

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

Crl.MC.No. 5350 of 2014

**C.C.NO.735/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-1,
NEYYATTINKARA**

**CRIME NO. 1008/2010 OF NEYYATTINKARA POLICE STATION ,
THIRUVANANTHAPURAM**

PETITIONER(S)/15TH ACCUSED :

**PRADEESH.P.J, AGED 39 YEARS,
(ERRONEOUSLY STATED AS PRADEEP), S/O.PRABHAKARAN,
MAKARIYAM, MAMPAZHAKARA, PERUMPAZHUTHOOR P.O.,
NEYYATTINKARA, THIRUVANANTHAPURAM- 695 126.**

**BY DR.K.P.SATHEESAN (SENIOR ADVOCATE)
ADVS. SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN
SRI.SIDDHARTH KRISHNAN**

RESPONDENT(S)/STATE & COMPLAINANT :

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI- 682 031.**
- 2. THE SUB INSPECTOR OF POLICE,
NEYYATTINKARA POLICE STATION,
THIRUVANANTHAPURAM DISTRICT, PIN- 695 126.**

BY PUBLIC PROSECUTOR SMT.S.HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 18-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE 1:** TRUE COPY OF THE F.I.R REGISTERED BY
THE 2ND RESPONDENT DATED 28.07.2010.
- ANNEXURE 2:** TRUE COPY OF THE FINAL REPORT FILED BY
THE 2ND RESPONDENT DATED 10.01.2011.
- ANNEXURE 3:** TRUE COPY OF THE DUTY REPORT OF THE PETITIONER
OBTAINED UNDER RIGHT TO INFORMATION ACT FROM
THE ADMINISTRATIVE OFFICER, K.S.R.T.C,
DATED 01.08.2014.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

=====

Crl.M.C.No.5350 of 2014

=====

Dated this the 18th day of June, 2015

ORDER

The prayer in this Crl.M.C. is as follows:

“to quash Annexure-II Final Report in C.C.No.735/2011 pending before the Judicial First Class Magistrate's Court-I, Neyyattinkara as far as the petitioner is concerned and render justice to the Petitioner.”

2. The petitioner herein is accused No.15 in C.C.No.735/2011 now on the file of Judicial First Class Magistrate Court No.I, Neyyattinkara. The Calandar Case arising out of the impugned Annexure-I FIR in Crime No:1008 of 2010 of Neyyattinkara Police Station registered for offences under Sections 143, 147, 149, 188, 283 of IPC and Section 38 read with 52 of the Kerala Police Act. The police after investigation submitted the impugned Annexure-II final report/charge sheet which led to the institution of the aforestated Calandar Case. The brief of the prosecution case is that on 28/07/2010 the petitioner (A15) along with more than 350 persons had

assembled in front of the post office, Neyyattinkara and had obstructed the traffic of the public road to protest against the rise in price of petrol and other products of the Central Government. Annexure-I FIR was registered naming 10 persons as accused and stating that there are 350 unidentifiable persons. The petitioner was not included among the original 10 accused persons mentioned in the FIR. It was only after the completion of the investigation that the petitioner's name was included in the accused array of the impugned Annexure-II final report/charge sheet. Now pursuant to the submission of the impugned final report, petitioner is arrayed as accused No.15 in the said criminal proceedings.

3. It is the case of the petitioner that on the day of incident, viz., 28/07/2010, the petitioner herein was attending his official duties from 8.53 a.m. to 4:00 p.m. at Pappanamcode Central Workshop of the Kerala State Road Transport Corporation. Petitioner strongly relies in this regard Annexure-III duty report showing his attendanced duty in the KSRTC official work place on the day in question. It is the specific contention of the petitioner that even going by the version projected by the prosecution, the

entire vehicular traffic was obstructed at Neyyattinkara due to the aforementioned public protest and it will be humanly impossible for the petitioner to reach the site in question as it would have taken more than two hours due to such obstruction to travel between Pappanamcode (work place) and Neyyattinkara (site of the alleged crime). The distance between these two places are stated is about at least 25 Kms. It is thus contended that without conducting any proper investigation and without any evidence that the petitioner is implicated as an accused. That even the trial is conducted there is no remote possibility for conviction and it is sheer waste of time and abuse of the process of the court. It is in the light of these aspects the petitioner has framed his contentions for seeking for quashment of the impugned criminal proceedings.

4. As directed by this Court, the 2nd respondent Investigating Officer has submitted a statement dated 30/09/2014 in this Crl.M.C before this Court. Though various aspects about the investigation has stated attempting to justify the arraignment of the petitioner as accused in the above said impugned final report, the said statement concludes with the

remark by the Investigating Officer that the arguments of the petitioner regarding his presence at his work place during the entire time on the day in question, is to be proved with the documentary evidence. This should be taken as an approach that even the Investigating Officer may not have been fully convinced about the correctness of the conclusions of the Investigating Officer. These observations are made only on a prima facie assessment of the facts and circumstances of the case and it is not to be taken as any expression of the final opinion on that issue. This observation has been made only to modulate the prayer to be considered in this case. The investigation should not only be fair and even handed but should also appear to be fair and even handed to all concerned including the complainant, the accused and the public at large. Since the petitioner has a specific plea based on his work assignment on the day in question and more particularly on the basis of Annexure-III duty report of the Kerala State Road Transport Corporation, following order is passed in the interest of justice. Accordingly it is ordered that a further investigation in the case should be conducted on a very limited aspect on the plea of the petitioner that he was fully

held up in his work place on that day and therefore he was never even remotely near the place of occurrence of the crime. To enable the conduct of such further investigation, it is ordered that District Police Chief, (Thiruvananthapuram Rural) will forthwith issue necessary orders to entrust the conduct of such further investigation to a Senior Officer, not below the rank of Inspector of Police to be monitored and supervised closely and directly by a Senior Officer not below the rank of Deputy Superintendent of Police. Such further investigation may be conducted on this limited aspect and not on any other issues. The further investigation should be commenced immediately and should be concluded within a period of two months from the date of production of certified copy of this Order. Once further investigation as directed above is completed, necessary report in that regard should be submitted by the Investigating Officer after completing the necessary formalities without any delay before the Jurisdictional Magistrate's court concerned.

5. It is pointed out that the trial in this case has not so far been commenced. The petitioner as well as the respondent Investigating Officer through the Public Prosecutor concerned will

produce a certified copy of this Order before the Jurisdictional Magistrate concerned. At this point Dr.K.P.Satheesan, learned Senior Counsel, instructed by Sri. Anoop V Nair, learned Counsel appearing for the petitioner submits that this Court may direct that further steps in the conduct of the trial may be ordered to be deferred until the submission of the final report. It is made clear that it will be open to the petitioner and the prosecution agency to appraise the court below concerned about the aforementioned direction to be issued to conduct further investigation as directed above so as to enable the court below concerned for further necessary steps.

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

Sd/- ALEXANDER THOMAS, JUDGE