

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

WP(C).No. 8768 of 2014 (U)

PETITIONER(S) :

**MOHAMMED ABDUL RAHIMAN, AGED 58 YEARS,
S/O.KUNHUMARAKKAR, RESIDING AT KUTTIKKARIPOTTU
HOUSE, ERAMANGALAM, VELIYAMCODE VILLAGE,
PONNANI TALUK, MALAPPURAM DISTRICT.**

BY ADV. SRI.C.M.MOHAMMED IQUABAL

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE HOME DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.**
- 2. THE DISTRICT SUPERINTENDENT OF POLICE,
THRISSUR, POST THRISSUR, PIN-680 001.**
- 3. THE SUB INSPECTOR OF POLICE,
CHERUTHURUTHY POLICE STATION,
POST CHERUTHURUTHY, PIN-679 531.**
- 4. CENTRAL BUREAU OF INVESTIGATION
PLOT NO.5, CGO COMPLEX, LODHI ROAD, NEW DELHI-110 003,
REPRESENTED BY ITS DIRECTOR.**
- 5. ABDUL KHADER , AGED 45 YEARS,
S/O.VEERAN HAJI, SOURYANPARAMBIL HOUSE,
THALASSERY VILLAGE, P.O.THALASSERY, THALAPPILLY TALUK,
THRISSUR-679 532.**
- 6. ABDUL HAMEED , AGED 38 YEARS,
S/O.VEERAN HAJI, SOURYANPARAMBIL HOUSE,
THALASSERY VILLAGE, P.O.THALASSERY, THALAPPILLY TALUK,
THRISSUR-679 532.**
- 7. VEERAN HAJI , AGED 76 YEARS,
S/O. KHADER, SOURYANPARAMBIL HOUSE, THALASSERY VILLAGE,
P.O.THALASSERY, THALAPPILLY TALUK, THRISSUR-679 532.**

**R1 TO R3 BY STATE ATTORNEY SRI.P.VIJAYA RAGHAVAN
R4 BY ADV. SRI.P.CHANDRASEKHARA PILLAI, C.B.I.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1 : THE TRUE COPY OF THE FIR IN CRIME NO.566/2013 OF CHERUTHURUTHY POLICE STATION DATED 09.07.2013.**
- P2 : THE TRUE COPY OF THE ORDER IN I.A.NO.1885/2005 IN O.S.NO.313/2005 DATED 28.03.2005 OF THE PRINCIPAL SUB COURT, THRISSUR.**
- P3 : THE TRUE COPY OF THE DECREE IN O.S.NO.313/2005 DATED 07.08.2008 OF THE PRINCIPAL SUB COURT, THRISSUR.**
- P4 : THE TRUE COPY OF THE COMPLAINT IN C.M.P NO.7317/2013 ON THE FILE OF THE JFCM COURT, VADAKKANCHERRY, DATED 06.07.2013.**
- P5 : A TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 31.01.2014.**

RESPONDENT(S)' ANNEXURES :

ANNEXURE R3(A): A TRUE COPY OF THE PETITION DATED 19.03.2014.

ANNEXURE R3(B): TRUE COPY OF THE FINAL REPORT DATED 30.11.2013.

//TRUE COPY//

P.A.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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W.P.(C)No.8768 of 2014

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Dated this the 16th day of June, 2015

JUDGMENT

The prayers in this W.P.(C) are as follows:

- “a) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the 1st respondent to order investigation of the case of the petitioner by any external agency like CBI or any other investigating agency.
- b) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the 2nd respondent to monitor the investigation in Crime No.566/2013 of Cheruthuruthy Police Station.
- c) Issue A writ of Mandamus or any other appropriate writ, order or direction directing the 2nd respondent to consider and pass appropriate orders on Ext.P5 representation filed by the petitioner.

and

- d) Pass any other appropriate writ, order or direction which this Hon'ble Court may deem fit to issue and the petitioner may pray from time to time.”

2. Pursuant to the directions of this Court, Investigating Officer in Ext.P1 Crime No.566/2013 of Cheruthuruthi Police Station has now filed a statement dated 11/06/2015, paragraphs 2 and 3 there of reads as follows:

“2. It is respectfully submitted that during the course of further investigation it was revealed that the amount involved was more than 25 lakhs. Therefore in compliance with the Circular No.1/2013, the investigation of the above case was taken over by me on 12.03.2015. On investigation it is disclosed that the Power of Attorney executed by Late Smt.Khadeeja in favour of her son Abdul Nazar was declared as null and void by the Hon'ble Sub Court, Trissur and accordingly the complainant has sustained a loss of Rs.58 lakhs. It is further revealed that at the time of execution of sale deed in favour of the defacto complainant, there was already a litigation going on challenging the validity of the above Power of Attorney and the vendor was fully aware of the said litigation and the same was deliberately suppressed from the knowledge of the vendee and by suppressing the fact the vendee was induced to part with the sale consideration. Since A1 and A2 had prior knowledge of the pending litigation and had deliberately suppressed the fact and cheated the defacto complainant with the object of making unlawful gain, after conducting a detailed investigation, charge sheet against A1 & A2 was submitted on 12.05.2015 before the Hon'ble JFCM Court, Wadakkancherry under Section 406, 417, 418, 420 against A1 and A2.

3. It is respectfully submitted that I have conducted a fair, proper and impartial investigation into the above crime and as stated above, charge sheet has already been filed before the Hon'ble Court, hence the above writ petition has become infructuous and liable to be dismissed.”

3. Heard, Sri.C.M.Mohammed Iquabal, learned counsel for the petitioner and the learned State Attorney appearing for the official respondents.

4. Learned State Attorney made submission on the basis of the averments contained in paragraph 2 and 3 of the above said statement dated 11/06/2015 filed by the Investigating Officer. The learned counsel for the petitioner would submit that initially three

persons were included in the accused array and now it is stated in the aforementioned statement that only A1 and A2 are included in the accused array in the final report/charge sheet and that the name of accused No.3 mentioned in the FIR is deleted from the accused array in the final report. Accordingly the learned counsel for the petitioner submits that in view of the above said statement, liberty may be reserved to the petitioner to challenge the non inclusion of accused No.3 in the accused array in the final report, before the learned Magistrate who is to consider and pass orders on the aforementioned point of law.

In the light of these submissions, the Writ petition (Civil) stands finally disposed of, recording the above said submissions on either side and granting liberty to the petitioner to work out his remedies, if he has any further subsequent grievances, in accordance with law.

Sd/- ALEXANDER THOMAS, JUDGE