

Moni George vs State of Kerala

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Court : Kerala

Decided On : Jun-30-2023

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : Crl.MC/5114/2023

Appellant : Moni George

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V FRIDAY, THE 30TH DAY OF JUNE 2023 / 9TH ASHADHA, 1945 AGAINST THE ORDER/JUDGMENT IN SC 892/2023 OF SUB COURT, NEDUMANGAD PETITIONER/S: 1 MONI GEORGE AGED 56 YEARS S/O GEORGE, PLAMOOTTU PUTHEN VEEDU, THUMBUKONAM, CHERIYA ARYANAD, ARYANAD.P.O., NEDUMANGAD, THIRUVANANTHAPURAM,, PIN - 695542 2 RAJEEV @ MANOJ AGED 35 YEARS S/O GILBERT, MARUTHUMMOODU VEEDU, THUMBUKONAM, CHERIYA ARYANAD, ARYANAD.P.O., NEDUMANGAD, THIRUVANANTHAPURAM,, PIN - 695542 BY ADV A.S.SHAMMY RAJ RESPONDENT/S: 1 STATE OF KERALA

REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, HIGH COURT.P.O., ERNAKULAM, PIN - 682031 2 STATION HOUSE OFFICER ARYANAD POLICE STATION, ARYANAD.P.O., NEDUMANGAD, THIRUVANANTHAPURAM,, PIN - 3 VINEESH KUMAR AGED 35 YEARS S/O VIJAYAN, VINEESH BHAVAN, THUMBUKONAM COLONY, CHERIYA ARYANAD, ARYANAD.P.O., NEDUMANGAD, THIRUVANANTHAPURAM,, PIN - 695542 4 VISHNU @ BALU S/O BAHULEYAN, MEKKUMKARA PUTHEN VEEDU, CHERIYA ARYANAD, ARYANAD.P.O., NEDUMANGAD, THIRUVANANTHAPURAM,, PIN - SRI. VIPIN NARAYAN, SR. PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.06.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

The petitioner herein is accused Nos. 1 and 2 in Crime No. under Sections 294(b), 341, 323, 324, 308 r/w Section 34 of the IPC. After completion of the investigation, the final report has been laid, and the case is pending as S.C. No. 892/2023 on the file of the Assistant Sessions Court, Nedumangad.

2. The prosecution allegation is that owing to previous enmity in

connection with property disputes, on 23.10.2022 at about 8. pm, the accused, in furtherance of their common intention, wrongfully restrained the informant and attacked him with an iron pipe causing injuries. When CW2 attempted to intervene, he was also attacked, and injuries were inflicted. It is further alleged that when the prosecution witnesses, who were cited as CWs 3 to 5, intervened, they were also assaulted.

3. Sri. Shammy Raj, the learned counsel appearing for the

petitioners, submits that the allegations in the Final report cannot be accepted as correct. According to the learned counsel, the de facto complainant is an influential person, and he has managed to concoct a false case against the accused with the aid of the police. The learned counsel would further contend that at the instance of

the 1st accused herein, Annexure-A5 crime has been registered on 08.05.2022. Later, the

1st accused was again assaulted, and based on the information furnished by him, Annexure-A12 was registered. The learned counsel submits that the assertions in the final report that the petitioners herein were armed with weapons and they had attacked the de facto complainant is a false version that has not been substantiated by the investigation carried out by the police.

4. The learned Public Prosecutor has opposed the submissions.

Reliance is placed on the witness statement and other prosecution records, and it is argued that the materials collected clearly point to the involvement of the petitioners. It is submitted that the medical records also disclose that injuries were sustained by the victims.

5. I have considered the submissions advanced and have gone through the materials made available.

6. It is well-settled by now that when a plea for quashing a

prosecution in its nascent stages is made, this Court is entrusted with the responsibility of ascertaining whether the uncontested allegations outlined in the complaint or the charge constitute an offense. In the exercise of jurisdiction under Section 482 of the Code, this Court is not justified in minutely scrutinizing the materials that are yet to be presented and evaluated in their proper context. Jurisdiction under the provision must be exercised sparingly, reserving it for exceptional circumstances, and should not be exercised to stifle a legitimate prosecution. At this juncture, only a

prima facie case ought to be considered, in accordance with the legal principles enunciated by the Supreme Court in landmark cases such as R.P. Kapur vs. State of Punjab (AIR 1960 SC 866), State of Haryana vs. Bhajan Lal (1992 SCC (Cr) 426), State of Bihar vs. PP Sharma (1992 SCC (Cr.) 192), Zandu Pharmaceutical Works Ltd. vs. Mohd. Saraful Haq and another (2005 SCC (Cr.) 293), and more recently in Neeharika Infrastructure Pvt Ltd v. State of Maharashtra and Others

[2021 SCC Online SC 315].

7. Upon careful examination of the available materials and

evaluation of the records in the factual backdrop of the present case, I am of the view that it would be premature to deduce that no offense has been established against the petitioner at this stage. Upon perusal of the entirety of the charge sheet, it becomes evident that specific allegations have been leveled against the petitioner, invoking specific offenses under the Indian Penal Code. The arguments put forth by the learned counsel

concerning purported contradictions in the witnesses' statements, absence of serious injuries, the timeliness and falsity of the complaint, and other related matters fall within the domain of consideration by the Trial Court at the appropriate stage. This Court will not be justified in assessing the appropriateness, veracity, or accuracy of the allegations mentioned in the charge at this juncture based on the CD statements; rather, these aspects are to be deliberated upon by the trial court at the

opportune stage after evaluating the evidence adduced before court. It would be prudent for this court to abstain from expressing any opinion regarding the merits of the allegations at this stage so as to prevent any prejudice to either the prosecution or the accused. In the facts and circumstances, I find no reason to interfere, this petition will stand dismissed. Sd/- RAJA VIJAYARAGHAVAN V JUDGE avs APPENDIX OF CRL.MC 5114/2023 PETITIONER ANNEXURES Annexure A1 CERTIFIED COPY OF THE FINAL REPORT IN S.C. NO.892/2023 ON THE FILE OF ASSISTANT SESSIONS COURT, NEDUMANGAD WHICH AROSE FROM CRIME NO.856/2022 OF ARYANAD POLICE STATION, THIRUVANANTHAPURAM DISTRICT DATED 26.11.2022

Annexure A2 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.856/2022 OF ARYANAD POLICE STATION, THIRUVANANTHAPURAM DISTRICT DATED 25.10.2022 Annexure A3 TRUE COPY OF THE INTERIM INJUNCTION ORDER DATED 25.3.2022 PASSED BY THE MUNSIF COURT, NEDUMANGAD IN I.A. NO.1/2022 IN O.S. NO.214/2022 Annexure A4 TRUE

COPY OF THE PLAN SUBMITTED BY THE ADVOCATE COMMISSIONER IN O.S. NO.214/2022 OF MUNSIF COURT, NEDUMANGAD (UNDATED) Annexure A5 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.299/2022 OF ARYANAD POLICE STATION, THIRUVANANTHAPURAM DISTRICT Annexure A6 TRUE COPY OF THE TREATMENT HISTORY OF THE 1ST

PETITIONER ISSUED FROM THE DEPARTMENT OF CARDIOLOGY, MEDICAL COLLEGE HOSPITAL, TRIVANDRUM BEARING I.P. NO.184665/2016 FOR THE PERIOD FROM 6.3.2016 TO 11.3.2016 Annexure A7 TRUE COPY OF THE COMPLAINT DATED 19.8.2022 SUBMITTED BY 1ST PETITIONER BEFORE THE SUPERINTENDENT OF POLICE (RURAL), THIRUVANANTHAPURAM ALONG WITH THE ACKNOWLEDGEMENT RECEIPT OF PETITION NO.58343/2022/T DATED 19.8.2022 FROM THE OFFICE OF DISTRICT POLICE OFFICE, THIRUVANANTHAPURAM RURAL

Annexure A8 TRUE COPY OF THE CASUALTY O.P. TICKET ISSUED TO THE 1ST PETITIONER BY THE COMMUNITY HEALTH CENTRE, ARYANAD DATED 23.10.2022 Annexure A9 TRUE COPY OF THE CASUALTY O.P. TICKET ISSUED TO THE 1ST PETITIONER BY THE MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM, DATED 23.10.2022 Annexure A10 TRUE COPY OF THE DISCHARGE SUMMARY DATED 28.10.2022 ISSUED BY THE DISTRICT HOSPITAL, NEDUMANGAD TO THE 1ST PETITIONER Annexure A11 TRUE COPY OF THE COMPLAINT DATED 24.10.2022 SUBMITTED BY THE 1ST PETITIONER'S MOTHER BEFORE THE 2ND RESPONDENT Annexure A12 TRUE COPY OF THE F.I.R. IN CRIME NO.859/2022 OF ARYANAD POLICE STATION, THIRUVANANTHAPURAM DISTRICT DATED 26.10.2022 Annexure A13 PHOTOGRAPH SHOWING THE DATE AND TIME OF THE PHOTO AS 23.10.2022, 9.11 P.M.

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