

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS
FRIDAY, THE 24TH DAY OF MARCH 2023 / 3RD CHAITHRA, 1945
CRL.MC NO. 1940 OF 2023
IN CRIME NO.1332 OF 2021 OF CHAVARA POLICE STATION, KOLLAM

PETITIONER/SOLE ACCUSED:

ANAND MAHADEVAN
AGED 28 YEARS
S/O PRAVEEN KUMAR G,
ANAND MADOM, THOTTINUVADAKKU,
CHAVARA P.O, KOLLAM, KERALA, PIN - 691583

BY ADV APPU AJITH

RESPONDENTS/STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 2 THE STATION HOUSE OFFICER
CHAVARA POLICE STATION,
KOLLAM, KERALA, PIN - 691583

BY ADV
SEETHA S
PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
24.03.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

'CR'

BECHU KURIAN THOMAS, J.
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Crl.M.C. No.1940 of 2023
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Dated this the 24th day of March, 2023

ORDER

Power of preventive action is vested upon the police under Chapter XI of the Code of Criminal Procedure, 1973 (for short 'the Code'). Since the power is capable of being misused, strict interpretation is essential for exercising such extraordinary powers. Section 151 of the Code confers power to arrest without a warrant on knowledge of a design to commit a cognizable offence.

2. Petitioner is a practicing Advocate. He was arrested in purported exercise of the power under Section 151 of the Code. FIR No.1332/2021 of Chavara Police Station was registered against him. The registration of the crime is questioned in this petition under Section 482 of the Code.

3. The crime was registered alleging the petitioner to be a threat to the peaceful living of the public and that letting him on liberty would lead to breach of peace. The FIR alleges that to prevent commission of such incidents petitioner was being arrested on 25.12.2021, at 1.00 pm

and detained.

4. Petitioner contends that though an FIR of the nature referred above has been registered, he was not arrested at all and on the other hand he was merely called to the Police Station to give his personal details and he was permitted to leave immediately. It is contended that, petitioner was not even informed that his arrest was recorded, or that he is being implicated in a crime. According to him, the action is politically motivated and there was no instance of any apprehension of law and order issue in the area and also that he is not involved in any criminal case even. Petitioner also alleges that the crime has been registered against him with oblique motives, especially when he enquired about a Police Clearance Certificate. Petitioner also contends that, despite the lapse of one year, since the registration of the alleged crime, no investigation worth its name has been conducted and the FIR is standing as an impediment for his police clearances. It is further alleged that, as a practicing Advocate, the proceeding pending against the petitioner is an abuse of the judicial process and that the FIR is required to be quashed.

5. The learned Public Prosecutor, upon instructions submitted that, petitioner was earlier arrayed as an accused in Crime No.615/2014 of Ochira Police Station, which was subsequently quashed. The prosecutor submitted that after recording the arrest of the petitioner in

the present crime, he was immediately released from the Police Station itself.

6. I have heard Sri. Appu Ajith, the learned counsel for the petitioner as well as Smt. Seetha. S, the learned Public Prosecutor.

7. A perusal of Annexure A1 FIR reveals that the crime has been registered under Section 151 of the Code, alleging that petitioner is a threat to the peaceful living of the public and that, if he is set at liberty, there will be a breach of peace and hence he is arrested under Section 151 of the Code.

8. Section 151 of the Code deals with the power of arrest to prevent the commission of cognizable offences. It reads as below:

"151. Arrest to prevent the commission of cognizable offences.-(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorised under any other provisions of this Code or of any other law for the time being in force."

9. A glance at Section 151 of the Code reveals that the object of the provision is to prevent a person from committing a cognizable offence, which he has designed to commit or intends

to commit. Knowledge of a design to commit the offence is the essence of the offence. Apart from the knowledge of the design to commit an offence, the Police Officer must also be of the belief that the commission of that offence cannot be prevented, otherwise than by the arrest of that person. The provisions of Section 151 of the Code confers a power of detention and hence existing emergency must be shown to exist before exercising the power, as otherwise, there is a likelihood of misuse of the said power.

10. The object of Section 151 of the Code is one of preventive justice and before invoking the said provision, it must be evident that there is imminent danger. Unless the arrest under Section 151 of the Code is based upon a bonafide belief of the existence of a design to commit a cognizable offence and without arresting the person, the threat of commission of offence cannot be averted, only then can the Police Officer be clothed with the power to arrest under Section 151 of Code. The corollary of the above is that, without the knowledge of a design and without an imminent threat to commit a cognizable offence, a Police Officer cannot arrest, that too without a warrant from the Magistrate in exercise of the power under Section 151 of the Code.

11. Though the learned Public Prosecutor had, upon instructions submitted that, petitioner was arrested and immediately released on bail, there is nothing mentioned either in the FIR or upon instructions, as to what was the knowledge based upon which the Police Officer proceeded to act under Section 151 of the Code. Since the provision can be a possible source of misuse with Article 21 of the Constitution of India, remaining like a brooding omnipresence over the provisions of the Code, it is necessary to observe that in the absence of bonafide material or evidence of a design to commit an offence, which cannot be averted without arresting the person, the action under Section 151 of the Code would fall foul not only of Section 151 of the Code, but also of Article 21 of the Constitution of India.

12. Petitioner's alleged involvement in Crime No. 615/2014 of Ochira Police Station, cannot be relied upon in 2021 for the purpose of initiating action under Section 151 of the Code, more so since the said crime had already been quashed. Apart from the above, the FIR does not mention that there was any knowledge about a design to commit an offence. Thus the registration of FIR is an abuse of the process of the Court.

13. The registration of the crime hangs as a damocles sword over petitioner's head. Though the crime registered against the

petitioner can only result in a report closing the FIR, it would cause great prejudice to him, not only as a practicing professional, but also for all other purposes. Thus the registration of crime and its continuance is an abuse of the process of Court.

14. In such circumstances, I am satisfied that this is a fit case where the provisions of Section 482 of the Code ought to be invoked to quash the proceedings. Hence, I quash FIR No.1332/2021 of Chavara Police Station and all further proceedings therein.

This criminal miscellaneous case is allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

jka/24.3.23.

APPENDIX OF CRL.M.C.No.1940/2023

PETITIONER ANNEXURES

Annexure A1 THE TRUE COPY OF THE FIR DATED
25/12/2021 IN CRIME NO. 1332 OF 2021 OF
CHAVARA POLICE STATION