

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WA.No. 2741 of 2015 IN WP(C).35009/2015

AGAINST THE ORDER IN WP(C) 35009/2015 DATED 04-12-2015

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APPELLANT/3rd PARTY :

GEORGY GEORGE, AGED 34 YEARS,
S/O.GEORGE, PALIYATHU HOUSE,
THADIYANPADU KARA, IDUKKI VILLAGE,
IDUKKI DISTRICT.

BY ADVS.SRI.K.GOPALAKRISHNA KURUP (SR.)
SRI.D.KISHORE

RESPONDENTS/PETITIONER AND RESPONDENTS 1 TO 5 IN WPC :

1. MUKESH AGED 28 YEARS
S/O MOHANAN, PARACKAL HOUSE, 3RD CAMP
KARUNAPURAM VILLAGE, UDUMPANCHOLA TALUK - 685 613.
2. UNION OF INDIA
REPRESENTED BY SECRETARY, MIISTRY OF HOME AFFAIRS
NORTH BLOCK, NEW DELHI - 110 001.
3. THE DIRECTOR
CENTRAL BUREAU OF INVESTIGATION, CBI HEAD QUARTERS
NEW DELHI - 110 001.
4. THE HOME SECRETARY
STATE OF KERALA, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001
5. THE STATE POLICE CHIEF
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM - 695 001.
6. THE ASSISTANT SUPERINTENDENT OF POLICE (ASP)
OFFICE OF THE DEPUTY SUPERINTENDNET OF POLICE
MUNNAR, DEVIKULAM, IDUKKI - 685 613.

R1 BY SRI.C.S.AJITH PRAKASH
R2 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R3 BY SRI.P.CHANDRASEKHARA PILLAI, SC, C.B.I.
R4 TO R6 BY SR.GOVERNMENT PLEADER, SRI.P.I. DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT'S EXHIBITS :

ANNEXURE 1 : TRUE COPY OF THE FINAL REPORT IN CRIME NO.70/2005 OF DEVIKULAM
POLICE STATION.

ANNEXURE 1(A) : THE ENGLISH TRANSLATION OF ANNEXURE 1.

RESPONDENTS' EXHIBITS:

NIL

/TRUE COPY/

PA TO JUDGE

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

W.A. No. 2741 OF 2015

Dated this the 21st day of December, 2015

JUDGMENT

Ashok Bhushan, C.J.

Heard Sri. K. Gopalakrishna Kurup, learned Senior Counsel appearing for the appellant, learned counsel for the 1st respondent/writ petitioner and learned Senior Government Pleader, Sri.P.I. Davis.

2. This writ appeal has been filed against the order dated 04.12.2015 passed in W.P.(C) No.35009 of 2015. The appellant was not party to the writ petition and by grant of leave by our order dated 17.12.2015 this appeal has been filed.

3. The writ petition was filed by the 1st respondent seeking for the following reliefs:

"i. Issue a writ of mandamus or any other appropriate writ, order or direction commanding the 2nd respondent to take over and conduct investigation into the crime No.s20/2015, 21/2015 and 22/2015 registered by the SHO of Devikulam Police Station, in Idukki District, Kerala and to conduct an impartial investigation into the offences alleged against the accused in the FIR.

ii. To issue in the nature of mandamus or any other appropriate order or direction commanding the respondents 3

to 5 to hand over the records relating to the Crime of Nos.20/2015, 21/2015 and 22/2015 registered by the SHO of Devikulam Police Station in Idukki District to the 2nd respondent, in the interest of justice.”

4. The appellant was one of the accused in Crime Nos.20 to 22 of 2015 of Devikulam Police Station. The grievance raised by learned counsel for the appellant is that in the writ petition the appellant's name was mentioned, but he was not impleaded in the writ petition and observations were made by learned Single Judge which may affect the rights of the appellant in the investigation which is going on in the aforesaid crime.

5. Learned counsel for the 1st respondent/writ petitioner contended that there was serious allegations against which crime has been registered. With reference to an earlier proceedings a reference has been made in paragraph 24 of the appeal, which is a different crime and is not in connection with the FIR which is now registered.

6. We have considered the submissions made by learned counsel for the parties and perused the records.

7. It is not disputed that the appellant who was arrayed as one of the accused in the crime registered was not

party to the writ petition. The prayer in the writ petition was to handover the case to CBI. In the facts of the present case it is not necessary for us to enter into the issues raised. Interest of justice will be served in setting aside the order dated 04.12.2015 and remitting the matter before the learned Single Judge for fresh consideration and to pass fresh orders after hearing the appellant, as well as learned counsel for the writ petitioner and learned Government Pleader.

We make it clear that our order may not be interpreted to mean that investigation in any manner has been stopped by this Court or stayed. Investigation may go on, subject to the order to be passed by learned Single Judge in the writ petition. The Writ Appeal is disposed of accordingly.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**

WA No. 2741 of 2015

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