

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR

TUESDAY, THE 18TH DAY OF AUGUST 2020 / 27TH SRAVANA, 1942

Cr1.MC.No.2560 OF 2015

CRIME NO.380/2015 OF Thrikkakara Police Station , Ernakulam

PETITIONER/ACCUSED:

PRASANTH
AGED 35 YEARS
S/O SIVAN, CHERIYAPUYTHENVEETIL HOUSE,
KODUNGALLOOR, THRISSUR DISTRICT.

BY ADVS.
SRI.ARUN PAUL JACOB
SRI.S.RAJEEV
SRI.ALEX.M.SCARIA

RESPONDENTS/DE FACTO COMPLAINANT & STATE:

- 1 C.V.KURIAKOSE
S/O VARHGESE, SANKOORIKKAL HOUSE, SANTHI NAGAR,
CHAKKARAPPARAMBU, ERNAKULAM.
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM-682031.

R1 BY ADV. SRI.LINDONS C.DAVIS
ADV.SRI. UDAYAKUMAR, K.B. (P.P.)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
18.08.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Dated this the 18th day of August, 2020

O R D E R

The sole accused in Crime No.380/2015 of Thrikkakara Police Station seeks to quash Annexure-B FIR registered against him for commission of offences punishable under Sections 415, 419, 463, 464, 465 and 471 of IPC, invoking the inherent power of this Court under Section 482 of Cr.P.C. on the ground that it is the result of false implication as well as personal enmity of the first respondent towards him. The case was registered against him on the motion of first respondent, de facto complainant, who filed Annexure-A complaint before JFCM-I, Aluva.

2. The petitioner is indisputably an Embryologist. The gist of the prosecution allegation against him is that he, without having acquired Doctorate in any of the subjects, is

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illegally using the prefix 'Doctor' along with his name. His conduct in the public and false claim being made before the hospital authorities as a doctor, are nothing short of acts of deception. He has fabricated documents to make it appear that he has Doctorate in Philosophy though as a matter of fact, he has not acquired such a degree in any of the streams. It is in this background, the first respondent claims to have submitted Annexure-A complaint before JFCM-I, Aluva, which was forwarded to Sub Inspector of Police, Thrikkakara Police Station, for registration and investigation under Section 156(3) of Cr.P.C.

3. The contention of the petitioner is that even if the entire allegations against him are taken as true, none of the offences in question can be said to have been made out under law. It is contended that since the authorities of hospitals, where he is working, have not preferred any

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complaint to the authorities of law, the allegation against him is liable only to be rejected as falsely made. According to him, he is fully qualified and has all requisite certificates of eligibility for being employed as Clinical Embryologist in the hospitals. It is also contended that he has obtained Annexure-C certificate of Doctorate in Philosophy in Animal Biotechnology, from Prescott University, London, U.K. He also produced Annexure-D certificate claiming it to be his Degree in Master of Science. He claims to have obtained Annexure-E Master of Philosophy in Biotechnology from Bharathidasan University.

4. On the other hand, the first respondent produced a series of documents contending that they are sufficient by themselves to substantiate that petitioner's certificates are all fabricated and he has not acquired Doctorate in Animal Biotechnology.

5. I heard the learned counsel for the

petitioner, the first respondent and also the learned Public Prosecutor.

6. Having examined the nature of contentions raised by the parties, it is quite natural for one to think that since the falsity or genuineness of the certificates relied on by the petitioner is a matter of controversy necessitating enquiry, continuance of investigation pursuant to Annexure-B FIR is only desirable. That apart, one should not, however, lose sight of the other side of the picture also. Any investigation permitted to be held by the police authorities as to the authenticity or otherwise of the certificates in question pursuant to the complaint lodged by a member of the public, will certainly affect, not only the reputation but also the career prospects of the suspect in the crime. If the outcome of the investigation ultimately turns out to be in favour of the suspect, no doubt by that time, his

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reputation as well as opportunity for employment might be ruined. It, however, does not mean that in all the cases wherever possession of requisite qualification or authenticity of certificates is in question, investigation should be invariably withheld. It would only be a prudent approach if the judicial Magistrate concerned who forwards the complaint for registration and orders investigation into the crime ensures that the complaining person approaches him only with good sense of responsibility and also even preparedness to face the consequences if his allegations turn out, at a later stage to be factually wrong or otherwise ill-motivated.

7. This position has been taken note of with utmost concern by the Honourable Apex Court which, in one of its decisions insisted the judicial Magistrates entertaining complaints to make sure that the allegations made in the complaint are

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genuine, before it being forwarded for registration and investigation to the Police under Section 156(3) of Cr.P.C. This insistence came into vogue in the wake of the bald and frivolous allegations made by certain complainants turning out to be false in some cases, at the later stage of the investigation. It was opined by the Honourable Apex Court that there existed the need for devising appropriate legal mechanism for holding the persons responsible for making false imputations. It was thus suggested that in order to confirm that only persons with sense of responsibility approach the court with honest complaints, the learned Magistrate should insist the applicant to file affidavit along with the complaint in appropriate cases, duly swearing that the imputations made in the complaint are factually true to the best of their knowledge, information and belief. A rigid procedure demanding affidavit to accompany every

complaint is not what is intended. It is after all the discretion which the Magistrate may exercise in selected and deserving cases depending on the nature of allegations in the complaint and also facts and circumstances of each case.

8. In **Priyanka Srivastava and anr. v. State of U.P. & ors. (2015 KHC 4242)**, the Honourable Supreme Court held as follows;

"27. In our considered opinion, a stage has come in this country where S.156(3) CrPC applications are to be supported by an affidavit duly sworn b the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Art.226 of the Constitution of India. But it cannot be done to take undue

advantage in a Criminal Court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under S.154(1) and S.154(3) while filing a petition under S.156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that on the application under S.156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under S.156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to be nature of allegations of the case."

9. In the present case, Annexure-A complaint is not supported by any affidavit in compliance with the spirit of **Priyanka's** case *supra*. The non compliance with the direction of the Honourable Apex Court, having due regard to the facts of this case, has vitiated the criminal proceeding in Crime No.380/2015. The learned counsel for the first

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respondent submitted that the argument based on **Priyanka's** case *supra*, is only technical so far as the facts of the present case are concerned. I do not agree to this submission, especially in the light of Annexures-C to E certificates already produced by the petitioner asserting them to be genuine documents capable of proving his qualifications as a Doctor in Philosophy. Though the authenticity or otherwise of these certificates could be contended as a matter requiring scrutiny by means of an investigation, as I held earlier, it was rather not fair for the learned Magistrate to have entertained the complaint and directed investigation for the evident reason that the complaining party failed to submit a supporting affidavit affirming the allegations raised in Annexure-A complaint as being true and correct. In the circumstances, Annexure-B FIR cannot survive and is liable to be quashed.

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In the result, Cr1.M.C. is allowed quashing Annexure-B FIR as against the petitioner. However, this order will not stand in the way of the first respondent setting the criminal law in motion on the basis of a proper complaint supported by an affidavit being submitted in compliance of the directives in **Priyanka's** case *supra*.

All pending interlocutory applications are closed.

Sd/-

**T.V.ANILKUMAR
JUDGE**

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ANNEXURES

PETITIONER'S EXHIBITS :

- ANNEXURE A A TRUE COPY OF THE PRIVATE COMPLAINT
(MP 698/2015) FILED BY THE IST
RESPONDENT.
- ANNEXURE B A TRUE COPY OF THE FIR IN CRIME
380/2015 OF THRIKKAKKARA POLICE
STATION.
- ANNEXURE C A TRUE COPY OF THE CERTIFICATE
ISSUED TO THE PETITIONER FROM
PRESCOTT UNIVERSITY, LONDON, U.K.
- ANNEXURE D A TRUE COPY OF THE CERTIFICATE DATED
2.9.2003 ISSUED TO THE PETITIONER
FROM BHARATHI DASAN UNIVERSITY
- ANNEXURE E A TRUE COPY OF THE CERTIFICATE DATED
12.10.2007 ISSUED TO THE PETITIONER
FROM BHARATHI DASAN UNIVERSITY
- ANNEXURE F A COPY OF THE MEMORANDUM IN OP
45/2015 OF FAMILY COURT, PALA
- ANNEXURE G THE CONTACT INFORMATION OF PRESCOTT
UNIVERSITY PUBLISHED IN THE OFFICIAL
WEBSITE OF THE UNIVERSITY
- ANNEXURE H A TRUE COPY OF THE CERTIFICATE OF
AUTHORISATION GIVEN BY PRESCOTT
UNIVERSITY
- ANNEXURE I RELEVANT PAGES OF THE RULES PREPARED
BY MINISTRY OF HEALTH AND FAMILY
WELFARE, GOVERNMENT OF INDIA
- ANNEXURE J A COPY OF THE WEBSITE DETAILS OF
PRESCOTT UNIVERSITY ALONG WITH
STUDENT ALUMNI DIRECTORY

RESPONDENTS' EXHIBITS :

- ANNEXURE R1 (a) COPY OF THE RESUME OF THE ACCUSED
- ANNEXURE R1 (b) COPY OF THE LETTER FROM NIANP DATED
19.2.2015
- ANNEXURE R1 (c) COPY OF THE ADVERTISEMENT OF THE
SUNRISE HOSPITAL
- ANNEXURE R1 (d) COPY OF THE ADVERTISEMENT OF THE
CREDENCE HOSPITAL
- ANNEXURE R1 (e) COPY OF THE ADVERTISEMENT OF THE
ACCUSED
- ANNEXURE R1 (f) COPY OF THE WEB PAGE OF THE
PETITIONER IN www.doctorscabin.com
- ANNEXURE R1 (g) COPY OF THE VAKALAT EXECUTED BY THE
ACCUSED DATED 7.4.2015
- ANNEXURE R1 (h) COPY OF THE IDENTITY CARD OF ACCUSED
FROM KERALA SHOPS AND COMMERCIAL
ESTABLISHMENT WORKERS WELFARE BOARD
- ANNEXURE R1 (i) COPY OF THE HOME PAGE OF THE WEBSITE
prescottuniversity.co.uk.