

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

CrI.MC.No. 5020 of 2015 ()

**MP.NO. 2033/2012 OF CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM
CRIME NO. 932/2012 OF KADAVANTHARA POLICE STATION , ERNAKULAM DISTRICT**

PETITIONER/DEFACTO COMPLAINANT:

**M/S.GLOBELINE SHIPPING SERVICES PVT. LTD.,
FORMERLY SAROSH SHIPPING INDIA PVT. LTD-INDIA, G-2,
PRIYA APARTMENTS, SOMAJIGUDA, HYDERABAD-500 082,
HAVING ITS LOCAL OFFICE AT 7B, JERUSALEM APARTMENTS,
KADAVANTHARA, ERNAKULAM,
REPRESENTED BY ITS CHAIRMAN AND AUTHORISED SIGNATORY
P.VISHNUKANTH, AGED 39 YEARS, S/O.P.RAMAKANTH.**

**BY ADVS.SRI.K.C.ELDHO
SRI.JIJO THOMAS
SRI.M.REVIKRISHNAN**

RESPONDENT/STATE:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.GITHESH.R

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 07-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX-A1:** TRUE COPY OF M.P.NO.2033 OF 2012 ON THE FILE OF THE CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM.
- ANNEX-A2:** TRUE COPY OF THE FRESH CERTIFICATE OF INCORPORATION CONSEQUENT UPON NAME CHANGE ISSUED BY THE MINISTRY OF CORPORATE AFFAIRS, GOVERNMENT OF INDIA.
- ANNEX-A3:** TRUE COPY OF THE FIR IN CRIME NO.932 OF 2012 OF KADAVANTHARA POLICE STATION.
- ANNEX-A4:** TRUE COPY OF THE REFER NOTICE RECEIVED BY THE PETITIONER FROM THE CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM.
- ANNEX-A5:** TRUE COPY OF THE REFER REPORT SUBMITTED BY THE INVESTIGATING OFFICER IN CRIME NO.932 OF 2012 OF KADAVANTHARA POLICE STATION.
- ANNEX-A6:** CERTIFIED COPY OF THE PROCEEDINGS DATED 19.08.2014 OF THE CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM IN CRIME NO.932 OF 2012 OF KADAVANTHARA POLICE STATION IN MP NO.2033 OF 2012.

RESPONDENT(S)' ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C No.5020 of 2015

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Dated this the 7th day of August, 2015

ORDER

The order under challenge is at Anx.A6 proceedings dated 19.8.2014 of the Chief Judicial Magistrate Court, Ernakulam, whereby the refer charge report in crime No.932/12 of Kadavanthara Police Station has been accepted. It is urged by the learned counsel for the petitioner that the impugned proceedings at Anx.A6 is against the constitutional law laid down by this Court in the case Parameswaran Nair v. Surendran reported in 2009 (1) KLT 794.

2. Heard Sri. K.C.Eldho, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

3. On a perusal of the impugned order, it appears that the impugned refer charge report has been accepted on the ground that the de facto complainant had not till then filed the protest complaint. On a consideration of the matter this Court is of the

considered opinion that the impugned order is not in consonance with the legal position settled by this Court in Parameswaran Nair v. Surendran reported in 2009 (1) KLT 794. It is now very well established that the final report is filed after investigation, the jurisdictional Magistrate is legally bound to look into the contents in the final report and to consider whether the said report is to be accepted or whether further investigation is to be ordered or cognizance is to be taken, etc. Since no such endeavour is seen under taken in the impugned order. The said order is set aside and the matter is remitted to the court below for fresh consideration. The court below, after granting an opportunity to the complainant will take a decision without much delay on the issue in the light of the well established principles laid down in Parameswaran Nair's case and such other rulings brought to the notice of the learned Magistrate by the complainant. The learned counsel for the petitioner submits that liberty may be reserved for the petitioner to institute appropriate protest complaint in the matter. It is made clear that if such protest complaint is instituted by the petitioner, the same shall be considered in accordance with law. The complainant may enter appearance before the court below on

7.9.2015 at 11 a.m and produce a certified copy of this judgment to enable the learned Magistrate to take further steps in the matter.

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

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ALEXANDER THOMAS, JUDGE