

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

Crl.MC.No. 6512 of 2013

CC 65/2012 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM
CRIME NO. 81/2012 OF ERNAKULAM SOUTH POLICE STATION, ERNAKULAM
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PETITIONER(S)/ACCUSED 1 & 2:

1. THOMAS MANNULLY, AGED 64 YEARS,
S/O.JOSEPH MANNULLY, MANNULLY HOUSE, MANNULLY ROAD,
CHILAVANNOOR, COCHIN - 682 020.
2. YASH THOMAS MANNULLY, AGED 32 YEARS,
S/O.THOMAS MANNULLY, MANNULLY HOUSE, MANNULLY ROAD,
CHILAVANNOOR, COCHIN - 682 020.

BY ADV. SRI.G.SANTHOSH KUMAR (P).

RESPONDENT(S)/DEFACTO-COMPLAINANT/STATE:

1. SWAGAT R. BANDARI,
R.D.O (INDEPENDENT CHARGE), FORT KOCHI,
R.D.O OFFICE, FORT KOCHI - 682 001.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.
3. SUB INSPECTOR OF POLICE,
ERNAKULAM TOWN SOUTH POLICE STATION,
ERNAKULAM -682 016.

BY SENIOR PUBLIC PROSECUTOR SMT.SAREENA GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
17-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- ANNEXURE-A1:** TRUE COPY OF THE F.I.R IN CRIME NO.81 OF 2012 OF ERNAKULAM TOWN SOUTH POLICE STATION DATED 11.1.2012 AND COMPLAINT DATED 11.1.2012 BY DEFACTO COMPLAINANT.
- ANNEXURE-A2:** CERTIFIED COPY OF THE FINAL REPORT IN C.C. NO.65 OF 2012 DATED 6.2.2012 PENDING BEFORE ACJM COURT (EO), ERNAKULAM.
- ANNEXURE-A3:** TRUE COPY OF THE ORDER IN CRL.M.C.NO.108 OF 2012 BY HON'BLE SESSIONS COURT.
- ANNEXURE-A4:** TRUE COPY OF THE G.O DATED 24.8.2012 ISSUED BY GENERAL ADMINISTRATION (SPECIAL A) DEPARTMENT.
- ANNEXURE-A5:** TRUE COPY OF THE REPLY DATED 28.2.2013 UNDER RTI FROM UNDER SECRETARY, REVENUE DEPARTMENT.
- ANNEXURE-A6:** TRUE COPY OF THE REPLY DATED 15.12.2012 UNDER RTI ACT FROM UNDER SECRETARY, GENERAL ADMINISTRATION (SPECIAL-A) DEPARTMENT.
- ANNEXURE-A7:** TRUE COPY OF THE APPLICATION DATED 5.11.2012 UNDER RTI ACT.
- ANNEXURE-A8:** TRUE COPY OF THE NOTIFICATION DATED 19.6.2012 PUBLISHED IN KERALA GAZETTE BY KERALA PUBLIC SERVICE COMMISSION.
- ANNEXURE-A9:** TRUE COPY OF THE NOTIFICATION DATED 5.3.2013 PUBLISHED IN KERALA GAZETTE BY KERALA PUBLIC SERVICE COMMISSION.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B.KEMAL PASHA, J.

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Crl.M.C. No. 6512 of 2013

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Dated this the 17th day of September, 2015

O R D E R

Petitioners are accused in Crime No.81/2012 of the Ernakulam Town South Police Station, which is presently pending as C.C.No.65/2012 of the Additional Chief Judicial Magistrate's Court (Economic Offences), Ernakulam, for the offence punishable under Section 353 read with Section 34 IPC.

2. The prosecution case is that on 11.01.2012 at 11 a.m., when CW1 Assistant Collector had reached the road in front of the house of the petitioners for an inspection along with some other officers, the petitioners shouted and made a tumult there. It is further alleged that they intimidated CW1 and the 2nd petitioner took the photograph of the spot by making use of a camera. These are the only allegations levelled against the petitioners by

the prosecution.

3. It seems that there is no allegation that the petitioners had assaulted or used criminal force to any such public servant. Only when there is assault or use of criminal force to any such public servant in the execution of his duty as such a public servant, the offence under Section 353 IPC can be attracted. There is no allegation that with intent to prevent or deter such a public servant from discharging his duty, they had assaulted CW1 or used criminal force.

4. When those specific allegations are not there and when no other offence has been alleged, the offence under Section 353 IPC is not legally sustainable in this case. Matters being so, the continued prosecution is quite unnecessary and will be a sheer waste of time. Therefore, Annexure-A2 final report and all further proceedings in C.C No.65/2012 of the Additional Chief Judicial Magistrate's Court (Economic Offences), Ernakulam are liable to be quashed.

In the result, this Crl.M.C is allowed and Annexure A2 final report and all further proceedings in C.C No.65/2012 of the Additional Chief Judicial Magistrate's Court (Economic Offences), Ernakulam, are hereby quashed.

Sd/-
B.KEMAL PASHA, JUDGE

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