

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

WP(C) .No. 24826 of 2015 (C)

PETITIONER:

SIJI MONCY JACOB, AGED 36 YEARS,
VELIYATHUKUDIYIL HOUSE, VENGOOR.P.O.,
CHOOORATHODU,
ERNAKULAM DISTRICT, PIN-683546.

BY ADV. SRI.M.S.BREEZ

RESPONDENTS:

1. THE STATE POLICE CHIEF,
POLICE HEADQUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM, PIN-695001.
2. THE DISTRICT POLICE CHIEF(RURAL),
O/O.THE DISTRICT POLICE CHIEF(RURAL), ALUVA
ERNAKULAM DISTRICT-683101.
3. DEPUTY SUPERINTENDENT OF POLICE,
PERUMBAVOOR, ERNAKULAM DISTRICT 683542.
4. CIRCLE INSPECTOR OF POLICE,
KURUPPAMPADY POLICE CIRCLE,
ERNAKULAM DISTRICT-683545.

R1 -R4 BY GOVERNMENT PLEADER SRI.C.RASHEED

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 28-10-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP(C) .No. 24826 of 2015 (C)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: PHOTOCOPY OF THE FIR & FIS IN CRIME NO.1763 OF
2014 OF KURUPPAMPADY POLICE STATION.

EXT.P2: PHOTOCOPY OF THE DISCHARGE CARD ISSUED FROM TALUK
HEADQUARTERS HOSPITAL.

EXT.P3: PHOTOCOPY OF THE REPORT DATED 20.08.2014 FILED BY
THE POLICE BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, PERUMBAVOOR.

EXT.P4: COPY OF THE JUDGMENT IN W.P(C) NO.24880 OF 2014
DATED 04/02/2015 OF THIS HON'BLE COURT.

EXT.P5: COPY FO THE STATEMENT BEFORE THE JUDICIAL FIRST
CLASS MAGISTRATE COURT, KURUPPUMPADY DATED 03/02/2014.

EXT.P6: COPY OF THE 164 STATEMENT BEFORE THE JUDICIAL
FIRST CLASS MAGISTRATE, KOTHAMANGALAM DATED 08/07/2015.

RESPONDENTS' EXHIBITS

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

W.P(C) No. 24826 of 2015

Dated this the 28th day of October, 2015

J U D G M E N T

The petitioner herein is the defacto complainant in Crime No.1763/2014 of the Kuruppampady Police Station. The complaint made by her is against three persons. During investigation, the police submitted a report in the trial court deleting the name of two of the accused. The aggrieved complainant approached this Court with a writ petition. In the said writ petition, filed as W.P(c) No.24880/2014 this Court recorded the police report that some more sections are involved, and that the two accused also would be added. The writ petition was accordingly closed. When the defacto complainant found some malpractice on the part of the then investigating officer, she again brought this writ petition for a direction for further investigation, for adding one more accused on the array of accused. Pending this proceeding, the police submitted a report that investigation is over, and that the final report has been submitted in court against two accused. This means that the writ petitioner's grievance still subsists, that inspite of definite

complaint against three persons, there is final report only against two accused.

2. On hearing both sides, and on a perusal of the case diary made available by the Public Prosecutor I find that this is a matter where the scope of application of Section 319 of the Code of Criminal Procedure can be looked into by the trial court. Of course, it is true that the complainant has made complaint against three accused. But the case diary shows that the police submitted final report against two accused on the basis of statements given by the eye witnesses, that only two were involved in the actual incident, and the third person came there just after the incident. Anyway, those matters require clarification during trial. If the involvement and complicity of the third one is revealed by evidence, the trial court can very well invoke Section 319 of the Code of Criminal Procedure and issue summons to the third one. This is not a ground for ordering further investigation. When remedy is otherwise available under the law as part of the procedure, such remedy will have to be resorted to, and in such a circumstance it would be illegal and inappropriate to order further investigation,

In the result, this writ petition is disposed of, with

observation that if the role and complicity of another accused is revealed by evidence during trial, the trial court can very well invoke the powers under Section 319 of the Code of Criminal Procedure, and issue summons to the said accused.

**Sd/-
P.UBAID
JUDGE**

//True Copy//

P.A to Judge

ab