

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 5TH DAY OF OCTOBER 2023 / 13TH ASWINA, 1945

CRL.MC NO. 7345 OF 2023

**AGAINST THE ORDER/JUDGMENT CRMP 2780/2023 OF DISTRICT COURT &
SESSIONS COURT, ERNAKULAM**

PETITIONER/S:

SOJAN SCARIA
AGED 45 YEARS
S/O. SCARIA KARIYILAKULAM HOUSE, EDAKADATHI P.O.,
ERUMELY SOUTH VILLAGE KANJIRAPPALLY TALUK KOTTAYAM
DISTRICT, PIN - 686510

BY ADV C.G.PREETHA

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF
KERALA ERNAKULAM, PIN - 682031
- 2 THE STATION HOUSE OFFICER
ELAMAKKARA POLICE STATION ERNAKULAM, PIN - 682026
- 3 THE ASSISTANT COMMISSIONER OF POLICE
OFFICE OF THE ASSISTANT COMMISSIONER OF POLICE NEAR
HIGH COURT ERNAKULAM, PIN - 682018

OTHER PRESENT:

HRITCWICK CS PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
05.10.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

CrI.M.C. No. 7345 of 2023

Dated this the 5th day of October, 2023

O R D E R

The petitioner is one of the two directors of a Company named Tidings Digital Publications Private Limited. The Company is registered with the Registrar of Companies, Kerala is the submission. In June 2023, the 1st respondent has registered a criminal case against the Managing Director and two former employees of the company as Crime No. 899/2023 alleging offences punishable under Secs. 3(1)(r), 3(1)(u) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 r/w Sec. 120(O) of the Kerala Police Act, 2011. The defacto complainant is a Member of the Legislative Assembly of the State. Annexure-A3 is the FIR.

2. The prosecution case is that on 24.05.2023, the accused through their online news channel 'Marunadan Malayali' telecasted a video containing certain false news and

information about the defacto complainant who belongs to the Scheduled Caste intending to insult and defame him among the public. The Police conducted search of the Company's office at Thiruvananthapuram in connection with the investigation in the above case and seized cameras, monitors, micro phones, laptops, CCTV DVR etc. It is submitted that under the guise of investigation in connection with the case, the respondents issued instructions to the bankers of the Company and froze the accounts maintained with the SBI, Kowdiar Branch and Federal Bank, Pattom Branch. The search was conducted on 27.06.2023 and 03.07.2023. Annexures-A4 & A5 are the seizure mahazars.

3. On 10.07.2023, the petitioner filed a petition under Sec. 457 Cr.P.C. seeking the release of the articles seized by the police. Annexure-A6 is the petition. The petitioner also filed another application as Crl.M.P.No. 2779/2023 seeking orders directing de-freezing of the Company's bank accounts. When there was delay in passing orders, the petitioner approached this Court and this Court called for a report.

Thereafter, the order is passed dismissing the application. Annexure-A7 is the order rejecting the application submitted by the petitioner for releasing the articles as evident by Annexure-A6. Aggrieved by the same, this Crl.M.C. is filed.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

5. The counsel for the petitioner reiterated the contentions raised in the Crl.M.C. The counsel for the petitioner also submitted that the articles seized are necessary to the petitioner's channel for the day to day affairs. It is submitted that the cameras, monitors, micro phones, laptops, CCTV DVR etc. are seized. The Public Prosecutor seriously opposed the petition. The Public Prosecutor submitted that the petitioner is only one among the Directors and he is not the custodian. But the counsel for the petitioner submitted that Annexures A1 and A2 are the letter of appointment and extract of board of resolution passed by the Company. In the light of Annexures A1 and A2, the contention of the Public Prosecutor will not stand.

6. Annexure-A7 is the impugned order passed by the learned Sessions Judge. The learned Sessions Judge dismissed the application mainly for the reason that seized articles have to be forwarded to the Forensic Science Laboratory (FSL) and the FSL report is necessary. It is submitted that the FSL report has not been received and therefore, the articles cannot be released. Now, the Public Prosecutor after getting instructions submitted that a forwarding note in respect of all the items seized excluding monitor and camera were sent to the Hon'ble District and Sessions Court for forwarding those items to Regional Forensic Science Laboratory (RFSL) for examination. It is also submitted by the prosecution that as per the forwarding note, the items had been sent to the RFSL, Thrissur by the Court on 25.07.2023. But the items were returned by RFSL, Thrissur to the District and Sessions Court vide letter No. B1-2350/2023/RFSL-EKM for want of additional sterile hard disk with double capacity for conducting the examination of data contained in the seized items. Now, these materials are with the Sessions Court, Ernakulam is the

submission of the Public Prosecutor. The Public Prosecutor also submitted that upon calculating the capacity of all items seized in this case, it will come around 36 Terra Byte and hence, it requires a 72 Terra Byte capacity sterile hard disk for conducting the examination. It costs nearly Rs.1,70,000/- and so an application along with three quotations has been submitted to the District Police Chief, Kochi City for getting sanction to purchase the sterile hard disk. Since the sanctioning power of DPC, Kochi City is below the amount needed for purchase of the hard disk, the request has been forwarded to the Police Headquarters, Thiruvananthapuram for sanction and it is under consideration. Hence, it is submitted that the seized items will soon be sent to the FSL after purchasing the abovesaid sterile hard disk. The time needed for examination depends upon the nature of the examination and pendency of cases at RFSL. This is the submission of the Public Prosecutor.

7. The above explanation given by the Public Prosecutor cannot be accepted. The offences alleged in this case are under

Secs. 3(1)(r), 3(1)(u) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sec.120(O) of Kerala Police Act. This case is to be proved mainly based on oral evidence. I do not know why the entire equipments of this channel are seized by the Police in connection with this case. Now, it is stated that the FSL returned the articles stating that sterile hard disk is necessary, for which a separate quotation is submitted by the Police authorities, which is to be sanctioned by the Police Headquarters. It is the case of the prosecution that till then, the channel should work without these equipments. I am of the considered opinion that these materials should be released to the petitioner forthwith. As per the instructions, it is submitted that the monitor and cameras are with the Police and that also should be returned forthwith to the petitioner, after executing a bond. If the examination of the material is necessary, the Police can direct to produce the articles one after the other instead of seizing the entire articles.

Therefore, this Crl.M.C. is allowed in the following manner :

- 1) Annexure-A7 is set aside.
- 2) The prayer in Crl.M.P. no. 2780/2023 is allowed. The Sessions Court, Ernakulam is directed to release the articles after imposing appropriate conditions, including a condition to the effect that the petitioner shall not erase or tamper any contents of the equipments.
- 3) The Police authorities will immediately, at any rate, within one week from the date of receipt of a certified copy of this order, release the monitor and cameras kept in the Police Station after executing a bond, in accordance with law.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

APPENDIX OF CRL.MC 7345/2023

PETITIONER ANNEXURES

- ANNEXURE A1 THE TRUE COPY OF THE LETTER OF APPOINTMENT OF THE PETITIONER AS ADDITIONAL DIRECTOR IN THE BOARD OF THE COMPANY ISSUED BY THE MANAGING DIRECTOR ON BEHALF OF THE BOARD OF DIRECTORS OF THE COMPANY DATED 28.08.2020
- ANNEXURE A2 THE TRUE COPY OF THE RESOLUTION OF THE BOARD OF DIRECTORS AUTHORISING THE PETITIONER TO REPRESENT THE COMPANY BEFORE ANY COURT OF LAW DATED 02.05.2023
- ANNEXURE A3 THE TRUE COPY OF THE FIR IN CRIME NO 899 OF 2023 REGISTERED BY THE ELAMAKKARA POLICE STATION, ERNAKULAM DISTRICT DATED 09.06.2023
- ANNEXURE A4 THE TRUE COPY OF THE SEIZURE MAHAZAR DATED 27.06.2023
- ANNEXURE A5 THE TRUE COPY OF THE SEIZURE MAHAZAR DATED 03.07.2023
- ANNEXURE A6 THE TRUE COPY OF THE PETITION IN CRL.M.P.NO 2780 OF 2023 ON THE FILE OF DISTRICT AND SESSIONS COURT, ERNAKULAM (SPECIAL COURT FOR SC/ST (PA) ACT CASES) FILED BY THE PETITIONER DATED 10.07.2023
- ANNEXURE A7 THE CERTIFIED COPY OF THE ORDER IN CRL.M.P.NO 2780 OF 2023 PASSED BY THE SESSIONS COURT, ERNAKULAM DATED 24.08.2023