

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

CrI.MC.No. 4386 of 2013 ()

**C.C.NO.100/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT - II,
KOTTARAKKARA
CRIME NO.1069/2011 OF POOYAPPALLY POLICE STATION, KOLLAM**

PETITIONER(S)/ACCUSED:

**SHAJI.K.A.,
S/O.ABRAHAM, ANUGRAHA, CHENKULAM MURI,
POOYAPPALLY VILLAGE, KOTTARAKKARA, KOLLAM DISTRICT.**

BY ADV. SRI.B.MOHANLAL

RESPONDENT(S)/COMPLAINANT:

**THE STATION HOUSE OFFICER,
POOYAPPALLY POLICE STATION, KOLLAM DISTRICT
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 4386 of 2013 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE A1 - THE TRUE CERTIFIED COPY OF THE FIR AND FIS IN
CRIME NO.1069/2011 OF POOYAPPALLY POLICE
STATION IN KOLLAM DISTRICT.**

**ANNEXURE A2 - THE TRUE CERTIFIED COPY OF THE FINAL REPORT IN
C.C.NO.100/2012 OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT-II, KOTTARAKKARA.**

RESPONDENT(S)' EXHIBITS

NIL

//True Copy//

P.A. To Judge

Bb

C.R.

K. Ramakrishnan, J.

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Crl.M.C.No.4386 of 2013

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Dated this, the 26th day of March, 2015.

ORDER

Accused in C.C.No.100/2012 on the file of Judicial First Class Magistrate Court - II, Kottarakkara has filed this petition to quash the proceedings under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that petitioner has been made as an accused in C.C.No.100/2012 on the file of the Judicial First Class Magistrate Court - II, Kottarakkara. He was arrayed as a sole accused in Crime No.1069/2011 of Pooyappally police station in Kollam District alleging offence under Sections 20 and 21 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (hereinafter called 'the Act'). The allegation was that, on 07.12.2011, while the first respondent and his party was doing patrol duty and when they reached near Oyoor Junction, got information that petitioner was illegally excavating sand from Aduthala Kadavu adjacent to the Brick Killen belongs to the petitioner. They reached the spot and found somebody swam

across the river leaving the articles and on enquiry, it was revealed that it was the petitioner who escaped from the spot. So, they suo moto registered Annexure A1 Crime against the petitioner and thereafter filed Annexure A2 final report, on the basis of which, the case was taken on file as C.C.No.100/2012. Taking cognizance under Sections 20 and 21 of the Act on the basis of police report is against Section 25 of the Act, as the court can take cognizance of the offence under the Act only on the basis of a complaint filed by the persons mentioned therein and so, the taking cognizance of the case itself is bad. The petitioner has no other remedy except to approach this court seeking the following relief:

"To quash Anneuxre-A1 and A2 FIR and Final Report in Crime No.1069/2011 of Pooyappally Police Station in Kollam District pending as C.C.No:100/2012 on the file of the Judicial First Class Magistrate Court-II, Kottarakkara as against the Petitioner."

3. Heard the Counsel for the petitioner and the learned Public Prosecutor.

4. The Counsel for the petitioner Smt.Preetha P.S. submitted that Annexure A2 is a police report filed under Section 173(2) of Code of Criminal Procedure and as such, taking cognizance of the case on the basis of that report is bad

in law. The learned Counsel has relied on the decisions reported in **Sumesh v. State of Kerala [2012 (3) KLT 524]** and **Ismayil v. State of Kerala [2010 (3) KLT 706]** and **Nizam v. State of Kerala [2014 (2) KHC 354]** in support of her case.

5. The learned Public Prosecutor Shri.Rajesh Vijayan has submitted that, in this case, what is filed is a complaint and the ingredients of the complaint has been made out. Merely because in the prayer portion, it was mentioned as charge and certain inadmissible documents were produced will not take away the document filed from the character of the complaint as contended by the Counsel for the petitioner.

6. It is an admitted fact that the first respondent had registered Annexure A1 Crime No.1069/2011 of Pooyappally police station alleging offence under Sections 20 and 21 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 against the petitioner and thereafter, filed Annexure A2 complaint, on the basis of which, the case was taken on file as C.C.No.100/2012 on the file of the Judicial First Class Magistrate Court - II, Kottarakkara. It is true that in the decisions reported in **Sumesh v. State of Kerala**

[2012 (3) KLT 524] and **Nizam v. State of Kerala [2014 (2) KHC 354]** relying on the decision reported in **Ismayil v. State of Kerala [2010 (3) KLT 706]**, this court has observed that, court cannot take cognizance of the case on the basis of a final report filed under Section 173(2) of Code of Criminal Procedure. There is no dispute regarding the proposition laid down by the learned Single Judges, as in those cases, after investigation, final report under Section 173(2) of Code of Criminal Procedure was filed and it was on the basis of the final report filed, that cognizance was taken which was declared as bad in law in view of the clear provision under Section 25 of the Act.

7. Section 25 of the above said Act reads as follows:

"25. Cognizance of offences:- No Court shall take cognizance of any offence punishable under this Act, except upon a complaint in writing made by a person authorised in this behalf by the Government or the District Collector or a Geologist of the Department of Mining and Geology."

The Section says that, court can take cognizance of the offence under the said Act only on the basis of a complaint filed by the persons mentioned in the Section.

8. The Station House Officers of the police station were authorised to file complaint as per notification in S.R.O.No.64/2007 which reads as follows:

"In exercise of the powers conferred by Section 25 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (18 of 2001), the Government of Kerala hereby authorise the Revenue Divisional Officers, Tahsildars, Deputy Tahsildars, Superintendents of Police, the Deputy Superintendents of Police and Station House Officers to exercise the power to make a complaint in writing in respect of any offence punishable under the said Act."

9. So, a complaint filed by the Station House Officer namely., the Sub Inspector of Police under Section 25 of the Act is perfectly maintainable. Then, the question is as to whether Annexure A2 is a complaint or a police report contemplated under Section 173(2) of Code of Criminal Procedure. A reading of Annexure A2 will go to show that in fact, it is a complaint filed under Section 25 of the Act specifying the allegations of the ingredients of the offence committed and the documents filed and the witnesses to be examined. It is true that in the prayer portion, it was mentioned that;

"ചാർജ്ജ് സ്വീകരിച്ച് പ്രതിയുടെ പേരിൽ വേണ്ട നടപടിക്കായ് അയച്ചുപേക്ഷിച്ച് കൊള്ളുന്നു"

That will not make Annexure A2 as a report under Section 173 (2) of Code of Criminal Procedure. Even assuming that along with the complaint, 161 statement of the witnesses were

produced will not change the character of the complaint though such documents may be inadmissible in evidence and those statements cannot be marked as document when the complainant is examined.

10. Section 2(d) of the Code of Criminal Procedure defines complaint which reads as follows:

“complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation:- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.”

11. It excludes only police report which is defined under Section 2(r) of the Code of Criminal Procedure which reads as follows:

“police report” means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173.”

12. Neither in the Act or under the Code, no form has been prescribed for filing a complaint. What is required under Section 2(d) is only either an oral complaint or complaint reduced in writing making allegations constituting the offence. A reading of Annexure A2 will go to show that necessary

ingredients of the complaint has been made except in the prayer portion it was mentioned that charge has to be received and action has to be taken. That alone will not change the character of the complaint into a police report which has to be filed under Section 173(2) of Code of Criminal Procedure. So, under the circumstances, there is nothing wrong on the court to take cognizance of the case on the basis of Annexure A2 complaint filed by the Station House Officer who is an authorised officer to file complaint under Section 25 of the above said Act and so, the petition lacks merit and the same is liable to be dismissed.

In the result, the Criminal Miscellaneous Case is dismissed. The interim order of stay granted as per order in Crl.M.A.No.7748/2013 is vacated and the application is dismissed.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge