

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WP(C).No. 8467 of 2015 (G)

PETITIONER(S):

**JOY, S/O.BENEDICT, AGED 49 YEARS,JOBIN NIVAS,PADAPPAKKARA,
PERAYAM P.O., MULAVANA VILLAGE, KOLLAM DISTRICT.**

**BY ADVS.SRI.K.SIJU
SRI.S.ABHILASH
SMT.S.SEETHA
ANTONY SHYJU**

RESPONDENT(S):

- 1. STATE POLICE CHIEF,POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM-695 001.**
- 2. THE KOLLAM DISTRICT RURAL POLICE CHIEF,KOTTARAKKARA,
KOLLAM-691 506.**
- 3. SUB INSPECTOR OF POLICE,KUNDARA POLICE STATION-691 501.**
- 4. PHILLIS,PROPRIETOR,FISA CABLES,PADAPPAKKARA P.O.,
MULAVANA, KOLLAM-691 503.**

BY P.P. SRI.ABDUL SHUKKOOR.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 8467 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:THE COPY OF FIR WITH FIS IN CRIME NO.2193/2014 OF KUNDARA POLICE STATION.

EXT.P2: THE COPY OF COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P3: THE COPY OF COMPLAINT BY VIDE C.M.P. NO.11073/2014 ON THE FILE OF JFMC-1, KOLLAM.

RESPONDENT(S)' EXHIBITS

NIL.

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P.S. to Judge

ALEXANDER THOMAS, J.

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W.P.(C).No. 8467 of 2015

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Dated this the 20th day of May, 2015

J U D G M E N T

The above captioned Writ Petition (Civil) has been filed with the following prayers:

- i. to issue a writ of mandamus or any other appropriate writ or order of direction commanding the respondents 1 and 2 to hand over investigation of crime No.2193/2014 of Kundara Police station to the crime branch wing of Kerala Police.
- ii. To direct the respondents 2 and 3 to conduct an effective and proper investigation in Ext.P3 complaint in a time bound manner.”

2. This Court as per order dated 18.3.2015 had directed the Public Prosecutor concerned to file a report of the Station House Officer concerned about the progress of the investigation in Ext.P-1 crime. Accordingly, the 3rd respondent has filed a statement dated 21.3.2015 in compliance with the order dated 18.3.2015 issued by this Court. It is pertinent to note paragraphs 3 to 7 of the said statement dated 21.3.2015 of the 3rd respondent-Sub Inspector of Police, Kundara Police Station, Kollam district, which read as follows:

“3. It is submitted that Crime No. 2193/14 u/c “Motor Occurrence” was registered on 13.10.2014 on the strength of a statement given by one Mr.Sunil, S/o.William, Mini Vilasom vedu,

Padappakkara, Perayam, Chery, Mulavana stating that his cousin one Mr.Jobin while riding a motor cycle bearing Reg. No.KL2-AP-1948 along the Perayam-Padappakkara public road from west to east on 12.10.2014, 22.00 Hrs. met with a motor vehicle accident when he reached at Padappakkara St.Sebastian Church Chapel and that the vehicle had accidentally hit against an electric post standing on the southern side of the road and as a result of the injury sustained over his head and chest the rider of the vehicle succumbed to the injuries on the way to the hospital, etc.

4. It is submitted that on investigation conducted, it is revealed that deceased Jobin, aged 19, S/o.Joy was riding a motor cycle bearing Reg. No.KL 02-AP-1948 through Perayam-Padappakkara public road from west to east on 12.10.2014. On reaching near Padappakkara St.Sebastian Church Chapel, while negotiating a bump the vehicle lost control and hit against an electric post on the southern side of the public road and Jobin succumbed to his injuries sustained over his head and chest on the way to hospital.

5. It is submitted that while the investigation of the above crime was in progress the petitioner approached the Hon'ble J.F.M.C-1, Kollam and filed Ext.P3 complaint as CMP No.11073/14 on 16.12.2014. The said CMP was forwarded to this respondent u/s.156 (3) Cr.P.C. by the Hon'ble J.F.M.C. 1 Kollam for registering a case and to conduct the investigation. In this aspect it is pertinent to note that even though the complainant was well aware of the registration of the above crime and that the investigation was going on, he suppressed the same and filed Ext.P3 complaint and caused the Hon'ble Court to issue an order u/s.156(3) Cr.P.C. On receiving Ext.P3, this respondent has filed a report before the Hon'ble Court reporting that already a crime has been registered on 18.12.2014 and the investigation was going on.

6. It is respectfully submitted that during the course of investigation the allegation raised in Ext.P3 complaint was also investigated in detail. The case of the petitioner is that he got information from the local residents of the area wherein the accident occurred that broken cable wire was hanging and lying across the road and the same got entangled and as a result the rider of the bike lost control and hit against the electric post and it was further alleged that the cable wire was negligently drawn by the 4th respondent. During investigation, the people residing near to the scene of occurrence were questioned and it was stated that no such cable wire was seen lying across the road at the time of accident or thereafter. It is pertinent to note that when the scene mahazer was prepared on 13.10.2014 at 14.00 hrs. it was noted that the cable wires was tied up at the top of the electric post and the electric post and the electric post was scene (sic) situated on the southern side of the public road

and that no cable wire was hanging or lying across the road at the place of occurrence. The investigation so far conducted revealed that the deceased was riding the motor bike across the bump near Padappakkara St. Sebastian Church Chapel and on entering the bump the vehicle lost its control and it accidentally skid and hit against the electric post which was situated on the southern side of the road., i.e. on the wrong side of the vehicle driven by the deceased.

7. It is submitted that however further detailed investigation will be conducted regarding the allegations raised by the petitioner by questioning more witnesses who reached the scene of occurrence immediately after the accident and also the persons who are residing near the scene of occurrence before filing the final report for which atleast one months time may kindly be granted.”

3. Heard Sri.Siju Kamalasanan, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondents.

4. On a consideration of the totality of the facts and circumstances of this case and in the interest justice, it is ordered that in case petitioner has any grievances regarding the conduct of the investigation in the aforementioned crime, then he may file detailed representation in that regard before the 2nd respondent- Kollam District Police Chief, Kottarakkara, Kollam district, detailing out his submissions to substantiate his grievances and the 2nd respondent will then examine the case diary files in this crime and examine as to whether the investigation in this case has been conducted properly and effectively so far and if necessary, the 2nd respondent may either entrust the further investigation in this case

to a senior officer or he may direct that the further investigation in this crime will be supervised by such senior officer. It is further ordered that until the decision as aforestated is taken by the 2nd respondent, final report in the matter shall not be submitted by the 3rd respondent, provided the petitioner submits the representation to the 2nd respondent along with a certified copy of this judgment, within 1 month.

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

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Sd/-
ALEXANDER THOMAS, JUDGE

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P.S. to Judge