

Mohandas vs the State of Kerala

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Court : Kerala Orders

Decided On : Jul-29-2024

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Crl.MC/6386/2024

Appellant : Mohandas

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS MONDAY, THE 29TH DAY OF JULY 2024 / 7TH SRAVANA, 1946 CRIME NO.169/1999 OF Pudunagaram Police Station, Palakkad CC NO.338 OF 2008 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, PALAKKAD PETITIONER/ REVISION PETITIONER/ PETITIONER-2ND ACCUSED : MOHANDAS AGED 65 YEARS S/O PRABHAKARAN,, MANCHIRA, CHITTUR, PALAKKAD DISTRICT, PIN - 678101 BY ADVS. RAJESH SIVARAMANKUTTY VIJINA K. ARUL MURALIDHARAN RESPONDENT/ STATE AND DEFACTO COMPLAINANT : 1 THE STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, THROUGH SUB

INSPECTOR OF POLICE, PUDUNAGARAM POLICE STATION, PALAKKAD (CRIME NO. 169/1999), PIN - 682031 2 P.V. RAMASWAMY AGED 59 YEARS, S/O P.R. VELAYUDHAN, P.V.R NIVAS, ENTHALAPALAM, PERUMATTY, CHITTUR, PALAKKAD, PIN - 680 686 BY SRI. NOUSHAD K. A., PUBLIC PROSECTOR) THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

----- Crl.M.C.No.6386 of 2024 -----
----- Dated this the 29th day of July, 2024 -----

ORDER

Petitioner is the 2nd accused in C.C.No.338 of 2008 on the files of the Judicial First Class Magistrate's Court-I, Palakkad, which arises out of Crime No.169 of 1999 of Pudunagaram Police Station, Palakkad. Petitioner challenges the final report filed in the above crime.

2. The defacto complainant alleged that the accused had, in February 1997, introduced themselves and expressed their willingness to

sell an immovable property. Believing the words of the accused, the defacto complainant paid an amount of Rs.2,00,000/- and executed a sale deed on 08.04.1997. Subsequently, a civil suit was filed by one Sri.Raghavan Nair stating that the sale deed ought to be set aside as he

had not executed the document. According to the prosecution, the accused had fraudulently introduced the first accused - Sri.Rajendran, as Sri.Raghavan Nair and colluded together to impersonate Sri.Raghavan Nair and executed the document thereby committing the offences under Sections 120B, 460, 420 and 468 r/w Section 34 of the Indian Penal Code, 1860.

3. Sri.Rajesh Sivaramankutty, the learned counsel for the

petitioner contended that the complaint of the petitioner is totally baseless and is false which can easily be identified from the pleadings in the written statement in O.S.No.261 of 1998 of the Sub Court, Palakkad. According to the learned counsel, in the said written statement, the defacto complainant has stated that he is the bonafide purchaser of the property and that he had paid the sale consideration and the court had upheld the validity of the sale deed in question and therefore the allegation now raised in the criminal proceeding is without any basis.

4. Sri.Noushad K.A., the learned Public Prosecutor, on the other

hand pointed out Annexure D and Annexure E orders issued by the learned Magistrate and the learned Sessions Judge respectively in the discharge petition filed by the petitioner. It was also pointed out that the pleadings in the written statement in the suit filed for setting aside the sale deed has been clearly dealt with by the learned Sessions Judge and it is a matter which requires proof and therefore the jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita ought not be invoked.

5. I have considered the rival contentions.

6. The crime was registered in the year 1999 and cognizance was

taken in the year 2008 after completing investigation. The offence alleged against the petitioner and other accused includes Sections 468, 416 and 420 apart from Section 120B of the Indian Penal Code, 1860. Petitioner is alleged to have introduced the first accused as Raghavan Nair knowing that he was Sri.Rajendran, who thereafter allegedly executed the sale deed in favour of the petitioner. Merely because in the suit filed by Sri.Raghavan Nair, the defacto complainant had taken a plea that he was a bonafide purchaser by itself cannot advance the case of the petitioner herein.

7. The learned Sessions Judge has, while dismissing the revision

petition filed, against the dismissal of the discharge petition, specifically referred to the pleading in paragraph 12 of the written statement, filed by the defacto complainant and observed that the plaint averments were specifically denied and

that it was also pleaded that after execution of the document, he realised that the accused had colluded together and manipulated several things and also that they had even defrauded other

people in a similar fashion. Since the discharge petition filed by the petitioner has been dismissed which was upheld by the learned Sessions Judge, the scope of interference under Section 482 is even narrowed down especially since the uncontroverted allegations in the final report do make out the offences alleged. By the dismissal of the discharge petition, it is also evident that the materials collected by the prosecution do prima

facie indicate the commission of offences. In such circumstances, the jurisdiction under Section 482 of Cr.P.C. cannot be invoked to quash the proceedings.

8. As observed in the decision in State of U.P. v. O.P.Sharma

[(1996) 7 SCC 705], in a proceeding under Section 482, the court should be circumspect and be loath to interfere and should allow the law to take its own course. In cases where the materials prima facie indicate the commission of the offences, it is a matter which will have to be

decided by the trial court after appreciation of evidence. As held in Mahendra K.C. v. State of Karnataka [(2022) 2 SCC 129], the inherent power under Section 482 of Cr.P.C. should be exercised sparingly and cautiously and only when there will gross miscarriage of justice. In such a proceeding, Court cannot embark upon the reliability of the allegations.

9. Further, in the instant case, cognizance was taken in the year

2008. Till 2024 March, the petitioner could delay the trial because of the revision petition that was pending consideration. Now that the said revision petition has been dismissed, the trial can start without any delay. In such circumstances, I find no reason to entertain this petition. Accordingly, this CrI.M.C. is dismissed. Sd/-
BECHU KURIAN THOMAS, JUDGE RKM APPENDIX OF CRL.MC 6386/2024
PETITIONER'S ANNEXURES : Annexure A A. TRUE COPY OF THE PRIVATE COMPLAINT AS CRL.M.P. NO. 2776/1999 DATED 18-8-1999 FILED BY 2 ND

RESPONDENT AGAINST PETITIONER AND OTHERS BEFORE JUDICIAL
FIRST CLASS MAGISTRATE, CHITTUR Annexure B CERTIFIED COPY OF THE
FIRST INFORMATION REPORT DATED 23-8-1999. IN CRIME NO. PALAKKAD
DISTRICT Annexure C CERTIFIED COPY OF THE FINAL REPORT DATED

17-2-2006 IN C.C. NO. 338/2008 ON THE FILES OF THE JUDICIAL FIRST
MAGISTRATE COURT, CHITTUR REGISTERED FOR OFFENCE UNDER
SECTIONS 120-B, 416, 420, 468 R/W 34 OF IPC IN C.C. NO. 338/2008
AGAINST THE PETITIONER AS 2 ND ACCUSED

Annexure D CERTIFIED COPY OF THE ORDER DATED

CLASS MAGISTRATE COURT-I, PALAKKAD Annexure E A FAIR COPY OF THE
JUDGMENT DATED 18-3-2024 IN CRIMINAL REVISION PETITION NO. 40/2011
PASSED BY THE SESSIONS JUDGE, PALAKKAD

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