



2025:KER:282

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 7TH DAY OF JANUARY 2025/17TH POUSHA, 1946

OP(CRL.) NO.799 OF 2024

CRIME NO.646/2018 OF MUSEUM POLICE STATION,
THIRUVANANTHAPURAM.

AGAINST FIR NO.646 OF 2018 OF JUDICIAL MAGISTRATE OF FIRST
CLASS-III, THIRUVANANTHAPURAM

PETITIONER/COMPLAINANT:

SNIGDHA KUMAR, AGED 31 YEARS,
D/O.SUDESH KUMAR, HOUSE NO.214,
ROSE PARK, JALANDHAR,
PUNJAB, PIN - 144008.

BY ADVS.
SASI M.R.
N.P.SILPA
DHARMYA M.S
KAVYA KRISHNAN
S.SAJIT SANAL
ARYA VALSAN
THARANATH R.
B.G.HARINDRANATH (SR.) (K/378/1984)

RESPONDENT/STATE AND ACCUSED:

- 1 THE INSPECTOR OF POLICE, CBCID, ALAPPUZHA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.
- 2 GAVASKAR, AGED 43 YEARS, S/O.ABDUL KHAREEM,
MELEMUKKU PUTHEN VEEDU, II WARD,
MANNURKKARA VILLAGE, KATTAKKADA TALUK,
THIRUVANANTHAPURAM, PIN - 695542.



BY ADV.C.N.PRABHAKARAN, SENIOR PUBLIC PROSECUTOR

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
19.12.2025, THE COURT ON 07.01.2025 DELIVERED THE FOLLOWING:



'C.R'

JUDGMENT

Dated, this the 7th day of January, 2025

Petitioner is aggrieved by Ext.P1 Order, which refused to issue a copy of the petitioner's statement recorded under Section 164 Cr.P.C. Pursuant to the First Information Statement given by the petitioner, an F.I.R was registered as Crime No.646/2018 of the Museum Police Station, Thiruvananthapuram. The investigation was subsequently transferred to C.B.C.I.D and the crime was re-numbered as 167/CBI/TVPM/R/18. After investigation, Ext.P3 final report has been filed, concluding that the offences alleged has not been made out and requesting the Court to strike off the crime from the records. Dissatisfied, the petitioner/defacto complainant wanted to prefer a protest complaint against Ext.P3 refer report, for which purpose, petitioner wanted to peruse her statement recorded under Section 164 Cr.P.C by the Magistrate. Accordingly an application was filed. The same was dismissed vide Ext.P1, relying upon a judgment of the Hon'ble Supreme Court in ***A v. State of Uttar Pradesh and another*** [(2010) 10 SCC 505].



2. Learned Senior Counsel would submit that, Ext.P1 Order cannot be sustained in law. The judgment relied upon has no relevance to the facts in issue. The same was a case where an application was made by the accused, before the completion of investigation. The Court held that the accused is not entitled to a copy until the investigation is over and a report under Section 173 has been filed. In paragraph no.17, it was held that the accused is entitled in terms of Sections 207 and 208 Cr.P.C to get copies of the documents, only after taking cognizance and issuance of process. Distinguishing the said judgment, learned Senior Counsel would point out that, in the instant case, a copy of statement under Section 164 sought for by the person who gave the statement, that too, after completion of investigation and filing Ext.P2 refer report/final report. Learned counsel then relied upon Rule 226 of the Criminal Rules of Practice, whereby even a stranger is entitled to issuance of copies of documents, provided sufficient cause is shown. In support of the same, the judgment of a learned Single Judge of this Court in ***Vivek Nair v. Puravankara Projects Limited*** [2017 (3) KLT 93] is relied upon. Thus, the petitioner seeks to set aside Ext.P1 Order and



seeks a direction to issue a copy of her statement under Section 164.

3. The above submission was seriously opposed by the learned Senior Public Prosecutor. Learned Prosecutor would point out that this is not a case, where a refer charge was filed upon finding that the accused has not committed the offences alleged. This is a case, where further action is dropped due to insufficiency of evidence collected during investigation, which would necessarily mean that, in case incriminating evidence surfaces at later point of time, a final report assigning guilt of the accused can be filed later, after investigation. A third category referred to by the learned Public Prosecutor is a case, where the crime remains undetected. Inasmuch as Ext.P3 final report purports to drop further action for want of sufficient evidence, the investigation cannot be deemed to have been concluded, for which reason, copy of the statement under Section 164 Cr.P.C cannot be issued to the petitioner, is the submission made. Learned Prosecutor would also add that the petitioner, after filing the protest complaint, can call for the records through



the Court, which would afford her an opportunity to peruse her statement under Section 164. According to the learned Public Prosecutor, in cases where cognizance has not been taken by the trial court, copies of statements under Section 164 cannot be issued. Learned Public Prosecutor relied upon two judgments of this Court. The first being *Athulya v. State of Kerala* [2019 (5) KHC 920] and the second, *Saritha S.Nair v. Union of India and another* [2022 (5) KHC 527].

4. Having heard the learned counsel appearing for the respective parties, this Court can only endorse the submission made by the learned Senior Counsel on behalf of the petitioner. I will straight away ascertain the nature of Ext.P3 report, the relevant findings of which are extracted here below:

"ഈ കേസ്സിന്റെ നാളിതുവരെയുള്ള അന്വേഷണത്തിൽ നിന്നും ഈ കേസ്സിലെ പരാതിക്കാരിയായ സ്ത്രീയ്ക്ക് കുമാർ മൃഗസം പോലീസ് സ്റ്റേഷനിൽ എതിർകക്ഷിക്കെതിരെ മൊഴി നൽകി ടി സ്റ്റേഷൻ ക്രൈം.646/2018 U/sec 294 (b), 354 IPC പ്രകാരം FIR രജിസ്റ്റർ ചെയ്യുന്നതിന് ഇടയായിട്ടുള്ളതായും, എന്നാൽ ടി മൊഴിയിലെ ആരോപണങ്ങൾക്ക് ആധാരമായ കുറ്റകൃത്യങ്ങൾ തെളിയിക്കാൻ സാധിച്ചിട്ടില്ലാത്തതുകൊണ്ടും ടി കുറ്റകൃത്യങ്ങൾ പ്രതിസ്ഥാനത്തുള്ളതായും



ചെയ്തിട്ടില്ലാത്തതായി ബോധ്യപ്പെടുകയാലും ടി കേസ് തുടർന്ന് അന്വേഷണം നടത്തേണ്ട ആവശ്യകതയില്ലായെന്ന് കാണുകയാൽ ആയത് FAD ആയി പരിഗണിച്ച് ബഹു. കോടതിയുടെ ഫയലിൽ നിന്നും കറവ് ചെയ്യുന്നതിന് വേണ്ടി ഈ അന്തിമ റിപ്പോർട്ട് തയ്യാറാക്കി ബഹു. കോടതി മുമ്പാകെ സമർപ്പിക്കുന്നു.”

5. It is clear from the above extracted portion of Ext.P3 that there exists no sufficient material to establish the offences alleged; that it is revealed, the accused has not committed the crime and that there is no necessity to investigate the case any more. On such premise, the case is sought to be treated as all 'Further Action Dropped' and to strike off the same from the files of the court.

6. Having regard to the above contents of Ext.P3, the argument of the learned Senior Public Prosecutor that Ext.P3 is not final and that it can be investigated further on collecting new evidence, etc. cannot be accepted at all. It is true that in every case, further investigation can be conducted, if new evidence surfaces, as enabled by Section 173(8) Cr.P.C. However, such an option on the eventuality of surfacing new material cannot affect the finality of a refer



report/final report under Section 173(8), as things stand established as of the moment.

7. Dehors and independent of the so called finality of Ext.P3 Order, the option available for a dissatisfied defacto complainant is to prefer a protest complaint. If that be so, the right of the defacto complainant to get a copy of her statement recorded under Section 164 Cr.P.C cannot be doubted at all. Even the accused is entitled to a copy of the police report, the F.I.R and all the statements recorded under Section 161 and Section 164, as per Section 207 or 208, as the case may be, the only precondition being that such right can be enforced after the filing of the final report and the Magistrate takes cognizance of the same. In the instant case, Ext.P3 final report/refer report has already been filed, based upon which, notice has been issued to the defacto complainant, as could be seen from the endorsement contained in Ext.P3 (see running page no.31). In the circumstances, this Court is of the opinion that the petitioner/defacto complainant is entitled to a copy of her statement under Section 164 Cr.P.C.



8. Moreover, it is noticed that as per Rule 226 of the Criminal Rules of Practice, even a stranger is entitled to issuance of copies of documents, provided sufficient cause is shown. Needless to say that a final report is a document filed before the court, which is also in the custody of the court. In the instant case, the defacto complainant had shown sufficient cause, that is to say, to enable her to prefer a protest complaint as against the refer report. The requirements of Rule 226 is also satisfied thus.

9. As rightly pointed out by the learned Senior Counsel, the trial court has wrongly placed reliance on the judgment of the Hon'ble Supreme Court in *A v. State of Uttar Pradesh* (supra). That was a case, where the accused has sought for a copy of the statement recorded under Section 164 Cr.P.C, that too, before filing the final report and taking cognizance by the court. The facts are wholly non-palatable and reliance placed upon that judgment is completely misconceived.

10. In the circumstances, this O.P.(Cr1) is allowed. Ext.P1



Order is hereby set aside. There will be a direction to the learned Magistrate to issue to the petitioner a copy of her statement recorded under Section 164 Cr.P.C.

Sd/-

C.JAYACHANDRAN, JUDGE

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APPENDIX OF OP (CRL.) 799/2024

PETITIONER'S EXHIBITS:

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| EXHIBIT P1 | A CERTIFIED COPY OF THE ORDER DATED 5TH OCTOBER 2024 IN COPY APPLICATION NUMBER A 890 OF 2024 IN CBCID CRIME NO.167 OF 2018 BEFORE THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE NO.III, THIRUVANANTHAPURAM. |
| EXHIBIT P2 | A TRUE COPY OF THE FIR IN CRIME NO.646 OF 2018 OF MUSEUM POLICE STATION, THIRUVANANTHAPURAM. |
| EXHIBIT P3 | A TRUE COPY OF THE FINAL REPORT DATED 30/12/2023 IN NO.167/CBI/TVPM/R/18 (MUSEUM PS CR.646/18) . |