

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA, 1937

Crl.MC.No. 5948 of 2015 (G)

CC 941/2015 of J.M.F.C.-I, PUNALUR

CRIME NO. 198/2015 OF KULATHUPUZHA POLICE STATION, KOLLAM

PETITIONER(S)/ACCUSED :-

**MATHEW JOHN, AGED 58 YEARS,
S/O.JOHN, MANNA COTTAGE, VALIYELA,
KULATHUPUZHA MURI, THINKALKARIKKUM VILLAGE,
PUNALLOOR THALUK.**

BY ADV. SMT.ASHA ELIZABETH MATHEW

RESPONDENT(S)/STATE & DEFACTO-COMPLAINANT :-

- 1. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM - 682 031.**
- 2. NAZEERA, AGED 45 YEARS,
W/O.SAITHUKUTTY, SHAN MANZIL, VALIYELA,
KULATHUPUZHA MURI, THINKALKARIKKUM VILLAGE,
PUNALLOOR THALUK(P.O)-691 305.**

R BY SRI.JUSTIN JACOB, PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 21-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' ANNEXURES :-

ANNEXURE A1- TRUE COPY OF THE SALE DEED DATED 01.07.2010 OF SRO PUNALUR.

ANNEXURE A2- A TRUE COPY OF THE TAX RECEIPT DATED 05.06.2014.

ANNEXURE A3- A TRUE COPY OF THE PLAINT IN OS NO.428/2014 OF THE MUNSIFF'S COURT, PUNALUR.

ANNEXURE A4- A TRUE COPY OF THE FIR IN CRIME NO.145/2015 OF KULATHUPUZHA POLICE STATION.

ANNEXURE A5- PHOTOCOPY OF THE FIR AND FIRST INFORMATION STATEMENT IN CRIME NO.198/2015 OF KULATHUPUZHA POLICE STATION.

ANNEXURE A6- A TRUE COPY OF THE COMPLAINT DATED 23.02.2015 SUBMITTED BY THE PETITIONER BEFORE THE SUPERINTENDENT OF POLICE (RURAL), KOTTARAKKARA.

ANNEXURE A7- CERTIFIED COPY OF THE CHARGE IN CRIME NO.198/2015 OF KULATHUPUZHA POLICE STATION.

RESPONDENT(S)' ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

P.UBAID, J.

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Crl.M.C.No.5948 of 2015
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Dated this the 21st day of November, 2015

ORDER

The petitioner herein seeks orders quashing the prosecution in C.C.No.941 of 2015 of the Judicial First Class Magistrate Court -I, Punaloor wherein he is the sole accused. The offences involved in this case are under Sections 447 and 427 IPC. The prosecution case is that the petitioner trespassed into the complainant's property, and committed mischief in the said property. The case of the petitioner is that the said property belongs to him exclusively, and that he has already brought a civil suit against the 2nd respondent herein and others. The second respondent remained absent inspite of notice. The definite case of the petitioner is that when the second respondent trespassed into the property in dispute, he had filed a complaint against her and others, and

a crime was also registered by the police on the said complaint. Annexure-A4 is copy of the said FIR registered under Sections 447, 427, 294(b) and 506(ii) IPC. It is alleged that the present crime on the complaint of the second respondent is only a counterblast to the crime initiated by the petitioner herein.

2. On hearing both sides, and on a perusal of the materials, I find that continuance of the present prosecution will amount to abuse of legal process. Annexure-A3 is copy of the plaint in O.S.No.428 of 2014 brought by the petitioner herein before the Munsiff's Court, Punaloor. The second respondent herein and two others are the defendants in the said suit. The subject matter of dispute in the said suit is the very same property involved in this prosecution. Extent wise, and also as regards the Survey number, and other features the property is exactly the same. Annexure-A1 is copy of the title deed under which the revision petitioner claims title over the property, and Annexure-A2 shows payment of tax by the petitioner for the said property in Sy.No.890/1/2. I find that the petitioner has a genuine case here. When the

subject matter of prosecution is the very same subject matter of the civil suit wherein the petitioner claims title and possession, and seeks a decree of injunction, it would be illegal and inappropriate to proceed against the petitioner herein with prosecution under Section 447 or 427 IPC. I find that the dispute between the parties involves a boundary dispute, and also a dispute regarding right of way. In such a situation, it would be inappropriate and illegal to prosecute the petitioner on the allegation of trespass into the property.

In the result, this petition is allowed. The prosecution against the petitioner in C.C.No.941 of 2015 of the Judicial First Class Magistrate Court -I, Punaloor will stand quashed under Section 482 Cr.P.C.

Sd/-
P.UBAID
JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE