

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.HARIPAL

TUESDAY, THE 8TH DAY OF MARCH 2022 / 17TH PHALGUNA, 1943

CRL.MC NO. 3927 OF 2020

SC 496/2020 OF SESSIONS COURT, KOZHIKODE

PETITIONER/PETITIONER/ACCUSED NO. 5:

VIJAYAKUMAR
AGED 68 YEARS
S/O.APPUTTY CHENGOT,
CHENGOT HOUSE,
KUTHIRAVATTAM P.O.,
NELLIKODE VILLAGE,
KOZHIKODE DISTRICT.

BY ADVS.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY
SRI.D.FEROZE
SRI.K.ANAND (A-1921)

RESPONDENT/STATE:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM - 682031
(CRIME NO.189/2011 OF KODENCHERY POLICE STATION,
KOZHIKODE RURAL DISTRICT).

BY SRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR
BY SRI. S.U.NAZAR, SPECIAL PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
14.12.2021, THE COURT ON 08.03.2022 PASSED THE FOLLOWING:



ORDER

Petitioner is a lawyer by profession, having 38 years of practice in Kozhikode. He is also a Notary Public. Now he has been arrayed as the fifth accused in Crime No. 189/2011 of Kodenchery police station, which was registered as early on 01.10.2011 on the unnatural death of one Roy Thomas, son of Tom Thomas. That crime was registered under Section 174 of the Code of Criminal Procedure after the said Roy Thomas was found lying unconscious in the toilet, who was removed to the hospital where he died and his death was taken as a case of suicide and the proceedings were closed in 2011 itself. Later in 2020, in the backdrop of a series of deaths in Ponnammattam house, house of the husband of Jolly Roy, the prime accused, the case was reopened and thus on conclusion of further investigation, charge sheet was laid against four persons alleging offences under Sections 110, 465, 471, 474, 302 and 201 of the Indian Penal Code and under Section 2 read with



Section 6(2) of the Poisons Act 1919. At that time, the statement of the petitioner was also recorded as the Notary who had attested a Will deed executed by Tom Thomas, father of Roy Thomas, husband of Jolly Roy. Later, on the basis of some revelations, it came out that the petitioner also had joined the criminal conspiracy with the other accused persons, especially, the first accused and the fourth accused, and on that basis, after getting sanction issued by the Law Secretary, offence under Sections 120B, 468 read with 34 of the IPC is alleged against him, who is now the fifth accused. The petitioner has approached this Court for quashing the proceedings under Section 482 of the Cr.P.C.

2. I heard the learned counsel for the petitioner and also the learned Special Public Prosecutor.

3. The learned counsel for the petitioner submits that earlier he was CW156 in the original charge sheet, that on completion of investigation and following committal proceedings the case reached the Sessions Court, Kozhikode as S.C. No. 496/2020. There the statement of the petitioner was



recorded under Section 161 of the Cr.P.C. He had also given statement under Section 164 of the Cr.P.C. and the said attestation of the Will was done way back on 30.06.2008. There is absolutely no basis in arraying him as one of the accused persons. He is totally innocent, that even if the allegations in the charge sheet are accepted on its face value, there is absolutely no materials available before Court that he was part of a criminal conspiracy at any point of time. The crime has been registered on the death of Roy Thomas and the attestation of the Will deed produced by the first accused along with the fourth accused before him has no bearing in the allegations against the other accused persons. The allegation that he had conspired with other accused and facilitated to forge a false Will of Tom Thomas, that would give rise to a different cause of action and has nothing to do with the allegations in Crime No. 189/2011 of Kodenchery police station. Petitioner had not shared any culpable mental state at the time of attesting the document. The only reason for implicating him is that he had not seen the original document while attesting the same. It is



only a malafide attempt to harass him, that such a prosecution will not lawfully sustain against him. Relying on the decision reported in **Jyolsna V.P. v. State of Kerala and Another [2020 (6) KHC 334]**, the learned counsel submitted that in the absence of a complaint as provided under Section 13 of the Notaries Act, the proceedings will not lie against him. It may be true that the Law Secretary had accorded sanction and permitted the Dy.S.P. to file criminal complaint against the petitioner. But what is filed is a final report/a charge sheet which is not a complaint as provided under Section 13(1) of the Notaries Act. In this connection, he has relied on a Division Bench decision of this Court in **Ismayil v. State of Kerala [2010 (3) KLT 706]**.

4. The learned counsel also submitted that the matter has been raked up after a lapse of 12 years. The petitioner is a lawyer having more than 38 years of practice, he is 66 years old and that such a prosecution initiated against him is unfounded.

5. S.C. No. 496/2020 on the file of the Court of



Sessions, Kozhikode relates to one of the series of murders popularly known as 'Koodathayi murder cases' in which one Jolly Roy is the prime accused. It is alleged that to obtain monetary gain and to achieve her targets, the prime accused along with her associates, accused Nos. 2 and 3, obtained dangerous poison cyanide from the third accused and using the same, five members of the family, out of which three are near relatives and members of her own house hold including her mother-in-law, father-in-law and her husband were annihilated by administering cyanide through food served by her. To make a long story short, the allegations against the said Jolly Roy and others are that, she is a native of Idukki was taken to Kodenchery in Kozhikode by marriage. She was married to Roy Thomas. They have two children in the wedlock. In order to ventilate her ego and to achieve her targets, at first she had administered cyanide through food to her mother-in-law, followed by the father-in-law was killed and then her own husband was given poisonous food and thus all of died. Before the death of the father-in-law, she with the help of accused Nos.



2 to 4 managed to forge a Will deed of the father-in-law, Tom Thomas and made it appear that the tharavad house and 38 $\frac{3}{4}$ th cents of land was bequeathed in favour of her husband and herself in equal shares. After a few months, the father was killed by administering cyanide, followed by her own husband was killed in 2011. Passing away of her mother-in-law and father-in-law was taken as natural deaths. At the time of the death of the husband it was thought that it was a case of suicide committed by Roy Thomas and investigation was conducted and closed on that lines. But thereafter, a small child and her mother were also killed for the purpose of marrying CW5 Shaju Zacharias, a cousin of her deceased husband who is the second husband of the first accused. Growing suspicion of these deaths, investigation was conducted and ultimately, it came out that everything was stage managed by the first accused with the help of accused Nos. 2 and 3. During the course of further investigation of Crime No. 189/2011 of Kodenchery police station, the petitioner was examined as CW156 and thereafter, his statement was recorded under



Section 164 of the Code of Criminal Procedure. But ultimately, it came out that he had attested a photocopy of the Will allegedly executed by late Tom Thomas bequeathing 38 $\frac{3}{4}$ th cents of land and a house in favour of Roy Thomas and the first accused. In Annexure I and II statements, relied on by the petitioner, it was very clear that he had not seen the original documents, still had attested the same. The explanation given by him for attesting the same is not at all convincing or do not stand to reason. Whatever it may be, a further investigation was conducted and he was made the 5th accused and aggrieved by the same, he has approached this Court.

6. I have no doubt that the role played by the petitioner is not becoming to a Notary Public or a lawyer having long years of practice. Whatever it may be, we are concerned about the legality and correctness of the proceedings initiated against him. It is no doubt that he was discharging his functions as a Notary as provided under Section 8 of the Notaries Act. In Section 8 of the Notaries Act functions of the Notaries are specified. He had been attesting the said document evidently



without seeing the original. Therefore, it was within the domain of function as a Notary Public that he attested the document. In such a circumstance, Section 13(1) of the Notaries Act comes into play. Section 13(1) of the Notaries Act reads as follow:-

“13. Cognizance of offence:- (1) No court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf.”

7. That means there is a statutory injunction on the court in taking cognizance of offence committed by a Notary in exercise or purported exercise of his functions under the Act, without a complaint in writing made by the officer authorised by the appropriate Government. Here reliance has been placed on Annexure V Government Order, G.O. (R.T.) No. 305/2020/Law dated 06.03.2020 whereby, on the request of the District Police Chief, Kozhikode, the Law Secretary has authorised Sri. Haridasan R. the Deputy Superintendent of Police, District Crime Branch, Kozhikode Rural to file a



complaint against Sri. C.Vijaya Kumar, Notary, (Reg. No.7/98/KKD) under the provisions contained in sub-section (1) of Section 13 of the Notaries Act before a court of competent jurisdiction. So, the prosecution is heavily relying on Annexure V to say that the bar under Section 13(1) of the Notaries Act stands removed by virtue of Annexure V order.

8. But as rightly pointed out by the learned counsel for the petitioner, I have no doubt that Annexure V order cannot salvage the situation and remove the bar under Section 13(1) of the Act. Section 2(d) of the Cr.P.C defines a 'complaint'. The question is whether the Annexure VI final report falls within the definition of a complaint under Section 2(d) of the Cr.P.C. As rightly pointed by the learned counsel for the petitioner, a police report does not come under Section 2(d) of the Cr.P.C. In this connection, the Division Bench decision of this Court in **Ismayil's** case, relying on the decision reported in **Jeewan Kumar Rout v. Central Bureau of Investigation [AIR 2009 SC 2763]** where it is held that a complaint will not take within its scope a police report and a



police report will not take within its scope a complaint. That being the law, the Annexure VI final report will not fall within the scope of a complaint and therefore, the bar under Section 13(1) of the Notaries Act is not removed by virtue of Annexure V order issued by the Law Secretary. Offences alleged against the petitioner are under Section 120B, 468 read with 34 of the IPC. Even though the act of the petitioner is attesting a document without seeing the original or as per the advices of one of the accused is reprehensible, it is not known as to how such an act could be clubbed with the allegations of murder. It seems that, even the prosecution has no case that he was also party to the criminal conspiracy to end the life of Tom Thomas or Roy Thomas. In the circumstances, proceedings could have been initiated against the petitioner independently, without clubbing the case with the murder case.

9. Whatever it be, the proceedings initiated against the petitioner are bad and are barred under Section 13(1) of the Notaries Act. Therefore, entire proceedings initiated against



the petitioner are quashed. However, it is made clear that this order will not stand on the way of the Investigating Officer to file complaint proper against the petitioner in accordance with law, obeying the mandate under Section 13(1) of the Notaries Act.

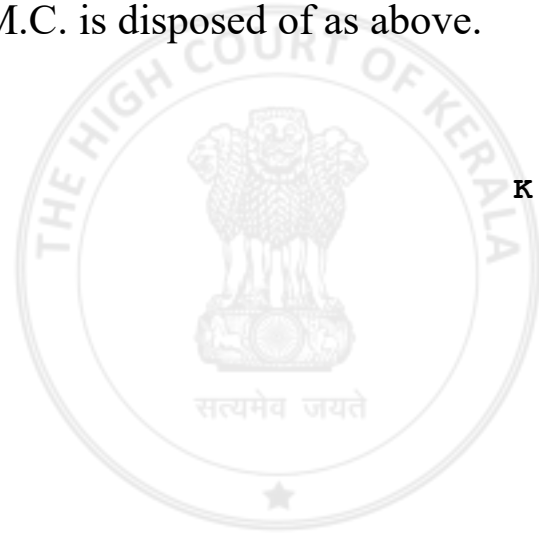
The Crl. M.C. is disposed of as above.

Sd/-

K. HARIPAL

JUDGE

DCS/06.03.2022



HIGH COURT OF KERALA
CERTIFIED COPY



APPENDIX

PETITIONER ANNEXURES

- ANNEXURE I** A TRUE COPY OF THE S.161 STATEMENT RECORDED BY THE INVESTIGATION AGENCY DURING THE COURSE OF INVESTIGATION IN CRIME NO.189/2011 OF KODENCHERY POLICE STATION.
- ANNEXURE II** A TRUE COPY OF THE STATEMENT RECORDED UNDER SECTION 162 CR PC IN THE CRIME NO.189/2011 OF KODENCHERY POLICE STATION.
- ANNEXURE III** COPY OF THE RELEVANT DOCUMENT TAX REGISTER.
- ANNEXURE IV** A TRUE COPY OF THE APPLICATION DATED 10/06/2020.
- ANNEXURE V** A TRUE COPY OF THE SANCTION.
- ANNEXURE VI** CERTIFIED COPY OF THE SUPPLEMENTARY FINAL REPORT IN SC NO.496/2020 PENDING ON THE FILE OF THE COURT OF SESSIONS, KOZHIKODE.
- ANNEXURE VII** A COPY OF THE FORENSIC SCIENCE LABORATORY DATED 30/01/2020.

