

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

WP(C).No. 2913 of 2015 (L)

WRIT PETITIONER :-

**ALEYAMMA VARGHESE,
W/O.T.VVARGHESE,
VADAKKEVEETIL HOUSE,
AKKANATTUKARA MURI,
THAZHAKKARA VILLAGE,
MAVELIKARA.**

**BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SMT.PARVATHY NAIR**

RESPONDENTS :-

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.**
- 2. DIRECTOR GENERAL OF POLICE,
KERALA POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM - 695 001.**
- 3. DISTRICT POLICE CHIEF,
OFFICE OF THE DISTRICT POLICE CHIEF,
ALAPPUZHA - 688 001.**
- 4. SUB INSPECTOR OF POLICE,
OFFICE OF THE SUB INSPECTOR OF POLICE
MAVELIKKARA - 690 101.**

5. SARAMMA SHIJU,
SHIBU BHAVANAM,
KUTHIRACHIRA,
PUNALUR P.O. - 691 305.
6. INSPECTOR GENERAL,
CRIME BRANCH (CID),
ORGANISED CRIME WING,
THIRUVANANTHAPURAM- 695 001.

AS PER IMPEADING PETITION IN I.A.NO.6642/2015, THE ADDITIONAL 6TH
RESPONDENT IS IMPEADED.

R1-R4 BY TOM JOSE PADINJAREKKARA,ADDL PUBLIC PROSECUTOR
R5 BY ADVS. SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
04-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS :-

- EXHIBIT P1 :- A TRUE COPY OF COMMUNICATION NO.D.6086/09/NC DATED 22.07.2009.**
- EXHIBIT P2 :- A TRUE COPY OF COMMUNICATION NO.VER/598/CAC EKM/NORKA-ROOTS/2009 DATED 17.07.2009.**
- EXHIBIT P3 :- A TRUE COPY OF FORGED CERTIFICATE OF GENERAL NURSING AND MIDWIFERY WITH SL.NO.22449 DATED 30.07.2003 SHOWING THE REGISTRATION NUMBER OF THE 5TH RESPONDENT AS NURSE AND MIDWIFE AS 32606.**
- EXHIBIT P4 :- A TRUE COPY OF FORGED MARK SHEET DATED 31.05.2001 OF GENERAL NURSING AND MIDWIFERY INTEGRATED COURSE OF 5TH RESPONDENT.**
- EXHIBIT P5 :- A TRUE COPY OF FORGED MARK SHEET DATED 28.03.2002 OF GENERAL NURSING AND MIDWIFERY INTEGRATED COURSE OF 5TH RESPONDENT.**
- EXHIBIT P6 :- A TRUE COPY OF FORGED MARK SHEET DATED 27.04.2003 OF GENERAL NURSING AND MIDWIFERY INTEGRATED COURSE OF 5TH RESPONDENT.**
- EXHIBIT P7 :- A TRUE COPY OF RELEVANT PAGES OF FORGED SSLC BOOK OF THE 5TH RESPONDENT WITH REG.NO.368648 EVIDENCING THAT THE 5TH RESPONDENT HAD APPEARED FOR AND PASSED SSLC EXAMINATION.**
- EXHIBIT P8 :- A TRUE COPY OF FORGED STATEMENT OF MARKS OF THE 5TH RESPONDENT WITH REG.NO.40314 SHOWING THAT SHE APPEARED FOR THE 2ND YEAR PRE-DEGREE EXAMINATION HELD IN MARCH 1999 AND SECURED 323 OUT OF 500 MARKS.**
- EXHIBIT P9 :- A TRUE COPY OF CMP NO.6170/10 ON THE FILE OF JFCM, MAVELIKKARA.**
- EXHIBIT P10 :- A TRUE COPY OF CMP NO.6257/10 ON THE FILE OF JFCM, MAVELIKKARA.**

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EXHIBIT P11 :- A TRUE COPY OF ORDER DATED 11.03.2011 IN CRL.M.C.NO.637/11.

EXHIBIT P12 :- A TRUE COPY OF FINAL REPORT.

EXHIBIT P13 :- A TRUE COPY OF ORDER DATED 16.06.2014 IN CRL.M.C.3198/14 OF THIS HONOURABLE COURT.

EXHIBIT P14 :- A TRUE COPY OF THE DEPOSITION OF DW1 IN OP(DIV.)730/09 ON THE FILE OF FAMILY COURT, ALAPPUZHA.

RESPONDENT(S)' EXHIBITS :- NIL

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//TRUE COPY//

P.A. TO JUDGE

ALEXANDER THOMAS, J

W.P.(C)No.2913 of 2015

Dated this the 4th day of June, 2015

JUDGMENT

The prayer in this Writ Petition is essentially for directions to ensure the conduct of further investigation in Crime No.755/2010 of Mavelikkara Police Station, in which the alleging offences under Sections 420, 465, 466 & 467 of the IPC, wherein arraying the 5th respondent as the sole accused. The police after investigation submitted the impugned Ext.P12 Final Report/charge sheet in the said crime which is taken cognizance as C.C. No.397/11 of the Judicial First Class Magistrate Court-I, Mavelikkara. The 4th respondent, Investigating Officer has filed a statement dated 10.02.2015 in the matter wherein it is stated interalia in paragraphs 4,5 and 6 thereof as follows;

“4. It is respectfully submitted that the investigation of the case was entrusted to Sri.J.Sunny, Addl. Sub Inspector of Police, Mavelikkara and he had conducted investigation by questioning the defacto complainant as well as the accused. On questioning the accused confessed that she did not pass SSLC examination and had only passed Diploma in nursing from Viswabharathi School of nursing, Adoor and that the

SSLC book, Pre-Degree mark list and the certificate of general nursing and midwifery were bogus and forged and that the said illegal act was done by her husband and relatives for procuring a job abroad for her.

5. It is submitted that during the course of investigation, communications were sent to (i) The Secretary, Board of public Examination, Thiruvananthapuram (ii) The Controller of Examination, University of Kerala, Thiruvananthapuram and (iii) The Registrar, Kerala Nurses and Midwives Council Thiruvananthapuram, along with the copies of the aforesaid certificates to ascertain the genuineness of the SSLC Book, Pre Degree Mark list and Nursing Certificate respectively. After verification, the above authorities informed the Investigating Officer that the certificates sent for verification were forged and bogus.

6. It is submitted that during the course of investigation prima facie it is established that the accused fabricated the above documents. After completion of investigation, charge sheet had been filed before the Hon'ble Judicial First Class Magistrate Court, Mavelikkara on 07.11.2011 and the case is now listed as CC No.397/2011."

2. It is submitted by the learned counsel appearing for the petitioner that one of the main contentions raised by the petitioner among various other grounds is easy referable from reading of paragraph 16 on pages 7 and 8 of the writ petition, which reads as follows;

“16. It is submitted that Ext.P12 Final report is inconclusive as to the identity of person, who had forged the emblem, signature and seal of the officer and office in Exts.P3 to P8. The investigation conducted by the 4th respondent is riddled with inherent infirmity and the same would result in deflection of the course of justice. The persons who have committed grave offence of forging mark sheets and certificates would go scot free and perpetuate illegalities affecting public order. Ext.P12 report filed under Section 173(2) Cr.P.C. is lacking in material particulars as to the person who had fabricated/forged Exts.P3 to P8. Lack of investigation on that front causes serious prejudice, injury, hardship and loss to the petitioner who has been cheated using such fudged documents. Though the Magistrate has the power to direct further investigation under Section 173(8) Cr.P.C., the learned Magistrate having accepted the final report has failed to exercise jurisdiction vested under law. The investigation into the crime, which involves forging of emblem, seal, signature etc. of University/Board of Government Examination/The Kerala Nurses and Midwives Council are required to be investigated and the offenders booked. Such investigation could only be done by a Specialised Agency as evident from Ext.P12 report submitted by the 4th respondent, which is inconclusive. Ext.P12 reflects the inability of the Investigating Agency to conduct a wide and extensive specialised investigation into the mystery behind the forging of documents such as Exts.P3 to P8. In such circumstances, it is necessary that this Honourable Court be pleased to direct the 3rd respondent to take upon itself the investigation into Crime No.755/10 of Mavelikkara Police Station and conducts such further investigation as is necessary and entrust the

investigation to any other specialised agency as required in the circumstances.”

3. Sri.George Varghese, Perumpallikuttiyl, learned counsel for the petitioner further submits that the investigation has clearly not examined who exactly has committed the forgery and eventhough going by the case admitted by the investigating agency, all the certificates in questions are fake and that without conducting investigation on this crucial aspects amounts to misdirection by the investigating agency. The learned counsel for the petitioner would further contend that in the absence of the further investigation which probes in detail as to who were parties in the acts of forgery and related acts, and proper additional final report of the charge sheet is filed in the matter, the trial will be an exercise in futility. It is further alleged by the learned counsel for the petitioner that additional respondent No.6 is a specialised agency under the Crime Branch of the State Police which deals and focuses on such crimes relating to the forgery of public documents. The documents, which are even the investigating agency conclusively said are fake and stated to have been issued in the names of different public authorities concerned. It is in the light of these aspects of learned counsel

for the petitioner submits that this Court may issue a writ of mandamus to direct the second respondent, Director General of Police to order that the further investigation in this case be investigated by the specialised agency of the State Crime Branch like one attached to the 6th respondent.

4. Heard Sri. George Varghese, Perumpallikuttiiyil, the learned counsel for the petitioner, and Sri.Tom Jose, Padinjarekkara, the learned Additional State Prosecutor appearing for the official respondents 1 to 4 and 6.

5. The State Prosecutor would submit that in the previous rival litigations initiated at the interest of the petitioner as in Exts.P11 and P13 orders, the petitioner had never urged these contentions and submitted that inspite of the Ext.P11 order issued by this Court, the petitioner did not focus the grievances that the further investigation should be conducted by a specialised agency that crime branch relating to the forgery and further that even in Ext.P13 proceedings before this Court, the writ petitioner was insisting for expeditious completion of the trial, as the final report was already then submitted. The learned counsel for the petitioner submits that the petitioner herein is a

67 years old mother, who may not be well versed in the niceties of the conduct of criminal proceedings and that the interest of justice and the interest of an effective culmination of the prosecution process demand that the present prayer be considered seriously by this Court.

6. Having given anxious consideration of the contentions raised by either side, prima facie, this Court is of the opinion that this plea could be considered by this Court. One important aspect of the matter which is staring at this Court is that this aspect of the matter had never urged by this petitioner at any time and never received the attention of the second respondent, Director General of Police, who alone is competent at the departmental level to entertain such prayer. Without making such a request and prayer before the competent authority, it may not really be proper for this Court to exercise its extra ordinary jurisdiction confined under Article 226 of the Constitution of India, especially on a plea relating to the mandamus for entrustment of further investigation, for which requisite remedies are even otherwise available in provisions as in Section 173 of the Code of Criminal Procedure. Be that as it

may, this Court is of the considered opinion that this aspect of the matter should really be seriously focused and considered by the second respondent, Director General of Police. In this view of the matter, it is ordered that it will be open to the petitioner to make a detailed representation before the second respondent, Director General of Police pointing out with material particulars and point out the alleged deficiencies in the conduct of the investigation so far and as to the necessity for ordering the further investigation in this case to be conducted by the specialised agency as the crime branch including the unit attached to the 6th respondent. This appears to be eminently this course of action in this case, though, it is pointed out by both sides that after the submission of the impugned final report/charge sheet even charges have been framed by the Court below concerned. Accordingly, it is ordered that in the event of the petitioner submitting such a detailed representation before the second respondent within a period of three weeks from the date of issuance of the certified copy of this judgment, along with the supporting materials if any, then the second respondent, Director General of Police will call for the entire CD files from the

4th respondent, Sub Inspector of Police and get that the CD file examined by a Senior Officer in the police head quarters and to examine various aspects of the investigation so far conducted and to decide on the relevance and necessity of the plea made by the petitioner for entrustment of the further investigation to the specialised crime branch etc. The action in this regard may be finalised and necessary decision in accordance with law may be taken by the second respondent without much delay, preferably within a period of two months from the date of receipt of such representation to be submitted along with the certified copy of this judgment. It is made clear that the developments pursuant to Exts.P11 and P13 orders of this Court will not by itself in anyway preclude the second respondent, Director General of Police in exercising his discretion so as to advance the course of justice and also to ensure that the interest of the prosecution in this case is also adequately protected. It is for the petitioner and the 4th respondent Investigating Officer to produce the certified copy of this judgment before the court below concerned. It is also made clear that once orders in this regard are passed by the second respondent, Director General of Police, then a copy of the

same shall be communicated by registered speed post to the petitioner and also to the 4th respondent, Investigating Officer and the 4th respondent shall through the prosecutor concerned to take further necessary action in that regard as warranted then.

With these observations and directions, this Writ Petition (Civil) stands disposed of.

Sd/-
ALEXANDER THOMAS
JUDGE

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P.A. TO JUDGE