2024:KER:59795

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 7TH DAY OF AUGUST 2024 / 16TH SRAVANA, 1946

CRL.MC NO. 987 OF 2017

CRIME NO.403/2015 OF KOLLAM EAST POLICE STATION, KOLLAM

AGAINST THE ORDER/JUDGMENT DATED 29.10.2010 IN AS NO.187 OF 2006 OF I ADDITIONAL DISTRICT COURT & I ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM

ARISING OUT OF THE ORDER/JUDGMENT DATED IN CC NO.561 OF 2016 OF CHIEF JUDICIAL MAGISTRATE, KOLLAM

PETITIONERS/ACCUSED 1-2:-

1 R. RAVIKUMAR
AGED 62 YEARS, T.C.25/1838, THAMPANOOR ROAD, THIRUVANANTHAPURAM-695 001

2 V.C.JAMES
AGED 58 YEARS, 36/2290, VADAKKEDAM HOUSE, SHENOI ROAD, KOCHI-682 017

BY ADV SRI.R.S.KALKURA

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY SUB INSPECTOR OF POLICE, KOLLAM EAST POLICE STATION, KOLLAM THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031

2 K.SUDHAKARAN
AGED 52 YEARS, S/O.KUTTAPPAN, KEETHANATHIL,

**SWAMY OIL MILL ROAD, CANTONMENT NORTH,
KOLLAM EAST VILLAGE, KOLLAM-691 001**

3 THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, REPRESENTED BY ITS SECRETARY, P.B.BOX.NO.7100, INDRAPRASTHA MARG, NEW DELHI-110 002

**4 INDIAN BANK
REPRESENTED BY IT'S MANAGER KOLLAM BRANCH
INDIAN BANK TOWERS, MAIN ROAD KOLLAM-691001**

**BY ADVS. RENJITH T.R., SR. PP
SRI.BINOY VASUDEVAN - R4
SRI.S.SANTHOSH KUMAR - R2**

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

2024:KER:59795

P.V.KUNHIKRISHNAN, J.

Crl.M.C. No.987 of 2017

Dated this the 07th day of August, 2024

O R D E R

This Criminal Miscellaneous Case is filed to quash the proceedings in C.C. No.561/2016 on the file of Chief Judicial Magistrate Court, Kollam. It is a complaint filed by the 2nd respondent. The offence alleged are under Sections 120B, 419, 420 and 465 of IPC.

2. This is a protest complaint. Before filing this protest complaint, the police registered a case and investigated the matter and thereafter submitted Annexure-A11 refer report. The grievance of the petitioners is that, without considering Annexure-A11 refer report, the learned Magistrate taken cognizance based on the protest

complaint as evident by Annexure-A13. Aggrieved by the same, this Criminal Miscellaneous Case is filed.

3. Heard the learned counsel for the petitioner, the learned Public Prosecutor and the learned counsel appearing for the 2nd and 4th respondent.

4. It is an admitted fact that, the Police investigated the same issue and submitted a refer report and thereafter the protest complaint is filed by the 2nd respondent. The order taking cognizance is Annexure-A13. Even in Annexure-A13, it is mentioned that, there was a police complaint and it was referred. But, while taking cognizance, the learned Magistrate has not look into the findings in the refer report. This Court in **Parameshwaran Nair v. Surendran** [2009 (1) KLT 794] considered this point in detail. The relevant portion of the

above judgment is extracted hereunder:

> "12. If the original complaint stood dismissed by the acceptance of the refer report submitted after investigation the protest complaint if any filed can only be treated as a second complaint. If so, the protest complaint will lie only if there was a manifest error or manifest miscarriage of justice in the earlier order or new facts which the complainant had no knowledge of or with reasonable diligence could not have brought forward in the previous proceedings is adduced. When this is the legal position, it is notlawful to the Magistrate to ignore the final report submitted by the police under Section 173(2) of the Code. Magistrate is bound to consider the final report and decide which of the options available to him is to be exercised."

5. Similarly in **Kader v. State of Kerala** [1999 (3) KLT 55], this Court considered the same point, which is extracted hereunder:

> *"7. The Court noted that the scope of enquiry under S.202 is the ascertainment of the truth or falsity of the allegations made in the complaint on the materials placed by the complainant before the Court for the limited purpose of*

finding out whether the prima facie case for issue of process has been made out and for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. Nevertheless, the Court has a duty to protect the interest of the absent accused also because at the particular stage, the accused has no say in the matter and the matter is decided without notice to him. It is, therefore, open to the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent the accused therein from being called upon to face obviously frivolous complaint and to find what material there is to support the allegations made in the complaint. The Magistrate has a duty not only to bring to book a person or persons against whom grave allegations are made in the complaint but also to protect the interest of the absent accused in such matters. What all matters he should take into consideration to arrive at the conclusion that he should take cognizance of the offence, will depend upon the facts and circumstances of each case. He has necessarily to consider the allegations made in the complaint and the statement of the complainant recorded under S.200 Cr.P.C. as also of the witnesses examined under S.202 of the Cr.P.C. Along with that, he has also to consider the result of enquiry or investigation, if any, held by the police. It cannot be said that the said data is not an essential factor. The consideration of the materials under S.202 of the Cr.P.C. is not an empty formality and cannot be done in a

perfunctory or mechanical manner or by adopting a superficial approach."

6. In the light of the above principles, I am of the considered opinion that, the order taking cognizance as evident by Annexure-A13 is to be set aside and the matter is to be reconsidered by the learned Magistrate.

Therefore, this Criminal Miscellaneous Case is allowed in the following manner:

1. *Annexure-A13 order is set aside.*
2. *The Chief Judicial Magistrate Court, Kollam is directed to reconsider Annexure-A12 protest complaint in the light of Annexure-A11 and also in the light of the dictum laid down by this Court in* ***Parameswaran Nair****'s and* ***Kader****'s Cases (supra).*

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

nvj

APPENDIX OF CRL.MC 987/2017

PETITIONER ANNEXURES

ANNEXURE A1	**TRUE COPY OF THE LETTER DATED 18.12.2004, ISSUED BY THE 2ND RESPONDENT TO THE ICAI**
ANNEXURE A2	**TRUE COPY OF THE LETTER DATED 23.4.2005 ISSUED BY THE ICAI TO TEH FIRM, M/S.SANKAR & MOORTHY**
ANNEXURE A3	**TRUE COPY OF THE LETTER DATED 9.5.2005, ISSUED BY ICAI, CHENNAI, TO THE 2ND RESPONDENT**
ANNEXURE A4	**TRUE COPY OF THE LETTER DATED 9.5.2005, ISSUED BY THE ICAI TO M/S. SANKAR & MOORTHY**
ANNEXURE A5	**TRUE COPY OF THE LETTER DATED 7.7.2005, ISSUED BY ICAI, CHENNAI TO ICAI, CHENNAI TO ICAI, NEW DELHI**
ANNEXURE A6	**TRUE COPY OF THE LETTER DATED 22.7.2005, ISSUED BY ICAI, CHENNAI, TO THE 2ND RESPONDENT**
ANNEXURE A7	**TRUE COPY OF THE LETTER DATED 4.4.2008, ISSUED BY ICAI TO M/S.INDIAN RARE EARTHS LTD.**
ANNEXURE A8	**TRUE COPY OF THE JUDGEMENT DATED 29.10.2010 IN A.S.NO.187/2006 ON THE FILE TO THE 1ST ADDITIONAL DISTRICT JUDGE, KOLLAM**
ANNEXURE A9	**TRUE COPY OF THE JUDGEMENT DATED 30.10.2010, IN APPEAL NO.185/2010 ON THE FILE OF THE KERALA STATE**

	CONSUMER DISPUTES REDRESSAL COMMISSION
ANNEXURE A10	**TRUE COPY OF THE ORDER DATED 25.1.2012 PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX/CENTRAL PUBLIC INFORMATION OFFICER**
ANNEXURE A11	**CERITIFIED COPY OF THE REFER CHARGE-SHEET DATED 29.1.2016, SUBMITTED TO THE CHIEF JUDICIAL MAGISTRATE, KOLLAM**
ANNEXURE A12	**CERTIFIED COPY OF THE PROTEST-PETITION, CMP NO.753/2016 ON THE FILE OF THE CHIEF JUDICIAL MAGISTRATE, KOLLAM**
ANNEXURE A13	**CERTIFIED COPY OF THE ORDER DATED 27.7.2016, PASSED BY THE CHIEF JUDICIAL MAGISTRATE, KOLLAM, IN CMP NO.753/2016**
ANNEXURE A14	**CERTIFIED COPY OF THE STATEMENT RECORDED, OF THE 2ND RSPONDENT**
ANNEXURE A15	**CERTIFIED COPY OF THE STATEMENT RECORDED, OF THE WITNESS, JOSHI**
ANNEXURE A16	**CERTIFIED COPY OF THE STATEMENT RECORDED, OF THE WITNESS, VINOD KUMAR, THE MANAGER, INDIAN BANK, KOLLAM**
ANNEXURE A17	**CERTIFIED COPY OF THE STATEMENT RECORDED, OF PW3**
ANNEXURE A18	**CERTIFIED COPY OF THE LETTER DATED 30.6.2007, ISSUED BY THE 1ST PETITIONER IN HIS CAPACITY AS A PARTNER OF THE FIRM, TO INDIAN**

BANK, THIRUVANANTHAPURAM

ANNEXURE A19	**CERTIFIED COPY OF THE JUDGMENT DATED 26.5.2007, IN O.S.129/2007, ON THE FILE OF THE PRINCIPAL MUNSIFF, KOLLAM**

RESPONDENTS EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE