

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. 2083 of 2014

F.I.R. NO. 419/2000 OF ERNAKULAM NORTH POLICE STATION , ERNAKULAM

PETITIONER(S)/ACCUSED NO.9 IN THE CRIME :

**NASSER.C.H, AGED 54 YEARS,
S/O.C.P.HASSAINAR, CHERUVALLYKUDY HOUSE,
NETTOOR - 682 040, ERNAKULAM.**

**BY ADVS.SRI.T.K.RADHAKRISHNAN
SRI.T.B.GAFOOR
SMT.S.SREEDEVI(ALP)**

RESPONDENT(S)/COMPLAINANT :

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, COCHI- 31.**
- 2. ERNAKULAM TOWN NORTH POLICE STATION,
ERNAKULAM REPRESENTED BY PUBLIC PROSECUTOR,
COCHI- 31.**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 22-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

ANNEXURE-A1: THE COPY OF FIR NO.419/00 DATED 11.11.2000 OF ERNAKULAM TOWN NORTH POLICE STATION.

ANNEXURE-A2: THE COPY OF ORDER IN O.P NO.38728/2002.

ANNEXURE-A3: THE ORDER IN R.P NO.1/2003.

ANNEXURE-A4: THE COPY OF FINAL REPORT SUPPLIED BY THE 2ND RESPONDENT.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

Crl.M.C.No.2083 Of 2014

Dated this the 22nd day of June, 2015.

ORDER

The petitioner is the accused No.9 in the impugned Anx-A1 FIR in Crime No.419/2000 of Ernakulam Town North Police Station registered for offences under Secs.14(1)(a), 16 r/w Sec.24(1)(a) & 24(2) of the Atomic Energy Act, 1962. It is averred by the petitioner that he was engaged in the business of dealing with scrap articles and he was collecting scraps from persons and institutions, both private and Governmental. In November, 2000, the Health Department of the Government of Kerala had auctioned some old machineries. The petitioner along with some other scrap merchants purchased some scraps from the Government Hospital, Ernakulam and sold out to others and that it appears that on the basis of some secret information the police has taken custody of one scrap merchant and on questioning he admitted purchase and sale

Crl.M.C.No.2083 Of 2014

of Uranium. Accordingly, the police registered the impugned Anx-A1 Crime No.419/2000 of Ernakulam Town North Police Station for the offences under the above said provisions and the petitioner was arrayed as accused No.9 and there were altogether 9 accused including the petitioner.

2. Earlier, by Anx-A2 judgment dated 27.12.2002 in O.P.No.38728/2002 this Court directed the respondent-Regional Passport Officer to issue a passport to the petitioner for a limited period of 45 days on his executing a bond assuring his return. Later, by Anx-A3 order dated 7.1.2013 in R.P.No.1/2003 in O.P.No.38728/2002, this Court modified Anx-A2 judgment directing the Regional Passport Officer to issue passport to the petitioner to a limited period of six months instead of 45 days. It is mentioned in Anx-A3 judgment that the petitioner shall surrender his passport to the Regional Passport Officer on his return from pilgrimage etc.

3. The police after investigation submitted the impugned Final Report/Charge Sheet in the above said crime. The petitioner

Crl.M.C.No.2083 Of 2014

has contended that as the material object seized in this case is Uranium, which was purchased by him in a public auction from a Governmental institution, he cannot be mulcted with criminal culpability and that the impugned criminal proceedings to the extent it detrimentally affects the petitioner is liable to be quashed and terminated by this Court.

4. Heard Sri.T.K.Radhakrishnan, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondents.

5. This Court had earlier directed the Judicial First Class Magistrate Court-II, Ernakulam wherein the impugned Final Report/Charge Sheet is filed, to submit a report about this case. Accordingly, now the Judicial First Class Magistrate Court-II, Ernakulam, has furnished a report dated 5.9.2014, through the Registry for perusal of this Court which reads as follows:

"The final report in Crime No. 419/2000 was returned on 28.5.2002, with the endorsement "Necessary steps has not been taken till date forwarding MOs for examination. Hence the charge sheet returned". Thereafter, there was no response on the part of the investigating agency and on 25.8.14, the Sub Inspector of Police, Ernakulam Town North Police Station filed a report to the effect that

Crl.M.C.No.2083 Of 2014

material object has not been traced out and there is no chances for its tracing out also, as the then investigating officer Sri.B.Stephen is no more. There is a prayer incorporated in the said report to accept the final report as such.

3. The offence alleged against the accused is under Atomic (sic) Energy Act and the allegation is that they have dealt with uranium rods having radioactive energy, without any licence or authority and in violation of the said Act. The so called uranium rods are not chemically examined and without having the chemical analysis report, the trial against the accused would be an in vein exercise. The report of the Sub Inspector of Police, Ernakulam Town North Police Station dated 25.8.14 is therefore kept under consideration. This report is submitted for favour of necessary action.'

Later this Court had passed order dated 13.2.2015 which reads as follows:

"Report from the learned Judicial 1st Class Magistrate II, Ernakulam perused. It appears that the Station House Officer has not resubmitted the final report returned from the court for proper legal steps. The SHO has only submitted a report stating the inability on 25.8.2014 and it is under consideration by the learned Magistrate. If scientific examination of the material objects is not possible, now the SHO will report it to the learned Magistrate and resubmit the final report. The SHO will act accordingly and submit report before the court.

Post after three weeks."

Still later this Court passed order dated 26.5.2015, which reads as follows:

"This Court on 13.2.2015 passed an order which reads as follows:

Crl.M.C.No.2083 Of 2014

“Report from the learned Judicial 1st Class Magistrate-II, Ernakulam perused. It appears that the Station House Officer has not resubmitted the final report returned from the court for proper legal steps. The SHO has only submitted a report stating the inability on 25.8.2014 and it is under consideration by the learned Magistrate. If scientific examination of the material objects is not possible now, the SHO will report it to the learned Magistrate and resubmit the final report. The SHO will act accordingly and submit report before the court.

Post after three weeks.”

2. Today also the learned Public Prosecutor was unable to furnish instructions from the Investigating Officer to clarify on the points dealt with in the order dated 13.2.2015 and the learned Public Prosecutor is having only the written instruction furnished before this Court on 28.5.2014. The investigating officer in Crime No.419/2000 of Ernakulam Town North Police Station, shall immediately file his statement/report through the Public Prosecutor within two days.

List on 29.5.2015.”

Still later, this Court passed order dated 5.6.2015 in this case which reads as follows:

'As earlier directed by this Court, the Judicial First Class Magistrate's Court-II, Ernakulam, had furnished report dated 5.9.2014, stating as follows:

“2. The final report in Crime No. 419/2000 was returned on 28.5.2002, with the endorsement “Necessary steps has not been taken till date forwarding MOs for examination. Hence the charge sheet returned”. Thereafter, there was no response on the part of the investigating agency and on 25.8.14, the Sub Inspector of Police, Ernakulam Town North Police Station filed a report to the effect that material object has not been traced out and there is no chances for its tracing out also, as the then investigating officer Sri.B.Stephen is no more. There is a prayer incorporated in the said report to accept the

Crl.M.C.No.2083 Of 2014

final report as such.

3. The offence alleged against the accused is under Atomic (sic) Energy Act and the allegation is that they have dealt with uranium rods having radioactive energy, without any licence or authority and in violation of the said Act. The so called uranium rods are not chemically examined and without having the chemical analysis report, the trial against the accused would be an in vein exercise. The report of the Sub Inspector of Police, Ernakulam Town North Police Station dated 25.8.14 is therefore kept under consideration. This report is submitted for favour of necessary action.”

2. Later this Court had passed an order dated 13.2.2015 in this case, which reads as follows:

“Report from the learned Judicial 1st Class Magistrate-II, Ernakulam perused. It appears that the Station House Officer has not re-submitted the final report returned from the court for proper legal steps. The SHO has only submitted a report stating the inability on 25.8.2014 and it is under consideration by the learned Magistrate. If scientific examination of the material objects is not possible now the SHO will report it to the learned Magistrate and resubmit the final report. The SHO will act accordingly and submit report before the court.

Post after three weeks.”

3. Still further this Court had passed order dated 26.5.2015 requesting the Prosecutor to get clarification from the investigating officer on the points dealt with in the order dated 13.2.2015.

4. Now the Prosecutor has submitted a memo producing a copy of the final report filed by the investigating officer in this crime before the court below.

5. The Registry to get a further report from the Judicial First Class Magistrate's Court-II, Ernakulam, as to whether the final report is the one said to have been filed on 25.8.2014 as reported in the learned Magistrate's report dated 5.9.2014 or whether the said final report was returned back to the investigating officer for re-presentation after curing the defects. The learned Magistrate will also clarify as to

Crl.M.C.No.2083 Of 2014

whether the uranium rods are chemically examined and the chemical analysis report has been furnished and if not, the learned Magistrate may report as to whether, in the absence of the production of the said material objects and without their chemical analysis examination report, the trial in this case would be in vein exercise as already reported by him on 5.9.2014 etc, This report may be furnished within ten days.

Post on 22.6.2015.'

The Judicial First Class Magistrate Court-II, Ernakulam has again submitted a further report dated 15.6.2015 which reads as follows:

"The final report filed on 25.8.2015 (sic) was returned on the same day for want of taking necessary steps to forward the material objects for chemical examination. However, the returned final report was not taken back by the investigating officer and on 25.8.2015 (sic), the Sub Inspector of Police, Ernakulam Town North Police Station filed a memo, to accept the final report filed on 28.5.2002 as such. It is mentioned that the material objects has not been traced out. The investigating officer Sri.B.Stephen is no more and hence, there is no chance for its being traced out. As the matter is pending before the Hon'ble High Court of Kerala, the said memo has been kept in abeyance for consideration. No other report has been filed by the investigating agency so far. For a successful prosecution against the accused, he proof regarding the characteristics of the material objects is highly necessary and without the same, the trial would be a futile exercise. This report is filed for favour of kind consideration." (Emphasis supplied)

Thus, it can be seen that the investigation has not proceeded fruitfully any further except that the Investigating Officer is insisting to place the very same defective Final Report/Charge Sheet

Crl.M.C.No.2083 Of 2014

in spite of repeated directions of the learned Magistrate to return it back and complete all the necessary formalities as otherwise the entire prosecution would amount to total futile exercise. The learned Magistrate in the report dated 5.9.2014 as well as in the further report dated 15.6.2015 has reported that the Material Objects has not been traced out and the Investigating Officer has stated that there is no chance for its being traced out on specific information conveyed by the Investigating Officer. Moreover, it is reported by the learned Magistrate that no other report has been submitted by the investigating agency so far. The investigating agency is still sticking on the initial Final Report/Charge Sheet which was placed before the learned Magistrate as such and they have placed such Final Report/Charge Sheet again before the learned Magistrate. The learned Magistrate has reported in both reports that for a successful prosecution against the accused, the proof regarding the characteristics of Material Objects is highly necessary and without the same the trial will be a futile and vane exercise. In the light of this specific aspect, it is ordered in the

Crl.M.C.No.2083 Of 2014

interest of justice that Judicial First Class Magistrate Court-II, Ernakulam, shall immediately take up for consideration the impugned Final Report/Charge Sheet filed by the Investigating Officer as referred to the aforementioned reports dated 5.9.2014, 15.6.2015 and pass orders thereon, in the light of the specific opinion tendered by the learned Magistrate in the aforementioned reports furnished before this Court. Orders in this regard shall be passed by the learned Magistrate within a period of two weeks from the date of receipt of a certified copy of this order. The petitioner and the 2nd respondent-SHO, Ernakulam Town North Police Station shall immediately forward certified copies of this order to the Judicial First Class Magistrate Court-II, Ernakulam for further appropriate action.

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

ALEXANDER THOMAS,
Judge.

bkn/-