

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.BHAVADASAN

SATURDAY, THE 30TH JANUARY 2010 / 10TH MAGHA 1931

Crl.MC.No. 1221 of 2009()

CC.777/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM
(CRIME NO.189/07 OF CENTRAL POLICE STATION, ERNAKULAM)

PETITIONER(S): ACCUSED

1. M.ABDULLA KUNJU, EMPLOYEE, SUPPLY CO,
ERNAKULAM.
2. MANI, EMPLOYEES, SUPPLY CO, ERNAKULAM.
3. HENTRY, EMPLOYEE, SUPPLY CO,
ERNAKULAM.
4. SUHARA, EMPLOYEE, SUPPLY CO,
ERNAKULAM.
5. RAJESH, EMPLOYEE, SUPPLY CO,
ERNAKULAM.
6. SREEKUMAR, EMPLOYEE, SUPPLY CO,
ERNAKULAM.
7. BENNY P.JOSEPH, EMPLOYEE, SUPPLY CO,
ERNAKULAM.
8. JOSEPH, EMPLOYEE, SUPPLY CO.,
ERNAKULAM.

BY ADV. SRI.K.P.DANDAPANI, SENIOR ADVOCATE & SRI.MILLU DANDAPANI

RESPONDENT(S): COMPLAINANT & STATE

1. VIJU CHOOLAKKAL, S/O.JOSEPH,
CHOOLAKKAL VEEDU, KARSHAKA ROAD, KOCHI-18.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

PUBLIC PROSECUTOR SRI.P A SALIM
SRI.T.K.AJITHKUMAR (VALATH) & SRI.SUNEESH.M. FOR R1

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30/01/2010,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.BHAVADASAN, J.

Cr. MC No.1221 of 2009-C

Dated 30th January 2010

Order

This is a petition, filed under Section 482 of the Code of Criminal Procedure, seeking to have Annexure E complaint in CC No.777/07, pending before the Judicial First Class Magistrate Court-II, Ernakulam, quashed.

2. In relation to an incident, which took place on 07.02.2007 at about 12.30 pm, the Central Police, Ernakulam registered Crime No.189/07 against the first respondent and others for the offences punishable under Ss.450, 392 and 332 read with S.34 IPC. The allegation was that the first respondent and others, who belong to a particular political party, trespassed into the office of the Maveli Bhavan, Supplyco and caused hurt to the officials, who were working in the office. A copy of the F.I.R. is produced as Annexure-A. Later, it appears that on 22.02.2007, the first respondent filed a private complaint with regard to the very same incident which took place on 07.02.2007, which was forwarded for investigation to the Police under S.156 Cr.P.C.

The Police, after investigation, filed Annexure D refer report. It is seen that the first respondent then filed a protest complaint, on which cognizance is said to have taken by the learned Magistrate. The act of the learned Magistrate in taking cognizance on a protest complaint is assailed in this proceedings.

3. There is much substance in the grievance voiced by the petitioners. The incident took place on 07.02.2007 and the offences shown in the F.I.R. would clearly show that it was the first respondent and others, who trespassed into the premises belonging to the office of the Supplyco and created problems there. It is significant to notice that the private complaint was laid only two weeks thereafter, which clearly shows that it was nothing but only a counter-blast against the crime registered by the Police. Further, the records would also show that the police, after investigation of the private complaint filed by the 1st respondent which was sent to them for investigation, had filed a refer report showing that the complaint itself was vexatious and frivolous. There was nothing more in the protest complaint than in the original complaint. Under such circumstances, there is no

justification for the learned Magistrate to have taken cognizance on the basis of the protest complaint. No material whatsoever is available to proceed against the petitioners. In the result, this petition is allowed and all further proceedings shown as Annexure E in CC No.777/07 pending before the Judicial First Class Magistrate Court-II, Ernakulam, shall stand quashed.

P.BHAVADASAN, JUDGE

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