

**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, THE 24TH DAY OF JUNE 2015 3RD ASHADHA, 1937 CrI.MC.No. 3382 of 2015 () ----- MC. NO.72/2014 of SUB DIVISIONAL MAGISTRATE COURT, ADOOR. .... PETITIONER: ----- RATHEESH KUMAR, S/O. DEVARAJAN, AGED 29 YEARS, 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 ON 24/06-2015, THE COURT ON THE SAME DAY PASSED



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 CrI.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 aforesaid reported rulings of this Court to the respondent Sub Divisional Magistrate, Adoor. Sd/- sdk+ ALEXANDER THOMAS, JUDGE ///True copy/// P.S. to Judge CrI.M.C.3382/15 - :

5. :-

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