

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

Crl.MC.No. 629 of 2015 ()

**CP NO. 144/2014 (EARLIER CC.NO.1518/2009)
OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, PUNALUR
CRIME NO. 447/2008 OF ANCHAL POLICE STATION, KOLLAM DISTRICT**

PETITIONER/ACCUSED :

**PRAKASH, AGED 33,
S/O.PADMANABHAN, MULLAKKAL VEEDU, POIKAYILMUKKU
KARAVALLUR, KOLLAM DISTRICT.**

BY ADV. SRI.R.KRISHNAKUMAR (CHERTHALA)

RESPONDENTS/STATE & COMPLAINANT :

- 1. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.**
- 2. DEPUTY SUPERINTENDENT OF POLICE
PUNALUR, (CRIME NO.447/2008), KOLLAM DISTRICT-691305.**
- 3. RAJENDRAN
S/O.NARAYANAN, NINU BHAVAN, KURUVANCHERRY
MANGAD, ALAYAMON, KOLLAM DISTRICT-691306.**

**R1 & R2 BY ADDL. DIRECTOR GENERAL OF PROSECUTION
SRI. TOM JOSE PADINJAREKKARA**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29-06-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONERS' ANNEXURES :

- ANNEXURE A1:** TRUE COPY OF THE FIR IN CRIME NO.447/08 DT.28-7-2008 OF ANCHAL POLICE STATION.
- ANNEXURE A2:** TRUE COPY OF THE FINAL REPORT ALONG WITH CONNECTED RECORDS IN CRIME NO.447/08 DT.30-7-2009 OF ANCHAL POLICE STATION.
- ANNEXURE A3:** TRUE COPY OF THE DECREE DT.19-9-2009 IN OP 857/08 ON THE FILE OF THE HON'BLE FAMILY COURT, KOTTARAKKARA.
- ANNEXURE A4:** TRUE COPY OF THE ORDER DT.19-9-2009 IN OP 857/08 ON THE FILE OF THE HON'BLE FAMILY COURT, KOTTARAKKARA.
- ANNEXURE A5:** TRUE COPY OF THE PETITION IN CMP 6064/12 ON THE FILE OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, PUNALUR DT.21-6-12.
- ANNEXURE A6:** TRUE COPY OF THE PETITION IN CMP NO.6065/2012 ON THE FILE OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, PUNALUR DT.21-6-12.
- ANNEXURE A7:** TRUE COPY OF THE ORDER DT.26-4-14 IN CC NO. 1518/2009 ON THE FILE OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, PUNALUR.
- ANNEXURE A8:** TRUE COPY OF THE SUPPLEMENTARY FINAL REPORT ALONG WITH CONNECTED RECORDS IN CRIME NO.447/08 DT.30-9-14 OF ANCHAL POLICE STATION.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

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K.ABRAHAM MATHEW J.

Crl.M.C.No.629 OF 2015

Dated this the 29th day of June, 2015

ORDER

The proceedings from which this Crl.M.C arises has its genesis in the case registered by the police under Section 174 Cr.P.C. on the death of the wife of the petitioner. In the course of the investigation it was revealed that the petitioner and his mother had subjected the deceased to cruelty and the investigation ended with the filing of a report by the Dy.S.P concerned under Section 173(2) Cr.P.C alleging commission of the offence under Section 498A IPC by the petitioner and his mother, who died subsequently. Learned Magistrate took cognizance of the offence and issued process to the petitioner, who faced trial. After the petitioner was examined under Section 313 Cr.P.C the learned Magistrate passed Annexure-A7 order, the reasons for which are irrelevant. The relevant directions in the order are these:

“The police is directed u/s 156(3)Cr.P.C to conduct a further investigation in the case by invoking their powers u/s.173(8)Cr.P.C.

As the original investigation in the case was conducted by the then ASP Punalur, the further investigation in the case will be entrusted by District Police Chief Kollam(Rural) to any competent officer under his command and control.

The said officer will conduct a foolproof further investigation in accordance with law and the same will be supervised by DPC, Kollam(Rural)”.

2. Pursuant to the above direction further investigation was conducted and Annexure-A8 supplementary report was filed alleging commission of the offences under Sections 498A and 306 IPC by the petitioner. The learned Magistrate took the case on his file as CP No.144 of 2014. The legality of Annexure-A7 order of the learned Magistrate and Annexure-A8 supplementary report of the police is challenged.

3. Two questions arise for consideration:

1) Was it legal for the Magistrate to suo motu order further investigation after taking cognizance on police report and issuing process to the petitioner.

2) Is the direction to the District Police Chief to entrust the investigation to "any competent officer under his command or control" legal.

4. 'Further investigation' is a term used in Section 173(8) Cr.P.C. The said provision does not explicitly empower Magistrates to order further investigation. In **Bhagwant Singh v. Commissioner of Police and another (1985)2 SCC 537** a three Judge of the Supreme Court held that there are three options for a Magistrate when a report under Section 173(2) Cr.P.C is received to the effect that an offence appears to have been committed by the accused: 1) he may accept the report and take cognizance of the offence and issue process, or 2) he may disagree with the report

and drop the proceedings, or 3) he may direct further investigation under sub section 3 of Section 156 Cr.P.C and require the police to make a further report. So there cannot be any doubt that the Magistrate has power to order further investigation on receipt of a report under Section 173(2) Cr.P.C. The power flows from Section 156(3) of the Code. This has been reiterated in **Sakiri Vasu v. State of UP (2008 (1)KLT 724)**.

5. Subsequent decisions of the Supreme Court in **Randhir Singh Rana v. State, Delhi Administration (AIR 1997 SC 639)** and **Reeta Nag v. State of West Bengal ((2009)9 SCC 129)** and of a Division Bench of this court in **Abdul Latheef v. State of Kerala (2014(3)KLT 905)** require notice.

6. In **Abdul Latheef v. State of Kerala** (supra) the Division Bench has made the following observation:

"From all the above, it can safely be concluded that when the court has the power to direct the investigating agency to conduct further investigation under Section 173(8) Cr.P.C in a matter even after taking cognizance on the final report filed by the investigating agency before it under S.173(2) Cr.P.C, either the de facto complainant, who is aggrieved on account of any lapse committed by the investigating agency in conducting the investigation or in not conducting the investigation in another line to which it ought to have been conducted, or the Public Prosecutor who notices serious lapse committed by the investigating agency in not conducting the investigation properly, can invite the attention of the court through an application for satisfying the court in respect of the necessity to invoke the power of the court under S.173(8)Cr.P.C. Even

without any such wake up call, the court on its own can invoke its power under Section 173(8) Cr.P.C.”(emphasis supplied)

It is submitted that the observation that even after taking cognizance the court on its own can invoke its power under Section 173(8)Cr.P.C runs contrary to the decisions of the Supreme Court in **Randhir Singh Rana v. State, Delhi Administration (AIR 1997 SC 639)** and **Reeta Nag v. State of West Bengal ((2009)9 SCC 129)**.

7. The question that came up for consideration before the Supreme Court in **Randhir Singh Rana's** case was whether a Magistrate after taking cognizance of an offence on the basis of a police report and after appearance of the accused in pursuance of the process issued can order of his own further investigation in the case. Rejecting the contention that as the power to order further investigation undoubtedly existed at the first stage- that is when the report under Section 173(2) is received by the Magistrate - at subsequent stages also the Magistrate can exercise that power the Supreme Court held that after cognizance is taken and process issued to the accused, the Magistrate cannot suo motu order further investigation. This was reiterated in **Reeta Nag's** case, in which the question the Supreme Court was required to answer was whether the Magistrate can order further investigation after charge is framed. The Court held that it was illegal to do so. There is no

decision of the Supreme Court which has taken a view different from the one taken in the above two cases.

8. Thus it is well settled that the power of Magistrate to order further investigation flows from Section 156(3)Cr.P.C and not from Section 173(8) of the Code and after taking cognizance of the offence on the basis of a report filed under Section 173(2) the court cannot suo motu order further investigation. The contrary observation made by the division bench of this court in **Abdul Latheef's** case cannot be followed in view of the above mentioned two decisions of the apex court. The learned Magistrate went wrong in ordering further investigation suo motu in the midst of the trial.

9. Coming to the second question, the issue relating to the power of the Magistrate to direct investigation by a police officer other than the Station House Officer concerned came up for the consideration of the apex court in **Central Bureau of Investigation v. State of Rajasthan (AIR 2001 SC 668)**. The court held:

"S. 36 of the Code authorises any other police officer, who is superior in rank to an officer in charge of a police station to exercise the same powers of the officer-in-charge of a police station. But when a Magistrate orders investigation under S.156(3) he can only direct an officer-in-charge of a police station to conduct such investigation and not a superior officer. S.36 of the Code is not meant to substitute the magisterial power envisaged in S.156(3) of the Code, though it could supplement the powers of an officer-in-charge of a police station."

10. In **Central Bureau of Investigation v. State of Gujarat (2007)6 SCC 156** also the Supreme Court has taken the same view. The direction of the learned Magistrate to the District Police Chief to entrust the investigation to "any competent officer under his command or control" is illegal.

11. In the light of the discussion made above it is only to be held that the impugned order and the final report filed pursuant to it should be set aside.

In the result, this Crl.M.C is allowed. Annexure-A7 order and Annexure-A8 supplementary final report are set aside. It is made clear that there is no impediment for the Magistrate to pass appropriate orders if an application for further investigation is filed by the investigating officer or other competent persons.

Sd/-

K.ABRAHAM MATHEW
JUDGE

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/True copy/

P.S.to Judge