

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WP(C).No. 5771 of 2015 (V)

PETITIONER(S) :

- 1. ALEX MATHEW, AGED 47 YEARS,
S/O.VARKEY MATHAI, THAZHATHATTIL HOUSE,
KALLISSERY P.O, CHENGANNUR, ALAPPUZHA DISTRICT.**
- 2. A.K.VARGHESE, AGED 46 YEARS,
S/O.A.K.KUNJUMMAN, VENATTUMALAYIL, KARIKATHOOR,
MANIMALA, KOTTAYAM DISTRICT.**

**BY ADVS.SRI.G.PRIYADARSAN THAMPI
SRI.P.S.PRADEEP**

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF HOME AFFAIRS, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE SUPERINTENDENT OF POLICE,
PATHANAMTHITTA DISTRICT, PIN- 689 645.**
- 3. THE SUB INSPECTOR OF POLICE,
THIRUVALLA POLICE STATION,
PATHANAMTHITTA DISTRICT, PIN- 689 645.**
- 4. THE SUPERINTENDENT OF POLICE,
C.B.C.I.D., THIRUVALLA, PATHANAMTHITTA DISTRICT, PIN- 689 645.**

BY PUBLIC PROSECUTOR SRI.ABDUL SHUKKOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 5771 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: TRUE COPY OF THE FIR IN CRIME NO. 472/2014 OF THIRUVALLA
 POLICE STATION.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

ALEXANDER THOMAS,J.

W.P(C)No.5771 of 2015

Dated this the 21st day of May, 2015

JUDGMENT

The above WP(C) has been filed with the following prayer.

(i) issue a Writ of Mandamus or any other appropriate Writ, Order or Direction, directing the respondents 2 and 3 herein to hand over the Investigation of Exhibit P-1 Crime No.472/2014 of Thiruvalla Police Station to the 4th respondent;

(ii)declare that the investigation of Crime No.472/2014 of Thiruvalla Police Station by the 3rd respondent is not satisfactory and it is necessary to hand over the same to a competent impartial authority, like CBCID.

and

(iii)grant such other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of this case.

2. As directed the 3rd respondent who is the Sub Inspector of Police, Thiruvalla and who is the Investigating Officer in the aforementioned Crime filed a statement dated 08/05/2015 and paragraphs 3 to 8 of said statement /report reads as follows:

"3. It is submitted that Cr.No. 472/14 was registered u/s 419, 420 r/w 34 IPC at Thiruvalla Police Station on the strength of the statement given by one Mr. Alex Mathew who is the petitioner herein against (1) Mr. Prasannan Pillai, aged 55 years, S/o. Ramakrishna Pillai, Ram Nivas House,

Haripad, Alappuzha (now residing at Vilakkumadathil House, East Othera, Eraviperoor Village) (2) Smt. Sasikala, aged 40, W/o. Prasannan Pillai. The brief of the case is that the 1st accused introduced himself to the complainant as Vigilance C.I. attached to the Petroleum Ministry and promised to procure licence for running a petrol pump outlet and also to get LPG Agency for the complainant's brother-in-law one Mr. A.K. Varghese and that on believing the words of the 1st accused, the defacto complainant and his brother-in-law one Mr. A.K. Varghese had given an amount of Rs. 25 Lakhs and Rs. 13 Lakhs respectively on 09.09.2009 to the accused at the residence of the 2nd accused at Othera and the accused had swindled the same. It is respectfully submitted that during the course of investigation, the 2nd accused Sasikala who is the wife of the 1st accused got bail from the Hon'ble Judicial 1st Class Magistrate Court, Thiruvalla as per the direction of this Hon'ble Court in B.A.No. 32891/14. On enquiry, it is revealed that the 1st accused has absconded. In the circumstances, the assistance of the Cyber Cell was sought for to find out the tower location of the accused.

4. It is submitted that a notice u/s 91 CrPC was served to the defacto complainant during the investigation to produce the relevant documents. But he did not produce the same. However, after completing the investigation, the accused persons were charge sheeted on 05.07.2014 and the final report was filed before the Hon'ble Judicial 1st Class Magistrate Court, Thiruvalla on 05.07.2014 and the case is now pending trial as C.C.No. 1545/14.

5. It is submitted that now the defacto complainant has produced before me, the original of the agreement executed between the complainant and the accused. In the light of the fresh evidence produced, a report has been submitted before the Hon'ble Judicial 1st Class Magistrate Court, Thiruvalla seeking permission for further investigation u/s 173(8) CrPC and the Hon'ble Court was pleased to grant permission on 29.04.2015 and accordingly the case has been reopened for further investigation.

6. It is submitted that as part of further investigation, two agreements, one executed between the

accused and the defacto complainant and another executed by the accused with one Mr. Varghese were seized on mahazar and produced before the Hon'ble Judicial 1st Class Magistrate Court, Thiruvalla.

7. It is submitted that during the course of investigation, 9 witnesses were questioned and their statement were recorded. The 1st accused could not be arrested since he had absconded. Mobile Phone No. of the accused as well as his close relatives have been forwarded to the Cyber Cell to locate the accused. The signature and the handwriting are to be proved through the Forensic Science Laboratory, Thiruvananthapuram after getting the accused apprehended.

8. It is respectfully submitted that a just, fair, proper and impartial investigation has been conducted in the above crime and the allegations contrary to the same or false and hence denied. Since a proper investigation is being conducted in the above crime, there is no need to transfer the investigation of the case to any other officer or agency at this juncture."

3. Heard, Sri. G. Priyadarshan Thampi, learned counsel appearing for the petitioner and the learned State Attorney appearing for the official respondents.

4. On consideration of the totality of the facts and circumstances of the case and in the interest of justice, it is ordered that the petitioner will be at liberty to approach the 2nd respondent Superintendent of Police of Pathanamthitta District, who is the superior officer, in case there are grievances regarding the fairness and propriety of the investigation so far conducted by the 3rd respondent and

point out the details in that regard by submitting appropriate representation on those aspects of the matter before the 2nd respondent. In such event the 2nd respondent will examine such representation that will be submitted by the petitioner and will call for the Case Diary file pertaining to this case to the 2nd respondent Superintendent of Police and shall examine as to whether the investigation has so far been conducted fairly and properly and whether it requires to be entrusted to another senior officer or whether the further investigation to be conducted by 3rd respondent is to be monitored and supervised by any such senior officer.

5. The decision as stated above will be taken by 2nd respondent Superintendent of Police within four weeks from the date of submission of such representation by the petitioner.

With these observations and directions the Writ Petition stands finally disposed of.

Sd/- **ALEXANDER THOMAS**
JUDGE