

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

OP(Crl.).No. 165 of 2015 (Q)

SC.NO. 165/2014 OF ADDL. DISTRICT SESSIONS COURT (ADHOC)-1, KALPETTA

PETITIONER:

M.J.BABY, S/O.JOSEPH, AGED 48 YEARS,
MUKALAYIL HOUSE, THIRUVAMPADY,
PULLURAMPARA.P.O.,KOZHIKODE DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS:

1. THE DEPUTY SUPERINTENDENT OF POLICE,
KALPETTA, OFFICE OF THE SUPERINTENDENT OF POLICE,
KALPETTA.PIN-673 001
2. ADDL.DIRECTOR GENERAL OF POLICE, NORTH ZONE,
OFFICE OF THE ADDL.DIRECTOR GENERAL OF POLICE,
NORTH ZONE, KOZHIKODE-673 001
3. SUPERINTENDENT OF POLICE,
WAYANAD OFFICE OF THE SUPERINTENDENT OF POLICE,
WAYANAD-673 001
4. DIRECTOR GENERAL OF POLICE,
OFFICE OF THE DIRECTOR GENERAL OF POLICE,
TRIVANDRUM. PIN-695 001
5. SUPERINTENDENT OF POLICE, CBCID WAYANAD
OFFICE OF THE SUPERINTENDENT OF POLICE, CBCID,
WAYANAD-673 001
6. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, GOVT. OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM.PIN-695 001

*ADDL.R7 TO R9 IMPEADED

*ADDL.R7: P.S.JOSEPH, AGED 66 YEARS, S/O.P.J.STEPHEN,
PALATTY HOUSE, CHUNDALE.P.O., ACHOORANAM VILLAGE,
VYTHIRI TALUK, WAYANAD-673 123.

OP(CRL.)NO.165/2015

*ADDL.R8: THRESSIA JOSEPH, AGED 64 YEARS,
W/O.P.S.JOSEPH, PALATTY HOUSE, CHUNDALE.P.O.,
ACHOORANAM VILLAGE, VYTHIRI TALUK,
WAYANAD-673 123.

*ADDL.R9: ANOOP JOSEPH, AGED 31 YEARS,
S/O.P.S.JOSEPH, PALATTY HOUSE, CHUNDALE.P.O.,
ACHOORANAM VILLAGE, VYTHIRI TALUK,
WAYANAD-673 123.

*ADDL.R7 TO R9 ARE IMPEADED AS PER ORDER DATED 18/9/2015 IN
I.A.NO.7631/2015

R1 TO R6 BY STATE ATTORNEY SRI.P.VIJAYARAGHAVAN
ADDL.R7 TO R9 BY ADV. SRI.MATHEW KURIAKOSE

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 18-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 TRUE COPY OF THE PETITION DATED 30.12.2013
- EXT.P2 TRUE COPY OF THE RECEIPT ISSUED BY THE POSTAL DEPARTMENT
FOR SENDING EXT.P1 TO VARIOUS OFFICES
- EXT.P3 TRUE COPY OF THE FINAL REPORT IN CRIME NO.531/2013
- EXT.P4 TRUE COPY OF THE PETITION DATED 24.4.2015.

RESPONDENT(S)' EXHIBITS

- EXT.R7(A) COPY OF THE ORDER DATED 29/01/2014 IN BA.NO.8679 OF 2013 OF
THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM
- EXT.R7(B) COPY OF THE VAKALATH DATED 20/05/2014 FILED ON BEHALF OF THE
ORIGINAL PETITIONER HEREIN BEFORE THE CHIEF JUDICIAL
MAGISTRATE COURT, KALPETTA, IN C.P.NO.16 OF 2014
- EXT.R7(C) COPY OF THE APPLICATION NO.296 OF 2014 DATED 20/05/2014 FILED
ON BEHALF OF THE ORIGINAL PETITIONER HEREIN BEFORE THE
CHIEF JUDICIAL MAGISTRATE COURT, KALPETTA, IN C.P.NO.16 OF
2014
- EXT.R7(D) COPY OF THE MEDICAL REPORT DATED 04/06/2015 ISSUED BY
DR.A.KRISHNADAS OF GOOD SHEPHERD HOSPITAL, VYTHIRI IN
RESPECT OF PETITIONER NO.1
- EXT.R7(E) COPY OF THE MEDICAL REPORT DATED 04/06/2015 ISSUED BY
DR.A.KRISHNADAS OF GOOD SHEPHERD HOSPITAL, VYTHIRI IN
RESPECT OF PETITIONER NO.2
- EXT.R7(F) COPY OF THE MEDICAL REPORT DATED 04/06/2015 ISSUED BY
DR.K.S.CHANDRAKANTH OF MALABAR EYE HOSPITAL & RESEARCH
CENTRE PVT. LTD., CALICUT IN RESPECT OF PETITIONER NO.1

/TRUE COPY/

P.A.TO JUDGE

ALEXANDER THOMAS, J.

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O.P(CrI.)No. 165 of 2015

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Dated this the 18th day of September, 2015

J U D G M E N T

It is averred that the petitioner's daughter allegedly committed suicide in her matrimonial home on 14.12.2013 and that before her death, she had, on many occasions, complained that she is being harassed and ill-treated by her husband and parents in-laws, demanding more dowry. That consequent to her death, Crime No. 531/2013 of Vythiri Police Station was registered and later, the Police completed the investigation and submitted the final report/charge sheet in the above said crime alleging commission of offences punishable under Sec.306, 498A read with Sec.34 of the I.P.C. That the death of the petitioner's daughter occurred within seven years of her marriage and that there were allegations of demand for more dowry and ornaments and that the petitioner even suspects that his daughter was murdered by forcibly administering poison by her husband and in-laws. The main case of the petitioner is that the investigation has been misdirected insofar as the serious

offence under Sec.304B has not been included in the final report/charge sheet. It is averred that the petitioner had filed complaints before the superior Police officers as early as in the year 2013. Accordingly, it is prayed that this Court may consider the plea for direction for entrustment of further investigation to a different agency like the Crime Branch so as to conduct effective investigation on the aspects relating to the offence under Sec.304B of the I.P.C. It is also stated that the trial in the case has already commenced and that this Court may ensure in the interest of justice that effective directions in the manner stated above may be granted in this case, etc.

2. It is contended by the petitioner that the investigation by the Police in this case has been misdirected. That immediately after the death of the petitioner's daughter, the petitioner had filed Ext.P-1 petition before the Superintendent of Police, Wayanad with copies to the Additional Director of North Zone and the Director General of Police pointing out that his statement was not properly recorded by the Sub Inspector of Police, Vythiri Police Station, who conducted the investigation and that statements of his wife and younger daughter were also not properly recorded so as to help the

accused. That the petitioner's daughter was found dead on 14.12.2013 and as early as on 30.12.2013, the petitioner had filed Ext.P-1 before the higher Police officers as he was not convinced that he will not get any justice at the hands of the Sub Inspector of Police concerned, etc.

3. Heard Sri.Sunny Mathew, learned counsel appearing for the petitioner, Sri.P.Vijayaraghavan, learned State Attorney appearing for the official respondents 1 to 6 and Sri.Mathew Kuriakose, learned counsel appearing for additional respondents 7 to 9.

4. As directed by this Court, the 1st respondent, (Deputy Superintendent of Police, Kalpetta, Wayanad district) has filed a statement dated 15.6.2015 in this case, in which, it is stated that immediately after the registration of the crime, Crime No.531/2013 of Vythiri Police Station, under Sec.174 of Code of Criminal Procedure on 15.12.2013 at 8.10 hrs., crime inquest was conducted by the Tahsildar, Vythiri Taluk, since the death occurred within seven years of the date of the deceased's marriage. That as per the opinion of the Panchayathdars, the deceased Anju had committed suicide by consuming poison due to mental agony and anguish.

That the investigation was taken over by one Sri.S.Prabhakaran, Deputy Superintendent of Police, Kalpetta on 16.12.2013. The details of the questioning of the petitioner herein (CW-9) and his wife, Sheela (CW-10) are given in paragraphs 3 and 4 of the said statement, which read as follows:

“3. It is submitted that the Investigation Officer questioned the petitioner herein (CW9) on 18.12.13 and he had stated that deceased Anju was the elder daughter and had completed a general nursing course and was in love with one Mr.Anoop (A1), a native of Vythiry and thereafter both the families jointly arranged their marriage on 2010 May 22nd. At the time of marriage the above named Anoop was working as dental technical at Kozhikode. After marriage they lived together as husband and wife at Kozhikode in a rented house for 10 months and there after a female child was borne out the wedlock. In the meantime Anoop was transferred to Kannur and Anju shifted residence to her matrimonial house and began to reside with her in-laws. After the birth of child, Anoop began to harass and ill-treat the deceased. Moreover, there was serious difference of opinion and they were leading and unhappy married life. The above named Anoop did not even attend the marriage function of Smt.Ambili, the younger sister of the deceased. However, in the statement given before the police, the complainant had never raised the allegation that there was demand for more dowry from the husband or his parent.

4. It is submitted that the Investigation Officer questioned Sheela (CW-10), who is the mother of the deceased on 18.12.13 and recorded her statement. Moreover she had disclosed before the Investigating Officer that Anoop was a sexual pervert and homosexual and not interested in sexual relationship with his wife Anju. Because of these strange habits, there was always altercation between Anoop and her wife. The above named Sheela had also stated that when Anju shifted to the matrimonial house, the parents of Anoop (A2 and A3) terminated the service of the housemaid and Anju was forced to do all the house hold work alone. Anoop as well as the in-laws had ill-treated her and she was being mentally tortured. When she could not tolerate the harassment and torture from the side of her husband and in-laws anymore, she had no other option but to commit suicide. The Investigating Officer had questioned the younger sisters of the deceased Smt.Ambily (CW11) and Smt.Anjana (CW-12) and recorded their statement. They had also given statement corroborating and supporting the statement given by the mother of the deceased (CW 10).

5. It is further pointed out that as per the inquest report prepared by the Tahsildar, Vythiri Taluk, as also the statement of one Dr.Krishnakumar, Assistant Professor and Police Surgeon, Medical College Hospital, Kozhikode, who conducted the autopsy, the cause of death was consistent with death due to consumption of insecticide and there was no sign of poisoning the victim forcefully. That the mobile phone call details of the 1st accused and deceased Anju were collected and examined by the investigating officer and it is revealed that on 14.12.2013, the location of Anoop was shown at Kannur and he contacted Anju for eight times till 22.32 hrs and that it is evident that at the time of death of Anju, Anoop, the 1st accused, was not present at the time of occurrence. That altogether 48 witnesses were questioned including the parents, relatives and neighbours residing near the matrimonial house and all of them had stated that Anju had committed suicide because of mental torture and ill-treatment meted out to her from her husband and his parents. That at the same time, none had stated that the accused persons demanded more dowry from Anju or her parents. That in the course of the investigation, Sections in the FIR were altered and offences under Secs.306 and 498A read with Sec.34

were included. That the medical evidence and other evidence collected during the course of the investigation has revealed that there is no evidence regarding forceful administration of poison to the deceased as now alleged by the petitioner. It is thus after conducting a comprehensive and exhaustive investigation, that the investigating officer had submitted the final report/charge sheet in this crime for offences under Secs.306 and 498A read with Sec.34 of the I.P.C. against A-1, (Anoop) A-2, Joseph (father-law-of the deceased) and A-3, Thressya (mother in law of the deceased). That was on 19.2.2014 and now the case is under trial as S.C.No.165/2014 on the file of the Addl. Sessions Court (Adhoc)-I, Kalpetta.

6. Very crucially it is stated in paragraph 10 of the said statement that the allegation of the petitioner that the petitioner, his wife, his younger daughter had given statements before the Police that the the accused persons demanded dowry is actually incorrect and that they had never given any such statement before the investigating officer. That the investigation has also clearly revealed that there was no demand whatsoever made either by the husband or his parents for more dowry and so the offence under Sec.304B was not attracted. It is further stated that a just, fair and impartial

investigation has been conducted in this case and the allegations to the contrary, are false and have been denied, etc.

7. It can be seen that though Ext.P-1 is seen to have submitted by the petitioner before the District Collector, Wayanad, on 30.12.2013, the petitioner has not been able to produce any material to show that the petitioner had thereafter taken any follow up on the same. The final report in this case was filed on 8.3.2014 and the committal proceedings were initiated on 10.6.2014 and the case was later committed to the Sessions Court concerned and it is thereafter that after the commencement of the trial, that the petitioner has filed Ext.P-4 application dated 24.4.2015 praying before the Sessions Court concerned that the examination of the witnesses may be stopped and the case may be adjourned, etc. The petitioner has chosen to approach this Court by filing this O.P(Cr1.) only on 21.5.2015.

8. As directed by this Court, the Sessions Court concerned has also furnished a report before this Court in this matter. It is pointed out that that the case records in this case were made over to that Additional Sessions Court and the case records were received on 24.7.2014 and that though the accused persons appeared before

the said court on 25.9.2015, trial could not be started as the report from the Forensic Science Laboratory was not received. That on receipt of the FSL report, charge was framed by the court on 10.3.2015 and the case was scheduled for evidence of the prosecution witnesses to be started on 22.4.2015 and the matter was posted in such a manner that the prosecution evidence could be completed by 28.4.2015. That out of the 39 witnesses summoned, only the presence of 16 witnesses could be secured by that day. That it was only after the examination of the two prosecution witnesses and when the case stood posted for examination of some other witnesses, the petitioner had filed Ext.P-4 application (CrI.M.P.No. 756/2015) before the Sessions Court. That the petitioner has no case in his Ext.P-4 petition that he has taken any steps to get the case further investigated and his only case is that he is intending to take steps for the purpose, etc.

9. Having regard to the conspectus of the facts and circumstances of this case, this Court is constrained to take the view that the petitioner has not been able to establish any serious grounds so as to hold that the investigation was faulty or misdirected. The petitioner has not been able to establish as to what

prevented him from seeking appropriate remedies in the matter before completion of the investigation or at least immediately after the submission of the final report. Moreover, the case has been investigated by a superior officer of the rank of Deputy Superintendent of Police and it is clearly stated in the statement that no-one has stated before the investigating officer that accused persons demanded more dowry from the deceased Anju or her parents and that therefore the offence under Sec.304B of the I.P.C. was not attracted in the facts and circumstances of this case. The trial had already commenced.

10. It is also to be noted that the instant petition is one solely filed under Art.227 of the Constitution of India, which in sum and substance, is a power of superintendence over all the courts by the High Court and Art.227(1) thereof, expressly states that every High Court shall have superintendence over all courts and tribunals throughout the territory in relation to which, it exercises jurisdiction. Here essentially the petitioner challenges not the legality or propriety of an order or action taken by the criminal court, but the petitioner's only case is that the investigation done by the Police agency is faulty and wrong and that it warrants further

investigation. Therefore, it is amply clear that it is not right or correct to exercise powers under Art.227 Constitution of India for examining and reviewing the legality and propriety of the Police investigation in the instant case. True that after the commencement of the sessions trial, the petitioner had submitted Ext.P-4 application dated 24.4.2015 praying for temporarily stopping the examination of the witnesses and the adducing of the evidence in the case. This, the petitioner states, is to facilitate a further investigation in the crime. It is discernible from the report of the Sessions Court, that petition was dismissed by that court and the said order of rejection is not seen challenged in these proceedings. Moreover, the petitioner has no case that he had duly approached the competent criminal court concerned pointing out the deficiencies in the investigation and praying for its proper monitoring and for conduct of proper further investigation, etc., either before the filing of the final report or after that. It appears that the petitioner has for the first time approached the court below by filing Ext.P-4 application dated 24.4.2015 and that too, after the commencement of the examination of the witnesses. Therefore, it cannot be said that in substance there is any challenge against the

order or decision making process of any subordinate criminal court concerned in this case. In pith and substance, the grievance of the petitioner is that the investigation conducted by the Police was faulty and wrong and that therefore it requires conduct of a further investigation at this belated stage. Therefore, it is seriously open to doubt whether the jurisdiction available under Art.227 of the Constitution of India, which invests powers of superintendence over subordinate courts, could be invoked to redress the grievances highlighted in the facts of this case. As this cardinal aspect of the matter was not highlighted by the respondents, this Court has only proceeded to make a prima facie examination of the merits of the matter and the discussion in the previous paragraphs is only limited to that aspect.

11. It is further made clear that the discussion on the merits of the rival contentions raised in this case has been made in this judgment only for consideration of the limited question as to the issue raised by the petitioner in this petition regarding the prayer for further investigation in this case. This Court has been constrained to go into this aspect only because of the issues raised by the petitioner in the background of the prayer made in the

petition. Therefore, the observations and findings in this judgment shall not in any way trammel or influence the trial in this case and it is ordered that the Sessions Court concerned shall proceed with the trial in independent exercise of its discretion and in accordance with law and uninfluenced and untrammelled by any of the observations and findings in this judgment. It is made clear that the findings and observations in this judgment in the aforesaid limited context shall not in any way hamper or trammel the rights of all the parties concerned with the trial, viz., the prosecution, defacto complainant and the accused, in raising any relevant contentions, in accordance with law, which has to be independently decided by the Sessions Court totally uninfluenced by the findings and observations in this judgment. Needless to say, this is without prejudice to the contentions that are available to the petitioner and other parties concerned, which are to be raised in accordance with law.

12. In view of these aspects, this Court is of the considered opinion that the petitioner has not made out a case for interference in the matter. At any rate, this Court is of the considered opinion that interference at this late stage after the commencement of the trial, is not called for.

In view of these aspects, this Original Petition stands dismissed.

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Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

Having regard to the conspectus of the facts and circumstances of this case, this Court is constrained to take the view that the petitioner has not been able to establish any serious grounds so as to hold that the investigation was faulty or misdirected.

Needless to say, this is without prejudice to the contentions that are available to the petitioner and other parties concerned, which are to be raised in accordance with law.

It is also to be noted that the instant petition is one filed under

Art.227 of the Constitution of India, which in sum and substance, is a power of superintendence over all the courts by the High Court and Art.227(1) thereof, expressly states that every High Court shall have superintendence over all courts and tribunals throughout the territory in relation to which, it exercises jurisdiction. Here essentially the petitioner challenges not the legality or propriety of an order or action taken by the criminal court, but the petitioner's only case is that the investigation done by the Police agency is faulty and wrong and that it warrants further investigation. Therefore, it is amply clear that it is not right or correct to exercise powers under Art.227 Constitution of India for examining and reviewing the legality and propriety of the Police investigation in the instant case. As this cardinal aspect of the matter was not highlighted by the respondents, this Court has only proceeded to make a prima facie examination of the merits of the matter and the discussion in the previous paragraphs is only limited to that aspect.

It is further made clear that the discussion on the merits of the rival contentions raised in this case has been made in this judgment

only for consideration of the limited question as to the issue raised by the petitioner in this petition regarding the prayer for further investigation in this case. This Court has been constrained to go into this aspect only because of the issues raised by the petitioner in the background of the prayer made in the petition. Therefore, the observations and findings in this judgment shall not in any way trammel or influence the trial in this case and it is ordered that the Sessions Court concerned shall proceed with the trial in independent exercise of its discretion and in accordance with law and uninfluenced and untrammelled by any of the observations and findings in this judgment. It is made clear that the findings and observations in this judgment in the aforesaid limited context shall not in any way hamper or trammel the rights of all the parties concerned with the trial, viz., the prosecution, defacto complainant and the accused, in raising any relevant contentions, in accordance with law, which has to be independently decided by the Sessions Court totally uninfluenced by the findings and observations in this judgment.