

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

OP(Crl.).No. 239 of 2015 (Q)

**(CC.NO. 424/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -II(FOREST
OFFENCES),MANJERI)**

PETITIONER :

**ISMAYIL NARAKKODAN, AGED 39 YEARS,
S/O.ALIKUTTY, VATTAKANDATHIL HOUSE, OZHUKOOR P.O.,
MORAYOOR, MALAPPURAM DISTRICT.**

BY ADV. SRI.R.ABDUL AHAD

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SHO, KONDOTTY POLICE STATION,
MALAPPURAM DISTRICT,
REP BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM -682 031**
- 2. ALI, S/O.MOIDEEN,
MALAYATHOTTATHIL HOUSE, OZHUKOOR P.O.,
MORAYOOR, MALAPPURAM DISTRICT- 673 649**
- 3. ABDUL KALAM P., S/O.ALIKUTTY,
KUTTASSERIPARAMBIL HOUSE, OZHUKOOR P.O.,
MORAYOOR, MALAPPURAM DISTRICT -673 649**
- 4. SALAMNUL FARIZ N.,S/O.SAIDALAVI,
KADUNGALAMKUNNU HOUSE, OZHUKOOR P.O.,
MORAYOOR, MALAPPURAM DISTRICT -673 649**
- 5. ABDUL RAHOOF, S/O.VEEERANKUTTY,
THEKKUMPRATH MALAYATHOTTATHIL,
OZHUKOOR P.O, MORAYOOR, MALAPPURAM DISTRICT -673 649**
- 6. NOUSHAD N.,S/O.MUHAMMED,
MANJALAM KUNNU HOUSE, OZHUKOOR P.O.,
MORAYOOR, MALAPPURAM DISTRICT -673 649**

R1 BY PUBLIC PROSECUTOR SMT. MAYA

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 11-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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OP(Crl.).No. 239 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE FIR NO. 24/2011 OF KONDOTTY POLICE STATION IN
MALAPPURAM DISTRICT DATED 10.01.2011
- P2: TRUE COPY OF THE STATEMENT DATED 10.01.2011
- P3: TRUE COPY OF THE FINAL REPORT DATED 12.01.2011 IN CRIME NO.24/2011
OF KONDOTTY POLICE STATION IN MALAPPURAM DISTRICT
- P4: TRUE COPY OF THE STATEMENT PRODUCED BY THE INVESTIGATION
OFFICER DATED 12.01.2011

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

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K.RAMAKRISHNAN, J.

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O.P.(CrI.) No.239 OF 2015

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Dated this the 11th day of September, 2015

ORDER

This is an application filed by the defacto complainant in C.C. No.424/2014 pending before the Judicial First Class Magistrate Court-II Forest Cases, Manjeri seeking further investigation under Article 226 of the Constitution of India and under Section 482 of Code of Criminal Procedure. It is alleged in the petition that the petitioner is a defacto complainant in CC No.424/2014 pending before the Judicial First Class Magistrate Court-II Forest Cases, Manjeri.

2. The case originated on the basis of a crime registered as Crime No.24/2011 of Kondotty Police Station of Malappuram District on the basis of Ext.P2 statement given by the petitioner alleging offences under Sections 143, 147, 148,341,323,324 read with Section 149 of Indian Penal Code.

3. The allegation in the petition was that the final report was filed in the case without conducting proper investigation deleting relevant penal provisions and name

of the 6th respondent from the final report. The statement said to have been given under Section 161 Code of Criminal Procedure recorded by the Investigating Officer is also not correct. These things were done by them under the influence of respondents 2 to 6. If evidence is taken on the basis of materials collected it will be cause prejudice to the petitioner as it will result in great injustice to him. So he has no other remedy except to approach this court seeking the following relief:

- “(i) Order further investigation in Crime No.24/2011 of Konotty Police Station in Malappuram District as provided under Section 173(8) of the Criminal Procedure Code in a fair and proper manner.
- (ii) Direct the 1st respondent to submit further report after conducting proper investigation in Crime No.24/2011 as provided under Section 173(8) of the Criminal Procedure Code.”

4. The 1st respondent filed a statement stating that they have conducted proper investigation and during investigation, it was revealed that only four persons involved in the case and no offence under Sections 143, 147, 148, 324 read with Section 149 of Indian Penal Code

were committed. So those sections were deleted and 5th accused was found to be not in station. So the case was confined to accused Nos. 1 to 4 and also for the offence under Sections 341,323 read with 34 of Indian Penal Code alone. So other allegations in the petitions are not correct. So they prayed for dismissal of the petition.

5. Heard the counsel for the petitioner Abdul Ahad and Learned Public Prosecutor Smt. Maya.

6. The counsel for the petitioner submitted that no proper investigation was conducted and actual persons involved in the crime were not included as well. So he prayed for allowing the petition.

7. The learned Public Prosecutor submitted that the remedy of the petitioner is to file a protest complaint if he is not satisfied with the final report filed.

8. It is seen from the allegations in the statement filed by the respondent and also the documents produced that originally Ext.P1 crime was registered by Kondotty Police as Crime No.24/2011 of Malappuram District under

Sections 143, 147, 148, 341, 323, 324 read with Section 149 of Indian Penal Code against 5 named persons on the basis of Ext.P2 statement given by the petitioner as defacto complainant. It is also in a way admitted that Ext.P3 final report was filed against only four accused persons deleting the 5th accused in the First information Report and also deleting the offences under Sections 143, 147, 148 and 324 read with Section 149 of Indian Penal Code and confined the case to offences under Section 341, 323 and 34 IPC. It was taken on file as CC 232/2011. It is seen from the final report that though crime was registered on 10.1.2011, final report was seen filed on 12.1.2011. There is no allegation in the counter statement that they have given any notice to the defacto complainant when the final report was filed deleting some of the original penal provisions and one of the accused. So under the circumstances, he may be knowing about the result of the investigation only when he received summons from the court. He can very well file an application before the

Magistrate Court itself either under Section 173(8) Code of Criminal Procedure seeking further investigation or he can even file a protest complaint against the final report filed alleging that the proper investigation was not conducted and real persons who were involved in the crime had not been included and medical examination of the petitioner was not done and no attempt was made to conduct proper investigation and seek for enquiry of that case either under Section 202 Code of Criminal Procedure, or even forwarding the case for further investigation which has to be done by the Magistrate exercising his power conferred on him under the Code of Criminal Procedure. Without exhausting that remedy this court feels that it is not proper to entertain such applications before this court, though there is not express bar for same. So under the circumstances, leaving open the right of the petitioner to file necessary application for further investigation under Section 173(8) Code of Criminal Procedure or file a protest complaint against final report filed before the concerned

Magistrate Court for re-dressal of his grievance and such application/complaint is filed, then the concerned magistrate is directed to consider and pass appropriate orders in the application/complaint in accordance with law.

With the above directions and observations, this OP(Cr.) is disposed of.

Sd/ –
K.RAMAKRISHNAN, JUDGE

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