

John Chandy Vs. State of Kerala

John Chandy Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/1157087

Court : Kerala

Decided On : Jul-16-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : John Chandy

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD WEDNESDAY,THE16H DAY OF JULY201425TH ASHADHA, 1936 CrI.MC.No. 3069 of 2012 () ----- CC7372011 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KOTTAYAM CRIME NO.887/2011 OF KOTTAYAM EAST POLICESTATION PETITIONER(S)/ACCUSED1AND2 ----- 1. JOHN CHANDYAGED49YEARS S/O CHANDY JOHN, VATTAKUNNEL PULICKAL, MUTTAMBALAM KOTTAYAM.

2. ICY JOHN, D/O CHANDY JOHN, AGED49YEARS, VATTAKUNNEL PULICKAL, MUTTAMBALAM, KOTTAYAM. BY ADV. SRI.M.J.THOMAS RESPONDENT(S)/STATE AND COMPLAINANT: ----- 1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM-682031.

2. THE SUB INSPECTOR OF POLICE, KOTTAYAM EAST, KOTTAYAM-686 001. ADDL.R3 IMPEADED: ADDL.R3. PILO P.JACOB, AGED65 S/O.PILO VATTAKUNNEL PULICKAL HOUSE, ERAYIL KADAVU, MUTTAMBALAM, KOTTAYAM-686001 IS IMPEADED AS ADDITIONAL RESPONDENT NO.3 AS PER

ORDER

DATED1710.2012 IN CRL.MA. 6807/2012 IN CRL.MC NO.3069/2012 ADDL.R3 BYADV.SRI.V.A.SHAJI R1 & R2 BY PUBLIC PROSECUTOR SHRI SHIBU JOSEPH THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON1607-2014, ALONG WITH CRL.MC NOS.3088/2012 & 2699/2012, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC30692012 APPENDIX PETITIONER(S) ANNEXURES ANNEXURE-1.TRUE COPY OF THE FIR IN CRIME NO.887/2011 OF KOTTAYAM EAST POLICE STATION. ANNEXURE-2.TRUE COPY OF THE SCENE MAHAZAR DATED2610/2011. ANNEXURE-3.TRUE COPY OF THE STATEMENT GIVEN BY THE MUNICIPAL SECRETARY BEFORE THE OMBUDSMAN. ANNEXURE-4.TRUE COPY OF THE

ORDER

DATED274/2012 PASSED BY THE OMBUDSMAN. ANNEXURE-5.TRUE COPY OF THE FINAL

ORDER

DATED186/2012 PASSED BY THE MUNICIPAL SECRETARY. ANNEXURE-6.CERTIFIED COPY OF THE CHARGE SHEET IN CC NO.737/2012. ANNEXURE-7.COPY OF THE PLAINT IN OS NO.506/2011 BEFORE THE MUNSIFF'S COURT, KOTTAYAM. ANNEXURE-8.TRUE COPY OF THE COMMISSION REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER. RESPONDENTS' EXHIBITS : ANNEXURE-R3(A) COPY OF THE

ORDER

OF THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT IN OP NO.1194/2012 DATED2509.2012 ANNEXURE-R3(B) COPY OF THE

ORDER

DATED 30.10.2012 ISSUED BY THE KOTTAYAM MUNICIPALITY ANNEXURE-R3(C) COPY OF THE IA IN OS NO.506/2011 ON 79.2012 FILED BY THE 1ST PETITIONER //TRUE COPY// A.HARIPRASAD, J.

----- Crl.M.C. Nos.2699, 3069 & 3088 of 2012
----- Dated this the 16th day of July, 2014. COMMON

ORDER

Petitions filed under Section 482 of the Code of Criminal Procedure.

2. Crl.M.C.No.3069 of 2012 is taken as the leading case. Parties are hereinafter referred to as the petitioners and respondents.

3. Allegations common in all the cases are as follows: The petitioners/accused are having property on the eastern side of a road, which is said to be a road vested with a Municipality. On the western side of the said road, the property belonging to the additional 3rd respondent/defacto complainant is situated. It is alleged against the petitioners that on 30.09.2011, 25.10.2011 and 28.10.2011 they trespassed into the property of the additional 3rd respondent, abused him in obscene words, demolished the compound wall and also criminally intimidated him. Therefore, cases have been registered as Crime Nos.896 of 2011, 887 of 2011 and 797 of 2011 by the Kottayam East Police. The offences alleged against the petitioners in the leading case are punishable under Sections 447, 294(b), 506(ii) and 427 read with Section 34 of the Indian Penal Code (in short, "IPC"). In Crl.M.C.Nos.2699 of 2012 and 3088 of 2012, all the Crl.MC Nos.2699, 3069 & 3088/2012 2 offences, except the one under Section 506(ii) IPC, are alleged.

4. Heard the learned counsel for the petitioners and the learned counsel for the additional 3rd respondent/defacto complainant. Learned Public Prosecutor is also heard.

5. Learned counsel for the petitioners submitted that this is essentially a civil dispute between the parties. So much so, the prosecution is an abuse of the process of the court. To buttress this argument, my attention is drawn to Annexure-2 scene mahazar prepared by the Police and Annexure-8

Commissioner's report in O.S.No.506 of 2011, which was pending before the Munsiff's Court, Kottayam at the material time. Admittedly the case was later withdrawn by the petitioners/accused.

6. Per contra, learned counsel for the additional 3rd respondent/defacto complainant submitted that in the application to withdraw the suit filed by the petitioners, they have categorically stated that the pathway lying in between the properties of the disputants is not a public pathway. However, in this proceedings, this Court is not supposed to determine the nature of the pathway. Order 23 Rule 1 of the Code of Civil Procedure permits withdrawal of a suit. It has been mentioned that the accused persons wanted to file a suit after rectifying the defect. The fact CrI.MC Nos.2699, 3069 & 3088/2012 3 remains that at present there is no suit pending between the parties.

7. Learned counsel for the petitioners submitted that the illegal construction made by the additional 3rd respondent/defacto complainant was brought to the notice of the Municipality and thereafter, it gained the attention of the learned Ombudsman for Local Self Government. As directed by the learned Ombudsman, the Municipality passed an order (Annexure-R3(B)). My attention is further drawn to Annexure-R3(B) submitted by the learned counsel for the defacto complainant whereby it is mentioned that the Municipality has decided to conduct a detailed survey of the properties and the pathway so as to ascertain the nature of the disputed properties. Further, the Municipality decided not to demolish the construction made by the defacto complainant pending decision of the matter. This order was passed by the Municipality as directed by the learned Ombudsman as per Annexure-R3(A) order. Fact of the matter is that the dispute is pertaining to the nature of the pathway and whether the compound wall is attempted to be constructed encroaching upon the pathway. Issues raised by the parties appear to be having some civil colour. But, at the same time there are allegations of other offences like the ones under Sections 506(ii) and 294(b) IPC. Considering the totality of the allegations, I am of the opinion that the jurisdiction of this Court under CrI.MC Nos.2699, 3069 & 3088/2012 4 Section 482 Cr.P.C. cannot be invoked to quash the final reports. But it is made clear that the petitioners are free to move for appropriate reliefs before the trial court. I notice that the matter

involved in CrI.M.C.No.3069 of 2012 (C.C.No.737 of 2011 on the file of the Judicial First Class Magistrate Court-I, Kottayam) pertains to offences triable as a warrant trial. If the parties make request, the trial court can consider clubbing of these offences by invoking Section 219 Cr.P.C. Petitioners are at liberty to claim discharge before the court below; if the law permits to do so. With these observations,all the petitions are disposed. All pending interlocutory applications will stand dismissed. A. HARIPRASAD, JUDGE. cks

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com