

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

Crl.Rev.Pet.No. 711 of 2015 ()

CMP 4664/14 IN CC 410/10 OF J.F.C.M.COURT-I, PEERMADE

REVISION PETITIONER(S)/COMPLAINANTS:

1. D.SASI,
HEAD CONSTABLE (HCU 1014), UPPUTHARA POLICE STATION,
RESIDING AT KAITHAMATTOM HOUSE, MANARKAD.P.O.,
KOTTAYAM.

2. C.N.SURENDRANATH,
HEAD CONSTABLE, UPPUTHARA POLICE STATION,
RESIDING AT PUSHPPAMANGALAM HOUSE, KADAYINIKADU,
VAZHOOR.

BY ADV. SRI.MANSOOR.B.H.

RESPONDENT(S)/STATE & RESPONDENT:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. T.G.MATHEW, S/O.GEORGEKUTTY,
THURUTHIYIL HOUSE, LONDRIY P.O., UPPUTHARA, PEERUMEDU,
IDUKKI,PIN 685 505.

R2 BY ADV. SRI.P.P.BIJU

R1 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 14-07-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

K.HARILAL, J.

Cr1.R.P. No.711 of 2015

Dated this the 14th day of July, 2015.

O R D E R

Revision petitioners are the accused Nos.2 and 3 in C.C.No.410/10 pending before the Judicial First Class Magistrate's Court-I, Peermade, alleging commission of the offences punishable under Sections 294(b), 341, 352, 506(i), 165 and 385 of the Indian Penal Code. The above case was registered on the basis of a private complaint filed by the second respondent herein before the said court. The accused Nos.1, 4 and 5 are the employees of a financial institution. The revision petitioners herein are Police Head Constables attached to the Upputhara Police Station at the relevant time.

2. The allegation in the complaint is that on 15.9.2009 at about 3.45 P.M. the accused 2 & 3/revision

petitioners 1 & 2 came into the shop room of the complainant in a jeep and asked the complainant to show the vehicle which was purchased by him with the financial assistance of SML Finance in which the other accused are also employees. They asked the complainant to come to the police station with the said vehicle. At that time, the accused 2 and 3 abused him with filthy language and exerted force to put him into the jeep and thus he was forcefully brought to the police station. Thus the accused have committed the offences alleged against them.

3. The revision petitioners filed a petition under Section 245 of the Cr.P.C., 1973, claiming discharge pursuant to the order passed in CrI.M.C.No.5298/14. In CrI.M.C.No.5298/14, this Court set aside the charge and the trial court was directed to hear the revision petitioners on the legal issue, whether sanction under Section 197 of the Cr.P.C. is required to prosecute the revision petitioners herein, who are public servants. As per the direction of this Court, both parties were

heard on the above question and, after considering the submissions made by both parties, the court below dismissed the application on a finding that sanction under Section 197 of the Cr.P.C. is not required as the petitioners are officers permissible by Inspector General of Police, a lesser government authority. The legality and propriety of the said order are under challenge in this revision petition.

4. Learned counsel for the revision petitioners advanced arguments assailing the said finding by which the trial court dismissed the application seeking discharge. The learned counsel cited Unnikrishnan v. State of Kerala [2014 (1) KLT 903] and contended that the revision petitioners are Police Constables charged with maintenance of public order as they are attached to Upputhara Police Station. Thereby they are entitled to get protection under the notification No.61135/A2/77/Home dtd.6.7.1977. According to the said notification, all members of the Kerala State Police, notwithstanding their rank, would

come under the purview of the requirement of sanction, under Section 197 of the Cr.P.C., provided they are charged with maintenance of public holder. But the said notification was not brought to the notice of the court and thereby the court below passed the impugned order in contravention to the protection provided under the notification. Per contra, the learned counsel for the 1st respondent advanced arguments to justify the findings whereby the court below dismissed the application under Section 245 of the Cr.P.C.

5. The short question that arises for consideration is whether sanction under Section 197 of the Cr.P.C. is required to prosecute the petitioners under the complaint filed by the revision petitioners.

6. Admittedly, the revision petitioners are public servants working in the Police Department in the rank of Head Constables and they are charged with law and order. It is true that under Section 197(1) of the Cr.P.C., sanction is required for the prosecution of

public servants not removable from his office without sanction of the Government. As observed by the learned Magistrate, the revision petitioners will not come under the category under Section 197(1) of the Cr.P.C. But going by sub-sections (2) to (4) of Section 197 of the Cr.P.C., it could be seen that the protection is conferred to certain other categories also. Under Section 197(3) of the Cr.P.C., the State Government is empowered to confer such protection to certain other categories, notwithstanding the rank, by notification as provided under Section 197(3) of the Cr.P.C. The Government of Kerala, by notification dated 06/12/1997, granted such a protection to all the members of Kerala State Police charged with maintenance of public order, irrespective of the rank they are holding. Therefore, in view of the above notification, the revision petitioners are entitled to get protection under Section 197 of the Cr.P.C. and thereby sanction is required to prosecute them in the above private complaint. In the absence of sanction, they are liable

to be discharged from the prosecution. Hence, the impugned order is set aside to the extent of the revision petitioners, and they would stand discharged from the prosecution proceedings in the above Calendar Case.

This criminal revision petition is allowed.

Sd/-
K. HARILAL, JUDGE

okb/rsr