

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

Crl.MC.No. 3200 of 2015 ()

CRIME NO. 746/2015 OF HARIPPAD POLICE STATION, ALAPPUZHA

PETITIONER/ACCUSED NO.1 :

**ANEESH, AGED 29 YEARS,
S/O. ANANDAN, GIRIJA BHAVANAM, ANARY,
CHERUTHANA, HARIPAD, ALAPPUZHA**

BY ADV. SRI.M.REVIKRISHNAN

RESPONDENTS/INJURED AND STATE :

- 1. SUMEESH U., AGED 20 YEARS,
S/O. UTHAMAN, PULIMOOTIL THEKKATHIL,
THULAMPARAMBU NORTH, MANNARASALA P.O.,
HARIPAD, ALAPPUZHA - 690 514.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**
- 3. THE SUB INSPECTOR OF POLICE,
HARIPAD POLICE STATION -690 514.**
- 4. SANTHOSH KUMAR,
SENIOR CIVIL POLICE OFFICER, 4811
HARIPAD POLICE STATION.**

**R1 BY ADV. SRI.AJEESH K.SASI
R2 TO R4 BY PUBLIC PROSECUTOR SRI.S. HYMA**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 22-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER'S ANNEXURS :

ANNEXURE A: COPY OF TH FIR IN CRIME NO. 746/2015 OF HARIPAD POLICE STATION, ALAPPUZHA DISTRICT.

ANNEXURE B: COPY OF THE FIRST INFORMATION STATEMENT NOW BROUGHT ON RECORD BY PROSECUTION, ALLEGEDLY BEING GIVEN BY THE R1 HEREIN TO THE HARIPAD POLICE.

ANNEXURE C: COPY OF THE PETITION SUBMITTED BY THE WIFE OF THE PETITIONER TO THE DISTRICT POLICE CHIEF, ALAPPUZHA COMPLAINING HARASSMENT AT THE INSTANCE OF THE HARIPAD POLICE DT 27/1/2015.

ANNEXURE D: COPY OF THE RECEIPT ACKNOWLEDGING RECEIVAL OF ANNEXURE C FROM THE OFFICE OF THE DISTRICT POLICE CHIEF, ALAPPUZHA.

ANNEXURE E: COPY OF THE PETITION SUBMITTED BY THE WIFE OF THE PETITIONER TO THE STATE HUMAN RIGHTS COMMISSION DT 2/2/2015.

ANNEXURE F: COPY OF THE ACKNOWLEDGMENT CARD SHOWING RECEIVAL OF ANNEXURE E.

ANNEXURE G: AFFIDAVIT SWORN TO BY THE R1 SIGNIFYING THE FACT THAT HE HAS NO GRIEVANCE WHATSOEVER AGAINST THE PETITIONER IN THE CRIMINAL M.C. AND HAS NO OBJECTION IN THE PROCEEDINGS INITIATED AGAINST HIM IN THE CRIME BEING QUASHED, AMONG OTHER THINGS.

RESPONDENT'S ANNEXURES : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

ALEXANDER THOMAS, J.

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Crl.M.C No.3200 of 2015

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Dated this the 22nd day of June, 2015

O R D E R

The petitioner is the accused No.1 in the impugned Anx.A FIR in Crime No.746 of 2015 of Harippad Police Station, Alappuzha District for offences under Sections 143, 147, 148, 294(b), 341, 326 and 308 of IPC. The brief of the prosecution case is that on 14.5.2015, at about 8.15 PM, the accused allegedly due to previous animosity towards the first respondent had intercepted the bike in which he was traveling and he was assaulted by the accused resulting in injuries to him. As per the projected prosecution case, the crime was got registered on the basis of the statement of the first respondent herein/injured given to the police from the Government hospital, Harippad. According to the petitioner the first respondent has a definite case that no such statement as is seen now brought on record by the prosecution as the impugned first information statement to register the crime was in fact given by him to the police. The first respondent is definite in his version that the

FI statement as such is an act of concoction at the behest of the police and the signature sworn to be affixed in the FI statement as that of the first respondent was not put by him. It is the contention of the petitioner that as per the case projected by the prosecution the incident is said to have occurred on 14.5.2015 at about 8.15 PM. Around this time, the first respondent has actually suffered a fracture to his right hand and that it was impossible for him to put his signature on the first information statement said to have been registered on 14.5.2015 at 9.20 PM. That the first respondent has in fact not made any such allegation against the petitioner and that the police in the Station House Office, Harippad is on enimical terms with the petitioner and that they have falsely booked him in many cases and that their intention is to falsely implicate the petitioner in this crime involving offences like the one under Section 308 of the IPC so as to make it as a ground for moving the preventive detention authorities for unlawfully taking adverse action against the petitioner for his preventive detention. The petitioners wife has already made complaints against these actions at the instance of the Harippad Police before the District Police Chief Alappuzha and that she has also preferred a petition before the Kerala State Human

Rights Commission in the matter. Further that the first respondent (injured) has sworn to an affidavit which has been produced as Annexure G wherein it is stated about the aforementioned aspects and that Annexure B FI statement is an act of concoction by the respondent police and that the petitioner herein is not involved in the occurrence is resulted in injuries in the first respondent and that he had suffered a fracture of his right hand immediately after 8.15 pm on 14.5.2015 due to the above incident and that he was not in a position to even sign the First Information Statement which is seen to have been recorded at about 9.20 pm on that day. The first respondent has not affixed his signature on the Annexure G affidavit but has only affixed his thump impression therein and it is pointed out that this is due to his total inability to use his right hand fingers to even put signature on a paper and that this clearly shows that it was impossible for the first respondent to affix his signature in the impugned first information statement which is claimed by the police to have been signed by him on 14.5.15 at about 9.20 p.m one hour after the first respondent has suffered serious fracture on his right hand due to the above said injury. It is in the light of these aspects that the petitioner has filed the instant Crl.M.C with

prayer to quash the impugned criminal proceedings at Annexure A FIR and Annexure B First Information Statement in the impugned crime No.746 of 2015 of Harippad Police Station as against the petitioner / accused No.1 is concerned.

2. Heard Sri. M. Revikrishnan, learned counsel for the petitioner and the learned Public Prosecutor. This court will not be justified in entertaining this plea to interdict the impugned criminal proceedings in the light of the aforementioned factual aspects. This court in exercise of his powers under Section 482 Cr.P.C, is not equipped to adjudicate on such issues. More importantly and crucially, the matter is still at the stage of investigation in respect of the crime which is seen registered as recently as on 14.5.2015. These are matters which are eminently and primarily within the exclusive zone of the investigating Agency. However it is to be noted that the Investigating Agency is also under bound on duty to act fairly and efficiently so as to unravel the truth of the matter and so as to inspire confidence not only of the complainants and the accused but also of the community at large so that the police in exercise of its investigatory powers acts in a fair and even handed manner to all concerned. Since such a specific plea based on the

aforementioned aspects regarding the first information statement, has been pointedly raised in this case and that on the basis of Annexure G affidavit, it is the solemn duty of the investigating agency to come to the truth of the matter. It is the duty of the investigating agency to find out the truth or falsity of these aspects pointedly raised in this case. Accordingly, in the interest of justice and to protect the interest of both the prosecution and the accused, it is ordered that the fifth respondent Superintendent of Police, Alappuzha will immediately call for the entire CD file in Annexure A Crime No.746 of 2015 of Harippad Police Station, Alappuzha District and ensure that a Senior officer of the rank of a Deputy Superintendent of Police, will examine the CD files to ascertain whether investigation has been carried out fairly and on the right lines and also as to whether the investigation agency has been diligently carried out touching on all the aspects as the one as raised based on the version given in Anx.-G affidavit. On such review of the investigation, the 5th respondent Superintendent of Police will decide whether for more efficacious conduct of the further investigation, an officer senior in rank than the 3rd respondent Sub Inspector of Police preferably of the rank of Inspector of Police is to be entrusted with

the conduct of the further investigation or whether the investigation could continue under the 3rd respondent Sub Inspector of Police. However, at any rate, such further investigation shall be caused to be directly and closely monitored and supervised by a Senior officer of the rank of Deputy Superintendent of Police (Dy.S.P), until the conclusion of such investigation. Such further investigation, as aforestated, under the supervision of the Dy.S.P, shall ascertain as to the truth or otherwise of the aforestated aspects raised by the petitioner as based on Annexure G affidavit of the de facto complainant and also on all other aspects of the remaining part of the further investigation. The 5th respondent Superintendent of Police will also render an overall supervision of such further investigation until the submission of the final report.

3. The learned counsel for the petitioner submits that this Court may issue necessary directions either for the grant of bail to the petitioner or for necessary directions to ensure that the petitioner is not arrested by the police until atleast the conclusion of the limited aspect of the further investigation as ordered above on the present issue especially that based on Annexure –G etc. This Court is of the considered opinion that it may not be proper for this

Court to examine this plea for bail, as even according to the petitioner, the Investigating agency has not so far arrested him and as the petitioner has not moved for pre-arrest bail or has not chosen to appear before the jurisdictional Magistrate concerned seeking for bail. However, it will be suffice to say that it is for the Investigating Officer concerned who is entrusted with such further investigation, to act with fairness and wisdom and in the best interest of the conduct of the investigation.

With these observations and directions, this Crl.M.C stands finally disposed of.

sd/-

sab

ALEXANDER THOMAS, JUDGE