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Court : Kerala

Decided On : Sep-13-2012

Judge : S.S. Satheesachandran

Appeal No. : Crl.MC. No. 2744 of 2012

Appellant : Raju Thomas @ John Thomas

Respondent : State of Kerala, Represented by Public Prosecutor

Judgement :

1. Petitioner is the accused in a pending case on the file of the Judicial Magistrate of the First Class, Kunnamangalam. He is being prosecuted for offences punishable under Section 153 and 427 of the Indian Penal Code (for short “the IPC”), on a report filed by the Sub Inspector of Police, Medical College Police Station, Kozhikode. Gist of the accusation is that he had destroyed a notice board put up by some social activists at a public place with intend to commit disruption of public peace, and, by his acts he caused loss of Rs.500/- to the de facto complainant. Annexure A2 is a copy of the final report laid before the magistrate. Cognizance of the offences in the report taken against the accused, the case now awaits further steps for trial. Petitioner has filed the above petition to quash the criminal proceedings against him invoking under Section 482 of the Code of Criminal Procedure (for short “the Code”).

2. I heard the learned counsel for the petitioner and also the learned Public Prosecutor.

3. The materials placed by the prosecuting agency do not disclose of any of the essential ingredients constituting the offences, to proceed against the petitioner, and as such the criminal proceedings initiated against him are an abuse of the process of the court, is the submission of his counsel.

4. Annexure A1 is the complaint given by the de facto complainant before the Circle Inspector of Police to proceed against the accused for the alleged criminal acts imputed over the destruction of a notice board. Annexure A6 is a copy of the notice affixed on such board, which was destroyed by the accused. Going through Annexure A6, it is seen that the notice put up naming the accused imputed him as an uncivilized person indulging in antisocial activities. If he does not reform, then, the people of the locality will do what is necessary, is the substance of the notice published. Such a notice published and put up in a board at a public place was torn up and destroyed by the petitioner/accused, is the case of the complainant alleging that thereby he has suffered loss of Rs.500/-. Even assuming that the allegation raised is true and correct, still, how far the complainant or any other person could have put up a notice board in a public place, the contents of which as per se defamatory against the petitioner is also a larger issue presented on the allegation raised in the complaint. Petitioner has got a case that as against the complainant he had previously launched criminal proceedings which after investigation by the police, has led to his indictment and trial before a court. When such circumstances are canvassed of, which are not refuted, that has also to be taken note of in considering whether the criminal proceedings launched against the petitioner on the complaint over the destruction of the notice board is justified.

5. To constitute an offence under Section 153 of the IPC, the essential ingredients thereof have to be made out. The 'act' imputed against the accused is illegal, he has done such act malignantly or wantonly, and, he has given provocation to any person intending or knowing that such provocation will cause the offence of rioting are the ingredients to establish the offence. To hold that an act is done malignantly, it must be an unlawful act done intentionally without just cause or

excuse. "Malignant" means extreme malevolence or enmity; violently hostile or harmful. The act imputed, if not maliciously, should be at least shown to have been done wantonly. "Wantonly" simply means recklessly, thoughtlessly, without regard for right or consequences. More than that the act has been done maliciously or wantonly, it is also required to be shown that the act of the accused was illegal. A notice containing defamatory statement put up in a board at a public place against the accused was torn off by him. Even if that is accepted on its face value, it cannot be viewed as an unlawful act done by him out of extreme malevolence or enmity or recklessness. Notice board containing defamatory statement against the accused is not disputed. None has a right to exhibit such a notice board in a public place cannot also be lost sight of. Even assuming that the complainant should have approached the law enforcing agency rather than taking action by himself, in the given facts and circumstances presented, it cannot be stated that tearing of the notice board containing defamatory statement against him and that too exhibited in a public place was an act done by him with intent to provoke any person to commit the offence of rioting. Where the exhibiting of such a board against him at a public place itself is shown to be illegal, tearing away that notice board, even if such allegation is accepted as true, cannot be considered as an act intentionally done to provoke any other person to commit rioting. At best, it was an act of removing a notice board affecting his self respect and dignity when it was exhibited by some miscreants at a public place.

6. In the given facts of the case, the allegation imputed that by destruction of the notice board loss of Rs.500/- was caused to the complainant, to constitute an offence under Section 427 of the Code, cannot also be accepted. The mischief, prima facie, is attributable to the de facto complainant in putting up such notice board containing defamatory statements against the petitioner/accused. In such circumstances, I find, continuation of the criminal proceedings against the petitioner is nothing but an abuse of the process of the court.

Criminal proceedings against the petitioner in S.T.No.1049 of 2012 on the file of the Judicial Magistrate of the First Class, Kunnamangalam are quashed under Section 482 of the Code.

Crl.M.C. is disposed of as above.

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