

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

WP(C).No. 748 of 2015 (P)

PETITIONER(S):

**SUJATHA,
W/O. RAGHUNATHA, PAZHAMALA HOUSE, KALLOOPARA VILLAGE,
MUTTATHUKONAM MURI, P.O. PUTHUSSERY, PIN-689 602.**

BY ADV. SRI.V.C.MADHAVANKUTTY

RESPONDENT(S):

- 1. THE CIRCLE INSPECTOR OF POLICE,
KOZHANJERY, PATHANAMTHITTA DISTRICT-689 645.**
- 2. THE SUPERINTENDENT OF POLICE,
PATHANAMTHITTA-689 645.**
- 3. THE SUPERINTENDENT OF POLICE,
CENTRAL BUREAU OF INVESTIGATION, ERNAKULAM - 682 016.**
- 4. THE STATE OF KERALA,
REPRESENTED BY SECRETARY, DEPARTMENT OF HOME AFFAIRS,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.**

**R3 ADV. SRI.P.CHANDRASEKHARA PILLAI, C.B.I.
R1,R2 & R4 BY ADV. STATE ATTORNEY SRI.P. VIJAYA RAGHAVAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- P1. TRUE COPY OF THE FIR IN CRIME NUMBER 787 OF 2012 OF KOIPURAM POLICE STATION DATED 20-10-2012.
- P2. TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 19-11-12.
- P3. TRUE COPY OF THE 2ND APPLICATION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 5-11-12.
- P4. TRUE COPY OF THE POST-MORTEM CERTIFICATE ISSUED FROM GOVERNMENT HOSPITAL, THIRUVALLA DATED 21-10-12.
- P5. TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 3-11-12.
- P6. CERTAIN PHOTOGRAPHS OF DECEASED RAHUL.
- P7. THE NEWS REPORTED IN KERALA KAUMUDI DAILY DATED 4-11-13.
- P8. THE NEWS REPORTED IN MALAYALA MANORAMA DAILY DATED 24-11-12.
- P9. THE NEWS REPORTED IN MANGALAM DAILY DATED 24-10-13.
- P10. ANOTHER APPLICATION FILED BY PETITIONER BEFORE THE 1ST RESPONDENT DATED 12-11-13.
- P11. TRUE COPY OF THE PETITION FILED BEFORE THE STATE INFORMATION OFFICER DATED 17-10-2013.
- P12. THE REPLY RECEIVED TO EXT.P11 DATED 26-10-2013.
- P13. THE APPLICATION FILED BY THE PETITIONER BEFORE THE STATE INFORMATION OFFICER UNDER RIGHT TO INFORMATION ACT DATED 15-9-2014 AND SENT ON 17-9-2014.
- P14. THE REPLY RECEIVED FROM STATE PUBLIC INFORMATION OFFICER AS NO. T1/105460/2014/PHQ DATED 13-10-2014.
- P15. THE REPLY RECEIVED FROM STATE PUBLIC INFORMATION OFFICER AS NO. B5/11916/14 TR DATED 13-11-14.

msv/

WP(C).No. 748 of 2015 (P)

RESPONDENT(S)' EXHIBITS:

EXT.R1(a): TRUE COPY OF THE ORDER NO.70/GI/2013/PSD DTD.2.3.2013.

EXT.R1(b): TRUE COPY OF THE ORDER NO.D1-37002/13 N DATED 29.11.2013.

EXT.R1(c): TRUE COPY OF THE FSL REPORT DTD.26.6.2013.

//TRUE COPY//

P.S.TO JUDGE.

MsV/

ALEXANDER THOMAS, J.

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W.P.(C) No.748 of 2015

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Dated this the 31st day of July, 2015

J U D G M E N T

The prayers in this Crl.M.C are as follows:

- i. Issue a writ of mandamus or any appropriate writ, order or direction, directing respondents 1 and 2 to hand over the entire files, records and investigation of crime number 787 of 2012 of Koipuram Police Station handled by them so far, to the 3rd respondent and complete the investigation as expeditiously as possible.
- ii. Issue such other order or direction, as this Hon'ble court deems fit and proper in the circumstances of the case.

2. The respondent officer concerned (Inspector of Police, Kozhenchery) had earlier filed statement dated 16.1.2015 wherein the details of the investigation till then has been dealt with. It will be profitable to refer to the contents of paras 5 to 12 of the such statement dated 16.1.2015, which reads as follows:

“5. It is submitted that the allegations contained in Ext.P2 were also enquired into properly during investigation. The petitioner has alleged that the tempo van bearing registration No.KL-03-E-9172 followed the motor cycle bearing Reg.No.KL-28A-5345 ridden by the deceased Rahul and the van deliberately hit the motor bike and that one Mr.Sajan was driving the tempo van at the relevant time. Based on the allegation of the petitioner, the then Sub Inspector of Police conducted a detailed examination of the said vehicle through the Scientific Assistant, DCRB, Kollam. He collected the sample paint from the body of the vehicles alleged to have been involved in the accident and the same were sent to the FSL, Thiruvananthapuram through the Hon'ble JFMC-II, Pathanamthitta. The allegation of the petitioner that the Sub Inspector of Police and

ASI were trying to protect the actual culprit who is the driver of the tempo van due to high handed influence and hence did not conduct proper investigation is absolutely false and hence denied.

6. It is submitted that the allegation of the petitioner in Ext.P2 that frequent calls were made from a mobile phone to the mobile phone of deceased Rahul prior to the occurrence was also enquired into. In fact pursuant to the allegations raised in Ext.P2, the DySP, Pathanamthitta vide Order No.70/G1/2013/PSD dated 02.03.2013 had directed the Inspector of Police, Kozhenchery to take over the investigation regarding the allegations raised in Ext.P2. True copy of the above order dated 02.03.2013 is produced herewith and marked as Annexure R1(a). Pursuant to the above order the Inspector of Police Kozhencherry took over the investigation of the above crime and continued with the investigation.

7. It is respectfully submitted that I took charge as the Inspector of Police, Kozhenchery on 07.03.2013 and continued with the investigation. I questioned the witnesses and recorded their statements. The persons referred in Ext.P2 complaint were also questioned and their statements were recorded on questioning. The above witnesses had categorically stated that the accident occurred due skidding of the bike and that the tempo van was never involved in the accident as alleged by the petitioner.

8. It is respectfully submitted that while the investigation was going on as per Order No.D1-37002/13 N dated 29.11.2013 issued by the District Police Chief, Pathanamthitta, the investigation of the above case was handed over to Mr.R. Chandrasekharan Pillai, DySP, Pathanamthitta and in compliance with the above order he took over the investigation on 10.12.2013 and continued with the investigation till 24.02.2014. True copy of the above order dated 29.11.2013 is produced herewith and marked as Annexure R1(b). The above order was passed on the basis of the representation submitted by the petitioner before the Hon'ble Home Minister on 31.10.2013.

9. It is submitted that from 24.02.2014 onwards Mr. Santhosh Kumar, DySP, Pathanamthitta has been conducting the investigation of the above case. During investigation 27 witnesses including 2 eye witnesses named Mr.Lal@Sethu, Christeen, the medical officer who conducted the autopsy, Motor Vehicle Inspector Mr.K. Manoj who conducted the testing of Motor cycle, Smt.S. Aparna, Scientific Assistant, DCRB, Kollam who collected the sample paints from both vehicles were also questioned and their statements were recorded.

10. It is submitted that the result of the FSL report after examining the sample paints from both the vehicle was received from the FSL, Thiruvananthapuram on 25.01.2014 and the result of examination was "Dissimilar" which would indicate that the allegation of the petitioner is baseless and the tempo van did not hit the motor bike. True copy of the FSL report dated 26.06.2013 is

produced therewith and marked as Annexure R1(c).

11. It is respectfully submitted that the investigation conducted revealed that the son of the petitioner Rahul.P.Nath while driving the motor cycle bearing Reg.No.KL-28A-5345 on 20.10.2012 at 16 hrs. along Kumbanadu – Puramattam road, the motor cycle accidentally skidded on the tar road which was wet due to rain and slippery and as a result, sustained grievous injuries and later on succumbed to the injuries on the same day on his way to hospital.

12. It is submitted that investigating officer has conducted a fair, proper and impartial investigation into the above crime and the allegations contrary to the same are false and hence denied. Now the attempt of the petitioner is to anyhow convert the motor occurrence into a motor vehicle accident so as to enable him to file a claim petition before the Motor Accidents Claim Tribunal for compensation. Since the investigation of the above case has been conducted properly, there is no need to transfer the case to any other agency.”

3. Later, this Court had directed that the statement be filed on behalf of the respondents by the Deputy Superintendent of Police who was investigating the case. Pursuant to that direction, the Deputy Superintendent of Police, Pathanamthitta has filed a statement dated 30.3.2015 dealing with the subsequent aspects of the investigation. Paragraph 2 to 8 of the said statement reads as follows:

“2. It is submitted that I took charge as DySP, Pathanamthitta on 24.02.2014 and since then I have been conducting the investigation of the above crime. Initially the investigation was being conducted by Nuo Aman, the then Sub Inspector of Police, Koipuram. On a perusal of the case diary it is found that the allegations contained in Ext.P2 were also enquired into properly during investigation. It is alleged by the petitioner that a tempo van bearing reg. No.KL03-E-9172 followed the motor cycle bearing reg. No.28A-5345 ridden by the deceased Rahul and that the above van deliberately hit against the motor bike. It is further alleged by the petitioner that one Mr. Sajan was driving the tempo van at the relevant time. Since serious allegations were raised by the petitioner,

detailed investigation was being conducted by the then Inspector of Police. The vehicle was examined through scientific assistant, DCRB, Kollam. He collected the sample paint from the body of the vehicles alleged to have been involved in the accident and sent the same to the FSL, Thiruvananthapuram through the Hon'ble JFMC-II, Pathanamthitta. The further allegation contained in Ext.P2 that frequent calls were made from the mobile phones to the mobile phone of the deceased Rahul prior to the incident was also enquired into. Since the allegations were raised against the Investigating Officer by the petitioner, the then DysP, Pathanamthitta vide order No.70/GL/2013/PSD dated 02.03.2013 had directed the Inspector of Police, Kozhenchery to take over the investigation of the above case and also to conduct a detailed investigation on Ext.P2.

3. It is submitted that after taking over the charge of the investigation the Inspector of Police, Kozhenchery continued the investigation from 7.3.2013 onwards. He questioned the witnesses including the persons referred to in Ext.P2 complaint and their statements were recorded. The above witnesses had categorically stated that the accident occurred due to skidding of the bike and that the tempo van was never involved in the accident as alleged by the petitioner.

4. It is respectfully submitted that while the investigation was in progress as per Order No.D1-37002/13 N dated 29.11.2013 issued by the District Police Chief, Pathanamthitta, the investigation was handed over to Mr. R. Chandrasekharan Pillai, the then DySP, Pathanamthitta and in furtherance thereof he took over the investigation on 10.12.2013 and continued with the investigation till 24.02.2014. The said order was passed on the basis of the representation submitted by the petitioner before the Hon'ble Home Minister on 31.10.2013.

5. It is submitted that from 24.02.2014 onwards I have been conducting the investigation of the above case. During investigation 27 witnesses including 2 eye witnesses named Mr.Lal @ Sethu, Christeen, the medical officer who conducted the autopsy, Motor Vehicle Inspector Mr. K. Manoj who conducted the testing of Motor cycle, Smt. S. Aparna, Scientific Assistant, DCRB, Kollam who collected the sample paints from both vehicles were also questioned and their statements were recorded.

6. It is submitted that the result of the FSL report after examining the sample paints from both the vehicle was received from the FSL, Thiruvananthapuram on 25.01.2014 and the result of examination was "Dissimilar" which would indicate that the allegation of the petitioner is baseless and the tempo van did not hit the motor bike.

7. It is respectfully submitted that the investigation conducted revealed that the son of the petitioner Rahul.P.Nath while driving the motor cycle bearing Reg.No.KL.28A-5345 on 20.10.2012 at 16 hrs. along Kumbanadu - Puramattam road, the motorcycle accidentally skidded on the tar road which was wet by rain and

slippery and as a result, sustained grievous injuries and later on succumbed to the injuries on the same day on his way to hospital.

8. It is submitted that the investigation officer has conducted a fair, proper and impartial investigation into the above crime and the allegations contrary to the same are false and hence denied. Now, the attempt of the petitioner is to anyhow convert the motor occurrence into a motor vehicle accident so as to enable him to file a claim petition before the Motor Accidents Claim Tribunal claiming for compensation. Since the investigation of the above case has been conducting properly, there is no need to transfer the case to any other agency at this juncture."

4. Heard Sri. V.C.Madhavankutty, the learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent, State of Kerala.

5. After hearing both sides and on a perusal of the averments and materials made available in the writ petition as well as the statement filed on behalf of the respondents this Court is of the considered opinion that no further consideration at the hands of this Court is required and so the matter could be closed with liberty to the petitioner to work out his remedies in accordance with law. However, it is only to be ordered that the investigating officer concerned shall ensure that the investigation is completed without any further delay, if not already completed. If the investigation not so far been completed, then the entire CD files should also be reviewed and analysed by the District Police Chief, Pathanamthitta and it is only on the basis of his supervisory guidance that the final

steps in the investigation be taken so as to analyse the investigation by submitting the final report. In view of these aspects, this W.P (Civil) is closed with liberty to the petitioner to work out his remedies in accordance with law.

sd/-

sab

ALEXANDER THOMAS, JUDGE