

**IN THE HIGH COURT OF KERALA AT ERNAKULAM****PRESENT****THE HONOURABLE MR.JUSTICE V.G.ARUN****THURSDAY, THE 15<sup>TH</sup> DAY OF JUNE 2023 / 25TH JYAISHTA, 1945****CRL.MC NO. 5624 OF 2022****AGAINST THE ORDER/JUDGMENT in SC 501/2022 OF DISTRICT COURT&  
SESSIONS COURT,PATHANAMTHITTA****PETITIONER/ACCUSED NO.1:**

BYJU SEBASTIAN,  
AGED 45 YEARS  
S/O. V.T. SEBASTIAN, VELLAPLAMURIYIL, MAKKAPUZHA P.O.  
RANNI, PATHANAMTHITTA, PIN - 689676

BY ADVS.  
SAIBY JOSE KIDANGOOR  
BENNY ANTONY PAREL  
ANOOP SEBASTIAN  
PRAMITHA AUGUSTINE  
IRINE MATHEW  
ADITHYA KIRAN V.E  
ANJALI NAIR  
NAAIL FATHIMA ABDULLA A.  
TANOOSHA PAUL

**RESPONDENT/STATE & COMPLAINANT:**

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,  
PIN - 682031
- 2 THE STATION OFFICER  
RANNI POLICE STATION, PATHANAMTHITTA, PIN - 689711
- 3 BABU (SOUGHT TO BE IMPEADED )  
S/O BHARATHAN, THADATHIL HOUSE PAZHAVANGADIKKARA  
VILLAGE, RANNI TALUK, PATHANAMTHITTA DISTRICT ( SOUGHT  
TO BE IMPEADED )  
  
BY ADVS.  
PUBLIC PROSECUTOR  
V.SETHUNATH

**OTHER PRESENT:**



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SR.PP.RENJITH GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR  
ADMISSION ON 02.03.2023, THE COURT ON 15/6/2023 PASSED  
THE FOLLOWING:



**V.G.ARUN J.**

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Crl.M.C.No.5624 of 2022  
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Dated this the 15th day of June 2023

**ORDER**

The petitioner is aggrieved by Annexure A4 order by which the District & Sessions Judge, Pathanamthitta took cognizance of the offences punishable under Section 506 IPC and Section 3(2) (va) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act. Cognizance of the said offences was taken and summons issued to the petitioner based on a protest complaint filed by the third respondent. The essential facts are as under;

2. In the year 2010, the petitioner purchased land comprised in Re-survey Nos.17/11, 18/7/1 in Block No.9 of Pazhavangadi village as per document No.2065 of 2010. The petitioner and family are residing in that property. When the petitioner purchased the property it had no vehicular access. In order to facilitate easy access, the petitioner purchased the property having an extent of 40 sq.meters in Re-survey



No.18/6/4. Thereafter, the petitioner constructed a cartable private road having an approximate length of 70 meters, starting from the Pallippadi-Thalakottupadi Panchayat road and reaching up to the petitioner's residence. The property lying on the western side of petitioner's property was owned by one V.T.Varghese. The said person gifted three cents of property each to eight persons belonging to lower strata of the society. The properties thus gifted did not have proper access and thus resulted in a dispute between the petitioner and the assignee regarding the right of way to their property. The dispute led to abuse, intimidation and assault. Consequently, crimes were registered against both parties. One such crime pertains to an incident on 21/10/2021, when the petitioner along with others allegedly humiliated and intimidated the third respondent and others, while they were engaged in improvement works in the property gifted to them by V.T.Varghese. Based on the third respondent's complaint regarding the incident, the Ranni police registered crime No. 1308/2021 for offences under Sections 506 read with section 34 of IPC and Sections 3 (1) (r), 3(1)(s) of the SC & ST (PoA) Act. The police after investigation filed Annexure A2 final report in that crime, finding that the offences under the



SC & ST (PoA) Act are not sustainable. Therefore, the jurisdictional Magistrate was requested to close the proceedings, since the offences under IPC were non cognizable and hence not possible for the police to investigate directly. On receipt of notice in the closure report, the third respondent filed Annexure A3 protest complaint. Therein, the learned Sessions Judge passed the impugned order taking cognizance of the offence against the petitioner and dismissing the complaint as regards respondents 2 to 6 therein. Aggrieved, this Crl.M.C is filed.

3. Adv.Saiby Jose Kidangoor, learned Counsel for the petitioner contended that the court below had committed grave illegality in taking cognizance of the offences, despite the police have conducted detailed investigation and filed a refer report. The learned Sessions Judge failed to ascertain and satisfy himself whether the essential ingredients for attracting the offences are made out in the complaint. Further, the fact that the police had referred the earlier complaint finding the allegation to be unsustainable was also not taken into account. The non application of mind is clear from the cryptic manner in which cognizance was taken. Referring to the decision in

**Lalankumar Singh and Ors. v. State of Maharashtra (AIR**



**2022 SC 5151**), it is contended that the order of issuance of process is not an empty formality and the court is required to apply its mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion should be reflected in the order itself.

4. Adv.V.Sethunath, learned Counsel for the third respondent pointed out the limited scope for interference in an order taking cognizance by exercising the power under Section 482 Cr.P.C. It is submitted that Annexure A2 refer report was filed on the premise that the third respondent /de facto complainant does not belong to the scheduled caste. The said finding is factually incorrect and hence the protest complaint was filed along with documents to prove that the petitioner belongs to Hindu Cheramar community, which is a scheduled caste. Hence, the Sessions Court was well justified in having taken cognizance of the offences under the SC & ST (PoA) Act.

5. The learned Public Prosecutor submitted that in the light of the additional documents produced, the order taking cognizance based on the protest complaint cannot be faulted.

6. Although learned Counsel for the petitioner and the third respondent elaborately argued as to the factual circumstances



and raised allegations against their rival parties, I am not delving into those contentions, since such consideration is unnecessary for deciding the question involved in this Crl.M.C.

7. The short point arising for consideration is whether the order taking cognizance is bad by reason of the refer report and for non application of mind. The legal position that even in cases where an earlier complaint was dismissed or refer report filed, the jurisdictional court is vested with the power to take cognizance of the offences based on protest complaint is well settled in **Maheshchand v. B.Janardhan Redddy & Another** (2003 (1) SCC 734), wherein the Apex Court has held, only because the Magistrate has accepted the final report, the same by itself would not stand in his way to take cognizance of the offence on a protest/complaint petition.

8. The position was reiterated in **B.Chandrika v. Santhosh and another (2014 (13) SCC 699)**. Paragraphs 5 and 6 of that decision being contextually relevant, are extracted hereunder;

“5.The power of the Magistrate to take cognizance of an offence on a complaint or a protest petition on the same or similar allegations even after accepting the final report, cannot be



disputed. It is settled law that when a complaint is filed and sent to police under Section 156(3) for investigation and then a protest petition is filed, the Magistrate after accepting the final report of the police under Section 173 and discharging the accused persons has the power to deal with the protest petition. However, the protest petition has to satisfy the ingredients of complaint before the Magistrate takes cognizance under Section 190(1) (a) CrPC.

**6.** This Court in *Gopal Vijay Vermav. Bhuneshwar Prasad Sinha* [(1982) 3 SCC 510 : 1983 SCC (Cri) 110] held that the Magistrate is not debarred from taking cognizance of a complaint merely on the ground that earlier he had declined to take cognizance of police report. The judgment was followed by three-Judge Bench judgment of this Court in *Kishore Kumar Gyanchandani v. G.D. Mehrotra* [(2011) 15 SCC 513 : (2012) 4 SCC (Cri) 633 : AIR 2002 SC 483] .

9. In the case at hand, it is pertinent to note that the only reason for filing refer report in the crime registered earlier was a report obtained from the Tahsildar Ranni stating that the de facto complainant did not belong to scheduled caste. Along with the protest complaint the third respondent has produced





documents to prove that he belongs to scheduled caste. In such circumstances, the learned Sessions Judge was justified in taking cognizance of the offences under the SC & ST (PoA) Act.

10. The other question is whether the impugned order is liable to be set aside for non application of mind and absence of reasons. No doubt, taking of cognizance is not a mechanical process and the order should reflect the reason for taking cognizance. The order is liable to be set aside if no reasons are given. In Annexure A4, the learned Sessions Judge has stated that a case is made out against the first respondent/petitioner under Section 506 IPC and Section 3(2)(va) of the SC & ST (PoA) Act. Accordingly, summons was issued to the first respondent/petitioner herein. The court went on to find that no material is brought out against the other respondents and proceeded to dismiss the complaint as against them. Thus, there is clear indication of the court having considered the materials on record and applied its mind. Even in Lalankumar's case (supra), while holding that an order for issuance of process is liable to be set aside if no reasons are given, the Apex Court also held that the order need not contain detailed reasons. Hence, the challenge on the ground that the order does not contain reasons



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is also liable to be rejected.

In the result, the Crl.M.C is dismissed.

Sd/-

**V.G.ARUN**  
**JUDGE**

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