

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 4TH DAY OF APRIL 2022 / 14TH CHAITHRA, 1944

WP(C) NO. 9187 OF 2022

PETITIONER:

SAGAR VINCENT,
AGED 29 YEARS
S/O. VINCENT, RESIDING AT VELIYIL HOUSE,
KANJIRAMCHIRAKARA, ARYADTHEKKU VILLAGE,
AMBALAPPUZHA, ALAPPUZHA DISTRICT 688 538.

BY ADVS.
R.BINDU (SASTHAMANGALAM)
G.RAJAGOPAL (KUMMANAM)
C.THEJUS PURUSHOTHAMAN

RESPONDENTS:

- 1 BIJU PAULOSE M.,
DEPUTY SUPERINTENDENT OF POLICE,
CRIME BRANCH, ALAPPUZHA, 688 001.
- 2 THE ADDITIONAL DIRECTOR GENERAL OF POLICE,
STATE CRIME BRANCH
THIRUVANANTHAPURAM 695 008.
- 3 THE DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM 695 001.
- 4 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT
OF HOME, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM 695 001.

BY ADVS.
P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC
PROSECUTOR
ADVOCATE GENERAL OFFICE KERALA
DIRECTOR GENERAL OF PROSECUTION (AG-10)
SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR()

OTHER PRESENT:

SRI.P.NARAYANAN-SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 29.03.2022, THE COURT ON 04.04.2022 DELIVERED
THE FOLLOWING:

ANU SIVARAMAN, J.

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W.P.(C).No.9187 of 2022

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Dated this the 4th day of April, 2022

JUDGMENT

1. This writ petition is filed seeking the following reliefs:-

"i. Issue a declaration that the 1st respondent has absolutely no right or authority to threaten and harass the petitioner to give statements in contradiction to the statement given by him before the Chief Judicial Magistrate Court, Ernakulam under Section 164 of the Code of Criminal Procedure or the evidence tendered by him on oath before the Court of Additional Sessions Judge (SPE/CBI-III), Ernakulam.

ii. issue a writ of mandamus or any other appropriate writ, direction or order, directing the 1st respondent not to harass or threaten the petitioner any further in connection with the investigation in Crime No. 297/2017 of Nedumbassery Police Station."

2. Heard the learned counsel for the petitioner, the learned Senior Government Pleader and Additional Public Prosecutor for the respondents.

3. It is submitted by the learned counsel for the petitioner that the petitioner is being threatened and harassed by the 1st respondent, who is the Investigating Officer in Crime No.297/2017 of Nedumbassery Police Station. It is submitted

that a statement of the petitioner as a witness was recorded by the Police in connection with the above crime in the year 2017 itself. Later the petitioner had also given a statement under Section 164 of the Code of Criminal Procedure before the Chief Judicial Magistrate, Ernakulam. It is submitted that the 1st respondent had thereafter been harassing the petitioner requiring him to give a statement against the statement recorded under Section 164 Cr.P.C. It is submitted that since the petitioner had already given a statement in response to the notice issued to him, the action of the 1st respondent in requiring him to be present before the police repeatedly, for giving evidence is completely untenable. It is submitted that the petitioner had submitted representations before the Superintendent of Police as well as before the court where the offence is pending trial. But the 1st respondent is proceeding to issue notices requiring the petitioner to be present. It is on these allegations that the writ petition is filed.

4. The learned counsel for the petitioner relies on a decision of this Court in **Public Prosecutor v. Moidu Haji** [1989 KHC 373]

to contend that where the Investigating Officer is proceeding to question the accused, the presence of a lawyer at the time of investigation can be ordered in appropriate cases. It is therefore contended that even if the petitioner is being questioned by the police, it should be directed that the questioning should be in the presence of his Advocate.

5. The learned Senior Government Pleader and Additional Public Prosecutor has placed on record a statement along with a copy of the explanation submitted by the 1st respondent in CMP No.747/2017 before the JFCM Court, Angamaly. It is stated that the petitioner in the writ petition was a witness in S.C.No.118/2018 (Cr.No.297/2017 of Nedumbassery Police Station) which is under trial before the Additional District and Sessions Court (SPE/CBI-III), Ernakulam. The 1st respondent is the Investigating Officer. It is contended that the petitioner had been questioned in relation to the crime and the statement was reduced into writing and also video recorded and submitted before the court. It is stated that the petitioner deviated from this statement when his statement was recorded by the Magistrate under Section 164 Cr.P.C. It is submitted that

another witness, PW80 had given further statement, which was recorded under Section 164 Cr.P.C, in which he had narrated that the petitioner herein had been influenced and induced by the accused to retract from his earlier 161 statement and therefore the petitioner had been required to appear for interrogation again. Thereafter, the petitioner did not appear before the Investigating Officer or co-operate with the investigation even after repeated notices.

6. It is submitted that the petitioner preferred a complaint dated 20.09.2017 before the JFCM, Angamaly against the Investigating Officer and an explanation was submitted by the Investigating Officer. It is contended that there was material to suspect that the petitioner had retracted from his earlier statement at the instance of the accused. It is submitted that the petitioner had been served with summons to appear before the Additional Sessions Court to give evidence on 14.10.2020, but he could not be examined on the said day. Thereafter, he was examined on 18.03.2021 and he turned hostile to the prosecution. It is submitted that further investigation in the above case had been

ordered and is being continued and in the course of further investigation some evidence was seized by the Investigating Officer with respect to the petitioner which requires a further statement to be recorded from the petitioner . It is submitted that though notice was served under Section 160 Cr.P.C to the petitioner to appear before the Investigating Officer, the petitioner did not appear and has issued replies raising allegations against the investigation. The explanation submitted by the Investigating Officer to the complaint preferred by the petitioner as CMP No.747/2017 before the JFCM Court, Angamaly is also produced along with the statement.

7. The learned Senior Government Pleader and Additional Public Prosecutor relies on the decisions of this Court in **Raveendran C.M.v. Union of India and Another** [2021 KHC 3239] and of the Supreme Court in **Poolpandi and others v. Superintendent, Central Excise and others** [(1992) 3 SCC 259] as well as of the High Court of Bombay in **Arun Gulab Gavali v.State of Maharashtra and others** [2005 SCC Online Bombay 1615] to contend that the contention of the petitioner

that he is to be investigated only in the presence of his advocate is completely untenable and is not liable to be accepted at all. It is contended that the decision of this Court relied on by the learned counsel for the petitioner would apply only in a case where an accused is being questioned and that it has no application whatsoever to an issuance of notice under Section 160 Cr.P.C for recording a statement under Section 161 Cr.P.C. The Apex Court in **Poolpandi and others** (supra) had specifically considered the right of a person being interrogated during investigation into an offence and had held that such a person not being accused of any offence within the meaning of Article 20(3) is not entitled to the assistance of a lawyer at the time of such interrogation. This Court in **Raveendran** 's case (supra) had also held that a person summoned under Section 50(2) of the Prevention of Money Laundering Act, 2002 cannot contend that his constitutional right under Article 21 could be violated if he is not granted assistance of a lawyer at the time of his interrogation.

8. In the instant case also, the petitioner has no contention that he is being summoned to give a statement as an accused in a crime.

I notice that the specific case of the Investigating Officer is that a further investigation has been ordered in the crime under section 173(8) of the Cr.P.C and the petitioner has been summoned only to give evidence in the further investigation.

In the above view of the matter , I am of the opinion that the reliefs as sought for in the writ petition cannot be granted. The writ petition, therefore, fails and the same is accordingly dismissed. However, it is made clear that the petitioner shall be summoned only after giving due notice under Section 160 Cr.P.C and that he will not be harassed further or summoned unnecessarily, except for the purpose of recording the statement. The specific provisions in the Code of Criminal Procedure, including Sections 160 and 161 as well as Section 35 of the Police Act, 2011 with regard to the examination of the witnesses by the police shall be strictly complied with and the Investigating Officer shall not compel or induce the petitioner to make any confessions or admissions.

sd/-

Anu Sivaraman, Judge

sj

APPENDIX OF WP(C) 9187/2022

PETITIONER EXHIBITS

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| Exhibit P1 | TRUE COPY OF THE PETITION DATED
20.09.2017 SUBMITTED BY PETITIONER
BEFORE JFCM, ANGAMALY. |
| Exhibit P2 | TRUE COPY OF THE PETITION DATED
20.02.2022 SUBMITTED BY THE PETITIONER
BEFORE THE ADDL SPECIAL SESSIONS COURT
ERNAKULAM, |
| Exhibit P3 | TRUE COPY OF THE NOTICE ISSUED BY THE
IST RESPONDENT DATED NIL. |
| Exhibit P4 | TRUE COPY OF THE REPLY SUBMITTED BY THE
PETITIONER DATED 01.03.2022. |
| Exhibit P5 | TRUE COPY OF THE NOTICE ISSUED BY THE
IST RESPONDENT DATED 14.3.2022. |

True copy

PS to Judge