

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 30384 of 2011 (W)

PETITIONER :

ALEX
S/O. K.A. ISSAC, AGED 39
MANGALATHU KUNNIL, KANJIRAMATTOM P.O.
ERNAKULAM DISTRICT.

BY ADVS.SMT.A.A.GEETHA
SRI.PAUL K.VARGHESE

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY SECRETARY (HOME DEPARTMENT)
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-1.
2. THE DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM-1.
3. THE INSPECTOR GENERAL OF POLICE,
ERNAKULAM-11.
4. THE COMMISSIONER OF POLICE,
ERNAKULAM CITY, ERNAKULAM-11.
5. THE SUB INSPECTOR OF POLICE,
MULANTHURUTHY POLICE STATION,
MULANTHURUTHY, PIN-682 314.
6. THE CIRCLE INSPECTOR OF POLICE,
PIRAVOM POLICE STATION, PIRAVOM, PIN-686664.
7. SRI.SUDHEER MANOHAR,
SUB INSPECTOR OF POLICE,
UDAYAMPEROOR, PIN-682 307.
8. REGI V. VARGHESE,
CPO 10051, POLICE CONSTABLE
UDAYAMPEROOR POLICE STATION,
UDAYAMPEROOR
PIN-682 307.

9. BABU, POLICE CONSTABLE,
(HOME GUARD NO.128), UDAYAMPEROOR POLICE STATION
UDAYAMPEROOR, PIN-682 307.
10. SANTHOSH, POLICE CONSTABLE,
UDAYAMPEROOR POLICE STATION, UDAYAMPEROOR
PIN-682 307.

R1 TO R6 BY SR. GOVT. PLEADER SRI.SOJAN JAMES
R7, R8, R9 & R10 BY ADV. SRI.K.P.MADHU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE FINAL REPORT IN FIR NO. 1443/11 REGISTERED BY THE 7TH RESPONDENT AGAINST THE PETITIONER DATED 4.9.2011.
- EXT.P2 COPY OF THE MEDICAL CERTIFICATE ISSUED BY DR. BEENA DATED 4.9.2011 TO THE PETITIONER.
- EXT.P3 COPY OF THE MEDICAL CERTIFICATE ISSUED BY DR. BEENA TO THE PETITIONER'S WIFE SMT. SINI DATED 4.9.2011.
- EXT.P4 COPY OF THE MEDICAL CERTIFICATE ISSUED BY DR. BEENA KEECHERY HOSPITAL DATED 4.9.2011.
- EXT.P5 COPY OF THE MEDICAL CERTIFICATE ISSUED FROM TALUK HEAD QUARTERS HOSPITAL, TRIPUNITHURA TO THE PETITIONER DATED 7.9.2011.
- EXT.P6 COPY OF THE MEDICAL CERTIFICATE ISSUED FROM TALUK HEAD QUARTERS HOSPITAL, TRIPUNITHURA TO THE PETITIONER'S WIFE DATED 4.9.2011.
- EXT.P7 COPY OF THE NEWS PUBLISHED BY MALAYALA MANORAMA DATED 5.9.2011.
- EXT.P8 COPY OF THE NEWS PUBLISHED BY DESABHIMANI DATED 5.9.2011.
- EXT.P9 COPY OF THE NEWS PUBLISHED BY MATHRUBHUMI DATED 5.9.2011.
- EXT.P10 COPY OF THE NEWS PUBLISHED BY MANGALAM DAILY DATED 5.9.2011.
- EXT.P11 COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE CHIEF MINISTER OF KERALA AND THE RESPONDENTS NO. 1 TO 5 DATED 12.9.2011.

(Contd...)

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- EXT.P12 COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER'S WIFE SMT. SINI TO THE CITY POLICE COMMISSIONER DATED 5.9.2011.**
- EXT.P13 COPY OF THE INTIMATION GIVEN BY DR. BEENA TO THE SUB INSPECTOR OF POLICE, MULANTHURUTHY POLICE STATION DATED 4.9.2011.**
- EXT.P14 COPY OF THE FIR IN CRIME NO. 530/11 AND F.I. STATEMENT SUBMITTED BY THE SUB INSPECTOR OF POLICE, MULANTHURUTHY TO THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KOLENCHERY DATED 7.9.2011.**
- EXT.P15 COPY OF THE MEDICAL BILL ISSUED BY THE ARYA VAIDYA PHARMACY (COIMBATORE) LIMITED DATED 13.9.2011.**
- EXT.P15(a) COPY OF THE MEDICAL BILL ISSUED BY THE ARYA VAIDYA PHARMACY (COIMBATORE) LIMITED DATED 13.9.2011.**
- EXT.P16(a) COPY OF THE MEDICAL BILL ISSUED BY THE CHERUVALLIL MEDICALS, KANJIRAMATTOM TO THE PETITIONER DATED 13/9/2011.**
- EXT.P16(b) COPY OF THE MEDICAL BILL ISSUED BY THE CHERUVALLIL MEDICALS, KANJIRAMATTOM TO THE PETITIONER DATED 13/9/2011.**
- EXT.P17(a) COPY OF THE MEDICAL BILLS ISSUED BY THE JANATHA MEDICAL CENTRE, THEKKUMBHAGAM, TRIPUNITHURA TO THE PETITIONER DATED 8/9/2011.**
- EXT.P17(b) COPY OF THE MEDICAL BILLS ISSUED BY THE JANATHA MEDICAL CENTRE, THEKKUMBHAGAM, TRIPUNITHURA TO THE PETITIONER'S WIFE DATED 8/9/2011.**
- EXT.P18 COPY OF THE NOTICE ISSUED BY THE POLICE INSPECTOR, PIRAVOM DATED 10.6.2011.**
- EXT.P19 COPY OF THE ENQUIRY REPORT AGAINST THE 7TH RESPONDENT.**
- EXT.P20 THE FINAL REPORT IN CRIME NO. 530/2011 OF MULANTHURUTHY POLICE STATION DATED 10/10/2011.**

(Contd...)

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RESPONDENT'S EXHIBITS :

**EXT.R7(a) : COPY OF MEDICAL CERTIFICATE DATED 3.9.2011 ISSUED BY
DR.REJEESH S.R., PRIMARY HEALTH CENTRE, POOTHOTTA TO THE
PETITIONER.**

**EXT.R7(b) COPY OF REFER REPORT IN CRIME 530/2011 OF C.I. POLICE,
PIRAVOM FILED BEFORE THE JUDICIAL IST CLASS MAGISTRATE
COURT, KOLENCHERY.**

**EXT.R7(c) COPY OF PROCEEDINGS NO. H1/44/PR/11 EC DATED 23.3.2012 OF
DEPUTY COMMISSIONER OF POLICE, KOCHI CITY.**

//TRUE COPY//

P.A. TO JUDGE

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C.K. ABDUL REHIM, J.

W.P.(C)No.30384 of 2011

Dated this the 20th day of March, 2015

JUDGMENT

This writ petition under Article 226 of the Constitution of India was originally filed seeking for a direction commanding respondents 1 and 2 to conduct further investigation in Crime No.530/2011 of Mulanthuruthy Police Station, under direct supervision of the 2nd respondent, by an officer not below the rank of Superintendent of Police. Inter alia, the petitioner sought for a relief to quash Ext.P1 Charge Sheet (final report) in Crime No.1443/2011 of Udayamperoor Police Station. Ext.P18 notice of information issued under Section 157(2) Cr.P.C with respect to the report submitted before the Magistrate, referring the case in Crime No.530/2011 as false, was also challenged. By virtue of amendment now incorporated the petitioner is also challenging Ext.P20 final report submitted in Crime No.530/2011.

2. Facts stated in brief are that, the 7th respondent along with his policemen had brutally manhandled and assaulted the petitioner and his wife on 03/09/2011, at a place near to their residence, by stopping a vehicle in which they were traveling along with their two minor children and had taken the petitioner to the police station, where also assault against him had continued. The petitioner was released from the Police Station only after registering a case alleging offence punishable under Section 279 of Indian Penal Code (for short 'IPC') and various other offenses punishable under the Motor Vehicles Act, including offence of drunken driving. The petitioner and his wife were taken to the Government Hospital, Keecheri on the next day, from where they were taken to the Taluk Head Quarters Hospital, Tripunithura for better treatment. Exts.P2 to P6 are the Medical Certificates produced in this regard. The petitioner thereupon submitted complaints before various higher police authorities alleging that respondents 7 to 10 had committed various offences punishable under IPC. Later on Crime No.530/2011 was

registered at Mulanthuruthy Police Station against the 7th respondent and others. The FIR in the said case is produced as Ext.P14. It is stated that the petitioner and his wife had continued prolonged treatment for the injuries sustained in the assault.

4. During June 2011 the petitioner was served with Ext.P18 notice intimating about the final report submitted in Crime No.530/2011, to the effect of referring the case finding the allegations are false. Drawing attention to Ext.P20 refer report, it is contended that no proper investigation was conducted in the said case by recording evidence of any independent witnesses. It is alleged that such a report was filed only to help the 7th respondent and the other Police Officers who were accused in the case registered. Under such circumstances the petitioner is seeking for a further investigation of the case. So also the petitioner seeks to quash Ext.P20 report as it is totally unsustainable.

5. Another relief sought for in this writ petition is to quash Ext.P1 final report (Charge sheet) in Crime

No.1443/2011 of Udayamperoor Police Station registered against the petitioner under Section 279 IPC and other offences under the MV Act. Such a relief cannot be entertained in this writ petition because the petitioner has not produced any materials before this court to convince that there exists circumstances warranting interference against the final report, by invoking the extra ordinary discretionary jurisdiction vested under Article 226. It is always left open to the petitioner to seek appropriate remedy available under Cr.P.C against Ext.P1 before the appropriate Court.

6. Main relief sought for in this writ petition is to order further investigation in Crime No.530/2011. Admittedly, investigation of the said case had already culminated in Ext.P20 final report submitted before the Magistrate's Court under Section 173(2) Cr.PC. Before submitting the final report, in which request is made to the court to refer the case as false, the Investigating Officer had issued Ext. P18 notice giving information to the defacto complainant (petitioner) under Section 157(2) of Cr.PC. It

is not evident from the averments contained in the writ petition, as to whether the Magistrate before whom Ext.P20 report was submitted had accepted the same or not. At this stage whether the defacto complainant can seek for further investigation, is the crucial question to be decided.

7. In the decision of the Hon'ble Supreme Court in **State of Punjab v Central Bureau of Investigation and Others (AIR 2011 SC 2962) (2011 (4) KLT SN 3)** it is held that a further investigation under Section 173(8) Cr.PC. is not prohibited even after submission of the final report under Section 173(2) Cr.PC. A learned Judge of this court in the decision in **Prem Vijayan V. State of Keala [2012 (4) KLT 330]** had found that even acceptance of the final report will not oust the Magistrate from taking cognizance of an offence alleged to have been committed on the basis of a complaint. The defacto complainant in such case can seek further investigation by impeaching the final report. It is held that the defacto complainant can either raise objection to the final report or can file a protest complaint after acceptance of such report. In that decision

the learned Judge had relied on the ruling of the Supreme Court in **Kishore Kumar Gyanchandani V. G.D. Mehrotra and another [(2001) 3 Crimes 205 (SC)]** in order to hold that, it is not material whether the final report was accepted or not by the Magistrate, further investigation can be directed. The above view has been reiterated by another decision of the hon'ble apex court in **Ramachandran V. R. Udayakumar and others [(2008) KHC 6403]**. So also this court in the case of **Sindhu Gopalakrishnan V. Sebastain Attookkaran @ Sebastain [2011 (1) KLT 279]**. This court found that the defacto complainant in a police case can file a petition seeking further investigation or a private complaint, as the case may be. This view has been reiterated in so many decisions of this court.

8. But there exist vast difference between a further investigation and a re-investigation. In the decision in **State of Punjab V. Central Bureau of Investigation** (cited supra) it is held that a superior court in a given case can exercise its constitutional power under Article 226 to direct

an offence to be further investigated by a different agency. But the direction for a 're-investigation' is totally forbidden in law. It is held that no superior court can issue such a direction. However it is held that powers conferred under Section 173 (8) Cr. P.C cannot limit or affect the inherent powers vested on this court under Section 482 Cr.P.C to prevent abuse of any process of court or otherwise to secure the ends of justice.

9. Learned counsel for the petitioner raised vehement contentions to the effect that when this court could arrive at a finding that the investigation conducted by the police authorities is not proper, in order to do complete justice it is open to handover the investigation to any independent agency. In this regard reliance was placed on various decisions such as, **George Muthoot V. State of Kerala (2010 (1) KLT 399)**, **Narmada Bai V. State of Gujarat (2011 (2) KLT SN 71 (C. No.91)**, **State of Punjab V. Central Bureau of Investigation (2011 (4) KLT SN 4) (C. No.3)** & **Sreekumar Menon and others V. M/s. Baby Container Terminal Pvt. Ltd. (2012 (2)**

KLT 432). But the question to be decided is as to whether the materials produced in the case at hand would prompt the court to arrive at a conclusion to exercise the power vested either under Section 482 Cr.P.C or under Article 226 of the Constitution to direct a further investigation by any other competent agency.

10. The hon'ble Supreme Court in **Reeta Nag V. State of West Bengal and others (2009) 9 SCC 129** held that, once the charge sheet under Section 173 (2) is filed, the Magistrate may order further investigation on the basis of a protest petition or on application by the investigating authority, under Section 173 (8). But the Magistrate cannot suo motu direct further investigation or a re-investigation. A learned Judge of this court in the decision in **Amitha Razzak V. State of Kerala and others (2015 (1) KHC 487** held that, the remedy available to the defacto complainant when the investigating officer had filed a refer report and when the Magistrate is accepting it, is either to file a protest complaint or to file a revision pointing out the mistakes crept into investigation

conducted by the police. Therefore it is evident that despite the fact that whether the Magistrate had accepted Ext.P20 final report or not, the petitioner has got remedies either to approach the Magistrate court in a protest complaint invoking powers under Section 190 or to challenge the decision of acceptance of the final report in revision before the appropriate court. Whether there exists any special circumstances warranting interference by this court invoking the extra ordinary jurisdiction vested under Article 226, in order to arrive at a finding regarding impropriety of the investigation conducted and in order to order a re-investigation, is the question to be decided. Going by Ext.P20 it is not discernable with respect to details of the investigation conducted. Details such as the number of witnesses questioned or the number of documents or material objects collected etc. are not revealed. Learned counsel for the petitioner had placed heavy reliance on Ext.P2 to P6 Medical Certificates, Ext.P7 to P10 Newspaper clippings, Ext.P11 and P12 complaints submitted before the higher police authorities and Ext.P13 intimation given by

the Medical Officer to the police station on the next day of incident etc. But whether these materials were considered by the Investigating Officer while arriving at the conclusion contained in Ext.P20, is not discernable. In other words, in order to arrive at a conclusion that the investigation was not properly conducted and in order to find that a re-investigation is necessary to do complete justice or to prevent miscarriage of justice, it needs a detailed probe. Appreciation and evaluation of various factual aspects, both oral and documentary, are required to arrive at any such conclusion. As already observed, the petitioner has got effective remedies as provided under relevant provisions of the Cr.P.C before the appropriate court dealing with the case. Hence this court is of the considered opinion that reliefs sought for in this writ petition cannot be granted by invoking powers under Article 226.

11. In the decision of the hon'ble Supreme Court in **Sakiri Vasu V. State of U.P. (2008 (1) KLT 724 (SC))** it is held that the Magistrate has very wide powers to direct registration of F.I.R and to ensure proper investigation and

for this purpose it can monitor the investigation to ensure that the investigation is done properly. The High Court should discourage the practice of filing writ petition or petition under Section 482 Cr.P.C simply because a person has a grievance that his F.I.R has not been registered by the police, or that after being registered, proper investigation has not been done by the police. For this grievance the remedy lies before the concerned Magistrate or by filing a criminal complaint under Section 200 Cr. P.C. and not by filing a writ petition or a petition under Section 482 Cr. P.C. It is observed therein that, eventhough the alternate remedy is not an absolute bar to a writ petition, it is equally well settled that if there is an alternate remedy the High Court should not ordinarily interfere. It was observed in the said case that by invoking the doctrine of implied power the scope under Section 156 (3) Cr. P.C, which is vested on the Magistrate is wide enough even to include ordering of reopening of the investigation. The hon'ble apex court in a strong words had observed that, if a final report after investigation is submitted and if the report has been

accepted by the Magistrate and no appeal/revision was filed against the order of the learned Magistrate accepting police report, then that is the end of the matter. Therefore it is evident that when an effective alternate remedy is available the petitioner need not rush to this court by invoking Article 226 or Section 483 Cr.P.C.

12. Based on the findings mentioned as above, this writ petition is hereby dismissed, without prejudice to rights of the petitioner to seek appropriate remedy before the appropriate court in accordance with the statutory provisions.

Sd/-
C.K. ABDUL REHIM
JUDGE

MJL/SKV/AMG

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P.A. to Judge