



2024:KER:80608

Cr1.M.C.No.7975/2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 24TH DAY OF OCTOBER 2024 / 2ND KARTHIKA, 1946

CRL.MC NO. 7975 OF 2024

CRIME NO.49/2020 OF Kannamali Police Station, Ernakulam

SC NO.273 OF 2024 OF SPECIAL C IDAMALAYAR INVN & 5 ADDITIONAL
DISTRICT COURT, ERNAKULAM/II ADDITIONAL MACT, EKM

PETITIONER/ACCUSED:

ASHA
AGED 35 YEARS
W/O ANTONY @ SIBICHAN, ANANDAMPARAMBIL (H),
KAMBANIPADY, CHELLANAM, ERNAKULAM DISTRICT,
PIN - 682008.

BY ADVS.
P.J.JUSTINE
C.H.ABDUL RASAC

RESPONDENTS/STATE/DEFACTO COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.

2 ANTONY @ ANTHAPPAN
AGED 50 YEARS
S/O JOHN, VALIYAVEETIL (H), KAMBANIPADY, CHELLANAM,
ERNAKULAM DISTRICT, PIN - 682008.

PUBLIC PROSECUTOR SRI M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
26.09.2024, THE COURT ON 24.10.2024 PASSED THE FOLLOWING:

**“C.R”****A. BADHARUDEEN, J.**

Crl.M.C.No.7975 of 2024-F

*Dated this the 24th day of October, 2024***ORDER**

This Criminal Miscellaneous Case has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short) by the accused in Crime No.248/2024 seeking the following reliefs:

“(i) Call for the records in SC No.273/2024 on the files of the 5th Additional District & Sessions Court (Idamalayar), Ernakulam, arising out of Crime No.49/2020 of Kannamaly Police Station, Ernakulam District and quash all the proceedings against the petitioner.

“(ii) grant such other reliefs as this Hon’ble Court may deem fit and proper as on the facts and circumstances of the case.”

2. The petitioner is the 6th accused in the above case, where he alleged to have committed offences punishable under Sections 447, 323, 341, 324, 325, 326, 307 read with 34 of Indian Penal Code ('IPC' for short). It is submitted by the learned counsel for the



petitioner that at the time of registering FIR, the petitioner was not arrayed as an accused. Originally accused Nos.1 to 5 were alleged to have committed the above offences after forming into unlawful assembly with knowledge that they are all members of the assembly at 5.45 p.m on 22.02.2020 in front of the house of the defacto complainant and thereafter the 1st accused caused stab injury on the back side of the neck of the defacto complainant. The 2nd accused beat the defacto complainant on his head by using a bamboo stick and also caused stab injury to the wife of the defacto complainant. The 3rd accused caused injuries on the nose of the brother of the defacto complainant and the 4th accused beat him with bamboos.

3. Thereafter, further investigation was conducted without obtaining permission from the court and additional report also was filed. After the further investigation, the petitioner also got incorporated as the 6th accused. According to the learned counsel for the petitioner, the petitioner was roped into this crime since the petitioner herein filed a private complaint against the defacto complainant and 8 others in the instant crime alleging attack against the petitioner at 5 p.m on 22.02.2020



and accordingly another crime also was registered. Therefore, inclusion of the petitioner as an additional accused is without any basis and the supplementary final report filed by incorporating the petitioner as the 6th accused, pursuant to further investigation, without the permission of the court is non-est and the same is liable to be interfered. In this connection, the learned counsel for the petitioner placed decision of the Apex Court reported in [2023 (4) Supreme (SC) 261 : MANU/SC/0522/2023], ***Peethambaran v. State of Kerala and Anr.***, wherein the Apex Court considered 2 questions (i) Whether under the recognised parameters of exercise of power under Section 482, in the facts of the present case, the non-exercise of power is justified? (ii) Whether the District Police Chief, Kottayam, could have ordered the further investigation pursuant to which the second final report was filed? In the said decision, after referring earlier decisions with reference to Section 173(8) of Cr.P.C, the Apex Court answered the first question in the negative and answered the second question holding that the District Police Chief, Kottayam, could not have ordered further investigation.

4. The learned counsel for the petitioner also placed



decisions of the Apex Court reported in [2013 (3) KLT 552], *Jose Thettayil v. Station House Officer*, [(2009) 4 SCC 439], *Mahesh Chaudhary v. State of Rajasthan* to buttress his contentions.

5. Whereas it is submitted by the learned Public Prosecutor that even though at the time of registering the FIR in this crime the 6th accused/petitioner was not named as an accused, after further investigation his involvement also was made out. According to the learned Public Prosecutor, further investigation was conducted when the Investigating Officer obtained further evidence to show involvement of the petitioner also in the crime. Therefore, if at all a formal permission envisaged under the Judge made law was not obtained, the same would not make further investigation and the report thereof as non-est. Hence quashment sought for on the said ground would not succeed.

6. Here there are 2 crimes arose out of the same occurrence. Crime No.49/2020 is pertaining to the present case (S.C.No.273 of 2024), where the prosecution alleges commission of offences, as referred above and (2) Crime No.76/2020 was registered on the basis of a private complaint, lodged by the petitioner herein. Based on Annexure 4 final



report in the second crime, S.C.No.661/2021 has been pending on the files of VIth Additional Sessions Court, Ernakulam. In Crime No.76/2020 also further investigation was conducted and offences punishable under Sections 341, 307, 506, 294(b), 354(a)(1)(b) were deleted.

7. The prime questions arise for consideration in the present case are:

1) whether further investigation conducted without getting formal permission of the court would make the supplementary/additional final report non-est?

2) Whether the inclusion of the petitioner as the 6th accused in the present case is without support of any materials?

8. It is true that as per Section 173(8) of Cr.P.C it has been provided that nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-



sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2) and the statutory provision doesn't make it mandatory for the Investigating Officer to seek permission for conducting further investigation. But in a catena of decisions on the point rendered by the Apex Court it has been held that in order to keep comity between the court and the Investigating Agency the Investigating Officer has to get formal permission for conducting further investigation.

9. In *Sri Bhagwan Samardha SreepadaVallabha Venkata Vishwanandha Maharaj* [(1999) 5 SCC 740], in paragraphs 10, 11 and 12, the Apex Court observed as under, dismissing the appeal:

*“10. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in **Ram Lal Narang v. State (Delhi Admn.)**, [(1979) 2 SCC 322 : 1979 SCC (Cri 479 : AIR 1979 SC 1791]. The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.*



11. *In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court within the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation.*

12. *For the aforesaid reasons, we are unable to interfere with the order passed by the Magistrate. Appeal is accordingly dismissed.”*

10. In the decision reported in [2024 KHC OnLine 895 : 2024 KER 65560 : 2024 KLT OnLine 2298], ***Cirin Siby v. State of Kerala***, this Court considered the earlier decisions of the Supreme Court, viz. ***Vinay Tyagi v. Irshad Ali @ Deepak and Ors***, [2012 KHC 4747], ***Devendra Nath Singh v. State of Bihar & Ors***. [2022 (6) KLT SN 26 (C.No.21) SC : 2022 (5) KLT OnLine 1054(SC) : 2023 (1) SCC 48] ***and Peethambaran v. State of Kerala, [2023 KHC 6510]*** and held in paragraph 9 as under:

*“Reading the decisions in ***Vinay Tyagi's*** case (supra), ***Devendra Nath Singh's*** case (supra) as well as ***Peethambaran's*** case (supra), further investigation provided under S.173(8) of CrPC would require permission. That is to say, requirement of permission for further*



investigation and to file a supplementary report is accepted within law. Therefore, the said requirement to be complied with and the same arises from the maxim contemporanea expositio. Contemporanea expositio is a Latin phrase that means "contemporaneous exposition". It is a doctrine that states that the best interpretation of a law or document is the one that was given by the people who enacted or signed it. This doctrine is especially useful when dealing with old laws, as it helps to understand the legislative intent behind the law. It is noticed that as per proviso to S.193(9) of BNSS, obtaining permission for the purpose of further investigation has given statutory recognition. Therefore, obtaining permission for further investigation is not merely an empty formality and it has some significance, so that the court dealing with the matter should be aware of further investigation by granting a permission to proceed further in that particular case. Having held the law so, on reading the proceedings under challenge, along with report of the learned Special Judge, it seems that no formal permission was granted by the trial court for the purpose of conducting further investigation. ...

11. In the latest decision reported in [2023 KHC OnLine 6480 : 2023 LiveLaw (SC) 365 : 2023 SCC OnLine SC 515 : 2023 INSC 460 : 2023 KLT OnLine 1620 : AIR OnLine 2023 SC 468 : AIR 2023 SC (Cri) 1127], ***State Through Central Bureau of Investigation v. Hemendhra Reddy and Another***, the Apex Court considered the question what is the prime consideration for further investigation and summarised the conclusion in



paragraph 53 as under:

“We may summarise our final conclusion as under: (i) Even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under S.173(8) of the CrPC after the final report submitted under S.173(2) of the CrPC has been accepted. (ii) Prior to carrying out further investigation under S.173(8) of the CrPC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed. (iv) Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. Moreover, investigation cannot be put at par with prosecution and punishment so as to fall within the ambit of Clause (2) of Art.20 of the Constitution. The principle of double jeopardy would, therefore, not be applicable to further investigation. (v) There is nothing in the CrPC to suggest that the court is obliged to hear the accused while considering an application for further investigation under S.173(8) of the CrPC.”

12. But no ratio is laid down in any of the decisions to hold that when a supplementary/additional final report has been filed on the basis of a further investigation, without obtaining formal permission would make the same non-est. As per Section 173(8) of Cr.P.C, further investigation can be done by the Investigating Officer on getting further evidence, oral



and documentary. Proviso to Section 193(9) of BNSS stipulates that further investigation during the trial may be conducted with the permission of the Court trying the case and the same shall be completed within a period of ninety days which may be extended with the permission of the Court. Thus obtaining formal permission to conduct further investigation is recognized in law and the same has to be opted invariably as a matter of practice, when an Investigating Officer fails to seek permission before conducting further investigation, the further investigation and the report thereof could not be held as non-est for the said reason alone. Therefore, the said supplementary/additional final report is legally sustainable.

13. In this matter as part of further investigation, the Station Inspector, Thoppumpadi Police Station, recorded the statements of witness Nos.18 and 21 and based on their statements it was found that the petitioner herein also involved in committing the crime. Going by the statements recorded as that of witness Nos.18 and 21, there is allegation that the petitioner also involved in this crime along with the other accused and she caught hold of the hair of Laila, the wife of the defacto complainant, and hit her head on the wall. The presence of the petitioner



at the place of occurrence is fortified by the counter case also. Be it so, inclusion of the petitioner as 6th accused in this crime is with the aid of necessary materials.

14. Now the trial court accepted both the final reports and took cognizance of the matter. In such a case, it could not be held at this stage that the petitioner is innocent and she got impleaded as additional 6th respondent without any materials or in derogation of the procedure of law. Thus the prayer herein would necessarily fail.

Accordingly, this Criminal Miscellaneous Petition stands dismissed.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/



APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE 1 : TRUE COPY OF THE FIR IN CRIME NO.49/2020 OF KANNAMALY POLICE STATION, ERNAKULAM DISTRICT.

ANNEXURE 2 : TRUE COPY OF THE FINAL REPORT IN CRIME NO.49/2020 OF KANNAMALY POLICE STATION, ERNAKULAM DISTRICT.

ANNEXURE 3 : TRUE COPY OF THE JUDGMENT OF THE HON'BLE SUPREME COURT IN PEETHAMBARAN V. STATE OF KERALA & ANR. REPORTED IN 2023 SUPREME (SC) 466.

ANNEXURE 4 : TRUE COPY OF THE FINAL REPORT AGAINST THE DEFACTO COMPLAINANT AND OTHERS IN CRIME NO.76/2020 OF KANNAMALY POLICE STATION.

ANNEXURE 5 : THE SUPPLEMENTARY FINAL REPORT FILED IN CRIME NO.76/2020 OF KANNAMALY POLICE STATION.