

(2009) 08 KL CK 0032

In the High Court Of Kerala

Case No : Criminal M.C. No. 2094 of 2009

Mohammed Basheer

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Kerala Municipalities Act, 1960 — Section 271, 275(2), 276, 511, 545

Citation : (2009) 3 KLT 993

Hon'ble Judges : Sasidharan Nambiar, J

Bench : Single Bench

Advocate : K. Mr. Hari Rao and N. Shobha, for the Appellant; S.U. Nazar, Public Prosecutor and P.P. Jacob, for the Respondent

Final Decision : Allowed

Judgement

M. Sasidharan Nambiar, J.—Accused in S.T. No. 473 of 2007 on the file of Judicial First Class Magistrate Court-I, Ernakulam filed this petition u/s 482 of Code of Criminal Procedure to quash Annexure A complaint taken cognizance by the learned Magistrate contending that the authorised contractor of Tripunithura Municipality is not competent to lodge the complaint for an offence u/s 511 of Kerala Municipality Act for the Municipality. Second respondent is the complainant R. Mukundan described as authorised contractor, Advertisement Tax. Tripunithura Municipality. The case in the complaint is that petitioner violated the condition by failure to pay the advertisement tax and thereby committed an offence u/s 511 of Kerala Municipality Act. The case of the petitioner is that for an offence under the Municipality Act a complaint is to be filed only by the Secretary and therefore the learned Magistrate is not competent to take cognizance of the offence on a complaint filed by the authorised contractor and therefore it is to be quashed.

2. Learned Counsel appearing for the petitioner and second respondent were heard.

3. Section 511 of Kerala Municipality Act is general provisions regarding penalties specified in the Schedule. Under Sub-section (1) whoever contravenes any provision of this Act or the sections specified in column (1) of the Fourth Schedule or contravenes any order made under any section specified in the said Schedule or fails to comply with any direction lawfully given to him or any requisition lawfully made upon him under or in pursuance of the provisions of any of the said sections or rules shall, be punishable with fine which may extend to the amount specified against each item in column (4) of the Fourth Schedule. Section 275(2) provides that any person exhibiting or responsible for exhibiting any advertisement otherwise than in accordance with the provisions of the Act shall be liable, in addition to the penalty prescribed in the Fourth Schedule and the Fifth Schedule to pay the Municipality the charges of the removal of the unauthorised advertisement. Section 276 provides that the Secretary may farm out the collection of any tax on advertisement leviable u/s 271 for any period not exceeding one year at a time on such terms and conditions as may be provided for by bye-laws made u/s 567. Section 545 provides for the institution of civil and criminal actions. Under Sub-section (1) the Secretary may institute, or withdraw from proceeding against any person who commits any offence against the provisions of this Act or the Rules, bye-laws or regulation made thereunder or any offence which affects or is likely to affect any property or interest of the Municipality, or the due administration of the Act or any nuisance whatsoever. Therefore only the Secretary is authorised to file a complaint for taking action for the offence committed under the Act. Annexure A complaint is filed not by the Secretary but by the authorised contractor of advertisement tax. An authorised contractor is not competent u/s 545 of the Kerala Municipality Act to lodge a complaint. The complaint is therefore not legal and is liable to be quashed.

Petition is allowed. S.T. No. 473/2007 on the file of Judicial First Class Magistrate Court-I, Ernakulam taken cognizance on Annexure A complaint is quashed. It is made clear that the Secretary of the Municipality or anybody else on this behalf who is competent to file a complaint can file the complaint on the claim raised in Annexure A.