

Mujeeb vs State of Kerala

Mujeeb vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1555035

Court : Kerala Orders

Decided On : Jan-27-2022

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

Appeal No. : Crl.MC/5702/2020

Appellant : Mujeeb

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
THURSDAY, THE 27TH DAY OF JANUARY 2022 / 7TH MAGHA, 1943
IN FIR NO.1015/2020 OF ALAPPUZHA SOUTH POLICE STATION
PETITIONERS/ACCUSED: MUJEEB AGED 48 YEARS S/O. ABDUL
AZEEZ, MUNEER MANZIL, STADIUM WARD, ALAPPUZHA-688 001
BY ADVS. A.RAJASIMHAN K.J.RAJAN KUM.VYKHARI.K.U
RESPONDENTS/STATE AND ANOTHER: 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT,
ERNAKULAM-682 031 2 K.J. MICHAEL, AGED 65 YEARS S/O.
JOSEPH, KOCHIKKARAN VEEDU, THUMBOLI, ALAPPUZHA-688 008
BY ADVS. SRI.K.S.HARIHARAPUTHRAN SMT.BHANU THILAK SRI.

SUDHEER GOPALAKRISHNAN -PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27.01.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

The petitioner is the accused in Crime No.1015/2020 of Alappuzha South Police Station. The aforesaid crime was registered against the petitioner for the offence punishable under Section 420 of Indian Penal Code on the basis of a complaint submitted by the 2 nd respondent herein.

2. The complaint against the petitioner is as follows: The

petitioner has taken a building belonging to the 2 nd respondent for rent. Adjacent to the aforesaid building, the 2nd respondent was having another residential building which was rented out to some other person. Later, when the other building got vacated by the tenant, the petitioner herein rented out the said building to some other person without the knowledge and permission of the 2nd respondent and collected rent there from. Apart from the above, it was also alleged that, offering good returns from the business of demolition of old buildings, the petitioner collected an amount of Rs.4 lakh from the 2 nd respondent. It is also alleged that, the petitioner also obtained 10 sovereigns of gold ornaments from the 2nd respondent by making false

promises.

3. This Crl.M.C. is filed for quashing all further proceedings pursuant to Annexure A2 First Information Report.

4. Heard both sides.

5. The learned counsel for the petitioner contends that, the

allegations in Annexure A2 First Information Report do not make out the offences alleged against the petitioner. Learned counsel for the petitioner also brought my attention to Annexure A3 complaint submitted by the petitioner against the 2nd

respondent, alleging that the 2nd respondent is taking steps to prosecute the petitioner by misusing a cheque obtained from him. It was also mentioned in the aforesaid complaint that, the 2nd respondent is a person engaged in the business of illegal money lending and as the same was being conducted without any license, the commission of offence under Kerala Money Lenders Act, 1958 was also alleged against the 2nd respondent. The learned counsel also produced documents along with CrI.M.A. No.1/2021 indicating that, by utilizing aforesaid cheque, criminal prosecution was initiated against the petitioner herein for the offences under

Section 138 of Negotiable Instrument Act.

6. The only question that arises is whether the petitioner is

successful in making out a case for invoking powers of this Court under Section 482 Cr.P.C. The prayer sought for is to quash Annexure A2 First Information Report. It is a well settled position of law that, the powers of this Court under Section 482 Cr.P.C. can be invoked sparingly and only under exceptional circumstances. When the interference is sought for in respect of a First Information Report, the standard to be applied is more stringent. The interference can be made only if it is shown that, even if the entire allegations contained in the First Information Report are accepted for its face value, it does not make out any offence. When the aforesaid principles are applied to this case, it can be seen that, the contents of Annexure A2 First Information Report reveal specific allegations. One of the allegations is that, the residential building of the 2nd respondent was rented out to some other person by the petitioner without knowledge of the 2nd respondent and collected rent. The statement filed by the investigation officer also reveals that, the investigation is at its infantile stage and

further evidence in connection with the same are to be collected. As Annexure A2 First Information Report contains an allegation which prima facie indicates a case against the petitioner, and since the investigation is at infantile stage, I am of the view that this is not a fit case in which the powers of this Court under Section 482 can be invoked.

In such circumstances, I do not find any merit in this Crl.M.C.

and accordingly, it is dismissed. However, it is made clear that the observations and findings entered in this order are made only for the purpose of finding out whether a prima facie case is made out for invoking the powers of this Court under Section 482 Cr.P.C or not. All the contentions of either parties are left open, and they can raise all their contentions before the trial court, which shall be considered on merits, untrammelled by any of the observations made by this Court in this order.

Sd/- ZIYAD RAHMAN A.A. JUDGE scs APPENDIX OF CRL.MC 5702/2020
PETITIONER ANNEXURES ANNEXURE A1 TRUE COPY OF PLAINT IN OS NO.
566 OF 2020 OF MUNSIFFCOURT, ALAPPUZHA FILED BY THE PETITIONER.
ANNEXURE A2 TRUE COPY OF THE FIR NO. 1015 OF 2020 OF ALAPPUZHA
SOUTH POLICE STATION. ANNEXURE A3 TRUE COPY OF THE COMPLAINT
DATED 11.12.2020 FILED BY THE PETITIONER. ANNEXURE A4 TRUE COPY
OF NOTICE DATED 04.02.2021 ISSUED BY THE 2ND RESPONDENT
ANNEXURE A5 TRUE COPY OF SUMMONS DATED 9.7.2021 ISSUED BY THE
CHIEF JUDICIAL MAGISTRATE COURT, ALAPPUZHA

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com