

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

Crl.MC.No. 6254 of 2014

**SC 926/2012 of ADDL. DISTRICT. & SESSIONS COURT - V, KOZHIKODE
CRIME NO. 252/2011 OF VELLAYIL POLICE STATION , KOZHIKODE**

PETITIONER(S):

**REJANI V,
W/O.VASU, VALIAKATH HOUSE, KAITHAVALAPPU
BEFORE.P.O., KOZHIKODE DISTRICT.**

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S):

- 1. THE SUB INSPECTOR
VELLAYIL POLICE STATION, KOZHIKODE DISTRICT-673001.**
- 2. THE DEPUTY SUPERINTENDENT OF POLICE
CBCID, HHW-III, KOZHIKODE-673001.**
- 3. VINAYAN T.P
S/O.RAJAN, THEKKARAKAM PARAMBA, VELLAYIL
KOZHIKODE-673001.**
- 4. SANTHI T.P
D/O.RAJAN, THEKKARAKAM PARAMBA, VELLAYIL
KOZHIKODE-682031.**

**R1 & 2 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS
R3 & 4 BY ADV. SRI.T.G.RAJENDRAN**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 24-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

Crl.MC.No. 6254 of 2014

APPENDIX

PETITIONERS' ANNEXURES

- A1: COPY OF THE ORDER DATED 24/10/14 PASSED BY THE ADDITIONAL
SESSIONS JUDGE V, KOZHIKODE IN CMP.3731(A)/2014 IN SC.926/12**
- A2: COPY OF THE ORDER DATED 24/10/14 PASSED BY THE ADDITIONAL
SESSIONS JUDGE V, KOZHIKODE IN CMP.3630/14 IN SC.926/12**

RESPONDENTS' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B.KEMAL PASHA, J.

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Crl.M.C.No.6254 of 2014

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Dated this the 24th day of February, 2015

ORDER

The defacto complainant in Crime No.252 of 2011 of the Vellayil Police Station, Kozhikode, is the petitioner herein. The crime was investigated for the offences under Sections 498A and 306 of the Indian Penal Code.

2. The daughter of the defacto complainant had allegedly committed suicide at the matrimonial home. From the very beginning onwards, the defacto complainant was entertaining a doubt regarding the death of her daughter and she believed that it was not a case of suicide; whereas it was a case of murder. She was running from pillar to post to get the matter investigated properly. But her crisis were not properly attended to and Final Report was filed alleging offences under Section 498A and 306 of the Indian Penal Code. The matter was committed to the Court of Sessions, where it was taken on file as S.C.No.926 of 2012.

3. When the matter came up for trial before the Additional Sessions Court-V, Kozhikode, the learned

Additional Public Prosecutor filed an application by informing the court regarding a decision for further investigation, by the investigating officer, under Section 173(8) Cr.P.C., through C.M.P.No.3731 of 2014. It seems that the court below has dismissed the said petition on the ground that no grounds exist for a further investigation under Section 173(8) Cr.P.C. Another petition was also filed as C.M.P.No.3630 of 2014 for stopping the trial of the case till such further Final Report is received under Section 173(8) Cr.P.C. The court below has dismissed the said application also by taking the view that the Government has no power to stop the trial of a criminal case.

4. Heard Adv.Sri.Sunny Mathew, the learned counsel for the petitioner, Adv.Sri.T.G.Rajendran, the learned counsel for respondents 3 and 4, and the learned Public Prosecutor for the other respondents.

5. It seems that the court below has committed a grave error in taking the view that permission is required from the court below for further investigation in a case wherein the trial has been commenced. It is the prerogative of the investigating officer to decide whether a further investigation, as

contemplated under Section 173(8) Cr.P.C. is required or not in the matter. Apart from informing the court regarding the necessity or decision for a further investigation under Section 173(8) Cr.P.C., the Law does not contemplate any permission from the concerned court for a further investigation under Section 173(8) Cr.P.C. (See *Ram Lal Narang v. State (Delhi Administration)* [(1979) 2 SCC 322]). It is the incumbent on the part of the investigating officer, who decides to have a further investigation under Section 173(8) Cr.P.C., to inform the court regarding the said matter. Apart from that it does not contemplate even a formal permission from the court for a further investigation under Section 173(8) Cr.P.C.

6. When a further investigation is necessitated, it is just and proper in the interest of justice on the part of the concerned court to refrain from taking further evidence in the matter, till such a further Final Report is received. Over and above all these, in the case of further investigation under Section 173(8) Cr.P.C., the accused have no say at all. Matters being so, this Court is of the view that the impugned orders have resulted in substantial miscarriage of justice and

therefore, the same are liable to be set aside.

7. The learned counsel for the accused have fairly conceded that the accused are not standing in the way of any further investigation. Let the Law take its course and a further investigation be there in the matter under Section 173(8) Cr.P.C. Till the receipt of a further Final Report, the court below shall not continue to take further evidence in the matter.

This Crl.M.C. is allowed with the aforesaid observations. The concerned investigating officer shall take all necessary steps to conduct and complete such further investigation, as expeditiously as possible, and file a further Final Report at the earliest before the concerned court.

Sd/-
B.KEMAL PASHA
JUDGE

DSV/24/2/15

// True Copy //

P.A. To Judge