

B.Binu vs State of Kerala

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Court : Kerala Orders

Decided On : Nov-06-2024

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/6589/2018

Appellant : B.BINU

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN MONDAY,
THE 22ND DAY OF JULY 2024 / 31ST ASHADHA, 1946 CRL.MC NO. 6589 OF
2018 AGAINST THE ORDER IN CC NO.172 OF 2008 OF JUDICIAL

**MAGISTRATE OF FIRST CLASS ,RANNI ARISING OUT OF THE
ORDER**

IN CRRP NO.8 OF 2010 OF ADDITIONAL DISTRICT COURT (ADHOC), FAST
TRACT-III, PATHANAMTHITTA PETITIONER/ACCUSED: B.BINU, AGED 48
YEARS S/O BHASKARAN, ASSISTANT ENGINEER, ROADS SECTION, PWD,
RANNY, PATHANAMTHITTA BY ADVS. S.RAJEEV
K.K.DHEERENDRAKRISHNAN V.VINAY D.FEROZE K.ANAND (A-1921)

RESPONDENTS/COMPLAINANT/STATE: 1 STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031 2 BINU CHERIAN, S/O.CHERIAN, VALYATHUMANDAKATHIL, MADAMOM THEKKEKARA, PERUNAD-686002. BY ADV SRI.V.PHILIP MATHEW OTHER PRESENT: SRI.RENJITH.T.R, SR.PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P. V. KUNHIKRISHNAN, J.

----- Crl.M.C.No.6589 of 2018
----- Dated this the 22nd day of July, 2024

ORDER

The petitioner is the accused in C.C.No.172/2008 on the file of the Judicial First Class Magistrate Court, Ranni. The learned Magistrate took cognizance based on a private complaint for the offences punishable under Sections 447 and 427 of the Indian Penal Code.

2. The gist of the prosecution case is that the petitioner who

was working as Assistant Engineer, PWD Laha requested the complainant not to construct the boundary wall by trespassing into the Government land and according to Annexure-I complaint, after issuing notice on 22.09.2005, the accused along with the police party, on 26.09.2005, came to the place of occurrence and demolished the boundary wall constructed by the complainant and thereby

committed the offences alleged. According to the petitioner, the private complaint was filed by the 2 nd respondent to wreak vengeance against the petitioner due to the interference of the petitioner in the capacity as Assistant Engineer, PWD and demolition of the boundary wall constructed by the 2nd respondent and a distorted version was put forwarded by him suppressing the true facts.

3. When the complaint was taken on file, the petitioner

appeared and filed CrI.M.P.No.4691/2009 stating that the complaint is not maintainable because there is no sanction under Section 197 Cr.P.C. The learned Magistrate dismissed the same as per Annexure- V order. Aggrieved by the same, the petitioner filed revision before the Sessions Court, Pathanamthitta. The Additional District and Sessions Judge (Ad-hoc), Fast Track-III, Pathanamthitta dismissed the revision confirming the order passed by the learned Magistrate. Aggrieved by the same, this Criminal Miscellaneous Case is filed.

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

5. The counsel for the petitioner submitted that the

impugned orders are illegal and unsustainable. It is submitted that the petitioner is an Assistant Engineer in charge of roads at Laha Section. It is further submitted that, he is duty bound to protect the above said road which is within his jurisdiction and also one of the 17 main roads leading to Sabarimala maintained under the direct supervision as per the orders passed by this Court. It is submitted that the petitioner had received an information that the 2 nd respondent had trespassed into the Government land by encroaching

the Government property and constructed a boundary wall. The petitioner went to the place of occurrence on 22.09.2005 and requested not to construct the boundary wall by encroaching into the Government property. It is submitted that, though oral directions were given on that day, the complainant proceeded with the construction and hence, issued a notice on 22.09.2005. When the petitioner reached the place of occurrence to issue notice to the complainant/2nd respondent, he misbehaved with the petitioner and

manhandled him is the submission. Evidently, thereafter, on 23.09.2005, a copy of the above notice along with a report was forwarded to the Assistant Executive Engineer, PWD Roads Sub Division, Ranni and the Assistant Executive Engineer specifically instructed the petitioner to remove the encroachment within 72 hours with sufficient police protection and to report the progress to his office as per Annexure-II. Thereafter, on 30.01.2006, the 2 nd respondent had sent a letter to the petitioner stating that, he had encroached into the road puramboke only to an

extent less than 2 meters and not as stated by the petitioner, whereby he himself admitted that he had encroached into the road puramboke and constructed the boundary wall is the submission. Annexure-III is the letter addressed to the PWD Road Section, Laha. The 2 nd respondent obstructed the petitioner from doing his official duty and the petitioner reported the matter to the Circle Inspector of Police,

Vadassery Kara is the further submission. On the basis of the complaint filed by the petitioner, a crime was registered as Crime No.152/2005 alleging offences punishable under sections 353 and 506(i) IPC and Annexure-IV is the final report in that case. It is submitted that the final report was submitted on 19.10.2005. When the 2nd respondent came to know about the complaint filed by the petitioner on 14.07.2006, the 2nd respondent filed the above private complaint against the petitioner is the submission of the petitioner.

6. According to the petitioner, a reading of the complaint as

well as the contents of the documents clearly suggests that the petitioner was doing his official duty and hence the protection under Section 197 Cr.P.C is available to the petitioner. Hence it is submitted that the impugned orders are unsustainable. The Public Prosecutor on the other hand submitted that, there is nothing to interfere with the impugned orders. The learned Magistrate and Sessions Judge considered all the aspects in detail and thereafter passed the impugned orders.

7. This Court considered the contentions of the petitioner

and the Public Prosecutor. The petitioner relied on Annexures-II and III to show that the petitioner is justified in the acts and there is protection to the petitioner under Section 197 Cr.P.C. Annexures-II and III were not before the trial court when the application filed by the petitioner is considered and dismissed as per Annexure-V. In such circumstance, I am of the considered opinion that the learned Magistrate should consider the matter afresh and the petitioner can be allowed to file a copy of Annexures-II and III. Based on the same, the learned Magistrate will reconsider the matter. To facilitate the learned magistrate to re-consider the matter, Annexures-V and VI can be set aside.

Therefore, this Criminal Miscellaneous Case is disposed of with the following directions:

a) Annexures-V and VI are set aside. b) The Judicial First Class Magistrate Court-I, Ranni is directed to reconsider Crl.M.P.No.4691/2009 in C.C.No.172/2008 afresh, after giving an opportunity of hearing to the petitioner and the 2nd respondent. c) The petitioner is free to produce a copy of Annexures-II and III before the trial court and the trial court will consider the same also while deciding the matter.

Sd/- P. V. KUNHIKRISHNAN JUDGE Sbna/24.07.24 np[/APPENDIX OF CRL.MC 6589/2018 PETITIONER ANNEXURES ANNEXURE I TRUE COPY OF THE COMPLAINANT DATED 14.7.2005 FILED BY THE 2ND RESPONDENT. ANNEXURE II TRUE COPY OF THE LETTER RS.61/2005 DATED 23.9.2005 OF ASST. EXECUTIVE ENGINEER, ROADS SUB DIVISION, RANNI. ANNEXURE III TRUE COPY OF THE LETTER DATED 30.1.2006 ADDRESSED TO THE ASST. ENGINEER, PWD ROAD SECTION. LAHA. ANNEXURE IV TRUE COPY OF THE FINAL REPORT IN CRIME NO.152/2005 OF PERUNAD POLICE STATION, PATHANAMTHITTA. ANNEXURE V CERTIFIED COPY OF THE ORDER DATED 9.2.2010

IN CRL.MP.NO.4691/2009 IN CC.NO.172/2008 PASSED BY THE JUDICIAL MAGISTRATE OF FIRST CLASS - I, RANNY. ANNEXURE VI CERTIFIED COPY OF THE ORDER DATED 8.5.2013 IN CRL.RP.NO.8/2010 PASSED BY THE ADDITIONAL DISTRICT & SESSIONS JUDGE (AD-HOC) FAST TRACK COURT-III, PATHANAMTHITTA.

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