

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945

CRL.MC NO. 2247 OF 2023

CC 2371/2019 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,
THIRUVALLA

PETITIONER/ACCUSED NO.8:

ANISH K. VARKEY
AGED 40 YEARS
S/O. K.V. VARKEY, KANJIRAKATTU HOUSE, MANJADI P.O.,
THIRUVALLA PATHANAMTHITTA, PIN - 689105.

BY ADVS.
M.R.NANDAKUMAR
MAYIKA SUNDAR
ARJUN ANIL
ASIN V.S.

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682031.
- 2 THE STATION HOUSE OFFICER
THIRUVALLA POLICE STATION, PATHANAMTHITTA, PIN -
689662.

SRI.M P PRASHANTH, SR PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
31.05.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

The petitioner is the 8th accused in C.C.No.2371/2019 on the file of the Judicial First Class Magistrate Court, Thiruvalla. In the aforesaid case, he faces indictment for having committed offences punishable under Sections 143, 147, 148, 332 r/w Section 149 of the IPC.

2. The prosecution allegation is that on 21.04.2019, the concluding day of the campaign in respect of the parliamentary election, at about 4 p.m., around 100 persons gathered at Thiruvalla SCS Junction armed with stones and sticks. The people who gathered at the junction were followers of the CPM and the BJP. The allegation is that the accused, knowing fully well that they are members of the unlawful assembly, committed the offense of rioting and, when the police personnel tried to intervene, threw stones and thereby obstructed the officers from discharging the official duty. It is also stated that the officers who were on duty at the spot suffered injuries on account of the pelting of the stones.

3. Sri. M.R. Nandakumar, the learned counsel appearing for the petitioner, submits that at the time of registration of the FIR, all that was mentioned is that there were 100 identifiable BJP/CPM activists. The learned counsel, by referring to Annexure A2 final report, submits that not even one

person has identified the petitioner as a person who was present at the scene of the crime. The petitioner asserts that he has not been arrested till date. However, the investigating officer who conducted the investigation included the name of the petitioner in the final report without any materials whatsoever. The learned counsel submits that the continuance of the proceedings against the petitioner is a clear abuse of process.

4. The learned Public Prosecutor submits that the investigating officer has noted in the final report that the petitioner has been identified.

5. I have considered the submissions advanced and have gone through Annexure A1 FIR as well as Annexure A2 final report. I find that the specific accusation is that about 100 persons gathered and pelted stones at each other consequent to which the police officers suffered injuries. I find that none of the witnesses identified the petitioner herein or have spoken about his involvement. Admittedly the petitioner has not been arrested to date. No report has been placed along with the final report to substantiate that the petitioner was identified by any of the eyewitnesses as a person who was present at the spot and who had participated in the incident which took place on 21.4.2019.

6. The scope of exercise of power under Section 482 of the Code

and the categories of cases where the High Court may exercise its power under it relating to cognizable offenses to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in **State of Haryana v. Bhajan Lal**¹. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by the Apex Court has been detailed in paragraph 102 and 103 of the judgment, which reads as under:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

¹ [1992 Supp (1) SCC 335]

- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection

and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

7. Having considered the facts of the instant case, in the light of the principles laid down by the Apex Court in **Bhajan Lal** (supra), I am of the view that the uncontroverted allegations made in the FIR and the charge and the evidence collected in support of the same do not disclose the commission of any offence against the petitioner. In that view of the matter, this Court will be well justified in invoking its powers under section 482 of the Code to quash the criminal proceedings against the petitioner.

Resultantly, this petition will stand allowed. Annexure A2 final Report in Crime No.872/2019 of the Thiruvalla Police Station and all further proceedings insofar as it concerns the petitioner and pending as C.C.No.2371/2019 on the file of the Judicial First Class Magistrate Court, Thiruvalla, are quashed.

Sd/-

**RAJA VIJAYARAGHAVAN V
JUDGE**

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APPENDIX OF CRL.MC 2247/2023

PETITIONER ANNEXURES

Annexure A1 A TRUE COPY OF THE FIR NO. 872/2019 DATED
21.04.2019 OF THE 2ND RESPONDENT.

Annexure A2 CERTIFIED COPY OF THE FINAL REPORT/CHARGE
SHEET NO. 2285/19 DATED 30.09.2019 BEFORE THE
HONOURABLE JFCM, COURT, THIRUVALLA.