

**Bijudas vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1624341](http://sooperkanoon.com/1624341)

**Court :** Kerala

**Decided On :** Oct-29-2021

**Judge :** Honourable Mr.Justice Mohammed Nias C.P.

**Appeal No. :** Crl.MC/5797/2013

**Appellant :** Bijudas

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.  
FRIDAY, THE 29TH DAY OF OCTOBER 2021 / 7TH KARTHIKA, 1943  
CRL.MC NO. 5797 OF 2013 CRIME NO.343/2009 OF MARANALLOR  
POLICE STATION, THIRUVANANTHAPURAM IN CC 1815/2012 OF  
JUDICIAL MAGISTRATE OF FIRST CLASS, KATTAKADA,  
THIRUVANANTHAPURAM

PETITIONERS/ACCUSED 1 TO 12: BIJUDAS, AGED 37 YEARS,  
S/O.DEVADAS, JOSE VILASOM, VELIAMCODE, 1 MARANALLOORE.  
SIMON, AGED 37 YEARS, S/O.CHRISTUDAS, RETNA VILASOM,  
KONDUMCODE, 2 MARANALLOORE. RAJESH @ ANEESH, AGED 24

YEARS, S/O.RAJAN, RAJESH BHAVANAM, CHENNIYODE, 3 MARANALLOORE. SHAJU GLADSTONE S/O.ISRAEL, NEDIYAVILA HOUSE, CHENNIYODE, 4 MARANALLOORE. SABU NELSON S/O.NELSON, KARTHIKA NIVAS, CHENNIYODE, 5 MARANALLOORE. SASIDRAN S/O.SUKUMARAN, ROADARIKATHUPUTHEN VEEDU, 6 CHENNIYODE, MARANALLOORE.

MANOJ @ SANTHOSH, AGED 26 YEARS, S/O.THAKARAJ, CHERUKONATHU SANNTHOSH BHAVAN, MARANALLOORE. SHAJI S/O.SUKUMARAN, ROADARIKATHUPUTHENVEEDU, 8 CHENNIYODE, MARANALLOORE.

VINODKUMAR @ BABU 9 S/O.JOHNSON, CARMEL HOUSE, KODAMCODE, MARANALLOORE. SAJI, AGED 42 YEARS, S/O.CHRISTUDAS, THEKKEKARA PUTHEN VEEDU, 10 KONDACODE, MARANALLOORE. REGI S/O.REVI, CHENNIYODE KODIVILA VEEDU, 11 MARANALLOORE VILLAGE. PRAVEEN S/O.VISHNU, PRAVEEN BHAVAN, CHENNIYODE, 12 MARANALLOORE VILLAGE. BY ADV SRI.SUMAN CHAKRAVARTHY RESPONDENT/STATE & DEFACTO COMPLAINANT: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, 1 HIGH COURT OF KERALA, ERNAKULAM 682 031.

SHANTAKUMARI PUNNAMOODU HOUSE, NEAR SBT, OORUTTAMBALAM, 2 MARANALLOOR, 695 572. BY PUBLIC PROSECUTOR SMT.MAYA M N THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21.10.2021, THE COURT ON 29.10.2021 PASSED THE FOLLOWING:

## **ORDER**

The petitioner challenges Annexure G report and all proceedings in CC No. 1815 of 2012 on the file of the Judicial First Class Magistrate Court, Kattakkada. The short facts necessary for the disposal of the case are as follows:-

2. The petitioners are accused Nos.1 to 12 in

Crime No.343 of 2009 of Maranalloor Police Station registered on the allegation that some unknown persons trespassed into the property of the second respondent, defacto complainant, and felled 500 rubber trees on the midnight on 23.12.2009. The first petitioner is stated to be a Block Panchayat member during the relevant time and the

others were activists of 'Madyavirudha samiti' which was functioning against bootlegging in the area. It is stated that though the initial investigation revealed nothing about the identity of the accused, on 18.02.2010 the Sub Inspector of Police gave a report before the jurisdictional Magistrate stating that the witnesses were ready to give a 164 statement before the Court. The names of the accused were

mentioned in the said petition although till then there was no clue about the names of the accused. The Magistrate recorded the statement of four witnesses (CWs 1 to 4) on 02.03.2010 and 18.03.2010) and based on the additional report all the petitioners were arrayed as accused and arrested.

3. After the petitioners were enlarged on bail, they

gave a detailed complaint to the Director General of Police narrating the facts and circumstances which led to their false implication. The complaint is marked as Annexure D and the same was forwarded to the I.G. of Police, Thiruvananthapuram Range, who in turn entrusted the complaint to be enquired by the Deputy Superintendent of Police, District Special Branch Thiruvananthapuram, and who after a detailed enquiry found that one ASI of Police, Sasisekharan Nair (CW9) who was inimical with the accused

was instrumental in foisting the case. The said report is marked as Annexure E.

4. Nemam Block Panchayat also gave a complaint to the Director General of Police, which was enquired into by

the Deputy Superintendent of Police, Special Team. Police Headquarters, Thiruvananthapuram, who after pursuing the entire CD submitted a detailed report before the Director General of Police, which also suggested that the entire investigation was aimed at framing the petitioners as accused. This report is marked as Annexure F. Thereafter, the investigation was handed over to the Rural Crime Detachment Wing. The investigation was taken over by CW12 (Rajendran) but he did not complete the investigation. The same was taken over by CW 13 (Manoj Chandran). CW13 filed a report in terms of the investigation already conducted till then by CW11 and a true copy of the final report alleging offences punishable under Sections 143, 147, 148, 149, 447, 427 and 120(B) IPC is marked as Annexure D. It is in this background fact that the above CrI.M.C is filed under Section 482 of the Code of Criminal Procedure to quash the final report and the further proceedings.

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

6. Though notice was served on the second respondent, there is no appearance.

7. Learned counsel for the petitioners submits that

the entire proceedings adopted by the police were to frame the petitioners as accused. It is to be noticed that in the first statement of the second respondent, which led to the registration of the FIR, the second respondent not only did not name any person but she did not even suspect anyone. Still further, the initial investigation did not reveal anything of the identity of the accused. It was on 18.02.2010 that the S.I.of Police gave a report before the learned Magistrate stating that the witnesses in the case were ready to give a statement under Section 164 Cr.P.C before the court. It is

surprising to note that in Annexure B report dated 18.02.2010 the names of all the accused, about whom they have no clue till then, were stated. This fact was specifically noticed in Annexure E report which was consequent to the direction by the Director-General of Police on getting the complaint from the petitioners (Annexure D). Annexure E and F, two separate enquiries ordered on the basis of Annexure D complaint clearly revealed that most of the

accused were not even near the place of the incident and that the role of the S.I.- Sasisekharan Nair who was inimical towards the petitioners was also mentioned. The witnesses were also having dubious antecedents as they are involved in similar criminal cases, the details of which stated in the petition under S.482 CrPc and which are not disputed are extracted below:-

CW3 is a hardcore criminal in the locality who is involved in crime no.306/06, 63/09, 143/09 etc of Maranallore PS and several other police stations. The sole eyewitness CW5 Suresh @ Wawa Suresh is also a notorious criminal who is involved in crime numbers He is convicted in crime number 298/01 of Malinkeezh PS for offences under the Arms Act. He is also involved in crime numbers 216/00, 431/01, 468/05 of Malayileezh PS to name a few. He is also involved in Abkari Act cases of Kattakada Excise Range. CW-4 is also having criminal antecedent and is invoked several criminal cases.

8. It is also pertinent to note that CW1, the defacto

complainant has not mentioned anything about the petitioners in her 164 statement, and thus it is clear that CW9-Sasisekharan Nair had taken the assistance of CWs 3 to 5 who as aforesaid had the criminal background, to accuse

the petitioners herein. I have no reason to doubt the correctness of the contents mentioned in Annexures E and F, and in fairness, there is no argument made by the learned Public Prosecutor against Annexures E and F, reports prepared by the Superior officers pursuant to the complaint given before the State Police Chief. They are unimpeachable documents which lead to the irresistible inference that the

petitioners were falsely implicated. In the said circumstances, I have no hesitation to hold that the case registered against the petitioners is nothing but an abuse of process of Court as revealed from Annexures E and F, which are incontrovertible, unimpeachable, beyond doubt and the veracity of which is not disputed.

9. The arguments of the learned counsel for

the petitioners that CW9-Sasisekharan Nair was instrumental in falsely implicating the petitioners herein cannot be lost sight of. It is a case of abuse of power by those who were successful in arraying the petitioners as accused, as is seen from Annexures E and F. Criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts

while exercising power under Section 482 of the Cr.P.C. should also strive to serve the ends of justice. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceedings in the interest of justice. The ends of justice is higher than the ends of mere law though justice

has got to be administered according to laws made by the

legislature. See (Vesa Holdings Private Limited & Anr v. State of Kerala & Ors. [2015 (8) SCC 293], State of Karnataka v. L. Muniswamy [1977 (2) SCC 699]. This case squarely falls in the categories 5 and 7 illustrated in the decision of State of Haryana v. Bhajan Lal [1992 Supp. (1) SCC 335] It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. In this case, Annexures E and F are

### **indeed special features forcing me to come to the conclusion**

about the malafides in the prosecution. More so, a Court cannot be utilised for any oblique purpose and where in the opinion of the Court, the chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court will quash the proceedings as criminal proceedings

cannot be permitted to degenerate into weapons of harassment. I hold that the instant case is one where the power of this Court under Section 482 Cr.P.C. must be invoked to prevent abuse of process and to render justice.

In the result, the Crl.M.C is allowed and Annexure G final report and all proceedings in CC No.1815 of 2012 on the file of the Judicial First Class Magistrate Court, Kattakkada, arising from Crime No.343 of 2009 of Maranalloor Police Station are hereby quashed. Sd/- MOHAMMED NIAS.C.P, JUDGE dIK  
21.10.2021 APPENDIX OF CRL.MC 5797/2013 PETITIONERS ANNEXURES  
ANNEXURE A. COPY OF THE FIR IN CRIME 343/09 OF MARANALLOOR P.S.  
ANNEXURE B. COPY OF THE PETITION 13.02.2010. ANNEXURE C. COPY OF THE ADDITIONAL REPORT DATED 8.6.10. ANNEXURE D. COPY OF THE COMPLAINT DATED 23.6.10.

ANNEXURE E. COPY OF THE REPORT BY DEPUTY SUPERINTENDENT OF POLICE DISTRICT SPECIAL BRANCH DATED 10.10. ANNEXURE F. COPY OF THE REPORT DATED 27.7.10 BY DYSP SPECIAL TEAM PHO THIRUVANANTHAPURAM. ANNEXURE G. COPY OF THE FINAL REPORT IN CRIME NO.343/09.

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