

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

Crl.Rev.Pet.No. 620 of 2015

AGAINST THE JUDGMENT IN M.P. NO.5754/2012 IN CC 68/2012
of J.M.F.C.,CHAVAKKAD DATED 03-07-2014.

REVISION PETITIONER/PETITIONER/ACCUSED:

SATHEESH V.G. @ SATHEESAN, AGED 50,
S/O. GOPALAN, VENKITANGU VEEDU,
EDAKALATHUR, CHAVAKKAD, THRISSUR.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS/RESPONDENTS/COMPLAINANT, STATE:

1. VASANTHA,
W/O.SUDEEPAN, APPANATH HOUSE, VENKIDANGU P.O.,
THRISSUR-680 510.

2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R1 BY ADV. SRI.A.T.ANILKUMAR

R1 BY ADV. SMT.V.SHYLAJA

R2 BY PUBLIC PROSECUTOR SMT. MADHU BEN.

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 27-05-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

Crl.R.P. No.620 of 2015

Dated this the 27th day of May, 2015

ORDER

The revision petitioner is the accused in C.C.No.68 of 2012 on the files of the Judicial First Class Magistrate's Court, Chavakkad. He is the petitioner in M.P.No.5754 of 2012 filed therein under Sec.239 of the Code of Criminal Procedure. Now he stands charge sheeted by the police for the offence punishable under Sec.420 of the Indian Penal Code. According to the petitioner, the charge formulated against him by the police in the final report is groundless and the prosecution cannot be proceeded and charge cannot be framed on the basis of the final report filed by the police. It is the case of the prosecution that the de

facto complainant is a member of Scheduled Caste and the District Panchayat sanctioned ₹1,00,000/- for the construction of her house. The petitioner/accused promised to construct the house to the de facto complainant for ₹1,10,000/- and by virtue of that agreement, the de facto complainant paid ₹1,10,000/- to him on various dates; but he failed to construct the house, as agreed by him, and thereby cheated her. The de facto complainant has produced documents showing that the District Panchayat has allotted fund for constructing the house to the de facto complainant. The certificate issued by the State Bank of India shows that an amount of ₹60,000/- had been withdraw by the de facto complainant on 15/12/2008.

2. The defence version put forward in the discharge petition is that one Sudeepan, an old neighbour of the petitioner and husband of the de facto complainant, had borrowed a trolley and ₹11,000/- from the petitioner. On demanding the same back, the said Sudeepan threatened the

petitioner. The said Sudeepan was an accused in a murder case. The petitioner approached the Guruvayoor police and lodged a complaint against him. Thus, the petitioner is at loggerhead with the de facto complainant and her husband Sudeepan for the last so many years. The said Sudeepan and the 1st respondent had indulged in malpractices for obtaining the said housing loan. The petitioner made on queries under the Right to Information Act learnt that the de facto complainant had swindled the District Panchayat by misappropriating Government housing grant using forged certificates claiming that she had completed the construction of the house up to lintel stage. Actually, she had only completed the foundation alone in a pretext to get the grant. The petitioner had filed a complaint before the Panchayat alleging the offence committed by the de facto complainant and her husband. A copy of the resolution of the Welfare Standing Committee of Thrissur District Panchayat dated 26/7/2011 received by the petitioner on RTI

query is produced and marked as Annexure-A1. He also moved the Vigilance Court which found her guilty of the allegations and a copy of the order passed by the Vigilance Court is produced and marked as Annexure-A2. After considering the evidence on record, the learned Magistrate dismissed the application on a finding that there are grounds to proceed against the petitioner.

3. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent.

4. The question to be considered is, whether there is any illegality or impropriety in the impugned order, whereby the court below dismissed the application for discharge filed under Sec.239 of the Cr.P.C. Going by the order, it could be seen that in compliance with the statutory mandate under Sec.239 of the Cr.P.C., the court below had examined the final report sent under Sec.173(2) of the Cr.P.C. and the documents appended to the final report. Going by the grounds raised in the application for discharge, it

could be seen that the plea for discharge is based on a contention that the de facto complainant had filed the complaint which culminated to the final report in retaliation to Annexure-A2 order which was passed on the basis of a complaint filed by the petitioner before the Vigilance Court. In support of the said contention, the petitioner had filed Annexures-A1 to A4. It is proved that the petitioner had raised specific defence contention. But, in view of the decision in State of Orissa v. Debendra Nath Padhi [2005 (1) KLT 80 (SC)], the scope of jurisdiction under Sec.239 of the Cr.P.C. is very limited. The defence contention and the documents produced by the defence in support of the defence plea cannot be looked into while considering the application for discharge under Sec.239 of the Cr.P.C. The Magistrate is required to consider the evidence prima facie whether the evidence, if unrebutted, would result in conviction or not. Therefore, Annexures-A1 to A4 cannot be looked into for consideration of the application under Sec.239 of the

Cr.P.C.

5. In view of the matter, the court below can be justified in dismissing the application for discharge. There is no illegality or impropriety in the impugned order under challenge.

This revision petition will stand dismissed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge