

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

Crl.MC.No. 1857 of 2015

**O.S.NO.145/2014 OF MUNSIFF COURT, PALA
C.M.P.NO.319/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PALA**

PETITIONER(S)/ACCUSED :

**V.J.JOSEPH,
VARICKAMAKKAL PAICATTU HOUSE, NEELOOR POST,
KADANADU VILLAGE, KOTTAYAM.**

BY ADV. SRI.V.J.JOSEPH (PARTY IN PERSON)

RESPONDENT(S)/STATE :

- 1. MATHEW JOSEPH,
VALLOMPURAYIDATHIL HOUSE,
HINDUSTAN LEVER APARTMENT FLAT NO.22,
NEAR HIGH COURT, ERNAKULAM - 682 031.**
- 2. ROSAMMA MATHEW,
VALLOMPURAYIDATHIL HOUSE,
HINDUSTAN LEVER APARTMENT FLAT NO.22,
NEAR HIGH COURT, ERNAKULAM - 682 031.**
- 3. LOUIS.S.MATHEWS,
18 D, CHOICE PARADISE, NADAMA EAST,
TRIPUNITHURA- 682 301.**
- 4. ADV.JOSE THOMAS,
PANDIAMAKKAL, KADANADU POST,
KADANADU VILLAGE, KOTTAYAM - 686 653.**
- 5. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM- 682 031.**

**R1 TO R3 BY ADVS. SRI.P.TANTONY
SRI.AYPE JOSEPH
R5 BY PUBLIC PROSECUTOR SMT.P.MAYA**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 30-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNX.I: TRUE COPY OF THE PLAINT OS.145/2014 BEFORE THE MUNSIFF COURT, PALA DATED 11-04-2014.**
- ANNX.II: TRUE COPY OF THE POWER OF ATTORNEY DATED 26-09-2014.**
- ANNX.III: TRUE COPY OF THE WRITTEN STATEMENT DATED 17-12-2014.**
- ANNX.IV: TRUE COPY OF THE COMPLAINT DATED 09-02-2015.**
- ANNX.V: TRUE COPY OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT PALA AND THE MAGISTRATE COURT HAD NUMBERED AS CMP 319/2015 DATED 25-02-2015.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P. UBAID, J.

Crl.M.C.No.1857 of 2015

Dated this the 30th day of March, 2015

O R D E R

The petitioner herein is the plaintiff in O.S.No.145/2014 before the Munsiff's Court, Pala. Pending the proceeding he filed an application under Section 340 Cr.P.C., against the defendants, containing allegations of forgery of a document produced in court. Instead of proceeding properly under the the law under Section 340 Cr.P.C., the learned Munsiff forward the said application to the Judicial First Class Magistrate Court, Pala, without conducting any enquiry as prescribed under the law. Finding that there must be a proper complaint after necessary enquiry as prescribed under Section 340 Cr.P.C., the learned Magistrate returned the complaint to the petitioner herein for presentation before the Munsiff Court again. The said order is sought to be set aside, and the petitioner wants orders from this Court under Section 482 Cr.P.C., directing the learned Munsiff to conduct a proper enquiry and make a proper complaint as prescribed under the law.

2. Section 340 of the Code of Criminal Procedure provides that when an application comes before the court; civil or criminal, complaining of the commission of any offence referred to in

Clause (b) of Sub Section 1 of Section 195 Cr.P.C., and it appears to have been committed in or in relation to a proceeding in that court, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary enquiry, if any, as it thinks fit, record a finding to that defect, make a complaint thereof in writing, and send to the Magistrate of the First Class having jurisdiction. Thus the necessary procedure is prescribed clearly under Section 340 Cr.P.C. When such an application comes under Section 340 Cr.P.C., the judicial officer will have to conduct a preliminary enquiry to see whether there is necessity of a complaint. If he finds the necessity of a complaint, he will have to record a finding to that effect, and make a complaint to the learned Judicial First Class Magistrate having jurisdiction. Here, instead of conducting such an enquiry for coming to a finding prima facie, and making a complaint before the learned Magistrate having jurisdiction, the learned Munsiff directly forwarded the petition under Section 340 Cr.P.C. to the learned Magistrate. Thus, there is no proper complaint now before the learned Magistrate. There is also no finding by the learned Munsiff under Section 340 Cr.P.C. I find that the procedure adopted by the learned Munsiff is wrong. The learned Munsiff will

have to conduct a proper enquiry as prescribed under Section 340 Cr.P.C., come to a prima facie finding that there is necessity of a prosecution, and if he finds such necessity, he will have to make a complaint before the learned Judicial First Class Magistrate having jurisdiction. Without such a complaint, cognizance cannot be taken by the learned Magistrate. I find that the petitioner herein has a genuine grievance. The illegality committed by the court below will have to be corrected. Now the petition filed under Section 340 Cr.P.C. stands returned to him by the learned Magistrate. He will have to present it before the learned Munsiff for appropriate proceeding.

In the result, this petition is allowed. The petitioner herein is permitted to present the application made by him under Section 340 Cr.P.C., before the learned Munsiff, Pala, within ten days from this date. The learned Munsiff will conduct a proper enquiry as prescribed under Section 340 Cr.P.C., and if he finds the necessity of a prosecution, the learned Munsiff will make a proper complaint before the learned Magistrate having jurisdiction.

Sd/-
P. UBAID, JUDGE

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