

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

TUESDAY, THE 06TH DAY OF OCTOBER 2020 / 14TH ASWINA, 1942

Cr1.MC.No.1873 OF 2019(D)

AGAINST THE ORDER/JUDGMENT IN CC 1471/2017 OF JUDICIAL MAGISTRATE
OF FIRST CLASS-I, KASARAGOD

CRIME NO.176/2017 OF VIDYANAGAR POLICE STATION , Kasargod

PETITIONER/ACCUSED:

GANGANDHARAN NAIR
AGED 62 YEARS
S/O.KUNJAMBU NAIR, PUTHIYAPURA HOUSE, BOVIKKANAM,
MULLIYAR POST, KASARAGOD-671 542.

BY ADVS.
SRI.SHAIJAN C.GEORGE
SMT.SAJITHA GEORGE

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN-682031.
- 2 SUB INSPECTOR OF POLICE,
VIDYANAGAR POLICE STATION, KASARAGOD, PIN-671121.

R1-2 BY ADDL.DIRECTOR GENERAL OF PROSECUTION

OTHER PRESENT:

SRI.C.K SURESH, PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
25.09.2020, THE COURT ON 06-10-2020 PASSED THE FOLLOWING:

O R D E R

Dated : 6th October, 2020

1. This criminal miscellaneous case has been filed under Section 482 Cr.P.C. to quash Charge-sheet in C.C.No.1471/2017 of the Judicial First Class Magistrate Court-I, Kasargode.
2. Petitioner's case in short is as follows:

Petitioner was a worker of the Plantation Corporation of Kerala Ltd. (in short PCK Ltd.) and engaged in spraying Endosulphan pesticide mainly used for the control of Tea Mosquitoes. Petitioner retired from employment in the year 2014. According to the petitioner, the use of the pesticide was under the directions of the concerned authorities and no health hazards actually reported by the use of the pesticide. But much cornered propagation picturising the adverse effects of the use of the pesticide Endosulphan have created very impacts in the news media. On the basis of the same and the statements of some prominent personalities social conscience turned against the use of Endosulphan.

3. Though the petitioner had been working in the plantation with direct physical contact with pesticide Endosulphan he never had any problem due to the said contact. Ultimately the Hon'ble Supreme Court in W.P.(C)No.213/2011 directed the State Government to formulate a scheme for providing compensation to the victims for the use of Endosulphan in the State. No scientific method was adopted by any of the concerned authorities to fix whether there is any calamity created by the use of pesticide in the plantation. Petitioner genuinely doubted that some centres with vested interest are playing to see that the crops of PCK Ltd. to get diminished and thereby to cause changes in the market. Hence petitioner and others formed an organisation in the name and style 'Plantation Corporation Samrakshana Samithy' and the petitioner acted as the Secretary of the same. None of the victims raised any complaint before any proper authority regarding the damages or injuries sustained by them. After the direction of the Hon'ble Supreme Court the political parties in the locality included the names of their followers and sympathisers in the list to be prepared for the purpose of providing compensation without following any criteria. Even persons suffering from

tuberculosis, ear problems and other diseases are fraudulently listed as victims of Endosulphan. The use of endosulphan was as per the schedule by the National Research Centre for Cashes at Puttur, Karnataka. As per the enquiry made by the petitioner, the Government had declared payment of Rs.5 lakh each to the victims. If it is distributed among the persons included in the list, it would result in looting of public fund. So the petitioner filed complaint before the Chief Secretary to Government, copy of which is marked as Annexure 1. Even after that no due care was taken in preparing the list. On 08.09.2016 and 01.12.2016 petitioner filed complaints before the Director, Vigilance and anti-corruption Bureau complaining about the corruptive methods followed by certain officials and the matter was investigated. Petitioner has received a communication from the Director, VAACB intimating that they have found out that a number of undeserved persons were included in the list when they have conducted the quck verification. True copy of the said communication dated 09.01.2017 with its translation is produced and marked as Annexure 2. Thereafter, petitioner filed complaint before the District Collector highlighting the

need for review of the list and copy of the same is produced and marked as Annexure 3. After repeated communications by the petitioner he received copy of the quick verification report and the copy of the same with translation is produced and marked as Annexure A5 and A4 respectively. The petitioner also has complaints with regard to the correctness of the list prepared and the eligibility of the beneficiaries in the list. On 30.03.2017 a meeting was convened in the compound of Collectorate, Kasargode to distribute compensation for the Endosulphan affected victims by the Chief Minister. According to the petitioner, to bring the issue of malpractice in the preparation of list and fake claims to the direct notice of the Chief Minister as a common-man he displayed a placard poster with the writings as follows:

“എൻഡോസൾഫാൻ വിഷയം.

ഇങ്ങനെ ഒരു രോഗാവസ്ഥ കാസർഗോഡ് ജില്ലയിൽ ഇല്ല.

ഇതിന്റെ പേരിലുള്ള തട്ടിപ്പ് അവസാനിപ്പിക്കുക.

ഇതിന്റെ പേരിലുള്ള സർക്കാർ ചെങ്കനാവ് കൊള്ളയടിക്കുന്നത് അവസാനിപ്പിക്കുക.

കാസർഗോഡ് വിജിലൻസിന്റെ അന്വേഷണ റിപ്പോർട്ട് പരസ്യപ്പെടുത്തുക.

നിഷ്പക്ഷമായ അന്വേഷണം നടത്തി യാഥാർത്ഥ്യം പുറത്ത് കൊണ്ടുവരിക.

സത്യമേവ ജയതേ.”

4. He has not made a voice and uttered any slogan. But the

second respondent took the petitioner into custody and a crime was registered as Crime No.0716/2017 Vidyanagar police station against him and he completed the investigation and filed final report and the Judicial Magistrate of First Class-I, Kasargode took cognisance of the offence against the petitioner as C.C.No.1471/2017. True copy of the FIR is marked as Annexure 6 and true copy of the Final Report is marked as Annexure 7. So the present Cr1.M.C. has been filed to quash the final report.

5. Notice was issued to the respondents and respondents appeared through Public Prosecutor Sri. C.K. Suresh. Case diary also produced and perused and both sides were heard.
6. According to the learned Public Prosecutor the writings in the placard itself would prima facie prove that the offence under Section 153 IPC and also Section 2 of the Kerala Prevention of Disturbances of Public Meetings Act, 1961 are attracted. He would also contend that at this stage this Court is to be satisfied only about a prima facie case and whether any offence as alleged has been made out. He would contend that on a mere glance through the FIR and the Final Report, this Court can very well be satisfied of the

prima facie case in favour of the respondent/State.

7. The writings in the placard which has been extracted above would show that the petitioner is asserting that there is no menace due to the use of Endosulphan in Kasargode district. Further, he proclaimed to stop the corruption under the guise of the same and misutilisation of State fund on this account.
8. In this context, it is to be noted that even admittedly by the petitioner there is a direction by the Apex Court as per the judgment in W.P.(C)No.213/2011 to the State Government to formulate a scheme for providing compensation to the victims of the use of Endosulphan in the State. So when the Apex Court had made a finding and directed the State Government to formulate a scheme for providing compensation to the victims of the use of Endosulphan it goes without saying that it is the law of the land. So the writings in the placard that there is no menace by the use of endosulphan in Kasargode District appears as prima facie illegal.
9. Admittedly by the petitioner the placard with the writings has been erected by him in a meeting held at the collectorate, Kasargode and the Chief Minister was

speaking on the occasion. So the question is whether the conduct of the petitioner in such an event would attract the offence under Section 153 IPC prima facie. Section 153 IPC in this context is relevant to be extracted, which reads as follows:

“153. Wantonly giving provocation with intent to cause riot - if rioting be committed - if not committed - whoever, malignantly, or wantonly, by or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequences of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence or rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

10. According to the learned counsel for the petitioner there is no malignant act and there is no illegality in the act and hence the question of Section 153 IPC attracting does not arise. But on a close scrutiny of Section 153 IPC, what could be gathered is that whoever malignantly or wantonly do any act, which is illegal and give provocation to any person intending or knowing it to be likely that such provocation would cause the offence of rioting to be committed, the offence would be attracted in two ways: (1) if the offence of rioting is committed in consequence of

such provocation and(2) if the offence of the rioting is not committed. The word 'malignant' is not defined in IPC. In Ratanlal & Dhirajlal's Commentaries on the IPC 33rd Edition page No.952 with respect to S.153 IPC reads as follows:

'Malignantly'.- It implies a sort of general malice. The adverbs 'maliciously' and 'malignantly' are synonymous. Malice is not, as in ordinary speech, only an express of hatred or ill-will to an individual, but means an unlawful act done intentionally without just cause or excuse. Malignant means extreme malevolence or enmity; violently hostile or harmful.

'Wantonly'- It means recklessly, thoughtlessly, without regard of right or consequences. This word gives to the offence contained in this section a far larger, vaguer and more comprehensive scope, than would be implied by the word 'malignantly' standing alone. It occurs only in this section of the Penal Code, while the word 'malignantly' occurs one again in Section 270 I.P.C.

11. So from the above, what could be gathered is that any unlawful act done intentionally without just cause or excuse would come within the purview of malignant act. The word 'wantonly' is far wider and having more comprehensive application than that would be implied by the word malignantly. So any reckless or thoughtless act without any regard for right or consequences would amount to a wanton act.

12. Here, what has been done by the petitioner is erection of a placard in public meeting where Chief Minister of the State is speaking in connection with the distribution of compensation to the victims of Endosulphan. So naturally the participants in the meeting would be the victims of endosulphan who have come in the list prepared by the authorities. Probably, some persons in the list of beneficiaries may not be deserving persons. But it cannot be forgotten that there would be persons who are eligible also would be participating in the meeting. So what would be their feeling on seeing such a placard with a writing that there is no such menace of Endosulphan in Kasargode district? So the act of the petitioner would prima facie amounts to a reckless or thoughtless act without any regard for the consequence. The possibility of the genuine victims of Endosulphan got provoked by seeing the placard cannot be ruled out prima facie. Petitioner being a person who admittedly have been protesting for long for Endosulphan for PCK Ltd and is also claims to be the Secretary of Plantation Corporation Samrakshana Samithi can very well likely to have knowledge that the people will be provoked.

13. The learned Public Prosecutor also would contend that

apart from Section 153 IPC Section 2 of Kerala Prevention of Disturbances of Public Meetings Act, 1961 has also been incorporated and he would contend that there would not be any doubt to the position that Section 2 of the Kerala Prevention of Disturbances of Public Meetings Act, 1961 (hereinafter be called as the Act) would attract in the present case. To understand the matters more clearly I would extract Section 2 of the above Act, which reads as follows:

2.Penalty on endeavor to break up public

meetings,- (1)whoever at a public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence under this Act and shall, on conviction, be liable to imprisonment of either description for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.

(2) Any person who incites others to commit an offence under this section shall be guilty of a like offence.

(3) Any Police Officer may arrest without warrant a person who commits an offence under this section.

14. So from the above, it would clear that if anybody acts in a disorderly manner at a public meeting for the purpose of preventing the transaction of the business for which the meeting was called, the offence would be attracted. It is true that the word 'disorderly' is not defined in the Act.

15. In **Oxford Advanced Learner's Dictionary Of Current English**, the meaning of the word 'disorderly' is, absence of order; confusion, disturbances of the normal working of the body or mind. English - English - Malayalam dictionary by T. Ramalingam Pillai also states the meaning of disorderly in Malayalam 'ക്രമം തെറ്റിയ ; ആത്മനിയന്ത്രണം ഇല്ലാത്ത'. So when the petitioner displays a placard containing the writings quoted above in a meeting held for distribution of compensation to the victims of endosulphan and that too at the time when the Chief Minister is making a speech in connection with the function, there won't be any doubt that the act of the petitioner/accused would cause confusion or disturbances of the normal working of mind of the victims who were assembled there prima facie. Whether the purpose of the petitioner was for preventing the transaction of the business for which meeting was called etc are matters to be proved during evidence. While sitting in a petition under Section 482 Cr.P.C. for quashing the proceedings this Court is not expected to explore those matters which are the realm of the trial court.

16. It is true that the learned counsel for the petitioner took my attention to Annexure 1 complaint filed by the

Plantation Corporation Samrakshna Samithi to the Chief Secretary, Government of Kerala and the communication received to the petitioner from the Director, Vigilance and Anti-corruption Bureau intimating that they have found number of undeserved persons included in the list when they have conducted quick verification. He also brought my attention to Annexure 3 - a representation of the petitioner to the District Collector urging the need for review of the list to save the public exchequer and also the copy of the quick verification report - Annexure 4 & 5. It is true that the said report would state that in the list of the victims of Endosulphan some ineligible people were also included and hence the present list has to be renewed as per the guidelines of 2013.

17. He also produced copy of the judgment in W.P. (C)No.33289/2017 dated 08.07.2020 filed by him against the State of Kerala and also the Director, Vigilance and Anti Corruption Bureau, Vikas Bhavan, Thiruvananthapuram and Others and the reliefs sought in the writ petition is to call for the quick verification report of the 4th respondent (Director, VAACB) and to issue a writ of mandamus or any other direction to the respondents 1 to 3 to revise the

beneficiary list for the compensation of the victims of Endosulphan in Kasargod district strictly adhering to the scientific and clinical assessment. This Court as per the judgment dated 08.07.2020 has disposed the writ petition taking note of the fact that beneficiary list for distribution of compensation to the victims of Endosulphan, Kasargod district has been addressed and that there is no need to issue any writ as prayed for. The submission of the State Attorney that the beneficiary list has been revamped has also been recorded. Hence finding that there is no need to issue any direction, the writ petition was disposed of. So also the quick verification report filed by the Director, VAACB also would reveal that some ineligible persons have been included in the list of Endosulphan victims and recommendations were made by the Director, VAACB to renew the list and to eliminate ineligible persons. Those are all factors which lend support to the contention of the petitioner that undeserving persons were included in the list. But those are not the matters to be determined in this proceedings and the facts for consideration by this Court at this stage is not whether the allegations in the complaint or the proceedings are likely to be established by evidence or

not and that is the function of the Magistrate when the evidence comes before him. So the point for determination is only whether the charge sheet in law would constitute or spell out an offence or not. If not, it would definitely be an abuse of process of court. It is only when that is established this Court would be entitled to exercise the jurisdiction vested under Section 482 Cr.P.C.

18. In this context I may refer to the decision in **State of Bihar v. Murad Ali Khan and Ors.** [AIR 1989 SC 1 : 1988 **KHC 1071**]. Paragraph No.6 of the said judgment is relevant in this context to be extracted and it reads as follows:

“6. The second ground takes into consideration the merits of the matter. It cannot be said that the complainant does not spell out the ingredients of the offence alleged. A complaint only means any allegation made orally or in writing to a Magistrate, with a view to his taking action, that some person, whether known or unknown, has committed an offence.

It is trite that jurisdiction under S.482, Cr.P.C., which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court would not embark upon an enquiry whether the allegations in the complainant are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any

offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not.”

19. Municipal Corporation of Delhi v. R.K. Rohtagi 1983 KHC 404 para 10:(1983) 1 SCR 884 : AIR 1983 SC 67 at page No.70, is also relevant to be quoted, which reads as follows:

“It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complainant or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under S.482 of the present Code.”

20. It is also relevant in this context to quote **Chand Dhawan v. Jawahar Lal and Ors. [1992 KHC 875 : AIR 1992 SC 1379]** wherein while dealing with Section 482 Cr.P.C. it has been held that High Court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the complaint do not constitute an offence. In that case Magistrate on having been satisfied of the statement of the complainant and evidence of witnesses examined and material on record come to a conclusion that cognisance should be taken and process was issued and in such situation quashing of

complaint on additional materials filed by the accused is found to be not justified. So this Court is not actually expected to examine the documents produced from the side of the petitioner/accused at this stage to quash the proceedings initiated against the petitioner/accused.

21. Learned counsel for the petitioner/accused also seek in aid of Article 19 of the Constitution which guarantees freedom of speech and expression. According to him, by erecting the placard with the writings referred above have been made by the petitioner/accused only to show his protest in distributing the compensation to non-deserving persons which would affect the public exchequer and he has not shouted any slogan and the act of the accused is a right guaranteed under the Constitution of India and hence the accused is entitled for protection under Article 19 of the Constitution of India. But it cannot be forgotten that Article 19 sub-clause (a) of clause(1) is subject to sub clause (2) which reads as follows:

Article 19. (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] the security of the State, friendly relations with Foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.

22. So Section 153 IPC and Section 2 of Kerala Prevention of Disturbances of Public Meetings Act, 1961 expressly prohibits certain acts in public meeting by any citizen. So it will come under the reasonable restriction on the exercise of the right guaranteed under Article 19(1)(a).

23. So based on the above discussion, I am of the view that petitioner could not substantiate that the C.C. No.1471/2017 pending before the Judicial First Class Magistrate Court-I, Kasargode is an abuse of process of law for enabling this Court to exercise the inherent powers vested under Section 482 Cr.P.C. to quash the proceedings.

24. It is also hereby made clear that the observations and discussions made in the previous paragraphs are only for the purpose of the disposal of this Crl.M.C.

In the result, Crl.M.C. is found to be devoid of any merit and accordingly it is dismissed.

SD/-

M. R. ANITHA

JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

- ANNEXURE 1 A TRUE COPY OF THE COMPLAINT DATED
3.8.2012.
- ANNEXURE 2 A TRUE COPY OF THE COMMUNICATION DATED
9.1.2017 ISSUED BY THE DIRECTOR, VIGILANCE
AND ANTI-CORRUPTION BUREAU ALONG WITH ITS
TRANSLATION INTO ENGLISH.
- ANNEXURE 3 A TRUE COPY OF THE REPRESENTATION DATED
20.3.2017 SUBMITTED BEFORE THE DISTRICT
COLLECTOR.
- ANNEXURE 4 A TRUE COPY OF THE COMMUNICATION DATED
3.6.2017 INCLUDING THE COPY OF QUICK
VERIFICATION REPORT PROVIDED BY THE ANTI-
CORRUPTION BUREAU.
- ANNEXURE 5 A TRUE TRANSLATION OF EXT P4 IN ENGLISH.
- ANNEXURE 6 A TRUE COPY OF THE FIR IN CR.NO.0176/2017
OF VIDYANAGAR POLICE STATION.
- ANNEXURE 7 A TRUE COPY OF THE FINAL REPORT IN
CR.NO.0176/2017 OF VIDYANAGAR POLICE
STATION WHICH IS FURTHER NUMBERED AS C.C
NO.1471/2017 AND PENDING BEFORE THE JFCM
COURT-I, KASARAGOD.