

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

Crl.MC.No. 327 of 2013 ()

**AGAINST THE ORDER IN CC 487/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT
KAYAMKULAM DATED 16-07-2012
CRIME NO. 235/2010 OF VALLIKUNNAM POLICE STATION , ALAPPUZHA**

PETITIONER/ACCUSED:

**RENJITH, AGED 27 YEARS
S/O.SURESH, RENJITH BHAVAN, KATTANAM MURI
KATTANAM VILLAGE, KATTANAM P.O., ALAPPUZHA.**

**BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH
SRI.RAAJESH S.SUBRAHMANIAN**

RESPONDENTS/COMPLAINANT AND STATE:

**1. THE SUB INSPECTOR OF POLICE
VALLIKUNNAM POLICE STATION, VALLIKUNNAM P.O.
ALAPPUZHA-690 501.**

**2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT. LISHA M.G.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 28-07-2015,
THE COURT ON 21.8.2015 PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S ANNEXURES

ANNEXURE-A1: CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.235/2010 SUBMITTED BY THE A.S.I. OF POLICE, VALLIKUNNAM, DATED 19.05.2010.

ANNEXURE-A2: CERTIFIED COPY OF THE REFER REPORT SUBMITTED BY THE INSPECTOR OF POLICE MAVELIKKARA IN CRIME NO.235/2010, DATED 01.11.2011.

ANNEXURE-A3: PHOTOSTAT COPY OF THE ORDER IN C.C.NO.487/2010 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KAYAMKULAM, DATED 16.07.2012.

ANNEXURE-A4: THE TRUE PHOTOSTAT COPY OF THE STATEMENT FILED BY THE DEPUTY SUPERINTENDENT OF POLICE, CHENGANNUR IN CRL.R.P.NO.2509/2012, DATED 9TH DAY OF JANUARY, 2013.

RESPONDENTS'ANNEXURES.

NIL

//True copy//

P.A. TO JUDGE

Shg/

C.R.

K.P. JYOTHINDRANATH, J.

Crl.M.C.No.327 of 2013

Dated this the 21st day of August, 2015

O R D E R

This is an application filed under Section 482 of the Code of Criminal Procedure to quash the proceedings against the petitioner/accused before the trial court.

2. The facts which are relevant for this proceedings is as follows:

Crime No.234/2010 under Section 447, 294(b), 323 r/w. Section 34 of Indian Penal Code is registered against one Shaji and others at Vallikunnam Police Station. The said crime is registered on a statement given by the petitioner herein. The incident in that crime occurred on 17.05.2010 at 7.45 p.m. The said crime was investigated and charge sheeted before the Judicial First Class Magistrate Court, Kayamkulam and the court took cognisance of the offences. On the strength of the statement given by Sathiyamma, who is the mother of the above

referred Shaji, alleging an incident on 17.5.2010 at 8.10 p.m. crime No.235/2010 is registered at the very same police station for offences under Sections 447, 294(b), 323 of IPC. The said crime is also investigated and charge sheeted before the court and it is now numbered as C.C.No.487/2010.

3. When the mother of the petitioner herein came to know about the above case, she made a representation before the Superintendent of Police. Her case was that the case put forward by the defacto complainant in crime No.235/2010 is false. After a preliminary enquiry, the District Police Chief ordered reinvestigation and entrusted the matter with the Inspector of Police, Mavelikkara. The Inspector of Police filed a report before the trial court on 21.12.2010 praying to stop further proceedings of the trial in C.C.487/2010 and also informed the reinvestigation of the case. A final report was filed before the court on 01.11.2011.

4. After filing the second report the court below

passed an order dated 16.7.2012 which state as follows:

“1.The cognisance of the case was taken on the basis of the final report filed by the S.I. of Police, Vallikunnam in Cr.No.235/10 in CC487/10 against the accused u/s. 447, 294(b)&323 IPC. Subsequently the C.I. of Police, Kayamkulam sought for further investigation on the basis of a complaint filed by the accused before the Superintendent of Police, Alappuzha. Thereafter the C.I. of Police, Kayamkulam filed a refer report stating that no offence is made out against the accused, the earlier report was submitted on the basis of false informations and statements.

2. Heard both sides. On going through the materials produced by S.I. of Police Vallikunnam it is seen that the first report, other statements and wound certificate etc. made out the offence alleged against the accused. The second report stated that offence is made out against the accused and earlier report and statements are based on false informations, cannot be believed. Hence I find that the first report and its materials are more reliable than the second report as referred by SHO concerned. Hence the cognisance taken on the first report can be proceeded further. The accused shall be produced on 10.8.12.”

5. The prayer in this petition is to quash the first report in crime No.235/2010 of Vallikunnam Police Station by accepting the second report.

6. Heard the counsel on both sides in detail.

7. Deputy Superintendent of Police, Chengannur filed a statement as ordered by this Court. He reported that the petitioner herein as well as the above referred Renjith and his mother Smt. Jayakumari were neighbours and were

in good terms. There was a plot owned by Marutholil family where Smt.Jayakumari has been working as a housemaid. Shaji had an idea to buy the land but the Marutholil family sold the property to some other person. There occurred an ill will between the two families on the misunderstanding that the reason behind this transaction was Smt. Jayakumari. Meanwhile some committee members of the family temple came to Jayakumari's house on 17.05.2010. Sri. Shaji misunderstood that those people were quotation team and came there to attack Shaji and his family. Due to this misunderstanding and enmity, at about 7.45 p.m. on 17.05.2010 Sri. Shahji and his cousin Rajeev and four others, who were friends of Rajeev trespassed into the courtyard at Renjith Bhavanam and manhandled Renjith and his mother Jayakumari. Renjith along with his mother Jayakumari came to the police station and crime No.234/2010 under Sections 447, 294(b), 323 r/w. Section 34 of IPC was registered against Shaji and others on the strength of statement given by Sri.Renjith.

8. It is also reported that considering the seniority and experience in the investigation, it can be presumed that the further investigation was proper and the stand of the said Dy.S.P. is that the first final report made in crime No.235/2010 under Sections 447, 294(b), 324 & 34 IPC is false as reported in the second report and second report is reliable and admissible.

9. In this case, the main point is regarding the impugned order passed by the Magistrate as well as legality of second report. It can be seen that in the first report only two witnesses were cited; whereas while filing the second report 12 witnesses are shown as examined. In this case, the Superintendent of Police ordered a reinvestigation. It is a settled position that a reinvestigation can be ordered only by a higher court in exercise of its extraordinary or inherent jurisdiction. There also, the precedent says that higher courts will have to pass a specific order with regard to the fate of the investigation already conducted and the report so filed before the court of the competent jurisdiction. It can

be seen that the Superintendent of Police will not be entitled to order a reinvestigation in a case. But surely when a police officer is under the impression after an enquiry that the investigation already done has not proceeded in a proper way or a miscarriage of justice is done, surely he will be entitled to pass an order to conduct further investigation as contemplated under Section 173 (8) of Cr.P.C. The Magistrate is also empowered to order further investigation, but not a reinvestigation.

10. When the legal position is as stated above, even when a final report is filed before the Magistrate with prior information regarding the reinvestigation, a reinvestigation done so will not get the legal sanctity and such a report will be a nullity in the eye of law. In this case even though the investigation is done on orders of the Police Chief to conduct re-investigation, in principle when a police officer is only entitled to do a further investigation, the character of the investigation done is to be scrutinised to see whether it was a further investigation or a reinvestigation/de novo

investigation. Only because, in the relevant column prescribed to file a final report, it is written as 'assal' (original) it will not become a de novo investigation. In this case, it can be seen that the only thing the investigating officer has done is examining the witnesses as contemplated under Section 161 of Cr.P.C. Thus what comes out is that whatever will be the name given for further investigation, what is to be looked into by the court is whether it was a de novo investigation or a further investigation actually done by the police officer. As long as the first report is not erased or made a nullity by a judicial order of the higher courts with its inherent or extraordinary jurisdiction, a second final report is to be verified to see whether it has only the features of a report filed under Section 173 (8) of Cr.P.C. In this case, it can be seen that 12 witnesses are examined by the investigating officer during the second phase of investigation whereas during first investigation only two witnesses questioned/cited as witnesses. No other search or seizure done during the second phase. Thus it can be

seen that actually only a further investigation was done in this matter.

11. Now, in this case, the offences are summons-triable one. After taking cognisance of the offence, the court has to follow the procedure laid down in the Code of Criminal Procedure. In a summons-case, there will be no specific charge but only an accusation. I am highlighting the fact that the accused will not be getting an opportunity to argue for discharge. But, the Magistrate can stop the proceedings under Section 258 of Cr.P.C. at any stage without pronouncing any judgment and can release the accused, even when his plea is not recorded.

12. In this case, the Magistrate passed an order where he already expressed his opinion regarding the reliability of the materials collected during the investigation referred above. Surely it is a report styled as final report filed by the police after investigation. The procedure adopted by the police is not in accordance with law. Similarly the learned Magistrate has also passed an order

not in accordance with law. Apex Court has considered a similar situation in **Vinay Tyagi v. Irshad Ali @ Deepak & Ors. [(2013) 5 SCC 762]**, and to do justice, it has been ordered by their Lordships to consider the two reports. In that case reinvestigation was ordered by the High Court of Delhi. But the court was silent regarding the fate of final report already filed by the police. CBI filed a refer report. Under such circumstances, their Lordships of the Apex Court ordered as stated earlier. Thus following the dictum laid down therein the following conclusion can be arrived at:

1. No police officer is authorised to order reinvestigation/de novo investigation in a matter where already a final report filed before a competent Magistrate and cognisance taken upon it.
2. The court taking cognisance is only empowered to order further investigation and not a reinvestigation.
3. A second report filed even if styled as 'final' report the court has power to look whether the investigation done is only a further investigation or actually a de novo investigation.
4. If the second report is a final report after a de novo investigation/reinvestigation it is ipso facto a nullity as long as there is no order for reinvestigation by the Higher Court in exercise of its extraordinary

or inherent jurisdiction.

13. Thus considering the facts in this case, the impugned order dated 16.07.2012 in C.C.No.487/2010 of Judicial First Class Magistrate Court, Kayamkulam which is quoted earlier is hereby quashed and it is further ordered that the trial court has to consider the entire record including the first and second report filed by the police and statements and documents, if any, filed along with first report and shall proceed in accordance with law from the stage immediately after filing the second report.

It is made clear that untrammelled by any of the observations made above, the Magistrate Court will be at liberty to consider whether the petitioner/accused is entitled for a relief under Section 258 of Cr.P.C.

As stated above, this petition is disposed of.

Sd/-
K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/