

General Manager vs Secretary

General Manager vs Secretary

SooperKanoon Citation : sooperkanoon.com/1570893

Court : Kerala

Decided On : Aug-05-2022

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

Appeal No. : Crl.MC/180/2022

Appellant : General Manager

Respondent : Secretary

Judgement :

Crl.M.C.No.180/22 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
FRIDAY, THE 5TH DAY OF AUGUST 2022 / 14TH SRAVANA, 1944
CRL.MC NO. 180 OF 2022 AGAINST THE ORDER/JUDGMENTST
86/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,
PATHANAPURAM PETITIONER/ACCUSED: GENERAL MANAGER,
OFFICE OF THE GMTD, BSNL BHAVAN, VETTIYAMBALAM, KOLLAM
DISTRICT, PINCODE-691 012. BY ADV SRI.MATHEWS K.PHILIP, SC,
BSNL RESPONDENTS/COMPLAINANTS:

1 SECRETARY, PIRAVANTHOOR GRAMA PANCHAYAT, VETTITHITTA P.O., PIRAVANTHOOR, KOLLAM DISTRICT-689 696. 2 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PINCODE-682 031. BY ADV.MANOJ RAMASWAMY(K/000496/2000) THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05.08.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.M.C.No.180/22 2

ORDER

The petitioner is the accused in S.T.No.86 of 2021 on the file of

the Judicial First Class Magistrate Court, Pathanapuram. The aforesaid case is registered based on a private complaint submitted by the 1st respondent Grama Panchayath, invoking the provision under Section 210 of Kerala Panchayath Raj Act, 1994. The prosecution was launched for violation of Rule 27 of the Kerala Panchayath Raj

(Taxation, Levy and Appeal Rules 1996). According to the complainant, even though a demand for Rs 2,29,447/- as building tax was raised against the petitioner, they allegedly failed to remit the said amount and the prosecution was initiated on account of the same. This CrI.M.C. is filed challenging Annexure-I complaint and further proceedings thereof.

2. Heard Sri.Mathews K.Philip, learned counsel for the petitioner, Sri.Manoj Ramaswamy, learned Standing Counsel for the 1 st respondent and Smt.Seena C., learned Public Prosecutor for the State.

3. The issue regarding the sustainability of prosecution under

Section 210 of the Kerala Panchayath Raj Act has already been decided by this Court as per judgment dated 02.03.2022 in CrI.M.C 3165 of 2018. It is held therein that, before commencing prosecution, the complainant has to initiate recovery proceedings by treating it as CrI.M.C.No.180/22 3 arrears of public revenue. As

part of such recovery proceedings, the Secretary of Panchayat may directly recover by distraint under his warrant and sale of movable properties of the defaulter, subject to such rules prescribed in this regard. As per the second proviso to Section 210 of the Kerala Panchayath Raj Act, if for any reason, the recovery against the property of the defaulter is impracticable, the Secretary may prosecute the defaulter before a Magistrate. Therefore, the impracticability of the recovery measures is one of the prerequisites for the initiation of the prosecution. To establish the same, the complaint must contain sufficient averments indicating the details of the steps taken to recover the amounts and the reasons for impracticability. In the order passed in CrI.M.C.No 3165/2018, it was

held that the prosecution would not be sustainable if there are no

averments, as mentioned above. On going through Annexure-I complaint, it is seen that the averments indicating the same are absent.

4. Apart from the above, it is also brought to my notice that subsequent to the initiation of prosecution, the demand which formed the basis of prosecution was set aside by this Court and later a fresh demand was issued. Therefore, it is evident that the basis of the prosecution is not subsisting. Due to the above reasons, it is CrI.M.C.No.180/22 4 only proper that the prosecution initiated based on Annexure-II is quashed, as the same is not legally sustainable. Accordingly, this CrI.M.C. is allowed and Annexure-I complaint in S.T.No.86 of 2021 on the file of the Judicial First Class Magistrate Court, Pathanapuram and all further proceedings are hereby quashed.

Sd/- ZIYAD RAHMAN A.A. JUDGE DG/8.8.22 CrI.M.C.No.180/22 5 APPENDIX OF CRL.MC 180/2022 PETITIONER ANNEXURES Annexure I CERTIFIED COPY OF THE COMPLAINT IN ST Annexure II TRUE COPY OF THE INTIMATION DATED 14.9.2021 GIVEN TO THE PETITIONER Annexure III TRUE COPY OF HE REPRESENTATION GIVEN BY DGM, BSNL Annexure IV TRUE COPY OF THE PROCEEDINGS DATED 27.10.2021

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