

Arun vs State of Kerala

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Court : Kerala

Decided On : Oct-31-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/6741/2022

Appellant : ARUN

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA,
1945 CRL.MC NO. 6741 OF 2022 AGAINST THE ORDER/JUDGMENT
IN MC 362/2022 OF SUB DIVISIONAL MAGISTRATE COURT, KOLLAM
PETITIONER/COUTNER PETITIONER: ARUN AGED 40 YEARS S/O.
VIJAYAN, GAYATHRI BHAVANAM, KUNNATHUR, MANAMPUZHA,
KOLLAM, KERALA,, PIN - 691553 BY ADVS. K.R.VINOD M.S.LETHA
K.S.SREEREKHA NABIL KHADER RESPONDENT/PETITIONER:
STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 OTHER
PRESENT: SRI HRITHWIK CS, PP THIS CRIMINAL MISC. CASE

HAVING COME UP FOR ADMISSION ON 31.10.2023, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING: P.V.KUNHIKRISHNAN
----- Dated this the 31st day of October,
2023

ORDER

This CrI.MC is filed to quash Annexure A1 order of the Sub Divisional Magistrate Court, Kollam. The above case is initiated under Section 111 Cr.PC. It is the case of the petitioner that Annexure A1 notice issued by the Sub Divisional Magistrate Court, Kollam does not contain the substances of the information received by the respondent for arriving at the satisfaction contemplated under Section 107 Cr.PC. The counsel relied the judgments of this Court in Girish P. and others v. State of Kerala and another (2009 (4) KHC 929), Santhosh M.V and others vs. State of Kerala and others (2014 KHC 522) and also Bejoy K.V vs State of Kerala and Another (2015 (5) KHC 507).

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. A perusal of Annexure A1 notice would not show

that it is an order passed in tune with Section 107 r/w Section 111 Cr.PC. In Girish P' case (supra), the mandate of Section 111 and Section 107 Cr.PC are mentioned. It will be better to extract the relevant paragraph, which reads as follows:-

5. S.107 of Code of Criminal Procedure enables an executive Magistrate on receiving information that a person is likely to commit breach of peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, to require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping peace for such period not exceeding one year as the Magistrate thinks fit. S.111 mandates that

when a Magistrate acting under S.107, deems it necessary to require any person to show cause, he shall make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties, if any required, the necessity to set forth the substance of the information' in the order under S.111 is not an empty formality and is with a purpose. It is to enable the person against whom the

order is passed, to appear and show cause before the

Magistrate that the allegations are not correct. Unless that information is furnished to the person against whom the order is passed, he cannot defend the allegation as against him.

6. Annexure I order issued by the Sub Divisional

Magistrate does not disclose the substance of the information received by the Sub Divisional Magistrate on which he was satisfied that proceedings under S.107 is to be initiated. The fact that petitioners are involved in Crime No. 207/2009 by itself is not a ground, to initiate proceedings, under S. 107. Though past conduct may be a guide to initiate proceedings, on that ground alone proceedings cannot be initiated unless as stated by the Full Bench in Moidu's case (supra) there is an imminent breach of peace warranting initiation of proceedings under S.107 of Code of Criminal Procedure, 1973.

4. In Bejoy K.V's case (supra) also, this Court considered the same point and relevant paragraph is extracted hereunder:-

17. Therefore, it is mandatory that an order issued under S.111 Cr PC by a Sub Divisional Magistrate exercising jurisdiction under S.107 Cr PC, to set forth the substance of information received, the amount of the bond to be executed, the term for which it is to be in force and the number,

character and type of securities, if any are required. The order must also reflect that the Magistrate has assessed the truth of the information and the need for taking action under S.107 Cr PC for preservation of peace and that

thereupon he has passed such an order. An order

issued under S.111 Cr PC calling upon the person to show cause against execution of bond without disclosing therein the substance of information received and upon which satisfaction was arrived at

by him, will not sustain in the eye of law. The order

must contain all particulars relevant and sufficient to inform him about the accusation against him. This is because, the party calling upon must have to explain the circumstances against him or defend the proceedings and only on sufficient and satisfactory information being furnished, he will be able to answer the same. Therefore, the Sub Divisional Magistrate empowered with the authority to exercise the authority under S.107 Cr PC to initiate proceedings must be vigilant and conscious while exercising the power and should bear in mind that the spirit envisaged by the Section is preservation of peace and public tranquillity. The Sub Divisional Magistrate must see that the information supplied to him proposing action, was not one intended with a view to satisfy his personal vendetta. He must bear in mind that with the exercise of the power a man is called upon to execute a bond undertaking to preserve peace and tranquility for a period specified in the proceedings and therefore, it is likely to cast a stigma upon such a person that he was instrumental in breaching the peace or disturbing the public tranquillity. If such a stigma is allowed to be fell upon an innocent person without any basis, that stigma cannot be removed later and the person would not be relegated to his real status of innocence, ultimately

when such person was found irresponsible for any such alleged acts.

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

considered opinion that Annexure A1 is not an order in tune with Section 111 Cr.PC and 107 Cr.PC. It is only stated that crime is registered against the counter petitioners. The substances of information received and the details of the case are not narrated in the notice. Therefore, I am of the considered opinion that Annexure A1 proceedings is unsustainable. Therefore, this Criminal Miscellaneous case is allowed. All further proceedings against the petitioner based on Annexure A1 are quashed. Sd/- P.V.KUNHIKRISHNAN JUDGE bng APPENDIX OF CRL.MC 6741/2022 PETITIONER ANNEXURES Annexure A1 THE ORIGINAL OF THE ORDER DATED

04.08.2022 ISSUED BY THE SUB DIVISIONAL MAGISTRATE COURT, KOLLAM
UNDER SEC.111 OF CODE OF CRIMINAL PROCEDURE

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