

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 21782 of 2014 (W)

PETITIONER(S):

1. RAJU
S/O GANGADHARAN, VALUCHIRAYIL VEEDU, KARAMUTTU
KARUVATTA VADAKKU MURI, KARUVATTA VILLAGE
ALAPPUZHA DISTRICT

2. ANEESH
S/O MANIYAN, PUTHEN NIKATHIL, OOTTUPARAMBU
KARUVATTA VADAKKU MURI, KARUVATTA VILLAGE
ALAPPUZHA DISTRICT

BY ADVS.SRI.SHABU SREEDHARAN
SRI.C.G.SALIM
SRI.UDAYAKUMAR SREEDHARAN
SRI.B.BALA PRASANNAN
SMT.RESHMA ABDUL RASHEED

RESPONDENT(S):

1. THE DIRECTOR GENERAL OF POLICE
POLICE HEAD QUARTERS, VAZHUTHAKKADU
THIRUVANANTHAPURAM 695014

2. K.S UDAYABHANU,
CIRCLE INSPECTOR OF POLICE, HARIPPAD, ALAPPUZHA 690514

3. PRADEEP
S/O VISWANATHAN, KAVUMTHARAYIL VEEDU
KARUVATTA VADAKKUM MURI, KARUVATTA, ALAPPUZHA 690517

4. ARUN,
S/O SISUPALAN, MOONNUMANAKKAL VEEDU
KARUVATTA VADAKKUM MURI, KARUVATTA, ALAPPUZHA 690517

R1 BY ADV. STATE ATTORNEY SHRI. P. VIJAYARAGHAVAN
R2 BY GOVERNMENT PLEADER SMT. P. MAYA
R3-R4 BY ADV. SRI.T.S.ANURAJ
R3-R4 BY ADV. SRI.K.M.ABDUL MAJEED

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 21782 of 2014 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE FIR DATED 18-05-2014

EXHIBIT P2 TRUE COPY OF THE FIS DATED 18-05-2014

**EXHIBIT P3 TRUE COPY OF THE MEMORANDUM OF WRIT PETITION IN WPC NO
15590/2014 DATED 18-06-2014**

**EXHIBIT P4 TRUE COPY OF THE CONDIDENTIAL VERIFICATION REPORT DATED
29-01-2013**

EXHIBIT P5 TRUE COPY OF THE SAID COMPLAINT DATED 12-07-2014

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

W.P(C) No. 21782 of 2014

Dated this the 19th day of March, 2015.

J U D G M E N T

The petitioners herein are two among the many accused involved in Crime No.722 of 2014 of the Harippad Police Station, registered under Sections 143, 144, 147, 148, 149 and 307 of IPC. The prayer they essentially seek in the writ petition is a writ of certiorari quashing the said FIR on the ground that they were falsely implicated as accused in the proceeding. They also seek a writ of mandamus directing the first respondent to hand over investigation to some other Superior Officer. On hearing both sides I find that the ground stated by the petitioners to quash the crime cannot be entertained in this writ proceeding. The ground on which they seek orders is that the first information statement given by the de facto complainant Pradeep is not a statement given by him voluntarily and consciously. Their grievance is that

these two petitioners were implicated falsely in the statement, by the police. They have now come forward with an affidavit of the complainant that he had not given any statement against these two petitioners. These are all matters to be gone into and decided by the trial court, when the case comes up for trial. Here is a case where crime was registered by the police on the basis of a definite complaint. The said complaint specifically implicates some named persons and some identifiable persons. These named persons include these two petitioners also. When such a first information statement is there, another statement obtained from the complainant cannot be accepted by the court in this proceeding. The truth, genuineness and acceptability of the first information statement will have to be gone into and decided by the trial court. Another contention is that the two petitioners were falsely implicated by the Investigating Officer. This also cannot be accepted now, because the first information statement itself implicates these two persons. It is submitted that investigation is in progress in the crime. In the particular circumstances where there is a definite complaint against the petitioners, and where investigation is in progress, the petitioners' request to quash the crime as against them at this

stage cannot be entertained by this court. The petitioners can very well pursue the normal remedies available at the Code of Criminal Procedure, either during investigation, or after the final report is submitted. Extra ordinary powers under Section 226 of the Constitution of India cannot be exercised in matters like this. When there is a definite first information statement implicating these petitioners, the value of a further statement given by the complainant, or an affidavit filed by him cannot be adjudged by this court in this proceeding brought under Article 226 of the Constitution of India. The petitioners can either pursue the normal remedies available under the Code of Criminal Procedure, or if the final report comes, they can pursue such remedies including request for discharge. The contention raised by the petitioners that these petitioners happened to be arraigned as accused on a mistaken identity also cannot be now entertained because, the complaint is definite against them and regarding their involvement in the alleged offence. I find no merit in this writ petition, and it is liable to be dismissed. As regards the other prayer for proper investigation, the request will be considered in WP No.15590 of 2014 brought by the de facto complainant himself for a proper and effective investigation.

In the result, this petition is dismissed without prejudice to the right of the petitioners to pursue other appropriate remedy is possible under the law, including the remedies possible under the Code of Criminal Procedure.

P.UBAID,
JUDGE

sab