

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 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

WP(C).No. 6573 of 2008 (S)

PETITIONER(S) :-

T.P.NANDAKUMAR, AGED 42 YEARS,
S/O.K.DAMODARAN NAIR, CHIEF EDITOR,
"CRIME", PUTHIYA ROAD, KOZHIKODE - 673 004.

BY ADV. SRI.N.J.MATHEWS

RESPONDENT(S) :-

1. UNION OF INDIA REP. BY THE SECRETARY,
HEALTH DEPARTMENT, NEW DELHI.
2. STATE OF KERALA, REP. BY THE
HOME SECRETARY, HOME DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
3. THE DIRECTOR, CENTRAL BUREAU OF INVESTIGATION,
C.G.O. COMPLEX, LODHI ROAD, NEW DELHI - 110 003.
4. THE DIRECTOR GENERAL OF POLICE
POLICE HEAD QUARTERS, TRIVANDRUM.
5. KERALA STATE HUMAN RIGHTS COMMISSION
REPRESENTED BY ITS SECRETARY, M.P.APPAN ROAD
VAZHUTHAKKAD.

R3 BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
SRI.P.CHANDRASEKHARA PILLAI, C.B.I.
BY ADV. SRI.ABRAHAM THOMAS, CGC
BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R5 BY ADV. SRI.SEBASTIAN DAVIS
BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

jvt

APPENDIX

PETITIONER'S EXHIBITS :-

EXT.P1 :- TRUE COPY OF THE NEWS ITEM PUBLISHED IN CRIME STORY EVENING DATED 19.1.2002.

EXT.P2 :- TRUE COPY OF THE NEWS ITEM PUBLISHED IN CRIME STORY EVENING DATED 23.1.2002.

EXT.P3 :- TRUE COPY OF THE REPORT SUBMITTED BY SRI.JACOB PUNNOOSE, IPS BEFORE THE HUMAN RIGHTS COMMISSION.

EXT.P4 :- TRUE COPY OF THE REPORT FILED BY MUAMMED YASSIN, I.G. OF POLICE.

EXT.P5 :- TRUE COPY OF THE ORDER OF THIS HON'BLE COURT IN CRL.R.P.No.1110/2005.

EXT.P6 :- TRUE COPY OF THE COMPLAINT PREFERRED BY DR.MOHAMMEDALI BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT-III, THIRUVANANTHAPURAM.

EXT.P7 :- TRUE COPY OF THE REPRESENTATION DATED 17.8.2006 PREFERRED BY THE PETITIONER BEFORE THE CHIEF MINISTER, HOME MINISTER AND DIRECTOR GENERAL OF POLICE, KERALA.

EXT.P8 :- TRUE COPY OF THE NEWS ITEM PUBLISHED IN INDIAN EXPRESS DAILY.

RESPONDENT'S EXHIBITS :- NIL.

//TRUE COPY//

P.A. TO JUDGE

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

W.P.(C) No.6573 of 2008

Dated this the 31st day of August 2015

J U D G M E N T

Shaffique, J.

This writ petition is filed in the form of a public interest litigation seeking for the following reliefs :-

- “(a) issue a writ of mandamus or any other appropriate writ, order or direction directing the 3rd respondent CBI to conduct investigation in the matter of illegal Kidney trade reported from several places of Kerala.
- (b) issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents no.1, 2 and 5 to hand over the case diary and other details including the Investigating Reports submitted by Jacob Punnoos, IPS and Mohamed Yassin, IPS to the 3rd respondent.
- (b1) issue a writ of mandamus or any other appropriate writ, order or direction directing the 2nd respondent to appoint a special team consisting Senior Police Officers with known integrity and a team of senior Doctors to investigate about the illegal Kidney Trade going on in Kerala, which is mentioned in the reports produced before this Hon'ble Court.”

2. The petitioner claims to be a pro bono publico has approached this Court narrating various incidents, in which, reports appeared in news paper regarding kidney transplantation. The reports narrated by the petitioner indicates that kidney trafficking is being done with the connivance of various persons involved in the matter and trading activity is carried out by the

persons involved in the same. It is also stated in the report that some doctors and hospitals are involved in this illegal business and they are carrying out transplantation of kidney and other organs violating the provisions of the Transplantation of Human Organs Act, 1994 and the Rules framed thereunder. But, invariably several cases have been reported to indicate that trading activities are going on between the donor and the donee, which are at the connivance of several hospitals and doctors involved in the matter, which requires thorough investigation by the CBI. Though the local police have registered some cases, there is no progress in the matter. It is in that view of the matter that this writ petition has been filed seeking for aforesaid reliefs.

3. Counter affidavit has been filed by the 2nd respondent inter alia indicating the measures that had been taken by the police in the matter involved in illegal kidney trading. It is stated that eight cases were registered in Kochi City alleging offences punishable under Secs.465, 470, 471 and 472 of IPC. Those cases were registered based on the complaint made by the Principal, T.D.Medical College, Alappuzha, who was also the Chairman of District Level Authorization Committee for Organ Transplantation for the Districts of Alappuzha and Ernakulam. Similar other three

crimes were registered at Ernakulam Town North Police Station involving offences punishable under various provisions of Indian Penal Code as well as violation of the provisions of the Transplantation of Human Organs Act, 1994. In paragraph 9 of the affidavit filed, it is stated that out of 15 cases registered, 9 cases are under investigation and in four cases, charge sheets have already been submitted. In one case, final report was submitted as 'mistake of facts' and in another case, the matter has been reported as false case.

4. Having regard to the fact that already appropriate action had been taken by the police, taking into consideration the complaints submitted by the Committee and also on the basis of the other information received by the police, we do not think that the State Police has kept a closed eye in the matter. They have registered crimes, investigation are in progress and in four cases, charge sheets have already been filed before the court. Further, the State Government has come with appropriate regulations for transplantation of human organs and presently the matter is already covered by appropriate legislation and those procedures are to be followed while donating human organs. Under such circumstances, when appropriate steps have already been taken,

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we do not think that an investigation by CBI is required as matters stand now. Under such circumstances, we do not think that a direction as sought for is required to be passed.

5. Learned counsel for the petitioner would however submits that though the cases had been registered, it has not reached its logical conclusion. We only observe that the State Government and other authorities shall ensure that investigation in the cases are completed as early as possible and appropriate steps shall be taken to ensure that the cases are disposed of in accordance with law.

With the above observation, this writ petition is closed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE