

W.P.(C) No. 4888/2023 : 1 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 14TH DAY OF FEBRUARY 2023 / 25TH MAGHA, 1944

WP(C) NO. 4888 OF 2023

PETITIONER/S:

SANTHOSH KUMAR,
AGED 46 YEARS
S/O MALATHY AMMA, KAVUNGAL, MUKUNDAPURAM TALUK,
PRASANTHI NAGAR, PUTHENCHIRA SOUTH (PO), PUTHENCHIRA
VILLAGE, THRISSUR DISTRICT-PINCODE, PIN - 680 682.
BY ADV RAKESH RAJ R.

RESPONDENT/S:

- 1 THE HIGH COURT OF KERALA
REPRESENTED BY THE REGISTRAR DISTRICT JUDICIARY, HIGH
COURT OF KERALA, ERNAKULAM, KOCHI-, PIN - 682 031.
- 2 THE PRINCIPAL DISTRICT & SESSIONS JUDGE
DISTRICT & SESSIONS COURT, 5TH FLOOR, NEW COURT COMPLEX
AYYANTHOLE, THRISSUR, PIN - 680 003.
- 3 THE BAR COUNCIL OF KERALA,
REPRESENTED BY THE SECRETARY TO THE BAR COUNCIL, BAR
COUNCIL BHAVAN, HIGH COURT CAMPUS, KOCHI, PIN - 682 031.
- 4 C.V SABURAJ,
ADVOCATE, ROLL NUMBER: K/153/2000, ROOM NUMBER - 4,
ALENGADAN BUILDING, OPP.MAGISTRATE COURT, IRINJALAKUDA-
680 121, PERMANENTLY RESIDING AT CHULLIKKATTIL HOUSE,
POOKODE, VARAKARA P.O, PIN - 680 302.
- 5 M.V SATHIANARAYANAN,
ADVOCATE, S/O VENKATA EMBRATHIRI AGED 51 YEARS, ROLL. NO.
K/ 1136/1993, ROOM NUMBER - 5, ALENGADAN BUILDING,
OPP.MAGISTRATE COURT, IRINJALAKUDA-680 121, PERMANENTLY
RESIDING AT MADAPARAMBU MADATHIL, CHALAKUDY TALUK,
PADINJARE CHALAKKUDI VILLAGE, PIN - 680 307.

R3 - SRI.P.L.SIVARAMAN
SRI.PRANOY KOTTARAM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14.02.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R'

SHAJI P. CHALY, J.

W.P.(C). No. 4888 of 2023

Dated this the 14th day of February, 2023.

JUDGMENT

Petitioner has filed this writ petition seeking to quash Exhibit P2 order dated 28.12.2022 passed by the District Judge, Thrissur on the administrative side, in a proceeding initiated on the basis of a complaint submitted by the petitioner; whereby the learned District Judge, after conducting an enquiry, held that since the proceedings are pending before the Bar Council of Kerala and the Munsiff's Court, Irinjalakuda, it has to attain logical conclusion, and accordingly the petition seeking to take action against respondent Nos. 4 and 5, who are advocates practicing in Irinjalakuda courts was rejected.

2. The basic material facts for the disposal of the writ petition are as follows:

According to the petitioner, he works as a production Executive, both in Malayalam and Tamil Film Industry. Respondent Nos. 4 and 5, who are advocates enrolled with the Bar Council of Kerala and members of Irinjalakuda Bar Association, have committed fraud and falsification of the document and secured a

decree in O.S.No 2641 of 2017 on the files of the Munsiff's Court, Irinjalakuda. It is the further case of the petitioner that a decree was passed by the Munsiff's Court on the basis of a fabricated compromise document and various other records forged by superimposing the signature of the petitioner by colluding with the 5th respondent Advocate.

3. It was thereupon that a complaint was filed by the petitioner to the District Judge, Thrissur narrating the whole episode. The learned District Judge, after taking into consideration the facts and figures in the complaint, has rejected the complaint stating that the subject matter is to be considered by the concerned Munsiff's Court under Section 340 of Cr.P.C. So also, it is held that since the party respondents are enrolled with the Bar Council of Kerala, it is vested with powers to take appropriate action in accordance with law. It is thus, challenging the legality and correctness of the decision taken by the District Judge, Thrissur, the writ petition is filed.

4. I have heard the learned counsel for the petitioner Sri. Rakesh Raj R, and perused the pleadings and material on record.

5. The issue with respect to the falsification or forgery of documents when raised before a court of law which dealt with the litigation is a subject matter to be considered by the said court itself

invoking the provisions of Section 340 of Cr.P.C. Section 340 Cr.P.C is a self contained provision having its own mechanism to tackle such a situation. The said provision reads thus:

340. Procedure in cases mentioned in section 195.—(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of Justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—

(a) record a finding to that effect;
(b) make a complaint thereof in writing;
(c) send it to a Magistrate of the first class having jurisdiction;
(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

1[(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.]

(4) In this section, "Court" has the same meaning as in section 195"

6. Therefore, on an analysis of the said provision, it is clear that the Judicial Officer concerned is vested with ample powers to conduct an enquiry and submit a complaint before the Jurisdictional Magistrate. That being the legal position, the complaint submitted by the petitioner on the administrative side of the District Judge is not legally sustainable. This I say because, when a specific power is conferred under a statute to tackle a particular situation on a judicial officer on the judicial side itself, that precludes the administrative authority to entertain a complaint and take a decision on the administrative side.

7. Therefore, I do not think, the petitioner has made out a case to interfere with Exhibit P2 order passed, in a proceeding under Article 226 of the Constitution of India, there being no arbitrariness, illegality or any other legal infirmities justifying me to do so. Therefore, the reliefs sought for in the writ petition are declined.

8. However, at that point of time, learned counsel for the petitioner submitted that he had only filed an application before the Munsiff's Court, Irinjalakuda to set aside the compromise decree. In my considered view, if the application submitted to set aside the decree contains the relevant particulars with respect to the alleged forgery and falsification of the records, it is for the Munsiff to take

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appropriate action in accordance with law. In that view of the matter, the liberty of the petitioner to adduce evidence in the pending proceedings are all left open.

Writ Petition is disposed of accordingly.

sd/- **SHAJI P. CHALY, JUDGE.**

Rv

APPENDIX OF WP(C) 4888/2023

PETITIONER'S EXHIBITS:

- Exhibit P1 A TRUE COPY OF THE COMPLAINT DATED 16-11-2022 FILED BEFORE THE PRINCIPAL DISTRICT & SESSIONS JUDGE, THRISSUR.
- Exhibit P2 A TRUE COPY OF THE ORDER PASSED BY THE PRINCIPAL DISTRICT & SESSIONS JUDGE, THRISSUR THROUGH ITS ORDER NO.C1-1999/2022 DATED 28-12-2022.
- Exhibit P3 A TRUE COPY OF THE NOTICE SERVED BY THE MUNSIFF COURT, KODUNGALLOOR DATED 20-10-2021 IN EP NO 573 OF 2021 IN OS NO 2641 OF 2017.
- Exhibit P4 A TRUE COPY OF THE EXECUTION PETITION NUMBER EP.NO. 573 OF 2021 IN OS NO 2641 OF 2017 IN THE FILE OF THE MUNSIFF COURT, KODUNGALLUR DATED 23-09-2021.
- Exhibit P5 A TRUE COPY OF THE AFFIDAVIT FILED ALONG WITH EXECUTION PETITION NUMBER EP.NO. 573 OF 2021 IN OS NO 2641 OF 2017 IN THE FILE OF THE MUNSIFF COURT, KODUNGALLUR DATED 23-09-2021.
- Exhibit P6 A TRUE COPY OF THE EXECUTION APPLICATION NUMBER EA.NO.241 OF 2021 IN EP.NO. 573 OF 2021 IN OS NO 2641 OF 2017 IN THE FILE OF THE MUNSIFF COURT, KODUNGALLUR DATED 23-09-2021.
- Exhibit P7 A TRUE COPY OF THE COMPLAINT DATED 23-09-2016 GIVEN TO THE SUB INSPECTOR OF POLICE, KATTOOR.
- Exhibit P8 A TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT VIDE NUMBER 439/DPTN/J2/16 DATED 01-10-2016 ISSUED FROM THE OFFICE OF THE SUB-INSPECTOR OF POLICE, KATTOOR.
- Exhibit P9 A TRUE COPY OF THE COMPLAINT DATED 03-03-2017 GIVEN TO THE CIRCLE INSPECTOR OF POLICE, IRINJALAKUDA.
- Exhibit P10 A TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT OF PETITION NUMBER: 29490 OF 2017 DATED 03-03-2017 ISSUED FROM THE OFFICE OF THE CIRCLE INSPECTOR OF POLICE, IRINJALAKUDA.
- Exhibit P11 A TRUE COPY OF THE COMPLAINT DATED 02-03-2017 GIVEN TO THE PRESIDENT, BAR ASSOCIATION IRINJALAKUDA
- Exhibit P12 A TRUE COPY OF THE COMPLAINT DATED 13-04-2017 GIVEN TO THE PRESIDENT, BAR COUNCIL OF KERALA.
- Exhibit P13 A TRUE COPY OF THE LETTER VIDE NUMBER KBC/CP/786/17 DATED 27-04-2017 ISSUED FROM THE BAR COUNCIL OF KERALA
- Exhibit P14 A TRUE COPY OF THE RELEVANT PORTION OF THE GENERAL DIARY OF KATTOOR POLICE STATION

- HAVING THE ENTRY DATED 27-10-2016.
- Exhibit P15 A TRUE COPY OF THE SUIT IN O.S.NO.2641/2017 DATED 25TH DAY OF AUGUST, 2017 FILED BEFORE THE MUNSIFF COURT, IRINJALAKUDA.
- Exhibit P16 A TRUE COPY OF THE FRONT SIDE OF THE POSTAL ACKNOWLEDGMENT CARD HAVING SEAL AFFIXED BY THE POSTAL DEPARTMENT DATED 03-04-2017.
- Exhibit P17 A TRUE COPY OF THE REVERSE SIDE OF THE POSTAL ACKNOWLEDGEMENT CARD HAVING SEAL AFFIXED BY THE POSTAL DEPARTMENT DATED 12-04-2017.
- Exhibit P18 A TRUE COPY OF THE COPY APPLICATION DATED 16-11-2021 FILED BEFORE THE MUNSIFF COURT, IRINJALAKUDA.
- Exhibit P19 A TRUE COPY OF THE PROCEEDINGS IN O.S.NO.2641 OF 2017 BEFORE THE MUNSIFF COURT, IRINJALAKUDA
- Exhibit P20 A TRUE COPY OF THE REVIEW PETITION DATED 23-11-2017 FILED BY THE 5TH RESPONDENT BEFORE THE MUNSIFF COURT, IRINJALAKUDA AS I.A.NO.6320/2017 IN OS.NO.2641/2017.
- Exhibit P21 A TRUE COPY OF THE CAVEAT PETITION IN O.P.NO.72/2017 DATED 3RD DAY OF JULY,2017 BEFORE THE MUNSIFF COURT, IRINJALAKUDA.
- Exhibit P22 A TRUE COPY OF THE VAKKALATH DATED 22ND DAY OF JULY,2017 ALLEGED TO BE FILED IN CAVEAT O.P.NO.72/2017 BEFORE THE MUNSIFF COURT, IRINJALAKUDA.
- Exhibit P23 A TRUE COPY OF THE AFFIDAVIT FILED BY THE 4TH RESPONDENT ALONG WITH CAVEAT O.P.NO.72/2017 BEFORE THE MUNSIFF COURT, IRINJALAKUDA.
- Exhibit P24 A TRUE COPY OF THE POSTAL RECEIPT FILED BY THE 4TH RESPONDENT ALONG WITH CAVEAT O.P.NO.72/2017 BEFORE THE MUNSIFF COURT, IRINJALAKUDA.
- Exhibit P25 A TRUE COPY OF THE COMPROMISE PETITION DATED 29-08-2017 FILED BY THE 5TH RESPONDENT BEFORE THE MUNSIFF COURT, IRINJALAKUDA AS I.A.NO.4570/2017 IN O.S.NO.2641/2017.
- Exhibit P26 A TRUE COPY OF THE DECREE PASSED BY THE HONOURABLE MUNSIFF COURT, IRINJALAKUDA IN O.S.NO. 2641/2017 DATED 12TH DAY OF DECEMBER, 2017.
- Exhibit P27 THE TRUE COPY OF THE JUDGMENT IN O.S.NO. 2641/2017 DATED 12TH DAY OF DECEMBER,2017.
- Exhibit P28 A TRUE COPY OF THE ENDORSEMENT GIVEN BY THE HONOURABLE MUNSIFF COURT, IRINJALAKUDA ON THE REVERSE SIDE OF THE COPY APPLICATION DATED 16-11-2021 FILED BY THE WRIT PETITIONER.
- Exhibit P29 A TRUE COPY OF THE COMPLAINT NO.CP.52/2022 DATED 4TH DAY OF MAY,2022 FILED BEFORE THE HON'BLE BAR COUNCIL OF KERALA.

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Exhibit P30 A TRUE COPY OF THE OBJECTION DATED 14TH DAY OF JUNE,2022 FILED BY THE 4TH RESPONDENT IN COMPLAINT NO.CP.52/2022 BEFORE THE HON'BLE BAR COUNCIL OF KERALA.

Exhibit P31 A TRUE COPY OF THE PETITION IN RP.NO.49/2022 IN O.S.NO.2641/2017 DATED 7TH JULY,2022 IN THE FILE OF THE MUNSIFF COURT, IRINJALAKUDA.

Exhibit P32 A TRUE COPY OF THE COMPLAINT GIVEN BY THE 4TH RESPONDENT BEFORE THE BAR ASSOCIATION, IRINJALAKUDA DATED 23-06-2022.

RESPONDENTS' EXHIBITS: NIL

True Copy

PS To Judge.

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