



2024:KER:80505

CRL.MC NO. 2588 OF 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 28TH DAY OF OCTOBER 2024 / 6TH KARTHIKA, 1946

CRL.MC NO. 2588 OF 2023

CRIME NO.86/2021 OF VAGAMON POLICE STATION, IDUKKI

AGAINST THE ORDER/JUDGMENT IN ST NO.263 OF 2021 OF
GRAM NYALAYA, AZHUTHA AT PEERUMEDU

PETITIONER/ACCUSED:

DR. VISAKH VIJAYAN
AGED 29 YEARS
UTHRADAM, SIVAPURAM, CHERIYAKOLLA P O,
KUNNATHUKAL, TRIVANDRUM, PIN - 695504

BY ADV C.R.SURESH KUMAR

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 2 SAJITH @ KANNAN
AGED 25 YEARS
S/O SASIDHARAN NAIR, LATHA BHAVAN,
ILAMBA VILLAGE, CHIRAKINKEEZU, TRIVANDRUM,
PIN - 695304

BY ADV SMT. SREEJA V, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 28.10.2024, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

**BECHU KURIAN THOMAS, J****Crl.M.C.No.2588 of 2023****Dated this the 28th day of October, 2024****ORDER**

Petitioner- a paraplegic, has approached this court seeking to quash proceedings initiated against him alleging rash and negligent driving, which resulted in an injury to his co-passenger. Unfortunately, petitioner became a paraplegic in the said accident itself. Despite the above, he is now facing prosecution on the basis of a complaint filed by his co-passenger.

2. Prosecution alleges that, on 14.03.2021, while the petitioner was driving a Mahindra Thar vehicle, bearing No.KL-01-CF-2018, through Vagamon- a hill resort, along with his friend as co-passenger, on reaching a hilltop, the vehicle started rolling back and toppled down into the valley, causing injuries to his friend—the defacto complainant. Since the accident occurred due to the rash and negligent driving of the accused, he committed the offences under Sections 279, 337, and 338 of the Indian Penal Code 1868.

3. Sri. C.R. Suresh Kumar, the learned counsel for the petitioner, contended that the prosecution allegations are totally false and the incident had not occurred as alleged. Referring to the



statement of the defacto complainant as well as the witnesses, it was contended that the accused had, while driving the vehicle taken a wrong route and thereafter, while they were climbing a steep slope, the vehicle slipped and fell into a valley, thereby seriously injuring the petitioner and the defacto complainant. The learned counsel submitted that as evident from Annexure A4 disability certificate, the petitioner has become a paraplegic with 65% disability, and to compel him to undergo the trauma of trial would result in manifest injustice requiring the court to interfere under Section 482 Cr. P.C

4. Smt. Sreeja V, the learned Public Prosecutor submitted that the uncontroverted allegations in the final report do make out the offences alleged. However, she fairly submitted that the defacto complainant himself had given a statement that he is not interested to pursue the matter, especially since the accident occurred not due to any rashness or negligence of the accused, but only because a wrong route was taken.

5. I have considered the rival contentions. The petitioner had sustained serious injuries in the accident and has become a paraplegic. The said circumstance must certainly compel this Court to adopt a sympathetic view. This is all the more since the defacto complainant had expressed his disinterestedness to



proceed with the case.

6. Sections 279, 337, and 338 IPC provisions alleged against the petitioner. The primary ingredient in all these three provisions is the same person who drives a vehicle or does any act so rashly or negligently. A rash act is something which is done in haste and when the word 'rashly' is prefixed by the adjective 'so rashly' there must be something more than normal rashness that would attract the offending provisions.

7. A reading of the final report reveals that other than the petitioner driving the vehicle through a steep slope, there is nothing alleged as indicating or suggestive of any rash act or any act that could be attributed as hasty to come within the purview of 'so rash and negligent act'. In the absence of any allegation in the final report that petitioner had driven the vehicle so rashly or negligently, the provisions of Sections 279, 337, and 338 cannot be said to be attracted in the present case to compel the petitioner to face a criminal prosecution.

8. Further, since the defacto complainant has asserted that he has no grievance against the petitioner, the trial will no doubt be an exercise in futility.

9. In a recent decision in **Achin Gupta vs. State of Haryana and Another (2024 SCC OnLine SC 759)**, the Hon'ble



Supreme Court had observed that the authority of Court exists for advancement of justice and Courts have the power to prevent abuse. When the uncontroverted allegations in the final report do not make out the offences alleged failure to quash the proceedings can result in manifest injustice. In this context, the circumstances that the petitioner is a paraplegic can be reckoned by the Court to consider that since not only the uncontroverted allegations would not make out an offence, but compelling the petitioner to undergo a criminal trial would be traumatic, perhaps more than the incident itself.

10. I am satisfied that continuing the proceedings against the petitioner in ST.263/2021 before the Grama Nyayalaya, Azhutha at Peermade would lead to manifest injustice. Therefore, the said proceedings are required to be quashed.

11. In the above circumstances, all proceedings in ST.263/2021 on the files of the Grama Nyayalaya, Azhutha at Peermade, arising out of Crime No.86/2021 Vagamon Police Station are hereby quashed.

This Crl,M.C is allowed accordingly.

Sd/-

**BECHU KURLAN THOMAS
JUDGE**

SPV



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APPENDIX OF CRL.MC 2588/2023

PETITIONERS' ANNEXURES

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| Annexure A-1 | A TRUE COPY OF THE FIR OF THE KERALA POLICE IN CRIME NO. 86/2021 OF VAGAMON POLICE STATION |
| Annexure A-2 | A TRUE COPY OF THE RELEVANT PAGES OF DISCHARGE SUMMARY ISSUED FROM ANANTHAPURI HOSPITAL, TRIVANDRUM DATED 09.04.2021 |
| Annexure A-3 | A CERTIFIED COPY OF THE FINAL REPORT DATED 30.06.2021 IN CRIME NO.86/2021 OF VAGAMON POLICE STATION. |
| Annexure A-4 | A TRUE COPY OF THE DISABILITY CERTIFICATE ISSUED BY DEPARTMENT OF EMPOWERMENT OF PERSONS WITH DISABILITIES UNDER THE MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, GOVERNMENT OF INDIA DATED 08.01.2022 |
| Annexure A-5 | A TRUE COPY OF THE ORDER IN CRIMINAL MC NO.2719/2021 OF HON'BLE HIGH COURT OF KERALA. |