IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 29TH DAY OF APRIL 2025 / 9TH VAISAKHA, 1947

CRL.MC NO. 516 OF 2021

CRIME NO.840/2019 OF Mangalapuram Police Station,

Thiruvananthapuram

CC NO.2107 OF 2020 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, ATTINGAL

PETITIONER/ACCUSED:

SHAMIL MUHAMMED
AGED 32 YEARS
SHALIMAR, NEAR VETTUROAD JUNCTION,
KANIYAPURAM P.O., PALLIPURAM VILLAGE,
THIRUVANANTHAPURAM DISTRICT-695 301.

BY ADV P.ANOOP (MULAVANA)

RESPONDENT/STATE, DE FACTO COMPLAINANT:

1 **STATE OF KERALA**
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

2 **SAKKIYA PRAVEEN**
D/O.NASEEMA, THEKKEVILA PUTHENVEEDU, NILAKKAMUKKU,
KADAKKAVOOR P.O., CHIRAYINKEEZHU,
THIRUVANANTHAPURAM DISTRICT-695 309.

SRI.HARISH.K.P. - PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11.04.2025, THE COURT ON 29.04.2025 PASSED THE FOLLOWING:

[CR]

S.MANU, J.

Crl.M.C.No.516 of 2021

Dated this the 29th day of April, 2025

ORDER

Accused in C.C.No.2107/2020 of the Judicial First Class Magistrate's Court-II, Attingal filed this Crl.M.C. praying to quash the final report in the case arising from Crime No.840/2019 of Mangalapuram Police Station, Thiruvananthapuram District. This Crl.M.C. came up for admission on 29.1.2021. Thereafter, it was considered on some other dates also. When it came up for hearing on 20.3.2025, the learned Public Prosecutor submitted that the petitioner filed Crl.M.C.No.8210/2023 while this Crl.M.C. was pending for the same relief and by order dated 31.10.2023 Crl.M.C.No.8210/2023 was allowed. Therefore, the Registry was directed to make available the files of Crl.M.C.No.8210/2023 for perusal. On perusal of the files, it

was noticed that pendency of the above Crl.M.C. was not disclosed in Crl.M.C.No.8210/2023. The second Crl.M.C. was filed stating that the matter was settled between the petitioner and the 2nd respondent. A copy of the affidavit sworn by the 2nd respondent was produced as an Annexure. Taking note of the settlement the Crl.M.C. was allowed and proceedings in C.C.No.2107/2020 on the file of the Judicial First Class Magistrate's Court-II, Attingal was quashed.

2. In the order dated 19.3.2025 it was noticed that the second Crl.M.C. obviously happened to be allowed without noticing the pendency of the above Crl.M.C. filed for the same relief. Observing that the conduct of the petitioner in this regard cannot be approved and practice of filing cases without disclosing pendency of cases previously filed for the same relief cannot be lightly ignored, Registry was directed to issue notice to the petitioner to show-cause as to why appropriate proceedings shall not be initiated and exemplary costs be imposed. When the case was considered again on 02.04.2025, the

Registry placed on record a response from the petitioner received through e-mail. In view of the said communication, the petitioner was called upon to file a properly attested affidavit on or before 10.04.2025. Though the petitioner thereafter sent another statement in the format of affidavit to the Registry, the same was not properly attested. Notice issued by the Registry and printout of the e-mail from the petitioner along with the reply submitted by the petitioner to it shall be taken on the records of this case and marked as Annexures 'X' and 'Y' respectively.

3. Petitioner has stated in his reply that the above Crl.M.C. was filed arraying the de facto complainant as the 2nd respondent for quashing the proceedings in C.C.No.2107/2020 and during the course of trial of the said case lawyer engaged by the de facto complainant took initiative for settling the disputes between the petitioner and the de facto complainant. Petitioner and the 2nd respondent agreed to close all cases between them. The lawyer intimated the petitioner that the

counsel through whom the above Crl.M.C. was filed was not cooperative and if a fresh vakalath is executed, another counsel can be engaged in the above case after obtaining no objection certification/endorsement from the counsel who filed the above Crl.M.C. The lawyer obtained signature of the petitioner in a vakalath and some papers and the petitioner could not do any follow-up as he went abroad. He further states that filing of Crl.M.C.No.8210/2023 came to his knowledge only when he received notice issued pursuant to the order dated 19.3.2025. He also stated that the same might have happened on account of communication gap between him and the lawyer. He pleaded that the filing of another case for the same relief during pendency of the above Crl.M.C. may be pardoned as it happened on account of ignorance.

4. Learned counsel who filed the above Crl.M.C. appeared and submitted that he had no information about filing of Crl.M.C.No.8210/2023. He clarified that neither the petitioner nor

anybody on his behalf approached him any time for relinquishing the engagement in the above Crl.M.C. He further stated that the petitioner did not contact him any time after the filing of the above Crl.M.C. The learned counsel came to know about the filing of Crl.M.C.No.8210/2023 and its disposal only when the learned Public Prosecutor made submissions in this case. The learned counsel fairly agreed that the petitioner has resorted to unfair practice and submitted that appropriate orders may be passed.

5. The above Crl.M.C. was filed in 2021 and no order was passed other than issuing notice. Though an application for stay was filed, no order was passed in the said application. Hence, the petitioner did not get any immediate relief in the above Crl.M.C. Presumably while considering the above Crl.M.C. at the stage of admission it was not found to be a fit case in which orders could be passed for keeping the impugned proceedings in abeyance. Later, after a gap of more than three years, Crl.M.C.No.8210/2023 was filed through another counsel

for the same relief on the ground that the disputes between the petitioner and the de facto complainant had been settled. There is no whisper in the memorandum of Crl.M.C.No.8210/2023 about the pendency of the above Crl.M.C. The petitioner, who filed the above Crl.M.C. which was listed and considered on a number of occasions, by filing another Crl.M.C. in suppression of the pendency of the above Crl.M.C. has abused the process of the Court. Considerable amount of valuable and limited judicial time was utilized by this Court for handling the above case. Crl.M.Cs. filed in different years are being taken up for hearing by different Benches according to the roster. Therefore, the conduct of the petitioner can be considered as an instance of bench hunting also. Such unfair practices cannot be countenanced.

6. High Court is bestowed with inherent powers in its criminal jurisdiction that are meant to be used for the sake of justice and to forbid abuse of the process of court. This authority conferred on the

High Court is meant to be used sparingly and only in appropriate circumstances. Inherent powers cannot be used to extend relief to someone who approached the court in an unclean manner and withheld important information. The High Court's authority to stop abuse of the legal system cannot be allowed to be misused by unscrupulous litigants. Those who invoke this extraordinary authority of the Court should disclose every material fact and be fair. Casual attitude in approaching this Court and experimentation in litigation cannot be tolerated.

7. In ***Dalip Singh v. State of Uttar Pradesh and Others*** [(2010) 2 SCC 114], the Hon'ble Supreme Court lamented about erosion of values resulting in misrepresentation and suppression of facts in litigation. Relevant observations of the Hon'ble Supreme Court are extracted hereunder:

> *"1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people*

to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

8. In ***Chandra Shashi v. Anil Kumar Verma*** [(1995) 1 SCC 421], the Apex Court observed thus:

> *"The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.*
>
> *2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice."*

9. In ***K.D. Sharma v. Steel Authority of India Limited and Others*** [(2008) 12 SCC 481], the Hon'ble Supreme Court observed as follows:

> *"36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the*

> *action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it."*

Further it was observed thus;

> **"***38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".*
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> *39. If the primary object as highlighted in Kensington Income Tax Commrs. [(1917) 1 KB*

486] is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

10. Inherent powers of the High Court under Section 482 of the Code of Criminal Procedure/Section 528 of BNSS are akin to the powers under Article 226 of the Constitution. Therefore, the principles laid down by the Hon'ble Supreme Court in the decisions referred above regarding equitable and prerogative jurisdiction would apply to the proceedings under Section 482 of the Code of Criminal

Procedure/Section 528 of BNSS also. Reliefs are not to be placed on soiled hands while exercising prerogative jurisdiction. An applicant invoking the inherent powers of the High Court suppressing the previous proceedings in the same matter/pendency of proceedings for the same relief should be appropriately dealt with. Court has a duty to zealously guard the judicial process from being misused by unscrupulous litigants.

11. In ***Aravindakshan v. State of Kerala*** [1985 Crl.L.J. 1389] it was held thus;

> *"6. Before entering into a discussion on the merits of the controversy, I may say that by his actions the first petitioner made himself ineligible for the extraordinary and discretionary remedy of invoking the inherent jurisdiction of this Court. There are certain reliefs which parties may not be entitled to claim from a Court of law as a matter of right. For example, there are certain relief which could be claimed on the basis of the Specific Relief Act including injunction. In such cases, apart from the merits of the claims, the Court will look into the question whether the party who has approached the Court for such discretionary remedies have come with clean hands. He who sees equity must do equity. Those who are seeking equitable and discretionary reliefs will*

have to approach the Court with clean hands. A fraudulent attitude on the part of the petitioner or his unclean hands by themselves disentitle him to such reliefs even though he may be supported by legal backgrounds. That is the case with exercise of inherent jurisdiction also. Invoking of inherent jurisdiction is definitely an extraordinary remedy. While exercising that discretion, the Courts will have to act with due discretion which has to be exercised judicially. Such jurisdiction is expected to be exercised only sparingly and only in such cases of gross injustice for the remedial of which there is no other specific provision of law. The main purpose of invoking the inherent jurisdiction of the High Court under the Criminal P.C. is to prevent abuse of process of Court or to secure ends of justice otherwise in cases where no specific provision is available. A person who is seeking such a jurisdiction has undoubtedly to approach the court with clean hands and with equitable backgrounds. He has to come to Court with an open mind for the purpose of making him eligible for such a relief. The High Court may not be justified in invoking the inherent power in favour of a person who is known to have approached the Court with a mala fide and fraudulent background."

12. As noted above, the petitioner extracted considerable judicial time of this Court by filing the above Crl.M.C. While this Crl.M.C. was pending, the petitioner filed Crl.M.C.No.8210 of 2023

and obtained relief without disclosing the pendency of the earlier case. He resorted to material suppression in Crl.M.C.No.8210 of 2023 which could not be taken note of by this Court while allowing the same. The conduct of the petitioner definitely amounts to abuse of the process of the Court and may also border on contempt of Court. The explanation offered by the petitioner is that he executed a vakalath in favor of the counsel who appeared for the 2nd respondent in the trial court when the said counsel took the initiative to settle the dispute, and the counsel had assured that appropriate arrangements would be made to get the above Crl.M.C. disposed of based on the settlement. He also states that he could not do any follow-up as he went abroad. This explanation cannot be accepted as the order to his benefit was passed in Crl.M.C.No.8210 of 2023 which definitely would have come to his knowledge. Petitioner has not even mentioned the name of the lawyer who according to him made arrangements to file the latter Crl.M.C. Moreover, the learned counsel who filed the above Crl.M.C has

submitted that neither the petitioner nor anyone on his behalf contacted the counsel any time after filing of the Crl.M.C.

13. Practice adopted by the petitioner unquestionably amounts to abuse of the process of the court. Hence appropriate orders are to be passed in this case keeping in mind the necessity to preserve purity of judicial process. Hon'ble Supreme Court has laid down in ***Mary Angel and Others v. State of T.N*** *[(1999) 5 SCC 209]* that imposing cost in appropriate cases is permissible while exercising the powers under S.482 of Cr.P.C. Taking into account the facts and circumstances, I find appropriate to impose exemplary costs on the petitioner. Petitioner is hence directed to pay a cost of ₹20,000/- (Rupees Twenty Thousand Only) to the Kerala State Legal Services Authority within a period of one month. Registry shall ensure remittance of cost by the petitioner as directed above and take appropriate steps for recovery; in case the petitioner fails to pay the cost within the stipulated time limit.

14. It is to be noticed that this Court is insisting for declaration regarding previous bail applications filed by accused in the same crime when a new bail application is filed and also for an undertaking that no other bail applications will be filed before this Court or any other Court during the pendency of the application filed before this Court. It is also to be noted that Circular Nos.2 of 2009 and 9 of 2009 were issued by this Court on the administrative side for inclusion of statements regarding other bail applications, in applications filed before the Sessions Court and also in all other Criminal Courts. Hon'ble Supreme Court in ***Kusha Duruka v. State of Odisha*** *[(2024) 4 SCC 432]* has highlighted the necessity to insist for such declarations in bail applications. Rule 146 of the High Court Rules included in Chapter XI which deals with proceedings under Articles 226, 227 and 228 of the Constitution reads as follows:-

> *"146. Contents of the applications.—Every application shall set out the provision of law under which it is made, the name and description of the petitioner and the respondent, a clear and concise*

statement of facts, the grounds on which the relief is sought and the relief sought shall be signed by petitioner and by his Advocate, if he has appointed one, as in Form No. 10.

Provided that no petition shall be entertained by the Registry unless it contains a statement as to whether the petitioner had filed any petition seeking similar reliefs in respect of the same subject-matter earlier and if so, the result thereof."

(Emphasis added)

15. Time has come to ponder about analogous declarations/undertakings being insisted in the case of Crl.M.Cs filed under Section 528 of BNSS also to prevent unscrupulous litigants from abusing the prerogative jurisdiction of the High Court and indulging in bench hunting. The Registry shall take note of this order and may take appropriate steps in this regard.

Crl.M.C. is disposed of as above.

Sd/-

S.MANU
JUDGE

skj&rp

APPENDIX OF CRL.MC 516/2021

PETITIONER'S ANNEXURES

ANNEXURE A1	**TRUE COPY OF THE FINAL REPORT IN CC NO.2107/2020 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, ATTINGAL.**