

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

OP(Crl.).No. 236 of 2014 (Q)

CC 2346/2009 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOTTARAKKARA

PETITIONER(S):

MUJEEB M,
S/O.M.ABDUL MAJEED, PARUTHIVILA VEEDU, PAPPANAMCODEU,
PERINGAMALA.P.O., NEDUMANGAD TALUK,
THIRUVANANTHAPURAM DISTRICT, PIN - 6955

BY ADV. SRI.R.B.RAJESH

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 031.
2. SRI.BAIJU,
S/O. PUSHANGADAN, BINDU NIVAS,
NEAR HIGH SCHOOL CHITHARA, CHIRAVOOR MURI,
MANCODE VILLAGE.
3. SRI.TWIJITH @ SANAL,
S/O. SASIDHARAN, SUNILALAYAM, KIZHAKKUM BHAGAM,
CHIRAVOOR MURI, MANCODE VILLAGE.
4. SRI. RAJESH @ KALLAYAM RAJESH,
S/O. PUSHANGADAN, GOVINDAVILASAM, THENGARAMUKAL
KALLAYAM, VATTAPPARA.P.O., NEDUMANGAD,
THIRUVANANTHAPURAM DISTRICT.
5. SRI.SURESH,
S/O.PONNAPPAN CHETTIAR, MULAMOOTIL VEEDU, ANCHAL
THAZHAMEL MURI, ANCHAL VILLAGE, PATHANAPURAM TALUK.

R1 BY GOVERNMENT PLEADER SMT.SAREENA

R2 BY ADV. SRI.SAJU.S.A

R5 BY ADV. SRI.PRAVEEN K. JOY

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 30-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - COPY OF THE FINAL REPORT IN CC.2346/09 PENDING BEFORE THE JFMC-II KOTTARAKKARA
- EXT.P2 - COPY OF THE ORDER IN CMP.3842/08 DATED 20/2/09 OF JFMC-II, KOTTARAKKARA
- EXT.P3 - COPY OF THE ORDER IN CMP.4062/08 DATED 16/1/09 OF JFMC-II, KOTTARAKKARA
- EXT.P4 - COPY OF THE AFORE SAID SALE LETTER DATED 24/10/2007 PRODUCED BY THE R5
- EXT.P5- COPY OF THE SAID SALE LETTER DATED 23/12/07
- EXT.P6- COPY OF THE ORDER IN CMP.1646/13 DATED 5/8/14 PASSED BY THE JFMC-II, KOTTARAKKARA

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B. KEMAL PASHA, J.

.....
O.P.(CrI.) No.236 of 2014
.....

Dated this the 30th day of October, 2015

J U D G M E N T

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According to the petitioner, role of respondents 4 and 5 herein in the case relating to Crime No.172/2008 of Kadakkal Police Station was not properly investigated and the police have falsely exonerated them from the final report in the case in CC No.2346/2009 pending before the Judicial First Class Magistrate's Court-II, Kottarakkara. The investigation was conducted by the Sub Inspector of Police, Kadakkal Police Station. Final report was filed in the matter by the Deputy Superintendent of Police, Punalur.

2. It seems that the investigating officer has exonerated respondents 4 and 5 by highlighting a reason that they were *bona fide* purchasers of the vehicle from A1 and A2. It is the case of the petitioner that his two vehicles were rented out to A1 and A2 for going to Mookambika, and

since the vehicles were not returned by them, he had to file complaints before the Kadakkal police, consequent to which, the crime was registered. Subsequently, the vehicles were traced out and produced before the court below. Even though the petitioner had sought for interim custody of the vehicle under Section 451 Cr.P.C. from the court below, the said request was turned down. Thereafter, the petitioner had approached this Court and obtained orders for the release of the vehicles in his favour and consequently, the vehicles were released. Still now, the records of the vehicles were not handed over to him and the same were not recovered.

3. Respondents 4 and 5 are claiming the status of *bona fide* purchasers of the vehicles on the basis of Exts.P4 and P5. On a perusal of Ext.P4, it seems that the same was executed on 24.10.2007. In the seal affixed in the stamp paper, it seems that the stamp paper was issued on 31.10.2007. Therefore, from the face of Ext.P4 itself, it is

evident that it is a false document fabricated by the said persons. In Ext.P5, a revenue stamp is affixed. At the same time, no signatures are there on the revenue stamp. As per Ext.P5, the vehicle was purchased by the 4th respondent directly from the petitioner. At the same time, it seems that the signature of the petitioner is not there in Ext.P5. Even from the face of Exts.P4 and P5, it is evident that those documents are falsely fabricated with a view to escaping from the clutches of law. Even then, the police have exonerated them and the same was unfortunately approved by the court below in the order passed on the petition filed by the petitioner seeking a further investigation under Section 173(8) Cr.P.C.

4. On going through the matter, it seems that there was culpable negligence from the part of the investigating officers in investigating the matter properly and there are materials to suspect that the police was hand in gloves with the accused persons in the case. The matter requires a

thorough further investigation The District Police Chief shall conduct a further investigation in the matter and file a further final report before the court below. Till then, the proceedings before the court below in the case shall stand stayed.

O.P.(Crl.) is disposed of as above.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/31/10

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PA to Judge