
(2011) 05 KL CK 0152
In the High Court Of Kerala
Case No : Criminal M.C. No. 1504 of 2011

Mary Benjamin

APPELLANT

Vs

K.Y. George and State of Kerala

RESPONDENT

Date of Decision : 25-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 294, 323, 341

Citation : (2011) 05 KL CK 0152

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : S. Easwaran, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

Thomas P. Joseph, J.—Petitioner is accused in Crime No. 220 of 2007 of Ernakulam Central Police Station and C.C. No. 167 of 2007 of the Court of learned Judicial First Class Magistrate-II, Ernakulam for offences punishable under Sections 341, 323 and 294(b) of the Indian Penal Code. Case is that on 04.12.2006 at about 12p.m Petitioner wrongfully restrained the first Respondent, used obscene words at him, pushed him down and caused hurt to him. Petitioner seeks to quash proceeding against him on the ground that allegations are false and that at any rate, do not constitute any such offences. Learned Counsel submitted that the complaint is nothing but the result of faction fight between two sections of the Church to which the parties belonged. Learned Counsel submitted that version of the first Respondent is quite unbelievable. In the circumstances this Court is justifiable in interfering u/s 482 of the Code of Criminal Procedure (for short, "the Code"). Alternatively, it is argued that personal appearance of Petitioner who is a lawyer and was appearing for one of the factions during the relevant time in the trial court may be dispensed with. I have heard learned Public Prosecutor also.

2. According to the learned Counsel, first Respondent had earlier preferred a

complaint to the police which the police on enquiry found to be not having any substance. Later the first Respondent preferred a complaint before the learned Magistrate which was forwarded to the police for investigation u/s 156(3) of the Code. Thereon police registered Crime No. 220 of 2007, investigated and submitted final report. I have gone through the complaint and final report and find that there are specific allegations against Petitioner. Question whether those allegations are correct or not being a disputed question of fact, is a matter which the trial court has to decide. Having regard to the allegations contained this Court is not required or justified in exercising extra ordinary power u/s 482 of the Code.

3. So far as request for exemption from personal appearance is concerned, there appears to be no dispute regarding identity. I do not find reason why physical presence of Petitioner who is a practicing lawyer should be insisted by the learned Magistrate. But, it is not proper for me to pass any order in this proceeding regarding exemption from personal appearance. That has to be decided by the learned Magistrate. I make it clear that it is open to the Petitioner to make a request to the learned Magistrate for exemption from personal appearance and if any such request is made learned Magistrate shall consider the request having regard to all relevant aspects and pass appropriate orders in that regard.

With the above observation this criminal miscellaneous case is closed.