

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

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 1005 of 2015 (A)

PETITIONERS :

1. SRI.NAIZAM A.,AGED 40 YEARS,
S/O.IBRAHIM RAWTHER,
KAUSTHUBAM KANNAMKODE
ADDOR, PATHANAMTHITTA - 690 504.
2. LEKHA K., W/O. SRI. NAIZAM A.,
KAUSTHUBAM KANNAMKODE
ADDOR, PATHANAMTHITTA - 690 504.

BY ADVS.SRI.P.A.MOHAMMED SHAH
SRI.B.PRASANTH
SRI.T.S.SARATH
SMT.P.M.MAZNA MANSOOR

RESPONDENTS :

1. STATE POLICE CHIEF,
POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM, KERALA - 695 001.
2. DISTRICT POLICE CHIEF, PATHANAMTHITTA DISTRICT - 689 645.
3. SRI. S. ANILDAS, DEPUTY SUPERINTENDENT OF POLICE,
DISTRICT CRIME REPORTS BUREAU,
PATHANAMTHITTA - 689 645.
4. SRI. A. NAZIM, DEPUTY SUPERINTENDENT OF POLICE,
ADOOR PATHANAMTHITTA - 691 523.

R1 & R2 BY STATE ATTORNEY, SRI.P. VIJAYARAGHAVAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE COMPLAINT DATED 26.11.2014.

EXT.P2 : TRUE COPY OF THE ACKNOWLEDGMENT CARD DATED 02.12.2014.

EXT.P3 : TRUE COPY OF THE REPORT DATED 02.12.2014.

RESPONDENTS' EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

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

W.P.(C) No. 1005 OF 2015

Dated this the 12th day of January, 2015

JUDGMENT

Ashok Bhushan, Ag.C.J.

Heard learned counsel for the petitioner and learned State Attorney appearing for the State.

2. This Writ Petition has been filed by the petitioner alleging harassment by police. Prayer has been made to issue a direction to 5th respondent not to harass the petitioner. Learned State Attorney submits that there is a statutory remedy under Section 110 of Kerala Police Act, 2011(Section 17E of the Kerala Police Act, 1960), where the petitioner can approach the Police Complaints Authority. He has placed reliance on the Division Bench judgment of this Court in **Aslam V. State of Kerala** [2011 (2) KLT 601] in which similar provision has been dealt with, Section 17E of the Kerala Police Act, 1960. The Division Bench has laid down the following in paragraphs 2, 3 and 4 :

“2. Chap.3A of the Kerala Police Act, 1960 was inserted by Act XXI of 2007 with effect from 07/04/2007. It provides for, among other things, Police Complaints Authority in S.17E. It provides for the establishment of a Police Complaints

Authority at the State level; Police Complaints Authorities at the District level, called 'the District Authority'. Those authorities are bestowed with statutory duties and powers. The State Authority shall look into complaints of grave misconduct of all types against police officers of and above the rank of Superintendent of Police and serious complaints against officers of other ranks relating to molestation of women in custody or causation of death to any person or infliction of grievous hurt to any person or rape. The District Authority is to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. The State Authority is to be headed by a retired Judge of a High Court and the District Authority is to be headed by a retired District Judge. The District Collector and the District Superintendent of Police are members of the District Authority. The State Authority and the District Authorities have powers to summon and to record evidence etc. Sub-S.8 of S.17E enjoins that all agencies of the Government shall render all possible assistance to the authority or authorities in respect of production of documents, examination of records etc. The recommendations of the Authorities, for any action, departmental or criminal, against a delinquent police officer shall be binding insofar as initiation of departmental proceedings or registration of a criminal case is concerned. This is specifically provided for in sub-S.9 of S.17E. Such recommendations shall, however, not prejudice the application of mind by the enquiry officer or the investigating officer when he is conducting the departmental enquiry or criminal investigation, as the case may be. A survey of the aforesaid and other provisions of the Police Act and also of other laws, including criminal laws, particularly the Indian Penal Code, would show that if appropriately considered and applied,

the provisions in S.17E contain sufficient teeth to protect the life and liberty of citizens who complain about police harassment. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, is liable to be punished in terms of S.166 of the Indian Penal Code with simple imprisonment for a term which may extend to one year, or with fine, or with both. This is a non-compoundable offence. Though non-cognizable, the recommendations of the competent authority in terms of S.17E (9) of the Police Act would make it obligatory that a criminal case is registered for offence punishable under S.166 IPC, if so recommended. This example, when appropriately applied to other provisions, would clearly show that the Complaints Authorities under S.17E have abundant power to ensure that any act of police harassment is appropriately taken note of and redressed.

3. The power to take action in a particular situation includes the power to issue orders as may be necessary to ensure that any reasonable apprehension of such illegal acts is also taken note of and preventive orders, which would protect the rights of citizens, are issued.

4. With the aforesaid efficacious remedial provisions being in place, the citizens appear to remain unaware of such remedies and they often move the High Court for protective orders invoking Art.226 of the Constitution. The extraordinary jurisdiction of the High Court under Art.226 of the Constitution of India is to be invoked by parties and exercised by the Court only in exceptional circumstances of grave and imminent danger to

the person applying for such relief, provided, such a situation is shown and demonstrated to the satisfaction of the writ Court and it is shown that the afore - noted alternate remedies are resorted to, but remains ineffective or has turned futile. Such orders cannot be sought for in a routine manner. We observe that a good number of writ petitions are being filed as matters relating to 'police harassment'. Yet many of them turn out to be merely impending due process of law and interfering with legitimate mechanisms.”

3. Learned State Attorney further submits that in fact the petitioner has already filed a complaint before the Police Complaints Authority in which notice has been issued fixing the hearing date as 13.01.2015. As the petitioner has already approached the Police Complaints Authority, we are of the opinion that the petitioner may pursue the complaint before the Authority concerned.

With the above observation, the Writ Petition is closed.

**Ashok Bhushan,
Acting Chief Justice.**

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