IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 29TH DAY OF JULY 2024 / 7TH SRAVANA, 1946

CRL.MC NO. 2242 OF 2013

AGAINST THE ORDER IN CC NO.97 OF 2011 OF CHIEF JUDICIAL MAGISTRATE, THODUPUZHA

PETITIONER:

BOBBY K AUGUSTINE
AGED 47 YEARS
S/O.AUGUSTHY, KACHIRAYIL HOUSE,
MURIKKASSERRY, VATHIKUDY VILLAGE,
IDUKKI DISTRICT
BY ADV NANDAGOPAL S.KURUP

RESPONDENT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM

OTHER PRESENT:

SRI.SANGEETHARAJ.N.R, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P. V. KUNHIKRISHNAN, J.

Crl.M.C.No.2242 of 2013

Dated this the 29th day of July, 2024

ORDER

This Criminal Miscellaneous Case is filed to quash all further proceedings against the petitioner in C.C.No.97/2011 on the file of the Chief Judicial Magistrate Court, Thodupuzha. The petitioner herein is the 3rd accused. The said case arises out of Crime No.8/2010 registered by the Devikulam Police. The said case was subsequently transferred to CBCID, EOW, Kottayam for investigation. On completion of the investigation, CBCID filed final report before the Chief Judicial Magistrate Court, Thodupuzha and the same is taken on file as C.C.No.97/2011 alleging offcences punishable under section 447 of the Indian Penal Code and Section 7(a) and (b) of the Kerala Land Conservancy (Amendment) Act, 2009. The petitioner is shown as the 3rd accused in the said report. It is submitted that, as far as the 1st accused is concerned, a refer charge sheet is filed and the 2nd accused died pending investigation.

It is also submitted that, several accused were deleted from the party array after investigation and the petitioner is the only person remaining, who is facing trial.

2. It is the case of the petitioner that a report was filed by the investigating agency implicating him as an accused subsequent to the registration of the case. According to the petitioner, no purpose will be served in continuing the prosecution against the petitioner. It is also submitted that the proceedings against the co-accused were already quashed by this Court on 23.12.2011 in Crl.M.C.No.4166/2011. Hence this Criminal Miscellaneous Case.

3. Heard counsel for the petitioner and the Public Prosecutor.

4. It is the admitted fact that, one of the accused approached this Court and filed Crl.M.C.No.4166/2011 and the case against that accused is already quashed. It will be better to extract the order passed by this Court dated 23.12.2011 in Crl.M.C.No.4166/2011:

> 'The petitioner is the accused in CC No.92 of 2011 on the file of CJM Court, Thodupuzha. The allegation is that he trespassed into the area held by K.D.H. reserve

> area and thus the petitioner has committed offence under Section 7(a)(d) of the Kerala Land Conservancy Act, 2009 and Section 447 IPC. The learned counsel for the petitioner submits that the petitioner has been working in U.S.A. for so many years. When he was practising as an Advocate in Devikulam, an office building was constructed in that property. According to the learned counsel, as there was no demarcation, he was unaware of the fact that the land whereupon the construction stood fell within the KDH area. Learned counsel further submits that he has absolutely no claim over the land whereupon the construction stood. The petitioner says that he was not responsible for another Advocate occupying that premises.
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> 2. The learned Public Prosecutor submits that no building or construction now exists in the area mentioned in the police report and that the entire area has been taken over and is held absolutely by the Revenue Department and that it is now free from encroachment. Since the stand taken by the petitioner is that he has absolutely no claim over the land and that he had left for foreign country several years back, I quash the further proceedings as against the petitioner in the aforesaid case. But it is made clear that if the petitioner trespasses/encroaches or raises any claim over the aforesaid area, then certainly the respondent would be at liberty to take further action in the matter.'

5. In the light of the above order, I am of the considered opinion that, no purpose will be served by continuing the prosecution against the petitioner. The main allegation against the

petitioner is that, he filed O.S.No.183/2009 claiming title with respect to the Government property based on some invalid documents. Moreover, the case against other accused were either referred or deleted by the Investigating Agency. The case against the 2nd accused is closed because the 2nd accused died pending investigation. In such circumstances, I am of the considered opinion that, continuation of the prosecution against the petitioner alone is without any purpose.

Therefore, this Criminal Miscellaneous Case is allowed. All further proceedings against the petitioner in C.C.No.97/2011 pending before the Chief Judicial Magistrate Court, Thodupuzha are quashed.

Sd/-

P. V. KUNHIKRISHNAN
JUDGE

Sbna/29.07.24

APPENDIX OF CRL.MC 2242/2013

PETITIONER ANNEXURES

ANNEXURE A1 TRUE COPY OF THE FIR IN CRIME NO 8/2010 OF THE DEVIKULAM POLICE STATION.,

ANNEXURE A2 TRUE COPY OF THE FINAL REPORT IN CRIME NO 94/CR/EOW-II/KTM/10

ANNEXURE A3 TRUE COPY OF THE PLAINT IN O.S NO 183/2009 FILED BY THE PETITIONER HEREIN BEFORE THE MUNSIFF'S COURT,DEVIKULAM

ANNEXURE A4 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS IN O.S NO 183/2009

ANNEXURE A5 TRUE COPY OF THE PETITION FILED BY THE PETITIONER AS PLAINTIFF IN I.A NO 42/2012 IN M.T.O.P NO 10/2011 OF THE MUNNAR SPECIAL TRIBUNAL

ANNEXURE A6 TRUE COPY OF THE ORDER DATED 27-03-2012 PASSED BY THE MUNNAR TRIBUNAL IN I.A NO 42/2012 IN M.T.O.P NO 10/2011