

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 26TH DAY OF JULY 2022 / 4TH SRAVANA, 1944

CRL.MC NO. 4674 OF 2016

AGAINST THE ORDER DATED 06.02.2013 IN C.M.P.NO.711/2012 OF
JUDICIAL FIRST CLASS MAGISTRATE COURT, NILAMBUR

PETITIONER/ COMPLAINANT IN C.M.P.711/2012 :

GULAM RASUL,
S/O MUHAMMEDKUTTY, AGED 39 YEARS,
MANAKADAVAN HOUSE, KALLIDUMBU, EDAVANNA P.O.

BY ADVS.
SRI.LAL K.JOSEPH
SRI.JOSEPH KURIAN VALLAMATTAM
SRI.V.S.SHIRAZ BAVA
SRI.A.A.ZIYAD RAHMAN

RESPONDENTS/ 1ST RESPONDENT/ ACCUSED IN C.M.P.711/2012 :

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
- 2 A.P. CHANDRAN,
CIRCLE INSPECTOR OF POLICE,
NILAMBUR

BY ADVS.
SRI.K.K.DHEERENDRAKRISHNAN
SRI.D.FEROZE
SRI.S.RAJEEV
SRI.V.VINAY

BY SRI.NOUSHAD K.A., PUBLIC PROSECUTOR

THIS CRIMINAL MISC.CASE HAVING BEEN FINALLY HEARD ON
15.07.2022, THE COURT ON 26.07.2022 PASSED THE FOLLOWING :

BECHU KURIAN THOMAS, J.

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Crl.M.C.No.4674 of 2016

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Dated this the 26th day of July, 2022

ORDER

Petitioner had filed a complaint against a Circle Inspector of Police alleging offences under Sections 341, 323 and 324 of the Indian Penal Code, 1860.

2. By the impugned order, the learned Magistrate found that the sanction for prosecuting the accused ought to have been obtained under Section 197 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') and therefore refused to take cognizance. The aforementioned order refusing to take cognizance and instead deferring the proceedings until sanction is obtained from the Government is impugned in this petition under Section 482 of the Cr.P.C.

3. Sri.Lal K.Joseph, the learned counsel for the petitioner contended that the 2nd respondent police officer had brutally attacked the petitioner with a bamboo stick and dragged him by his hair. Pursuant to the complaint of torture, the learned Magistrate had, on noticing the injuries directed to provide medical attention to

the petitioner and thereafter he was admitted in a hospital at Manjeri for three days. It was further pointed out that a civil dispute existed between the employer of the petitioner and another person in respect of a property and a civil suit as OS.No.26/2012 was pending and that the 2nd respondent had, in connivance with the defendant in the civil suit tried to indulge in an illegal activity. It was further argued that, the learned Magistrate has by the impugned order erroneously held that sanction under Section 197 Cr.P.C. is required. The learned counsel also argued that the 2nd respondent was not acting in discharge of his duty in inflicting torture on the petitioner, and therefore, the impugned order is liable to be set aside.

4. Sri.V.Vinay, the learned counsel for the 2nd respondent contended that the impugned order had considered in detail all the relevant aspects and found that in the nature of the circumstances, sanction under Section 197 Cr.P.C. was essential and therefore rightly deferred taking cognizance of the case. It was further submitted that sanction has not been obtained by the petitioner till date, and hence the complaint itself ought to have been dismissed.

5. Sri.Noushad K.A., the learned Public Prosecutor also submitted that the protection under Section 197 of the Cr.P.C. is

intended with a purpose which the learned Magistrate had considered in detail, and therefore the impugned order does not warrant any interference.

6. I have considered the arguments of both the counsel and have gone through the impugned order.

7. O.S.No.26/2012 was filed admittedly on 13.01.2012 seeking specific performance of an agreement for sale. The plaintiff in the said suit was the alleged employer of the petitioner. It was mentioned in the plaint that the alleged employer of the petitioner was not the owner of the property as on 13.01.2012. In the meantime an FIR in Crime No.48/2012 of Nilambur Police Station was registered on 15.01.2022 alleging that around 30 persons had trespassed into the property on 13.01.2012 having an extent of 30 acres of property, owned by the defacto complainant therein and committed robbery of various articles causing a loss of Rs.10,00,000/-. The property involved in the said crime is the same as the property in the civil suit O.S. No.26/2012. Thus, in short, petitioner's employer and others are alleged to have trespassed into the property of the defendants in O.S. No.26/2012 and committed the offence of robbery.

8. On 23.01.2022 at midnight, petitioner is alleged to have

been arrested by the 2nd respondent and his team of police, pursuant to Crime No.48/2012 of Nilambur Police Station, during the course of investigation. The learned Magistrate found that petitioner was arrested by the 2nd respondent pursuant to the registration of a crime and the same was in the course of investigation. Therefore, undoubtedly the 2nd respondent was acting in discharge of his duty since the arrest was made 7 days after registration of Crime No.48/2012.

9. In this context, it is relevant to mention that a perusal of Annexure -A2 wound certificate issued by the Government Hospital, Manjeri indicates no serious injury having been sustained by the petitioner. The 2nd respondent had contended that pursuant to registration of the crime, petitioner and other accused had absconded and that when the petitioner was identified within the vicinity of the disputed property and while he was being apprehended, he attacked the police with a sword and tried to escape. In the process, the police party had chased the petitioner, and during the chase, petitioner fell down, by which time, the 2nd respondent and other members of the police party reached there and used requisite force to subdue the petitioner and thereafter arrested him.

10. In the decision in **Prakash v. State of Kerala** [2011 (2) KLT 158], the learned Single Judge after analysing the position of law, relating to sanction under Section 197 of Cr.P.C. observed that three questions are to be answered while considering the requirement of sanction under Section 197 Cr.P.C. which reads thus :

(i) What was the particular official duty which was being discharged or purported to be discharged by the public servant, at the time of alleged commission of offence ?

(ii) What act or acts are to be done by the public servant to perform and complete such particular official duty?

(iii) Is there any reasonable connection or relationship between the offending act/ acts allegedly committed by the public servant and, the act or acts which is/ are to be done to perform and complete such particular duty?

11. With the above three questions in mind, when the circumstances of the present case are appreciated, it can be understood that petitioner was apprehended by the 2nd respondent and his team of police, 7 days after registration of crime No.48/2012 and while discharging their official duty. It can also be noticed that in discharge of the said duty, they are entitled to use such force as is necessary to arrest an accused. Further in the

attempt to subdue a fleeing accused, force can be used, and if in that process any injury is caused, it cannot be said that the police officer was not acting in discharge of his duty.

12. The learned Magistrate has held that if in the doing of his official duty, a person acted in excess of his duty, and there is a reasonable connection between the act and the performance of the official duty, the act done in excess cannot be regarded as a sufficient ground to deprive the public servant of the protection under Section 197 Cr.P.C. When a crime alleging robbery and criminal trespass is registered as an FIR, necessarily the police will have to investigate and nab the accused and arrest him. In the process of arresting the accused, the police are entitled to use such force as is necessary to arrest the accused.

13. A reading of the impugned order shows that the learned Magistrate had considered all aspects of the case and appreciated the legal as well as factual issues and found the need for sanction to prosecute the accused before taking cognizance. I do not find any reason to interfere with the conclusions arrived at by the learned Magistrate in Annexure A12 especially under section 482 of Cr.P.C. Hence this Crl.M.C is without merits and is to be dismissed.

14. Before concluding, it is necessary to observe that since the impugned order was issued in 2013 and sanction to prosecute the 2nd respondent has not been obtained so far, in view of the findings arrived at in this order, the conclusion is inevitable - the complaint is only to be dismissed. However, it is for the learned Magistrate to pass appropriate orders.

This Crl.M.C. is therefore dismissed.

Sd/-

BECHU KURIAN THOMAS, JUDGE

RKM

APPENDIX OF CRL.MC 4674/2016

PETITIONER'S ANNEXURES :

ANNEXURE:A1	TRUE COPY OF THE COMPLAINT CMP NO. 711/12 BEFORE THE JFCM COURT NILAMBUR
ANNEXURE:A2	TRUE COPY OF THE ACCIDENT CUM WOUND CERTIFICATE DT. 23/1/12 OF THE GOVERNMENT HOSPITAL, MANJERY
ANNEXURE:A3	TRUE COPY OF THE SALE AGREEMENT DT. 3/1/12
ANNEXURE:A4	TRUE COPY OF THE PLAINT IN OS 26/12 ON THE FILE OF THE SUBORDINATE JUDGES COURT MANJERY
ANNEXURE:A5	TRUE COPY OF THE SWORN STATEMENT
ANNEXURE:A6	TRUE COPY OF THE SWORN STATEMENT AND DEPOSITIONS OF CW1
ANNEXURE:A7	TRUE COPY OF THE SWORN STATEMENT AND DEPOSITIONS OF CW2
ANNEXURE:A8	TRUE COPY OF THE SWORN STATEMENT AND DEPOSITIONS OF CW3
ANNEXURE:A9	TRUE COPY OF THE SWORN STATEMENT AND DEPOSITIONS OF CW4
ANNEXURE:A10	TRUE COPY OF THE SWORN STATEMENT AND DEPOSITIONS OF CW5
ANNEXURE:A11	TRUE COPY OF THE SWORN STATEMENT AND DEPOSITIONS OF CW6
ANNEXURE:A12	TRUE COPY OF THE ORDER DT. 6/2/13 IN CMP 711/12 PASSED BY THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT, NILAMBUR
ANNEXURE:A13	TRUE COPY OF THE PLAINT IN OS 69/12 ON THE FILE OF SUBORDINATE JUDGES COURT, MANJERY
ANNEXURE:A14	TRUE COPY OF THE JUDGMENT DT. 31/1/14 IN OS 69/12
ANNEXURE:A14 (A)	TRUE COPY OF THE DECREE DT. 31/1/14 IN OS 69/12