

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V.G. ARUN

FRIDAY, THE 10TH DAY OF MARCH 2023 / 19TH PHALGUNA, 1944

CRL.MC NO. 5 OF 2023

PETITIONERS ACCUSED:

- 1 OMAR ABDUL VAHAB, AGED 38 YEARS
NALAKATH PUTHEN PURAKKAL, MUNDUR (P.O.),
THRISSUR, PIN - 680541

- 2 KALANDOOR KUNHI AHAMAD
AGED 59 YEARS
4041, KALANDOOR HOUSE, SPAS VILLAS, SHAKTHINAGAR,
MANGALURU, KARNATAKA, PIN - 575016

BY ADVS.
NIDHI BALACHANDRAN
VIJAYKRISHNAN S. MENON

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682035

- 2 EXCISE INSPECTOR
EXCISE RANGE OFFICE, KOZHIKODE, PIN - 673004

PP ADV. M.C. ASHI

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
07.02.2023, THE COURT ON 10.03.2023 PASSED THE FOLLOWING:

ORDER

Dated this the 10th day of March, 2023

The petitioners are the Director and Producer of the movie 'Nalla samayam'. Prior to the theatre release of their movie, the petitioners published the trailer of the film as a YouTube video in the official facebook page of the first petitioner. Thereupon, a complaint was received at the Excise Range Office, Kozhikode alleging that one of the characters in the trailer claimed MDMA to be a substance that gives energy and happiness to the user. The allegation was found to be correct on seeing the trailer. By including scenes showing consumption of drugs and by making statements to the effect that MDMA gives energy and happiness, the petitioners were found to be giving a wrong message to the society and thereby acting against the anti-drug movement of the Government. Hence, Crime No. 57 of 2022 was registered against the petitioners at the Kozhikode Excise Range Office for offences under Sections 27 and 29 of the Narcotic Drugs

and Psychotropic Substances Act, 1985. This Crl.M.C. is filed seeking to quash that crime.

2. Heard, learned counsel for the petitioners and the learned Public Prosecutor.

3. Section 27 of the NDPS Act provides punishment for consumption of narcotic drug or psychotropic substance. The prosecution case is that in the trailer published by the petitioners, some characters are seen consuming drugs. I am certain that Section 27 will not apply, since enactment of scenes in a movie cannot lead to the assumption that the actors had actually done what they had enacted. If that reasoning is adopted, actors in villainous roles stand the risk of being tried and convicted for murder, arson and rape.

4. Section 29 deals with punishment for abetment and conspiracy. For the said provision to attract, the accused must have either abetted or conspired to commit an offence punishable under the Act. As I have already found that the main provision, viz; Section 27, is not attracted, no question of abetment or conspiracy arises.

5. The above discussion leads me to the definite conclusion that the ingredients for attracting the offences under Sections 27 and 29 of NDPS Act are not made out, even if the prosecution allegations are accepted in toto. Being so, further proceedings in the crime registered against the petitioners would amount to an abuse of process.

In the result, this Crl.M.C. is allowed and the further proceedings in Crime No. 57 of 2022 of Excise Range Office, Kozhikode is quashed.

Sd/-

V.G.ARUN
JUDGE

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APPENDIX OF CRL.MC 5/2023

PETITIONER ANNEXURES

- Annexure A1 A TRUE COPY OF THE NOTICE DATED 30/12/22
ISSUED U/S 41 A OF CR PC BY THE 2ND
RESPONDENT
- Annexure A2 A TRUE COPY OF THE FIR IN NDPS CRIME NO 57/22
OF THE EXCISE RANGE OFFICE, KOZHIKODE