ANNEXURE 6: TRUE COPY OF STATEMENT OF CW3 RECORDED BY THE TALIPARAMBA POLICE UNDER SECTION 162 OF CR.PC.

ANNEXURE 7: TRUE COPY OF AN AFFIDAVIT DATED 20.07.2014 SWORN BY 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

ALEXANDER THOMAS, J.

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Crl.M.C No.4192 of 2014

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Dated this the 16th day of June, 2015

ORDER

The prayer in the above Crl.M.C instituted under Section 482 of Cr.P.C seeking the invocation of the inherent powers conferred on this Court is as follows:

“It is most respectfully prayed that this Hon'ble Court may be pleased to quash all further proceedings as against this petitioner in C.P No.120/2012 on the file Hon'ble Judicial First Class Magistrate, Taliparamba in Crime No.1040/2012 of Taliparamba Police Station. Otherwise the petitioner will be hard put.”

2. It is averred that the 2nd respondent /de facto complainant had submitted Annexure-1 complaint on 3.8.2012, alleging that on 1.8.2012 at about 20.30 hours, 15 persons had committed various acts offences punishable under Sections 143, 147, 148, 452, 436, 427 r/w 149 of IPC. The name of the petitioner is not seen reported. Later police recorded Annexure 4 statement of the 2nd respondent/de facto complainant as envisaged under

Section 161 of Cr.P.C, in which the de facto complaint stated specifically the names of 5 persons and 10 others, who could be identified had committed the offence. It is the case of the petitioner that though the de facto complainant specifically knew the petitioner and he had not named the petitioner in Annexure 4, as he was convinced that the petitioner was not in anyway involved even remotely in the commission of the alleged offence. The statement in Annexure 4 is given on page 31 of this paper book. CW2 and CW3 who are the other eye witnesses, have also given statement as per Annexure 5 and 6 to the police under Section 161 Cr.P.C (recorded under 162 of the Cr.P.C), which also does not in any way disclose the name of the petitioner in the alleged commission of the above said crime. It is the grievance of the petitioner that in the impugned Annexure 3 final report/charge sheet submitted by the police in the above said crime, the police had unlawfully and wrongly incorporated the name of the petitioner as accused No.12 in the accused array of the said impugned final report. The de facto complainant (2nd respondent herein) has sworn to Annexure 7 affidavit dated 20.7.14 before this Court wherein it is stated in

paragraph 2 thereof as follows:

“The petitioner, who is figured as A12 in the above crime, happened to be arrayed as accused on a mistaken identity. He had not taken part in the unlawful assembly that committed the offence in the above crime. When I was questioned by police and recorded my statement under Section 162 of Cr.P.C as annexure-4, I did not say about his presence in the scene. CW2 and CW3 who are other eye witnesses, who had also given Annexure -5 and Annexure-6 statements under Section 162 of Cr.P.C to police did not say that the petitioner was a member of the said unlawful assembly.”

(Annexure 7 affidavit is appended on page No.37 of this paper book.)

3. The petitioner thus contends that the petitioner was not in anyway involved in commission of the alleged offence. The de facto complainant has stated that the petitioner has not committed the offence and that the de facto complaint does not intend to support the prosecution against the petitioner and that he supports the quashment of the impugned criminal proceedings pending against the petitioner.

4. Sri. M.V Amaresan, the learned counsel for the petitioner, and the learned Public Prosecutor appearing for the respondent, State of Kerala.

5. Apart from the aforementioned submissions and contentions urged in the Crl.M.C, Sri. M.V Amaresan, the learned

counsel for the petitioner also relied on the decision of the Apex Court in Bholu Ram v. State of Punjab [2008 (4) KLT SN 51 (C.No.47)] wherein the Supreme Court held that if the act of taking cognizance, issuance of process or joining of an innocent person as an accused is totally uncalled for or ex facie bad in law, it is open to the aggrieved party to invoke inherent jurisdiction under S.482 of Cr.P.C. The Apex Court held that in a given case, a Magistrate may take cognizance of an offence illegally or arbitrarily without there being any material whatsoever. Such illegal order should not deprive the accused from contending that the learned Magistrate was wrong and wholly unjustified in entertaining the complaint or taking cognizance of an offence. In such cases, however, the accused is not without legal remedy. That if the act of taking cognizance, issuance of process or joining of an innocent person as an accused is totally uncalled for or ex facie bad in law, the extraordinary inherent powers of the High Court should be invoked in appropriate cases under Section 482 Cr.P.C. Where the High Court is satisfied that the order passed by the Magistrate was illegal improper or arbitrarily, the High Court can exercise inherent powers

and quash the impugned criminal proceedings etc. Though the respondents had filed a statement dated 6.2.2015 in this case, such statement has not updated to any of the aforementioned crucial aspects of the matter. Therefore this Court is of the considered opinion that it may not adjudicate on these crucial issues by resorted to the exercise of extra ordinary power under Section 482 Cr.P.C, even though such power may be permissible in the light of the aforementioned ruling of the Apex Court in the case Bholu Ram v. State of Punjab (Supra).

6. It is submitted by both sides that after the submission of the impugned Annexure 3 final report/charge sheet in the impugned Annexure 2 Crime No.1040 of 2012 of Taliparamba Police Station, the learned Magistrate has taken cognizance and the case is now pending as committal proceedings arising out of the impugned crime No.1040 of 2012 of Taliparamba Police Station.

7. However, though this Court is desisting to adjudicate the issues on merits in exercise of his powers under Section 482 Cr.P.C, this Court is of the considered opinion that necessary directions are called for so as to meet the ends of justice so that a

fair and impartial investigation would reveal the truth of the matter so as to protect the bonafide interest of both the prosecution and the defence of the petitioner/accused.

8. Accordingly, it is ordered that the third respondent, Superintendent of Police, Kannur shall immediately call for the entire CD files in the impugned crime No.1040 of 2012 of Taliparamba Police Station and pass necessary orders entrusting the conduct of a further investigation in this matter to an officer not below the rank of Inspector of police, who shall conduct a detailed and meticulous further investigation on the matters mentioned herein above to the extent it affects the petitioner. Such further investigation shall be closely monitored and supervised by a senior officer of the rank of Deputy Superintendent of Police, Kannur. The further investigation as directed above shall be completed by the Inspector of Police, within a period of three months from the date of production of the certified copy of this order. After the conclusion of the further investigation as directed above on the limited aspects mentioned above, the necessary report based on the conclusive findings in such further investigation shall be submitted before the

jurisdictional Magistrate concerned, and the learned Magistrate shall pass appropriate orders thereon. The petitioner and the learned Public Prosecutor concerned will forward certified copy of this order before the Superintendent of Police, Kannur as well as before the Judicial First Class Magistrate's Court, Taliparamba, which is now dealing with committal proceedings arising out of the impugned crime No.1040 of 2012 of Taliparamba Police Station.

With these observations, and directions the Crl.M.C stand final disposed of.

sd/-

sab

ALEXANDER THOMAS, JUDGE