

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 31ST DAY OF JANUARY 2020 / 11TH MAGHA, 1941

Cr1.MC.No.4749 OF 2019(C)

AGAINST THE ORDER IN CC 826/2018 OF JUDICIAL MAGISTRATE
OF FIRST CLASS, VADAKARA

CRIME NO.125/2018 OF VADAKARA POLICE STATION, KOZHIKODE

PETITIONER/ACCUSED:

PRASANTH,
AGED 28 YEARS, ADVOCATE, S/O.KALIMUTHU,
REVATHI NILAYAM, S.N.NAGAR, KALPATTA P.O.,
WAYANAD.

BY ADVS.
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY
SRI.D.FEROZE
SRI.K.ANAND (A-1921)

RESPONDENT/STATE/COMPLAINANT:

THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.
(CRIME NO.125/18 OF VADAKARA POLICE STATION,
KOZHIKODE DISTRICT).

SRI. AMJAD ALI SR. PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
31.01.2020, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

C.R.

P.B.SURESH KUMAR, J.

Crl.MC.No.4749 of 2019

Dated this the 31st day of January, 2020.

ORDER

This proceedings under Section 482 of the Code of Criminal Procedure is instituted seeking orders quashing the final report and all further proceedings in CC.No.826 of 2018 on the files of the Judicial Magistrate of the First Class, Vadakara.

2. The case aforesaid is one instituted upon a police report under Sections 341, 353 and 354 of the Indian Penal Code. The petitioner is the sole accused in the case. The accusation against the accused in the case as disclosed in the First Information Statement given by the de facto complainant is that on 18.01.2018, while the de facto complainant, a women Civil Police Officer was on escort duty of one Afifa, a person

accused in a case under the Narcotic Drugs and Psychotropic Substances Act pending before the Special Court, Vadakara, the accused attempted to converse with the prisoner in the premises of the special court and since the court proceedings was about to commence by that time, the de facto complainant prevented the accused from conversing with the prisoner. It was also alleged that later on the same day, while the de facto complainant was waiting at the bus stand with the prisoner for proceeding to another court, the accused attempted to converse with the prisoner again and the de facto complainant prevented him from doing so. It was also alleged that later, when de facto complainant boarded a bus along with the prisoner, the accused accompanied the prisoner in the bus as well for the said purpose stating that he is the lawyer of the prisoner and that he has the right to converse with the prisoner. The de facto complainant prevented him from doing so again for the purpose of ensuring the safe journey of the prisoner. It was further alleged that later after the Court proceedings, the accused appeared before them again and when the de facto

complainant permitted the accused to converse with the prisoner having realised that he is the lawyer of the prisoner, the accused pushed the woman Civil Police Officer who was accompanying the de facto complainant aside and proceeded refusing to converse with the prisoner shouting that he has other means to converse with the prisoner and he does not want the concessions of the de facto complainant for the said purpose. The case of the accused is that the accusation does not make out the offences alleged.

3. Heard the learned counsel for the petitioner as also the learned Public Prosecutor.

4. Before proceeding to examine the matter on merits, it is necessary to refer to the principles governing the subject. It is by now settled that criminal proceedings can be quashed at its initial stage only if no offence is made out on the face of the materials made available. In other words, the test is that by taking the allegations and complaints as they are, without adding or subtracting anything, if no offence is made out, then court will be justified in quashing the proceedings in

exercise of its powers under Section 482 of the Code of Criminal Procedure. The saving of the inherent power of the court is designed to achieve a salutary public purpose namely that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

5. Having referred to the principles aforesaid, I shall now deal with the scope of various offences attributed against the accused. A case of wrongful restraint under Section 341 of the Indian Penal Code arises only when the accused obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed. A case of assault or criminal force to deter public servants from discharging their duty under Section 353 of the Indian Penal Code arises only when a case of assault or use of criminal force by the accused is made out. It is trite that a physical act or either causing motion or cessation of motion of a person in order to the committing of an offence or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to

the person to whom the forces used, is required to make out a case of use of criminal force. To constitute assault in terms of Section 351 of the Indian Penal Code, the accused must by any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person. The explanation of Section 351 of the Indian Penal Code clarifies that the mere words do not amount to an assault and that only words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault. Similarly, a case of assault or criminal force to a woman with intent to outrage her modesty under Section 354 of the Indian Penal Code arises only when a case of assault or use of criminal force by the accused intending to outrage or knowing it to be likely that he will thereby outrage her modesty is made out. The facts of the case need to be analysed in the light of the scope of the offences attributed against the accused as explained.

6. I have meticulously read the First Information Statement given by the de facto complainant as also other materials collected and produced along with the final report which is sought to be quashed in the proceedings. If one comprehends the sequence of events narrated by the first informant holistically, eschewing the embellishments, the essence is that the accused attempted many times to converse with the prisoner who was being escorted by the de facto complainant as regards the particulars of the case in which the prisoner is involved and that, infuriated by the conduct of the de facto complainant in refusing to permit the accused to converse with the prisoner, the accused shouted at them and pushed aside the woman Police Officer who was accompanying the de facto complainant.

7. As noted, a case under Section 341 of the Indian Penal Code arises only when the accused obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed. The de facto complainant has no case that the accused restrained her

so as to prevent her from proceeding in the direction to which she wanted to proceed. The case set out is only that the accused attempted to converse with the prisoner who was being escorted by the de facto complainant. Further, as noted, the de facto complainant has no case that the accused has committed any physical act either causing motion or cessation of motion. True, there is a statement by the de facto complainant that when she permitted the accused to converse with the prisoner, he pushed the Police Officer who was accompanying the de facto complainant aside and walked away shouting at them that he does not want their concessions to converse with the prisoner. Such a conduct, even if true, according to me, would not make out a case of criminal force, for, the same cannot be, at any stretch of imagination, understood as an intentional use of force in order to the committing of any offence or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear and ends to the person to whom the force is used. Similarly, the de facto complainant has no case

that the accused has made any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause the de facto complainant to apprehend that the accused is about to use criminal force to her. If that be so, a case of criminal force or assault is also not made out. If no case of criminal force or assault is made out, the offences under sections 353 and 354 are also not made out. In the circumstances, I am satisfied that the final report in the case is nothing but an abuse of the process of the court. The Criminal M.C., in the circumstance, is allowed and the final report in C.C.No.826 of 2018 on the files of the Judicial Magistrate of First Class, Vadakara and all further proceedings thereto are quashed.

8. Before parting with this judgment, I think it is my duty to observe that it is high time that the police need to be sensitized about the rights of citizens including prisoners and need to be trained to deal with the complainants, accused, witnesses, lawyers etc. in the peculiar social fabric of our country. This court does not approve at all the conduct of the

accused involved in this matter in chasing the prisoner. There are other more appropriate means in place for the purpose of conversing with the accused who seeks legal aid in a case. At the same time, I am unable to endorse the conduct of the Police Officer involved in this matter in refusing to permit the accused to converse with his client, the prisoner for one or other reason and the conduct of the Police Officer who registered the case against the accused and later filed the final report in a case of this nature. I believe that if the de facto complainant had conducted herself properly having regard to the ground realities of life, leaving the ego behind that she is a Police Officer, an incident of this nature could have certainly been avoided and thereby not only the valuable time of the police force, but also precious judicial time intended for rendering justice to genuine and deserving cases, could have been saved.

Sd/-

P.B.SURESH KUMAR, JUDGE.

YKB

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE I	TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER TO THE SUPERINTENDENT OF POLICE ON 18/01/2018.
ANNEXURE II	TRUE COPY OF THE COMMUNICATION RECEIVED BY THE PETITIONER FROM DY.SUPERINTENDENT OF POLICE, VATAKARA, DATED 27/01/2018.
ANNEXURE III	TRUE COPY OF THE COMMUNICATION RECEIVED FROM ASST. COMMISSIONER OF POLICE, DISTRICT SPECIAL BRANCH, KOZHIKODE CITY, DATED 23/02/2018.
ANNEXURE IV	TRUE COPY OF THE STATEMENT SUBMITTED BY THE PETITIONER.
ANNEXURE V	TRUE COPY OF THE STATEMENT SUBMITTED BY THE PETITIONER ON 7/04/2018.
ANNEXURE VI	TRUE COPY OF THE FIR IN CRIME NO.125/2018 OF VATAKARA POLICE STATION ALONG WITH FIRST INFORMATION STATEMENT.
ANNEXURE VII	CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.125/2018 OF VATAKARA POLICE STATION, WHICH IS NOW PENDING AS CC NO.826/2018 ON THE FILE OF THE JUDICIAL MAGISTRATE OF FIRST CLASS, VATAKARA.

ANNEXURE VIII

TRUE COPY OF THE ORDER DATED
17/03/2018 PASSED IN
CRL.M.P.NO.572/2018 BY THE COURT OF
SESSIONS, WAYANAD.

RESPONDENT'S/S EXHIBITS:

NIL

//TRUE COPY//

PA TO JUDGE