

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WA.No. 581 of 2015 () IN WP(C).21566/2014

APPELLANT(S)/PETITIONER/ADDL.4TH RESPONDENT :-

J. RAMKUMAR, AGED 39 YEARS
PROPRIETOR, ARYA'S HOTEL, CHENGANNUR
ALAPPUZHA, RESIDING AT ANJILIVILAYIL HOUSE
THONALLOOR MURI, PANDALAM, PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.N.RADHAKRISHNAN(THIRUVALLA)

RESPONDENT(S)/RESPONDENTS/PETITIONER & RESPONDENTS 1 TO 3 :-

1. ASHOK JACOB, AGED 41 YEARS
S/O.P.V.JACOB, PADIPPURACKAL VEEDU, THITTAMEL MURI
CHENGANNUR VILLAGE, CHENGANNUR TALUK.
2. STATE OF KERALA
REPRESENTED BY THE SECRETARY, HOME DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
3. DEPUTY SUPERINTENDENT OF POLICE
CHENGANNUR, ALAPPUZHA DISTRICT - 689 121.
4. SUB INSPECTOR OF POLICE
CHENGANNUR POLICE STATION, CHENGANNUR - 689 121.

R2 TO R4 BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS
R1 BY SMT.INDU SUSAN JACOB

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24-03-2015,
ALONG WITH OPC. 2515/2014 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

jvt

APPENDIX

Appellant's Exhibits :-

Annexure-A1 :- Copy of statement filed by the 3rd respondent in W.P.(C) No.24782 of 2014.

Respondent's Exhibits :- NIL.

//True Copy//

P.A. to Judge

**ASHOK BHUSHAN, Ag. C.J &
A.M. SHAFFIQUE, J.**

**W.A. No.581 of 2015,
W.P.(C) Nos.21566 & 24782 of 2014
and
O.P.(C) Nos.2515 & 3083 of 2014**

Dated this the 24th day of March 2015

J U D G M E N T

Shaffique, J.

W.A.No.581 of 2015 has been filed challenging the order dated 24.2.2015 in I.A.No.15334 of 2014 in W.P.(C) No.21566 of 2014. The appellant is the additional 4th respondent in the said writ petition.

2. During the hearing of the above writ appeal, we have called for certain connected matters, in which, the subject matter is the dispute that has arisen between the petitioner and the additional 4th respondent, viz; W.P.(C) Nos.21566 & 24782 of 2014 and O.P.(C) Nos.2515 & 3083 of 2014. All these writ petitions arises out of the dispute between the landlord and tenant, which resulted in filing of O.S.No.43 of 2013 pending before Sub Court, Chengannur.

3. W.P.(C) No.21566 of 2014 is filed by the defendant in the suit, who is the landlord of the building. The tenant is the

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plaintiff. The suit is filed seeking for recovery of an amount of ₹74,68,750/- with future interest and incidental charges. The basis of the suit is an agreement dated 4.4.2009. The landlord coming to know about the agreement, when it was produced before the civil court, filed a complaint registered as Crime No.292 of 2014 before the Chengannur Police Station on 14.2.2014 inter alia contending that the said document is the outcome of forgery. The landlord denied the execution of the agreement. Despite the registration of the crime, since no action had been taken by the police to conduct further investigation in the matter, W.P.(C) No.21566 of 2014 was filed seeking for a direction to the police to investigate the crime in accordance with law and to take appropriate action to get the forged document produced in the suit to enable the police to forward the same for scientific examination.

4. An interim order was passed in the said writ petition on 28.10.2014, by which, this Court directed the Investigating Officer to take necessary steps to collect the document in question and to get the documents scientifically examined. I.A.No.15334 of 2014 came to be filed by the tenant seeking for modification of the said order, which was dismissed by the

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learned Single Judge.

5. W.P.(C) No.24782 of 2014 has been filed by the tenant seeking for a direction to handover the investigation of Crime No.292 of 2014 to any other police officer than the 3rd respondent. It is inter alia contended that the 3rd respondent is under the influence of the landlord in the case.

6. O.P.(C) No.2515 of 2014 was filed by the tenant, who is the plaintiff in the said suit challenging Ext.P4 order dated 24.9.2014 passed by the District Court dismissing the transfer application filed by the petitioner to transfer the civil suit to another court on the ground that there is a possibility of the Presiding Officer being influenced by the landlord.

7. O.P.(C) No.3083 of 2014 has been filed by the landlord seeking for a direction to comply the interim order passed by this Court in W.P.(C) No.21566 of 2014.

8. Having regard to the aforesaid pleadings in the writ petition and having heard the learned counsel appearing for both landlord and tenant, we are of the view that this appeal as well as the writ petitions can be disposed of by a common judgment.

9. Apparently, the dispute between the parties is related to investigation of Crime No.292 of 2014 of Chengannur Police

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Station. As rightly admitted by the learned counsel appearing on either side, in a case where a document is produced by one of the parties and if there is any complaint that the said document is forged, it is always open for the affected party to file a complaint before the police alleging that forgery has been committed and in such an event, the police shall investigate the crime and for that purpose, it is definitely required that the document, which is alleged to be forged, is taken into custody by the police and necessary investigation has to be conducted in the matter. Therefore, for that purpose, necessarily the investigating officer will have to approach the court and file necessary application and it is for the court to consider the respective contentions of the parties and then decide to handover the document to the investigating officer. It is brought to the notice of this court that even before filing W.P.(C) No.21566 of 2014, the investigating officer has filed a memo through the Prosecutor for handing over the said document to the investigating officer. Apparently, that has not been done.

10. By order dated 28.10.2014, the learned Single Judge had only permitted the investigating officer to approach the civil court for seeking custody of the document for the purpose of

further examination in the matter. We do not think that such an order suffers from any illegality.

11. The contention urged by the learned counsel for the appellant is that there is chance of the document being tampered if the original document is handed over to the investigating officer. According to him, the civil court by itself can sent the document for scientific examination. We do not think that such an apprehension is well founded. When a document is produced before the civil court and it is handed over to the investigating officer, the court shall verify the document and ensure that sufficient certified copies are retained to ensure that no tampering takes place after the same has been handed over to the investigating officer.

12. In that view of the matter, we do not think that the order dated 28.10.2014 suffers from any infirmity which required to be modified as claimed in I.A.No.15334 of 2014. Therefore, the learned Single Judge was justified in dismissing the said petition. However, we only observe that the present investigating officer will have to file a proper application for custody of the document before the civil court, which shall be considered by the civil court and it shall be ensured that no tampering shall take

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place to the said document. For that purpose, sufficient attested copies and if possible colour photocopies of the document shall be retained by the court before it is handed over to the investigating officer, which shall be kept in a sealed cover to ensure that no tampering takes place as apprehended by the learned counsel appearing for the tenant. Hence, W.A.No.581 of 2015 is disposed of as stated above.

13. As far as O.P.(C) No.2515 of 2014 is concerned, we do not think that the reason stated for transferring the case is justified. The District Court has rightly dismissed the application for transfer. The apprehension expressed by the petitioner is totally unfounded and we agree with the view taken by the District Court in the matter and accordingly, O.P.(C) No.2515 of 2014 is dismissed.

14. In the light of the judgment passed in W.A.No.581 of 2015, there is no reason to issue any further direction in O.P.(C) No.3083 of 2014. Accordingly, the same is closed.

15. In W.P.(C) No.21566 of 2014, the only relief sought for is to issue a direction to the investigating officer to complete the investigation of the crime. Having regard to the fact that we have already issued appropriate directions in this regard in

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W.A.No.581 of 2015, we do not think it necessary to keep the writ petition pending. We only observe that the investigation of the crime shall be completed as early as possible. The writ petition is disposed of as above.

16. In W.P.(C) No.24782 of 2014, the petitioner wanted to change the Investigating Officer. It is submitted that the concerned Deputy Superintendent of Police against whom the petitioner had a complaint is already transferred and therefore, there is no necessity to proceed with this petition and accordingly, the same is closed.

Sd/-
ASHOK BHUSHAN
Ag. CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

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