

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE M.C.HARI RANI

FRIDAY, THE 20TH MARCH 2009 / 29TH PHALGUNA 1930

Cri.MC.No. 1950 of 2006

S.C.998/2004 OF THE ADDL.SESIONS COURT (ADHOC-II),KOLLAM

PETITIONER:

C. JAYACHANDRAN NAIR,
CIRCLE INSPECTOR OF POLICE (D.I.)
C.B.C.I.D., S.I.G.II, ERNAKULAM.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT:

STATE OF KERALA, REPRESENTED BY
JPUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY GOVT. PLEADER MR. THOMAS JOHN AMBOOKKEN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 20/03/2009, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

CRL.M.A. NO. 3751/2006 IN CRL.M.C. NO. 1950/2006

DISMISSED.

20-3-2009

SD/-M.C. HARI RANI, JUDGE

TRUE COPY

P.S. TO JUDGE

M.C. HARI RANI, J.

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CRL.M.C.NO. 1950 of 2006

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Dated this the 20th day of March 2009

ORDER

The petitioner in this petition was examined as PW56 on the side of the prosecution in S.C.No.998/2004 on the file of the Additional District & Sessions Court (Adhoc-I), Kollam. This petition is filed before this court under Section 482 of the Code of Criminal Procedure with the prayer to expunge the observations and remarks made against him in the above mentioned judgment passed on 23-3-2006. Crime No.353/2000 of Kollam East Police Station was registered against the accused for the offence under Sections 120B, 201,364,302 read with Section 34 of the Indian Penal code. Investigation of that case was completed and charge sheet was laid before the Court of Judicial First Class Magistrate-II, Kollam. The learned Magistrate committed the case to the Sessions Court,Kollam and that court made over the case for trial and disposal to the Additional District

& Sessions Court(Adhoc-I),Kollam. The case was numbered as S.C.No.998/2004 and after trial, accused 1 and 2 were found guilty, convicted and sentenced as follows:

" 1. The accused 1 and 2 are sentenced to undergo life imprisonment under Section 120B(1)IPC, Rigorous imprisonment for a term of 5 years under Section 201 IPC and Rigorous imprisonment for a term of 5 years under Section 364 IPC. The sentence of imprisonment on the above 3 counts shall be allowed to run concurrently.

2. The accused 1 and 2 are sentenced to be hanged by neck till they are dead under Section 302 IPC."

A copy of that judgment dated 23-3-2006 is produced as Annexure-I.

Paragraph 61 of the judgment reads as follows:

"61. Before concluding the matter, I like to express my displeasure and dissatisfaction on the manner of investigation carried out by the police in the present

case. It is already noted that it is a case where the accused have by themselves fallen into the hands of the police shortly after the occurrence of the offence. It is not a case where the accused were apprehended in pursuance of the evidence collected on investigation. I find it appropriate on my part to convey the following culpable omissions in the process of the investigation of the present case.

1. There is a clear reference to the use of a mobile phone by the 1st accused to converse with the 2nd accused during the relevant period. A mobile phone was seized from the house of occurrence at Kumarapuram as per Ext.P9 scene mahazar dated 27-4-2000. MOVII camera was also seized from that house as per that mahazar on the very same date. They both were produced before court as per Ext.P35(3)

property list as item Nos.13 and 14. No effort was made during the investigation either to scan the camera. After commencement of the trial the learned Addl. Public Prosecutor filed Crl.M.P.No. 2165/05 to sent MOVII Camera to the Chief photographer, State Police Photographic Bureau, for developing the film if any found loaded in it. The prayer was allowed vide order dated 27-6-05 and MOVII(a) series 25 photographs of the accused 1 and 2 in the presence of Pws.4,9 and 55 were obtained. The order dated 27-6-2005 on Crl.M.P.No.2165/05 was upheld by the Hon'ble High court in Crl.M.C.No.1925/05, preferred from the defence side. In my view, the omission to examine the mobile phone and camera by

experts in appropriate time is a culpable omission on the part of the investigating officer and it is liable to be enquired into by higher police authorities.

2. The released involvement of experts, viz. finger print experts, handwriting and signature experts, etc. is noted as an important omission in the investigation of the case. No expert was called by the investigating officer while making the entry into the houses of occurrence, and also at the time of recovery of the dead body.

3. Non production of the way bill and receipt seized as per Ext.P12 seizure mahazar dated 22-4-00 with respect to the vehicle involved in the Crime (KL—4A-6595) will also raised a suspicion on the conduct of the investigating officer.

4. Non production of the negative with respect to Ext.P29 series(12) photos is suspected as an omission with ulterior motives to avoid detection of the presence of PW3(CW4) in the place at the time of recovery of the dead body.

5. I suspect correction or substitution of the statements of the witnesses recorded U/s.161 Cr.P.C.in matters involving CW4 (PW3).

Hence I propose to sent a copy of this judgment to the Registrar Subordinate Judiciary of the Hon'ble High court to be forwarded to the Director General of Police for his information and necessary action on the matters mentioned above".

2. In the aforementioned paragraph, the learned Additional Sessions Judge has expressed displeasure and dissatisfaction on the manner of investigation carried out in the

case. Further, it is specifically mentioned that no effort was made to scan the mobile phone or to detect the presence of used film in the camera. This, the learned Sessions Judge feels is a culpable omission on the part of the investigating officer requiring further investigation. The 2nd observation is regarding the non-involvement of experts like finger print experts and hand-writing experts. Non-production of Way bill and receipt seized and listed in the Mahazar, the court raises suspicion against the investigating officer. Non-production of negatives with respect to certain photographs was also seen as done with some ulterior motives and lastly correction or substitution is suspected in the 161 statement of PW3. The above observations of the learned Additional Sessions Judge is sought to be expunged by this court after exercising the inherent jurisdiction under Section 482 of Cr.P.C.

3. Heard the learned counsel appearing for the petitioner and also the learned Public Prosecutor.

4. It is submitted by the learned counsel for the petitioner

that the above observations in paragraph 61 of the judgment were without any basis or materials and were totally unwarranted for the disposal of the case which caused grave injustice to the petitioner. According to the learned counsel, the absence of the said evidence mentioned in the above observations is not in any way affected the prosecution case and the same were made without hearing the petitioner which is a gross violation of the principles of natural justice.

5. It is revealed from Annexure-I that PWs.1 to 57 were examined and Exts.P1 to P39 and Mos.I to XI were marked on the side of the prosecution. DWs.1 to 4 were examined and Exts.D1 to D3(a) were marked on the defence side. On the basis of the above evidence, both accused in S.C.No.998/2004 were found guilty. Accordingly, they were convicted and sentenced as mentioned above after accepting the case of the prosecution.

6. The learned counsel for the petitioners relied on the decision reported in **P.Ajayababu v. State of Kerala (2002(2) KLJ 582)**= **2002(3)K.L.T.S.N.104** wherein it was held as

follows:

“..... The settled position of law is that before any castigating remarks are made by the court against any person, particularly when such remarks could ensue serious consequences on the future career of the person concerned, he should be given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Giving of such an opportunity is the basic requirement and if no opportunity is given, the offending remark would be in violation of the principles of natural justice.”

.....” A passage which is likely to militate seriously against a party's earning livelihood and not necessary to the conclusion of the Judge, nor even necessary to his argument, should be expunged from the judgment. It is a general principle of highest

importance that a derogatory remark ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct.”.

7. It is evident from the facts of the instant case that Crime No.353/2000 was registered at the Kollam East Police station against accused 1 and 2 and the petitioner herein was examined on the side of the prosecution as PW56 who conducted the preliminary investigation of the case. No notice was issued by the learned Additional Sessions Judge to the petitioner in this petition and no opportunity for hearing was given to him before making the observations and the strictures against him as mentioned in paragraph 61 of the judgment. It is true that no appeal has been preferred against the judgment which contains the above observations and strictures against the petitioner. It is true that in order to maintain the independence of judiciary it is necessary that every Judge or Magistrate should have the

freedom to express his opinion in the judgment. But, while expressing his opinion, it is relevant for the Judge to consider whether such expression of opinion thereon going to the extent of commenting or criticizing becomes necessary as a part of reasoning requisite for arriving at a conclusion necessary for deciding the main controversy or it becomes necessary for the purpose of arriving at a decision on the issue involved in the litigation. It is the settled law that before making any disparaging remarks by any court against any person, especially in the case of witnesses or parties not before him and more particularly when such remarks could ensue serious consequences on the future career of the person concerned, he should be given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. It is revealed from the judgment in the present case that no such opportunity is given to the petitioner, who is the witness, would definitely be in violation of the principles of natural justice. Therefore, this Court by invoking the inherent jurisdiction envisaged under Section 482

of Cr.P.C. can expunge that observation made against him, which is unwarranted for deciding the offence alleged against the accused in that case. So, the prayer in this petition is to be allowed.

In the result, CrI.M.C. is allowed, expunging the remarks made against the petitioner by the learned Additional Sessions Judge,(Adhoc-I),Kollam in paragraph 61 of the judgment rendered by him on 23-3-2006 in S.C.No.998/2004. The direction given by the learned Additional Sessions Judge to the higher authorities to take action against the petitioner is also unsustainable and stands set aside.

**M.C. HARI RANI
JUDGE**

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