



2024/KER/12650

W.P.(Crl.) No.1222/23

-:1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 20<sup>TH</sup> DAY OF FEBRUARY 2024 / 1ST PHALGUNA, 1945

WP (CRL.) NO. 1222 OF 2023

CRIME NO.377/2023 OF Museum Police Station,

Thiruvananthapuram

PETITIONER:

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XXXXXXXXXX

BY ADVS.

SRI.R.SREEHARI

SRI.HAMZA A.V.

SRI.VIGNESH S.

RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY PRINCIPAL SECRETARY,  
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM POST,  
THIRUVANANTHAPURAM DISTRICT, PIN - 695001
- 2 THE STATE POLICE CHIEF,  
KERALA POLICE HEAD QUARTERS,  
VAZHUTHACAUD POST,  
THIRUVANANTHAPURAM DISTRICT, PIN - 695010
- 3 COMMISSIONER OF POLICE,  
THIRUVANANTHAPURAM CITY  
OFFICE OF THE COMMISSIONER OF POLICE,  
POLICE GROUND, RAMAN PILLAI ROAD,  
PANAVILA, THYCAUD POST,  
THIRUVANANTHAPURAM DISTRICT, PIN - 695014
- 4 SUPERINTENDENT OF POLICE,  
STATE CRIME BRANCH,



- CRIME BRANCH HEAD QUARTERS,  
ENCHECKAL POST,  
THIRUVANANTHAPURAM DISTRICT, PIN - 695008
- 5 ASSISTANT COMMISSIONER OF POLICE  
CRIME BRANCH, THIRUVANANTHAPURAM CITY,  
CRIME BRANCH OFFICE, ENCHECKAL POST,  
THIRUVANANTHAPURAM DISTRICT, PIN - 695008
- 6 STATION HOUSE OFFICER  
MUSEUM POLICE STATION,  
THIRUVANANTHAPURAM CITY,  
SURYAKANTHI ROAD, NANTHANCODU POST,  
THIRUVANANTHAPURAM DISTRICT, PIN - 695033
- 7 CENTRAL BUREAU OF INVESTIGATION (CBI)  
PLOT NO.5-B, CGO COMPLEX,  
LODHI ROAD POST, NEW DELHI, PIN - 110003  
REPRESENTED BY ITS DIRECTOR
- 8 SUPERINTENDENT OF POLICE,  
CENTRAL BUREAU OF INVESTIGATION  
SPECIAL CRIME BRANCH, T.C.1757/5,  
"CBI OCR COMPLEX" , MUTTATHARA,  
VALLAKADAVU POST,  
THIRUVANANTHAPURAM DISTRICT, PIN - 695008

SRI. M.C. ASHI, PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR  
ADMISSION ON 12.02.2024, THE COURT ON 20.02.2024 DELIVERED  
THE FOLLOWING:



**BECHU KURIAN THOMAS, J.**

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**W.P.(Crl.) No.1222 of 2023**  
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Dated this the 20<sup>th</sup> day of February, 2024

**JUDGMENT**

A wailing mother has approached this Court under Article 226 of the Constitution of India seeking a direction to entrust the investigation into the death of her daughter, which is the subject matter of Crime No.377 of 2023 of Museum Police Station, Thiruvananthapuram, to the Central Bureau of Investigation (for short 'the CBI').

2. Petitioner's daughter, born on 01/10/2009, studied in a well-known school in Thiruvananthapuram. On the morning of 29/03/2023, she was found unconscious in the bathroom of her house, and after breaking open the door, she was rushed to the hospital. While undergoing treatment at the Medical College, she died on 01/04/2023. A crime was initially registered as FIR No. 344/2023 of the Museum Police Station under section 174 Cr.P.C.

3. Subsequently, the body was subjected to postmortem, which opined that the death was due to intracranial haemorrhage. However, the postmortem also revealed that the minor child had been subjected to continuous acts of sexual abuse through vaginal and anal penetrations. On the basis of the postmortem report dated 02/04/2023, another crime



was registered on 12/04/2023 as Crime No.377 of 2023 before the Museum Police Station itself, alleging offences punishable under sections 376DA, 376E and 377 of the Indian Penal Code 1860, apart from sections 3(a), 3(d), 4(2), 5(i) and section 6 of the Protection of Children from Sexual Offences Act, 2012.

4. During the course of the investigation, noticing the heinous nature of the alleged crime, the investigation was entrusted to the District Crime Branch. Petitioner alleges that despite a serious crime having been reported, the investigating team has not been able to make any breakthrough by identifying the culprits. It is alleged that many material circumstances have been ignored, and no positive steps have been initiated to conduct a proper and scientific investigation. This writ petition has been filed seeking an effective and detailed probe by the CBI.

5. Sri. Sreehari R., the learned counsel for the petitioner, contended that the investigation conducted so far has not been able to identify any of the accused and that though there are several indications regarding persons who could fall within the zone of suspicion, none of them have been questioned effectively. It was also pointed out that the involvement of police officers cannot be completely ousted since the child was found lying in the bathroom of her house in the police quarters of her parents. The learned counsel also pointed out that the friends of the victim had not been questioned effectively, and merely because the parents of those



friends had objected, the investigating team avoided further probe, which could have certainly revealed circumstances that could have identified the suspects. The learned counsel also asserted that delay can defeat the effectiveness of the investigation and no serious probe is being conducted. It was also contended that since the fingers do point to the involvement of police officials, it is necessary that the investigation be handed over to the CBI as it falls within the category of an exceptional circumstance.

6. Sri.M.C.Ashi, the learned Public Prosecutor, on the other hand, submitted that a detailed investigation had been conducted so far by the investigating team, and despite such attempts, the culprits could not be nabbed. It was also submitted that merely because the culprits have not been nabbed, the same does not indicate an ineffective investigation.

7. Dr. K.P Satheeshan, the learned Senior Standing Counsel for the CBI, assisted by Sri. Sudhin Kumar K. was also heard.

8. Since the allegations revolved around the ineptness of the investigation conducted so far, this Court called for the case diary and has perused it.

9. The autopsy report of the victim revealed that she was subjected to sexual abuse. The postmortem certificate dated 02/04/2023 states, *“Hymen showed old healed tears at 5'O clock and 6'O clock positions, orifice admitted two fingers. Anus was patulous, mucosa ironed out”*. Though the post-mortem report opined that the victim died due to



intracranial haemorrhage, it was also evident that the minor child of 13½ years was subjected to repeated sexual assaults, including unnatural offences. Unfortunately, despite the investigation continuing for the last eight months, no breakthrough has been made by the investigation team. The culprits remain at large.

10. A reading of the statements given by some of the witnesses points out the suspicion of the involvement of certain persons. However, effective questioning is not seen to have been made, and on the other hand, the investigation team has failed to probe deeper. Since the victim was residing inside the police quarters and various policemen used to visit their houses, the involvement of policemen also cannot be completely eschewed. In such circumstances, this Court is of the view that this is a fit case where the investigation should be entrusted to the CBI.

11. In a case of this nature, each day's delay could be crucial and may destroy whatever evidence is left. Therefore, this Court is of the view that the decision regarding handing over the investigation to the CBI cannot wait until the final report is submitted by the present investigating team. Eight months have already elapsed, and the present investigation team has not been able to arrive at a conclusion. In cases where rape is alleged, section 173(1A) of Cr.P.C stipulates that the investigation be completed within two months from the date on which the information was recorded by the officer-in-charge of the police station. In the instant case,



the victim is a minor child who was subjected to sexual abuse, and the culprit is at large without any breakthrough, despite investigation for the last ten months and more. Therefore, the investigation has to be termed as ineffective and inadequate.

12. In a recent decision of the Supreme Court in **Vishal Tiwari v. Union of India** (2024 SCC Online SC 15), it was observed that while the constitutional courts do have the power to transfer investigation to the CBI or other investigating agencies, such powers must be exercised sparingly and in extraordinary circumstances. It was further observed that unless the authority statutorily entrusted with the power to investigate portrays a glaring, willful and deliberate inaction in carrying out the investigation, the court will ordinarily not supplant the authority which has been vested with the power to investigate. It was further held that the court must not exercise such powers in the absence of cogent justification indicative of a likely failure of justice in the absence of the exercise of the power to transfer and also that the party seeking an investigation by another agency must place on record strong evidence indicating that the investigation has portrayed inadequacy or prima facie appears to be biased. The power can also be exercised where it is found to be so necessary to do justice and to instill confidence in the investigation.

13. Viewed in the above perspective and considering the circumstances and the materials on record, this Court is of the opinion that



the present investigation is inadequate and ineffective. Further, this Court is also of the view that to instill confidence and to render justice, especially to the deceased victim and her family, it is necessary to direct the CBI to investigate Crime No.377 of 2023 of Museum Police Station, Thiruvananthapuram.

14. In the result, the investigation of Crime No.377 of 2023 of Museum Police Station, Thiruvananthapuram, is herewith transferred to the CBI. Respondents 2 to 4 or the competent authority under them shall immediately initiate appropriate steps to transfer all files required for an investigation to the 8<sup>th</sup> respondent, who shall depute a competent officer to carry out the investigation and submit the report before the jurisdictional court at the earliest.

The writ petition is allowed as above.

**Sd/-**

**BECHU KURIAN THOMAS  
JUDGE**

vps





## APPENDIX

PETITIONER'S EXHIBIT'S/S'

- EXT.P1 CERTIFIED COPY OF THE TREATMENT CERTIFICATE DATED 05/05/2023 ISSUED BY DR.SREENA SREEKUMAR T., ASSISTANT PROFESSOR, GOVERNMENT MEDICAL COLLEGE, THIRUVANANTHAPURAM
- EXT.P2 TRUE COPY OF THE FIRST INFORMATION REPORT DATED 01/04/2023 IN CRIME NO.344/2023 OF MUSEUM POLICE STATION, THIRUVANANTHAPURAM CITY
- EXT.P3 CERTIFIED COPY OF THE POST MORTEM CERTIFICATE WITH NO.989/23 DATED 02/04/2023 ISSUED FROM THE DIRECOTRATE OF MEDICAL EDUCATION, STATE MEDICO LEGAL INSTITUTE AND OFFICE OF THE POLICE SURGEON, DEPARTMENT OF FORENSIC MEDICINE, MEDICAL COLLEGE, THIRUVANANTHAPURAM
- EXT.P4 CERTIFIED COPY OF THE FIRST INFORMATION REPORT DATED 12/04/2023 IN CRIME NO.377/2023 OF MUSEUM POLICE STATION, THIRUVANANTHAPURAM CITY
- EXT.P5 CERTIFIED COPY OF THE MAHAZAR DATED 19/04/2023 PREPARED BY THE 6TH RESPONDENT IN CRIME NO.377/2023 OF MUSEUM POLICE STATION, THIRUVANANTHAPURAM CITY
- EXT.P6 CERTIFIED COPY OF THE LIST OF PROPERTY DATED 19/04/2023 WITH NO.I.2354/23 FORWARDED BY THE 6TH RESPONDENT TO THE ADDITIONAL DISTRICT AND SESSIONS COURT (POCSO) THIRUVANANTHAPURAM
- EXT.P7 CERTIFIED COPY OF THE LIST OF PROPERTY DATED 19/04/2023 WITH NO.I.2359/23 FORWARDED BY THE 6TH RESPONDENT TO THE ADDITIONAL DISTRICT AND SESSIONS COURT (POCSO) THIRUVANANTHAPURAM
- EXT.P8 CERTIFIED COPY OF THE MAHAZAR DATED 25/04/2023 PREPARED BY THE 5TH RESPONDENT IN CRIME NO.377/2023 OF MUSEUM POLICE STATION, THIRUVANANTHAPURAM CITY
- EXT.P9 CERTIFIED COPY OF THE MAHAZAR DATED 2/05/2023 PREPARED BY THE 5TH RESPONDENT IN CRIME NO.377/2023 OF MUSEUM POLICE STATION, THIRUVANANTHAPURAM CITY



- EXT.P10 CERTIFIED COPY OF THE MAHAZAR DATED 04/05/2023  
PREPARED BY BIBIN PRAKASH, SUB INSPECTOR OF  
POLICE, CRIME BRANCH, THIRUVANANTHAPURAM CITY
- EXT.P11 CERTIFIED COPY OF THE MAHAZAR DATED 08/05/2023  
PREPARED BY BIBIN PRAKASH, SUB INSPECTOR OF  
POLICE, CRIME BRANCH, THIRUVANANTHAPURAM CITY
- EXT.P12 CERTIFIED COPY OF THE LIST OF PROPERTY DATED  
25/04/2023 WITH NO.I.2413/23 FORWARDED BY THE 5TH  
RESPONDENT TO THE ADDITIONAL DISTRICT AND  
SESSIONS COURT (POCSO) THIRUVANANTHAPURAM
- EXT.P13 CERTIFIED COPY OF THE LIST OF PROPERTY DATED  
02/05/2023 WITH NO.I.2602/23 FORWARDED BY THE 5TH  
RESPONDENT TO THE ADDITIONAL DISTRICT AND  
SESSIONS COURT (POCSO) THIRUVANANTHAPURAM
- EXT.P14 TRUE COPY OF THE COMPLAINT DATED 20/07/2023  
SUBMITTED BY THE PETITIONER TO THE HON'BLE CHIEF  
MINISTER OF KERALA
- EXT.P15 TRUE COPY OF THE COMPLAINT SUBMITTED BY THE  
PETITIONER BEFORE THE 2ND RESPONDENT
- EXT.P16 TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT OF  
PETITION DATED 11/10/2023, WITH RESPECT TO THE  
178663/2023/PHQ ISSUED FROM THE POLICE  
HEADQUARTERS, THIRUVANANTHAPURAM