

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

Crl.MC.No. 5461 of 2014 ()

MC.NO. 66/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PERUMBAVOOR
CRIME NO. 3662/2014 OF PERUMBAVOOR POLICE STATION, ERNAKULAM DISTRICT

PETITIONER/ACCUSED:

ANIL K.MUHAMED, AGED 39 YEARS,
S/O.A.K.KUNJU MUHAMED, ELAMANA HOUSE, PARAMBAYAM,
CHENGAMANAD VILLAGE, ERNAKULAM DISTRICT. [ADVOCATE,
HIMAS COMPLEX, KOMBARA JUNCTION,
NEAR HIGH COURT OF KERALA, ERNAKULAM]

BY SRI.B.RAMAN PILLAI, SENIOR ADVOCATE
ADVS. SRI.R.ANIL
SRI. M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.T.ANIL KUMAR
SRI.MANU TOM
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SRI.M.VIVEK

RESPONDENT(S)/COMPLAINANT:

- 1. STATE,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. CHINSU SAJJAD, D/O. GEORGE,
MELEDATHU HOUSE, KANJIRAKAD KARA,
RAYON PURAM.P.O., PERUMBAVOOR,
ERNAKULAM DISTRICT. PIN-683 543.

***ADDL.R3 IMPEADED**

*ADDL.R3: N.R.SIVAN, FORMER SUB INSPECTOR OF POLICE,
PERUMBAVOOR-683 543, (PRESENTLY WORKING AS
SUB INSPECTOR OF POLICE, KUTTAMPUZHA).

*ADDL.R3 IS IMPEADED AS PER ORDER DATED 17/03/2015 IN
CRL.MA.NO.2325/2015.

R1 BY SR PUBLIC PROSECUTOR SRI.C.RASHEED
R2 BY ADV. SRI.GIGIMON ISSAC

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 17-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX A- TRUE PHOTOCOPY OF THE FIR IN CRIME NO.375/2014 OF KALADY POLICE STATION.
- ANNEX B- TRUE PHOTOCOPY OF THE FIR IN CRIME NO.375/2014 OF KALADY POLICE STATION.
- ANNEX C- TRUE PHOTOCOPY OF WP[CRL] 105/2014 BEFORE THIS HON'BLE COURT.
- ANNEX D- TRUE PHOTOCOPY OF ORDER DTD. 27.03.14 IN WP[CRL] 105/2014 OF THIS HON'BLE COURT.
- ANNEX E- TRUE PHOTOCOPY OF MEMORANDUM OF ORIGINAL PETITION IN O.P.NO.158/2014 OF FAMILY COURT, MUVATTUPUZHA.
- ANNEX F- TRUE PHOTOCOPY OF MEMORANDUM OF PETITION IN M.C.NO.66/2014 OF JFCM COURT-I, PERUMBAVOOR.
- ANNEX G- TRUE PHOTOCOPY OF ORDER DTD. 04.06.2014 IN C.M.P.NO.1155/2014 OF JFCM COURT-I, PERUMBAVOOR.
- ANNEX H- A TRUE PHOTO COPY OF PETITION DTD. 12.08.2014 IN M.C.NO.66/2014 OF JFCM COURT-I, PERUMBAVOOR.
- ANNEX I- CERTIFIED COPY OF FIR IN CRIME NO.3662/2014 OF PERUMBAVOOR POLICE STATION.
- ANNEX J- CERTIFIED COPY OF COMPLAINT IN CRIME NO.3662/2014 OF PERUMBAVOOR POLICE STATION.
- ANNEX K- TRUE COPY OF THE PAGE NO.150 OF PETITION REGISTER OF PERUMBAVOOR POLICE STATION.
- ANNEX L- TRUE COPY OF THE CHARGE SHEET IN C.C.NO.948/2010 OF JFCM-1, PERUMBAVOOR
- ANNEX M- TRUE COPY OF THE ORDER SHEET IN C.C.NO.948/2010 OF JFCM-1, PERUMBAVOOR
- ANNEX N- TRUE COPY OF THE CHARGE SHEET IN C.C.NO.949/2010 OF JFCM-1. PERUMBAVOOR
- ANNEX O- TRUE COPY OF THE ORDER SHEET IN C.C.NO.949/2010 OF JFCM-1, PERUMBAVOOR
- ANNEX P- TRUE COPY OF THE ORDER SHEET IN M.C.NO.66/2014 OF JFCM-1, PRUMBAVOOR

RESPONDENT(S)' ANNEXURES:

NIL

/TRUE COPY/

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P.A.TO.JUDGE

B.KEMAL PASHA, J.

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CRL.M.C. No.5461 of 2014

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Dated this the 17th day of March, 2015

ORDER

An unfortunate Lawyer, who happened to appear in various cases against a lady, who is the so called defacto complainant in Crime No.3662 of 2014 of the Perumbavoor Police Station, has the plight to approach this Court under Section 482 Cr.P.C., to get the proceedings against him in the crime quashed.

2. The defacto complainant in Crime No.3662 of 2014 is the 2nd respondent herein. It seems that she has been fighting tooth and nail with her husband. As a part of her prolonged litigations against the husband, on 01.03.2014, she has furnished a First Information Statement before the additional 3rd respondent herein, the additional Sub Inspector of Police, Perumbavoor, alleging that her husband

was missing. On the basis of it, Crime No.881 of 2014 of the Perumbavoor Police Station was registered. As the alleged place of occurrence in the said crime was within the limits of the Kalady Police Station, the crime was transferred to the Kalady Police Station, where it was re-registered as Crime No.375 of 2014.

3. On 06.03.2014, the 2nd respondent herein filed a writ petition by way of a Writ of Habeas Corpus as W.P.(Crl) No.105 of 2014 before this Court, alleging that her husband was being detained by his relatives. On 10.03.2014, her husband named Sajad appeared before the Judicial First Class Magistrate's Court, Perumbavoor through the petitioner herein as his counsel. Sajad gave a statement before the learned Magistrate in Crime No.375 of 2014 that he was not under the detention of anybody. On the basis of the said statement, the proceedings in the said crime was closed.

4. On 13.03.2014, the said Sajad appeared before this

Court through the petitioner as his counsel and submitted that the said Sajad was not under the detention of anybody; but at the same time he was not ready to live with the 2nd respondent herein. Even though a mediation was attempted, no fruitful **purpose** could be achieved in the matter. On 27.03.2014, W.P.(CrI)No.105 of 2014 was dismissed by this Court.

5. On 07.04.2014, the 2nd respondent herein filed O.P.No.158 of 2014 before the Family Court, Moovattupuzha for restitution of conjugal rights. On 22.05.2014, the present petitioner entered appearance before the said court on behalf of Sajad.

6. On 03.06.2014, the 2nd respondent herein filed M.C.No.66 of 2014 before the Judicial First Class Magistrate's Court-I, Perumbavoor under Section 12 of the Protection of Women from Domestic Violence Act against Sajad and his family members as respondents. The petitioner herein has appeared before the said court for

Sajad in that case also. Though the 2nd respondent had sought for a residence order at the residence of Sajad as shared household, the court had allowed only an alternate accommodation. The 2nd respondent was visibly irritated by the said order.

7. On 18.08.2014, the 2nd respondent filed an application before the Judicial First Class Magistrate's Court-I, Perumbavoor in the aforesaid case for an order directing Sajad to surrender his passport. The said application was also resisted and the said application was posted for orders on 25.08.2014.

8. The 2nd respondent had allegedly filed Annexure-J complaint before the additional 3rd respondent, alleging that the incident in the present case had happened on 18.08.2014.

9. It seems that by noting down a date for the registration of the present crime as 19.08.2014, Annexure-I First Information Report was registered by the additional 3rd

respondent herein for the offences punishable under Sections 294(b), 341, 354 and 506(i) of the Indian Penal Code.

10. Annexure-J complaint is dated 18.08.2014 and the same is seen numbered at the Police Station as IAPS No.113952/14. The name and address of the counter petitioner in the said complaint are shown as that of the present petitioner herein. The contents of the complaint in short is the following:

“The complainant is the petitioner in M.C.No.66 of 2014, filed under the Protection of Women From Domestic Violence Act. The arguments in the case were heard on that day and the same was posted for orders to 25.08.2014. Her husband had not appeared before court on that day. After the case was adjourned for orders, when she was standing at the veranda of the court at 02.30 p.m. she could see the present petitioner standing at the veranda of the court along with the elder brother of her husband. She put a query to

her husband's brother as to where was her husband. At that time, the petitioner herein had asked the complainant as to where was her counsel. She asked the petitioner as to where was her husband. It is alleged that at that time, the petitioner had abused her in filthy language and told her that she would never see her husband again. It is further alleged that the petitioner had given a signal to her husband, who was presented the compound, to go away from there. When she was about to rush towards her husband, the petitioner caught hold of her hand, thereby stopping her with a view to outraging her modesty."

11. The petitioner has approached this Court by stating that he has been unnecessarily implicated in a false case like this on account of the severe ill-will of the 2nd respondent herein, and that the additional 3rd respondent herein is also instrumental in registering a false criminal case like this against the Lawyer, who was appearing for the adverse party in all the proceedings initiated by the 2nd

respondent herein.

12. Heard Sri.B.Raman Pillai, learned Senior Counsel for the petitioner, Sri. Gigimon Issac, learned counsel for the 2nd respondent and also Sri.C.Rasheed, learned Senior Public Prosecutor.

13. The learned Senior Counsel has pointed out that the tenor of Annexure-J itself clearly reveals that the same is not prepared by the 2nd respondent herself; whereas it is prepared by a Lawyer. On going through the contents of Annexure-J, it is patent and evident that it is prepared by a Lawyer practicing before a criminal court. Even though the case of the 2nd respondent is that Annexure-J complaint was preferred on 18.08.2014, it seems that the additional 3rd respondent has made to appear that the crime was registered on 19.08.2014 as is evident from Annexure-I. At the same time, the learned Senior Counsel has pointed out that in the system generated First Information Report the Crime number is noted as 3662 of 2014 and the date of

registration of the crime as 20.08.2014. It is true that the additional 3rd respondent could not change the date in the system and the system had automatically generated the correct date as 20.08.2014. At the same time, a false entry has been deliberately made by the additional 3rd respondent, who had registered the so called crime as if it was registered on 19.08.2014 at 11.37 a.m. In the last page of Annexure-I, the additional 3rd respondent has continued to incorporate some more false information as follows:

“For this (19.08.14) Chinsu Sajad, aged 29 years, W/o.Sajad, Meledath Veedu, who is the daughter of George, Meledath Veedu, Kanjirakadu Kara, Perumabavoor Village filed the complaint before the Police Station, which is numbered as IAPS No.113952/14, on the basis of which Crime No.3662 of 2014 of the said Police Station was registered under Sections 341, 294(b), 506(i) and 354 of the Indian Penal Code and the First Information Report along with the original complaint was sent to the court and the

copies were sent to the Police higher ups.”

14. It seems that even though the 2nd respondent has a case that the complaint was preferred on 18.08.2014 itself, according to the additional 3rd respondent, in Annexure-I, the complaint was preferred by the 2nd respondent on 19.08.2014 only. Strangely enough, even though the 2nd respondent had no such case that the petitioner had uttered her that she would be done away with, the additional 3rd respondent was magnanimous enough to incorporate in the First Information Report that the petitioner had uttered that she would be done away with.

15. The additional 3rd respondent has appeared before this Court. According to him, the complainant was given to him at the Police Station by the 2nd respondent on 19.08.2014 and thereby he registered the crime on 19.08.2014 itself. The said version is apparently false. As the system has automatically generated the date of registration of the crime as 20.08.2014, the learned Senior

Counsel has rightly pointed out that Annexure-I First Information Report itself is anti-dated and the same was prepared as an anti-dated one deliberately by the additional 3rd respondent by joining sides with the 2nd respondent.

16. Much discussion is not required to conclude that there is every reason for the 2nd respondent to entertain an enmity towards the petitioner, who was the counsel appearing for her husband, against whom she has been nurturing an ill-will. It seems that she has been fighting tooth and nail with her husband. In all such cases, unfortunately the present petitioner was the counsel, who was appearing for her husband and relatives. It seems that her ill-will towards her husband and family members, has now turned towards the petitioner, who was the Lawyer engaged by her husband and his family members. It is quite unfortunate that her enmity, towards the petitioner, has been fueled by some other persons, who are also in the profession and she has become instrumental in preferring

Annexure-J complaint against the Lawyer of the adverse party.

17. From the circumstances and records, it is evident that the First Information Report is anti-dated and no First Information Report was registered on 19.08.2014; whereas the present First Information Report was registered on 20.08.2014 and attempts were made to make it appear that it was one registered on 19.08.2014. The learned Senior Counsel has invited the attention of this Court to Annexure-K, the copy of the Register of Petitions of the Perumbavoor Police Station during the period of the alleged incident. The copy of the concerned page of the Petition Register, which is produced as Annexure-K, shows that two complaints were received at the said Police Station on 15.08.2014 and 21.08.2014. It does not show that any complaint was received at the Police Station either on 18.08.2014 or on 19.08.2014. It seems that on 15.08.2014, IAPS No.144561/14 was registered and thereafter it was only on

21.08.2014 the next complaint was registered as IAPS No.144562/2014. Here it seems that at the caption of Annexure-J complaint, its registration number is noted as IAPS No.113952/14. Patently that is false. No such complaint was registered at the Perumbavoor Police Station either on 18.08.2014 or on 19.08.2014. It is evident that every thing in the matter is manipulated.

18. It is unfortunate that a Police officer is also privy to such an action. When this Court asked the additional 3rd respondent as to how the change of dates happened to be there in Annexure-I, First Information Report, he had no explanation at all.

19. It seems that the present complaint and the consequent First Information Report, which is manipulated on such a false complaint, clearly reveal an incident wherein all the norms of the solemn profession of advocacy have been overlooked and violated. This is an instance wherein this Court is compelled to note down that the professional

brotherhood to be maintained by the Lawyers has been violated. Annexure-J complaint is nothing but one prepared by a Lawyer against another Lawyer. Evidently the case set forth by the petitioner herein can only be believed. He had no axe to grind with the 2nd respondent herein. It is a fact that he has won all the cases in which he had appeared for his party. In such case, it cannot be believed that he had any enmity or anything to be sorted out with the opposite party, who had failed in all those litigations.

20. Over and above all these, the learned Senior Counsel has pointed out that evidence was also attempted to be cooked up in the case by the 2nd respondent at the instance of the additional 3rd respondent. The investigating officer has attempted to state that the accused and witnesses in C.C.No.948 of 2010 and C.C.No.949 of 2010 of the court below were witnesses to the so called incident allegedly occurred in this case. Annexure-M is the certified copy of the order sheet in C.C.No.948 of 2010 of the

Judicial First Class Magistrate's Court-I, Perumbavoor. After the posting of 16.07.2014 of the said case, the next posting was on 19.08.2014 only. It was on 19.08.2014 that A3 in the case along with CW4 in the said case were present before the court below. The said case had no posting at all on 18.08.2014. Similarly, Annexure-O, the certified copy of the order sheet of C.C.No.949 of 2010 of the court below, clearly shows that after 10.06.2014, the next posting date of the case was on 19.08.2014. It was on 19.08.2014 the accused along with CW3 were present before the court below in that case. Therefore, if the incident had occurred on 18.08.2014, any of the said persons associated with C.C.No.948 of 2010 or C.C.No.949 of 2010 of the court below could not have been present before the court below to witness such an incident. Matters being so, it is crystal clear that the investigating officer is behind all these mischief and it was he, who has cooked up evidence in the matter to show that the aforesaid persons were present

before the court below to witness such an incident on 18.08.2014. No such incident had occurred on 19.08.2014 even according to the 2nd respondent.

21. From all the above, It is evident that unnecessarily the petitioner herein is implicated in a false case like this. False allegations were levelled against the petitioner, who was appearing for the opposite party to the 2nd respondent in the cases against her. Matters being so, Annexure-I First Information Report and all further proceedings on it in Crime No. 3662 of 2014 of the Perumbavoor Police Station are liable to be quashed.

In the result, this Crl.M.C. is allowed and Annexure-I First Information Report and all further proceedings on it in Crime No. 3662 of 2014 of the Perumbavoor Police Station, are hereby quashed.

Sd/-
B.KEMAL PASHA,
JUDGE

DSV/18/3/15

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PA to Judge