

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 15TH FEBRUARY 2005 / 26TH MAGHA 1926

Crl.MC.No. 8806 of 2002()

CC.516/2001 of JUDL.MAGISTRATE OF FIRST CLASS-I, THAMARASSERY
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PETITIONER: ACCUSED NOS 1 TO 11

1. E.C.ABDUL KHADER S/O. CHERIYAMMAD HAJI,
AGED 47 YEARS, MALIYEKKAL HOUSE, KODUVALLY AMSOM,
PALAKKUTTY DESOM.
2. BASHER P.K. S/O. MUHAMMED HAJI, AGED 33
YEARS, KOTTAKKAL HOUSE, KARANTHOOR AMSOM,
KUNNAMANGALAM DESOM.
3. C.K.KOYA S/O. A.P. MOIDEEN HAJI, AGED 44
YEARS, AMBALAPARAMBIL HOUSE, KARANTHOOR AMSOM,
KUNNAMANGALAM, PATHIMANGALAM.
4. C.K.ASHRAF S/O. K.P.MOIDEN HAJI, AGED
33 YEARS, CHUDALAKANGAYIL HOUSE, KARANTHOOR AMSOM,
KUNNAMANGALAM, PATHIMANGALAM.
5. A.SIDDIOQUE S/O. ABU, AGED 29 YEARS,
AMBARAMMAL HOUSE, KARANTHOOR AMSOM, KOZHIKODE.
6. ABDUL MAJEED S/O. USSAIN,
PAYANKARA HOUSE, KODUVALLY AMSOM DESOM,
NEAR R.T.OFFICE
7. SHARAFUDDHIN S/O. BAVA, AGED 24 YEARS
AMBARAMMAL HOUSE, KARANTHOOR AMSOM,
PATHIMANGALAM
8. ABDUL KHADER S/O. IBRAHIM, AGED 22 YEARS
AMBARAMMAL HOUSE, KARANTHOOR AMSOM,
PATHIMANGALAM.
9. ABDUL SALAM S/O. ASSAINAR, AGED 30
YEARS, PARAPPURATH HOUSE, KODUVALLY AMSOM,
SOUTH KODUVALLY.
10. NASAR S/O. MOIDEEN, AGED 28 YEARS,
THANNIKUNDUNGAL HOUSE, KODUVALLY AMSOM.

: 2 :

11. N.K.BALAN NAIR S/O. CHATHUKUTTY NAIR,
AGED 42 YEARS, NEDUMKANDATHIL HOUSE,
KODUVALLU AMSOM, SOUTH KODUVALLY

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT

THE SUB INSPECTOR OF POLICE,
THAMARASSERY, REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR (SHRI. THAVAMONY)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 15/02/2005, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. HEMA, J.

Crl. M.C. No. 8806 of 2002

Dated this the 15th day of February, 2005

ORDER

Petitioners are accused Nos.1 to 11 in C.C.No.516 of 2001 on the file of the Judicial Magistrate of First Class-I, Thamarassery. They were charge-sheeted for offence under Section 384 and 34 of the IPC as per Annexure A1 charge sheet.

2. According to the allegations made in the charge sheet, on 6.8.2001 at about 9 p.m. petitioners forcibly stopped the vehicle in the National Highway between Ambayathodu and Chungam Check post and extorted money from the lorry drivers and other vehicles and issued receipts to them. They were collecting money under the misrepresentation that they are office bearers of District Lorry Drivers and Cleaners Association. The respondent police got reliable information and a crime was registered under Section 41(1) (a) of the Cr.P.C. and on reaching the spot certain bags in which money was collected and the receipt books were seized from the accused. After investigation, a charge sheet was laid before the Judicial First Class Magistrate-I, Thamarassery as Annexure A1. The case was taken on file on the final report in C.C.No.516 of 2001.

3. Learned counsel appearing for the petitioner vehemently contended that the records in this case will not disclose an offence

under Section 384 IPC. He produced various statements of the witnesses to contend that no offence is made out in this case. Those witnesses are the police officers or independent witnesses who, according to prosecution, gave statements to the police that petitioners were collecting money under the guise that they belong to District Lorry Drivers and Cleaners Association etc. The contention is that the statements of these witnesses will not show that money was extorted dishonestly from them by inducing them under fear of threat etc. which is a necessary ingredient for the offence.

4. It is true that from the statements produced before this Court it cannot be inferred that there was any evidence that the person from whom money was collected was put to fear and they were dishonestly induced to pay money etc. But the charge sheet Annexure A1 would show that there was such extortion. The records produced along with the petition will not contain any of the statements of the person from whom money was collected. The persons against whom offence is committed are the persons from whom money is extorted. Unless their statements are seen it would not be possible for this Court to conclude that no offence is made out in this case. The entire case records are not before me. It is not even known whether the persons from whom money was

extorted were actually questioned by the police or not. It is also not known whether they are cited as witnesses.

5. In the above circumstances, at this stage, it cannot be concluded from the records produced along with this petition that no offence is made out against the accused. I do not find any ground to interfere under Section 482 Cr.P.C. It is however, argued that none of the witnesses from whom money is allegedly extorted is cited as witnesses in the charge sheet. Though the allegation is that an offence under Section 384 IPC is committed, none of the persons who allegedly extorted are cited witnesses in the case, it is submitted. No doubt that those persons are material witnesses in this case. It is not known under what circumstances the investigating officer excluded their names from the witness-list. According to learned counsel for petitioners, this happened because none of them had any grievance against petitioners since they were lawfully receiving money on issuing receipts, it is submitted. Without the statement of the aggrieved persons on record, it may not be possible to presume that the petitioners have committed the offence, it is argued.

6. According to learned counsel for petitioners, this case is falsely charge-sheeted by the police to wreak vengeance against

petitioners. Learned counsel for the petitioners would also submit that to his information, none of the witnesses from whom money was collected was aggrieved since no offence is committed against them. Petitioners were only collecting the money as office bearers of the Association. Hence, it is submitted that petitioners are liable to be discharged.

7. On hearing both sides I find that, if the petitioners have a case that there are no materials to frame charge against the accused for want of evidence to presume commission of offence, petitioners are at liberty to approach lower court for discharge, if so advised. But, the mere omission to cite certain aggrieved persons as witnesses may not be sufficient to quash the charge. This is particularly so, since it is not possible to conclude from the available records whether they were actually questioned or not by police.

With these observations, this petition is disposed of.

K. HEMA, JUDGE.

krs