

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

Crl.MC.No. 6675 of 2015

**C.C.NO.1402/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
MATTANCHERY**

PETITIONER(S) :

**SEBASTIAN, AGED 61 YEARS,
S/O.K.V.VARGHESE, C.C.NO.10/1298, KURISINGAL HOUSE,
NEAR AMARAVATHY CHURCH, FORTKOCHI VILLAGE, ERNAKULAM.**

BY ADV. SRI.ABRAHAM JOHN

RESPONDENT(S) :

**STATE OF KERALA,
REPRESENTED BY S.I. OF POLICE, FORT KOCHI POLICE STATION,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT.MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 04-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE I: THE COPY OF ORIGINAL LICENSE GRANTED BY
THE DEPUTY CONSERVATOR OF COCHIN PORT TRUST.**
- ANNEXURE II: A TRUE COPY OF THE CHALLAN FOR REMITTANCE OF
RENEWAL FEE AND EXTENSION OF LICENSE UPTO
31.03.2014.**
- ANNEXURE III: A TRUE COPY OF THE FINAL REPORT SUBMITTED AGAINST
THE PETITIONER.**
- ANNEXURE IV: A TRUE COPY OF THE STATEMENT GIVEN BY LAND
INSPECTOR OF COCHIN PORT TRUST TO
THE RESPONDENT.**
- ANNEXURE V: A TRUE COPY OF THE CERTIFICATE ISSUED BY
THE VILLAGE OFFICER ON 22.04.2014.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

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Crl.M.C. No. 6675 of 2015

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Dated this the 4th day of November, 2015

ORDER

The petitioner is the accused in C.C.No.1402/2014 of the Judicial First Class Magistrate's Court, Mattanchery, which has arisen from Crime No.135/2014 of the Fort Kochi Police Station, for the offences under Sections 188 and 283 IPC, Sections 364 and 369 of the Kerala Municipality Act, 1994 and Section 7(a) of the Land Conservancy Act.

2. The allegation against the petitioner is that he had installed a China net at the portions of the public property in the possession of the Cochin Port Trust, thereby causing the free movement of the public through that portion of the property. According to the petitioner, any of the offences alleged against him will not lie in the matter.

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

4. It is evident that the court below could not have taken cognizance of the offence under Section 188 IPC as it is hit by Section 195(1)(a)(i) Cr.P.C. There is no complaint in writing from the public servant concerned and therefore, the taking of cognizance of the offence under Section 188 IPC is bad in law.

5. Regarding the other offence under Section 283 IPC, it seems that in order to commit such an offence, the petitioner ought to have caused any obstruction or danger or injury to any person in a public way. Here, apart from treating that portion of the property on which he had installed the China net as road Puramboke land, it is not mentioned that it was a road or a street. The report of the Village Officer clearly reveals that the said portion of the property is the Puramboke land of the Cochin Corporation. As the petitioner has not created the obstruction to the public way, an offence under Section 283 IPC also will not lie.

6. With regard to the offences under Section 364 and 369 of the Kerala Municipalities Act, 1994, the said portion should be a street. The report of the Village Officer shows that it is a Puramboke land belongs to the Cochin Corporation. Apart from that, it has not been mentioned that it is a street. It is true that the definition of street as contained in the Municipalities Act may cover the properties lying on either side of the street extending up to other private properties also. At the same time, when there is nothing to show that there is a street there, the offences under Sections 364 and 369 of the Municipalities Act are also not legally sustainable.

7. Regarding the offence under Section 7(a) of the Land Conservancy Act, it seems that admittedly the said portion of the property on which he had installed the China net was not a Government land. Therefore, the offence under Section 7(a) of the Land Conservancy Act has also no application as far as the present petitioner is concerned.

Matters being so, none of the offences alleged against the petitioner will lie in the matter and therefore, the prosecution as such is bad in law. Matters being so, the entire proceedings in C.C.No.1402/2014 of the Judicial First Class Magistrate's Court, Mattanchery based on Annexure -III final report as against the petitioner herein are liable to be quashed.

In the result, this Crl.M.C is allowed and all further proceedings in C.C.No.1402/2014 of the Judicial First Class Magistrate's Court, Mattanchery based on Annexure -III final report as against the petitioner herein, are hereby quashed.

Sd/-
B.KEMAL PASHA, JUDGE

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