

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

Cr1.MC.No. 5288 of 2015

AGAINST THE ORDER IN C.M.P NO.8379/2014 BEFORE THE JUDICIAL
MAGISTRATE OF THE FIRST CLASS, KARUNAAGAPALLY

CRIME NO. 949/2007 OF KARUNAAGAPALLY POLICE STATION , KOLLAM

PETITIONER/DEFACTO COMPLAINANT:

BUSHRA,
D/O.SOUDABEEVI, THOPPIL VADAKKATHIL,
SOUTH EAST MURI,
THAZHAVA VILLAGE, KARUNAGAPPALLY.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

RESPONDENTS/STATE:

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

* Addl.2. NAZAR, AGED 60 YEARS,
S/O.ALIKUNJU, SCHOOL MANAGER
AL-SAYED SCHOOL /ALSAYED VEEDU, WEST OF BLOCK OFFICE,
SOUTH OF PULIYOOR VANCHI, THODIYOOR VILLAGE,
KARUNAGAPPALLY, KOLLAM.

*ADDL.R2 IS IMPEADED AS PER ORDER DATED 06.08.2015 IN
CR.MA.7332/15.

ADDL.2 BY ADV. SRI.KURIAN GEORGE KANNANTHANAM (SR.)
ADDL.2 BY ADV. SRI.THOMAS GEORGE
R1 BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 26-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE I : COPY OF THE COMPLAINT SUBMITTED BEFORE THE STATE WOMEN'S COMMISSION DT 3-8-2007.

ANNEXURE II : COPY OF THE FIR DT 25-10-2007.

ANNEXURE III : COPY OF THE ORDER OF SUSPENSION ISSUED BY THE MANAGER OF PUTHENTHERUVU AL-SYED L.P.SCHOOL, DT 24-9-2007.

ANNEXURE IV : COPY OF THE FINAL REPORT FILED IN CC NO.1136 OF 2007 DT 10-11-2007.

ANNEXURE V : COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC. 2933 OF 2008 DT 26-3-2008

ANNEXURE VI : COPY OF THE ORDER SUSPENDING THE PETITIONER FROM SERVICE BY INVOKING RULE 57(1)(B) OF CHAPTER XIV A OF KER. A TRUE COPY OF THE SUSPENSION ORDER DT 30-4-2008.

ANNEXURE VII : COPY OF THE ORDER DT 16-10-2008

ANNEXURE VIII : COPY OF THE ORDER DT 25-10-2008 OF THE SCHOOL MANAGER.

ANNEXURE IX : COPY OF THE JUDGMENT IN WPC.NO.36879 OF 2008

ANNEXURE X : COPY OF THE JUDGMENT IN WPC.NO.6312 OF 2009 DT 14-3-2009

ANNEXURE XI : COPY OF THE ORDER DT 13-5-2009 OF THE DEPUTY COMMISSION OF EDUCATION.

ANNEXURE XII : COPY OF THE NOTICE DT 22-11-2010

ANNEXURE XIII : COPY OF THE BACKWARD COMMUNITY WELFARE SAMITHI OF THE KERALA LEGISLATIVE ASSEMBLY OBTAINED UNDER THE RIGHT TO INFORMATION ACT.

ANNEXURE XIV : COPY OF THE JUDGMENT IN CRL.M.C.NO.2093 OF 2012 DT 11-2-2014 BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM.

ANNEXURE XV : COPY OF THE JUDGMENT IN CRIMINAL MC.NO.2095 OF 2012 DT 11-2-2014 BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM.

ANNEXURE XVI : TRUE COPY OF THE PETITION SEEKING REINVESTIGATION FOR ADDITIONAL INVESTIGATION FILED BY THE PETITIONER IN CMP NO.8379 OF 2014 IN CC NO.1136 OF 2007

ANNEXURE XVII : TRUE COPY OF THE ORDER IN CMP NO.8379 OF 2014 IN CC NO.1136 OF 2007 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KARUNAGAPPALLY.

RESPONDENTS' ANNEXURES: NIL

//TRUE COPY//

P.UBAID, J.

Crl.M.C No.5288 of 2015

Dated this the 26th day of November, 2015

O R D E R

The petitioner herein is the defacto complainant in C.C No.1136/2007 of the Judicial First Class Magistrate Court, Karunagappally. The accused therein has been facing prosecution under Sections 353, 354 and 509 of the Indian Penal Code. He is none other than the Manager of the School of which the defacto complainant is the Headmistress. Pending the proceeding, the defacto complainant made an application before the learned Magistrate as C.M.P No.8379/2014 seeking further investigation on certain definite grounds. Her grievance is that the police has not questioned the very material witnesses including her brother, who took her to the hospital immediately after the incident, and that the police has not seized the very material documents like wound certificate, for proving the prosecution case effectively.

2. The request for further investigation was opposed by the accused. On hearing both sides, the learned Magistrate found that the grievance of the defacto complainant

is true, that there was failure on the part of the police to seize the material documents and also to question the material witnesses. Still, the learned Magistrate rejected the request on the ground that the defacto complainant has her own counsel. The learned Magistrate also observed that the counsel engaged by the defacto complainant can very well assist the Assistant Public Prosecutor. The defacto complainant is aggrieved by the said order dated 2.2.2015.

3. On hearing both sides and on a perusal of the impugned order, I find that the request for further investigation requires reconsideration by the learned Magistrate properly and legally. The reason found out by the learned Magistrate for the easy disposal is that the defacto complainant has a counsel of her own choice and that the said counsel can assist the learned Assistant Public Prosecutor. C.C. No.4136/2007 is a crime case brought by the police, and nobody else can intrude into the prosecution conducted by the Assistant Public Prosecutor, unless otherwise permitted by the court appropriately to the extent possible under the law. When the case is being conducted by a Prosecutor, the defacto complainant cannot engage a counsel of her choice. However, on a perusal of the materials, the learned

Magistrate found that the petitioner's grievance is genuine. Still the grievance was not properly and legally considered.

4. After hearing both sides in detail, the learned Magistrate will have to come to a finding whether further investigation as sought by the defacto complainant is necessary.

In the result, this petition is allowed. The impugned order passed by the court below in C.M.P No.8379/2014 dated 2.2.2015 is hereby set aside, the matter is remitted back to the learned Magistrate, and the court below is hereby directed to consider the said application appropriately as required under the law, and come to a proper decision on the request.

**Sd/-
P.UBAID
JUDGE**

//True Copy//

P.A to Judge

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