

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 3RD DAY OF JUNE 2022 / 13TH JYAISHTA, 1944

CRL.MC NO. 1286 OF 2022

IN THE MATTER OF CRIME NO.21/2019 OF KANNUR TOWN POLICE STATION,
PENDING AS CC 215/2020 BEFORE THE HONOURABLE JUDICIAL MAGISTRATE
OF FIRST CLASS -I, KANNUR

PETITIONERS/ACCUSED NOS.1 & 2:

- 1 K. P. SASIKALA
AGED 58 YEARS
W/O.VIJAYAKUMAR
RESIDING AT GOKULAM, MARUTHUR P. O., PATTAMBI,
PALAKKAD, PIN - 679306
- 2 S. J. R. KUMAR
AGED 65 YEARS
S/O. LAKE K.SRIDHARAN PILLAI
RESIDING AT PARK VILLAI, K. V-62,
PANAMPILLY NAGAR, COCHIN, PIN - 682036
BY ADVS.
SAJITH KUMAR V.
VIVEK A.V.
GODWIN JOSEPH
APARNA CHANDRAN
REMYA VARMA N.K

RESPONDENTS/STATE AND COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM (THROUGHT THE SUB
INSPECTOR OF POLICE, KANNUR TOWN POLICE STATION)
ERNAKULAM DISTRICT, PIN - 682031
- 2 DIRECTOR GENERAL OF POLICE
(STATE POLICE CHIEF), POLICE HEAD QUARTERS,
VELLAYAMBALAM, THIRUVANANTHAPURAM, PIN - 695001
- 3 THE DEPARTMENT OF HOME AFFAIRS
REPRESENTED BY ITS SECRETARY, GOVERNMENT OF KERALA
THIRUVANANTHAPURAM - 695 001
- 4 SHAMITH M.
AGED 41 YEARS
S/O.UTHAMAN
RESIDING AT KIZHAKKE VILAPPIL HOUSE,
NEAR PALAKKAT SWAMI MADOM,

KAKKAD ROAD, KANNUR, PIN - 670002

BY ADV.SMT.NIMA JACOB, GOVERNMENT PLEADER

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
03.06.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ORDER

Dated this the 03rd day of June, 2022

The petitioners are the accused Nos.1 and 2 in Crime No.21/2019 of Kannur Town Police Station which is now pending as C.C. No.215/2020 before the Judicial First Class Magistrate Court, Kannur. The offences alleged against the petitioners are under Sections 294(b), 506(i), 427 read with Section 34 of the Indian Penal Code (IPC).

2. The prosecution case is that, on 03.01.2019, at 5.45 am, accused Nos. 3 to 5 have committed mischief at Caltex Junction, Kannur, by vandalizing the auto rickshaw bearing registration No. KL 13 AB 7923 owned by the 4th respondent / de facto complainant and thereby caused damage to the auto rickshaw to the tune of Rs.5,650/-. It is further alleged that a harthal was called for by the petitioners 1 and 2, being the office bearers of an organization which was protesting against the implementation of

the decision to permit entry of women in Sabarimala Temple. Annexure-A is the F.I.R. and Annexure-B is the final report submitted by the police. This Crl.M.C. is filed for quashing all further proceedings pursuant to Annexure-B final report.

3. Heard Sri. Sajith Kumar V., learned Counsel appearing for the petitioners and Smt.Nima Jacob, learned Public Prosecutor. Even though notice was served upon the 4th respondent, there is no appearance for him.

4. The main contention put forward by the learned Counsel for the petitioner is that, the materials produced along with Annexure-B and the contents thereof do not reveal the offences against the petitioners. It is pointed out that, the acts which allegedly constitute the offences are alleged to have committed by accused Nos.3 to 5 and there is absolutely no role assigned to the petitioners herein. In such circumstances, the learned Counsel seeks for quashing all further proceedings against the

petitioners.

5. On the other hand, the learned Public Prosecutor would oppose the aforesaid contention. It is pointed out that, the question of involvement of the petitioners is a matter of evidence, which cannot be considered at this stage of the proceedings. In such circumstances, the learned Public Prosecutor seeks for dismissal of this CrI.M.C.

6. I have carefully gone through the Annexure-A F.I.R. and Annexure-B final report. As highlighted by the learned Counsel for the petitioners, the only allegation against the the petitioners is that they have called for a harthal in protest against the decision regarding the entry of women in Sabarimala Temple. However, the crux of the allegation which constitutes the offences are in respect of the act physically committed by the accused Nos.3 to 5. On perusal of the records, it is evident that in none of the statements of the witnesses recorded under Section 161 of Cr.P.C., the names of the petitioners are seen

mentioned. Apart from the mere statement that the petitioners have called for hartal, there is absolutely nothing is mentioned in the final report indicating the culpability of the petitioners. As far as the allegation of calling for hartal is concerned, the same by itself cannot be an act attracting any of the offences alleged. Even though, the petitioners are seen implicated on the strength of Section 34 of the IPC, there are absolutely no materials indicating any common intention being shared by the petitioners with the accused Nos. 3 to 5. Learned Counsel for the petitioners also brought my attention to the order passed by this Court in Crl. M.C. No.3601/2021 wherein, the criminal prosecution initiated against the first petitioner with similar allegation has been quashed. I have also taken into account the observations made by this Court in the aforesaid judgment.

7. Thus, after examining all the relevant inputs, I am of the firm view that none of the offences

alleged against the petitioners are attracted. The prosecution against the petitioners in pursuance to Annexure-B is a clear abuse of process of law.

In such circumstances, I am inclined to invoke the jurisdiction of this Court under Section 482 Cr.P.C. In the result, the Crl.M.C., is allowed. Annexure-B final report submitted in Crime No.21/2019 of Kannur Town Police Station and all further proceedings in C.C. No.215/2020 before the Judicial First Class Magistrate Court, Kannur, as against the petitioners herein are hereby quashed.

Sd/-

ZIYAD RAHMAN A.A.

JUDGE

APPENDIX OF CRL.MC 1286/2022

PETITIONERS' ANNEXURES :

- ANNEXURE A** THE CERTIFIED COPY OF THE FIR IN CRIME NO. 21/2019 DATED 03.01.2019 OF THE KANNUR TOWN POLICE STATION
- ANNEXURE B** THE CERTIFIED COPY OF THE FINAL REPORT NO. 1095/2019 DATED 05.10.2019 IN CRIME NO. 21/2019 OF KANNUR TOWN POLICE STATION PENDING AS C.C. NO. 215/2020 BEFORE THE HON'BLE FIRST CLASS JUDICIAL MAGISTRATE COURT - I, KANNUR.
- ANNEXURE C** A TRUE COPY OF THE ORDER NO. U4-4368/2019/ PHQ DATED 05.03.2019 ISSUED BY THE 2ND RESPONDENT ALONG WITH ITS TRANSCRIBED COPY.
- ANNEXURE D** A TRUE COPY OF THE GAZETTE NOTIFICATION DATED 02.12.2019.
- ANNEXURE E** A TRUE COPY OF THE G.O. (CRI.) NO. 70/2021/HOME DATED 26.02.2021 ISSUED BY THE 3RD RESPONDENT.
- ANNEXUREB F** A TRUE COPY OF THE JUDGMENT IN WP(C) NO. 32502 OF 2017 DATED 10.02.2020 BY THE HON'BLE DIVISION BENCH OF THE HIGH COURT OF KERALA.
- ANNEXURE G** A TRUE COPY OF THE ORDER DATED 11.05.2021 IN CRL. MC NO. 2398/2021 OF THIS HON'BLE COURT.
- ANNEXURE H** A TRUE COPY OF THE ORDER DATED 10.08.2021 IN CRL. MC NO. 3601/2021 OF THIS HON'BLE COURT.
- ANNEXURE I** A TRUE COPY OF THE ORDER DATED 27.10.2021 IN CRL. MC NO. 5042/2021 OF THIS HON'BLE COURT.

RESPONDENTS' ANNEXURES :NIL

TRUE COPY

P.A.TO JUDGE