Kerala High Court
Cc 85/2015 Of Judicial Magistrate ... vs By Adv. Sri.Kaleeswaram Raj on 9 April, 2021

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

FRIDAY, THE 09TH DAY OF APRIL 2021 / 19TH CHAITHRA, 1943

Crl.MC.No.1382 OF 2016(C)

CC 85/2015 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,RANNI

PETITIONER/ACCUSED

BINU K. SAM
S/O.K.J.SAMUEL, BRC TRAINER, BLOCK RESOUCE CENTRE (SSA) PAZHAVANGADI P.O. RANNY 689 673 RESIDING AT KUZHIKALAYIL HOUSE, RANNY 689 672, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS/COMPLAINANT

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI 31.

2 JAGADEESH KUMAR
S/O.KARUNAKARAN, PAUVATH HOUSE, RANNY P.O., RANNY TALUK, PATHANAMTHITTA 689 672.

BY ADV. SRI.SUNIL JACOB JOSE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 09.04.2021, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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ORDER

Dated : 8th April, 2020

1. The petitioner/accused in C.C.No.85/2015 on the files of the Judicial First Class Magistrate Court, Ranny approaches this Court seeking for quashing the proceedings .

2. C.C.No.85/2015 has been charge sheeted by the Sub Inspector of Police, Ranny against the petitioner/accused (in short, the petitioner) under Sections 469, 471 IPC and Section 118(d) of the Kerala Police Act. The case was initiated upon a private complaint filed by the second respondent - defacto complainant who is a colleague of the petitioner.

3. According to the learned counsel, the continuation of the proceedings against the petitioner would be an abuse of process of law and no offence as alleged is made out against him.

4. Notice was issued to the respondents. Sri.P.K. Babu, learned Public Prosecutor appeared on behalf of the State, Adv.Sri.Sunil Jacob Jose, appear on behalf of the second respondent. Heard Crl.M.C.No.1382 of 2016 both sides. Learned counsel for the petitioner filed argument notes also. Lower court records were called for also.

5.Learned counsel for the petitioner challenges the proceedings on the following grounds:

(i) No offence u/s.469 IPC is made out even if the entire allegations against the petitioner is accepted.

(ii) The offence u/s.469 & 471IPC cannot go together.

(iii) Offence u/s.471 IPC is not made out .

(iv) The prosecution is bad for want of sanction u/s.197 Cr.P.C.

6.The learned counsel for the second respondent - defacto complainant (hereinafter be referred as second respondent) on the other hand would vehemently contend that the proceedings initiated against the petitioner is perfectly in order. He would also content that there was a request by the investigating officer to send the signatures for expert opinion, but no follow up action is seen taken. No sanction is required in a case involving S.469 and 471 IPC since it is not the official duty of a public servant to commit forgery. Crl.M.C.No.1382 of 2016 Further he would contend that the present Crl.M.C. filed by the petitioner is highly premature and hence cannot be considered at all.

7.At the outset the learned counsel for the petitioner would contend that though Sec.118 (d) of the Kerala Police Act , 2011 is also incorporated in the charge it has been struck down by the Hon'ble Supreme court in Shreya Singhar v. Union of india 2015 5 SCC 1) as violative of Article 19(1)(a) of the Constitution of India and therefore , that charge will not survive. That fact is not further under challenge also.

8.Firstly, I will answer the question regarding the sanction u/s.197 Cr.P.C. To content that the petitioner would come within the definition of 'public servant' contemplated under Sec.197 Cr.P.C, reliance was placed on Section 2(y) of Cr.P.C, where in it is provided that the word used in Cr.P.C but not defined in it will have the same meaning assigned in IPC. The term 'public servant' is not defined in Cr.P.C. and the definition as provided under IPC deemed to have the same meaning. Section 21 IPC defines 'public servant' Crl.M.C.No.1382 of 2016 falling under any of the descriptions

provided therein. Section 21(12)(a) IPC says that every person in the service or pay of the Government or remuneration by fee or coming for the performance of any public duty by the Government is a public servant. R.S. Nayak v. A.R. Antulay [(1984) 2 SCC 183] was relied on to content that there are three independent categories comprehended in clause (12) (a) of S.21 IPC and if a person falls in any one of them, he would be a public servant. The three categories as held are (i) a person in the service of the Government; (ii) a person in the pay of the Government; and (iii) a person remunerated by fees or commission for the performance of any public duty by the Government.

9.The learned counsel would also contend that the petitioner is an aided School teacher being paid by the Government who was on deputation as a Block Trainer of Block Resource Centre as part of the SSA project and at the time of the alleged incident he was discharging a public duty. He would also contend that Sec.9(1) of Kerala Education Act, 1958 provides that Government shall pay the Crl.M.C.No.1382 of 2016 salaries of all Aided School teachers and to contend that he is a 'public servant' nor removable from his office save by or with the sanction of the Government as contemplated under Sec.197 Cr.P.C he would place reliance on Sec.12(2) of the Kerala Education Act, 1958 which provides that no teacher of an Aided School can be removed from his post without the prior sanction of the Government. That according to him, would take in the petitioner as a public servant as provided under Sec.197 Cr.P.C.

10.Section 197 Cr.P.C. specifies condition precedent for taking cognizance of an offence by a criminal court against a public servant. The person should be removable from office either by the Government or with the sanction of the Government. But what Section 12(2) of the Kerala Education Act provides is that no teacher of an aided school shall be dismissed, removed or reduced in rank by the Manager without the previous sanction of the officer authorized by the Government in this behalf etc. So Section 12(2) makes it clear that only sanction of the officer authorized by the Government would be sufficient for dismissal, removal or reduction Crl.M.C.No.1382 of 2016 in rank by the manager of a teacher of an aided school. That will not come within the sweep of S.197 Cr.P.C. as a public servant not removable from his office save by or with the sanction of the Government. In other words the officers who could be removed by an officer who had been delegated with power by the Government will not come within the purview of Section 197 Cr.P.C. It is relevant in this context to quote Pichai Pillai and Ors. v. Balasundara Mudaly and Ors [AIR 1935 Mad 442 : Manu/TN/0134/1935] wherein it has been held that the expression "any public servant who is not removable from his office save by or with the sanction of a Local Government or some higher authority" will not include public servants whom some lower authority has by law or rule or order been empowered to remove. It is also relevant in this context to quote Afzalur Rahman v. King Emperor : R.R. Chari v. State of U.P. [AIR 1943 PC 18 : MANU/FE/0005/1943] wherein it has been held that a Police officer who can be dismissed by the Deputy Inspector-General of Police under the statutory rules and regulations is not a person "not removable from office except by or Crl.M.C.No.1382 of 2016 with the sanction of the Provincial Government" within the meaning of Sec.197 of the Criminal Procedure Code and sanction under that section is not, therefore, necessary for prosecuting such an officer for an offence alleged to have been committed by him. Of course our State by subsequent notification extended the protection under Section 197 Cr.P.C. to all the police officers including the rank of Head Constable. So the petitioner herein will not come within the

purview of public servant' under Sec.197 Cr.P.C requiring prior sanction for initiating prosecution.

11.The learned counsel for the respondent would also content that in view of the nature of the offence alleged against the petitioner the sanction is not required. In this context it is relevant to quote State of H.P. v. M.P. Gupta [(2004) 2 SCC 349 : 2004 KHC 227] wherein the Apex Court has held that it was not part of public duty to commit offence under Secs 467, 468 and 471 IPC and there was no need for any sanction to prosecute such a public servant. The same view was expressed in State of U.P. v. Paras Nath Singh [(2009) 6 SCC 372]. In Prakash Singh Badal & Anr. v. State of Crl.M.C.No.1382 of 2016 Punjab & Ors [(2007) 1 SCC 1]. Hence I am also of the considered view that in view of the nature of the offence alleged to have been committed by the petitioner u/s.469 and 471 IPC the petitioner cannot contend about the bar of sanction u/s.197 Cr.P.C. So at any rate, the petitioner is not entitled for the protection under Sec.197 Cr.P.C.

12. According to the learned counsel for the petitioner, even if the entire allegations levelled against him is admitted, no offence u/s.469 IPC would be made out because there is no allegation of doing any act at the instance of the petitioner with intent to harm the reputation of the second respondent would be discernible from any of the records produced from the side of the prosecution. In this context, the learned counsel drew my attention to Annexure I, which is the copy of the complaint which has been forwarded u/s.156(3) Cr.P.C and on the basis of the same crime was registered and Annexure II is the certified copy of the FIR. The complaint arose with respect to the alleged incident happened during a trip of students requiring special care and their parents to Crl.M.C.No.1382 of 2016 Thiruvananthapuram. The petitioner and the second respondent admittedly were trainers of Ranny B.R.C Sarva Siksha Abhiyan. It is alleged that the second respondent and CW1 questioned the activities of the petitioner to grab money by cheating the students and parents providing an unhealthy food. Hence the second respondent and CW1 were not permitted to enter into the bus. Prosecution case is that since they questioned the petitioner in order to intentionally put them to irreparable injuries forging the signatures of the parents complainants have been given to Ranny AEO and DPO with out the knowledge or consent of parents. It is further alleged that after the trip , putting forged signatures of all the parents the petitioner submitted a complaint to Block Programme Officer, District Project Officer, State Project Director, State Programme Officer, AEO, out of which, the second respondent and CW1 were transferred from BRC and their deputation was withdrawn and sent to the parent institutions, out of which the second respondent and CW1 were subjected to irreparable loss and injuries.

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13. So the main argument of the learned counsel is that, even if the entire complaint is accepted, the ingredients of Section 469 of IPC would not attract. It would be relevant to quote Section 469 of IPC.

469. Forgery for purpose of harming reputation.-- Whoever commits forgery, intending that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

14. On analyzing Section 469 it could be seen that in order to attract the offence there should be forgery intending that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose. So intention to harm the reputation of of a party by creating forgery is a sine qua non for attracting Section 469. Committing forgery alone, no doubt, will not attract an offence u/s.469. Apart from forgery there should be an intention that the document forged should harm the reputation of any party or there should be a knowledge that the forged document would likely to be used for harming the reputation of a Crl.M.C.No.1382 of 2016 party.

15.In this case, the allegation quoted above would make it explicit that the allegation of the second respondent is that the alleged act of forgery of the signatures of the parents have been done by the petitioner with a willful intention of causing loss and injuries to the second respondent. So the intention of harming the reputation is conspicuously absent in the complaint. So also the irreparable loss and injury sustained by the second respondent is that the deputation of the second respondent and CW1 were withdrawn and they had been sent to the parent institutions. So the allegations in the complaint would make it clear that the grievances alleged by the second respondent is the irreparable injury and loss sustained by him by the cancellation of the deputation and sending to parent department. On perusing the entire Final Report, it is seen that he was not questioned subsequently. None of the witnesses also stated about the act of the petitioner with intention to harm the reputation of the second respondent. Learned counsel places reliance on paragraph No.18 of a decision of this Court in Rajesh v. Crl.M.C.No.1382 of 2016 State of Kerala [2013 (4) KLT 139] to contend that in order to attract an offence u/s.469 it should be necessary that intention to harm the reputation is an essential ingredient. Learned counsel also places reliance on Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors. [AIR 1988 SC 709] wherein it has been held that when a prosecution at the initiation stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and it is in the interest of justice to permit a prosecution to continue.

16. In this case, as discussed earlier, on a scrutiny of Annexure I complaint filed by the second respondent and the statement of the witnesses, there is nothing to attract the ingredients of the offence u/s. 469 i.e. the act (forgery) has been committed with an intent to harm the reputation of the second respondent.

17.The learned counsel also has got a contention that Sections 469 Crl.M.C.No.1382 of 2016 and 471 of IPC will not go together. Section 471 of IPC reads as follows:

> "471. Using as genuine a forged document or electronic record.--Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record."

18. The contention is that, Section 469 is applicable to a person committing forgery and Section 471 applies to someone other than the person committing the act of forgery. A person committing an offence of forgery commits it with some intention and purpose and that according to him means only that he will commit the offence when he uses the forged material with an offensive intent. If a person simply commits forgery and keeps the forged materials in secrecy, without making any impact on anyone else, then no offence will be made out and hence Section 469 is a self contained provision whereas Section 471 according to him is intended for a situation when a person has not actually committed forgery and it Crl.M.C.No.1382 of 2016 does not apply to a person who committed forgery for whom Section 469 alone can be applied. The punishment for both the offences is one and the same and hence according to him intention of the statute is clear and a person who commits forgery can be prosecuted u/s.469 alone.

19.The argument so advanced by the learned counsel though appear as appreciable on a first blush, on analyzing Section 469 and 471 closely such an interpretation can not be given to Section 471. The argument of the learned counsel that Section 471 will not apply to a person who actually committed forgery will make Section 471 itself as otiose since if a person who committed forgery also used that forged material he cannot be punished u/s 471. In other words, the word 'whoever' used in Section 471 IPC definitely includes a person who committed the forgery and if a person who committed forgery u/s.469 used that document as genuine he will come within a person who knows it as a forged document and the same punishment as a person who committed forgery u/s.469 will follows. In other words if a person who committed forgery u/s.469 uses that Crl.M.C.No.1382 of 2016 forged document as genuine he will have to face the consequences u/s.471 also. If the argument advanced by the learned counsel is accepted, a person who commits forgery u/s.469 used that document as genuine he will have to be left out without any punishment u/s 471. That will not be the intention of the statute. So the contention of the learned counsel that Sections 469 & 471 can not go together can not be accepted.

20.The learned counsel would further contend that the ingredients of the offence u/s.471 is not made out. But the allegation in the complaint is that the petitioner forged signatures of all the parents of the students in the bus and filed the complaint before the Block Development Officer, District Project Officer, State Project Director, State Programme Officer and A.E.O. So there is clear allegation in the complaint of the alleged use of forged document by the petitioner in the complaint. So the contention that an offence u/s.471 is not made out from the complaint is not acceptable.

21. The next argument of the learned counsel is that the entire criminal prosecution against the petitioner is an abuse of process of Crl.M.C.No.1382 of 2016 law. According to him, apart from the petitioner there are other signatories such as Block Programme Officer, District Project Officer, State Project Director, State Programme Officer and Assistant Educational Officer and those complaints were accepted and acted upon and the deputation of the second respondent and CW1 has been withdrawn and they have been sent to the parent institutions. The petitioner also produced Annexure A6 hearing report in connection with the complaint filed by the petitioner with regard to the unruly behaviour of second respondent and CW1 in the trip under SSA conducted on 11.05.2012 in which there is allegation against the second respondent and CW1 by some of the persons who participated in the enquiry and some of the parents also of the opinion that two teachers have been

drunken and they also stated that they have no complaint about the food arrangement. Anyway, the document produced from the side of the petitioner/accused is not to be considered by this Court at this stage of quashment of the proceedings. According to the learned counsel, a teacher who was only fulfilling his official duty has been Crl.M.C.No.1382 of 2016 straightaway subjected to a criminal prosecution by his co-worker to wreak vengeance and that according to him is an abuse of process of law and that itself is a reason to quash the proceedings.

22. Learned counsel places reliance on State of Haryana & Ors. v. Bhajan Lal [1992 Suppl (1) SCC 335]. Para No.102 of the above decision which deals with the principles of law enunciated by the Apex Court relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s.482 Cr.P.C. with illustration of categories of cases wherein power can be exercised to prevent abuse of process of court or otherwise to secure ends of justice was brought to my attention, in which, the learned counsel stress upon clauses 1 to 5 and 7 which have application in the case in hand:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in Crl.M.C.No.1382 of 2016 the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) x x x x (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'"

23. But there is allegation regarding forging the signatures of the parents of the students who were travelling in the bus and submitted to A.E.O, D.P.O without the consent or knowledge of parents and without describing the contents to them. Forging the signatures and producing the same before the authorities would prima facie seems to come u/s.471 IPC. Copy of the Final Report produced

from the side of the petitioner would also go to show that parents of the students have given statement that their signatures were obtained in Crl.M.C.No.1382 of 2016 a white paper and they have signed only in one white paper and they have not signed in the other papers shown to them. So prima facie there are materials to attract the offence u/s.471 IPC, though there are no materials to attract the offence u/s.469 IPC.

24.Bhajan Lal's case referred (supra) by the learned counsel itself would lay down that the power of quashing a criminal proceedings to be exercised very sparingly and with circumspection and that too in the rarest of rare cases. Here there are prima facie material in support of the charge u/s.471 IPC against the petitioner/accused. Hence Crl.M.C cannot be entertained at this stage. In view of the findings above made, the proceedings against the petitioner under Sec.469 IPC and 118 (d) of the Kerala Police Act, 2011 are hereby quashed. It is made clear that there are prima facie materials in support of the charge under Sec.471 IPC against the petitioner/accused.

25. In the result Crl.M.C allowed in part.

Sd/-

Mrcs/Shg M.R. ANITHA, Judge
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APPENDIX

EXHIBITS

EXHIBIT P1	AI: COPY OF THE PRIVATE COMPLAINT AS C.M.P NO.4497/2012 BEFORE THE FIRST CLASS MAGISTRATE COURT, RANNY
EXHIBIT P2	AII: TRUE COPY OF THE FIR
EXHIBIT P3	AIII: CERTIFIED COPY OF THE FINAL REPORT
EXHIBIT P4	AIV: TRUE COPY OF THE WRITTEN DOCUMENT DATED 11/5/2012
EXHIBIT P5	AV: TRUE COPY OF THE COMPLAINT GIVEN TO THE BLOCK PROGRAMME OFFICER
EXHIBIT P6	AVI: TRUE COPY OF THE REPORT OF HEARING
EXHIBIT P7	AVII: TRUE COPY OF THE REPRESENTATION DATED 4/7/2012
EXHIBIT P8	AVIII: TRUE COPY OF THE COMMUNICATION

DATED 12/7/2012