

Priya Vs. The State of Kerala

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Court : Kerala

Decided On : Jun-11-2015

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Priya

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ALEXANDER THOMAS THURSDAY, THE 11TH DAY OF JUNE 2015 21ST JYAISHTA, 1937 CrI.MC.No.2849 of 2015 ----- CC NO.3949/2013 of JUDICIAL FIRST CLASS MAGISTRATE COURT, IRINJALAKUDA CRIME NO.601/2013 OF PUDUKKAD POLICE STATION, TRISSUR. ... PETITIONER/PETITIONER: ----- PRIYA, AGED 30 YEARS, W/O. ADVOCATE BENNY KALAN, KALAN HOUSE, NELLAYI DESOM, THRISSUR DISTRICT. BY ADV.SRI.G.SREEKUMAR (CHELUR) RESPONDENT/THE STATE OF KERALA/COMPLAINANT:

----- THE STATE OF KERALA, REP BY THE SUB INSPECTOR OF POLICE, PUDUKAD POLICE STATION, THRISSUR DISTRICT, THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE. THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11-06-2015, THE COURT ON THE SAME DAY PASSED

THE FOLLOWING: pk CrI.MC.No.2849 of 2015 -----
APPENDIX PETITIONER'S ANNEXURES: -----
ANNEXURE I:-A TRUE COPY OF THE FIR IN CRIME NO.601/2013 OF THE
PUDUKAD POLICE STATION DTD194/2013. ANNEXURE II:-A TRUE COPY OF
THE WITNESS MEMORANDUM IN CRIME NO.Z601 OF 2013 OF THE
PUDUKAD POLICE STATION DTD204/2013. ANNEXURE III:-A TRUE COPY OF
THE STATEMENT OF ONE BIJU DTD194/2013. ANNEXURE IV:-A TRUE COPY
OF THE STATEMENT OF ONE K K RAVI, THE THEN SUB INSPECTOR OF
POLICE PUDUKAD POLICE STATION DTD194/2013. ANNEXURE V:-A TRUE
COPY OF THE COUNCIL DECISION OF THE AGRICULTUREAL
DEVELOPMENT SAMITHI DTD204/2013. ANNEXURE VI:-A TRUE COPY OF
THE COUNCIL DECISION OF THE PARAPUKARA GRAMA PANCHAYATH
DTD54/2013. ANNEXURE VII:-A TRUE COPY OF THE FINAL REPORT IN
CRIME601OF 2013 DTD304/2013 OF THE PUDUKAD POLICE STATION
RESPONDENT'S ANNEXURES: NIL ----- //TRUE
COPY// P.S.TO JUDGE pk ALEXANDER THOMAS, J.

===== CrI.M.C.No. 2849 of 2015 ===== Dated
this theO17th day of June, 2015 R D E R It is averred that in the impugned Anx.VII
final report/charge sheet filed in the impugned Anx.1 Crime No.601/2013 of
Puthukkad Police Station, registered for offences under Secs.143, 147, 188, 353
read with Sec.149 of the I.P.C., which is now pending as C.C.No.3949/2013 of
Judicial First Class Magistrate's Court, Irinjalakuda, the name of accused No.2
therein is shown as one Reshmi, but all the other details are that of the petitioner,
whose name is Priya. It is averred that some persons had allegedly indulged in
unauthorised reclamation of paddy land in the nearby locality and that the
members of the locality had organized themselves against such alleged unlawful
action and there was a public agitation. The husband of the petitioner is an
Advocate practising in various courts and the people of the locality had constantly
approached the petitioner's husband for legal advice and assistance for
championing the cause of public grievance against such unlawful reclamation of
paddy land. The petitioner's husband CrI.M.C.2849/15 - :

2. :- instituted several cases on behalf of several aggrieved persons. It is thus stated that the petitioner's husband was not liked by the persons, who are allegedly responsible for such illegal reclamation of paddy land, who were said to be an organized force. It is pointed out that in pursuance of the judgment of this Court in W.P.(C).No. 8664/2013, the Puthukkad Police was directed to ensure adequate police protection for removing the earth from the land in question on 19.4.2013 and it is alleged by the Police that several persons had obstructed the police from discharging their duties in the grant of police protection for undertaking the reclamation work, which led to the institution of Anx.I Crime No.601/2013 of Puthukkad Police Station. 18 accused persons have been included in that case and that the impugned Anx.VII final report/charge sheet was filed in the above said crime. The name of the 2nd accused shown in the impugned final report/charge sheet is as "Reshmi", aged 28 years, W/o.Benny, Kalan Veedu, Ponkothri Desom. The petitioner became aware about the pendency of the above said criminal proceedings only much after the submission of the impugned final report. As the name shown in A-2 is Reshmi, and since the address except the name, tallied with that of the petitioner, she has instituted the instant Criminal Miscellaneous Case for quashment of the impugned CrI.M.C.2849/15 - :

3. :- criminal proceedings. It is stated that the petitioner was not in any way involved with the above said incident, which led to the registration of the impugned crime and that the persons, who were behind the organised reclamation work, had misled the Police to falsely implicate the petitioner just to harass and deter the petitioner's husband, who is an Advocate, from fearlessly carrying out his professional service to the public, who were aggrieved by such illegal reclamation work. Even the name of the petitioner Priya is not shown in the final report/charge sheet inasmuch as the name shown therein is that of one Reshmi, whereas the petitioner's name is Priya. It is in the light of these aspects that the petitioner has filed the instant CrI.M.C. seeking the quashment of the impugned criminal proceedings against her.

2. Heard Sri.G.Sreekumar Chelur, learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

3. If, as a matter of fact, the petitioner was really involved in the incident, which led to the present impugned crime, then the Police authorities and the complainants concerned would have certainly correctly given the name of the petitioner, as the petitioner's husband, who is an Advocate, is well known to all the CrI.M.C.2849/15 - :

4. :- persons in the locality including the local Police. Even though there was some mistake in the name, the Police could have corrected such mistake in submitting necessary additional report to correct the name in the FIR by furnishing such report before the jurisdictional Magistrate. That is not done even during the entire process of investigation and even in the impugned Anx.VII final report/charge sheet the name of A-2 is shown as Reshmi and not as Priya. It is only now that the Police had attempted to make a plea that they will make necessary application for correcting the name of accused No.2 as Priya and to delete the name of Reshmi.

4. On evaluation of the entire facts and circumstances of this case, the very initiation of the impugned criminal proceedings purportedly against the petitioner appears to be vexatious and malafide. The version projected by the petitioner that this was done only to harass and deter the petitioner's husband, who was helping the cause of the aggrieved public, appears to be quite credible and more probable than the plea now sought to be made by the Police that they will attempt to make amends at this late stage by correcting the name accused No.2.

5. It has been held by the Apex Court in the case *Shakson Belthissor v. State of Kerala* and another reported in (2009) 14 SCC CrI.M.C.2849/15 - :

5. :- 466 that where a complaint is found to be vexatious or frivolous or oppressive, the power under Sec.482 Cr.P.C could be fittingly exercised to quash such impugned criminal proceedings. In the case *State of Orissa through Kumar Raghvendra Singh and others v. Ganesh Chandra Jew* reported in (2004) 8 SCC40 the Apex Court has held that the impugned criminal proceedings can be quashed where the complaint involves malafides. In the case *Lambodaran Nair v. State of Kerala* reported in 2003 (1) KLT SN115Case No.83 (SC) it has been held by the Apex Court that the power under Sec.482 Cr.PC can be exercised where criminal proceedings were manifestly attended with malafides or to wreck personal

vengeance. In the case *Om Prakash v. State of Jharkhand* reported in (2012) 12 SCC72 the Supreme Court has categorically held that if it appears to the trained judicial mind that continuance of a prosecution will lead to abuse of process of law or miscarriage of justice, the power under Sec.482 of Cr.P.C. must be exercised and the proceedings must be quashed. The Supreme Court in the case *Ravindran Singh v. Sukbhir Singh and others* reported in 2013 KHC4032(SC), has held that a person cannot be permitted to unleash vendetta to harass another person needlessly and that "ex ditione justitiae" is inbuilt in the inherent powers of the High Court and the Crl.M.C.2849/15 - :

6. :- whole idea is to do real, complete and substantial justice, for which the court exists and it becomes the paramount duty of the court to protect an apparently innocent person not to be subjected to prosecution on the basis of wholly untenable complaint. Further, in the case *Bhupendra v. Raj and Anr.* reported in 2013 KHC2356(SC) the Supreme Court has held that in a case where it is shown that the prosecution launched is not bonafide and tainted with motive for taking vengeance, the exercise of power by the court under Sec. 482 is well justified in quashing such proceedings.

6. Evaluating the factual matrix that has emerged in this case, in the aforesaid legal framework, this Court is of considered opinion that the impugned criminal proceedings are tainted by vexatiousness and certainly tainted by legal malafides. Accordingly, it is ordered that the impugned Anx.VII final report/charge sheet filed in Anx.1 in Crime No. 602/2013 of Pudukkad Police Station to the limited extent it affects the petitioner herein and all further proceedings arising therefrom to the limited extent it affect the petitioner herein will stand quashed. This Court is constrained to render the findings and directions in this order only in the limited context of the plea made in the case of the petitioner and the findings and directions in this order shall not in any way trammel or Crl.M.C.2849/15 - :

7. :- influence the impugned criminal proceedings to the extent it affect the other accused persons and the findings and directions issued in this order shall not in any way be construed to, even remotely, as an expression of opinion of this Court on the merits or otherwise of the impugned criminal proceedings to the extent it

affect the other accused persons. With these observations and directions, the
Crl.M.C. stands finally disposed of. Sd/- sdk+ ALEXANDER THOMAS, JUDGE
///True copy/// P.S. to Judge

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