

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(C).No. 17344 of 2015 (P)

PETITIONER(S):

**ACHU, AGED 22 YEARS,
S/O. RADHAKRISHNAN PILLAI, PULIVILAYIL VEEDU,
PUTHUKADU, CHAVARA, KOLLAM DISTRICT.**

**BY ADVS.SRI.C.RAJENDRAN
SRI.K.R.RANJITH**

RESPONDENT(S)/STATE/COMPLAINANT:

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO HOME DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM 695001.**
- 2. DISTRICT POLICE CHIEF, KOLLAM DISTRICT 691 001.**
- 3. ASSISTANT COMMISSIONER OF POLICE, KARUNAGAPALLY,
KOLLAM DISTRICT 690 518.**
- 4. SUB INSPECTOR OF POLICE,
CHAVARA POLICE STATION, CHAVARA,
KOLLAM DISTRICT 691 583.**
- 5. LOYED , AGED 22 YEARS,
S/O. LONACHAN, LOYAL NIVAS, PUTHUKKADU MURI,
CHAVARA VILLAGE, KARUNAGAPPALLY,
KOLLAM DISTRICT 691 583.**

R1-4 BY GOVERNMENT PLEADER SRI.GITHESH

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

WP(C).No. 17344 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: A TRUE PHOTOCOPY OF THE FIR IN CRIME NO. 306/2015 OF CHAVARA
POLICE STATION**

EXHIBIT P2: A TRUE PHOTOCOPY OF THE REMAND APPLICATION DATED 12.2.2015

**EXHIBIT P3: A TRUE PHOTOCOPY OF THE JUDGMENT DATED 12.11.2014 IN WP
(CRIMINAL NO.411 OF 2014 OF THIS HON'BLE HIGH COURT OF
KERALA**

**EXHIBIT P4: A TRUE NOTARISED AFFIDAVIT SWORN BY THE DEFACTO
COMPLAINANT DATED 27.5.2015**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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W.P.(C).No. 17344 of 2015

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Dated this the 30th day of June, 2015

J U D G M E N T

It is the case of the petitioner that he is aggrieved by his implication as accused No.6 in impugned Ext.P-1 Crime No. 306/ 2015 of Chavara Police Station, Kollam district, for offences punishable under Secs.143, 147, 148, 323, 324, 447, 326, 294(b), 427 read with Sec.149 of the I.P.C. It is averred that the said crime was registered at the instance of the complaint given by the 5th respondent defacto complainant. That the District Magistrate/ District Collector passed a detention order under Sec.3(1) of the Kerala Anti-social Activities (Prevention) Act, 2007 ("KAAPA" for short) and that the mother of the petitioner filed W.P.(CrI).No. 411/ 2014 before this Court seeking the release of the detainee and this Court as per Ext.P-3 judgment dated 12.11.2014, had ordered the release of the detainee. It is the petitioner's case that he had later contacted the 5th respondent defacto complainant and inquired as to why he was falsely implicated in Ext.P-1 crime and that the 5th

respondent informed that he had not told the petitioner's name to the Police to implicate him as an accused in that case and that the defacto complainant has volunteered that he is prepared to come and appraise before any court or any Police officer that he has not mentioned the petitioner's name as a participant in Ext.P-1 crime. That the defacto complainant has sworn to Ext.P-4 notarized affidavit in that regard. That the petitioner has now come to know that the local Police wanted to get the petitioner again to detain under the KAAPA. Since, as per the said Act, if, after release the detenue is involved in yet another case, then another detention order can be passed against him and that the mala fide action is being taken to thus unlawfully detain the petitioner under the provisions of the KAAPA and confine him in jail for another one year. Accordingly, this Writ Petition is filed with the following prayer:

“To issue a writ in the nature of mandamus or any other appropriate writ order or direction compelling and commanding the 1st respondent to entrust the investigation of the above case *Crime 306/2015 of Chavara Police Station* with an Officer not below the rank of Deputy Superintendent of Police.”

2. The petitioner's counsel had raised a specific plea that though the offence earlier mentioned in Ext.P-1 crime did not include one under Sec.308 of the I.P.C., investigating officer has now deleted the offence under Sec.326 of the I.P.C. so as to

deliberately include the offence under Sec.308 in order to make out a case for the preventive investigation of the petitioner under the KAAPA and that none of the vital ingredients of Sec.308 of the I.P.C. is made out even in the admitted facts projected in Ext.P-1 Crime No.306/2015 of Chavara Police Station. In view of these aspects, the learned Public Prosecutor was requested to get instructions and file a statement of the 4th respondent. Accordingly, the 4th respondent Sub Inspector of Police, Chavara Police Station, has filed a statement dated 17.6.2015 in this case. Paragraphs 2 to 7 of the said statement read as follows:

“2. It is humbly submitted that the above number case was registered on the basis of the statement given by the 4th respondent Loyed, who was admitted in the THQ Hospital Karunagappally. In his statement he alleged that on 09.02.2015, at about 11.00 p.m. due to the previous enmity of informing the unlawful activities of the petitioner Ajeesh @ Achu and others to the Police and the medias; the petitioner along with 7 others for committing culpable homicide, unlawfully assembled for their common object and committed the offence. On the basis of the statement a case has been registered as a Crime 306/15 U/s.143, 147, 148, 323, 324, 447, 326, 294(b), 427 and 149 I.P.C. at Chavara Police Station. The petitioner arrayed as the 6th accused.

3. It is respectfully submitted that on investigation the accused 1 & 2 were arrested on 11th February 2015 and they were produced before the Hon'ble Judicial First Class Magistrate, Chavara. The other accused including the petitioner has been absconding since the incident hence they could not be arrested till date. The investigation conducted so far reveals the overt act of the petitioner Ajeesh @ Achu.

4. It is humbly submitted that the petitioner's allegation in the petition that the respondent Sri.Loyed did not mention the petitioner's name in the alleged offence is devoid of merit. The

offence occurred on 09.02.2015, 11.00 pm and the FI statement of Sri.Loyed was recorded on the next day itself i.e. on 10.02.2015, 13.00 hrs. In his FI statement the defacto complainant Loyed said the names of the accused Shijin, Aswin, Renjith, Vijin, Kutty Rahul, Achu, the persons named Polio and Sreejith. Achu is the nickname of Ajeesh.

5. It is also humbly submitted that the petitioner Ajeesh @ Achu is a habitual offender and he is already involved in more than 13 criminal cases during 2010 to 2015. Out of these cases one is a murder case, Cr.1259/2010 & 1260/2010 of Chavara Police Station. He is the accused in the following Crimes of Chavara Police Station.

1. Cr.1259/10 & 1260/10 U/s 143, 147, 148, 342, 323, 324, 302, 149 I.P.C. He is the 11th accused and now cases is pending trial as SC 465/12 at Hon'ble Sessions Court, Kollam.
2. Cr.939/11, U/s.143, 147, 148, 341, 323, 324, 452, 427, 149 I.P.C. – He is the 4th accused and now cases is pending trial at Hon'ble JFMC Court, Chavara as CC 623/15.
3. Cr.940/11 U/s 143, 147, 148, 452, 294(b), 324, 427, 149 I.P.C. – He is the 5th accused and now cases is pending trial at JFMC, Chavara as CC 465/15.
4. Cr.1062/11 U/s. 395, 397, 120(b), 114, 427 I.P.C. – He is the 2nd accused and now the case is pending trial at Asst. Sessions Court, Karunagappally as SC 284/13.
5. Cr.1159/13, U/s.395 I.P.C. – He is the 6th accused and now the case is pending at Asst. Sessions Court, Karunagappally as SC 23/15.
6. Cr.1490/12 U/s.332, 323, 34 I.P.C. – He is the 2nd accused and case is pending trial as JFMC, Chavara.
7. Cr.1494/12 U/s.143, 147, 148, 294(b), 447, 324, 326, 427, 149 I.P.C. He is the 2nd accused and case is pending trial at JFMC, Chavara.
8. Cr.2463/13 U/s.143, 147, 148, 341, 324, 427, 149 I.P.C. – He is 2nd accused and now the case is pending trial at JFMC, Chavara as CC 89/15.
9. Cr.306/15 U/s.143, 147, 148, 323, 324, 308, 294(b), 427, 447, 149 I.P.C. – He is the 6th accused and case is under investigation.
10. Cr.498/10 U/s.341, 323, 324, 326, 427, 34 I.P.C. – He is the

4th accused and acquitted on 14.11.14 U/s.248 (1) Cr.P.C.

11. Cr.1063/11 U/s.143, 147, 148, 153, 506(2), 294(b), 427, 149 I.P.C. – He is the 3rd accused and acquitted on 18.02.15 U/s 248(1) Cr.P.C.

12. Cr.1071/11 U/s.397, 395 I.P.C. & 27 of Arms Act– He is the 4th accused and acquitted on 28.01.2015 U/s.232 Cr.P.C.

6. He is also a known rowdy in the station records. Security proceedings like 107 Cr.P.C., 110(e)(g) Cr.P.C. had already initiated against him. He was also detained as per Kerala Anti Social Activities (Prevention) Act 2007 Order No.M-9-15110/KAA(P)A/2014 dated 08.05.2014.

7. Due to the involvement of the petitioner in Chavara Police Station cr.306/2015 in the Chavara Police has submitted a proposal U/s.3 of KAAPA against the petitioner before the District Collector. The petitioner Ajeesh @ Achu approached this Hon'ble High Court for staying the proceedings of the Cr.306/15 only for hindering the initiation of Sec.3 KAAPA against him."

3. Heard Sri.C.Rajendran, learned counsel appearing for the petitioner and learned Public Prosecutor appearing for the respondent State of Kerala.

4. On going through the statement dated 17.6.2015 filed by the 4th respondent Sub Inspector of Police, Chavara Police Station, it can be seen that the petitioner's contentions are not tenable or sustainable. The details of various cases, in which petitioner has been involved, have already been stated in paragraph 5 on pages 2 and 3 of the said statement. It is also stated in paragraph 7 of the said statement that due to the involvement of the petitioner in Ext.P-1 Crime No.306/2015 of Chavara Police

Station, the Police authorities have submitted a proposal under Sec.3 of the KAAPA against the petitioner, before the District Collector, etc. In view of these aspects, this Court is of the considered opinion that no interference is called for in this case at this stage and it is for the petitioner to work out his remedies strictly in accordance with law.

With this observation, this Writ Petition (Civil) stands closed.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge