



2023/KER/42631

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**  
**PRESENT**  
**THE HONOURABLE MRS. JUSTICE SOPHY THOMAS**  
**WEDNESDAY, THE 26<sup>TH</sup> DAY OF JULY 2023 / 4TH SRAVANA, 1945**  
**CRL.MC NO. 8096 OF 2017**  
**CC 1259/2015 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,**  
**THIRUVANANTHAPURAM**

**PETITIONERS/ACCUSED 1, 3, 4, 7 & 8:**

- 1 MOHANDAS  
AGED 57 YEARS, S/O. LATE GOVINA PILLAI,  
'GOKULAM' PNRA (M1), PRASANTH NAGAR ROAD,  
MEDICAL COLLEGE P.O, THIRUVANANTHAPURAM  
DISTRICT.
  
- 2 LEELAKUMARI  
W/O. LATE SOMASEKHARAN NAIR, NALANDA,  
PERAPOOR, TEMPLE ROAD, MUKKOLA P.O,  
PEROORKADA, THIRUVANANTHAPURAM DISTRICT.
  
- 3 P. SADASIVAN NAIR  
S/O. VELAYUDHAN PILLAI, 'SOORYA', KAVIL LANE,  
BABUJI NAGAR, MEDICAL COLLEGE P.O,  
THIRUVANANTHAPURAM DISTRICT.
  
- 4 NIRMALA KUMARI  
W/O. KARUNAKARAN NAIR, PUTHEN VEEDU, N.S.S.  
KARAYOGAM LANE, KALLUMMOODU, ANAYARA,  
THIRUVANANTHAPURAM DISTRICT.
  
- 5 RADHAMMA  
W/O. SADASIVAN NAIR, 'SOORYA', KAVIL LANE,  
BABUJI NAGAR, MEDICAL COLLEGE P.O,  
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.  
SRI.AYYAPPAN SANKAR  
SMT.S.HRIDYA  
SRI.JAYAN JOHN



**RESPONDENTS/STATE & DE FACTO COMPLAINANT:**

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT  
OF KERALA, ERNAKULAM.
  
- 2 G. KRISHNAN NAIR  
S/O. LATE GOVINDA PILLAI, KRISHNA VILASOM,  
T.C. 8/2034, RAMAVARMA LANE, BABUJI NAGAR,  
MEDICAL COLLEGE P.O, THIRUVANANTHAPURAM  
DISTRICT.

BY ADVS.  
SRI.AJIT G.ANJARLEKAR  
SHRI.AJIT G ANJARLEKAR  
SRI.GOVIND PADMANAABHAN  
SRI.RAM MOHAN.G.  
SRI.G.P.SHINOD  
SMT.SHEEBA G, GOVT. PLEADER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
14.06.2023, THE COURT ON 26.07.2023 PASSED THE FOLLOWING:

**C.R****ORDER**

Every soul departs this world for their heavenly abode with a fervent hope to rest in peace. Here is a case, where the departed soul of a 95 year old mother is prevented from embracing eternal bliss, due to the legal battle fought by her greedy children over a piece of land owned by her, for which she had allegedly executed a Will Deed.

2. Petitioners 1, 4, 5 and the 2<sup>nd</sup> respondent are the children of deceased Kamamma. The 2<sup>nd</sup> petitioner is the wife of her deceased elder son Somasekharan Nair. The 3<sup>rd</sup> petitioner is the husband of her deceased daughter Radhamma.

3. The mother, Kamamma, had 27 cents of land in Re-Survey No.366/8. The dispute is centered around a Will Deed alleged to have been executed by the mother with respect to that property, on 31.05.2011. Her sons including the 2<sup>nd</sup> respondent and her daughters are the legatees under that Will. The grievance of the 2<sup>nd</sup> respondent seems to be that, he was given only two cents of land as per the Will Deed, and the other children



were given joint right over the remaining 25 cents of land. Provision for sharing the sale proceeds of the said 25 cents, with the children of two deceased daughters was also stipulated in the Will Deed.

4. The 2<sup>nd</sup> respondent, alleging forgery and cheating from the part of the petitioners, filed a complaint as CMP No.2001 of 2013 under Sections 420, 464, 120B r/w Section 34 of IPC before the Judicial First Class Magistrate Court-I, Thiruvananthapuram. The petitioners, the scribe, the Sub Registrar and also the witnesses in the Will Deed, were all made accused in that complaint. His allegation was that, accused Nos.1 to 9 committed criminal conspiracy and forged documents including the ID card of deceased Kamamma, and even impersonated her to make a false document styled as a Will Deed. According to him, mother Kamamma never had an identity card, and moreover, she was seriously ill, and was just discharged from hospital, when the so-called Will Deed was executed. She was not fit physically or mentally, to execute such a document on 31.05.2011.



5. Learned Magistrate forwarded that complaint to the jurisdictional Police, for investigation under Section 156(3) of Cr.P.C. The Police, after investigation, submitted a final report, with a finding that, the Will Deed was duly executed by Smt.Kamalamma at her residence, in the presence of the Sub Registrar. The Investigating Officer came to the conclusion that, such a complaint was filed on the mistaken notion that the ID card mentioned in the Will Deed was not issued from the Village Office. In the Will Deed, the number of the identity certificate of Smt.Kamalamma was mentioned as 22GL/11. But, in fact, the number of the identity certificate was 2242/2011. The Village Officer, on a petition under Right to Information Act, certified that no identity certificate with the number 22GL/11 was issued to Smt.Kamalamma, from that Village Office.

6. On receipt of the final report referring the criminal complaint filed by the 2<sup>nd</sup> respondent, learned Magistrate issued notice to him, and on receipt of that notice, he preferred a protest complaint. Sworn statement of the complainant and witnesses were taken and learned Magistrate took cognizance of the



offences under Sections 420, 464 and 120B r/w with Section 34 of IPC and the case was taken on file as CC No.1259 of 2015 and summons was ordered against the accused.

7. The petitioners herein, who are accused Nos.1,3, 4, 7 and 8, filed the above Cr1.M.C. to quash the protest complaint, as well as the order taking cognizance thereon, and all proceedings pursuant thereto. They would contend that the learned Magistrate mechanically took cognizance of the offences and issued process, without applying judicial mind. The protest complaint is an abuse of the process of law, with a view to make unjust gain, by harassing and coercing the petitioners. According to them, continuation of the prosecution proceedings would cause unnecessary harassment, and embarrassment to them. So, their prayer is to examine the legality, propriety and tenability of the proceedings initiated by the Magistrate and to set aside the order taking cognizance.

8. The petitioners pointed out the following facts to support their contentions:

The alleged forged document, i.e., the identity certificate of



mother Kamamma was not produced by the 2<sup>nd</sup> respondent/complainant before the Magistrate Court to form an opinion as to its genuineness. Moreover, he was not making any challenge against another document, which was executed by the very same mother, after five months of executing the Will Deed. The Will Deed was registered at the residence in the presence of the Sub Registrar, and so, the allegation of the 2<sup>nd</sup> respondent that the mother was not physically fit to move out for executing the document has no significance. In the complaint, he was alleging that the Will Deed was forged, impersonating Smt.Kamamma. But he has not specified who had impersonated her. The identity certificate issued from Cheruvakkal Village Office would show that the number of the certificate mentioned therein as 2242/11 was able to be read as 22GL/11 also, and that is why in the will deed the number happened to be noted as 22GL/11. It was only a mistake in reading the number, and there was no forgery or manipulation involved in it. In Annexure VIII, the Village Officer certified that an identity certificate bearing No.22GL/11 was not issued from that office. But, it is not stated that an identity



certificate with No.2242/11 was not issued from that office. So, the mistake in reproducing the number of that certificate in the Will Deed, was not sufficient enough to doubt the genuineness of the identity certificate or the genuineness of the Will Deed. Moreover, the fact that the 2<sup>nd</sup> respondent got only a lesser share as per the Will Deed is not a ground to challenge the genuineness of that document. The Will Deed executed by the mother is a genuine one and it reflects her will regarding disposition of her property. Learned Magistrate, without analysing the factual situation and also the report of the investigating officer, simply took cognizance of the offence and issued summons to the accused. So, according to them, it is an abuse of the process of law, and it is liable to be quashed.

9. It is trite law that while taking cognizance of an offence and issuing process to the accused, the Magistrates are not acting as Post Office, and they are not expected to issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he was satisfied with the allegations in the complaint, so as to constitute an offence when considered





along with the statements recorded and the result of inquiry or report of investigation under Section 202 of Cr.P.C.

10. The order of the learned Magistrate taking cognizance of the offence was produced as Annexure-XII, and it reads as follows:

“Heard. Analysed the statement given by the complainant and the witnesses. On hearing and perusal of documents, I am of the opinion that a prima facie case has been made out against the accused persons. Hence cognizance has been taken under section 420, 464, 120B read with Section 34 of the IPC. There are sufficient grounds to proceed against the accused persons and hence the case is taken on file as CC 1259/15.”

11. Though the above order says that, learned Magistrate analysed the statement of the complainant and witnesses, heard and perused documents, there is no indication that the report of the Police after investigation was perused. Except a general statement that, ‘perused the statements and records’, no specific finding is there, as to how, or on what ground she arrived at the conclusion that a prima facie case was made out. There is no indication that the learned Magistrate applied her mind before she



took cognizance of the offences under Sections 420, 464 and 120B r/w Section 34 of IPC. The difference seen in the number of the Identity Certificate mentioned in the Will Deed, was explained by Police in the refer report. That was not seen verified by the learned Magistrate. The questioned identity certificate was not even verified by the learned Magistrate to satisfy prima facie, that it was a forged document.

12. Summoning an accused in a criminal case is a serious matter, affecting his status and dignity. So, the process of criminal law has to be resorted, with due care and caution. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law governing the issue. Before issuing process to the accused, the learned Magistrate has to form an opinion regarding the prima facie case, and he has to consider whether there are any inherent improbabilities appearing on the face of the complaint. It is true that the learned Magistrate need not write detailed orders at the stage of issuing process. But, there must be sufficient indication regarding the satisfaction of the learned Magistrate as to the



allegations in the complaint, so as to constitute the offences alleged therein.

13. In **Mehmood Ul Rehman** vs. **Khazir Mohammed Tunda and others** [AIR 2015 SC 2195], the Apex Court held that, there must be sufficient indication in the order passed by the Magistrate, that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 of Cr.P.C, if any, the accused is answerable before the Criminal Court, there is ground for proceeding against the accused under Section 204 of Cr.P.C., by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on satisfaction. If there is no such indication in a case, where the Magistrate proceeds under Section 190/204 of Cr.P.C., the High Court under Section 482 of Cr.P.C. is bound to invoke its inherent power in order to prevent abuse of the power of Criminal Court. To be called to appear before Criminal Court as an accused is a serious matter affecting one's dignity, self respect and image in society. Hence, the



process of Criminal Court shall not be made a weapon of harassment.

14. In ***Pepsi Foods Ltd. vs. Special Judicial Magistrate*** [(1998) 5 SCC 749], the Apex Court has held in paragraph 28 as follows:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused”.



15. In **Fakhruddin Ahmad** vs. **State of Uttaranchal and another** [(2008) 17 SCC 157], the Apex Court has held in paragraph 17 as follows:

“17. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender”.

16. A protest complaint is in the nature of a complaint and it is referable to the investigation already done by the Police culminating in the Final Report. In **Parameswaran Nair** vs. **Surendran and another** [2009 (1) KLT 794], this Court observed in paragraphs 15 and 16 as follows:

“15. In practice when a complainant receives a notice from the Magistrate intimating the submission of a



final report by the police to the effect that no offence is made out, informing that the report is being considered by the Magistrate, he files a complaint which in common usage is termed protest complaint. So long as cognizance was not taken on the first complaint and only an order for investigation under S.156(3) at pre-cognizance stage was ordered, the complaint is not effaced from the file. Hence the Magistrate at the stage of considering the final report under S.173(2) is entitled to take cognizance of the offence on the materials furnished by the police under S.190(1)(b) rejecting the opinion of the police or is entitled to take cognizance under S.190(1)(a) on the original complaint after recording the statement of the complainant and his witnesses as provided under S.200 or even direct investigation under S.202 and conduct an inquiry and decide whether on all these materials whether process is to be issued under S.204. The protest complaint if any filed at that stage cannot be treated as the second complaint, attracting the limitations of a second complaint. Such a protest complaint can only be treated as an objection to the final report submitted under S.173(2). On filing of such a protest complaint or an objection to the final report, Magistrate is bound to consider the final report with the documents and statements produced and decide whether cognizance is to be taken on the police report under S.190(1)(b) of the Code. If not Magistrate can record the statement of the complainant and his witnesses and even can direct an



investigation under S.202 and based on the inquiry decide whether process is to be issued under S.204 or complaint is to be dismissed under S.203.

16. If Magistrate finds that in spite of all the objections raised, the final report is to be accepted he can accept it and drop the proceeding. At that stage Magistrate can entertain a second complaint. But such a complaint will lie only if there was manifest error or manifest miscarriage of justice or new facts which the complainant had no knowledge of or with reasonable diligence could not have brought forward in the previous proceedings. The Magistrate cannot therefore ignore the final report altogether and consider only the protest complaint and the sworn statement of the witnesses recorded in that enquiry”.

17. In the case on hand, though the learned Magistrate simply stated that prima facie case has been made out to take cognizance of the offences alleged, there is no indication that the learned Magistrate perused the final report or the statement of witnesses recorded by Police. So, obviously, the learned Magistrate did not analyse the factual situations in its correct perspective before taking cognizance and issuing summons to the accused.



18. The petitioners pointed that the 2<sup>nd</sup> respondent had filed Annexure-IV original suit before the Munsiff's Court, Thiruvananthapuram, for partition, separate possession etc. for the property covered by the will deed. That suit was filed as early as on 29.09.2012. He filed criminal complaint before the Judicial First Class Magistrate Court-I, Thiruvananthapuram, on 08.04.2013. So, when he filed the criminal complaint, original suit No.1536 of 2012 filed by him, for the very same property was pending before the Munsiff Court. But, the pendency of the civil suit was suppressed in the criminal complaint filed by him. The alleged Will Deed was executed on 31.05.2011. The propounder of the Will Smt.Kamamma died on 17.08.2012, i.e., after one year of execution of the Will Deed. After one month of her death, the civil suit was filed by the 2<sup>nd</sup> respondent and six months thereafter he filed the criminal complaint, suppressing the civil suit. Annexure-X is a release deed executed by Smt.Kamamma after five months of executing the Will Deed. But, that document is not under challenge by the 2<sup>nd</sup> respondent.

19. Learned counsel for the petitioners would contend that,





suppressing the pendency of the civil suit, only to harass the petitioners, the 2<sup>nd</sup> respondent filed a criminal complaint against them, and after detailed investigation, Police referred the complaint. But, on the basis of the protest complaint, learned Magistrate proceeded against the accused, without proper application of mind and without verifying the relevant documents. If at all the 2<sup>nd</sup> respondent was not aware of the Will Deed when he filed the civil suit, obviously, he filed the criminal complaint on knowing about the Will Deed. The pendency of the civil case is suppressed in the criminal complaint. In the criminal complaint, he has not mentioned when or how he came to know about the Will Deed. He is not specific as to whether the Will Deed was executed by the mother herself or by someone else impersonating her. He has not made any challenge against the signature of the mother seen in the alleged Will Deed. Annexure-VI Police Report was to the effect that the Will Deed was registered at the residence of the mother, in the presence of the Sub Registrar. The report further shows that earlier the mother was staying along with the 2<sup>nd</sup> respondent, but, when she fell ill, she was taken to



Medical College Hospital, Thiruvananthapuram, and on discharge, on her own will, she was taken to the house of her elder son Somasekharan Nair, and while residing there, on her own wish, she executed a Will Deed. The 2<sup>nd</sup> respondent will get only two cents of land as per the Will Deed, and that might have provoked him to file such a criminal complaint against his own siblings. In addition to that, there occurred a mistake regarding the number of the Identity Certificate of Smt.Kamamma, when it was written in the Will Deed. But, as we have seen, a perusal of Annexure-IX identity certificate will show that, the number mentioned in that certificate could be read either as 2242/11 or as 22GL/11. So, the mistake, if any, crept in the Will Deed regarding the number of the identity certificate was only a clerical error and that is not sufficient to doubt the genuineness of that document.

20. In **Paramjeet Batra vs. State of Uttarakhand and others** [(2013) 11 SCC 673], the Apex Court held that, if a civil remedy is available, and the party has adopted it, the High Court should not hesitate to quash criminal proceedings to prevent



abuse of process of court. Paragraph 12 of that judgment reads as follows:

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court”.

21. In ***Usha Chakraborty vs. State of West Bengal*** [2023 KHC 6085], the Apex Court held that, in a criminal complaint concealment of existence of pending civil suit between respondent and accused before a competent civil court, is obviously to give the cloak of criminal offence, for a dispute which is essentially civil in nature. When the respondent had already



resorted to the civil remedy and that is pending, the High Court should have quashed the criminal proceedings to prevent abuse of process of court. That case is squarely applicable here. The mother allegedly executed the Will Deed and she died after one year of execution of that document. On the very next month, of her death, the 2<sup>nd</sup> respondent filed the civil suit. After six months of filing the civil suit, he filed the criminal complaint, suppressing the pendency of the civil suit. He is challenging the Will Deed executed by the mother on the ground of forgery, impersonation, etc. As he had already approached the civil court resorting to the civil remedy, the subsequent criminal complaint filed by him, suppressing pendency of the civil suit, can be viewed only as a weapon of harassment.

22. From the foregoing discussion, we could conclude that the order of the learned Magistrate, taking cognizance and issuing summons to the accused in pursuance to the protest complaint filed by the 2<sup>nd</sup> respondent, is liable to be quashed. So, the order of the learned Magistrate dated 06.10.2015 taking cognizance of the offences, and issuing summons to the petitioners, and the



consequent proceedings in CC No.1259 of 2015 on the file of Judicial First Class Magistrate Court-I, Thiruvananthapuram are hereby quashed.

It is clarified that this order will have no effect on the pending civil suit between the parties, which will have to be decided by the Munsiff Court, Thiruvananthapuram, on the basis of its own facts and evidence, untrammelled by any of the observations in this order. Learned Munsiff, Thiruvananthapuram, shall decide the case independently and in accordance with law, as early as possible, at any rate, within a period of six months from today.

Accordingly, the Cr1.M.C stands allowed.

Sd/-

**SOPHY THOMAS  
JUDGE**

DSV/smp



**APPENDIX OF CRL.MC 8096/2017**

PETITIONER ANNEXURES:

ANNEXURE TRUE PHOTOCOPY OF THE DEATH CERTIFICATE DATED  
I 24.9.2012 OF 2ND RESPONDENT AND PETITIONERS 1,4 AND  
5.

ANNEXURE TRUE PHOTOCOPY OF REGISTERED WILL NO. 206/2011  
II EXECUTED BY LATE. SMT. KAMALAMMA, MOTHER OF 2ND  
RESPONDENT AND PETITIONERS 1,4 AND 5.

ANNEXURE CERTIFIED COPY OF THE PRIVATE COMPLAINT FILED BY THE  
III 2ND RESPONDENT BEFORE THE HON'BLE JUDICIAL FIRST  
CLASS MAGISTRATE COURT-I, THIRUVANANTHAPURAM.

ANNEXURE TRUE PHOTOCOPY OF THE PLAINT IN O.S. NO. 1536/2012  
IV PENDING BEFORE THE 2ND ADDITIONAL MUNSIFF'S COURT,  
THIRUVANANTHAPURAM.

ANNEXURE CERTIFIED TRUE COPY OF FIR IN CRIME NO. 905/2013 OF  
V SREEKARIYAM POLICE STATION.

ANNEXURE CERTIFIED TRUE COPY OF THE REFER CHARGE IN CRIME NO.  
VI 905/2013 OF SREEKARIYAM POLICE STATION.

ANNEXURE CERTIFIED TRUE COPY OF PROTEST COMPLAINT FILED BY 2ND  
VII RESPONDENT AS C.M.P NO. 6712/2015.

ANNEXURE TRUE PHOTOCOPY OF THE LETTER DATED 7.11.2012  
VIII PURPORTED TO TBE ISSUED BY THE VILLAGE OFFICER  
PRODUCED ALONG WITH ANNEXURE -VI.

ANNEXURE TRUE PHOTOCOPY OF THE CERTIFICATE DATED 28.5.2011  
IX ISSUED BY VILLAGE OFFICER, CHERUVACKAL.

ANNEXURE TRUE PHOTOCOPY OF DOCUMENT NO. 3074/2011 DATED  
X 4.10.2011 OF PATTOM S.R.O.

ANNEXURE TRUE PHOTOCOPIES OF SUMMONS ISSUED TO PETITIONER AND



XI            THEIR BROTHER SRI. LATE SOMASEKHARAN NAIR.

ANNEXURE    CERTIFIED COPY OF THE ORDER DTD.6.10.2015 OF  
XII            HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT -I,  
  
                  THIRUVANANTHAPURAM IN CC 1259/2015.

True Copy

P.S to Judge

smp