

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WP(C).No.22597 of 2015 (R)

PETITIONER(S):-

1. A.T.RAJU, AGED 53 YEARS, S/O.THOMAS,
ETTIYIL HOUSE, PUTHUPPADY P.O., THAMARASSERY,
KOZHIKODE DISTRICT.
2. SAJI M.S., AGED 46 YEARS, S/O.M.J.SCARIA,
SOORYA THEJAS, SARADA HOSPITAL COMPOUND,
KANNUR ROAD, KOZHIKODE.

BY ADV. SRI.ANIL D.KARTHA.

RESPONDENT(S):-

1. SRI. SHIBU DANIEL,
THE JUDICIAL FIRST CLASS MAGISTRATE, THAMARASSERY,
KOZHIKODE DISTRICT - 673 573.
2. SRI.JOHNNEY SEBASTIAN
THE CHIEF JUDICIAL MAGISTRATE, KOZHIKODE - 673 032.
3. THE HIGH COURT OF KERALA,
REPRESENTED BY THE REGISTRAR (SUB ORDINATE JUDICIARY),
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P-1: COPY OF THE ORDER DATED 14.8.2013 IN THE
JFMC THAMARASSERY IN CMP 2564/13 IN MC 52/13.
- EXT.P-2: COPY OF THE ORDER DATED 4.9.2013 OF THE
HIGH COURT OF KERALA IN OP (CRL) NO.2954/13.
- EXT.P-3: COPY OF THE ORDER DATED 24.7.2014 OF THE
JFMC - II THAMARASSERY IN CMP 4845/14 IN CRIME 495/14.
- EXT.P-4: COPY OF THE ORDER DATED 1.8.2014 OF THE
JFMC - II THAMARASSERY IN CMP 4859/14 IN CRIME 495/14.
- EXT.P-5: COPY OF THE ORDER DATED 18.8.2014 OF THE JFMC - II
THAMARASSERY, IN CMP 5120/14 IN CRIME 221/14.
- EXT.P-6: COPY OF THE ORDER DATED 29.8.2014 OF THE
SESSIONS COURT, KOZHIKODE IN CMC 1708/14.
- EXT.P-7: COPY OF THE ORDER DATED 17.7.2014 OF THE
JFMC - II THAMARASSERY IN CMP 4735/14 IN CRIME 199/14.
- EXT.P-8: COPY OF THE ORDER DATED 13.8.2014 OF THE
JFMC - II THAMARASSERY IN CMP 4237/14 IN MC 87/14.
- EXT.P-9: COPY OF THE ORDER DATED 19.8.2014 OF THE
JFMC - I THAMARASSERY IN CMP 4733/14 IN MC 202/14.
- EXT.P-10: COPY OF THE COMPLAINT DATED 10.11.2014 FILED BY THE
PETITIONERS BEFORE THE HIGH COURT OF KERALA.
- EXT.P-11: COPY OF THE REPORT DATED 20.1.2015 BY THE
CJM, KOZHIKODE.
- EXT.P-12: COPY OF THE OFFICIAL MEMORANDUM OF THE
HIGH COURT OF KERALA DATED 21.2.2015.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.22597 of 2015-R

Dated this the 03rd day of August, 2015

JUDGMENT

Two Advocates, practising before the various Courts in the Kozhikode District, challenge a report of the Chief Judicial Magistrate, Kozhikode on a complaint submitted by them against the Judicial First Class Magistrate, Thamarassery; both of whom are impleaded as party respondents 2 and 1 respectively. The petitioners allege that the 1st respondent had animosity towards the petitioners, which was putting them to great prejudice in their profession. They also allege that the conduct of the 1st respondent in Court, especially to them, was unbecoming of a Judicial Officer. To substantiate the allegations in the writ petition and the complaint produced at Exhibit P10, certain specific instances are referred to. This Court is of the opinion that this Court has to confine to such instances alleged; to understand whether there is any unbecoming conduct on the part of the Judicial Officer, the 1st respondent herein.

2. The report specifically refers to certain instances.

The 1st instance referred to in the report is, consideration of bail applications in Crime No.495/14 of Mukkom Police Station, which allege offences under the Indian Penal Code, 1860 [for brevity “IPC”] coupled with offences under the Kerala Prevention of Ragging Act. While a bail application filed by certain accused on 24.07.2014 was rejected on the same day, the bail application filed by the 1st accused through the 1st petitioner herein is said to have been dismissed after about seven days. This act, according to the petitioners, enabled the other accused to immediately approach the Sessions Court and obtain bail, while the 1st petitioner had to languish in Jail for more number of days. Again, in Crime No.221/14 arising from Thiruvambadi Police Station, a bail application filed on 12.08.2014 was dismissed only on 18.08.2014; though the offence was a bailable one. The accused then had to approach the Sessions Court, which granted bail by its order dated 29.08.2014. While the applications filed by the petitioners for the accused in Crime No.221/14 was dealt with in the aforesaid manner, the applications in Crime No.199/2014 of the Thiruvambadi Police Station is said to have been allowed,

granting bail on the same day. These instances, according to the petitioners, show a dual approach of the Judicial Officer. The animosity of the 1st respondent towards the petitioners arose in the proceedings with respect to interim custody of a minor child sought for in a case under the Protection of Women from Domestic Violence Act, 2005 [for brevity "Act of 2005"], according to the petitioners.

3. The animosity of the 1st respondent is said to have arisen in a proceeding under the Act of 2005, wherein one lady working at Scotland had approached the Magistrate's Court, *inter alia* with a petition under Section 21 of the Act for interim custody of a three year old child, who was in the custody of her in-laws. Both the mother and father of the minor child were employed in Scotland and the mother is said to have come to India specifically to see the child. The case filed on 07.08.2013 though filed before the Court of the 1st respondent, since he was on leave, another Magistrate who was holding charge of the said Court, is said to have given a direction to the respondents therein to produce the child and her passport on 14.08.2013. When the matter was called on 14.08.2013, it is stated that a lawyer from

Idukki, where the minor child admittedly resided with the grandparents; appeared and without complying with the earlier order of the Court, sought for a variation of the same. It is alleged that since the mother of the child had to return abroad on 02.09.2013, a compromise was entered into for meeting the child. The petition was also posted to 23.08.2013 for further consideration. The mother is said to have mingled with the child, as agreed to by the respondents and reduced to writing in the order dated 14.08.2013, and came back on 23.08.2013 for the hearing before the Court.

4. Despite the appearance of the minor child with the grand-parents and their willingness to handover the child to the mother, the 1st respondent is said to have refused to pass such an order. On 26.08.2013 the petitioners are said to have filed notes of arguments, highlighting the alleged objectionable conduct of the Judicial Officer, upon which the 1st respondent is said to have sought for transfer of the said case to another Court. The mother of the minor child filed an Original Petition before this Court and sought for a direction for expeditious disposal, which direction was issued to JFCM-1, Koyilandy, to which Court the

case stood transferred.

5. The 2nd respondent, CJM, has conducted an enquiry and submitted Exhibit P11 report to the Registrar (Subordinate Judiciary), the 3rd respondent herein. As to the case regarding the custody of the minor child, which, according to the petitioners, gave cause for the animosity towards the petitioners, the CJM found that in fact there was an *ad interim* order in favour of the mother to meet the child at Kattappana, where the child was kept by the in-laws of the child. Though on the filing date; the respondents were directed to produce the child and the passport on 14.08.2014, on the said date a lawyer from Idukki is said to have appeared for the respondents and sought for an adjournment. The CJM reports that there can be no illegality found in such an adjournment being granted at the first instance, especially when the Court had made sufficient safeguards to ensure that the mother had an opportunity to mingle with the child. This Court does not find any infirmity in the report on that count. However, when the matter was posted again, imputations were made against the incumbent in the Court, by way of an argument note, and it was hence that the 1st respondent

requested the CJM to transfer the case. Though the petitioners impute objectionable conduct, this Court is unable to find any justification for the allegations on the facts pleaded and that recorded in the report.

6. With respect to the allegations raised on the bail applications filed in Crime No.495/14, the specific allegation is that the 1st respondent was favouring one particular Advocate and acting with animosity towards the petitioners herein. It was found that there was delay in considering the bail application of the 1st accused, while the bail applications of accused 2 to 6 were disposed of on the same day. The CJM had perused the records of the case to find that there was no positive overt act alleged on accused 2 to 6 whose bail applications were dismissed on the same day. The 1st accused is said to be the principal accused against whom the overt act was alleged. The CJM also finds that the Magistrate, in the teeth of the seriousness of the allegations levelled against the 1st accused, would have called for a report from the Investigating Officer. The 1st accused is said to have been produced on 25.07.2014 with a remand report and the case was posted to 29.07.2014, which day was declared to be a

holiday. The matter was adjourned to 30.07.2014, when objection was filed, and the application heard on 31.07.2014 and an order passed on 01.08.2014. In this context, the CJM has also referred to another CMP, which was filed by the 1st petitioner herein and defended by the Advocate against whom the petitioners have raised an allegation of being favoured by the 1st respondent. The said application is said to have been allowed in favour of the petitioners' client. In the Crime registered at Thiruvambadi Police Station, there was a delay of six days to dispose of the bail application, during which period the accused was under detention and they had to approach the Session Court to obtain bail from that Court.

7. What essentially comes out of the complaint and the report filed is, that, the petitioners were aggrieved with the orders passed by the 1st respondent on the Judicial side and had also raised prejudice by the delay caused in consideration of the bail applications. As far as the judicial orders passed, it has to be dealt with before the hierarchy of Courts, which the petitioners seem to have taken up also.

8. As to the delay caused, definitely the explanations

put forth in the report of the CJM alone would not suffice. It is trite and the Hon'ble Supreme Court and this Court have time and again emphasised the need for consideration of the bail applications as expeditiously as possible and on the same day unless other compelling circumstances exist. The said fact was taken note of by the Judge-in-charge of administration of the district. A communication was also issued to the CJM directing to instruct the 1st respondent on the guidelines issued by this Court with respect to consideration of bail applications. The 1st respondent was also directed to follow the guidelines scrupulously. It is to be noticed that though the petitioners in the above writ petition challenge Exhibit P11 report and seek for a fresh enquiry into the allegations raised, there is no challenge made against Exhibit P12 decision by the learned Judge-in-charge of the administration of the District and communicated to the CJM. On the administrative side, the allegations were enquired into, the report of enquiry considered and the Judge-in-charge of administration also issued necessary orders. This Court does not find any reason to direct a fresh enquiry, on the facts disclosed, exercising the circumscribed

jurisdiction of judicial review; which essentially is invoked by the petitioners.

9. On the relief claimed of expunging the observations made in the report against the petitioners-Advocates, it is to be noticed that this Court does not find any observations in the report which cast any aspersion on the petitioners. The various allegations raised in the complaint were dealt with elaborately and the CJM having found the same to be not tainted by any animosity or *malafides*, merely found that the complaint is baseless and that the various documents produced by the complainants themselves would belie the contention of ill-will of the Judicial Officer. This would not cast any aspersions on the petitioners and the same is only based on the findings that the allegations in the complaint are found to be not correct.

10. The report of the CJM, a mere reading indicates, is after going through the case records of the specific instances pointed out by the petitioners. It cannot at all be said to be not an even handed enquiry. The enquiry was also not confined to the expeditious consideration of bail application but into the allegations of favouritism to one and ill-will to the petitioners. The

CJM was careful to look into other cases also in which the two Advocates appeared on opposite sides. The finding that the “fallacy of the wild allegations made by the complainants by records produced...” (sic) does not acquire the nature of an aspersion. Further the report is for internal circulation on the administrative side and cannot lead to any prejudice being caused to the petitioners - Advocates. In such circumstances, sitting in the confined jurisdiction of judicial review under Article 226 of the Constitution, this Court is not inclined to cause any interference to the action taken in the administrative side by the Registry of this Court in calling for a report. This Court also does not find the report of the 2nd respondent to be one not properly arrived. There is no ground to meddle at all with the decision taken by the Judge-in-charge of administration of the district.

The writ petition, hence, would stand dismissed.

Parties are directed to suffer their respective costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]