

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WA.No. 744 of 2015 () IN WP(C).27507/2014

AGAINST THE ORDER IN WP(C) 27507/2014 of HIGH COURT OF KERALA
DATED 02-03-2015

APPELLANT(S)/3RD RESPONDENT IN THE WP(C) :-

HARIKUMAR, AGED 45 YEARS, S/O.VASUDEVAN PILLAI,
VAZHAPPALLIL, CHOORAKKODU, ENATHU VILLAGE,
ADOOR, PATHANAMTHITTA.

BY ADV. SRI.D.KISHORE

RESPONDENT(S)/PETITIONERS 1 TO 4 AND RESPONDENTS 1 AND 2 IN THE WP(C) :-

1. T.R. AJITH KUMAR, AGED 50 YEARS, S/O.RAMANKURUP,
THATTANAPPALLY, PERINGHADU P.O.,
ADOOR, PATHANAMTHITTA - 685 590.
2. A.V.ANU, ALINTHEKKETHIL, MELOODU P.O.,
ADOOR, PATHANAMTHITTA - 685 590.
3. K.MADHAVAN UNNITHAN, THULASI VILASOM,
KARUVATTA, ADOOR P.O.,
PATHANAMTHITTA - 685 590.
4. MUKESH GOPINATH, VIRANICKAL HOUSE,
MALAKKARA, ADOOR P.O., PATHANAMTHITTA - 685 590.
5. STATE OF KERALA REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HOME, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
6. SUB INSPECTOR OF POLICE,
ADOOR POLICE STATION, PATHANAMTHITTA - 685 590.

R1-R4 BY ADV. SRI.P.HARIDAS

SMT.S.SIKKY

SRI.P.C.SHIJIN

R5 & R6 BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No.744 of 2015

Dated this the 27th day of March 2015

J U D G M E N T

Shaffique, J.

This appeal is filed against the interim order dated 2.3.2015 passed by the learned Single Judge in W.P.(C) No.27507 of 2014. The 3rd respondent in the writ petition is the appellant.

2. Respondents 1 to 4 herein have filed the writ petition seeking to quash Ext.P1, the First Information Report and Ext.R4(i), the additional report filed by the police in the matter relating to an investigation which commenced at the instance of the appellant herein, who was the 3rd respondent in the writ petition. The issue relates to misappropriation of copper having a weight of 1056.882kg. The investigation is admittedly in progress. The learned Single Judge by the interim order, took note of the report dated 27.10.2014, submitted by the Inspector of Police, Adoor, which indicated that there is proper accounting in the minutes regarding the

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major quantity of copper, but accounts are not seen regarding 1797kgs of copper sheets and that by itself will not attract prosecution. Further it was observed in the report that there were minutes of the general body and the executive committee regarding the issue. Hence, the learned Single Judge observed that the investigating authority will have to verify the minutes and the bye-law of the committee to find out whether any decision has been taken in the general body meeting or in the executive committee meeting regarding 1797kgs of copper sheets. If any such authorisation is available, the allegation of cheating or misappropriation will not have any significance. Hence, it was directed that the investigating officer will meticulously verify the whole minutes and connected papers and also the bye-law of the committee in detail to find out whether there is any unauthorised appropriation constituting misappropriation. A direction was issued to submit a proper and satisfactory report within one month.

3. Heard the learned counsel for the appellant, the learned counsel appearing for respondent Nos.1 to 4 and the learned Government Pleader appearing for respondent Nos.5 and 6.

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4. The main contention urged by the learned counsel for the appellant is regarding the legality of the writ court directing investigation in a particular manner. It is submitted that the investigation of a crime is purely within the realm of jurisdiction of the investigating officer and the direction issued by the Court amounts to interference in the investigating process. It is also argued that the investigating officer is not precluded from conducting any further investigation other than to verify the registers and find out whether proper authorisation has been given or not. The learned counsel also relied upon the judgment of the Apex Court in **Krishan Lal v. Dharmendra Bafna and another** [2009 (7) SCC 685] and **Ojha M.N. and others v. Alok Kumar Srivastav and another** [2009 (9) SCC 682].

5. On the other hand, the learned counsel appearing for the writ petitioners/respondents 1 to 4 herein submitted that the issue involved in the writ petition was whether the First Information Report as well as the additional report submitted by the investigating officer can be quashed with reference to the materials made available. In particular, the complaint is alleging offence of breach of trust under Sec.406

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of IPC. It has to be verified whether there is any decision or entry in the minutes and whether authorisation was given to sell the articles which were in excess of what was used for the purpose of temple. It is in that context, such direction has been issued by the learned Single Judge. Such direction is issued only to ensure that the investigation is being conducted in a proper manner and to verify whether an offence under Sec.406 IPC has made out.

6. Having regard to the fact that the investigating officer has already proceeded with the investigation, the question to be looked into by the writ court in the present writ petition is whether the First Information Report and the additional report filed by the police requires to be quashed or not.

7. In **State of Orissa v. Ujjal Kumar Burdhan** (AIR 2012 SC (Supp) 802), while considering the scope of jurisdiction to be exercised for quashing FIR Supreme Court held as under:

"7. It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extra-ordinary power has to be exercised

sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in-charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.

8. In **State of West Bengal and Ors. v. Swapan Kumar Guha and Ors.**¹, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus:

"An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed....Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case....If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence."

9. On a similar issue under consideration, in **Jeffrey J. Diermeier and Anr. v. State of West Bengal and Anr.**², while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (D. K. Jain, J.) speaking for the Bench, has observed as follows:

"20. The section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of Court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice."

1. (1982) 1 SCC 561: 1982 SCC (Cri) 283 : (1982) 3 SCR 121 : (AIR 1982 SC 949).

2. (2010) 6 SCC 243 : (AIR 2011 SC (Cri) 1215 : 2010 AIR SCW 3493).

8. Therefore, in the present case it may not be proper for the Court to direct the investigation to be conducted in a particular manner or to monitor the investigation. The Court cannot direct further investigation to be done in the manner, especially in a case relating to quashing FIR and additional report.

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9. Under such circumstances, we are of the considered view that the learned Single Judge ought to have considered whether the relief sought for in the writ petition can be granted at this stage of proceeding without waiting for any further report from the investigating officer.

Having regard to the aforesaid factual situation, we allow the writ appeal, setting aside the order dated 2.3.2015 passed by the learned Single Judge. Parties are entitled to appear before the learned Single Judge seeking for an early disposal of the writ petition. The observations made by us shall not preclude the parties from raising any contention which is legally permissible.

**Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE**

**Sd/-
A.M. SHAFFIQUE
JUDGE**

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P.A. TO JUDGE