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K.T.Benny vs State Represented by the Public Prosecutor

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Court : Kerala Orders

Decided On : Feb-22-2023

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : Crl.MC/764/2013

Appellant : K.T.Benny

Respondent : State Represented by the Public Prosecutor

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. WEDNESDAY, THE 22ND DAY OF FEBRUARY 2023/3RD PHALGUNA, 1944 CRL.MC NO. 764 OF 2013 CRIME NO.609/2012 OF WADAKKANCHERRY POLICE STATION PETITIONERS: 1 K.T.BENNY, AGED 44 YEARS S/O.THOMAS KUNALIL HOUSE KUMARANELLOOR VILLAGE ENJALODIDESHAM WADAKKANCHERRY THRISSUR DT 680590 2 SAJITH AHAMMED,. AGED 25 YEARS S/O.AHAMMED BASHEER THEKKETHIL HOUSE PARITHIPARA DESHAM ENKEKKAD VILLAGE KUMARANELLOOR P.O WADAKKANCHERRY THRISSUR DT 680590 BY ADVS. SRI.P.K.IBRAHIM SMT.A.A.SHIBI RESPONDENTS: 1 STATE REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA ERNAKLULAM ADDL.2 DR.SUJA

BOBY, W/O DR.P. BOBY GEORGE,PANAKKAL HOUSE,HOUSE NO.15/849,VAZHANI ROAD,ENGEKKAD VILLAGE,WADAKKANCHERY (ADDL.R2 IS IMPLEADED AS PER ORDER DATED 06.02.2013 IN CRL.M.A. NO.1403/2013 IN CRL.M.C.NO.764/2013.) BY ADV G.SREEKUMAR (CHELUR) SR.PP -SRI. C.S HRITHWIK THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22.02.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: :2 :

ORDER

Dated this the 22nd day of February, 2023 The petitioners are accused Nos.1 and 2 in crime No.609/2012 of Wadakkancherry Police Station. The aforesaid crime was registered for the offences punishable under Sections 452, 506(i) read with Section 34 of the Indian Penal Code.

2. Annexure-A1 is the complaint submitted by the 2 nd

respondent/defacto complainant before the District Superintendent of Police, Thrissur, which was forwarded to the Station House Officer concerned and upon receipt of the same, Annexure-A3 F.I.R. was registered after taking the statements of the 2nd respondent as evidenced by Annexure-A2. After completing the investigation, Annexure-A21 final report was submitted for the offences referred to above. This Crl.M.C. is filed challenging Annexure-A21 final report.

3. Heard Sri. P.K. Ibrahim, the learned counsel appearing

for the petitioners, Sri. C.S.Hritwik, the learned Public Prosecutor :3 : for the State and Sri. Sreekumar Chelur, the learned counsel appearing for the 2nd respondent.

4. In support of the prayer to quash all further

proceedings pursuant to Annexure-A21, various contentions have been taken by the learned counsel for the petitioners. The first of the said contentions was that the crime itself was registered based on Annexure-A1 complaint submitted before the District Superintendent of Police, which according to the learned counsel for the petitioners does not disclose any cognizable offence. It is true that the contents

of Annexure-A1 as such would not make out the offences as alleged in the F.I.R. and the final report. In this regard, the learned Public Prosecutor pointed out that, the crime was registered not based on the Annexure-A1 complaint alone. My attention was drawn to the contents of Annexure-A3 F.I.R. wherein it is specifically mentioned that upon Annexure-A1 complaint being forwarded to the Station House Officer, a statement of the defacto complainant has been recorded and based on the same, an F.I.R. was registered. Annexure-A2 is the statement recorded by the Police which is the First Information Statement. Therefore, the contention of the petitioners that the

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Annexure-A1 complaint submitted by the petitioners does not disclose any of the offences lost its significance because, the F.I.R. was registered based on the Annexure-A2 statement given by the defacto complainant. Therefore, the question that has to be considered is whether the contents of Annexure-A2 and the other materials placed before the court through Annexure-A21 final report disclose the offence punishable.

5. The crucial contention raised by the learned counsel

for the petitioners is that, even if the materials placed on record as per the said documents are taken into consideration, the ingredients for attracting any of the offences are not made out. As mentioned above, the offences alleged are under Sections 452 and 506 of the Indian Penal Code. As far as the offence under Section 506 is concerned, the specific contention put forward by the learned counsel for the petitioners is that the allegations contained in the F.I.S., as well as the final report, are not sufficient to attract the ingredients for the same. According to the learned counsel for the petitioners that, there is nothing to indicate that any of the petitioners have made any statement which could cause any threat or intimidation to the defacto

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complainant. I have carefully gone through the contents of Annexure-A2 and the additional statements made by the defacto complainant, which are produced along with Annexure-A21 final report. Besides, the statements of the defacto complainant there are statements of CWs2 and 3, who also reiterated the incident referred to by the 2nd respondent. As far as the offence under Section 506 of the Indian Penal Code is concerned, the same contemplate for punishment for criminal intimidation which term is defined under Section 503 of the Indian Penal Code. The said provision reads as follows:

> 503. Criminal intimidation:- Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. Explanation- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

As per the said provision, when a person threatens another with any injury to his person or reputation or property with the intention to cause alarm to that person or to cause that person to do any act or omit to do an act which such person was legally entitled to :6 : do, he has committed the offence.

6. In this case, the specific allegation against the 1 st

petitioner is that, on the date of occurrence, he entered into the house of the defacto complainant and threatened her that unless she withdraws from the purchase of a particular property, her life

would be in danger. In the Annexure-A2 statement, it is also mentioned that, while using the words he pointed his fingers at the defacto complainant. The learned counsel for the petitioner submits that merely because of the reason that the petitioner pointed his fingers at the victim the offences would not be attracted.

However, the crucial aspect to be noted in this regard is that a single act allegedly committed by the petitioner cannot be treated in isolation to find out an answer to the question whether offences would be attracted. While considering the said question the entire statements have to be read together along with the circumstances under which the relevant statements were

allegedly made by the petitioner. While considering the statements of the witnesses in this case in that perspective, it can be seen that the specific allegation is that on a particular date, the 1st accused entered into the residence of the petitioner and :7 : threatened the defacto complainant to cause an alarm to that person to compel her to withdraw from the purchase of the

property. In the additional statement given by the defacto complainant, it is specifically stated that, the petitioner also stated that, if the defacto complainant does not withdraw from the transaction relating to a property, her life itself would be in danger. In such circumstances, I am of the view that the contention raised by the petitioner that, no offence under Section 506 is made out

from the contents of the materials, cannot be accepted. The statements of the defacto complainant in the form Annexure-A2 and the further statement produced along with Annexure-A21 final report as well as the statements of CWs2 and 3 also convey the very same ingredients of the offences and therefore, I am of the view that at this stage of the proceedings, no interference can be made, with respect to the offence under Sections 506 of the Indian Penal Code as far as the 1st accused is concerned.

7. The allegation concerning the commission of an

offence under Section 506 as regards the 2 nd accused is that he allegedly contacted the defacto complainant over the phone and reiterated the threat as mentioned above. On going through the :8 : contents of the statement in the form of Annexure-A2 and additional statement of the witnesses, the contentions raised by the learned counsel for the petitioner, are only to be rejected for the reasons referred to above concerning the role of the 1 st accused.

8. The next offence alleged against the petitioners are

under Section 452 of the Indian Penal Code. The said offence is concerning the punishment for the commission of house trespass. House trespass is defined under Section 442 of the Indian Penal Code, which reads as follows:

> 442. House-trespass - Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit house trespass. Explanation-- The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house trespass.

One of the crucial ingredients for attracting the offence of house trespass is the commission of criminal trespass which term is defined under Section 441 of the Indian Penal Code which reads as follows: 441. Criminal trespass - Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, :9 : or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit criminal trespass.

9. On going through the definition of criminal trespass as

contained in Section 441 it can be seen that, whoever enters into a property in the possession of another with the intention to commit an offence or intimidate, insult or annoy any person in possession of such property, has committed the offence. In this case, I have already found that there are materials to make out a prima facie case, which would indicate that the 1 st petitioner had entered into the property and threatened the defacto complainant which comes within the definition of criminal intimidation. The learned counsel for the petitioner points out that, even going by the statement of the defacto complainant, the petitioner entered into the house after seeking permission from the defacto complainant and therefore, the offence under section 442 of the IPC is not attracted. However, from the perusal of

the definition of criminal trespass as per section 441 of the IPC, even if the entry was with permission, but if such entry was with the intention to commit an offence or to intimidate a person, the moment such offence is committed or intimidation is made, such entry would

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amount to criminal trespass. In this case, I have already observed that there are materials for attracting the offence of criminal intimidation. Therefore, even if it is assumed that the entry was lawful, the moment the offence of criminal intimidation was committed, the entry could be treated as a criminal trespass. In such circumstances, I am of the view that the contention raised by the learned counsel for the petitioner in this regard is liable to be rejected.

10. Thus after taking into account all the relevant aspects,

I am of the view that the contentions raised by the petitioner cannot be accepted at this stage of the proceedings. It is a well settled position of law that, while considering the question whether the interference is to be made under Section 482 Cr.P.C., the crucial aspect to be noticed is as to whether the uncontroverted allegations contained in the final report, even if

accepted, would attract the offences. Therefore, while considering an application under Section 482 Cr.P.C., this Court has to assume all the statements made in the F.I.R. as well as the final report as correct. The interference can be made only if those statements even if admitted are not making out any of the : 11 :

offence. As far as the materials placed on record in this case are concerned, I am of the view that the same would not come within the scope of the jurisdiction vested upon this Court under Section 482 Cr.P.C. and therefore, I do not find this as a fit case in which the said powers can be exercised. Therefore, this Crl. M.C. is dismissed.

However, it is clarified that all the observations made by this Court in this Crl.M.C. were for the purpose of determining the question as to whether the power of this Court under Section 482

Cr.P.C. is to be invoked or not. Under no circumstances the findings entered by this Court in this order shall cause any prejudice to the petitioner during the course of the trial. It shall be open for the trial court to consider all the contentions raised by the petitioner in accordance with law untrammelled by any of the observations made by this Court.

Sd/- ZIYAD RAHMAN A.A. JUDGE ncd

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