

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No. 17553 of 2015 (T)

CRIME NO.336/2015 OF ARANMULA POLICE STATION.

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PETITIONER(S):

**ABRAHAM VARGHESE, AGED 50 YEARS,
S/O.VARGHESE ABRAHAM, PARUTHIKALAYIL,
NARANGANAM VILLAGE, KOZHENCHERRY,
PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.S.SHANAVAS KHAN,
SMT.S.INDU.**

RESPONDENT(S):

- 1. THE DIRECTOR GENERAL OF POLICE,
KERALA POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM-695 001.**
- 2. THE DISTRICT POLICE CHIEF,
PATHANAMTHITTA, PIN-689 545.**
- 3. THE SUB INSPECTOR OF POLICE, ARANMULA,
PATHANAMTHITTA DISTRICT-689 545.**
- 4. SYED MUHAMMED,
PUTHUPARAMBIL, KANAMUKKU, NARANGANAM,
KOZHENCHERRY, PATHANAMTHITTA-689 545.**
- 5. SHAJI,
S/O.SYED MUHAMMED, PUTHUPARAMBIL, KANAMUKKU,
NARANGANAM, KOZHENCHERRY, PATHANAMTHITTA-689 545.**

R1 TO R3 BY PUBLIC PROSECUTOR SRI.N. SURESH.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

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APPENDIX

PETITIONER'S EXHIBITS:-

**P1 : TRUE COPY OF THE FIR IN CRIME NO.336/15 OF ARANMULA
POLICE STATION.**

**P2 : TRUE COPY OF THE REPRESENTATION DATED 02-05-2015
PREFERRED BEFORE THE FIRST RESPONDENT.**

**P3 : TRUE COPY OF THE ACKNOWLEDGEMENT CARD EVIDENCING
THE RECEIPT OF EXT P2.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Dated this the 17th day of July, 2015.

J U D G M E N T

The prayers in this Writ Petition are as follows:

- i) To issue a writ of mandamus, or any other writ, order or direction directing the first respondent to consider Ext.P2 representation in accordance with law.
- ii) To issue a writ of mandamus, or any other writ, order or direction directing the first respondent to hand over the investigation in the matter to any higher officer.”

2. When the matter was taken up for consideration, this Court by order dated 16.6.2015 in this Writ Petition held as follows:

“It is averred that the petitioner and his elderly father aged 82 years were attacked on 17/03/2015 by contesting respondent No.4, due to inimical relationship between them as the petitioner had earlier preferred a civil suit against him. That they sustained injuries and were admitted at District Government Hospital, Kozhencherry and though information was communicated to the 3rd respondent Sub Inspector of Police, Aranmula Police Station, nobody turned up from that Police Station to record the statement. Later on the very same date (17/03/2015) at 11.50 p.m., the 5th respondent (who is said to be the son of 4th respondent) and four other identifiable persons came to the District Government Hospital, Kozhencherry carrying deadly weapons such as sword stick and iron rod and trespassed into the MLC ward in which the petitioner and his elderly father were admitted and attacked them causing grievous injuries. Intimation was given to the police by the Government Hospital authorities, immediately and night patrolling

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police came to the hospital and recovered the iron rod. Though intimation was given by the hospital authorities to the 3rd respondent Station House Officer, he did not bother to come to record the statement of the informant and the injured. On 25/03/2015 petitioner was discharged from the hospital and on the same day he went to the Aranmula Police Station and lodged a complaint. It is contended in this Writ Petition that though the petitioner had given separate statements with regard to the aforementioned two separate incidents that occurred on 17/03/2015 at 11:45 a.m. (morning) and later on the same day viz. 17/03/2015 at 11:50 p.m.(night) the 3rd respondent Station House Officer deliberately registered only one crime by clubbing both these incidents and by incorporating only minor offences viz. those under Sections 294(b), 323, 506(i), 452, 324, and 34 of the IPC. It is contended that both the incidents disclose distinct and separate crimes. That the accused persons, time of occurrence, place of occurrence, weapons used, witnesses and motive of the incident are all different independent of each other. Injuries were separately sustained in both the incidents. Merely because the injured happened to be the petitioner and his father and the accused happened to be father and son, is no ground for clubbing the two incidents in one crime and that law mandates that commission of two separate incidents of cognizable offences should and ought to have been registered as separate crimes. That the 3rd respondent deliberately clubbed both these incidents together and registered a single crime with regard to the two incidents and that too incorporating minor offences. That the petitioner does not expect to get any fairness and partiality from the 3rd respondent SHO as he is adopting consistently a partisan attitude. The petitioner has submitted Ext.P2 representation dated 2/5/2015 to the 1st respondent, Director General of Police. It is in the light of these aspects the following prayers have been sought for in the present writ petition.

- i) issue a writ of mandamus, or any other writ, order or direction directing the first respondent to consider Ext.P2 representation in accordance with law.

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ii) issue a writ of mandamus, or any other writ, order or direction directing the first respondent to hand over the investigation in the matter to any higher officer and

iii) Pass such other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. Heard, learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the official respondents.

3. Considering the fact that one of the injured viz., petitioner's father is very elderly person of age 82 years and taking into account the specific averments and contentions urged in the writ petition as well as in Ext.P2 representation submitted by the petitioner before the Director General of Police, it is ordered in the interest of justice as follows:

The 2nd respondent, District Police Chief Pathanamthitta will immediately call for the entire CD files from the 3rd respondent SHO Aranmula Police Station pertaining to the Ext.P1 Crime No. 336/2015 of Aranmula Police Station and meticulously examine the same and ascertain as to whether the specific versions given by the petitioner regarding the 1st incident as well as the 2nd incident has been properly and correctly recorded. If the statements of the petitioner are not seen properly recorded, the 2nd respondent District Police Chief, Pathanamthitta will ensure that statements of both the petitioners in respect of these two incidents are separately recorded pertaining to the two incidents, through an officer not below the rank of Inspector of Police. During such process, the petitioners will be at liberty to have the presence of an Advocate of their choice while recording their statement by the Circle Inspector of Police. Thereafter the District Police Chief will carefully analyse the factual situation and decide as to whether or not two separate crimes should have been registered in the instant case and if he is convinced that separate crime as regards the

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2nd incident is also lawfully required, then he shall ensure that a separate crime in that regard is registered in the Aranmula Police Station.

4. After this process is over, the entire investigation in these incidents will stand entrusted to an officer of the rank of Inspector of Police in Chengannur, Alappuzha District and such investigation shall be closely and directly monitored and supervised by an officer of the rank of Dy.SP Chengannur, Alappuzha District. This direction is issued so as to ensure that fairness and justice is not only done but is also seen done by the police authorities in the course of investigation and fairness and impartiality is seen and perceived by both the de facto complainants and the accused persons concerned.

5. To ensure full and proper compliance of the latter direction rendered in the paragraph 4 above, the 2nd respondent District Police Chief, Pathanamthitta after completing the process as indicated in the paragraph 3 above, shall hand over the CD files concerned pertaining to these incidents to the Dy.SP Chengannur, Alappuzha District, through the District Police Chief, Alappuzha so as to effectuate the latter direction.

6. The decisions by the 2nd respondent-District Police Chief, Pathanamthitta as indicated herein above shall be taken within a period of two weeks from the date of production of a copy of this order and shall thereafter forthwith submit a report before this Court.

List on 08/07/2015 for further orders.”

3. In compliance with the direction passed by this Court on 16.6.2015, the District Police Chief, Pathanamthitta has filed a memo along with a report dated 9.7.2015 of the learned Public Prosecutor and the said report reads as follows:

“In obedience to the direction of the Hon'ble High Court of Kerala the C.D File in Crime No.336/2015 u/s 294(b), 323, 506(i), 452,

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324 & 34 IPC was examined and it was decided that separate crimes as regards both the incidents are lawfully required, and as such a separate crime, Crime No.1136/2015 u/s 452, 294(b), 506(i), 323 has been registered in Aranmula Police Station. Also steps have been taken to handover the entire investigation of these cases to C I Chengannur through District Police Chief, Alappuzha. This is for favour of kind information.”

4. The learned counsel for the petitioner submits that the petitioner will be satisfied for the time being, if this Court records the statement filed by the District Police Chief. The learned Public Prosecutor has no objection to this cause of action.

5. Accordingly, the aforesaid submission made in the report of the District Police Chief is hereby recorded and consequential directions are issued to the new investigating agency to ensure fair and proper investigation is conducted and completed in respect of both crimes without further delay. It is further ordered in the interest of justice that the new Investigation Team of Officers, viz., Inspector of Police, Chengannur Police Station and the Deputy Superintendent of Police, Chengannur will ensure that all sincere and earnest efforts are taken for the conduct of proper and fair investigation and the investigation is completed in respect of Crime No.336/2015 of Aranmula Police Station as well as Crime No.1136/2015 of the same Police Station without any

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further delay. It is to be ensured that investigation is completed in all entirety to ensure maximum confidence in the fairness of the police to both the rival parties concerned and to the public at large.

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

ALEXANDER THOMAS,
Judge.

bkn/-