

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE AMIT RAWAL
WEDNESDAY, THE 6TH DAY OF JULY 2022 / 15TH ASHADHA, 1944
OP (MAC) NO. 67 OF 2022

AGAINST THE ORDER/JUDGMENTOPMV 541/2019 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,KOLLAM

PETITIONER/S:

SUMITH
AGED 28 YEARS
PAYATTUVILA VEEDU,
NEDUNGOLAM.P.O, PARAVOOR VILLAGE,
KOLLAM DISTRICT., PIN - 691319

BY ADVS.
BINU GEORGE
HEMALATHA
ARYA UNNIKRISHNAN

RESPONDENT/S:

- 1 SHAREEF.S
 AGED 63 YEARS, S/O SALIM
 GAZAL VEEDU,
 THEKKUMBHAGAM CHERY, KOTTAPPURAM VILLAGE,
 PARAVOOR, KOLLAM DISTRICT., PIN - 691319

- 2 SANAL KUMAR
 AGED 39 YEARS
 S/O. CHANDRASEKHARAN NAIR,
 BHARANI VEEDU, KOORAMANDAL B CHERY,
 PARAVOOR, KOLLAM DISTRICT, PIN - 691319

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06.07.2022, ALONG
WITH WP(C).30885/2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

WEDNESDAY, THE 6TH DAY OF JULY 2022 / 15TH ASHADHA, 1944

WP(C) NO. 30885 OF 2019

PETITIONER/S:

SANALKUMAR

AGED 36 YEARS

S/O.CHANDRASEKHARAN NAIR, RESIDING AT BHARANI VEEDU, KOORMANDAL B
CHERY, PARAVUR VILLAGE, KOLLAM DISTRICT, REPRESENTED BY HIS POWER
OF ATTORNEY HOLDER, MANI.G., S/O.NANU ASAN, AGED 58, RESIDING AT
ERUPPARATHODIYIL VEEDU, MYLAKKADU.P.O., THAZHUTHALA, KOLLAM
DISTRICT-691571.

BY ADV J.S.AJITHKUMAR

RESPONDENT/S:

- 1 CITY POLICE COMMISSIONER,
KOLLAM DISTRICT, PIN-691001.
- 2 THE SUB INSPECTOR OF POLICE,
PARAVUR POLICE STATION, KOLLAM-691301.
- 3 ASWIN,
S/O.KUMAR, AGED 15, AMBAYIL VEEDU, POLACHIRA CHERRY, CHIRAKKARA
VILLAGE, KOLLAM DISTRICT, PIN-691578.(CORRECTED)
THE ADDRESS OF THE 3RD RESPONDENT IN THE CAUSE TITLE OF THE WP(C)
IS CORRECTED AS
ASWIN, S/O.KUMAR, AGED 15 YEARS, REPRESENTED BY HIS FATHER
SRI.KUMAR AS NEXT FRIEND, AMBAYIL VEEDU, POLACHIRA CHERRY,
CHIRAKKARA VILLAGE, KOLLAM DISTRICT, PIN-691 578 AS PER ORDER
DATED 11-12-2019 IN IA/2019.
- 4 SHAREEF.S.,
S/O.SALAM, AGED 61 YEARS, GAZAL VEEDU, THEKKUMBHAGAM CHERRY,
KOTTAPPURAM VILLAGE, PARAVOOR, KOLLAM DISTRICT-691319.
- 5 SUMITH,
S/O.BABU ASAN, PAYATTUVILA VEEDU, NEDUNGOLAM, PARAVOOR, KOLLAM
DISTRICT, PIN-691319.
- 6 STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY, HOME DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM-695001.
BY ADVS.
SRI.M.RAJESH
SRI.BINU GEORGE
SMT.HEMALATHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06.07.2022,
ALONG WITH OP (MAC).67/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This order of mine shall dispose of two cases; W.P.(C) No.30885 of 2019 titled as Sanalkumar v. City Police Commissioner, Kollam and others, Kollam and OP (MAC) No.67 of 2022 titled as Sumith v. Shareef S and others. Both the writ petitions are arising out of a cause of action ie., an accident alleged to have occurred on 27.4.2017. On the aforementioned date at 4.30 p.m one Sumith, petitioner in OP (MAC) No.67 of 2022 was riding a TVS Scooter bearing Reg. No.KL 2 AK 3318 through the Paravoor - Chathannoor Road from south to north direction and when reached near Prasanna Theatre Junction, Nedungola, a car bearing Reg. No.TN 02 X 6274 from the pocket road driven by one Sanal Kumar, petitioner in W.P.(C) No.30885 of 2019 hit the scooter, result of which injuries were caused to Sri.Sumith. Police on the basis of the aforementioned accident, registered a crime case No.1195/2017 of Paravoor Police Station against Sri.Sanal Kumar and Sri.Sumith.

2. Petitioner in W.P.(C) No.30885 of 2019 has approached this Court under Article 226 of the Constitution of India seeking the following reliefs:

Issue a writ of mandamus order or direction commanding the 1st

respondent to consider Ext.P5, depute an officer not below the rank of Circle Inspector of Police and expedite the further investigation in Crime No.1195/2017 of Paravoor Police station and submit detailed additional report in C.C No.14/2018 of Judicial First Class Magistrate Court, Paravoor.

3. This Court vide order dated 11.12.2019 while issuing notice to respondents 3 to 5 granted the interim order as prayed for, for a period of one month and continued from time to time. The prayer sought by the petitioner, Sanalkumar who has been branded as a Driver in the criminal case whereby a police report under Section 173(2) as criminal case No.14 of 2018 has been filed, which is sought to be quashed under Article 226 of the Constitution of India. The law with regard to the entertainment of the writ petition under Article 226 is no longer res integra and in as much as that ***in SB Thambe vs. HY Dage and Ors (2016 (6) SCC 277)***, it has been held that if a person is aggrieved of, a lack of proper investigation and remedy would not lie under Article 226 but elsewhere ie., under Section 156(3) of the Cr.P.C. Similar is the ratio in ***Sakiri Vasu v. State of UP (AIR 2008 SC 907)***. Since the proceedings under the MACT were continuing, a very novel method at the instance of another co-accused, Sri.Sumith, who was also a relative of the petitioner, an O.P has been filed with the following prayer:

a. Issue an order or direction, directing the Motor Accident

Claims Tribunal Kollam to kept in abeyance all further proceedings in O.P (M.V) No.541 of 2019 until disposal of W.P.(C) No.30885/2019 of this Hon'ble Court.

b. issue a order or direction call for the entire records in OPMV. No.541/2019 of MACT, Kollam.

The sole attempt of both the petitioners is to stall both the criminal proceedings as well as the proceedings pending in MACT case. Petitioners are at liberty to lead evidence in support of the defence statement under Section 313 of Cr.P.C and also cross-examine the prosecution witnesses with regard to the contents of the report filed by the police to belie the case but cannot in the manner and mode as has been sought in the writ petition and O.P to interdict the criminal as well as MACT proceedings. Both the cases are gross abuse of the process of the court and deserve to be dismissed with exemplary costs. Accordingly, the writ petition bearing No.W.P.(C) No.30885 of 2019 and OP (MAC) No.67 of 2022 are dismissed with the cost of Rs.25,000/- (Rupees twenty-five thousand) each to be paid to the Kerala High Court Bar Association.

sab

Sd/-
AMIT RAWAL
JUDGE

APPENDIX OF WP(C) 30885/2019

PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF THE FIR IN CRIME NO.1195/2017 OF
PARAVOOR POLICE STATION.

EXHIBIT P2 TRUE COPY OF THE FINAL REPORT IN C.C.NO.14/2018 IN
CRIME NO.1195/2017 ON THE FILE OF JUDICIAL FIRST
CLASS MAGISTRATE COURT, PARAVOOR.

EXHIBIT P3 TRUE COPY OF THE CLAIM PETITION IN O.P.
(MV)NO.541/2019 ON THE FILE OF MOTOR ACCIDENT CLAIM
TRIBUNAL, KOLLAM.

EXHIBIT P4 TRUE COPY OF THE COMPLAINT OF THE 5TH RESPONDENT TO
THE 2ND RESPONDENT DATED 15.5.2017.

EXHIBIT P5 TRUE COPY OF THE COMPLAINT OF THE PETITIONER DATED
4.8.2019 TO THE CITY POLICE COMMISSIONER, KOLLAM
DISTRICT.

EXHIBIT P6 TRUE COPY OF THE COMPLAINT OF THE PETITIONER DATED
24.8.2019 TO ASST. COMMISSIONER OF POLICE,
CHATHANNOOR AND DIRECTOR GENERAL OF POLICE.

EXHIBIT P7 TRUE COPY OF THE C.M.P.NO.5388/2019 IN C.C.NO.14/2018
ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
PARAVOOR.

EXHIBIT P8 TRUE COPY OF THE WRITTEN STATEMENT OF THE PETITIONER
(R2) IN O.P.(MV)NO.541/2019 ON THE FILE OF MOTOR
ACCIDENT CLAIM TRIBUNAL, KOLLAM.

RESPONDENT EXHIBITS

EXHIBIT R4(A) A TRUE COPY OF THE COMPLAINT FILED BY THE SON OF THE
4TH RESPONDENT BEFORE SUB INSPECTOR OF POLICE,
PARAVOOR POLICE STATION DATED 10.05.2017.

EXHIBIT R4(B) A TRUE COPY OF THE LETTER NO.11/20/RTI/K.1 DATED
12.02.2020 OF PUBLIC INFORMATION OFFICER, PARAVOOR
POLICE STATION.

APPENDIX OF OP (MAC) 67/2022

PETITIONER EXHIBITS

Exhibit P1 A TRUE COPY OF CLAIM PETITION IN OP(MV) NO.
541/2019 OF MACT, KOLLAM.

Exhibit P2 A TRUE COPY OF WRITTEN STATEMENT FILED BY
2ND RESPONDENT IN OP(MV) . NO. 541/2019 OF
MACT, KOLLAM.

Exhibit P3 A TRUE COPY OF PETITION IN CMP NO. 5388/2019
IN CC NO. 14/2018 OF JFMC (TEMPORARY),
PARAVOOR.

Exhibit P4 A TRUE COPY OF MEMORANDUM OF WRIT PETITION
IN WP(C) . NO.30885/2019 WITHOUT EXHIBITS.