

Manoj Kumar Vs. State of Kerala

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Court : Kerala

Decided On : Jul-06-2015

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Manoj Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS MONDAY, THE 6TH DAY OF JULY 2015 15TH ASHADHA, 193 CrI.MC.No. 7048 of 2014 ----- CRIME NO. 1341/2014 OF CHAVARA POLICE STATION, KOLLAM. PETITIONER/1ST ACCUSED: ----- MANOJ KUMAR, AGED 47 YEARS, (A1) S/O. SUNDARESAN, MANAGER, JITHIN INDUSTRIES, PATTATHANAM, KOLLAM. RESIDING AT MANGALATHU VEEDU, PERINAD.P.O., KOLLAM-691 601. BY ADVS. SRI. BINU GEORGE SMT. HEMALATHA RESPONDENT/STATE: ----- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI. GITHESH.R THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: mbr/ CrI.MC.No. 7048 of 2014 ----- APPENDIX PETITIONER(S)' ANNEXURES: ----- ANNEXURE I- A TRUE COPY OF REGISTRATION CERTIFICATES JITHIN INDUSTRIES. ANNEXURE II- A TRUE

COPY OF THE COMPLAINT DATED 14.5.2014 FILED BEFORE THE COMMISSIONER OF POLICE, KOLLAM. ANNEXURE III- A TRUE COPY OF FIR NO.1161/2014 OF CHAVARA POLICE STATION. ANNEXURE IV- CERTIFIED COPY OF FIR NO.1341/2014 OF CHAVARA POLICE STATION. ANNEXURE V- CERTIFIED COPY OF

ORDER

DATED 16.7.2014. ANNEXURE VI- CERTIFIED COPY OF FINAL REPORT FILED IN CRIME NO.1341/2014 OF CHAVARA POLICE STATION. ANNEXURE VII- CERTIFIED COPY OF MAHAZAR IN CRIME NO.1341/2014. ANNEXURE VIII- CERTIFIED COPY OF REMAND APPLICATION IN CRIME NO.1341/2014. ANNEXURE IX- A TRUE COPY OF LICENSE ISSUED BY CHAVARA GRAMA PANCHAYATH DATED 21.4.2012. RESPONDENTS' ANNEXURES: NIL. //TRUE COPY// P.S.TO JUDGE mbr/ ALEXANDER THOMAS, J.

===== Crl.M.C.No. 7048 of 2014 ===== Dated this the 6th day of July, 2015

ORDER

The prayer in this Crl.M.C. is as follows: "..... to quash Annexure IV FIR in Crime No. 1341/2014 of Chavara Police Station, Kollam District and allow this petition in the interest of justice." 2. It is stated that the petitioner is accused No.1 in the impugned Anx.IV Crime No.1341/2014 of Chavara Police Station, Kollam district, registered on 5.6.2014 against the petitioner and two other identifiable persons alleging offence punishable under Sec.353 (Assault or criminal force to deter public servant from discharge of his duty) read with Sec.34 of the I.P.C. The petitioner is said to be the manager of "M/s.Jithin Industries", which manufactures bottles and supplies packaged drinking water under the name, "Acqua Valley" for several years without any complaint from any corner. It is pointed out that on noticing that one Sri.Shajahan of "M/s.Life Industries" is behind the supply of such duplicate products imitating the petitioner's product, complaints were consequently Crl.M.C.7048/14 - :

2. :- filed before the Police on several occasions by the petitioner. That finally, a crime was registered as per Anx.III Crime No.1161/2014 of Chavara Police Station, against Sri.Shajahan at the instance of the petitioner. Aggravated by the act of the petitioner in filing Anx.II complaint before the Commissioner of Police, one Smt.A.K.Mini, the Assistant Commissioner Food Safety, Kollam, contacted the petitioner over phone at the instance of Sri.Shajahan many times and is said to have directed the petitioner to withdraw from the complaint against Sri.Shajahan by threatening that the petitioner will suffer for his act, in case he disobeys the directions of Smt.A.K.Mini, etc.

3. That the petitioner did not withdraw the case and as a counter blast, a false and frivolous case has been filed against the petitioner under the instigation of the said Sri.Shajahan, against the petitioner as per the impugned Anx.IV Crime No.1341/2014 of Chavara Police Station. That the Food Safety Act prescribes procedures for taking sample and no such steps have been taken thereunder and that the impugned Anx.IV Crime No.1341/2014 of Chavara Police Station will not disclose any offence under Sec.353 of the I.P.C. and that the scene mahazar was also not lawfully prepared Crl.M.C.7048/14 - :

3. :- in that case. Accordingly, it is contended that the prosecution as per Anx.IV Crime No.1341/2014, in which the petitioner is accused No.1, is only a futile exercise and serves no purpose. The petitioner has filed Crl.M.A.No.6379/2015 stating that the impugned Anx.VI final report/charge sheet has been filed in the impugned Anx.IV Crime No.1341/2014 of Chavara Police Station. That Anx.VII is the mahazar, Anx.VIII is the remand application in Crime No. 1341/ 2014 and Anx.IV is the copy of the licence issued by the Chavara Grama Panchayath, etc. Accordingly, prayer has been made in that Crl.M.A. for raising the amended plea for quashment of the impugned Anx.VI final report/charge sheet.

4. It is contended by the petitioner that, as revealed from Anx.I registration certificate and Anx.IX licence issued by the Panchayat authority, the building number of the petitioner's concern, "M/s.Jithin Industries", is CPXII-706, 707, but that as per the impugned Anx.VII scene mahazar prepared by the Police, the building number mentioned is IX/209. That Anx.VIII remand application reveals

that accused No.2, Sri.Ramachandran opened the premises for preparing the mahazar, but in the scene mahazar it is one Sri.Shareef, who accompanied the defacto complainant had CrI.M.C.7048/14 - :

4. :- shown the premises for preparing scene mahazar. That as per Anx.VIII remand application, the scene mahazar was prepared and produced before the Judicial First Class Magistrate's Court, Karunagappally on 6.6.2014 itself. But Anx.V order reveals that no scene mahazar was produced till 16.7.2014. Accordingly, it contended that the Chavara Police had never prepared the scene mahazar at the place of occurrence.

5. It is further contended that accused No.2, Sri.Ramachandran was present in the place of occurrence at the time of preparing the mahazar, but he was not arrested by the Police. According to the statement dated 19.12.2014 filed on behalf of the respondent officer in this case, accused No.2 was not arrested and was issued notice under Sec.41 A of the Cr.P.C. and that the other accused is not identified so far. But in Anx.VI final report/charge sheet it stated that on 21.9.2014, accused No.2 was present before the Chavara Police after getting notice, Police identified him and had let him to go after being convinced about the offence. Thus it is pointed that these are clearly contradictory versions given by the prosecution, which vitally affect the substratum of the case.

6. It is also contended that the impugned Anx.IV FIR and FIS CrI.M.C.7048/14 - :

5. :- show that the defacto complainant had seen a vehicle bearing registration No.KL-2-AM4860 illegally distributing bottled water and had questioned the driver by name, Sri.D.Shibu, Chatholil Kizhakkatil, Maruthadi, Kollam and that he disclosed that the above said water is bottled from "M/s.Jithin Industries, Pattathanam". That as per the above information, the defacto complainant and the party inspected the premises of the petitioner and the alleged incident has occurred. It is further pointed out that the Police had never seized the vehicle or arrested the driver, who is said to have allegedly unlawfully distributed bottled water. It is also pointed out that being statutory officials dealing with food safety, the defacto complainant and the party are under bounden to follow certain mandatory procedures under Secs.34 and 39 of the Food Safety and Standards

Act, 2006 and that they have never complied with these mandatory provisions of law. That it is only with illegal motive to book the petitioner falsely as culprit, with a view to helping the business rival of the petitioner that the impugned Anx. IV Crime and the impugned Anx.VI final report/charge sheet has been falsely fabricated against the petitioner. The petitioner accordingly contends that in the light of the aforestated facts and circumstances Crl.M.C.7048/14 - :

6. :- it would clearly show that, as a matter of fact, no such incident has occurred as alleged by the Police in Anx.IV Crime No.1341/2014 of Chavara Police Station and that the offence charged against the petitioner as per the impugned Anx.VI final report/charge sheet will not stand in the eye of law.

7. Heard Sri.Binu George & Smt.Hemalatha, learned Advocates appearing for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

8. The petitioner reiterated the aforestated submissions and contentions. The learned counsel for the petitioner submitted that this Court may direct the court below to consider the petitioner's application for discharge by permitting the petitioner to raise the aforestated contentions and necessary directions may be given to ensure consideration of such application of discharge by the court below. In the light of submissions made by the petitioner, it is ordered in the interest of justice that the petitioner will be liberty to file appropriate application seeking discharge in this case before the court below, provided the stage for consideration of such application for discharge has not yet been crossed. In that event the court below will consider such application for discharge that may be Crl.M.C.7048/14 - :

7. :- filed by the petitioner without any further delay, on merits and in case the petitioner raises the aforestated submissions and contentions or any other contentions, the court below shall advert to each such contention and deal with the same, after hearing the petitioner through his counsel, if any, and learned Public Prosecutor, and will pass appropriate orders thereon, without much delay. It is open to the petitioner to make such appropriate application for discharge along with a certified copy of this order, in which event, the same shall be considered as directed above, if the stage for such consideration of discharge plea has not yet

been crossed. 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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