

Mr. Asharaf K.H Vs State of Kerala and Nadarsha K.H.

Court: High Court Of Kerala

Date of Decision: May 26, 2009

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 482
Penal Code, 1860 (IPC) â€” Section 323, 34, 341

Hon'ble Judges: C.T. Ravi Kumar, J

Bench: Single Bench

Advocate: Varghese C. Kuriakose, for the Appellant; A.S. Sasidharan, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.T. Ravikumar, J.

The petitioner herein is indicted under Sections 341 and 323 read with Section 34 of the IPC along with another, in

S.T. No. 358/2005 on the file of the Judicial First Class Magistrate Court-II, Aluva. He is the eldest brother of the 2nd respondent, the de facto

complainant. Eschewing the trivia, the essential contentions of the petitioner are as hereunder:

The brothers obtained 40.500 cents and 36.500 cents of properties respectively as patrimonial shares. According to him, it bruised the

brotherhood and created esuriency and enmity in 2nd respondent. In the property obtained by him, there was an old building and in that of the 2nd

respondent, there is a pukka building. However, the 2nd respondent kept on demanding for the excessive extent obtained by him. While so, he

constructed a building in his property and let it for rent to M/s. Speedage Express Cargo Service. The fastidious frame of mind forced the 2nd

respondent to file O.S. No. 1825/2004 against him before the Munsiff's Court, Ernakulam, with a view to drive away the aforesaid tenant from his

property. The ex parte interim injunction obtained by the 2nd respondent in that suit was, later, dismissed as per Annexure-4 and the same is, now,

under appeal. He was compelled to file O.S. No. 1/2005 before the Munsiff's Court, Ernakulam against the 2nd respondent for fixation of

boundary and injunction and as per Annexure-6, an interim injunction was granted in his favour. On 14.12.2004, the 2nd respondent has filed

Annexure-7 I.A. No. 10751/2004 for prosecuting him for violation of the interim injunction. Shortly thereafter, the very injunction application itself

was dismissed as per Annexure-4. It is thereafter that the 2nd respondent filed Annexure-2 complaint against him. The learned Magistrate took

cognizance of Annexure-2 complaint and has issued Annexure-1 summons to him. In the said backdrop vividly explained above, he contends that

Annexure-2 was filed with the oblique motive to harass him and the nature of allegations in the said complaint, in sum and substance, is exactly

similar to that in Annexure-7 and that it is nothing but an abuse of process of Court. Further, it is contended that no purpose would be served by

continuing with the proceedings in S.T. No. 358/2005 on the file of the Judicial First Class Magistrate Court-II, Aluva and, therefore, he seeks to

terminate the said proceedings u/s 482 of the Code of Criminal Procedure.

2. The usage of the expressions "to secure ends of justice" and "to prevent abuse of process of any Court" in Section 482 of the Code of Criminal

Procedure undoubtedly makes it a duty of Court to interfere with undeserving prosecution and to prevent such prosecution when it is satisfied that

its continuance will result in great miscarriage of justice or abuse of process of Court. When a probable abuse of process of the court is brought to

the notice of the court, it is the paramount duty of the court to look into it and if found true, to prevent such abuse at its threshold. As stated earlier,

the core contention of the petitioner is that it is only to augment his prospects in the civil disputes that the 2nd respondent has instituted criminal

proceedings vide Annexure-2 on the same set of facts as set out in Annexure-7. Having regard to the relationship between the petitioner and the

2nd respondent and the background in which Annexure-2 complaint is filed, I think, it will not be inapposite to consider the contentions raised by

the petitioner. Elutiation of the allegations in Annexures-2 and 7 would reveal that there are same in sum and substance. Admittedly, Annexure-7

application has already been filed for prosecuting the petitioner for violation of the order of injunction and the same is pending. Subsequent

dismissal of the very application of interim injunction, that led to the passing of interim injunction alleged to have been violated, will not make

Annexure-7 unsustainable for that sole reason. Therefore, the action on the part of the 2nd respondent in filing Annexure-2 complaint, after

Annexure-4, that too, with similar allegations as made in Annexure-7 with addition of allegations of commission of offence of trivial in nature,

requires consideration to see whether the criminal proceeding is manifestly attended with malafides or whether it is maliciously instituted with an

ulterior motive. The incident alleged in Annexure-2 complaint is as follows:

and pushed the complainant with both hands and then 1st accused stepped forward and hit with his right hand on the left side of the head of the

complainant.... Due to the unexpected attack of the accused the complainant stood there with pain on his head and then the complainant has gone

to his house.

Immediately after narrating the said incident in Annexure-2, the 2nd respondent complainant stated therein that on the same day itself he went to

the police station and complained before the station house officer. A scanning of Annexure-2 complaint would reveal that his keen attention was to

get the petitioner booked in a criminal case and it did not reveal any genuine grievance of having sustained such an attack. The very nature of the

consequent actions as explained by the 2nd respondent would reveal that he was actually trying to make a platform to launch a criminal proceeding

against the petitioner to augment his prospects in the civil disputes. Institution of criminal proceedings with such motive can fall only under the

category "maliciously instituted proceedings with ulterior motive" and in such event this Court has a duty to prevent abuse of process of Court and

avoid wasting of precious judicial time. As already stated, if he has a genuine grievance regarding violation of the interim injunction passed in O.S.

No. 1825/2004, he has already approached the civil court with an appropriate petition. His subsequent action in filing Annexure-2 complaint

alleging commission of offence, trivial in nature, in the background in which it is filed, undoubtedly suggests that it is maliciously instituted solely with

an ulterior motive and at any rate the relevant, respective pleadings take any prudent man only to such an irresistible conclusion. The said fact is

further evident from the conduct of the 2nd respondent in this proceeding in as much as despite several continuous postings, he did not turn up to

contest and substantiate his contentions. His counsel was also not present on all such dates.

3. In the aforesaid admitted circumstances, I think it will be a mock trial if the case is allowed to proceed further. A frustrated litigant cannot be

allowed to take a judicial forum of the court to be utilised for any oblique motive. Preventing judicial process from being an instrument of

harassment in the hands of such a vindictive litigant is an obligation of the court when it is so found. I have already found that the present

proceedings in question has been maliciously instituted with an ulterior motive to augment his prospects in pending civil disputes. In the

circumstances, I think, it is an eminently fit case where interference to terminate the undeserving prosecution can be exercised by invoking the

inherent power u/s 482 Cr.P.C. Needless to say, in the circumstances, Annexure-1 summons issued to the petitioner is not justified.

4. In the light of the aforesaid discussions, I am inclined to invoke the inherent power u/s 482 of the Code of Criminal Procedure to quash the

original of Annexure-2 complaint and accordingly, Annexure-2 complaint filed by the 2nd respondent in S.T. No. 358/2005 on the file of the

Judicial First Class Magistrate Court-II, Aluva dated 7.1.2005 is quashed. No further proceedings shall be continued against the petitioner herein

based on Annexure-2 complaint.

The Crl. M.C. is, therefore, allowed.