

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

Crl.MC.No. 1291 of 2013

CRIME NO.137/2005 OF THOTTILPALAM POLICE STATION , KOZHIKODE DISTRICT

PETITIONER(S)/1ST ACCUSED :

K.C.MATHEW PERUMALI, AGED 84 YEARS,
S/O.CHERIAN, PERUMALI HOUSE, 9/247, VELI, KOCHI - 1.

BY ADV. SMT.M.K.PUSHPALATHA

RESPONDENT(S)/STATE :

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. DY.S.P, CRIME DETACHMENT,
VADAKARA, KOZHIKODE DISTRICT.
3. THE CIRCLE INSPECTOR OF POLICE,
KUTTIADY POLICE STATION, KOZHIKODE DISTRICT.

* ADDITIONAL R4 IMPEADED

4. MR.K.R.SUNNY,
S/O.LATE RAPHEL, RESIDING AT JANAKI BHAVAN,
EROOR SOUTH, KANAYANNUR TALUK, THRIPIUNITHURA.

* ADDITIONAL R4 IS IMPEADED AS PER ORDER DATED 07.08.2014 IN
CRL.M.A.NO.6371 OF 2013.

R1 TO R3 BY PUBLIC PROSECUTOR SMT.MAYA
ADDL.R4 BY ADVS. SRI.K.S.HARIHARAPUTHRAN
SRI.GEORGE MATHEW

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 31-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Msd.

B.KEMAL PASHA, J.

.....
CRL. M.C. No. 1291 of 2013
.....

Dated this the 8th day of September, 2015

ORDER

Order dated 31st August, 2015 is recalled and the Crl.M.C. is restored to file.

2. The petitioner is the first accused in Crime No.137/2005 of the Thottilpalam Police Station. The offences alleged in the crime were punishable under Sections 419, 468, 471 and 420 read with Section 34 of the Indian Penal Code. In the said case, after investigation, a final report was filed by referring the matter.

3. The case of the defacto complainant is that his father's property, having an extent of 7.5 acres, was snatched away by the accused by employing forgery, and forgery for the purpose of cheating. It is the further case of the defacto complainant that his father Raphale died on 4.9.1982 and he was residing at

Kozhikode. A Power of Attorney was cooked up as if it was executed at Mattancherry on 23.07.1982. It was registered on 10.11.1982, i.e. after the death of the Raphale, who allegedly executed the Power of Attorney. It was on the strength of the said Power of Attorney, the property was transferred.

4. According to the defacto complainant, everything was stage managed by the petitioner and other accused who are highly influential and got a refer report filed in the matter. Aggrieved by the same, the defacto complainant was knocking all the doors and finally, a further investigation was ordered in the matter under Section 173(8) Cr.P.C. and the said further investigation was entrusted to the Dy.S.P.(Crime Detachment), Kozhikode Rural. It seems that the further investigation was conducted and it has been completed. When the investigating officer approached the court below for filing the further final report in the matter, all the earlier original records were found missing.

5. The further final report was not accepted by the court below only because of the fact that the stay order passed by this Court is pending. The present complaint of the petitioner is that the petitioner has not been given an opportunity to have a say in any such investigation. The accused need not be consulted in the matter of further investigation. The accused has no say in any further investigation under Section 173(8) Cr.P.C. When further final report has been filed in the matter, it is for the court below to accept it and proceed with accordingly. In case the original records are missing, the court below shall reconstruct it. It seems that the missing of the records has been reported to this Court also. Matters being so, this Crl.M.C. is devoid of merits and is only to be dismissed, and I do so.

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

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge