

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

CrI.MC.No. 3198 of 2015 ()

**AGAINST IN CC 1424/2011 of JUDICIAL FIRST CLASS MAGISTRATE-I,
PARAPPANANGADI
CRIME NO. 510/2011 OF TIRURANGADI POLICE STATION , MALAPPURAM**
.....

PETITIONER(S)/DE-FACTO COMPLAINANT :-:

**ISMAIL MUSALIAR, AGED 50 YEARS
S/O.MOIDEENKUTTY, THOPPANARI HOUSE, OLAVATTOOR AMSOM,
KONDOTTI, MALAPPURAM DISTRICT.**

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S)/STATE AND ACCUSED :-:

- 1. THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**
- 2. ABOOBACKAR, AGED 58 YEARS
S/O.MOHAMMED KUTTY, MOOZHICKAL HOUSE,
KUTTISCHERICHINA
A.R.NAGAR, MALAPPURAM DISTRICT - 676 505.**

R1 BY SMT.S.HYMA, PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
03-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

AMV

Crl.MC.No. 3198 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

- ANNEXURE 1. : COPY OF THE FIR IN CRIME 510/2011 OF THE TIRURANGADI POLICE STATION.**
- ANNEXURE 2. : COPY OF THE APPLICATION MADE BY THE PROSECUTOR SEEKING PERMISSION UNDER SECTION 173(8) CR PC.**
- ANNEXURE 3. : COPY OF THE ORDER IN CMP 3490/2015 (ORDER CHALLENGED).**
- ANNEXURE 4. : COPY OF THE FINAL REPORT IN CRIME 510/2011.**
- ANNEXURE 5. : COPY OF THE FIS IN CRIME NO.510/2011 OF THE TIRURANGADI POLICE STATION.**
- ANNEXURE 6. : COPY OF THE STATEMENT RECORDED BY THE POLICE FROM THE PETITIONER UNDER SECTION 161 CRPC.**
- ANNEXURE 7. : COPY OF THE STATEMENT RECORDED BY THE POLICE FROM THE WITNESS UNDER SECTION 161 CRPC.**

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AMV

ALEXANDER THOMAS, J.

Crl.M.C. No. 3198 of 2015

Dated this the 3rd day of June, 2015

ORDER

The prayer in this Crl. Miscellaneous case is to set aside impugned Annexure-3 order, whereby the permission sought by the learned public prosecutor on behalf of the investigation to conduct further investigation in the matter under Section 173(8) of the Code of Criminal Procedure was rejected by the court below.

2. The impugned order reads as follows :

“This is a petition filed under Section 173 (8) Cr.P.C.

Heard both side. The contention of the learned APP is that the accused forged certain documents and the Police has not seized those documents. Hence further investigation is necessary to seize those documents. At this juncture it may be noted that the offence alleged against the accused is under Section 341 and 506(1) of IPC. I am of the view that the documents sought to be seized are not all necessary to decide the case on hand.

Hence petition dismissed.”

3. Heard Sri.Salil Narayanan K.A, the learned counsel for the petitioner and learned public prosecutor appearing for the respondent/State of Kerala.

4. It is to be noticed that the prayer made by the learned public prosecutor in Annexure-2 application is that the accused had forcibly obtained certain signed papers from the de facto complainant (petitioner herein) and created certain documents, which amount to forgery for the purpose of producing the same before the Sub Divisional Magistrate concerned in some pending litigation between the de facto complainant and the accused. Annexures 5, 6 and 7 produced along with Crl.M.A.No.5202 of 2015 in this Crl. M.C., are the copies of the First Information Statement in this crime as well as the statements recorded from the petitioner and from other witnesses under Section 161 of Cr.P.C.

5. On a perusal of Annexures 5, 6 and 7 shows that the de facto complainant has clearly projected the case

therein that certain signed papers are forcibly obtained from him by the accused, and the accused using the same for creating certain documents to be used in some pending litigation between those parties.

6. Therefore, the essential focus made by the learned public prosecutor in his application was that the action of the accused person in forcibly procuring signed papers from the de facto complainant for using the same for creating documents to be used in pending litigations between the parties etc., amount to commission of offences like forgery and other allied acts. Those offences have not been included either in the FIR or in the final report submitted by the police in this case.

7. It is in these circumstances that the learned public prosecutor thought it fit that more fine-tuned further investigation is to be conducted in the matter, so that the crucial aspect made by the de facto complainant himself in Annexure-5 FIS, and other statements as in Annexures 6 and 7 are made the subject matter of further investigation, so that in case cognizable offences are

those related to forgery etc., disclosed in such further investigation, the same could also be made the subject matter of the additional final report that could be filed before the court on the basis of such further investigation. Without appreciating these crucial aspects the learned Magistrate as per the impugned order has rejected the request of the prosecutor by simply holding that the alleged offences against the accused under Sections 341 and 506(1) of IPC and therefore the documents sought to be seized are not necessary to decide the case on hand. The learned Magistrate has clearly mis-directed himself in rejecting the plea of the prosecutor, based on such grounds as stated in the impugned Annexure -3 order. Firstly, the prayer in Annexure-2 application made by the learned public prosecutor was for permission to conduct further investigation in the crime by invoking the provisions under Section 173(8) of Cr.P.C. It is only for an effective further investigation into the aforementioned omitted aspects in the investigation that was sought to be made the subject matter of further investigation in the

application of the public prosecutor. Therefore, the ground of rejection based on Annexure-2 that nothing is going to improve by seizing the documents as far as the existing offences under Section 341 and 506(1) of IPC is concerned, is not a tenable ground for the issue posed before the court below.

8. Taking into account the specific plea made by the learned public prosecutor and the other materials on record including Annexures 5 to 7 herein, this Court is of the considered opinion that, the learned Magistrate clearly went wrong in rejecting the plea made by the prosecutor in this case. In this view of the matter, the impugned Annexure - 3 order, is set aside and the prayer in Annexure-2 application made by the learned public prosecutor is allowed. Necessary orders will be passed by the learned Magistrate for conducting further investigation expeditiously. The investigation will commence and conclude the further investigation, as ordered above, without any further delay and at any rate, within three months from the date of production of the certified copy

of this order.

It is pointed out by both sides that the trial is now stands posted on 04.06.2015. The Registry is directed to communicate a copy of this order to the learned Magistrate concerned forthwith.

The Crl.M.C. thus stands finally disposed.

sd/-
ALEXANDER THOMAS
JUDGE

AMV/03/06/