

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1431 of 2015

**CRL.M.P.NO.1523/2015 INSC 325/2014 OF IIND ADDITIONAL SESSIONS COURT,
ERNAKULAM**

REVISION PETITIONER/PETITIONER/ACCUSED NO.5 :-

**HARI, AGED 43 YEARS,
S/O. BALAKRISHNAN MENON,
VADAKKEKUNNATHU VEEDU,
VADAKKUMPURAM POST,
CHENNAMANGALAM VILLAGE,
N.PARAVUR, ERNAKULAM DISTRICT,
PIN - 683 521.**

**BY ADVS.SRI.K.J.MOHAMMED ANZAR
SRI.DILEEP D BHAT**

RESPONDENT/RESPONDENT :-

**STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682 031
THROUGH THE DEPUTY SUPERINTENDENT OF POLICE,
CRIME BRANCH, ERNAKULAM
(INVESTIGATING OFFICER, CRIME 346/11-N,
PARAVUR POLICE STATION & CBCID-HHW-II-CR-III/CR/HHW-II/III).**

R BY SMT.SHEEBA M.T., PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
03-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' ANNEXURES :-

- ANNEXURE A1 :** TRUE COPY OF THE FINAL REPORT IN S.C.NO.325/2014 OF THE IIND ADDITIONAL DISTRICT & SESSIONS JUDGE, ERNAKULAM FILED IN CRIME NO.346/2011 OF N.PARAVUR POLICE STATION.
- ANNEXURE A2 :** TRUE COPY OF THE FIR IN CRIME NO.346/2011 OF N.PARAVUR POLICE STATION.
- ANNEXURE A3 :** TRUE COPY OF THE STATEMENT OF THE DEFACTO-COMPLAINANT, NASEEHA IN CRIME NO.346/2011 DATED 07.03.2011 GIVEN TO THE SI OF POLICE, N.PARAVUR.
- ANNEXURE A4 :** TRUE COPY OF THE STATEMENT DATED 09.03.2011 IN CRIME NO.346/2011 RECORDED BY CIRCLE INSPECTOR OF POLICE, N.PARAVUR.
- ANNEXURE A5 :** TRUE COPY OF THE STATEMENT DATED 15.03.2011 IN CRIME NO.346/2011 GIVEN TO THE CI OF POLICE, N.PARAVUR.
- ANNEXURE A6 :** TRUE COPY OF THE DEPOSITION OF PW1 IN S.C.NO.325/2014 DATED 10.12.2014 OF THE IIND ADDITIONAL DISTRICT & SESSIONS JUDGE, ERNAKULAM.
- ANNEXURE A6(a) :** TRUE COPY OF A READABLE TYPED COPY OF THE DEPOSITION OF PW1 IN S.C.NO.325/2014 DATED 10.12.2014 OF THE IIND ADDITIONAL DISTRICT & SESSIONS JUDGE, ERNAKULAM.
- ANNEXURE A7 :** TRUE COPY OF THE DEPOSITION OF PW7 IN S.C.NO.325/2014 DATED 18.12.2014 OF THE IIND ADDITIONAL DISTRICT & SESSIONS JUDGE, ERNAKULAM.
- ANNEXURE A7(a) :** TRUE COPY OF A READABLE TYPED COPY OF THE DEPOSITION OF PW7 IN S.C.NO.325/2014 DATED 18.12.2014 OF THE IIND ADDITIONAL DISTRICT & SESSIONS JUDGE, ERNAKULAM.
- ANNEXURE A8 :** TRUE COPY OF THE 161 STATEMENT OF JUMAILA, CW10 IN ANNEXURE A1 FINAL REPORT AND PW7 S.C.NO.325/2014 OF THE IIND ADDITIONAL DISTRICT & SESSIONS JUDGE, ERNAKULAM.

**ANNEXURE A9 : TRUE COPY OF THE 164 STATEMENT OF CW10 IN ANNEXURE A1
FINAL REPORT AND PW7 S.C.NO.325/2014 OF THE IIND
ADDITIONAL DISTRICT & SESSIONS JUDGE, ERNAKULAM.**

**ANNEUXRE A10 : TRUE COPY OF THE APPLICATION DATED 16.01.2015 FILED BY
THE DYSP, CBCID, HH-N, ERNAKULAM FILED IN S.C.NO.325/2014
OF THE IIND ADDITIONAL DISTRICT & SESSIONS JUDGE,
ERNAKULAM.**

**ANNEXURE A11 : TRUE COPY OF THE LETTER DATED NIL ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER.**

**ANNEXURE A12 : TRUE COPIES OF THE RELEVANT PAGES OF THE PASSPORT
OF THE PETITIONER.**

**ANNEXURE A13 : TRUE COPY OF THE SUPPLEMENTARY FINAL REPORT DATED
27.01.2015 FILED BY THE 2ND RESPONDENT IN S.C.NO.325/14
OF THE IIND ADDITIONAL DISTRICT & SESSIONS COURT,
ERNAKULAM.**

**ANNEXURE A14 : TRUE COPY OF THE REPORT DATED 27.1.2015 FILED BY THE
2ND RESPONDENT IN S.C.NO.325/2014 OF THE IIND
ADDITIONAL DISTRICT & SESSIONS COURT, ERNAKULAM.**

RESPONDENT(S)' ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

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P.UBAID, J.

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Crl.R.P.No.1431 of 2015

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Dated this the 3rd day of December, 2015

ORDER

The petitioner herein is the fifth accused in S.C.No.325 of 2014 before the Second Additional Sessions Court, Ernakulam. In the said case, the police conducted further investigation, and submitted supplementary final report under Section 173(8) Cr.P.C. The petitioner herein filed objection to the said report in the form of an application as CMP No.1523 of 2015. On hearing both sides, the learned trial Judge found that the objection is not sustainable, and thus overruled the objection by order dated 30.09.2015. The said order is under challenge in this revision.

2. On a perusal of the impugned order, I find that it is a purely interlocutory order which cannot be amenable to revision under Section 397 Cr.P.C. The petitioner's grievance is that the supplementary final report filed by the police under Section 173 (8) Cr.P.C. is somewhat contrary to the first final report filed

under Section 173(2) Cr.P.C. If that is the grievance, the position is well covered by decisions.

3. In **State v. Gopakumar [1988(1) KLT 924]**, a learned Single Judge of this Court held that additional report of further investigation made under Section 173(8) Cr.P.C. must be solely regarding such evidence which was not collected, or which was not available earlier, when the final report under Section 173(2) Cr.P.C. was submitted. The question of acceptance or rejection of the additional final report of further investigation which is contrary to, or inconsistent with the additional report, is within the exclusive right and jurisdiction of the trial court, and under the guise of further investigation, the Investigating Officer cannot undo what is already done for an effective prosecution. In the said case, this Court explained that the report of further investigation only means the report in addition to the original one. It may have the effect of adding to, or subtracting from the original report. As regards acceptance of such a report, this Court again held in **Jiji Thomson v. State of Kerala [2015 CrIj 1635]** that when such a report comes before the Court, it must be within the jurisdiction of the trial court to consider the two reports, examine the contrary findings made by the Investigating Officer in the subsequent report, and

decide whether the subsequent report contrary to the earlier report can be accepted, or whether any legal value can be attached to which. Thus I find, that, if at all the petitioner has a grievance that the additional report filed by the police under Section 173(8) Cr.P.C. is inconsistent with the first report filed under Section 173(2) Cr.P.C., it will have to be considered by the trial court, and appropriate course will have to be followed by the trial court as explained by this Court in the decisions cited supra. The impugned order in this case is a purely interlocutory order made as part of proceedings, and it cannot be quashed by this Court in revision under Section 397 Cr.P.C. because, such orders cannot be amenable to revisional jurisdiction.

In the result, this Revision Petition is dismissed in limine, without being admitted to files.

Sd/-
P.UBAID
JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE