

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 14TH DAY OF MARCH 2019 / 23RD PHALGUNA, 1940

Cr1.MC.No. 5397 of 2018

CRIME NO. 1395/2018 OF ALAPPUZHA NORTH POLICE STATION, ALAPPUZHA

PETITIONERS/1ST AND 2ND ACCUSED:

- 1 JOHNSON GILBERT, AGED 57 YEARS,
S/O.SEBASTIAN GILBERT, LALBAGH,
CONVENT SQUARE, ALAPPUZHA BAZAR P.O.,
PIN-688 012.
- 2 HANA MUHAMMED ALI, AGED 50 YEARS,
W/O.JOHNSON GILBERT,
LALBAGH, CONVENT SQUARE SEA, VIEW WARD,
ALAPPUZHA BAZAR P.O., ALAPPUZHA,
PIN-688 012.

BY ADVS.

SRI.S.PRASANTH (AYYAPPANKAVU)
SMT.VARSHA BHASKAR
SRI.JYOTHISH D.MONY

RESPONDENTS/DE FACTO COMPLAINANT & THE STATE:

- 1 THE SUB-COLLECTOR AND SECRETARY,
NEHRU TROPHY BOAT RACE SOCIETY,
REVENUE DIVISIONAL OFFICER, ALAPPUZHA-688001.
- 2 THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

BY SENIOR PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 14.03.2019,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

“CR”

ORDER

In the month of August every year, people from all over the world flock to Alleppey to witness the exhilarating Nehru Trophy Boat Race held at the Punnamda Lake. It is a fiercely competitive event and the tranquil lake front is transformed into a sea of humanity with an estimated two lakh people, including tourists from abroad, landing in the sleepy town to watch the event. For the people of neighbouring villages of Kuttanad, a victory at this race for their village boat is something they cherish for years. They take part with much vigour and cheer their men from the banks of the lake.

2. The State saw this as a business opportunity and started charging the visitors based on the comforts provided to them. Ticket charges range from Rs.100/- to Rs.3,000/-. Tickets can be purchased online by logging on to the website <http://nehrutrophy.nic.in>. The fortunate few who manage to get the tickets and are prepared to suffer all the discomforts can watch the great spectacle by sitting on the lawns, galleries or the pavilions erected for the purpose by the organizers, the Nehru Trophy Boat Race Society (“NTBRS” for the sake of brevity). As it occurs everywhere, the prime seats are taken by the high and mighty.

3. The petitioners are husband and wife. The 1st petitioner is an entrepreneur and is engaged in the home stay and houseboat business. He claims to have pioneered the concept of taking out tourists in his houseboat on the day of the race. The boat would be anchored in the vicinity to enable the tourists with deep pockets to watch the event. Other houseboat owners and employees followed suit and started extending the same facilities to their guests. It cannot be disputed that this novel way of garnering business provided a great employment opportunity for those associated with the houseboat and home stay business. The boats and other water vessels were anchored near the finishing point on the date of race so that the guests could watch the enthralling event from the comforts of the anchored boat. Some of the better equipped houseboats had decks, wherein the tourists could lounge and enjoy the event. When this unique manner of profiting from the event came to the notice of the NTBRS, the houseboat owners were called upon to pay a royalty for anchoring at Punnamada Lake. Annexure-D is the proceeding issued by the Sub Collector, Alappuzha in his capacity as the Secretary, NTBRS, which states that the rates for anchoring Motor boats, Houseboats and other water vessels at Punnamada Lake from the northern side of the Nehru Pavilion to Dock Chira would range from

Rs.10,000/- to Rs.50,000/-. On the basis of the said proceeding, the 1st petitioner and other water vessel owners have been depositing the amount in the account of the Society as is evidenced by Annexure-B Bank Statement. This fact is also undisputed.

4. For the purpose of canvassing more business, the 1st petitioner decided to go online and he registered a website in the name www.alleppeysnakeboatrace.com and invited tourists to the event. Through the website, the 1st petitioner promoted stay in the houseboats and also gave the added bonus of watching the boat race. The 1st petitioner does not dispute that several persons had purchased tickets from the website for watching the race.

5. While so, on 28.6.2018, a complaint was lodged by the Secretary, NTBRS, alleging that the two websites were engaged in the sale of tickets for the 68th Nehru Trophy Boat Race to be held in the year 2018. A crime was promptly registered under Sections 463, 465, 468 of the IPC and Section 71 of the Information Technology Act, 2000. The 1st petitioner was arrested and he was remanded to judicial custody. The wife of the 1st petitioner was later arrayed as the 2nd accused.

6. Sri.Prasanth.S, the learned counsel appearing for the

petitioners, would contend that the initiation of criminal proceedings against the petitioners is a clear abuse of process. The allegations made in the first information report or in the complaint lodged by the Secretary, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused, is the submission. According to the learned counsel, the prosecution has no case that the petitioners have made any false documents with intent to cause damage or injury to the public or to any person with intent to commit fraud. The tickets that are sold by the NTBRS are for watching the event from the pavilion, galleries and lawn earmarked for that purpose by the Society. The tickets that are sold by the 1st petitioner, on the other hand, are for watching the event sitting on the deck of a boat anchored in the lake. For anchoring the boat, the NTBRS have fixed various rates as is evident from Annexure-D. Annexure-B bank statement would show that for the previous year, the 1st petitioner had paid a sum of Rs.60,000/- to the Society and he was permitted to anchor the boats, that too, at a vantage point. After giving an indication that it was open for the petitioners to anchor the boat in the finishing point, the de facto complainant cannot intrude into the manner in which the petitioners were carrying out their business in exercise of their rights

under the Constitution, submits the learned counsel. For the same reason, offence under Section 468 of the IPC will also not be made out as the petitioners have not committed any forgery for the purpose of cheating of either the de facto complainant or any other person for that matter. The learned counsel would also contend that Section 71 of the Information Technology Act, 2000, has no application. The petitioners have not misrepresented or suppressed any material fact from the Controller or the certifying authority for obtaining any licence or Electronic Signature Certificate as they have no licence to issue an electronic signature certificate.

7. Sri.Breez, the learned Public Prosecutor, would submit that the contentions advanced by the petitioners are merit-less. According to the learned Public Prosecutor, the petitioners cannot sell tickets for watching the Nehru Trophy Boat Race as it is the monopoly of the State. By setting up a website and procuring tourists to watch the race by selling tickets to them, the petitioners were enriching themselves. No one else, but the NTBRS society has the right to sell tickets of the race and in that view of the matter, the proceedings are perfectly legal, contends the learned Public Prosecutor.

8. I have considered the submissions advanced. The specific

case of the prosecution is that the petitioners herein sold tickets of the Nehru Trophy Boat Race by setting up a website in the name www.alleppeysnakeboatrace.com. It appears that when the crime was initially registered, the Secretary of the NTBRS was under the impression that the petitioners herein were selling tickets of the boat race through their portal. It is evident from Annexure-C that tickets are sold from the website for enabling guests to travel in the houseboat and to view the spectacle while sitting in the anchored vessel. The houseboat leaves for the race taking the guests on a cruise through the backwaters and lunch as well as drinking water is provided free. The houseboat is stationed at a vantage point close to the finishing point to enable the guests to have a view of the event in all its glory. There is no rule or regulation which says that only the State can issue tickets for watching the boat race.

9. In the facts projected, I am unable to accept the contention of the learned Public Prosecutor that the offence under Section 465 or 468 of the IPC would be attracted.

10. The forgery is defined under Section 463 of the IPC. The basic elements of forgery are:

- “1) The making of a false document or part of it, and
- 2) Such making should be with such intention as is specified in the Section viz.,
 - a) to cause damage or injury to
 - i) the public or
 - ii) any person: or
 - b) to support any claim or title or
 - c) to cause any person to part with property; or
 - d) to cause any person to enter into an express or implied contract; or
 - e) to commit fraud or that fraud may be committed.”

11. Thus, the two essential elements to constitute the offence of forgery are that there must be deceit or intention to deceive; secondly, actual or possible injury caused to some person or persons. To constitute the offence of forgery, the document must be a false one and must have been dishonestly or fraudulently made as contemplated by one of the three modes described in Section 464 of the IPC.

12. Section 464 states that a person makes a false document, if he makes or signs a document (i) intending it to be believed that it was made or signed or executed by or by the authority of some person by whom or by whose authority he knows it was not made, or signed, or (ii) with the intent that it shall be believed that it was made or

signed at a time when he knows it was not so made or signed. To bring the offence within the four corners of Section, false document must be created with a view to make it appear that it was made by some other person, who the accused knows, did not make it. In other words, under Section 464 of the IPC, what is essential is that the accused must make a document with the intention of making it to be believed that it was signed by or by the authority of someone else while he knows that it was not so made or authorised by that person.

13. Section 468 of the IPC refers to a special case of forgery in which the document is made subservient to cheating which is the main purpose of the accused. To attract the said offence, it has to be shown (1) that the document in question is forged (2) that the accused was the person who forged it and (3) that in forging it he intended that it shall be for the purpose of cheating.

14. Having scrutinized the allegations, I find that none of the aforesaid circumstances are made out in the instant case. No one has a case that the petitioners herein had made a false document with intent to cause damage or injury. All that he did as an entrepreneur is to set up a website and offered tickets to persons who were interested in watching the event by sitting on a houseboat. The tickets sold by

the petitioners online cannot be used by the purchasers to enter the pavilion or the galleries erected for the purpose by the NTBRS. The said ticket cannot be regarded as a false document as defined under Section 464 of the IPC and the act committed by the petitioners cannot by no stretch of imagination be categorized as an act of forgery. No one has a case that the petitioners have deceived any person fraudulently or dishonestly or that they had induced any one to deliver any property to any person. In that view of the matter, it is not possible to attribute any intention of cheating which is a necessary ingredient for the offence under Section 468 of the IPC.

15. It is quite unfortunate that a person who was eking a livelihood by doing a legal business was arrested and remanded for sensing a business opportunity. What is the legal injury that was caused to the society run by the de facto complainant is also not known. If the explanation offered by the learned Public Prosecutor for registering a crime is stretched a bit further, a person running a home stay business in the banks of the Punnamada Lake will be committing an offence if his guests watch the Nehru Trophy Boat race.

16. I fail to understand how the offence under Section 71 of the Information Technology Act, 2000, will be attracted in the facts and

circumstances. Section 71 reads as follows:

“Section 71 – Penalty for misrepresentation: Whoever makes any representation, or suppresses any material fact from the controller or certifying authority for obtaining any licence or digital signature certificate, as the case may be, shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both.”

17. In order to attract Section 71, there should be an allegation that the 1st petitioner had made any representation or suppressed any fact from the controller or the certifying authority for obtaining any licence or digital signature certificate. Licence has been defined under Section 2(z), which states that “licence” means a licence granted to a Certifying Authority under Section 24 of the Information Technology Act. Section 21 deals with licence to issue digital signature certificates. Certain requirements are stipulated in Section 21 which are to be satisfied prior to issuing a licence to issue digital signature certificate. Section 24 provides for the procedure for grant or rejection of the licence. In the case on hand, no one has a case that the petitioners had applied for issuance of digital signature certificate or that they had made any misrepresentation or suppression of fact. I am of the view that Section 71 of the

Information Technology Act has no application.

18. I am of the considered view that none of the allegations in the FIR would even make out even a trace of the offence alleged against the petitioners.

19. In **State of Haryana and Ors. v. Bhajan Lal and Ors.** [1992 Supp (1) SCC 335], the Apex Court has given clear indications of the categories of cases by way of illustration, wherein the powers under Article 226 of the Constitution or under Section 482 of the Code could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. They are:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer

without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Clauses (1), (3) and (5) would squarely apply in the instant case.

20. In **Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors.**, [(1988) 1 SCC 692], the Supreme Court observed as follows:

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice

to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

21. Further in **Janata Dal v. H.S. Chowdhary and Ors.**, [(1992) 4 SCC 305], observed as follows:

“132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court Under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.”

22. The entire law on the subjects was reviewed by a three Judges Bench of the Supreme Court in **Inder Mohan Goswami and**

Anr. v. State of Uttaranchal and Ors., [(2007) 12 SCC 1] and in **R. Kalyani v. Janak C. Mehta and Ors.** [(2009) 1 SCC 516] as well.

23. Having considered the entire facts and in the light of the above precedents, I am of the view that this is one of those rare and exceptional cases wherein this Court will be justified in terminating the criminal proceedings at the threshold stage itself.

In the result, this petition will stand allowed. Crime No. 1395 of 2018 of the Alappuzha Police Station and all further proceedings pursuant thereto against the petitioners are quashed.

Sd/-

**RAJA VIJAYARAGHAVAN V.,
JUDGE**

DSV/-

APPENDIX

PETITIONERS' EXHIBITS:

- ANNEXURE A: CERTIFIED COPY OF THE FIR ALONG WITH COPIES OF COMPLAINT AND OTHER ANNEXURES.
- ANNEXURE B: TRUE COPY OF THE BANK STATEMENT OF THE 1ST PETITIONER FOR THE PERIOD FROM 01.07.2017 TO 31.08.2017.
- ANNEXURE C: TRUE COPY OF THE RELEVANT ARCHIVED PAGES OF THE WEBSITE WWW.ALLEPPEYSNAKEBOATRACE.COM AS OBTAINED FROM THE INTERNET ARCHIEVE WAYBACK MACHINE.
- ANNEXURE D: TRUE COPY OF THE NOTICE NO.H-2018/2018 DATED 12.07.2018 ISSUED BY THE 1ST RESPONDENT.
- ANNEXURE E: TRUE COPY OF THE RELEVANT WEBPAGE OF WWW.INDUSHOLIDAYS.IN.
- ANNEXURE F: TRUE COPY OF THE RELEVANT PAGE OF THE OFFICIAL WEBSITE OF NEHRU TROPHY BOAT RACE.
- ANNEXURE G: TRUE COPY OF THE ORDER DATED 04.07.2018 PASSED BY CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA IN CMP NO.2705/18 IN ALAPPUZHA NORTH PS CRIME NO. 1395/18.

RESPONDENTS' EXHIBITS:

NIL

//TRUE COPY//

P.A. TO JUDGE

