

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

WP(C).No. 15057 of 2015 (F)

PETITIONER :

**N.G.AJI,
S/O.N.GOVINDHAN, AGED 41 YEARS,
GEETHAVILASAM, VELIVILAKAM,
POTTAYIL, EZHAKODU, MALAYINKEEZHU - 695 571.**

**BY ADVS.SRI.BIJU ABRAHAM
SRI.J.G.SYAMNATH**

RESPONDENT(S):

- 1. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT, HOME DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. THE SUPERINTENDENT OF POLICE,
RURAL DISTRICT CRIME BRANCH,
THIRUVANANTHAPURAM - 695 001.**
- 3. SUB INSPECTOR OF POLICE,
MALAYINKEEZHU POLICE STATION,
MALAYINKEEZHU - 695 571.**

BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - A TRUE COPY OF THE FIRST INFORMATION REPORT REGISTERED AS F.I.R NO. 695/2013 DT. 15.9.13 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KATTAKADA.
- P2 - A TRUE OCPY OF THE REPRESENTATION SUBMITTED BY THE FATHER OF THE DECEASED DT. 26.10.13.
- P3 - A TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER TO THE SUPERINTENDENT OF POLICE, NEDUMANGADU.
- P4 - A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE HOME MINISTER ON 10.9.14.
- P5 - A TRUE COPYOF THE REPORT SUBMITTED BY THE 3RD RESPONDENT BEFORE THE JUDICIAL MAGISTRATE COURT, KATTAKADA IN CMP NO. 405/2015 IN CRIME NO. 695/2013 DT. 11.3.15.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

ALEXANDER THOMAS, J.

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Dated this the 2nd day of June, 2015.

J U D G M E N T

The case projected in the Writ Petition is that investigation conducted in FIR No.695/2013 of Malayinkeezhu Police Station, Thiruvananthapuram District in connection with the death of one Sri.Anish, aged 21 (who is the nephew of the Writ Petitioner) has not been promptly and effectively carried out by the respondent police authorities that the incidents had taken place way back on 15.9.2013 and that though investigation was subsequently handed over to the 2nd respondent-Superintendent of Police, Rural District Crime Branch in November, there was no progress in the matter and in spite of repeated request as in Exts.P2 & P4 and even personal meetings with the investigating agency, there is no substantial progress in the investigation and that unless a special investigation team is constituted under the supervision of this Court, there is no chance for finding out the real culprit in the matter. On the basis of these averments and the contentions projected in this Writ Petition the following main prayer is made in this Writ Petition.

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“A] A writ of mandamus or any other appropriate writ, order or direction commanding the 1st respondent to constitute a special investigation team for investigating the Crime No.695/2013 of Malayinkeezhu Police Station and complete the investigation within a time fixed by this Hon'ble Court by submitting periodical report to this Hon'ble Court, enabling this Hon'ble Court to monitor the progress of the investigation from time to time.”

2. As directed by this Court, the Investigating Officer concerned, Deputy Superintendent of Police, District Crime Branch has filed a detailed statement dated 27.5.2015. Paragraphs 2 to 5 thereof detail out the various steps carried out at the initial stage by the earlier Investigating Officer. Paragraphs 6 to 10 thereof deal with the aspects of the matter since the taking over of the investigation by the Deputy Superintendent of Police, District Crime Branch (Rural), Thiruvananthapuram. In paragraph 6 of the statement it is stated that the Deputy Superintendent of Police, District Crime Branch, Thiruvananthapuram was ordered to take over the investigation as per the specific order issued by the 2nd respondent-District Police Chief pursuant to the representation submitted by the Writ Petitioner on 15.4.2014. Accordingly, Deputy Superintendent of Police concerned

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had taken over the investigation of the crime on 6.11.2014. The statement has seriously rebutted the allegations made by the petitioner that no proper investigation has been carried out. In paragraph 7 thereof, it is stated that the Investigating Officer again had visited the place of occurrence where the deceased had taken bath, the place where the dead body was found, the place where the motor cycle and his personal belongings were found and the officer recorded the statement of the witnesses, relatives, friends etc, and his friend Boslin, who was present along with the deceased Aneesh at the time of bathing and one Sri.Rajesh came to know about the incident from Boslin, were also questioned and recorded their detailed statements which were verified. In paragraph 8 thereof it is stated that the Investigating Officer has submitted a report before the Judicial First Class Magistrate Court, Kattakada requesting to conduct a polygraph test of the above said Boslin and that the court was pleased to conduct polygraph test and accordingly test was conducted at the Forensic Scientific Examination on 20.12.2014 and the test result was obtained on 26.3.2015 and analysis and evaluation of polygraph did not draw any deceptive

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response and the 164 Statement of Rajesh was also recorded by the Judicial First Class Magistrate Court-II, neyyattinkara and the copy of the said statement under Sec. 164 was perused and it was found that his earlier statement before the Investigating Officer and his Sec.164 statement are not contradictory that the officer collected the call details of deceased Aneesh, his friend Bosling and Rajesh and verified the calls and its locations. That the investigation so far conducted reveal that the deceased had left the house on 14.9.2013 at 11:00 a.m. in his motor cycle and picked up his friend Boslin and they went to kadav for bathing at Karamana river and Aneesh parked the bike near the riverside and used to bath at the kadavu after keeping his clothes besides his motor cycle and Boslin sat on the rock and after some time to attend a mobile phone call of Aneesh he came back from the river and took the mobile phone and attended the call. When he picked up the dress, his key accidentally fell in the river and he jumped into the river for retrieving it. Aneesh did not know swimming and he was swept away by the strong under current. Though Boslin searched for him he could not find him out and that he did not seek for help from other

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people, nor informed this incident to anyone else except one of his friends Rajesh etc. It is further stated in paragraph 9 thereof that the allegations by the petitioner that there was a scuffle near the motor cycle of the deceased and there were several injuries on his body are not true that the statement given by the expert doctor of the Forensic medicine opined that there was no severe or deep injury seen in the body and only some minor injuries which might have been caused by the bites of aquatic species and the wounds found on the body are not the cause of death and his lungs and air passages were filled with mud and water and in the postmortem certificate the cause of death was due to drowning etc.

3. Accordingly, it is reiterated in paragraph 10 of the statement that allegations of the petitioner that there is no progress in the investigation and that the entrusted Investigating Officer had deliberately failed to carryout proper investigation is absolutely wrong and that he had taken over the investigation on 6.11.2014 and there was considerable progress in the case that investigation is over and is waiting for polygraph test that on receipt of the analysis test, the other

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formalities of submission of Final Report will be finalized without any delay and that that investigation has been conducted in a just, fair, pror and impartial manner and the contrary allegations are wrong and incorrect etc.

4. Having regard to the averments in the above said statement filed by the Investigating Officer who is a senior officer in the rank of Deputy Superintendent of Police, this Court does not think it necessary to keep the Writ Petition pending any longer. However, the 2nd respondent-Superintendent of Police, District Crime Branch, Thiruvananthapuram (Rural) will closely monitor the investigation so far conducted and he will call for the entire CD file from the present Investigating Officer and may examine meticulously the various steps taken in the investigation so far conducted and ascertain whether investigation has been carried out in the right and proper lines. If the 2nd respondent finds that more fine tuning or correction are required for effectuating a meticulous investigation system give suitable direction to the Investigating Officer and can take suitable steps in the matter. The 2nd respondent will have to ensure that it is the statutory duty of the

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investigating agency to effectively and properly effectuate investigation so as to instill public confidence in the efficacy and fairness of the investigation. The 2nd respondent will be at liberty to issue any appropriate direction that he may deem fit and proper in the interest of fairness and justice in the proper conduct of investigation. It is to be borne in mind by the investigating agency that in these cases the parents and close relatives of the deceased young person of the age of 21 as in the instant case will certainly have so many apprehensions and concern not only about their young deceased member of the family but also may have serious concerns arising out of incident of death and it is the solemn duty of the investigating agency to rise to the occasion and instill public confidence so that the society at large including the family members of the deceased will have confidence and feeling that no onus have been left unturned in the effective conduct of investigation in a case like this. It is further made clear that if the petitioner has got any further specific grievance, it is open to him to pin point such aspects with material particulars by submitting a detailed representation before the 2nd respondent-Superintendent of Police. The petitioner or near

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relatives of the deceased should ensure that instead of just making vague allegations and doubts and apprehensions, they should pin point with material particulars as to how the investigation has not been properly conducted and as to the misdirection in such investigation. If such a representation is filed by the petitioner or any other close relative of the deceased within a period of one month, the 2nd respondent will take into consideration all these aspects while supervising the investigation and reviewing the case diary files as directed above. After consideration of such representation, the 2nd respondent may also send reply to the said representation detailing out the matters pursuant to such consideration of the request.

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

ALEXANDER THOMAS,
Judge.

bkn/-