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Aboobaker Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1127379

Court : Kerala

Decided On : Feb-14-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Aboobaker

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY,THE14H DAY OF FEBRUARY201425TH MAGHA, 1935 WP(C).No. 28361 of 2013 (U) ---------- PETITIONER(S): ---------- ABOOBAKER, VELLALIL VEETIL, KANNAMPALLY BHAGOM, KEERIKKAD, KAYAMKULAM P.O., ALAPPUZHA DISTRICT-690 502. BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL) SRI.A.R.DILEEP SRI.MANU SEBASTIAN SRI.K.J.SHARATH KUMAR RESPONDENT(S): ---------- 1. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, HOME DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2. STATE POLICE CHIEF, OFFICE OF THE STATE POLICE CHIEF, THIRUVANANTHAPURAM-695 001.

3. DISTRICT POLICE CHIEF, OFFICE OF THE DISTRICT POLICE CHIEF, ALAPPUZHA-688 001.

4. STATION HOUSE OFFICER, KAREELAKULANGARA POLICE STATION, ALAPPUZHA DISTRICT-690 572.

5. STATION HOUSE OFFICER, KAYAMKULAM POLICE STATION, ALAPPUZHA DISTRICT-690 502.

6. NISSAM, VALAYYATHU VEETTIL, ERUVA WEST, PATHIYOOR-690 552.

7. SHAMSUDHEEN, PUTHENKANDATHIL, KAYAMKULAM-690 502.

8. THAJUDHEEN, ARAKKAL THEKKATHIL, KANNAMPALLY, KEERIKKAD-690 508. R1 TO R5 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE.P. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON1402-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Kss WP(C).No. 28361 of 2013 (U) ---------- APPENDIX PETITIONER(S)' EXHIBITS: ---------- P1 : COPY OF COMPLAINT DTD.27.9.2013 MADE BEFORE THE3D RESPONDENT. P2 : COPY OF FIRST INFORMATION REPORT IN CRIME NO.797/13. P3 : COPY OF FIRST INFORMATION STATEMENT IN CRIME NO.797/13. P4 : COPY OF ACCIDENT CUM WOUND REGISTER DTD.25.9.2013. P5 : COPY OF DISCHARGE CARD OF THE PETITIONER. P6 : COPY OF SUMMONS ISSUED IN ST NO.1344/13 OF JMFC, KAYAMKULAM. P7 : COPY OF FIRST INFORMATION REPORT IN CRIME NO.2022/2013. P8 : COPY OF FIS IN CRIME NO.2022/13. P9 : COPY OF REPRESENTATION MADE BY THE PETITIONER BEFORE THE3D RESPONDENT ALONG WITH ACKNOWLEDGMENT. P10: COPY OF REPRESENTATION MADE BY THE PETITIONER BEFORE THE2D RESPONDENT ALONG WITH POSTAL RECEIPT. P11: COPY OF SUMMARY SHEET IN RESPECT OF THE PETITIONER ISSUED BY THE GOVERNMENT TALUK HEAD QUARTERS HOSPITAL, HARIPAD. (I.A.NO.1537/2014) P11: COPY OF REPLY DTD. 08/01/2014 GIVEN BY PUBLIC INFORMATION OFFICER OF JUDICIAL FIRST CLASS MAGISTRATE'S COURT, KAYAMKULAM. P12: COPY OF PETTY CASE

CHARGE-SHEET IN S.T.1344/13 OF JFMC, KAYAMKULAM. RESPONDENT(S)' EXHIBITS: ---------- N I L /TRUE COPY/ P.A.TO JUDGE Kss K. Ramakrishnan, J.

========== W.P.(C).No.28361 of 2013 ========== Dated this, the 14th day of February, 2014.

JUDGMENT

This is an application filed by the petitioner seeking proper and due investigation of Exts.P2 and P7 crimes and change of the investigating officer and considering Exts.P9 and P10 representations under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that he is the de facto complainant in Ext.P2 First Information Report arraying 8th respondent and his associates as accused alleging commission of offences under Sections. 143, 147, 149, 294(b), 323, 506(ii) of Indian Penal Code. He was constrained to lodge the said First Information Report on account of the acts of physical attack, intimidation, abuse etc., committed by 8th respondent and others within the premises of petitioner's ice-factory. However, 8th respondent is very influential person having considerable influence within the police force. Therefore, 4th respondent, the concerned S.H.O, was reluctant to file the First Information Report and the petitioner had to approach the third respondent by filing Ext.P1 complaint to cause the W.P.(C).No.28361 of 2013 2 registration of the crime. However, the statement of the petitioner was erroneously recorded and many material facts were omitted to be noted. Also, the 4th respondent with an intent to weaken the case of the petitioner, registered a false petty case against the petitioner with the allegation of indulging in public smoking on 29.09.2013. However, on the said date, the petitioner was undergoing treatment in Govt.Hospital, Haripad for the injuries sustained in a physical attack. Moreover, 8th respondent influenced 5th respondent, the S.H.O of Kayamkulam Police Station, to register Ext.P7 crime against the petitioner. It is a falsely registered case as a counter-blast to Ext.P2 crime. They are abusing their official position and the investigation is not properly done. So, he filed the present petition

seeking following relief: i) issue a writ in the nature of mandamus or any other writ order or direction, directing respondents 2 & 3 to consider Ext.P9 & P10 and take immediate action to enquire into the allegations therein and take follow-up action within such time as may be fixed by this Honourable Court; ii) issue a writ in the nature of mandamus or any other writ order or direction, directing the 2nd respondent to entrust the investigation of Exts.P2 and P7 crimes to an independent officer other than 4th and 5th W.P.(C).No.28361 of 2013 3 respondents.

3. Statements have been filed by the investigating officer stating that proper investigation has been conducted and final reports have been filed in both the cases. I have called for a report from the concerned courts regarding the same and Judicial First Class Magistrate, Kayamkulam, sent a report stating that final report in Crime No.2022/13 of Kayamkulam police station was submitted on 09.01.2014 showing 5 accused persons alleging offences under Sections.143, 147, 149, 323, 341 & 427 of Indian Penal Code and it was taken on file as C.C.No.61/14 and summons was ordered to the accused to appear on 02.04.2014. Similarly, another report was obtained from Judicial First Class Magistrate Court No.I, Haripad, regarding Ext.P2 case and a report has been obtained wherein it is stated that final report in Crime No.797/13 of Kareelakulangara police station was filed on 01.11.2013 and it was taken on file as C.C.No.851/13 for the offences under Section 294(b), 506(ii) and 323 read with Section 34 of Indian Penal Code and the case is posted to 12.03.2014, for return of summons. So, under the W.P.(C).No.28361 of 2013 4 circumstances, I feel that there is no necessity to issue any further directions in this regard. If the petitioner is aggrieved by the nature of investigation conducted or the manner in which statements were recorded not including the real culprits, not showing the necessary offences alleged etc., then, the remedy of the petitioner is to file private complaint showing all these aspects before the concerned court and that court can consider that complaint and pass appropriate orders in accordance with law. With the above direction and observation, the petition is disposed of. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

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