

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

OP(Crl.).No. 299 of 2014 (Q)

MP 2021/2013 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I, ALUVA

PETITIONERS:

**THANKAMMA ABRAHAM, AGED 54 YEARS
W/O.K.C. ABRAHAM, PASSPORT NO. F1 1784086, NURSE
EMPLOYED AT U K AND RESIDING AT WALES, CARDIFF
UNITED KINGDOM REP BY HER POWER OF ATTORNEY HOLDER
K.C. ABRAHAM, AGED 59 YEARS, S/O.CHANDY, KALATHARA ANISHA VILLA
PERUMPILLY, MULAMTHURUTHY, ERNAKULAM DIST-682314**

BY ADV. SRI.JOSHI N.THOMAS

RESPONDENT:

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- 1. GIRISA KUMAR, AGED 48 YEARS
S/O.LATE T K PONNAPPAN, MANAGING DIRECTOR
M/S.PARTHASARATHY PROPERTIES PVT LTD
35/3076 A, IST FLOOR, MADAMBIL BUILDINGS
THAMMANAM MAIN ROAD, PALARIVATTOM, COCHIN-682025**
 - 2. MARIAMMA KURIEN, AGED 59 YEARS
W/O.C K KURIEN , NIRMAL HOUSE
CHERUMATTAPUZHAKARA P O
VAZHAKALA, ERNAKULAM DIST, PIN-682020**
 - 3. KERALA STATE REP BY THE ASSISTANT
PUBLIC PROSECUTOR, ALUVA**
 - 4. THE STATION HOUSE OFFICER
AND SUB INSPECTOR OF POLICE
TRIKKAKARA POLICE STATION-682020**
 - 5. THE ASSISTANT COMMISSIONER OF POLICE
THRIKKAKKARA, COCHIN-682020**
 - 6. THE STATION HOUSE OFFICER AND SUB
INSPECTOR OF POLICE, PALARIVATTOM-682025**

BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 13-02-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

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- P1:- TRUE COPY OF POWER OF ATTORNEY EXECUTED DATED 19.005.2014 BY THE PETITIONER IN FAVOUR OF K C ABRAHAM
- P2:- TRUE COPY OF DETAILS OF PAYMENT MADE TO 1ST RESPONDENT BY THE PETITIONER
- P3:- TRUE COPY OF BILL DTD 25/1/2009 ISSUED BY THE NARMADA HANDICRAFT INDUSTRIES CO-OPERATIVE SOCIETY LTD AMBALLOOR
- P4:- TRUE COPY OF LETTER DTD 9/5/2009 ISSUED BY THE 1ST RESPONDENT
- P5:- TRUE COPY OF FIR 373/12 REGISTERED BY 4TH RESPONDENT
- P6:- TRUE COPY OF COMPLAINT MP 2021/13 FILED BY THE PETITIONER BEFORE THE JFCM COURT I, ALUVA
- P7:- TRUE COPY OF FIR NO 1459/13 REGISTERED OF THE 4TH RESPONDENT DATED 19.10.2013
- P8:- TRUE COPY OF M P NO 1800/14 FILED BY THE PETITIONER BEFORE THE JFCM I ALUVA DATED 16.10.2014
- P9:- TRUE COPY OF RT ACT APPLICATION SUBMITTED BEFORE THE PUBLIC INFORMATION OFFICER OF INSPECTOR GENERAL OF POLICE RANGE I G ERNAKULAM DTD 25/9/2014
- P10:- TRUE COPY OF REPORT DTD 7/10/2014 SUBMITTED BY THE 4TH RESPONDENT BEFORE THE JFCM COURT I ALUVA
- P11:- TRUE COPY OF INFORMATION SUPPLIED BY THE STATE PUBLIC INFORMATION OFFICER DTD 6/11/2014
- P12:- TRUE COPY OF INFORMATION DTD 16/10/2014 SUPPLIED BY THE STATE POLICE INFORMATION OFFICER OF THE OFFICE OF COMMISSIONER OF POLICE KOCHI CITY
- P13:- TRUE COPY OF REPORT DTD 27/10/2014 SUBMITTED BY THE 5TH RESPONDENT BEFORE THE JFCM COURT, ALUVA
- P14:- TRUE COPY OF M P NO 2371/2014 FILED BY THE PETITIONER BEFORE THE JFCM COURT I , ALUVA DATED 06.11.2014
- P15:- TRUE COPY OF ORDER DTD 28/11/2014 IN MP 2871/14 ISSUED BY THE JFCM COURT, ALUVA

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

P. UBAID, J.

O.P.(CrI) No.299 of 2014

Dated this the 13th day of February, 2015

JUDGMENT

A complaint filed by the petitioner herein before the Judicial First Class Magistrate Court, Aluva was forwarded for investigation to the Thrikkakara police under Station 156(3) Cr.P.C. Crime was accordingly registered on the said complaint by the Thrikkakara police as Crime No.1459/2013. Ext.P6 is copy of the said complaint, which has now become part of the FIR, as First Information Statement. Finding that the place of incident is within the limits of the Palarivattom Police Station, the said crime was transferred to the Palarivattom Police Station, where it was re-registered as Crime No.1426/2013. During investigation, the police noticed another investigation relating to the very same incident going on in Crime No.394/2012. Finding that two investigations cannot proceed, the Palarivattom Police dropped further action in Crime No.1426/2013, and accordingly, submitted a report before the learned Judicial First Class Magistrate Court-I, Ernakulam. Pending the proceedings the

petitioner filed a petition before the learned Magistrate under Section 340 Cr.P.C., for prosecution against the Sub Inspector of Police, Thrikkakara under Section 195 IPC, on the allegation that the report submitted by him is false, that the place of incident is within the limits of Palarivattom Police Station. Ext.P14 is copy of the said application brought under Section 340 Cr.P.C. Finding that action under Section 340 Cr.P.C. is possible only in a pending judicial proceeding, the learned Magistrate dismissed the said application. The petitioner is aggrieved. In this original petition brought under Article 227 of the Constitution of India, he seeks two prayers essentially. One is to restore the Ext.P6 complaint filed by him before the court, and the other relief is to direct the Judicial First Class Magistrate Court-I, Aluva to restore the Ext.P14 application under Section 340 Cr.P.C., and proceed according to law.

2. On hearing both sides, I find that the two reliefs sought by the petitioner cannot be granted by this Court under Article 227 of the Constitution of India. As regards the complaint or crime that stands referred, the petitioner has remedies under the law. Once a complaint is forwarded for investigation by the court to the police under Section 156(3)Cr.P.C., and a crime is also

registered on the said complaint by the police, the complaint becomes part of the FIR. It goes off the files of the court and gains the status of First Information Statement. The said complaint which has gone off the files and become part of the FIR registered by the police cannot be restored by the court, in any circumstance. If the police has referred the crime or has dropped further action, and submitted report accordingly in court, the petitioner's remedy is to challenge that final report, or to file a protest complaint, or he can even make an application for further investigation. When such remedies are possible under the law, the petitioner strangely seeks the relief of restoring the complaint which has gone off the files. No doubt, such a relief cannot be granted.

3. As regards the prayer regarding Ext.P14 application, I find that the application was rightly dismissed by the learned Magistrate. An application under Section 340 Cr.P.C. can be entertained by a court; whether it is civil or criminal court, only when a judicial proceeding is pending. Such an application can be entertained and enquiry can be conducted only if there is allegation of commission of any offence referred to in Section 195 (1)(b)Cr.P.C., during a judicial proceeding, or in relation to a

judicial proceeding. Here, there was no proceeding before the learned Magistrate when the petitioner brought such a petition. The complaint filed by him was referred for investigation under Section 156 Cr.P.C., and thus the complaint had gone off the files. When there was no judicial proceeding at all before the learned Magistrate, the court could not have entertained an application for enquiry under Section 340 Cr.P.C. Transferring a crime to another police station for investigation wrongly or on a mistaken understanding regarding the place of incident, will not constitute the offence punishable under Section 193 or 195 Cr.P.C. When there was no proceeding before the learned Magistrate, and when investigation was in progress, the petitioner herein brought a complaint under Section 340 Cr.P.C. On such a complaint, no action is possible because there was no proceeding at that time before the learned Magistrate. I find that Ext.P14 application was rightly dismissed by the learned Magistrate, and so there is no question of directing the court below to restore the complaint and proceed for enquiry under Section 340 Cr.P.C. Thus, I find that the second relief also cannot be granted.

4. As discussed in the foregoing paragraphs, I find that the

petitioner is not entitled to get any of the reliefs sought in this proceeding. He will have to pursue the proper and appropriate remedy available to him under the Code of Criminal Procedure, as observed earlier.

In the result, this Original Petition (Crl) is dismissed.

Sd/-

P. UBAID, JUDGE

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