

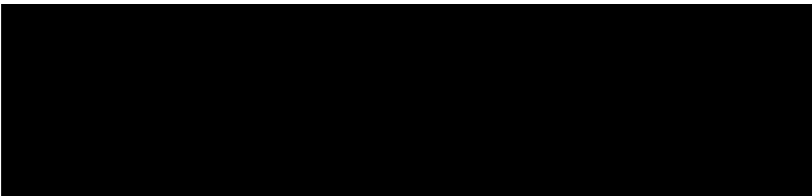


2023/KER/73844

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
FRIDAY, THE 24TH DAY OF NOVEMBER 2023 / 3RD AGRAHAYANA, 1945
CRL.MC NO.4592 OF 2022
CRIME NO.245/2022 OF AYIROOR POLICE STATION,
Thiruvananthapuram

PETITIONER/ACCUSED:

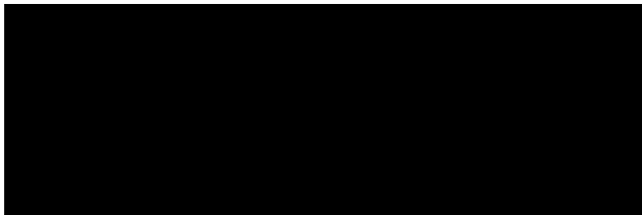
UDAYAKUMAR



BY ADV SRI.K.S.PRAVEEN

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM,
PIN - 682031.
- 2 THE STATION HOUSE OFFICER
AYIROOR POLICE STATION
THIRUVANANTHAPURAM DISTRICT,
PIN - 695310.
- 3 POOJA.G



BY ADVS.
ASWINI SANKAR R.S
T.RAMPRASAD UNNI (K/962/1992)
S.M.PRASANTH (K/957/1994)
T.H.ARAVIND (K/000266/2017)

OTHER PRESENT:

SRI.RENJIT GEORGE, SENIOR
PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
16.11.2023, THE COURT ON 24.11.2023 PASSED THE FOLLOWING:

**C.R****ORDER**

The petitioner, who is arrayed as an accused in Crime No.245 of 2022 of Ayiroor Police Station, Thiruvananthapuram, filed this Crl.M.C. to quash the proceedings in Annexure-B FIR.

2. Annexure-B FIR was registered on the basis of a private complaint preferred by the 3rd respondent herein before JFCM-I, Varkala, which was forwarded to SHO of Ayiroor Police Station for investigation and report under Section 156(3) of Cr.P.C. The petitioner would submit that, the transaction involved is purely civil in nature, and so, criminal prosecution will not lie based on that complaint. So, his prayer is to quash Annexure-B FIR, and the proceedings pursuant thereto.

3. Heard learned counsel for the petitioner and learned Senior Counsel appearing for the 3rd respondent.

4. The short and interesting question to be answered in this case is, can a person who was arrayed as an accused in a crime registered on the basis of a complaint forwarded from Magistrate Court under Section 156(3) of Cr.P.C, can challenge the investigation process initiated by Police, even before collecting details as to the commission of the offence alleged, and before



charging him for a cognizable offence.

5. Section 156 Cr.P.C reads thus:

“156. Police officer's power to investigate cognizable case.—(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned”.

6. Section 156 of Cr.P.C envisages investigation by a Police officer regarding cognizable offences either with the order of a Magistrate or without the order of a Magistrate. Section 156(2) is applicable to the investigation undertaken under clause (1) and clause (3) as well. As per clause (2), no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

7. As we know, investigation is the province of police. In order to find out the truth, they have to investigate the case by



collecting materials, without any interventions or inhibitions. On investigation, if commission of a cognizable offence is made out, the investigating officer is bound to file final report charging the offender for the offences committed by him. When no offence is made out during investigation, then also the investigating officer will send a final report under Section 173(2) of Cr.P.C., to the jurisdictional court, with a request to close it treating the complaint/First Information Statement, as false or on mistaken fact. When a complaint is investigated by Police, on the basis of a direction given by the Magistrate under Section 156(3) of Cr.P.C, even if the Police refer the case as false or mistaken, then also the complainant can pursue the matter further, as per Section 200 of Cr.P.C.

8. When a crime registered by the Police on the basis of a complaint forwarded by the Magistrate under Section 156(3) of Cr.P.C is pending investigation, it cannot be said that the person arrayed as an accused in the FIR is aggrieved by registering that crime. When a complaint is forwarded by the Magistrate under Section 156(3) of Cr.P.C for investigation, the SHO concerned is duty bound to register a crime and to investigate the matter. Column 7 of the printed FIR asks for the details of the known/



identifiable/suspected/unknown accused with full particulars. The name of the petitioner is shown in column 7 of Annexure-B FIR, as he was the respondent in Annexure-A complaint forwarded to the Police Station from JFCM-I, Varkala. Only by investigation, Police will find out whether the person named in column No.7 was the real culprit and whether he had committed a cognizable offence as alleged in the complaint, and if found so, a charge sheet will be filed against him, and then of course, the petitioner will get locus standi to challenge that accusation, on grounds which are legally sustainable. Before conducting investigation as to whether the petitioner had committed a cognizable offence or not, and before a final report is filed charging him for the offences alleged, in normal course, he cannot challenge the investigation undertaken by Police, which was so directed by the Magistrate under Section 156(3) of Cr.P.C. When investigation undertaken by Police as ordered by the Magistrate under Section 156(3) of Cr.P.C. is in progress, this Court cannot interfere with the investigation, which is a statutory function exercised by Police. Unless there are compelling and justifiable reasons, there cannot be any interference with the investigation proceedings.

9. In **Johny Joseph v. State of Kerala [1986 KLT 445]**,



this Court had occasion to consider whether this Court can interfere with the investigation undertaken by Police under Section 156(3) of Cr.P.C., in exercise of its inherent power, and the circumstances under which such power can be exercised. This Court held that, investigation is the province of the Police, whereas enquiry and trial are within the powers of the court. In a case instituted on a police report, the court gets jurisdiction to try the offender, only when the final report is filed and cognizance taken. Till then it is the duty of the Police to collect materials by investigation and decide whether the materials are sufficient to charge-sheet the accused to stand trial. When once that discretion is exercised and the accused is either charge-sheeted or a refer report is filed, the court gets jurisdiction to assess the correctness of the discretion. If the accused is charge-sheeted, before taking cognizance on the Police report, the court can apply its mind to decide whether the charge-sheet discloses the offence or offences alleged. So also if it is a refer report, the court can decide, whether further investigation has to be ordered or whether cognizance has to be taken in other methods provided by law. That does not mean that the High Court is powerless in interfering with the police investigation in appropriate cases in the exercise of its inherent



power. Save in exceptional cases, where non-interference would result in miscarriage of justice, the court and judicial process should not interfere at the stage of investigation of offences. If at all interference with the investigation is warranted, it should be to secure the ends of justice and to prevent miscarriage of justice. The investigating agency is having full discretion to assess the materials and to decide, whether those are sufficient to proceed with the investigation or to file charge-sheet against the accused before court.

10. In **HDFC Securities Ltd. v. State of Maharashtra [2017 (1) KLT SN 53 (Case No.59) SC]**, the Apex Court held that, an order under Section 156(3) of Cr.P.C requiring investigation by Police cannot cause injury of irreparable nature. The stage of cognizance would arise only after the investigation report is filed before the Magistrate. So, the petition under Article 227 of the Constitution of India or under Section 482 of Cr.P.C at this stage, is nothing but premature.

11. Paragraph 24 of the judgment **HDFC Securities Ltd. [2017 (1) KLT SN 53 (Case No.59) SC]** reads thus:

“It appears to us that the appellants approached the High Court even before the stage of issuance of process. In particular, the appellants challenged the order



dated 04.01.2011 passed by the learned Magistrate under Section 156(3) of Cr.P.C. The learned counsel appearing on behalf of the appellants after summarizing their arguments in the matter have emphasized also in the context of the fundamental rights of the appellants under the Constitution, that the order impugned has caused grave inequities to the appellants. In the circumstances, it was submitted that the order is illegal and is an abuse of the process of law. However, it appears to us that this order under Section 156(3) of Cr.P.C. requiring investigation by the police, cannot be said to have caused an injury of irreparable nature which, at this stage, requires quashing of the investigation. We must keep in our mind that the stage of cognizance would arise only after the investigation report is filed before the Magistrate”.

12. In the case on hand, the learned Magistrate forwarded Annexure-A complaint to SHO Ayiroor for investigation and report, and Police registered Annexure-B FIR and investigation is in progress collecting materials to unfurl the truth. Whether the materials collected are sufficient to charge the accused for the offences alleged is yet to be decided. Only if final report is filed, charging the petitioner for a cognizable offence, then only the Magistrate can take cognizance of it. If the petitioner is aggrieved by the order of the Magistrate in taking cognizance of the offence, he will get locus standi to challenge the same, on legally



sustainable grounds. So this petition is premature. By merely registering Annexure-B FIR, no injury has been caused to the petitioner. The petitioner may ventilate his grievance, if any, before the Magistrate either at the time of framing charge or at other stages of enquiry or trial, when the Magistrate is in seisin of the matter, or else he can approach this Court invoking inherent jurisdiction of this Court under Section 482 of Cr.P.C.

In the result, above Crl.M.C is dismissed, as premature.

Sd/-

**SOPHY THOMAS
JUDGE**

smp



APPENDIX OF CRL.MC 4592/2022

PETITIONER ANNEXURES

Annexure A CERTIFIED COPY OF THE CMP.NO 607/2022 DATED 08/02/2022 FILED BY THE 3RD RESPONDENT AGAINST THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT 1, VARKALA.

Annexure B CERTIFIED COPY OF THE FIRST INFORMATION REPORT DATED 11/04/2022.

Annexure C TRUE COPY OF THE AGREEMENT DATED 06/01/2020 BETWEEN THE PETITIONER AND THE DEFACTO COMPLAINANT

Annexure D ORIGINAL COPY OF AGREEMENT DATED 06/01/2020

True Copy

P.S to Judge

smp