

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

WP(C) .No. 16171 of 2013 (V)  
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PETITIONER:  
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SUNIL DUTT.S, S/O.SOMARAJAN,  
SAI, ALAKA, KNR-31-A,  
KOOTTIKKADA P.O., MAYYANAD, KOLLAM DISTRICT.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS:  
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1. THE STATE POLICE CHIEF,  
POLICE HEADQUARTERS, VAZHUTHACAUD  
THIRUVANANTHAPURAM -14.

2. THE DISTRICT POLICE CHIEF (CITY POLICE COMMISSIONER)  
KOLLAM CITY, DISTRICT POLICE HEAD QUARTERS,  
KOLLAM - 691 001.

3. THE ASSISTANT COMMISSIONER OF POLICE,  
KOLLAM CITY, KOLLAM - 691 001.

4. THE CIRCLE INSPECTOR OF POLICE,  
ERAVIPURAM P.O., KOLLAM, PIN - 691 011.

5. THE SUB INSPECTOR OF POLICE,  
ERAVIPURAM POLICE STATION, ERAVIPURAM P.O., KOLLAM  
PIN - 691 011.

6. THE MAYYANAD HIGHER SECONDARY SCHOOL,  
MAYYANAD P.O., KOLLAM, REP. BY ITS MANAGER - 691 303.

R6 BY ADV. SRI.G.SHRIKUMAR (SR.)  
R6 BY ADV. SRI.ANIL VINCENT  
R6 BY ADV. SRI.SURAJ SHRIKUMAR  
BY GOVERNMENT PLEADER SEENA RAMAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: THE TRUE COPY OF THE ORDER NO: B6/14103/2011/DDE DATED  
25/02/2012 ISSUED BY THE DEPUTY DIRECTOR OF EDUCATION, KOLLAM.

EXT.P2: THE TRUE COPY OF THE FIR IN CRIME NO.1224/2012 OF ERAVIPURAM  
POLICE STATION, REGISTERED BY THE 5TH RESPONDENT AGAINST THE PETITIONER

EXT.P3: THE TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER  
BEFORE THE 1ST RESPONDENT DATED 17/01/2013.

EXT.P4: THE TRUE COPY OF THE STATEMENT SUBMITTED BY THE PETITIONER  
BEFORE THE 3RD RESPONDENT ON 07/05/2013.

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.S TO JUDGE

**K. RAMAKRISHNAN, J.**

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W.P.(C)No.16171 of 2013  
.....

Dated this the 2<sup>nd</sup> day of December, 2015

**JUDGMENT**

This writ petition is filed by the petitioner, who has been arrayed as the accused, for issuing a direction to respondents 1 and 2 to conduct a confidence investigation of Ext.P2 Crime No.1224/2012 of Eravipuram police station under section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner is working as a High School Assistant (Maths) for the last 25 years from 30.6.1988 managed by the 6<sup>th</sup> respondent. No disciplinary proceedings were issued against him so far. The sixth respondent placed him under suspension on 26.8.2011 as per memo No.MHSS/Dist. Dated 26.8.2011 alleging that students of the school have represented the behavior attitude of the petitioner to the students, subversive of discipline and insubordination, negligence in work, disrespectful behavior towards the superiors, using filthy and abusive language and talking in disrespectful manner to other employees and superiors, absenting without leave etc. sexual harassment against the students, serious misconduct and irregularities and

requested the DEO, Kollam to conduct investigation in this case. A reply statement has been filed by the petitioner in this regard and thereafter filed appeal before the Deputy Director of Education, Kollam on 10.11.2011. The appellate authority considered the appeal and as per the order No. B6/14103/2011/DDE dated 25.2.2012 directed the 6<sup>th</sup> respondent to revoke the suspension of the petitioner with immediate effect and admit him to duty and report the matter to the DEO, Kollam as per Ext.P1 order. The sixth respondent preferred revision before the Government and thereafter filed WP(C) No.8936/2012 and this Court disposed of the same directing the Government to consider the revision and pass appropriate orders in the application, if any filed, and till then directed to keep Ext.P1 order in abeyance. Government considered the same and passed order G.O.(RT) No.3267/2012/G.Edn dated 10.7.2012 and directed to keep in abeyance Ext.P1 order for two months till detailed enquiry is completed by the DEO, Kollam. Thereafter the DEO, Kollam conducted an enquiry and by order dated 20.9.2012 directed the petitioner to be reinstated as the period of his suspension exceeding 12 months and to implement Ext.P1 order. The

sixth respondent filed a petition before the DEO, Kollam for reopening the enquiry and also filed W.P.(C).No.26266/2012 before this Court and status quo order was passed and it was extended from time to time and it is pending. Now a false case has been registered on the basis of the complaint given by the 6<sup>th</sup> respondent as Crime No.1224/2012 of Eravipuram police station alleging offence under sections 354 of the Indian Penal Code as Ext.P2. He had filed Exts.P3 and P4 petitions before the higher authorities for directing the investigating officer to conduct proper investigation. Those applications were not properly considered and no orders have been passed so far. So the petitioner has no other remedy except to approach this Court seeking the following reliefs:

“(i) To call for the records leading to Ext.P2 crime from the 5<sup>th</sup> respondent and quash all further proceedings in Ext.P2 Crime No.1224/2012 of Eravipuram police station as against the petitioner.

(ii) To issue a writ of mandamus and other appropriate writ, order or direction commanding the respondents 1 and 2 to conduct a confidence investigation of Ext.P2 crime No.1224/2012 of Eravipuram police station through a special investigation team other than

the 5<sup>th</sup> respondent and submit report before the court below within a stipulated time as directed by this Hon'ble Court and till then further proceedings against the petitioner pursuant to Ext.P2 crime may be kept in abeyance.

(iii) To issue a writ of mandamus or other appropriate order or direction commanding 1<sup>st</sup> respondent to consider Ext.P3 and conduct a proper and confidence investigation of Ext.P2 crime No.1224/2012 of Eravipuram police station through a special investigation team other than the 5<sup>th</sup> respondent and submit report before the court below within a stipulated time as directed by this Hon'ble Court and till then further proceedings against the petitioner pursuant to Ext.P2 crime may be kept in abeyance.

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

3. When the writ petition came up for hearing, counsel for the petitioner submitted that he has no objection in allowing the investigation to be completed but arrest of the petitioner should not be done indiscriminately and he is prepared to co-operate with the investigation.

4. Senior counsel Sri. G. Sreekumar, counsel appearing for the 6<sup>th</sup> respondent, submitted that he had only acted in accordance with the duties vested in him as Manager in filing

complaint when he came to know about the misconduct of the petitioner and he had no special interest in the outcome of the investigation and he only need want the investigation should be conducted in a proper manner. Further, the writ petition filed by the petitioner has been disposed of by this Court directing the Government to pass appropriate orders and on the basis of the direction of this Court, Government has ordered fresh enquiry and it is going on.

5. Learned Public Prosecutor submitted that on account of the stay granted by this Court, they are not able to proceed with the investigation.

6. On going through the allegations in the petition, this Court feels that there is no necessity to stall the investigation as such and the writ petition can be disposed of by giving a direction to the investigating officer to conduct proper investigation considering the allegations made by the petitioner in Exts.P3 and P4 representations said to have been filed by him before the higher authorities. Further, in the decision reported in **Arnesh Kumar v. State of Bihar** (2014 (3) KHC 69), the Hon'ble Supreme Court has held that police officers who are conducting the investigation are not expected to effect

arrest automatically where non bailable offence have been alleged. They will have to follow the procedure under section 41A of the Code and only if they are satisfied that arrest of the accused is required for the purpose of proper investigation, after recording such suggestion then only make arrest of the accused. So the investigating officer is directed to conduct a proper investigation considering the allegations made by the petitioner in Exts.P3 and P4 representations said to have been filed before the higher police officials and after complying with the directions given by the Apex Court regarding arrest of the suspected accused in a criminal case in **Arnesh Kumar's** case (cited supra), complete the investigation as expeditiously as possible and file final report before the concerned court, if any offence has been made out, within a period of three months. The petitioner is at liberty to challenge the outcome of the investigation, if he is not satisfied, by filing appropriate petition before the appropriate authority.

With the above directions, the writ petition is disposed of.

Sd/-

**K. RAMAKRISHNAN, JUDGE.**

cl

/true copy/

P.S to Judge



