

Poly vs State of Kerala

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Court : Kerala

Decided On : Mar-04-2022

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

Appeal No. : Crl.MC/1537/2018

Appellant : POLY

Respondent : State of Kerala

Judgement :

Crl.M.C.No.1537/2018 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. FRIDAY, THE 4TH DAY OF MARCH 2022 / 13TH PHALGUNA, 1943 CRL.MC NO. 1537 OF 2018 AGAINST THE ORDER/JUDGMENT IN CC 711/2017 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KALADY PETITIONERS/ACCUSED NO.1 TO 4: 1 POLY, AGED 51 YEARS, S/O. ANTONY,THALIYAN VEEDU, 2 JAYAN, AGED 50 YEARS, S/O. ANTONY,THALIYAN VEEDU, 3 SHYNI, AGED 47 YEARS, D/O. ANTONY,THALIYAN VEEDU, 4 BINOY, AGED 46 YEARS, S/O. ANTONY,THALIYAN VEEDU, BY ADVS. SRI.K.R.VINOD SMT.M.S.LETHA RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA, KOCHI-682031 2 THE TALUK

SUPPLY OFFICER KERALA STATE CIVIL SUPPLIES CORPORATION (SUPPLYCO),ALUVA 683101 BY ADV ADDL.DIRECTOR GENERAL OF PROSECUTION THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04.03.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.M.C.No.1537/2018 2

ORDER

This CrI.M.C. is filed by the accused persons in C.C.No.711 of 2017 on the file of the Judicial First Class Magistrate Court- Kalady. The aforesaid case was registered on the basis of the complaint submitted by the Taluk Supply Officer, Kerala State Civil Supplies Corporation (SUPPLY CO), for various offences punishable under the Kerala Essential Commodities Act, 1955.

2. The primary allegation against the accused persons is

that, when an inspection was conducted in the building owned by the petitioners on 21.06.2016 at 4 pm, it was found that 418 bags of rice intended to be supplied through the outlets of SUPPLY CO were kept in the premises without any authorization. Based on the same, an investigation was conducted, and a final report was submitted before the Judicial First Class Magistrate Court- Kalady. The learned Magistrate has taken cognizance thereon, and the same is now pending as C.C.No.711 of 2017.

3. This CrI.M.C. is filed praying for quashing all further proceedings in the aforesaid case. Heard Sri.K.R.Vinod, learned CrI.M.C.No.1537/2018 3 counsel for the petitioner and Sri.Ranjith George, learned Public Prosecutor for the State.

4. The specific contention put forward by the learned

counsel for the petitioners is that the aforesaid building was not in their possession as on the date of inspection. According to him, the aforesaid godown was rented out as per Annexure-A2 rent agreement in favour of M/s S.N.Rice Mills, Kalady. Acting upon Annexure-A2, the S.N.Rice Mill had informed the Civil Supplies Corporation by way of Annexure-A3 dated 17.06.2016, which is seen acknowledged by the officer concerned on the very

same date. Based on the aforesaid document, it is contended that as on the date of inspection and seizure of the articles, the petitioners were not in possession of the building. Therefore, they cannot be implicated as accused persons in this case.

5. On the other hand, the learned Public Prosecutor

would oppose the aforesaid contention. The learned Public Prosecutor would rely on the communication issued by the 2nd respondent herein, which forms part of Annexure-A1 final report, in which it is stated that the building from where the articles were seized was not the licensed premises of the SUPPLY CO. By placing reliance upon the same, it is contended that contention

Crl.M.C.No.1537/2018 4 raised by the petitioner is a question of fact, which can only be decided during the course of the trial, and he seeks for dismissal of Crl.M.C.

6. The question that arises is whether this is a fit case in which powers of this Court under Section 482 Cr.P.C can be invoked or not. My attention was specifically brought to the

order of this Court in Crl.M.C.No.8084 of 2017, which was

passed, when the petitioners herein approached this Court for quashing the FIR registered in the case. It is evident that the very same documents which are produced as Annexure-A2 and A3 were relied on by the petitioner in the said proceedings also.

The aforesaid Crl.M.C. was disposed of, directing the investigating officer to conduct an investigation in the matter, with reference to the aforementioned documents also, before filing the final report. On perusal of Annexure-A1 final report, I could not find any reference to the investigation relating to the aforesaid document, as ordered by this Court in Annexure-A5. The main reason for which the petitioners were implicated in this case is on the allegation that at the relevant time, the building in question was in possession of the petitioners herein. If the veracity of Annexure-A2 and A3 are proved, the decision

Crl.M.C.No.1537/2018 5 that could be arrived at will be otherwise. Therefore, an investigation as to the aforesaid documents was essential. In such circumstances, the absence of any investigation concerning the aforementioned documents despite a specific direction by this court in this regard was not proper. Hence, I am of the view that the aforesaid aspect has to be considered by the investigating officer. Considering all relevant aspects of the case, I am of the view that, a direction can be issued to the investigating officer to conduct a further investigation in the matter as contemplated under Section 173(8) Cr.P.C to examine the veracity of Annexure-A2 and A3 documents. Necessary legal formalities for invoking the powers of this Court under Section 173(8) of the Cr.P.C shall also be complied with by the investigating officer concerned, by furnishing proper intimation to the jurisdictional Magistrate in this regard. With the above observations and directions, this Crl.M.C. is disposed of.

Sd/- ZIYAD RAHMAN A.A. JUDGE DG/4.3.22 Crl.M.C.No.1537/2018 6
APPENDIX OF CRL.MC 1537/2018 PETITIONER ANNEXURES ANNEXURE A1:
TRUE COPY OF THE FINAL REPORT IN C.C.NO.711/17 OF JUDICIAL FIRST
CLASS MAGISTRATE COURT, KALADY ANNEXURE A2: TRUE COPY OF THE
RENT AGREEMENT EXECUTED BETWEEN THE PETITIONERS NO.1 TO 3
WITH M/S SN RICE MILLS ANNEXURE A3: TRUE COPY OF THE
COMMUNICATION DATED 17.06.2016 SENT BY M/S. SN RICE MILLS TO
SUPPLYCO ANNEXURE A4: CERTIFIED COPY OF THE WRITTEN
COMPLAINT LODGED BY 2ND RESPONDENT TO THE SUB INSPECTOR OF
POLICE, KALADY ANNEXURE A5: TRUE COPY OF THE ORDER DATED
18.01.2018 OF THIS HON'BLE HIGH COURT IN CRL.M.C.NO.8084/2017

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