

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

**WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937**

**CrI.MC.No. 3317 of 2014 ()**  
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**CC .NO. 853/2008 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,  
CHAVAKKAD (\*CORRECTED)**

**\*THE CC NO. 853/2008 OF JFCM COURT, CHAVAKKAD OCCURRING IN THE CAUSE  
TITLE OF CRL.M.C. NO. 3317/2014 IS CORRECTED AND SUBSTITUTED AS  
SC NO. 793/2010 ON THE FILES OF FIRST ADDITIONAL ASSISTANT  
SESSIONS COURT, THRISSUR AS PER ORDER DATED 4/7/14 IN  
CRL.M.A. NO. 6219/14 IN CRL.M.C. NO.3317/14.**  
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**PETITIONER/6TH ACCUSED :**  
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**NADIRSHA  
AGED 28 YEARS, S/O. MOHAMMEDALI,  
PANDIKASALAPARAMBIL HOUSE  
CHAITHANYA NAGAR, THIRUVATHRA (P.O),  
CHAVAKKAD, THRISSUR.**

**BY ADV. SRI.L.RAJESH NARAYAN**

**RESPONDENTS/COMPLAINANT :**  
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**STATE OF KRALA  
REPRESENTED BY CIRCLE INSPECTOR OF POLICE  
CHAVAKKAD POLICE STATION  
THROUGH PUBLIC PROSECUTOR  
HIGH COURT OF KERALA,  
ERNAKULAM.**

**\*ADDL. R2 IMPLEADED**  
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**\*ADDL.R2. SUPERINTENDENT OF POLICE  
THRISSUR (RURAL).**

**\*ADDL. R2 IS IMPLEADED AS PER ORDER IN CRL.M.A. NO. 5759/2015  
DATED 17/06/2015**

**R1 & R2 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 17-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**Mn**

**...2/-**

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**APPENDIX**

**PETITIONERS' ANNEXURES :**  
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|                   |                                                                                                            |
|-------------------|------------------------------------------------------------------------------------------------------------|
| <b>ANNEXURE A</b> | <b>TRUE COPY OF THE FIRST INFORMATION REPORT AND FIRST INFORMATION STATEMENT IN CRIME NO. 231 OF 2006.</b> |
| <b>ANNEXURE B</b> | <b>TRUE COPY OF THE FINAL REPORT IN CIRME NO 231 OF 2006 OF CHAVAKKAD POLICE STATION.</b>                  |
| <b>ANNEXURE C</b> | <b>TRUE COPY OF THE RELEVANT PAGES OF THE PASSPORT.</b>                                                    |
| <b>ANNEXURE D</b> | <b>TRUE COPY OF THE AFFIDAVIT DATED 07-08-2012.</b>                                                        |

**RESPONDENT(S)' EXHIBITS :      NIL**  
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**//TRUE COPY//**

**P.S. TO JUDGE**

**Mn**

ALEXANDER THOMAS, J.

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Dated this the 17<sup>th</sup> day of June, 2015.

O R D E R

The petitioner herein is the accused No.6 in S.C.No.793/2010 on the file of the 1<sup>st</sup> Additional Assistant Sessions Court, Thrissur, which arose out of impugned Anx-A FIR in Crime No.231/2006 of Chavakkad Police Station registered on 18.4.2006 on the complaint of complainant/informant, Sri.Siddique, registered for offences under Secs.143, 147, 148, 452, 427, 436, 395 r/w 149 IPC. The impugned Anx-A Crime No.231/2006 of Chavakkad Police Station was registered against "Unknown CPM workers" and later police after investigation submitted the impugned Anx-B Final Report /Charge Sheet wherein the petitioner was arrayed as accused No.6. It is the specific and precise case of the petitioner that during the commission of alleged offence on 18.4.2006, the petitioner herein was working at United Arab Emirates (UAE) and he was in Dubai for the consecutive period from 10.4.2005 to 8.5.2007 and that he was not even remotely present or available in India as on the date of commission of alleged offence on 18.4.2006 and that the petitioner came to know about the details of the case when he

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came on leave during August, 2012, then only he came to know about the case registered against him. Anx-C is the true copy of the relevant pages of passport by which the petitioner projects a case that he was in Dubai for the entire consecutive period from 10.4.2005 to 8.5.2007. Anx-D is the affidavit sworn to by the petitioner on 7.8.2012 before the Consulate General of India, Dubai, UAE wherein he has sworn that he was arrived in UAE on 10.4.2005 and returned back only on 8.5.2007 and throughout the year 2006 he had been in UAE and not in India and this affidavit has been sworn to by him to inform the authorities concerned regarding the case registered against him in India in the year 2006. He thus sworn to in the said affidavit before the Vice Consulate General of India stating that he filed the said affidavit to prove his absence regarding a case filed against him in India in 2006 and he is liable to be prosecuted, if Anx-D affidavit or any part therein is in any way found to be incorrect or false and this affidavit is true and that conceals nothing and no part of it is false etc. That unfortunately without taking into account the basic crucial and vital aspects in the matter the respondent-Investigating Officer has chosen to file the impugned Anx-B Final Report/Charge Sheet in the impugned Crime No.231/2006 of Chavakkad Police Station. The petitioner contends that

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had there been a proper and precise information to unravel the truth then it would have been clearly revealed that the petitioner was never available anywhere in India and that for the period from 10.4.2005 to 8.5.2007 he was throughout in Dubai during that period and that he was in fact not even available anywhere near the scene of occurrence alleged to have occurred on 18.4.2006. Accordingly, it is contended that the initiation and continuation of the impugned criminal proceedings is nothing but a grave abuse of the process of the court and it amounts to serious miscarriage of justice as the petitioner has been made to face ordeal of the impugned criminal proceedings for no valid reasons whatsoever. It is in the light of these aspects the petitioner has filed the instant Crl.M.C with the prayer for quashment of the impugned criminal proceedings to the extent it affects the petitioner.

2. Heard Sri.L.Rajesh Narayan Iyer, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondents 1 & 2.

3. As directed by this Court, the SHO, Chavakkad Police Station had initially filed a statement dated 23.3.2015 before this Court in this case. It is stated in paragraph 3 of the statement that a deep investigation was conducted in the role of the petitioner, who is the

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accused and it is learnt that from his Passport bearing No.E5022719 he was at abroad from 2005 to 2007 and that another passport was not issued to the petitioner for the above said period, but that from the materials on record and the information conveyed from the Regional Passport Officer, Cochin, it is unable to say that the petitioner, who is A6, was present at the time and place of occurrence on 18.4.2006. Further it is stated that it is learned that incidents which led to the crime in retaliation of murder of CPM party leader and former Chairman of Chavakkad Municipality and about 69 cases were registered at Chavakkad. That as per the CD file it is seen that PW2, Rasheed, Aged, 26 as on 2006, S/o.Hameed, Methy Veedu, Thiruvathra, and PW3, Ashref, aged 26 as on 2006, S/o.Badhu, Puthen Purackal House, Thiruvathra are eye witnesses in the case and they were directed to appear before the investigating officer but they refused to do so and hence the said police officer was unable to question the above witnesses. However it is stated that it is learnt that there is no enmity or conspiracy is happened towards the accused including accused A6 from the part of the investigating officer.

4. The above said statement dated 23.3.2015 was filed by the SHO in obedience to the direction issued by this Court as per order

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dated 5.3.2015 which reads as follows:

“The SHO will verify the materials and submit report regarding the claim made by the petitioner that he was in fact abroad on the date of the alleged incident. The police will also report whether there is a charge for criminal conspiracy u/s.120(b) IPC against the accused.”

As the above statement dated 23.3.2015 filed in this case does not fully meet the requirements needed as per this Court’s order dated 5.3.2015, this Court was constrained to pass order dated 1.6.2015 which reads as follows:

“The statement filed by the Sub Inspector of Police, Chavakkad Police Station in compliance with the order dated 5.3.2015 does not disclose all the details that are required to be clarified as per that order. Investigating Officer in the impugned Crime No.231/2006 of Chavakkad Police Station which led to the impugned Annexure-A final report/charge sheet, will file statement after ascertaining from the Case Diary file as to the precise materials and incriminating facts and circumstances, which led him to conclude that the present petitioner, who is accused No.6 in that crime, is connected with the criminal charges raised against him, when his specific plea is that the was outside India on the day of alleged occurrence of the crime (viz., 18/04/2006) as he was in Dubai during the period from 10/04/2005 to 08/05/2007 and that during the said period he was never in India etc.”

5. In pursuance of the said direction issued on 1.6.2015, the Inspector of Police, Chavakkad, has filed a further statement dated 8.6.2015 before this Court in this case. It is stated therein that subsequently the Investigating Officer had recorded the further

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statement of the complainant Sri.Siddique. That on the basis of the statement of the complainant and eye witness, the Investigating Officer included the petitioner as an accused in this case and thus the case was charge sheeted and case is under trial before the 1<sup>st</sup> Additional Assistant Sessions Court, Thrissur. That the case was occurred in connection with political retaliation in connection with the political murder of Municipal Chairman of the Chavakkad Municipality and that about 69 cases were reported in Chavakkad Municipality in connection with the said political murder that the Final Report/Charge Sheet has been filed as per the evidence. It is further stated in paragraph 4 of the statement that the Inspector of Police has verified copy of the Passport No.E5022719 issued from the Regional Passport Office, Cochin to the petitioner and from the passport it is seen that the departure seal is dated 10.4.2005 and arrived seal dated 09.05.2007 from Cochin Air Port. That the genuineness of the passport is not verified from the passport authority due to scarcity of time. This crucial averment in paragraph 4 of the statement dated 8.6.2015 filed by the Inspector of Police is seen made without adverting to some crucial factual statement earlier made by the SHO, Chavakkad Police Station in paragraph 3 of the first statement dated 23.3.2015 wherein it is clearly stated that it is

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learnt from his passport that the petitioner was abroad during the period 2005-2007 and that the alleged offences are occurred on 18.4.2006 and on verification from the Regional Passport Officer, Cochin, it is informed that another passport was not issued to the above said accused and it is on this information collected from the Regional Passport Officer, Cochin it is unable to say that the petitioner, who is A6, was present at the time at the place of occurrence on 18.4.2006. So the crucial aspect in paragraph 3 of statement dated 23.3.2015 filed by the SHO, Chavakkad about the verification of these material aspects from the Regional Passport Officer, Cochin that another passport was not issued to the petitioner is not clearly seen adverted to or appreciated by the later statement filed by the Inspector of Police. May be this has happened due to oversight or by inadvertence. Though it is clearly stated in paragraph 4 of the statement dated 8.6.2015 of the Inspector of Police that the genuineness of the passport could not be verified from the Regional Passport Officer due to scarcity of time, it points that Inspector of Police might have filed the statement dated 8.6.2015 in compliance with this Court's order dated 1.6.2015 without cross checking the facts, due to scarcity of time in filing that later statement. Be that as it may, the plea raised by the petitioner that too after the

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submission of the Final Report/Charge sheet cannot and could not be ordinarily be adjudicated by this Court sitting in the extra ordinary jurisdiction conferred on this Court as per Sec.482 of the Cr.P.C. which invest the inherent powers of the court. It is the bounden duty of the Investigating Agency to unravel the truth and nothing but the unvarnished truth of the matter so that no innocent man is arrayed as accused and no guilty man is also left off the hook. These different statements filed by these police officers show merely further precise and meticulous investigation is required to unravel the truth of the matter. If the plea made by the petitioner is indeed factually true, then it is the legal and bounden duty of the investigating agency to bring out the truth. If on the other hand, this factual plea is not tenable, certainly such person is liable to be arrayed as an accused and is bound to face the trial however ordeal it may be. The petitioner wanted this Court to issue notice to the complainant/informant, Sri.Siddique, and had wanted this Court to direct him to file an affidavit before this Court as to whether he has made any allegations regarding the involvement of the petitioner in this crime on the day of occurrence on 18.4.2006. However, this Court has refused the said plea of the petitioner as those matters are within the domain and province of the investigating agency.

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Accordingly, in the interest of justice, it is ordered that the 2<sup>nd</sup> respondent Superintendent of Police, Thrissur shall immediately call for the entire CD files in relation to the impugned Anx-A Crime No.231/2006 of Chavakkad Police Station and ensure that appropriate orders are passed to entrust further investigation in this matter on the limited aspect regarding the veracity or otherwise of the plea raised by the petitioner and such further investigation should be entrusted to an officer who is superior in rank of the officer, who has presently conducted the investigation.

6. If the investigation so far has been conducted by an officer of the rank of Inspector of Police, then further investigation should be ordered to be entrusted to an officer not below the rank of Deputy Superintendent of Police, Thrissur and such further investigation would be for the above said limited purpose and will be closely monitored and supervised by the 2<sup>nd</sup> respondent-Superintendent of Police, Thrissur. If on the other hand the investigation so far has been conducted by an officer of the rank of Sub Inspector of Police, then the 2<sup>nd</sup> respondent is at liberty to entrust further investigation of the case to an officer of the rank of Inspector of Police, which shall be closely monitored and supervised by an officer in the rank of Deputy Superintendent of Police.

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In any case, the 2<sup>nd</sup> respondent-Superintendent of Police should have overall supervision and superintendence over the further investigation to be conducted by the new officer as directed above. The further investigation as directed above may be endeavoured to be completed with all expedition and all reasonable efforts should be made to ensure that investigation as directed above may be concluded within a period of at least two months from the date of receipt of a certified copy of this order. The Investigating Officer will intimate the court below concerned, about this order.

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

ALEXANDER THOMAS,  
Judge.

bkn/-