



2024:KER:13165

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 21ST DAY OF FEBRUARY 2024 / 2ND PHALGUNA,
1945

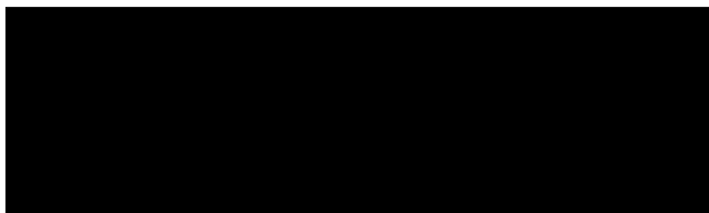
CRL.MC NO. 153 OF 2024

CRIME NO.1311/2022 OF PARASSALA POLICE STATION,
THIRUVANANTHAPURAM

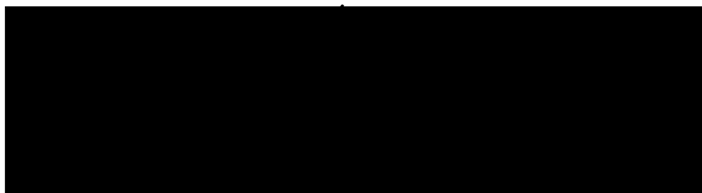
AGAINST SC 764/2023 OF ADDITIONAL SESSIONS COURT,
NEYYATTINKARA

PETITIONERS/ACCUSED 1 TO 3:

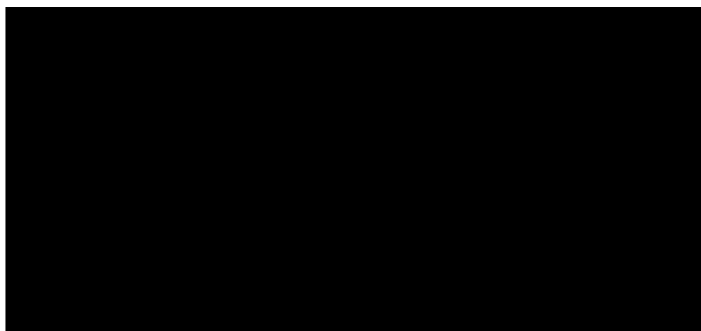
1 GREESHMA @ SREEKUTTY



2 SINDHU



3 NIRMALA KUMARAN NAIR



BY ADVS.

SRI.SASTHAMANGALAM S. AJITHKUMAR

SRI.SATHEESH MOHANAN

SRI.V.S.THOSHIN

SRI.SUNIL V.



SRI.VISHNU V.H.
SRI.SREEJITH S. NAIR
SMT.MAHIMA

RESPONDENTS/COMPLAINANT/STATE:

- 1 THE DEPUTY SUPERINTENDENT OF POLICE
CRIME BRANCH, THIRUVANANTHAPURAM (RURAL),
THIRUVANANTHAPURAM,
KERALA, PIN - 695033
- 2 THE STATION HOUSE OFFICER,
PARASSALA POLICE STATION
PARASSALA, THIRUVANANTHAPURAM,
KERALA, PIN - 695502
- 3 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

BY ADVS.
SRI. GRACIOUS KURIAKOSE, ADGP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 01.02.2024, THE COURT ON 21.02.2024 PASSED THE
FOLLOWING:



"C.R."

BECHU KURIAN THOMAS, J.**CrI.M.C. No.153 of 2024**Dated this the 21st day of January, 2024**JUDGMENT**

Can the head of a Special Investigation Team, specially constituted to investigate a crime, who is not the officer-in-charge of a police station, file a final report under section 173 Cr.P.C? The aforesaid question arises for consideration in this proceeding.

2. Petitioners are the three accused in S.C. No.764/2023 before the Additional Sessions Court, Neyattinkara, which arose out of Crime No.1311 of 2022 of the Parassala Police Station. They face an indictment for the offences under sections 302, 364, 328, 201 and 203 r/w section 34 of the Indian Penal Code, 1860. After the case was committed to the sessions court, petitioners questioned the order of committal of the case through an application filed as CMP No. 81/2023, contending that the investigating officer who had filed the final report did not possess



the jurisdiction to do so. The learned Sessions Judge dismissed the said application by the impugned order against which this challenge has been raised under section 482 of the Code of Criminal Procedure 1973 (for short, 'the Cr.P.C').

3. The case relates to the death of a young man named Sharon Raj. The prosecution alleges that the accused had murdered Sri. Sharon Raj, who was in a relationship with the first accused. It is alleged that the accused entered into a conspiracy to poison and murder the deceased due to his refusal to withdraw from the relationship with the first accused, as another alliance had been arranged for the first accused. In furtherance of their conspiracy, the first accused had, on 14.10.2022, seduced the deceased to visit her at her house and to make love with him. The deceased, on reaching her house, was served with an ayurvedic concoction laced with poison. After consuming the drink, the deceased started vomiting and soon fell ill, as his internal organs were severely damaged. On 30.10.2022, while undergoing treatment at Medical College Hospital, Thiruvananthapuram, Sri. Sharon Raj succumbed to death. The second and third accused allegedly destroyed the evidence by concealing the bottle containing the poison, and the



accused thus committed the offences alleged.

4. After the crime was registered with the Parassala Police Station, due to the sensational nature of the case, a Special Investigation Team was constituted, with the Deputy Superintendent of Police of the Crime Branch as its head and the reins of the investigation was handed over to him. After completing the investigation, the head of the investigating team filed the report, which was registered as C.P. No.6/2023 and thereafter committed and made over to the Additional Sessions Court at Neyyattinkara.

5. Petitioners questioned the committal order as well as the final report through C.M.P. No.81/2023, contending that it is filed by an officer without any jurisdiction. Referring to the definition of the terms "officer-in-charge of a police station", "police report", and "police station" under section 173(2) of Cr.P.C., it was contended that only the 'officer-in-charge of a police station' or in other words, the station house officer alone had the authority to file the final report even if the crime was investigated by a special investigation team. Reliance was placed on the judgment of the Karnataka High Court in **N. Narasimha Moorthy v. State of Karnataka** (CrI.R.P. No.250 of 2022).



6. By the impugned order, the learned Sessions Judge dismissed CMP No.81/2023 after finding that the head of the special investigation team was entitled to file the final report.

7. I have heard Sri. Sasthamangalam S.Ajithkumar, learned counsel for the petitioners as well as Sri. Grashious Kuriakose learned Additional Director General of Prosecutions.

8. The unnatural death of Sri. Sharon Raj, on 25.10.2022, slowly unfurled a case of a gruesome murder. The special investigation team was appointed by the District Police Chief on 29.10.2022 with Sri. Johnson K.J. Dy.S.P. as the head of the investigation. Later, the District Police Chief had, by another special order dated 04.01.2023, entrusted the investigation to Sri. V. T. Rasith, DY.S.P. Crime Branch, Thiruvananthapuram Rural, as head of the investigating team. By the latter order, the head of the investigating team was directed to expedite the investigation and to ensure that the charge sheet is submitted before the court on time. Pursuant thereto, the investigation was completed, and the final report was filed on 25.01.2023 by Sri.V.T.Rasith, Dy.S.P., Crime Branch, Thiruvananthapuram Rural.

9. While considering the question of whether the head of



the special investigation team was entitled to file the final report, it is necessary to refer to the provisions of the Kerala Police Act, 2011 (for short 'KP Act') as well as the Cr.P.C. Chapter IV of the KP Act deals with the general structure of the police force and section 14(2) of the KP Act specifies the ascending order of rank in the said force. A reading of the said provision reveals that a Deputy Superintendent of Police is superior to the Sub Inspector of Police and the Inspector of Police. Section 36 of Cr.P.C states that police officers superior in rank to an officer in charge of a police station may exercise the same powers throughout the local area to which they are appointed.

10. In the decisions in **R.T.Kapur and Others v. Sardar Pratap Singh Kiron and Others** (1961 (2) SCR 143) and **State of Andhra Pradesh v. A.S.Peter** [(2008) 2 SCC 383], it was held that a superior officer is entitled to exercise the powers of an officer in charge of a police station and is entitled to conduct an investigation. Recently, this Court had, in the decision in **Kuriachan Chacko v. State of Kerala** (2022 Livelaw (Ker.) 604), also considered the aforesaid decisions and concluded that the Commissioner of Police of Kochi City had the jurisdiction to



direct one of his subordinates to exercise jurisdiction to conduct the investigation in a case.

11. Viewed in the above perspective, the order of the District Police Chief of Thiruvananthapuram Rural dated 29.10.2022 entrusting investigation to a special investigation team and the subsequent order dated 04.01.2023 appointing Sri.V.T.Rasith, Dy.S.P., Crime Branch, Thiruvananthapuram Rural, as the head of the investigation team cannot be said to be contrary to law. Therefore, the Dy.S.P., Crime Branch, Thiruvananthapuram Rural - head of the investigation team, in the instant case, was a superior officer to the station house officer, Parassala, which is within the jurisdiction of Thiruvananthapuram Rural.

12. The question that remains to be considered is whether the Deputy Superintendent of Police, who was authorised specially to investigate the case, was legally empowered to submit the final report. For the purpose of considering the above question, it is necessary to extract sections 173(2) and 173(3) of Cr.P.C., which reads as below:



"173. Report of police officer on completion of investigation.

(2)(i) As soon as it is completed, the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating -

xxx

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer-in-charge of the police station to make further investigation."

13. In this context, a Government Order dated 17.06.2014 numbered as G.O.(MS) No.124/2014/O was handed over across the Bar. It is a general order revamping and strengthening the crime detachment units in the State and creating a specialised district-level investigative wing to help the investigation in sensational cases at the district level. The said Government Order indicates that the crime detachment units have been redesignated as District Crime Branch for investigating sensational cases. The order empowers the District Police Chief or other superior officers to transfer the investigation of cases to the District Crime Branch and also to entrust the investigation with officers specially chosen by the District Police Chief. On a perusal of the general order of the Government creating the



District Crime Branch and the order of the District Police Chief (Rural) dated 04.01.2023, it is evident that the requirement contemplated under section 173(3) Cr.P.C in respect of general or special order has been complied with. Viewed in the above perspective, the filing of the final report by the head of the special investigation team, i.e., Sri.V.T.Rasith, Dy.S.P., Crime Branch, Thiruvananthapuram Rural, cannot be found to be faulty in the circumstances of the case.

14. In the judgment of the Karnataka High Court in **N.Narasimha Murthy v. State of Karnataka** (Crl.R.P. No.250/2022), it was observed that it is indisputable that a final report under section 173(2) of Cr.P.C. should be filed only by an officer in charge of a police station, and this power of filing a report cannot be delegated. A perusal of the aforesaid judgment indicates that the court had finally come to the conclusion that the failure to file the final report by the officer in charge of a police station is only an irregularity, which will not vitiate the proceedings and the accused cannot be discharged on that ground. It was also observed that such an irregularity is only a curable defect, and the chargesheet can be returned with liberty



to the police to file the final report in accordance with law. In the said judgement, there is, in fact, an observation in paragraph 29 that *"this power of filing a report by the officer-in-charge of a police station cannot be delegated but a superior officer of that police station and no other can exercise such power in view of section 36 of Cr.P.C"*. Factually, the said Court had found that the officer who filed the report, in that case, was not the superior officer. The situation is different in the present case.

15. In this context, the decision of the Supreme Court in **State of Bihar and Another v. Lalu Singh** [(2014) 1 SCC 663] is relevant. In the aforesaid case, while the investigation was being carried out by the officer in charge of a police station, the Director General of Police entrusted the investigation to the Criminal Investigation Department (CID) and the task of conducting the investigation was assigned to an Inspector, who after completion of investigation submitted the charge. The accused against whom the charge sheet was filed challenged the same before the High Court, which held that the chargesheet could have been filed only by the officer in charge of a police station. However, the Supreme Court had, after analysing the



provisions of the Cr.P.C. and the Bihar Police Manual, concluded that as per section 36 of Cr.P.C, Inspectors and superior officers of the CID are superior in rank to an officer in charge of a police station. It was held as follows:

“12. Here, in the present case, as stated earlier, the investigation was conducted by the Inspector of CID and it is he who had submitted the report in terms of section 173 of the Code. In view of what we have observed above, the Inspector of CID can exercise the power of an officer-in-charge of a police station and once it is held so, its natural corollary is that the Inspector of CID is competent to submit the report as contemplated under section 173 of the Code. The case in hand is not one of those cases where the officer-in-charge of the police station had deputed the Inspector of CID to conduct some steps necessary during the course of investigation. Rather, in the present case, the investigation itself was entrusted to the Inspector of CID by the order of the Director General of Police. In such circumstances, in our opinion, it shall not be necessary for the officer-in-charge of the police station to submit the report under 173(2) of the Code. The formation of an opinion as to whether or not there is a case to forward the accused for trial shall always be with the officer-in-charge of the police station or the officers superior in rank to them, but in a case investigated by the inspector of CID, all these powers have to be performed by the Inspector himself or the officer superior to him. In view of what we have discussed above, the observations made by the High Court in the impugned judgment is erroneous and deserve to be set aside”

16. In view of the above discussion, it is evident that the head of the investigation team, who is the Deputy Superintendent of Police of the District Crime Branch, Thiruvananthapuram Rural and who was specifically entrusted to



conduct the investigation and to ensure the filing of the final report by the District Police Chief was competent to file the final report, being an officer superior in rank to the officer-in-charge of the police station.

17. Hence, the impugned order of the learned Sessions Judge dismissing the petition questioning the committal order and the final report does not warrant any interference.

I find no merit in this criminal miscellaneous case, and it is dismissed

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps



APPENDIX

PETITIONER 'S/S' ANNEXURES

- ANNEXURE 1** **THE CERTIFIED COPY OF ORDER IN CMP NO. 81/2023 IN S.C. NO. 764 OF 2023 BEFORE THE ADDITIONAL SESSIONS COURT, NEYYATINKARA, THIRUVANANTHAPURAM DISTRICT**
- ANNEXURE 2** **A TRUE COPY OF THE FINAL REPORT IN CRIME NO.1311/2022 OF PARASSALA POLICE STATION, THIRUVANANTHAPURAM DISTRICT AND NOW PENDING AS S.C. NO. 764 OF 2023 BEFORE THE ADDITIONAL SESSIONS COURT, NEYYATINKARA, THIRUVANANTHAPURAM DISTRICT**
- ANNEXURE 3** **THE TRUE COPY OF THE COMMITTAL ORDER DATED 01.04.2023 IN C.P. NO. 6/2023 OF JUDICIAL FIRST-CLASS MAGISTRATE - II, NEYYATINKARA**