

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 20TH DAY OF JANUARY 2015 / 30TH POUSHA, 1936

CRL.REV.PET NO. 2097 OF 2014

AGAINST THE ORDER/JUDGMENT IN CMP 3991/2010 OF JUDICIAL
MAGISTRATE OF FIRST CLASS ,VARKALA, THIRUVANANTHAPURAM

REVISION PETITIONER/S:

RAGHAVAN NADAR, PARAYAMVILAKATHU PUTHEN
VEEDU, KALLAMBALAM, NEAR NARANATHUCHIRA, KARAVARAM
VILLAGE, THIRUVANANTHAPURAM, PIN 695 605

BY ADV SRI.S.SHARAN

RESPONDENT/S:

- 1 SAHUL HAMEED, S/O.ABDU KHADHER, MANANAKKU
PRASANTHI NILAYAM, MANAMBOOR VILLAGE 695 611
- 2 SYAMKUMAR, S/O.RAMAKRISHNAN, VAISHNAVEEYAM, NEAR
KACHERI JUNCTION, ATTINGAL (U.D.CLERK, GRAMA
PANCHAYAT, KARAVARAM, THOTTAKKADU) 695 101
- 3 SETHU MADHAVAN, THUSHARA, NEAR MEVARKAL LPS
ALANCODE VILLAGE (L.D.CLERK, GRAMA
PANCHAYAT, KARAVARAM, THOTTAKKADU) 695 102
- 4 SHABNAM BEEGUM, D/O.SHYLA, PRASANTH
NILAYAM, PERUMKULAM 695 102.
- 5 G.KRISHNA NAIRRETD, DEPUTY DIRECTOR, PANCHAYATH
DIRECTORATE, THIRUVANANTHAPURAM, NOW RESIDING AT
SREENILAYAM, NETTIZHACHIRA ROAD, MANCHA PO,
NEDUMANGAD, THIRUVANANTHAPURAM DISTRICT 695 541.
- 6 STATE OF KERALA, REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
COCHIN 31

BY ADVS.

SRI.V.A.MUHAMMED

SRI.K.A.MANZOOR ALI

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 20.01.2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

ORDER

This revision petition is filed against the order dated 6.8.2011 in C.M.P.No.3991/2010 of the Judicial First Class Magistrate Court-I, Varkala. The revision petitioner is the complainant. He filed the said private complaint against respondents 1 to 5 herein viz., accused Nos.1 to 5 therein, alleging commission of offences punishable under sections 341,447,506(ii), 509 read with section 34 of the Indian Penal Code. The complainant viz., the revision petitioner herein and his three witnesses were examined by the learned Magistrate and thereupon, virtually the learned Magistrate refused to take cognizance of any of the offences. Accordingly, the complaint was dismissed without issuing processes, under section 203, Cr.P.C. Hence, this revision petition.

2. Heard the learned counsel for the revision petitioner and also he learned Public Prosecutor.

3. The facts in brief are as follows:-

In the complaint it was alleged that accused Nos.1 to 4 viz., respondent Nos.1 to 4 herein trespassed into the

property, which according to him is having an extent of 10 cents of which 6 cents is his registered holding and 4 cents is excess land lying along with the 6 cents and forming its part as a compact plot, at 4.00 PM on 18.12.2008. It is further alleged that accused No.3 photographed the property and a bathroom erected therein while his wife was taking bath in it. It is also alleged that he was wrongfully restrained him and criminally intimidated to kill him. He lodged a complaint before Kallambalam Police Station, however, no action was taken. A case was registered against him for deterring the public duty of Government Officials. The further allegation is that his attempt to get the matter enquired through the Sub Divisional Magistrate had also turn futile as the 5th accused/5th respondent to whom the matter was sent for enquiry did not take any further action. His further case projected in the complaint was as follows:-

4. The aforesaid property situates on the eastern side of a paddy filed which is separated by a wall built in rubble that forms western side of his property. He is residing there

with his family. There is a bund about 600 mtrs. north to his property. To drain water from it there is a small canal. During 2005-2006, some persons deviated the flow of the water to his property and caused flooding and upon which he made a complaint before the Sub Divisional Magistrate. A report was called from the 5th respondent and he inspected the property on 15.12.2008. It is thereafter that the alleged offensive acts were done. The complainant and his three witnesses were examined on oath. They gave statement in support of the aforesaid case. Going through the allegations in the complaint as also statements the learned Magistrate found little chance for a successful prosecution against the 5th accused. It was found that admittedly he was not present with respondents 1 to 4 herein on the date of alleged incident in the property. Obviously, the only allegation against him was that he did not take action in the complaint sent to him for enquiry by the Sub Divisional Magistrate despite conducting an inspection of the property on 15.12.2008. The complaint and statements also would not reveal connivance or abatement of any kind on

his part to commit the offences alleged.

5. In the case of respondents 1 to 4 herein, who is accused 1 to 4, the learned Magistrate found that the complaint as also the statements would go to show that they were actually discharging the official duty pursuant to the receipt of the complaint from the revision petitioner. In fact, the said complaint addressed to the Revenue Divisional Officer was transmitted to the 5th respondent for enquiry. The dispute involved therein is with respect to the change of course of water flow from the canal constructed using public fund to his property. The learned Magistrate took note of the fact that in respect of a complaint of such a nature, the 5th respondent was directed to conduct an inspection and to submit a report by the RDO concerned and respondents 1 to 4 visited the property for ascertaining the actual state of affairs of the property in question as the Panchayat also got interest in the matter and further that in connection with the same, a case was registered against the complainant for deterring the public duty of the officials. As already noticed, it is not a case

where the learned Magistrate straightaway dismissed the complaint. Section 203, Cr.P.C confers powers of a Magistrate, who dismiss the complaint in respect of which he made an enquiry under Sections 200 and 202, Cr.P.C. Evidently, the complainant as also his witnesses were examined on oath by the learned Magistrate. It is after looking into the material thus obtained, that the Magistrate arrived at a conclusion that the accused 1 to 4 were present in the property in question as part of their official duty and that the 5th respondent had inspected the property pursuant to the direction from RDO, to conduct an enquiry and submit a report, upon receipt of a complaint from the revision petitioner himself. Taking into account the aforesaid circumstances the learned Magistrate arrived at a conclusion that there is no ground to proceed against the accused 1 to 5, viz., respondents 1 to 5 herein. Considering the aforesaid circumstances, I do not find any illegality or perversity in respect of the conclusion arrived at by the learned Magistrate that the materials placed on record, viz., the statement on

oath of the complainant as also the witnesses are not sufficient to consider the complaint and the consequent dismissal of the complaint under Section 203 Cr.P.C. The impugned order would reveal that the learned Magistrate had applied his mind to the materials on record while passing the order. It is not a fit case wherein this Court should exercise the revisional power to interfere with the order dismissing the complaint under Section 203 Cr.P.C. Hence, the revision petition stands dismissed.

Sd/-
C.T.RAVIKUMAR
JUDGE

das

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE I	TRUE COPY OF THE ORDER DATED 19/8/2014 IN CRL.No.4336/2011 OF THE HON'BLE HIGH COURT OF KERALA
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