

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

Crl.MC.No. 4122 of 2015

**CMP.4141/2010 IN CC 1036/2008 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - I,
HOSDURG
CRIME NO. 25/2008 OF HOSDURG POLICE STATION, KASARGOD**
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PETITIONER(S)/COMPLAINANT:

**M.P.MOHAMMED,
AGED 63 YEARS, S/O.ABDULLA MUSALIYAR, P.O.MANIKOTH,
AJANUR VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT,
PIN- 671 316.**

**BY ADVS.SRI.T.K.VIPINDAS
SMT.PREM BINDU T.K.
SRI.K.V.SREE VINAYAKAN
SRI.K.M.MUHAMMED HUSSAIN**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, REPRESENTING S.H.O. HOSDURG.**
- 2. SUB INSPECTOR OF POLICE,
HOSDURG POLICE STATION, P.O.KANHANGAD, PIN-671 314.**

BY PUBLIC PROSECUTOR SRI.R.GITHESH

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
23-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

ANNX.A1 - THE TRUE COPY OF THE FIR IN CRIME NO.25/2008 OF HOSDURG POLICE STATION.

ANNX.A2 - THE TRUE COPY OF THE JUDGMENT IN WPC.6374/2010 DATED 4.6.2010.

ANNX.A3 - THE TRUE COPY OF THE CMP 4141/2010 BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, HOSDURG UNDER SECTION 173(8) OF CODE OF CRIMINAL PROCEDURE.

ANNX.A4 - THE TRUE COPY OF THE ORDER IN CMP.4141/2010 IN CC.1036/2008 BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, HOSDURG.

ANNX.A5 - THE TRUE COPY OF THE FURTHER INVESTIGATION REPORT DATED NIL SUBMITTED BY THE SUB INSPECTOR OF POLICE, HOSDURG.

ANNX.A6 - TRUE COPY OF THE FURTHER INVESTIGATION REPORT IN CC.1419/2008 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, HOSDURG.

ANNX.A7 - TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 20.9.2014 IN CRL.M.C.1663/2014

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

ALEXANDER THOMAS, J.

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Crl.M.C.No.4122 of 2015

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Dated this the 23rd day of July, 2015

O R D E R

The petitioner is the de facto complainant in C.C.No. 1036/2008 on the file of the Judicial First Class Magistrate Court-I, Hosdurg. Alleging that the investigation was not properly and fairly conducted, the petitioner has submitted an application for conduct of further investigation before the court below, pursuant to orders of this court in Annexure-A2 judgment. Thereupon further investigation was allowed by the learned Magistrate as per Annexure-A4 order. It is pointed out that further investigation was conducted by the Station House Officer concerned in a callous and careless manner and that when he received a show cause notice on account of delay in completing further investigation he had allegedly filed Annexure -A5 report on the outcome of such further investigation. It is this order at Annexure-A5 that is challenged in this Crl.M.C. It is pointed out by the petitioner that Annexure A6 is another report submitted by the same Investigating Officer pertaining to further investigation of another crime in which

petitioner was the de facto complainant, which was quashed by this Court as per Annexure-A7 judgment. It is pointed out that pursuant to impugned Annexure -A5 report as well as Annexure -A6 report which was impugned before this Court in Annexue-A7 Crl.M.C., suffers from the same legal infirmities. Therefore it is submitted that Annexure A5 report is also to be set aside in the light of Annexure-A7 judgment of this Court and the Investigating Officer is to be directed to submit a further report after conduct of proper and fair investigation as part of the further investigation.

2. Heard Sri.T.K.Vipindas learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

3. After going to the materials on record, it is clear that the matter in issue is covered by the Order of this Court in Annexure-A7 rendered on 20/09/2014 in Crl.M.C.No.1663/2014, which reads as follows:

"The petitioner herein is the defacto complainant in C.C. No. 1419/2008 before the Judicial First Class Magistrate Corut-I, Hosdurg. Further investigation under Section 173(8) Cr.P.C. was ordered by the trial court on an application filed by the defacto complainant. After making further investigation as directed by the court, the Sub Inspector of Police, Hosdurg submitted Annexure-5 report before the court, that he could not find anything contrary to the earlier findings and that investigation was properly conducted. The said Annexure-A5 report is sought to be quashed in this

proceeding, and the complainant seeks a direction to the police for proper investigation.

2. On a perusal of the Annexure-A5 report, I find that this cannot have be accepted as a report of further investigation made under Section 173(8) Cr.P.C. What is expected is a supplemental final report under Section 173(8) Cr.P.C., and if anything new or additional could be collected during such investigation, the said final report must contain the details. If at all nothing could be collected further the report must contain, on what all points investigation was made, and what is the result of such investigation. In short, what is expected is a supplemental final report of investigation under Section 173(8) Cr.P.C.

In the result, this petition is allowed. Annexure-A5 report submitted by the Sub Inspector of Police is set aside, and the Sub Inspector is hereby directed to make a proper further investigation and submit supplemental report of further investigation under Section 173(8) Cr.P.C., in the court below."

4. Following the course of action taken by this Court in Annexure-A7 order it is ordered in the interest of justice that the impugned Annexure-A5 report will stand quashed and the 2nd respondent Sub Inspector of Police, Hosdurg Police Station, Kanchangad of Kasaragod District is directed to make a proper further investigation and submit a supplemental report of further investigation under Section 173(8) of the Cr.P.C., in the manner pointed out in Annexure-A7 judgment. In this regard it is to be noted by the Investigating Officer that the impugned Annexure-A5 report cannot be accepted in law as a report of further investigation made in proper compliance of the mandate of Section 173(8) of the Cr.P.C. and what is to be lawfully done is to conduct a fair and

proper further investigation and submit a supplemental final report under Section 173(8) of the Cr.P.C. and if anything new or additional material is collected during the course of such further investigation, the said report, pursuant to finalisation of such further investigation, must contain precisely those details and the report should contain the matters which were investigated in the further investigation and its specific outcome on said points and if nothing new could be collected further, such report must contain, as to on whatever points the investigation was made and what is the result of such investigation on those specific points and thus submit a supplemental final report of further investigation as envisaged under Section 173(8) of the Cr.P.C. The Investigating Officer should ensure that there is strict compliance of the mandate of law as pointed out in Annexure-A7 judgment. For this purpose the District Police Chief, Kasaragod will ensure that further investigation to be so done by the 2nd respondent shall be supervised by a Superior Officer not below the rank of Deputy Superintendent of Police who will give necessary supervisory directions and guidance to the 2nd respondent in the conduct of further investigation and before finalisation of such further investigation, the Supervising Officer,

viz, Deputy Superintendent of Police concerned will ensure that the further investigation is strictly in compliance with the parameters as indicated above. It should also be ensure that before submission of such supplemental final report, the entire investigation process as directed above should be reviewed by the District Police Chief, Kasaragod so that he is convinced that there is proper compliance with legal requirements for conduct of further investigation. If any deficiencies are noted either by the Supervisory Officer or the District Police Chief, then they will issue necessary directions to the 2nd respondent Investigating Officer, who shall fine tune such aspects of further investigation based on such supervisory directions of the aforestated Superior Police Officers concerned. All efforts should be made to complete the further investigation as directed above within a reasonable time and this Court is not imposing any time limit in that regard and it shall be ensured by the District Police Chief, Kasaragod will fix a time line in that regard.

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

Sd/- ALEXANDER THOMAS, JUDGE