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Terly vs State of Kerala

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Court : Kerala

Decided On : Jul-30-2024

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/5517/2019

Appellant : TERLY

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN TUESDAY, THE 30TH DAY OF JULY 2024 / 8TH SRAVANA, 1946 CRL.MC NO. 5517 OF 2019 CRIME NO.488/2016 OF KUTTAMPUZHA POLICE STATION, ERNAKULAM AGAINST THE ORDER/JUDGMENT DATED IN CC NO.492 OF 2018 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - II, KOTHAMANGALAM PETITIONER/ACCUSED: TERLY AGED 49 YEARS S/O. BHASKARAN, KOMBANATHEKKETHIL HOUSE, NJAYAPPILLY P.O., KUTTAMPUZHA VILLAGE, KOTHAMANGALAM TALUK, PIN - 686 691. BY ADVS. A.CHERIAN SRI.NAVEEN THOMAS SHRI.GEORGE KURIAN SRI.P.N.ARUN KUMAR RESPONDENTS/STATE: 1 STATE OF

KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, SUB INSPECTOR OF POLICE, KUTTAMPUZHA POLICE STATION, PIN - 686 691. 2 DON, AGED 23, S/O. JOY, KALLARACKAL HOUSE, KUTTAMPUZHA VILLAGE, BLOWUNA BHAGOM, KUTTAMPUZHA P.O., PIN - 686 691. BY ADV. SRI.RENJITH T.R., SENIOR PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

---------- ---------- Dated this the 30th day of July, 2024

ORDER

This Criminal Miscellaneous Case is filed to quash Annexure A3 protest complaint. The above protest complaint is filed alleging offences punishable under Sections 336, 337, 341, 352 & 323 IPC.

2. The short point raised by the petitioner is

that, on the same set of facts, the police registered a case as evident by Annexure A1 and conducted investigation and thereafter submitted Annexure A2 final report, in which the police found that the case is false. Thereafter the learned Magistrate taken cognizance based on the protest complaint without considering the refer report.

3. After hearing both sides, I think there is

force in the argument of the petitioner. It is a settled position that, while taking cognizance based on the protest complaint, it is the duty of the court to look into the refer report also. This Court in Parameshwaran Nair v. Surendran [2009 (1) KLT 794] considered this point in detail. The relevant portion of the above judgment is extracted hereunder:

12. If the original complaint stood dismissed by the acceptance of the refer report submitted after investigation the protest complaint if any filed can only be treated as a second complaint. If so, the protest complaint will lie only if there was a manifest error or manifest miscarriage of justice in the earlier

order or new facts which the complainant had no

> knowledge of or with reasonable diligence could not have brought forward in the previous proceedings is adduced. When this is the legal position, it is notlawful to the Magistrate to ignore the final report submitted by the police under Section 173(2) of the Code. Magistrate is bound to consider the final report and decide which of the options available to him is to be exercised.

4. Similarly in Kader v. State of Kerala [1999

(3) KLT 55], this Court considered the same point which is extracted hereunder:

> 7. The Court noted that the scope of enquiry under S.202 is the ascertainment of the truth or falsity of the allegations made in the complaint on the materials placed by the complainant before the Court for the limited purpose of finding out whether the prima facie case for issue of process has been made out and for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. Nevertheless, the Court has a duty to protect the interest of the absent accused also because at the particular stage, the accused has no say in the matter and the matter is decided without notice to him. It is, therefore, open to the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent the accused therein from being called upon to face obviously frivolous complaint and to find what material there is to support the allegations made in the complaint. The Magistrate has a duty not only to bring to book a person or persons against whom grave allegations are made in the complaint but also to protect the interest of the absent

accused in such matters. What all matters he should take into consideration to arrive at the conclusion that he should take cognizance of the offence, will depend upon the facts and circumstances of each case. He has necessarily to consider the allegations made in the complaint and the statement of the complainant

recorded under S.200 Cr.P.C. as also of the witnesses examined under S.202 of the Cr.P.C. Along with that, he has also to consider the result of enquiry or investigation, if any, held by the police. It cannot be said that the said data is not an essential factor. The consideration of the materials under S.202 of the Cr.P.C. is not an empty formality and cannot be done in a perfunctory or mechanical manner or by adopting

a superficial approach.

5. In the light of the above principles, I am of

the considered opinion that the order taking cognizance in C.C.No.492/2018 can be set aside and the learned Magistrate can be directed to reconsider the matter in the light of the refer report. Therefore, this Criminal Miscellaneous case is disposed of in the following manner:

1. The order taking cognizance based on Annexure A3 complaint as C.C.No.492 of 2018 by the Judicial First Class Magistrate Court - II, Kothamangalam is set aside.

2. The learned Magistrate is directed to

reconsider the matter in the light of the refer report and also in the light of the dictum laid down by this Court in Parameshwaran Nair v. Surendran [2009 (1) KLT 794] and Kader v. State of Kerala [1999 (3) KLT 55]. Sd/- P.V.KUNHIKRISHNAN JUDGE DM APPENDIX OF CRL.MC 5517/2019 PETITIONER ANNEXURES ANNEXURE A1 CERTIFIED COPY OF FIR AND FIS IN CRIME 488/16 OF KUTTAMPUZHA POLICE STATION DATED 13.07.2016. ANNEXURE A2 CERTIFIED COPY OF REFER CHARGE IN CRIME 488/16 OF KUTTAMPUZHA

POLICE STATION DATED 26.08.2016. ANNEXURE A3 CERTIFIED COPY OF PROTEST COMPLAINT FILED BY RESPONDENT 2 DATED 21.08.16 AGAINST THE ANNEXURE A2 REFER CHARGE. ANNEXURE A4 CERTIFIED COPY OF TREATMENT

CERTIFICATE OF THE YOUNDER BROTHER OF R2 PRODUCED IN CRIME 488/16 AND IN CC 492/18 IN JUDICIAL MAGISTRATE COURT II AT KOTHAMANGALAM DATED 04.01.17. ANNEXURE A5 CERTIFIED COPY OF TREATMENT CERTIFICATE OF THE 2ND RESPONDENT PRODUCED IN CRIME 488/16 AND IN CC492/18 IN JUDICIAL MAGISTRATE COURT II AT KOTHAMANGALAM DATED 04.01.17.

ANNEXURE A6 CERTIFIED COPY OF THE STATEMENT OF

ANNEXURE A3 PROTEST COMPLAINT. ANNEXURE P7 COPY OF THE SWORN STATEMENT OF R2 BEFORE MAGISTRATE II KOTHAMANGALAM DATED 04/11/2017. ANNEXURE P8 COPY OF THE FIR AND FIS STATEMENT IN CRIME NO.487/16 AGAINST R2 AND GANG. ANNEXURE P9 COPY OF THE SCENE MAHAZAR IN CRIME ANNEXURE P10 COPY OF THE CHARGE IN CRIME 487/16 AND C.C.585/16 PENDING BEFRE MAGISTRATE II AT KOTHAMANGALAM DATED RESPONDENTS EXHIBITS: NIL //TRUE COPY// PA TO JUDGE

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