

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1358 of 2015 ()

JUDGMENT IN CC 2922/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, NORTH PARAVUR

REVISION PETITIONER/5TH ACCUSED:

SHAIJU,
S/O.BALAN, MALLUPARAMBIL HOUSE, THIRUTHUR KARA
PUTHENVELIKKARA VILLAGE.

BY ADVS.SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
REPRESENTING THE STATION HOUSE OFFICER
VADAKKEKARA POLICE STATION, N.PARAVOOR, PIN-695001.

* 2. VALSAN,
S/O.KUNHANPILLAI, NEELIMATHARA HOUSE
MOOTHAKUNNAM VILLAGE, MALIANKARA.P.O, PIN-683516.

R BY PUBLIC PROSECUTOR SRI.R.GITESH

* THE SECOND RESPONDENT STANDS DELETED AS PER THE ORDER DATED
3.11.2015 IN Crl.M.A.6184/2015.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 03-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1358 of 2015

Dated this the 3rd day of November, 2015

ORDER

The revision petitioner is the fifth accused in C.C.No.2922 of 2014 on the files of the Court of the Judicial Magistrate of First Class, North Paravur.

2. The offences alleged in the said case are the offences under Sections 283 and 188 IPC.

3. The summons was issued to the revision petitioner to appear before the court below to answer the above said charge. Aggrieved by the order of the learned magistrate issuing summons to the revision petitioner, this revision petition has been filed.

4. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

5. The prosecution allegation is that on 28.2.2014 at about 9 a.m., the revision petitioner and the other accused

obstructed the pathway leading to the house of the de facto complainant by putting up a compound wall and gate, violating the order passed by the Munsiffs Court in I.A.No.229 of 2011 in O.S.No.47 of 2011.

6. The Apex Court in **Urmila Devi v. Yudhvir Singh [(2013) 15 SCC 624]** considered the ratio in **Adalat Prasad v. Rooplal Jindal and others [(2004) 7 SCC 338]** and **Subramaniam Sethuraman v. State of Maharashtra and another [(2004) 13 SCC 324]** and held that the order issued by the Magistrate deciding to summon an accused in exercise of his power under Sections 200 to 204 Cr.P.C. would be an order of intermediary or quasi-final in nature and not interlocutory in nature and hence the revisionary jurisdiction provided under Section 397 can be worked out by the aggrieved party either before the Sessions Court or before the High Court. It was further held in *Urmila Devi* that since such an order of a Magistrate in deciding to issue process or summons to an accused in exercise of his power under Section

200 to 204 Cr.P.C., can always be subject-matter of challenge under the inherent jurisdiction of the High Court under Section 482 Cr.P.C. Thus, it is clear from the above decision that the revisional jurisdiction under Section 397 Cr.P.C. is available to the aggrieved party in challenging the order of the Magistrate directing issue of summons. In view of the above reason, this revision petition is maintainable.

7. It has been argued by the learned counsel for the revision petitioner that Section 188 IPC contemplates orders made by public functionaries for public purposes and not an order made in a civil suit and hence the Magistrate cannot take cognizance of the offence under Section 188 IPC. A learned Single Judge of this Court in **Joseph George v. State of Kerala [(2000) 3 KLT 275]** held in paragraph 9 thus:-

"Any order announced in open court will be deemed to have been promulgated and the open declaration of the order in court would be deemed to be a notice not to the public at large but to the parties of the case in which the order is passed. An order duly pronounced in open court must be deemed to be duly

promulgated so far as the parties to the case are concerned.

Section 188 IPC contemplates orders made by public functionaries for public purposes and not an order made in a civil suit.”

8. It is clear from the above decision that Section 188 IPC does not contemplate orders passed by civil courts in judicial proceedings. That apart, no complaint was made by a public servant and hence, there is bar under Section 195 (i) (a) (i) Cr.P.C. in taking cognizance by the court. In the said circumstances, the offence under Section 188 IPC cannot be taken cognizance by the court below.

9. It has been argued by the learned counsel for the revision petitioner that the charge levelled against the petitioner under Section 283 IPC is also not sustainable on the ground that the act of obstruction of the pathway itself is an act of disobedience of the order of the court granting injunction. Section 283 IPC provides that whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or

injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

10. In this case, the allegation is that the revision petitioner obstructed the pathway in violation of the order passed by the civil court. Therefore, there can be no doubt that the act of obstruction of the pathway itself violated the order of the court. Therefore, the bar under Section 195 Cr.P.C. is applicable. Having gone through the relevant inputs, I am of the considered view that in truth and substance, the act of obstruction alleged was itself an act of disobedience of the order passed by the court and hence, it is not permissible for the prosecution to introduce the offence under Section 283 IPC to evade the bar under Section 195 Cr.P.C.

11. The Apex Court in **C.Muniappan and others v. State of Tamil Nadu [(2010) 9 SCC 567]** held in paragraph 28 thus:

“Section 195 (1) (a) (i) Cr.P.C. bars the court from taking cognizance of any offence punishable

under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein.”

The Apex Court further in Muniappan (supra) held thus:

“The test of whether there is evasion or non-compliance with Section 195 Cr.P.C. or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In *Basir-ul-Haq v. State of West Bengal and Durgacharan Naik v. State of Orissa*, this Court held that the provisions of this Section cannot be evaded by describing the offence as one being punishable under some other sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195 Cr.P.C. Thus, cognizance of such an offence cannot be taken by misdescribing it or by putting a wrong label on it.”

12. Having gone through the relevant inputs, I am satisfied that in truth and substance, the offence alleged falls

in the category mentioned in Section 195 Cr.P.C. and hence cognizance of the offence cannot be taken by the court below on the basis of the police report. For the said reason, the issuance of summons against the revision petitioner cannot be said to be legal, proper and correct and consequently, the same is not sustainable.

In the result, this revision petition stands allowed, the order of the court below summoning the revision petitioner in C.C.No.2922 of 2014 on the files of the court below stands set aside. The further proceedings against the revision petitioner stands dropped.

**B. SUDHEENDRA KUMAR
JUDGE**