

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WP(C).No. 19392 of 2014 (Y)

PETITIONER :

**P.M HAMEED,
S/O.MARACKAR, PILAPPILLY HOUSE,
PALLIAMKARA NORTH, ROCKWELL ROAD,
H.M.T.COLONY P.O.,PIN-683 503**

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, THIRUVANANTHAPURAM-695 001.**
- 2. DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM-695 001.**
- 3. THE DISTRICT POLICE CHIEF,
ALUVA (RURAL), ALUVA- 683 101.**
- 4. SUB INSPECTOR OF POLICE,
KALAMASERY POLICE STATION, KALAMASSERY - 683 104**
- 5. ABDUL SALAM K.T.,
S/O.ABDUL RAHIMAN, FLAT NO.II,
CLASSIC BUILDING KARIPPAI ROAD,
KALAMASSERY (KAITHANDI THAZHE VEEDU,KANNOOKARA,
MADAPILLY COLLEGE P.O.,
VADAKARA KOZHIKODE DISTRICT) -673 102.**
- 6. ASHRAFF (BROTHER OF ABDUL SALAM K.T.),
KAITHANDI THAZHE VEEDU KANNOOKARA,
MADAPILLY COLLEGE P.O.,
VADAKARA KOZHIKODE DISTRICT- 673 102**
- 7. HASSAN (BROTHER-IN-LAW OF ABDUL SALAM K.T.)
KAITHANDI THAZHE VEEDU, KANNOOKARA,
MADAPILLY COLLEGE P.O.,
VADAKARA, KOZHIKODE DISTRICT- 673 102.**

WP(C).NO.19392/2014

**8. SUBAIDA (SISTER OF ABDUL SALAM K.T & W/O.HASSAN),
KAITHANDI THAZHE VEEDU, KANNOOKARA,
MADAPILLY COLLEGE P.O.,
VADAKARA KOZHIKODE DISTRICT- 673 102.**

**R1 TO R4 BY GOVERNMENT PLEADER SRI.ABDUL SHUKKOOR
R5 TO R8 BY ADV. SRI.K SURESHBABU**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-05-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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WP(C).No. 19392 of 2014 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 - TRUE COPY OF THE RECEIPT DATED 15-12-2011 ISSUED BY THE 3RD
RESPONDENT TO THE PETITIONER

EXT.P2 - TRUE COPY OF THE AGREEMENT DATED 14-12-2012 EXECUTED BY
THE 6TH RESPONDENT IN FAVOUR OF THE PETITIONER

EXT.P3 - TRUE COPY OF THE COMPLAINT DATED 23-5-2014 SUBMITTED BY
THE PETITIONER BEFORE THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS & ANNEXURES:

ANNEX R4(A) COPY OF THE PETITION DATED 02/06/2014.

/TRUE COPY/

P.A.TO JUDGE

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ALEXANDER THOMAS, J.

W.P.(C) No. 19392 of 2014

Dated this the 20th day of May, 2015

JUDGMENT

Alleging commission of certain cognizable offences by contesting respondents 3 to 8, the petitioner herein had submitted Ext.P3 representation dated 23/05/2014 before the 3rd respondent Sub Inspector of Police Kalamassery Police Station, Ernakulam District. Contending that the said respondent has not registered any crime inspite of the alleged disclosure of cognizable offences in Ext.P3, the petitioner had approached this court to the present writ petition filed on 24/07/2014 with the following prayers.

(i) To call for the records relating to Exts.P1 to P3 and to issue appropriate order or direction directing the first Respondent [State] to entrust investigation in respect of Ext.P-3 complaint with a Special Wing of Police and to bring the culprits under law by arresting and producing them before court and to order recovery of the amount

swindled from the Petitioner by the Respondents 4 to 7 after registering criminal case;

(ii) Any other appropriate, writ, order or direction also may be granted to meet out justice under the circumstances of the above case.

2. This court had issued notice on admission to contesting respondents 5 to 8 and though service of notice to them has been completed as endorsed by the Registry as on 12/2/2015, none has turned up to appear before this court. As directed by this Court, the 4th respondent the Sub Inspector of police has filed a statement dated 20/08/2014 in this writ petition and statement and paras 2 to 5 of the said statement reads as follows:

"2. It is submitted that the petitioner herein has submitted a petition on 02.06.2014 before the Inspector of Police, Kalamassery and the same was registered as Petition No.P1/69/PTN/14E and forwarded to this respondent for enquiry on the same day itself. On receiving the above said petition the same has been re-registered as Petition No.97/SO/PTN/14 on 02.06.2014. True copy of the petition dated 02.06.2014 is produced herewith

and marked as **Annexure R4(a)**.

3. It is submitted that the brief of the case is that the 5th respondent Sri.Abdul Salam and the petitioner were friends and known to each other for the last 10 years. On 2011, the 5th respondent offering supply of shoes and bags for petitioner's shop located at Kalamassery Co-operative Shopping Complex, received an amount of Rs.2 lakhs towards advance. At that time as security for the amount so advanced, blank signed cheques of the 5th respondent were entrusted with the petitioner. Thereafter, the petitioner had given a total amount of Rs.10 lakhs (including advance) on different dates as advance against shoes & bags to be supplied to his shop. However he didn't receive the bags and shoes as offered. On 18.12.2012, the petitioner approached the 5th respondent and it was revealed that there was no such godown or shoe & bag company in the name or ownership of 5th respondent. When R5 failed to supply the goods the petitioner demanded return of amount advanced by him. Thereupon as security to the amount due, a sale agreement has been entered into between the petitioner & R8 by which it was agreed to register a sale deed in respect of 5 cents of property owned by the 8th respondent who is the sister of R5. The period of agreement was 8 months.

4. It is submitted that enquiries were conducted

on the petition filed by the petitioner by recording the statements of the petitioner and respondent 5. As per the investigation, it is revealed that petitioner and the respondent 5 were known to each other for the last more than 10 years. The petitioner was a business man and respondent 5 was engaged in the construction field. For the smooth conduct of the construction work, the 5th respondent had received money from the petitioner on several occasions. At last, on 2011 the 5th respondent had borrowed Rs.6 lakhs from the petitioner for the same purpose and he could not repay the same in time and as per the understanding with the respondent 5, he had given blank signed cheques, original document pertaining to 5 cent land owned by the 8th respondent who is the sister of the petitioner and executed a sale agreement in respect of 5 cent land and further agreed to register the sale deed in the name of the petitioner, if the money borrowed was not paid with the stipulated time. It is also revealed that the petitioner had received an amount of Rs.1,25,000/- through Union bank from the 5th respondent towards part payment. The original documents pertaining to the 5 cent land, blank signed cheque leaf are still in the possession of the petitioner.

5. It is submitted that on the basis of the investigation it is revealed that the petitioner and the counter petitioners were having money transaction between them for quite some time and

while so there arose dispute between them regarding the amount due to the parties. As per the enquiry conducted, it is revealed that the counter petitioners did not commit any offence so as to register a crime case against them. Therefore the petitioner matter was closed and report has been submitted before the Inspector of Police, Kalamassery on 21.07.2014 treating the matter as civil in nature."

3. Heard, Sri. T.M. Abdul Latiff learned counsel for the petitioner and the State Attorney appearing on behalf of contesting respondents 1 to 4.

4. Having heard the learned advocate appearing for the petitioner and the learned State Attorney appearing for the official respondents and taking into consideration the facts and circumstances of the case it is ordered in the interest of justice that if the petitioner has any grievance against the closure of his complaint by the respondent police authority on 21/07/2014, then the petitioner will be at liberty to submit detailed representation in that regard before the 3rd respondent District Police Chief, Aluva (Rural) detailing out the deficiencies in the investigation and

stating, with material particulars as to how cognizable offences are disclosed in Ext.P3 and also as to his contention that investigation has not been properly and fairly carried out by the 4th respondent, then the 3rd respondent District Police Chief will call for the entire Case Diary file in this case from the 4th respondent and examine whether any cognizable offences are disclosed in the petition submitted by the petitioner and as to whether the assessments and conclusions of the 4th respondent are made on the right lines and are based on relevant considerations and if the 4th respondent is convinced that cognizable offences are disclosed in the matter, then he may direct the registration of crime in that regard and would also direct the entrustment of investigation to a officer higher in rank than the 4th respondent. It is for the petitioner to submit representation as directed above within a period of two weeks from the date of issuance of certified copy of this judgment and the 3rd respondent District Police Chief will consider

the matter and take decision thereon as directed above within a period of six weeks from the date of submission of the said representation of the petitioner along with certified copy of this judgment. The writ petition (civil) stands finally disposed of, with the above observations and directions.

**Sd/-ALEXANDER THOMAS
JUDGE**

MJL