



2024:KER:1280

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. BABU

TUESDAY, THE 9<sup>TH</sup> DAY OF JANUARY 2024 / 19<sup>TH</sup> POU SHA, 1945

WP(C) NO. 32166 OF 2018

PETITIONER:

HEMALATHA.S.NAIR,  
AGED 54 YEARS,

BY ADVS.  
O.V.MANIPRASAD  
JOSE ANTONY  
S.SHIV SHANKAR

RESPONDENTS:

- 1 STATE OF KERALA,  
REPRESENTED BY THE SECRETARY TO GOVERNMENT,  
HOME AND VIGILANCE DEPARTMENT, GOVT. SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
- 2 STATE POLICE CHIEF,  
KERALA, POLICE HEAD QUARTERS, VAZHUTHACAUD,  
THIRUVANANTHAPURAM- 695514.
- 3 DEPUTY SUPERINTENDENT OF POLICE,  
KANHANGAD AT HOSDURG,  
KASARAGOD DISTRICT, PIN- 671315.
- 4 CIRCLE INSPECTOR OF POLICE,  
NEELESWARAM, KASARAGOD DISTRICT, PIN- 671314.
- 5 THE SUB INSPECTOR OF POLICE,  
NEELESWARAM POLICE STATION, NEELESWARAM,  
KASARAGOD DISTRICT, PIN- 671314.
- 6 THE DEPUTY SUPERINTENDENT OF POLICE,  
STATE CRIME BRANCH (CID), KASARAGOD, PIN- 671121.
- ADDL.7 GOPALAKRISHNAN K.K,  
AGED 56 YEARS,

[ADDL.R7 IS IMPEADED AS PER ORDER DATED 19.07.2022 IN  
I.A NO:2/2022]



W.P.(C)No.32166 of 2018

2

- " 9 VENUGOPALAN NAIR,AGED 61 YEARS ,
- " 10 UNNIKRISHNAN,AGED 31 YEARS ,
- " 11 JAYASANKAR, AGED 28 YEARS ,
- " 12 RADHA K.K.,AGED 52 YEARS ,
- " 13 GAYATHRI, , AGED 34 YEARS ,
- " 14 UNDATHI KUNJIRAMAN, AGED ABOUT 56 YEARS ,

[ADDL.R8 TO R14 ARE IMPEADED AS PER ORDER DATED  
19/08/2022 IN I.A]

BY ADVS.  
KALEESWARAM RAJ  
VARUN C.VIJAY  
THULASI K. RAJ  
SHILPA SOMAN

OTHER PRESENT:

RAJESH A,SPL. GP VIGILANCE,  
REKHA SR. PP,  
G.SUDHEER ,PP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
09.01.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



**"C.R."**

### **JUDGMENT**

In this writ petition filed under Article 226 of the Constitution of India, the defacto complainant in C.C.No.1338 of 2011 on the file of the Judicial First Class Magistrate Court-II, Hosdurg, seeks further investigation in Crime No.475/2011 of Nileswaram Police Station. The petitioner is injured in the crime. Based on the first information statement submitted by the petitioner, the Police registered FIR alleging offences punishable under Sections 143, 147, 148, 451, 323, 324, 427 & 297 r/w Section 149 of IPC. Eight persons were named in the first information statement. The petitioner stated that she could identify the other persons involved in the crime, though she could not name them. Respondent No.5, the Sub Inspector of Police, Nileswaram, conducted an investigation and submitted the final report after deleting three accused (accused Nos.6 to 8). The Investigating Officer deleted the penal sections 324, 427 and 297 of IPC in the final report.



2. The petitioner submitted Ext.P8 petition seeking further investigation before the Magistrate Court. The learned Magistrate rejected the petition. The petitioner challenged the order before this Court by filing Crl.R.P.No.828/2014. This Court, as per order dated 15.10.2018, dismissed the revision petition.

3. The petitioner thereafter filed this writ petition praying for the following reliefs:-

- “(i) Issue a writ of mandamus, order or direction directing further investigation in Exhibit P1 Crime No.475/2011 of Nileswaram Police Station to be conducted by the 6<sup>th</sup> respondent and to file further final report, in accordance with law.
- (ii) Issue a writ of mandamus, order or direction directing the 1<sup>st</sup> respondent to direct further investigation in Exhibit P1 Crime No.475/2011 of Nileswaram Police Station and to entrust such further investigation to State Crime Branch (CID) wing of Kerala State Police.
- (ii)(a) Quash/Set aside Exhibit P9 order.
- (iii) Issue such other writ, order or direction as this Hon’ble Court may deem fit and proper to grant in the circumstances of the case.”

4. Heard the learned counsel for the petitioner Sri.O.V.Maniprasad, Sri.Kaleeswaram Raj, the learned Counsel appearing for respondent Nos.7 to 11 and the learned Public Prosecutor.



5. The learned counsel for the petitioner made the following submissions:-

- (1) There are materials to array accused Nos.6 to 8 in the final report.
- (2) The Investigating Officer has violated Ext.P4 circular No.29/2011.  
As one of the accused was Police personnel, an officer of the rank of the Circle Inspector ought to have conducted the investigation.
- (3) The trial Court ought to have ordered further investigation in the matter as the petitioner has the locus standi to apply for further investigation.

6. The learned counsel for respondent Nos.7 to 11 made the following submissions:-

- (1) The scope of further investigation in this case has been closed conclusively with the dismissal of CrI.R.P.No.828/2014.
- (2) No circumstances have been made out warranting a further investigation into the matter.
- (3) The petitioner has no right to say that a particular agency investigate the matter.
- (4) Ext.P4 circular cannot override the provisions of the Code of Criminal Procedure.



- (5) The petitioner had an equally efficacious remedy of filing a protest complaint.
- (6) The petitioner cannot simultaneously file a criminal revision petition and a writ petition challenging the same proceedings.
- (7) The long delay of 12 years would defeat the purpose of the prosecution.

7. The learned Public Prosecutor also supported the contentions of the learned counsel appearing for respondent Nos.7 to 11.

8. The alleged incident happened on 12.7.2011. The father of the petitioner died on 11.7.2011 at the Medical College Hospital, Pariyaram. The petitioner is the only daughter. She has four brothers. The body of the deceased father was taken to the petitioner's residence on 12.7.2011. The body was kept inside her house to facilitate the relatives and others to pay homage. The accused, with the intent to cause bodily hurt to the petitioner and to show disrespect to the dead body, formed themselves into an unlawful assembly, trespassed into the house of the petitioner, and assaulted her and her children using deadly weapons. They also caused damage to the window glasses and curtains. Finally, they dragged the dead body out of the house,



showing disrespect to the same. The petitioner sustained injuries. She was admitted to the Pariyaram Medical College Hospital.

9. The petitioner alleged offences punishable under Sections 143, 147, 148, 451, 323, 324, 427 and 297 r/w Section 149 of IPC . The Police conducted the investigation and deleted the penal sections 324, 327 and 297 of IPC. The Investigating Officer also deleted three persons from the array of accused. Accused No.1 is a Police Officer.

10. It is alleged that the Investigating Officer deleted certain penal provisions and some of the accused from the party array at the influence of accused No.1. The petitioner filed an application seeking further investigation into the matter. The learned Magistrate dismissed the application on the following grounds:-

- (1) Police registered the crime without any delay upon receipt of the First Information Statement.
- (2) The act of the Investigating Officer deleting some of the accused and certain penal provisions requires no interference as he did so based on relevant materials.
- (3) The petitioner is a practising lawyer, so the possibility of purposeful allegations to attract grave offences could not be ruled out.
- (4) No dangerous weapon was allegedly used by the accused, nor any



such corresponding injuries were noted in the wound certificate.

(5) The petitioner can very well prove the facts alleged through a protest complaint.

11. The petitioner challenged the order rejecting the application seeking further investigation before this Court in Crl.R.P.No.828/2014. This Court relied on **Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel and Others [(2017) 4 SCC 177]** to hold that after taking cognizance of the offences by the Magistrate, a further investigation could be done only on the application of the Investigating Officer. The position of law was changed with the pronouncement of the judgment by a three-Judge Bench of the Supreme Court in **Vinubhai Haribhai Malaviya and others v. State of Gujarat and another [(2019) 17 SCC 1]**. In **Vinubhai Haribhai Malaviya**, the Apex Court held thus:-

"42. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, *Sakiri [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440]* , *Samaj Parivartan Samudaya [Samaj Parivartan Samudaya v. State of Karnataka, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365]* , *Vinay Tyagi [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557]* , and *Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86]* ; *Hardeep Singh [Hardeep Singh v.*





*State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in *Hasanbhai Valibhai Qureshi* [*Hasanbhai Valibhai Qureshi v. State of Gujarat*, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603] . Therefore, to the extent that the judgments in *Amrutbhai Shambhubhai Patel* [*Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel*, (2017) 4 SCC 177 : (2017) 2 SCC (Cri) 331] , *Athul Rao* [*Athul Rao v. State of Karnataka*, (2018) 14 SCC 298 : (2019) 1 SCC (Cri) 594] and *Bikash Ranjan Rout* [*Bikash Ranjan Rout v. State (NCT of Delhi)*, (2019) 5 SCC 542 : (2019) 2 SCC (Cri) 613] have held to the contrary, they stand overruled. Needless to add, *Randhir Singh Rana v. State (Delhi Admn.)* [*Randhir Singh Rana v. State (Delhi Admn.)*, (1997) 1 SCC 361] and *Reeta Nag v. State of W.B.* [*Reeta Nag v. State of W.B.*, (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] also stand overruled."



12. The learned counsel appearing for respondent Nos.7 to 11 submitted that the law declared by the Apex Court in **Vinubhai Haribhai Malaviya** cannot be made applicable to the petitioner in the instant case as at the time of the dismissal of Crl.R.P.828/2014 the position of law laid down in **Amrutbhai Shambhubhai Patel** (supra) was holding the field. It is further submitted that an overruling judgment cannot be said to disturb the conclusiveness of the *inter parte* order that has become final. To substantiate his contention, he relied on **Neelima Srivastava v. State of Uttar Pradesh and Others (2021 SCC OnLine SC 610)** and **Union of India v. Central Administrative Tribunal, Ernakulam Bench (2002 (1) KLT 840)**.

In **Neelima Srivastava** the Apex Court held thus:-

“30. It becomes absolutely clear from the above clarification that earlier decisions running counter to the principles settled in the decision of *Umadevi (3)* will not be treated as precedents. It cannot mean that the judgment of a competent Court delivered prior to the decision in *Umadevi (3)* and which has attained finality and is binding *inter se* between the parties need not be implemented. Mere over-ruling of the principles, on which the earlier judgment was passed, by a subsequent judgment of higher forum will not have the effect of uprooting the final adjudication between the parties and set it at naught. There is a distinction between over-ruling a principle and reversal of the judgment. The judgment in question itself has to be assailed and got rid of in a manner known to or recognized by law. Mere over-ruling of the principles by a subsequent judgment will not dilute the binding effect of the decision on inter-parties.

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35. In *Union of India v. Major S.P. Sharma* [(2014) 6 SCC 351], a three-judge bench of this Court has held as under:—

“A decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be “confusion and chaos and the finality of proceedings would cease to have any meaning.”

36. Thus, it is very well settled that it is not permissible for the parties to re-open the concluded judgments of the Court as the same may not only tantamount to an abuse of the process of the Court but would have far reaching adverse effect on the administration of justice.”

In **Union of India v. Central Administrative Tribunal** (supra), the

Apex Court held thus:-

“4. ....We are of the view judgments intra-parties which have attained finality cannot be nullified and set at naught by subsequent decision of the Supreme Court even though issue involved was the same. It may be possible for the aggrieved parties to get earlier order reviewed in view of the Supreme Court decision. But the mere fact that Supreme Court has subsequently declared the law would not have the effect of taking away substratum of the earlier binding decision between the parties whether it is rendered by the Tribunal or the Supreme Court...”

13. In view of the settled law that the judgments *inter partes* which have attained finality cannot be nullified by subsequent decisions even though the issue involved was the same, the petitioner cannot challenge the order rejecting further investigation, which has become final with the dismissal of Crl.R.P.No.828/2014.

14. The petitioner relied on Ext.P4 circular to challenge the credibility of the investigation. Ext.P4 circular issued by the State Police Chief directs that the crimes in which Police Personnel are accused will



be investigated by an officer of the rank of Circle Inspector, and an officer of the rank of DySP will personally supervise the investigation.

15. In the present case, the investigation was conducted by the SHO, Neeleswaram, who is the officer empowered to investigate a cognizable offence. The express provisions of the Code empower him to conduct an investigation and submit a report as provided under Section 173(2) Cr.P.C. Ext.P4 executive circular cannot override the provisions of the Code. The petitioner has no case that the Investigating Officer has not complied with any provisions of the Code. It is trite that executive orders have no statutory force and that statutory rules cannot be overridden by executive orders or executive practice. (Vide: **K.Kuppusamy and Another v. State of T.N. and Others [(1998) 8 SCC 469]**). Therefore, the contention of the petitioner that the investigation is bad due to the non-compliance of Ext.P4 deserves no merit.

16. I have gone through the materials placed before the Court, including the order passed by the learned Magistrate. The learned Magistrate has applied sound reasons to reject the request for further investigation. The need for further investigation arises only when there is a clear failure or breakdown in the standard investigative



process. The petitioner has failed to place any material to conclude that the investigative procedure was flawed. There is nothing to show that the investigation was in any way defective. In **Vinay Thyagi v. Irshad Ali [(2013) 5 SCC 762]** the Supreme Court held thus:-

“**22.** Further investigation” is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8). This power is vested with the executive. It is the continuation of previous investigation and, therefore, is understood and described as “further investigation”. The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as “supplementary report”. “Supplementary report” would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a “reinvestigation”, “fresh” or “de novo” investigation.”

17. In the present case, there is no evidence to support the petitioner’s claim that further investigation is required. No further oral or documentary evidence emerged in the matter, requiring a further investigation.



18. The petitioner has prayed for an investigation by another agency. No one can insist that a particular agency investigate an offence. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that any particular agency investigates it. (Vide: **Sakiri Vasu v. State of Uttar Pradesh and Ors [(2008) 2 SCC 409]**)

19. The incident happened 12 years back. The learned counsel for respondent Nos.7 to 11 submitted that no purpose will be served with further investigation on flimsy grounds. The petitioner seeks to add some bailable offences without any supporting materials.

20. The petitioner has an equally efficacious remedy to redress the grievances raised in the writ petition. She could have filed a protest complaint before the jurisdictional Court. If she had filed such a complaint and produced materials to proceed against the deleted accused, the same could have been clubbed together with the charge-sheeted case under Section 210 Cr.P.C.

21. As the prayer for further investigation has become final with Ext.P11 order, the petitioner cannot seek a remedy to nullify a decision that attained finality through parallel or collateral proceeding, the learned counsel for respondent Nos.7 to 11 submitted. I find force



2024:KER:1280

W.P.(C)No.32166 of 2018

15

in that argument, and this parallel proceeding initiated by the petitioner is only to be treated as an abuse of the process of law.

The writ petition lacks merits, and it deserves to be dismissed. I do so.

Sd/-  
**K.BABU**  
**Judge**

TKS



APPENDIX OF WP(C) 32166/2018

**PETITIONER'S EXHIBITS:**

- EXHIBIT P1 A TRUE COPY OF THE FIR IN CRIME NO.475/2011 OF NILESHWAR POLICE STATION.
- EXHIBIT P2 A TRUE COPY OF THE FI STATEMENT DATED 13.07.2011 IN CRIME NO.475/2011 OF NILESWAR POLICE STATION.
- EXHIBIT P3 A TRUE COPY OF THE CHARGE SHEET DATED 03.11.2011 IN CRIME NO.475/2011 OF NILESWAR POLICE STATION.
- EXHIBIT P4 A TRUE COPY OF THE CIRCULAR NO.29/2011 OF THE STATE POLICE CHIEF, KERALA.
- EXHIBIT P5 A TRUE COPY OF THE PETITION MADE BY THE REVISION PETITIONER UNDER THE PROVISIONS OF THE RIGHT TO INFORMATION ACT AND THE REPLY PROVIDED BY THE PUBLIC INFORMATION OFFICER IN THE 5TH RESPONDENT'S OFFICE.
- EXHIBIT P6 A TRUE COPY OF THE SCENE MAHAZER PREPARED BY THE INVESTIGATING OFFICER ON 14.07.2011.
- EXHIBIT P7 A TRUE COPY OF THE REPORT SUBMITTED BY THE INVESTIGATING OFFICER ON 15.09.2011 BEFORE THE TRIAL COURT DELETING THE ACCUSED 6 TO 8 FROM THE ARRAY OF ACCUSED IN THE CASE.
- EXHIBIT P8 A TRUE COPY OF THE PETITION FILED BY THE PETITIONER UNDER SECTION 173(8) OF CODE OF CRIMINAL PROCEDURE.
- EXHIBIT P9 A TRUE COPY OF THE ORDER DATED 24.02.2014 IN CMP NO.6302/2013 IN CC 1338/2011 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, HOSDURG.
- EXHIBIT P10 A TRUE COPY OF THE PETITION DATED 21.10.2011 SUBMITTED BEFORE THE DISTRICT POLICE CHIEF, KASARAGOD BY THE PETITIONER.

**RESPONDENTS' EXHIBITS:**

- Exhibit R7(a) TRUE COPY OF THE ORDER DATED 15/10/2018 IN CRL.R.P NO.828/2014
- Exhibit R7(b) TRUE COPY OF THE PENSION CALCULATION STATEMENT FROM DISTRICT POLICE CHIEF, KASARGOD DATED 28/1/2022

TKS