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Ratheesh Kumar Vs. State of Kerala

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Court : Kerala

Decided On : Jun-24-2015

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Ratheesh Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS WEDNESDAY, THE24H DAY OF JUNE20153RD ASHADHA, 1937 Crl.MC.No. 3382 of 2015 () ---------- MC. NO.72/2014 of SUB DIVISIONAL MAGISTRATE COURT,ADOOR. ..... PETITIONER: ---------- RATHEESH KUMAR, S/O. DEVARAJAN, AGED29YEARS, ERUMATHADATHIL HOUSE, MUTTATHUKONAM P.O.,CHENNERKKARA VILLAGE, KOZHENCHERRY TALUK, PATHANAMTHITTA DISTRICT. BY ADV. SMT.INDU SUSAN JACOB. RESPONDENTS: ---------- 1. STATE OF KERALA, REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-692 031.

2. SUB INSPECTOR OF POLICE, PATHANAMTHITTA-689 675.

3. SUB DIVISIONAL MAGISTRATE, ADOOR-691 523. BY PUBLIC PROSECUTOR SMT.S. HYMA. THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON2406-2015, THE COURT ON THE SAME DAY PASSED

THE FOLLOWING: rs. Crl.MC.No. 3382 of 2015 APPENDIX PETITIONER'S ANNEXURES:- ANNEXURE A1- A TRUE COPY OF THE COMPLAINT MADE BY THE MS. SUBI S. RAJ TO THE DIRECTOR GENERAL OF SIGNALS, NEW DELHI. ANNEXURE A2- A TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED IN "THE HINDU" ON DATED JANUARY2D, 2015. ANNEXURE A3- A TRUE COPY OF THE COMMUNICATION RECEIVE BY THE2D PETITIONER'S BROTHER FROM THE OFFICE OF THE4H RESPONDENT. ANNEXURE A4- A TRUE COPY OF THE FIR NO. 2081/2014 AND THE REPORT MADE BY1T RESPONDENT TO THE2D RESPONDENT. RESPONDENT'S ANNEXURES:- NIL. //TRUE COPY// P.S.TO JUDGE rs. ALEXANDER THOMAS, J.

========== Crl.M.C.No. 3382 of 2015 ========== Dated this theO24th day of June, 2015 R D E R The matter in issue raised in this Criminal Miscellaneous Case is covered against the respondents-State by the legal principles laid down by this Court in Santhosh v. State of Kerala reported in 2014 (3) KLT837as well as the judgment dated 19.12.2014 of this Court rendered in the case Sajeesh.K v. State of Kerala in Crl.M.C.No. 7259/2014 and connected cases reported in 2014 SCC Online Ker. 27899 dealing with similar impugned proceedings under Sec.107 of the Cr.P.C. The impugned orders in this case are similar or almost identical to the one considered in the above said reported rulings of this Court. Accordingly, in tune with the directions issued by this Court in the said reported decisions, the impugned order in this case is quashed with liberty to the Sub Divisional Magistrate concerned to take fresh action, if actually necessary, after complying with all the statutory procedural requirements and after applying the legal principles laid down in the aforementioned reported rulings of this Court and in accordance with law.

2. Before parting with this case, this Court is constrained to Crl.M.C.3382/15 - :

2. :- observe that it appears to be indisputable case that there were lot of civil disputes pending in Munsiff's Court, Pathanamthitta between the petitioner herein and one Sri.Rajendran, both of who are stated to be close relatives, arising mainly out of private disputes between them and that there were also crimes registered in

such related incidents and that these crimes appear to be the predominant basis for triggering of the impugned action purported to be under Sec. 107 of the Code of Criminal Procedure. Moreover, one of the crucial allegations of the petitioner referred to in paragraph 8 of the Crl.M.C. has been admitted in paragraph 6 of the statement dated 16.6.2015 filed by the 2nd respondent Sub Inspector of Police, Pathanamthitta, wherein the said Police Officer has stated that the petitioner herein had lodged a complaint before the Deputy Superintendent of Police, Vigilance & Anti Corruption Bureau, Pathanamthitta, alleging that one Sri.Thajudheen, Civil Police Officer, (SPCO2271, who was investigating one of the impugned crimes (Crime No.2010/2014 of Pathanamthitta Police Station referred to as item No.3 in Anx.4) had demanded Rs. 20,000/- from the petitioner for settlement of the case and that on 1.1.2015 at 1.30 p.m. the Vigilance and Anti Corruption Bureau had trapped the above said Sri.Thajudeen, SCPO2271 at Life Line Hospital, Adoor Crl.M.C.3382/15 - :

3. :- and recovered Rs.10,000/- and registered a vigilance crime as VC No.1/2015/PTA in this regard and that the above said SCPO was arrested and produced before the Court of Enquiry Commissioner and Special Judge, Kottayam, which is the special court constituted under the provisions of the Prevention of Corruption Act. Be that as it may, as this Court is not entering into the merits of the controversy, this Court would only hope and expect that the learned Sub Divisional Magistrate should bear in mind that the power conferred to the executive magistracy under Secs.107 and 111 of the Code of Criminal Procedure is a carved out portion of the judicial power of the State and that such power should be exercised with lot of care and circumspection and in the light of the aforementioned well settled principles, keeping in view that any action taken thereunder would detrimentally affect the fundamental freedoms and rights of the affected parties.

3. During the commencement of the submission, Smt.Indu Susan Jacob, learned counsel for the petitioner had also prayed for this Court's permission to amend this Crl.M.C. to incorporate necessary prayers for effectuating fair and proper further investigation in respect of the crimes referred to in the impugned Anx.A-4 order, as according to the petitioner, the investigation has Crl.M.C.3382/15 - :

4. :- not been conducted fairly and properly and has been influenced by the rivals of the petitioner, primarily arising out of the civil disputes pending between the parties. The primary and main focus in the present proceedings initiated under Sec.482 of the Cr.P.C. is regarding the legality and propriety of the impugned order purportedly issued under Sec.107 of the Code of Criminal Procedure. Therefore, this Court is of the considered opinion that such other issues as pointed out by the learned counsel for the petitioner, need not be adjudicated in the present proceedings and needless to say, it is for the petitioner to initiate appropriate proceedings for ventilation of any such grievances, in accordance with law. With these observations and directions, the Crl.M.C. stands finally disposed of.

4. The office of the learned D.G. of Prosecution and the State Prosecutor is requested to forward photocopies of the aforestated reported rulings of this Court to the respondent Sub Divisional Magistrate, Adoor. Sd/- sdk+ ALEXANDER THOMAS, JUDGE ///True copy/// P.S. to Judge Crl.M.C.3382/15 - :

5. :-

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