

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

OP(Crl.).No. 24 of 2015 (Q)

MP NO. 104/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT V, KOCHI

PETITIONER/COMPLAINANT :

MINU SUDHILAL, AGED 25,
W/O.SUDHILAL, BHAMA NIVAS, ATTINGAL,
PRESENTLY RESIDING AT MATTANCHERRY POLICE OFFICE QUARTERS
BLOCK NO. 2, QUARTERS NO.4,PIN – 682 002.

BY ADVS.SRI.G.KRISHNAKUMAR
SRI.B.S.SURAJ KRISHNA

RESPONDENTS/ACCUSED :

1. M.SUDHILAL, AGED 35,
S/O.MOHANAN, PUTHUVAL CHAITHANYA HOUSE, WARD NO.8
THOTTAPALLY, ALAPPUZHA
PRESENTLY RESIDING AT MATTANCHERRY POLICE OFFICE QUARTERS
BLOCK NO.2, QUARTERS NO.4, PIN-682 002.
2. MOHANAN,AGED 64,
PUTHUVAL CHAITHANYA HOUSE, WARD NO. 8, THOTTAPALLY
ALAPPUZHA - 688 561
3. SUMATHI, AGED 55,
W/O.MOHANAN, PUTHUVAL CHAITHANYA HOUSE, WARD NO. 8
THOTTAPALLY, ALAPPUZHA - 688 561
4. SOUMYA, AGED 31 YEARS
W/O.AJESH, PUTHUVAL CHAITHANYA HOUSE,
THOTTAPALLY, ALAPPUZHA - 688 561
5. AJESH, AGED 40 YEARS
PUTHUVAL CHAITHANYA HOUSE, THOTTAPALLY
ALAPPUZHA - 688 561.

*ADDL. R6 IMPEADED

*ADDL.R6. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

*ADDL. R6 IS IMPEADED AS PER ORDER IN IA NO. 1509/2015 DATED 2/2/15.

R6 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 02-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

OP(Crl.).No. 24 of 2015 (Q)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1- TRUE COPY OF THE COMPLAINT IN M.P. NO.104/2015 ON THE FILE OF JFCM COURT V, KOCHI.
- EXT. P2- TRUE COPY OF THE PROCEEDING / ORDER DATED 13.1.2015 REFLECTED IN THE 'A' DIARY NOTED DOWN BY THE COUNSEL FOR THE PETITIONER.
- EXT. P3- TRUE MANUSCRIPT COPY OF THE ORDER DATED 13.1.2015 PRONOUNCED IN OPEN COURT IN EXHIBIT P1, NOTED DOWN BY THE COUNSEL FOR THE PETITIONER.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

B.KEMAL PASHA, J.

.....
O.P.(Crl) No.24 of 2015
.....

Dated this the 2nd day of February, 2015

J U D G M E N T

This is a petition filed under Article 227 of the Constitution of India.

2. The petitioner has filed a private complaint before the Judicial First Class Magistrate's Court-V, Kochi alleging offences under Sections 498A, 323, 324, 294(B), 341, 506 (2), 511 of 309, 354, 509, 403, 406 and 420 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act against respondents 1 to 5 herein. The first respondent is none other than the husband of the petitioner. It seems that the first respondent is the Sub Inspector of Police, Mattancherry. In fact, without taking note of the said aspect, it seems that at first the learned

Magistrate has chosen to pass an order thereby referring the matter to the Sub Inspector of Police, Mattancherry for investigation under Section 156(3) Cr.P.C. After some time, wisdom prevailed and the learned Magistrate perused the files and he could notice that the person to whom the matter was referred for investigation is the first accused in the matter and therefore, immediately, the learned Magistrate passed Ext.P2 order by deciding to record the sworn statement of the petitioner, posting the case to 24.01.2015 for that purpose. The said order passed by the learned Magistrate is under challenge herein.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. The learned counsel for the petitioner has pointed out that various illegalities have been committed by the learned Magistrate. By omitting to take note of the fact that the first accused in the complaint is the Sub Inspector of Police, Mattancherry, the learned Magistrate had passed an

order directing the first respondent herein to conduct investigation in the case under Section 156(3) Cr.P.C. According to the learned counsel for the respondents, the Magistrate came to know that the first respondent is the Sub Inspector of Police, Mattancherry and thereby the learned Magistrate has chosen to recall the earlier order passed by him and passed an order thereby deciding to record the sworn statement of the petitioner. According to the learned counsel for the petitioner, even when the first respondent is the Sub Inspector of Police, Mattancherry, the learned Magistrate could have forwarded the matter to some other police officer for investigation under Section 156(3) Cr.P.C.

5. It seems that the learned Magistrate ought to have passed an order thereby deciding to conduct an inquiry by himself or through some other police officer within the meaning of Section 202(1) Cr.P.C. The learned Magistrate is fully empowered to pass such an order. The only illegality committed by the learned Magistrate is that he

had recalled his earlier order and reviewed it, even though there is no provision of law enabling the learned Magistrate to do it. Whatever it is, the present order seems to be a correct order and in this particular case when serious allegations are there against a police officer, who is the Sub Inspector of Police of that particular Police Station, the learned Magistrate is empowered to conduct 202 inquiry with the assistance of other police officers within the meaning of Section 202(1) Cr.P.C. At the same time, when such unpleasant circumstances are created by the court below, this Court is of the view that the matter can be transferred to another learned Judicial First Class Magistrate of the very same Station, to proceed with the matter.

6. In the result, this O.P.(CrI) stands disposed of in the following terms:

The aforesaid matter in M.P.No.104/2015 of the Judicial First Class Magistrate's Court-V, Kochi is transferred

to the Judicial First Class Magistrate's Court-II, Kochi for disposal, in accordance with law, in the light of the observations made above. The petitioner shall appear before the said Court on 18.02.2015.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge