

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

CrI.MC.No. 6122 of 2013 ()

CRIME NO. 530/2013 OF KUNNICODE POLICE STATION , KOLLAM DISTRICT

PETITIONER(S):

1. SALIM,
AGED 44 YEARS, S/O. ABDUL RAHMAN, MANJU MANZIL,
KOTTAVILA, THRIKKADAVOOR VILLAGE, KOLLAM.
2. ANEESH T.S.,
THADATHIL VILA VEEDU IDAYKIDAM NORTH, EZHUKONE,
KOTTARAKKARA.
3. DILEEP KUMAR P.,
PANAVILA VEEDU, PERUCHERY, KOTTAMKARA,
KOLLAM.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-31
2. THE SUB INSPECTOR OF POLICE,
KUNNIKKODE POLICE STATION, KOLLAM-690 521

***ADDL.R3 IMPEADED**

***R3: RAJESH, S/O.NATARAJAN, PANAYARKUDI,
PADINJATTETHIL VEEDU, NEDUMAN, EZHAMKULAM, ADOOR.**

***IS IMPEADED AS ADDITIONAL R3 AS PER ORDER DATED 25/2/2015 IN
CRL.M.A.NO.1445/2015 IN CRL.M.C.NO.6122/2013.**

**R1 & R2 BY ADV. PUBLIC PROSECUTOR SRI.GITHESH.R.
R3 BY ADV. SRI.V.VENUGOPALAN NAIR**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 23-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

sts

CRMC.NO.6122/2013

APPENDIX

PETITIONER'S ANNEXURES:

- ANNEX A1** **COPY OF THE FIR IN CRIME NO.530 OF 2013 OF KUNNIKKODE POLICE STATION.**
- ANNEX A2** **COPY OF THE ORDER DATED 01/07/2013 IN B.A.NO.3628/2013 OF THIS HON'BLE COURT.**
- ANNEX A3** **COPY OF THE ORDER DATED 21/8/2013 ISSUED BY THE GOVERNMENT OF KERALA.**

RESPONDENT'S ANNEXURES: **NIL**

/TRUE COPY/

P.A.TO JUDGE

sts

ALEXANDER THOMAS, J.

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Crl.M.C No.6122 of 2013

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Dated this the 23rd day of July, 2015

O R D E R

The prayer in this Crl.M.C is as follows:

“... to quash Anx.A1 FIR and all the further proceedings pursuant to this in Crime No.530 of 2013 of Kunnikkode Police Station on the file of the Judicial First Class Magistrate Court-III Punaloor.”

2. The respondent officer concerned had earlier filed three statement in this case. Based on the statement dated 10.6.2015 filed by the Inspector of Police, Vigilance and Anti Corruption Bureau, Kollam this Court had passed an order dated 6.7.2015 which reads as follows:

“The Inspector of Police, Vigilance and Anti-Corruption Bureau, Kollam has filed a statement dated 10.06.2015 and paragraph 4 thereof reads as follows:

“As per the above direction Vigilance Director ordered a Vigilance Enquiry and directed to enquire the possibility to register a Vigilance case or Tribunal Enquiry or recommendation for Minor/Major Departmental action or Appropriate action by the department concerned or No further action. Enquiry has been entrusted to this unit on 20.05.2015, and is now in preliminary stage.”

2. The learned counsel for the petitioners urged that the petitioners have reliably come to know that the de facto complainant has now recently been questioned by the Vigilance Enquiry Officer and that the de facto complainant has stated that he has no complaint against the petitioners and that the petitioners have not committed any wrong etc and further that the de facto complainant has sworn to an such affidavit before this Court etc. In case the de facto complainant has already given a statement before the Vigilance Enquiry Officer, then the said officer shall examine such statement and report before this Court by filing an additional statement as to

whether any prima facie case of allegations and wrong doing has been disclosed against the petitioners etc. In case the statement de facto complainant has not so far been recorded by the Vigilance and Enquiry Officer, then the said Enquiry Officer shall take immediate steps to get the statement of the de facto complainant recorded and examine the matter as directed above and file statement. Statement in this regard shall be filed within 10 days from today.”

3. “In compliance with the requirements in the said order dated 6.7.2015 passed by this order, the Inspector of Police Vigilance and Anti Corruption Bureau Kollam has now filed a statement dated 15.7.2015. The relevant part of such statement dated 15.7.2015 given on pages 2 to 4 thereof reads as follows:

“As per the above direction Vigilance Director ordered a Vigilance Enquiry and directed to enquire scope for registering a Vigilance case or recommending Tribunal Enquiry or Minor / Major Departmental action or Appropriate action by the department concerned or No further action. The Enquiry was entrusted to this unit on 20.05.2015, and is pending.

As part of enquiry witnesses and suspect officers were questioned. CD file of Crime No.530/13 U/s 392 and 34 of the I.P.C. of Kunnikodu P.S and copy of enquiry report of Excise Vigilance were perused.

De facto complainant of Crime No.530/15 of Kunnikode P.S., Mr. Rajesh Age 30/15, S/o Natarajan Achary, Panayannar Kuzhi Pandijatathil Veedu, Neduman, Ezhamkulam Village was questioned by me on 12.6.2015 as part of this enquiry. He never supported allegations made in the FIS of Crime 530/2015 of Kunnikode P.S. In the FIS given to the SHO Kunnikkode P.S., he alleged that on 30.4.2013 by 12.30 Hrs. he was standing in front of Beverages Outlet Pattazhi after purchasing foreign liquor from the outlet. The petitioners, who were squad members of Enforcement and Anti-Narcotic Special Cell detained him and took him to a car parked nearby. He was carrying a total 5 liters of foreign liquor of which 3 litres of liquor was entrusted to him by his friend. Excise officials threatened him that they would register a case against him for possession of excess quantity of foreign liquor. According to him they took Rs.2000/- from his pocket and also compelled him to withdraw Rs.4000/- with ATM card which was possessed by him at that time. As per their demand, he withdrew the amount and gave to them. They also took the liquor purchased by him. Later he was released by them without registering case. Subsequently the de-facto complainant approached SHO Kunnikkode and gave FIS and got registered the above criminal case. The above case was first investigated by SHO Kunnikode P.S. Subsequently Smt. Manju W/o Salim, (1st petitioner) submitted a request before ADGP (South Zone) and in consequence to this the investigation was entrusted to Sri. P.D Sasi, DySP, DCRB, Kollam Rural on 17.5.2013.

After investigation of the above crime DySP DCRB arrived at a conclusion that the accused persons had not committed crime as alleged in the FIR. Defacto complainant had turned hostile by that time. But the DYSP opined that there was strong circumstantial evidence to suggest demand and acceptance of bribe from the defacto complainant. Hence he sought the legal opinion of Assistant Public Prosecutor, Punalur. He also suggested an enquiry by VACB in to the matter. Hence the matter was transferred to this agency.

A detailed enquiry was conducted by Vigilance Officer, Excise in this issue and he submitted a detailed enquiry report to the Excise Commissioner on 31/8/13. During this enquiry also the de-facto complainant turned hostile. But the enquiry officer reported that he was convinced from the circumstances and statements of other witnesses that the incidents alleged by the de-facto complainant in the FIS were true. He suggested departmental action against the officers. (Petitioners)

De-facto complainant Sri. Rajesh gave an FIS alleging demand and acceptance of bribe by Excise officers on 30/4/13 to the SHO, Kunnikode P.S. and he repeated the allegation on 2/5/13 before the DySP Punalur, during the enquiry. But on 7/6/13, he gave a statement to DySP, DCRB by denying his allegations leveled in the FIR and that he had given to the DySP, Punalur. Similarly he denied all allegations against Excise officials (petitioners) during the time of enquiry by Excise Vigilance.

Defacto complainant Sri. Rajesh was questioned by me on 12.06.2015 as part of enquiry by this unit. He denied all allegations leveled by him in the FIS given to Police against Excise officials. The fact in issue of this case is whether there was demand and acceptance of the money by excise officials from the defacto complainant for not taking legal action against him. In his signed statement he stated that on 30.04.2013 he was intercepted by Excise officials while he was coming out from Bevco outlet, Pattazhi after buying foreign liquor. He had 5 litres of foreign liquor within his possession. Excise officials verified him and released him after a warning, not to repeat the same. They did not demand bribe from him and he never paid any bribe to them. No prima facie case is made out from his statement. He is the victim as well as the sole eye-witness to the alleged transactions in this case who can give direct evidence. But he categorically denied all his allegations in the FIS and turned hostile. After thoroughly analysing the evidence collected during investigation by Police, enquiry by Excise and enquiry by this unit, it can be concluded that, the evidence gathered from other witnesses, circumstances etc. are not sufficient for a successful prosecution in this case before a court of law."

4. Heard Sri.C. Unnikrishnan, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent, State of Kerala.

5. Thus it can be seen from a mere perusal from the last

paragraph of the statement dated 15.7.2015 that the Vigilance Police Officer concerned, after dealing with all the details of the investigation so far conducted has come to the conclusion by thoroughly analysing the evidence collected during the investigation by police, enquiry by Excise and enquiry by the Vigilance unit, it can be concluded that, the evidence gathered from the other witnesses, and the circumstances etc are not sufficient for a successful prosecution in this case before the court of law. In the light of the specific conclusive stand taken by the competent respondent officer concerned this Court considers that any further continuance of impugned criminal proceedings will be a sheer wastage of precious time of the court. Accordingly, the impugned criminal proceedings at Anx.A1 and consequent proceedings arising therefrom including the proceedings referred to the Vigilance police, will stand quashed.

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

sd/-

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ALEXANDER THOMAS, JUDGE