IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 18TH DAY OF DECEMBER 2020 / 27TH AGRAHAYANA, 1942

Crl.MC.No.6208 OF 2016

CRIME NO.427/2016 OF Mulavukad Police Station , Ernakulam

PETITIONER:

VIMAL KUMAR
AGED 53 YEARS, S/O GOPALAKRISHNAN NAIR,
RESIDING AT MALIYACKAL HOUSE, PARAMBITHARA ROAD,
PANAMPILLY NAGAR, KERALA-36

BY ADV. SRI.B.N.SHIVSANKAR

RESPONDENTS:

1 **S.I OF POLICE**
MULAVUKADU POLICE STATION, MULAVUKADU,
KOCHI- 682 504

2 **SARALA M.P.**
AGED 56 YEARS, W/O LATE ASHOKAN,
PUNNAKATUTHARA HOUSE,PANAMBUKADU DESOM,
MULAVUKADU VILLAGE, KANAYANNUR TALUK- 682 504

3 **STATE OF KERALA**
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA - 682 031

BY ADVS.
SRI.SAIGI JACOB PALATTY, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 18.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ALEXANDER THOMAS, J.

Criminal M.C. No. 6208 of 2016

Dated this the 18th day of December, 2020

O R D E R

The prayer in the afore captioned Criminal Miscellaneous Case filed under Sec.482 of Cr.PC is as follows:

> *"....to quash the crime registered as FIR No.427/2016 by the Mulavukad Police Station and filed before the Judicial First Class Magistrate Court, Ernakulam"*

2. Heard Sri.B.N.Shiv Shankar, learned counsel appearing for the petitioner (accused No.1) and Sri.Saigi Jacob Palatty, learned Public Prosecutor appearing for official respondents 1 & 3. Though notice has been duly served on contesting respondent No.2 (lady defacto complainant), there is no appearance for that party.

3. The petitioner herein has been arrayed as accused No.1 among the two accused in the instant Anx.A8 FIR in crime No.427/2016 of Mulavukadu Police Station, Ernakulam for offences punishable under Secs.406, 420 read with Sec.34 of Indian Penal Code and Sec.3(1)(iv) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989, on the basis of the impugned Anx.A7 private criminal complaint dated 25-02-2016, in which the

learned Magistrate had directed the police to register a crime and conduct investigation into the allegations thereon. It is apprised this Court that till date the Final report in this case has not so far been filed by the police in Anx.8 crime.

4. This Crl.M.C has been filed as early as on 09-09-2016. Matter came up for consideration on 09-09-2016, on which day this court ordered as follows:

> *"It appears that the defacto complainant had filed a complaint against the petitioner herein raising contention invoking provisions under SC/ST (prevention of Atrocities) Act. It seems that their case is that defacto complainant cheated by mortgaging the property with title deeds. Ext.A6 itself shows that they are living in the property as tenants.*
>
> *In the light of the above, learned PP is directed to get instructions. It is doubtful whether crime itself is maintainable. Hence, the petitioner shall not be arrested till 27-09-2016."*

5. Later this Court has extended the interim order till the next posting date, etc. Thereafter, both sides have not apprised this Court any of the subsequent developments in this case. Accordingly, this court was constrained to request the Registry of this Court to ascertain from the office of the Judicial First Class Magistrate Court-I, Ernakulam, to whom copy of the impugned Anx.A8 FIR was transmitted and to apprise as to whether the police has filed the Final report in this case after completion of the investigation in the FIR.

The Judicial First Class Magistrate Court-I, Ernakulam has informed that the case was transferred to the Sessions Court on 17-07-2017 presumably, as one of the offences alleged is the one as per SC/ST (POA) Act, 1989. Further it appears that the Sessions Court, Ernakulam has informed that so far the Final report in this case has not been filed and that one Sri.Babu has been bailed out and that the case is taken in the Sessions Court concerned as re-registered FIR No.109/2017, etc.

6. The learned Public Prosecutor would submit that, it is reliably learnt that the investigation in this case has been transferred from the local police agency and entrusted to the Crime Branch CID. Further that it is learnt that the 2nd respondent's husband had died.

7. The learned Prosecutor would point out that, there are two accused in this case and petitioner, who is A1 alone has challenged the impugned criminal proceedings and it appears that A2 has been bailed out etc, and that in view of the nature of the allegations raised in this case and as only one of the accused persons have challenged the impugned criminal proceedings, which is now only at the FIR stage, this Court may give liberty to the Investigating agency to complete the investigation in the manner known to law and then so

as to file the Final report and thereafter in case if any of the parties concerned have any legally justiciable grievances thereto, they would certainly at liberty to work out the remedies in the manner known to law.

8. Sri.B.N.Shiv Shankar, learned counsel appearing for the petitioner (A1) would submit that it is reliably learnt that A1 has not so far applied for bail, in view of the pendency of this Crl.M.C and in view of the interim order passed by this Court not to arrest him, etc.

9. After hearing both sides this court is of the considered view that, the ends of justice could be advanced by permitting the investigating agency to complete the investigation in the manner known to law, without any further delay, so as to file Final report in this case in accordance with law before the competent criminal court concerned. The FIR has been registered as early as on 15-04-2016. From the submissions of the learned Prosecutor it appears that thereafter the investigation has been entrusted to the Crime Branch. This Court had passed an interim order in this case as early as on 09-09-2016 that the arrest of the petitioner may be deferred in view of the contentions and matters raised in this Crl.M.C.

10. The learned counsel for the petitioner would point out that this court may order that, in the event of the petitioner surrendering before the competent criminal court concerned and apply for bail under Sec.437 of Cr.PC, the same may be granted, etc.

11. In view of the long pendency of the matter and without getting into the merits of the controversy in any manner, this Court is of the considered view that, plea of the petitioner for bail could be favourably considered. Accordingly, it is ordered that the petitioner may immediately surrender before the competent criminal court concerned and may make application for grant of bail under Sec.437 of Cr.PC , without any further delay, at any rate, within two weeks from the date notified for receiving certified copy of this judgment and upon such motion, the criminal court concerned will consider the said bail application and after affording reasonable opportunity of being heard to the petitioner herein and the learned Public Prosecutor, pass appropriate orders thereon granting bail taking note of the long pendency of the matter and also the fact that accused No.2 has already been bailed out in this case.

12. However the petitioner shall ensure that advance notice of the bail motion shall be given to the Investigating officer concerned

as well as to the learned Public Prosecutor, who is attached to the court concerned, intimating about the exact date on which he would appear before the court below concerned and submit his application for grant of bail. The Investigating Agency will ensure that the investigation in this case is completed without any further delay and file Final report in the matter before the competent criminal court concerned without much delay, at any rate, within a period of four months from the date of production of a certified copy of this judgment, taking note of the long pendency of the matter. After filing of such Final report, if any of the parties concerned have any legally justiciable grievances thereto, liberty is accorded to them to work out the remedies in the manner known to law. All issues available to both sides are left open to be raised an decided in appropriate proceedings in the manner known to law.

With these observations and directions, the above Criminal Miscellaneous Case will stand disposed of.

Sd/-
ALEXANDER THOMAS,
JUDGE

KAS

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE A1	**TRUE COPY OF THE REGISTEED SALE DEED NO. 305/2003**
ANNEXURE A2	**TRUE COPY OF REGISTERED SALE DEED 1714/2009 DATED 19-06-2009**
ANNEXURE A3	**TRUE COPY OF THE LAND TAX RECEIPT DATED 21-06-2016**
ANNEXURE A4	**TRUE COPY OF THE RENT AGREEMENT DATED 26-6-2009**
ANNEXURE A5	**TRUE COPY OF THE S.A NO.78/2012 BEORE THE DEBT RECOVERY TRIBUNAL**
ANNEXURE A6	**TRUE COPY OF THE ORDER IN I.ANO.242/2012 IN S.A. NO.78/2012**
ANNEXURE A7	**CERTIFIED COPY OF THE COMPLAINT DATED 25-2-2016**
ANNEXURE A8	**CERTIFIED COPY OF THE FIR DATED 15-4-2016**

RESPONDENT'S/S EXHIBITS: **NIL**