

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

MONDAY, THE 18TH DAY OF JANUARY 2021 / 28TH POUSHA, 1942

Cr1.MC.No.552 OF 2018

AGAINST THE ORDER DATED 31/1/2017 IN C.M.P.NO.639/2016
IN CC 31/2011 OF JUDICIAL MAGISTRATE OF FIRST
CLASS -II, THIRUVANANTHAPURAM

CRIME NO.749/2010 OF FORT POLICE STATION, THIRUVANANTHAPURAM

PETITIONER/COMPLAINANT:

ANIL KUMAR, AGED 47 YEARS, S/O.GOPI,
T.C.NO.22/345, GOPI KRISHNA, ATTUKAL,
IRANIMUTTAM, MANACAUD P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENTS/COUNTER PETITIONERS:

- 1 LATHA MOHAN, T.C.21/349,
JANARDHANAN THAMPI LANE,
NEDUNKAD WARD, MANACAUD VILLAGE,
THIRUVANANTHAPURAM - 695009
- 2 STATE OF KERALA
REPRESENTED BY IT'S PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682031.

ADDITIONAL RESPONDENTS

- ADDL. SWAPNA MOHAN, W/O MURALI KRISHNA,
R3 SREE VILASOM (NANDANAM),
KONOTHU KIZHAKKUM KARA PUTHENVEEDU, NEAR MULLASSERRY
HIGH SCHOOL,
LAKSHAM VEEDU LANE, KARAKULAM P.O, THIRUVANANTHAPURAM
- 695 564
- ADDL. MOHANAN NAIR, S/O SUKUMARAN NAIR,
R4 SREE VILASOM (NANDANAM),
KONOTHU KIZHAKKUM KARA PUTHENVEEDU,
NEAR MULLASSERRY HIGH SCHOOL,
LAKSHAM VEEDU LANE, KARAKULAM P.O, THIRUVANANTHAPURAM
- 695 564

ADDL. MANOJ, S/O MOHANAN NAIR, THIRUVATHIRA,
R5 T.C.43/551(3),
MANACAUD P.O, THIRUVANANTHAPURAM - 695 009

ARE IMPEADED AS ADDL.R3,R4 & R5 AS PER ORDER DTD
27/2/19 IN CRL.M.A.3/19 IN CRL.M.C.552/18

R1 BY ADV. SRI.M.RAJENDRAN NAIR
R1 BY ADV. SMT.M.SANTHY
R2 BY SRI.SUMAN CHAKRAVARTHY, SENIOR PUBLIC
PROSECUTOR

AMICUS CURIAE SR.ADV.SRI.P.VIJAYA BHANU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
18.01.2021, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.

ORDER

An application under Section 319 Cr.P.C. to proceed against three persons other than the accused was dismissed by the trial court. Aggrieved by the said order, the defacto complainant, who filed the application, came up under Section 482 Cr.P.C.

2. Initially, crime was registered against four persons based on a reference of complaint under Section 156(3) Cr.P.C., but after investigation, final report was submitted only against one among the accused persons named in the FIR ie. the 2nd one and a separate report was submitted seeking to delete and remove the names of accused No.1, 3 and 4 in the FIR from the array of the accused.

3. It is thereafter, charge was framed and trial was commenced against the 2nd named accused in the FIR, who is the sole accused in the final report submitted. The report submitted for deleting and removing the names

of accused No.1, 3 and 4 in the FIR came to the notice of the defacto complainant only at the time of trial of the case. As such, he preferred an application under Section 319 Cr.P.C. at the trial stage to proceed against the above said persons as additional accused.

4. Admittedly, the report submitted by the investigating officer for deleting the names of accused No.1, 3 and 4 is not a report as envisaged under Section 173(2) Cr.P.C. and no notice was issued to the first informant, without which the report was accepted by deleting them from the array of accused. The final report submitted against accused No.2 (sole accused) was proceeded and trial was commenced. It is at that time, the defacto complainant came to know about the report seeking removal of accused No.1, 3 and 4 named in the FIR and its acceptance by the Magistrate.

5. It was brought to the notice of this Court by the learned Senior Public Prosecutor Sri.Suman Chakravarthy that the practice of submitting such report for deleting accused person either at the interim stage of investigation or at its final stage is followed throughout Kerala and so far nobody has

raised any legal objection to the said practice. Since the question requires elaborate consideration, this Court sought the help of an Amicus Curiae and the learned senior counsel Sri.P.Vijayabhanu expressed his willingness. Accordingly, it was ordered.

6. From Section 154 to Section 173 under Chapter XII of Cr.P.C., there is no provision for submitting any report by the officer in charge of police station/investigating officer except under Section 157 [Section 158 and 173(3)], 170, 173(2) and 173(8) Cr.P.C. At least three modalities were incorporated under Section 157 Cr.P.C. regarding the further steps to be taken by the officer in charge of the police station, on an information received or otherwise, regarding the commission of an offence, which he is empowered under Section 156 Cr.P.C. to investigate. When the officer in charge of a police station has reason to suspect commission of an offence, which he is empowered under Section 156 to investigate, he shall forthwith send a report to the Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person to the spot, to investigate

the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender or shall depute one of his subordinate officers not below the rank as the state Government may by general or special order prescribe in that behalf, to proceed, to the spot, to investigate the facts and circumstances of the case and if necessary to take measures for discovery and arrest of the offender. The said provision is subject to two exceptions in the form of two provisos. Clause (a) to the proviso to Section 157(1)Cr.P.C. gives an option to the officer in charge of the police station not to make any investigation on the spot when the offence alleged is not of serious nature. clause (b) to the said proviso permits the officer in charge of the police station not to investigate any case, if it appears to him that there is no sufficient ground for entering on an investigation. In the case of clause (a) and (b) of the said proviso, he is bound to submit a report as mandated under Section 157(2)Cr.P.C. stating his reason for not fully complying with the requirement. In the case mentioned in clause (b) of the said proviso, the

officer shall forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate or enter on any investigation or cause it to be done through any subordinate officer. Section 157 Cr.P.C. casts a duty upon the officer in charge of the police station/investigating officer to send a report to the concerned Magistrate and in the case of proviso (b), he shall forthwith notify the same to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case either by him or through any subordinate officer. Section 158 Cr.P.C. deals with the way in which the report under Section 157 Cr.P.C. has to be submitted. Section 173(3) Cr.P.C. enables the superior officer of the police through him a report has to be submitted under Section 158 Cr.P.C. to direct the officer in charge of the police station to make further investigation pending orders of the Magistrate.

7. Section 173 Cr.P.C. is extracted below for reference:

"173. Report of police officer on completion of investigation. -

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

[(1A) The investigation in relation to [an offence under sections 376, 376A, 376AB, 376B, 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860) shall be completed within two months.] from the date on which the information was recorded by the officer in charge of the police station.]

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating -

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170;

[(h) Whether the report of medical examination of the woman has been attached where investigation relates to an offence under [Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB]] or section 376E of the Indian Penal Code (45 of 1860)]

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may,

pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report -

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

(emphasis supplied)

8. The language employed under Section 173(1) Cr.P.C. that "every investigation under this Chapter shall be completed without unnecessary delay" stands for all investigations commenced under Section 156 Cr.P.C., that is to say, based on the FIR registered under Section 154 Cr.P.C. and a reference under Section 156(3) Cr.P.C.. What is stated in Section 173(2) Cr.P.C. that "as soon as it is completed" stands for "investigation" made mentioned in Section 173(1) Cr.P.C.. The user of the words " every investigation" in sub-section (1) and "as soon as it is completed" in sub-section (2) to Section 173 Cr.P.C. and a conjoint reading with the mandate of submitting a report on culmination of investigation under sub-section (2), would make the legal position clear that when investigation was commenced under Section 156 Cr.P.C., it is incumbent on the officer in charge of the police station/the investigating officer to submit a report under Section 173(2) Cr.P.C. in every case. There is no enabling provision or any provision in the Code to submit a casual report with a prayer to delete or

remove any person from the party array of the accused, except a report as envisaged under Section 173(2) Cr.P.C. Further, there is no provision in the Code either to seek deletion or removal of any person from the array of the accused. On the other hand, the investigating officer is bound to submit a report as envisaged under Section 173(2) Cr.P.C. for taking cognizance of any offence appears to have been committed by any person of accused (a charge sheet) or a refer report (referred charge) for its acceptance. The words "final report", "refer report", "charge sheet" etc. are not made mentioned anywhere in the Code. But the user of the said expressions with its meaning was considered by the Apex Court in **Gangadhar Janardan Mhatre v. State of Maharashtra and others [(2004) 7 SCC 768]** in the following lines:

"The expressions "charge sheet" or "final report" are not used in the Code, but it is understood in Police Manuals of several States containing the rules and regulations to be a report by the police filed under Section 170 of the Code, described as a "charge-sheet". In case of reports sent under Section 169 i.e. where there is no sufficiency of evidence to justify forwarding of a case to a Magistrate, it is termed variously i.e. referred charge, final report or summary."

9. Yet another reason is also available for

insisting compliance of mandate under Section 173(2) Cr.P.C. In the absence of a report as envisaged under Section 173(2) Cr.P.C., there cannot be any application of Section 173(8) Cr.P.C. even in a case of detection/revelation of any new material fact or evidence pertaining to the issue. A supplementary report under Section 173(8) Cr.P.C. can be submitted only after submission of a final report under Section 173(2) Cr.P.C. and in the absence of such a report, Section 173(8) Cr.P.C. cannot be applied. This would make the legal position crystal clear that the report that can be submitted after investigation must be in consonance with the mandate under Section 173 Cr.P.C.

10. Further, a right of notice and right of hearing to the first informant/defacto complainant is well recognized both under Section 157 and 173 Cr.P.C., based on the well evolved principles of natural justice and gives the first informant a right to set the criminal law again in motion despite the adverse report submitted under Section 157(2) Cr.P.C. not to investigate the case or a refer report (referred charge) under Section 173(2) or 173(8) Cr.P.C., by

maintaining a protest complaint. Hence the right of notice and right of hearing both under Sections 157, 173(2) and 173(8) Cr.P.C. to the first informant/defacto complainant cannot be defeated. This might be the reason why the legislature has incorporated provision for issuance of notice under Section 157(2) and 173(2)(ii) Cr.P.C.. It was well recognized and settled by a three Judge Bench of the Apex Court in **Bhagwant Singh v. Commissioner of Police and another** [(1985) 2 SCC 537 = AIR 1985 SC 1285] in the following lines:

"4. Now, when the report forwarded by the officer in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and

issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate besides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. More over, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognized by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2) (i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information

Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the Police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. More over, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

5. The position may, however, be a little different when we consider the question whether the injured person or a relative of a deceased, who is not the informant, is entitled to notice when the report comes up for consideration by the Magistrate. We cannot spell out either from the provisions of the Criminal Procedure Code, 1973 or from the principles of natural justice, any obligation on the Magistrate to issue notice to the injured person or to a relative of a deceased for providing such person an opportunity to be heard at the time of consideration of the report, unless such person is the informant who has lodged the First Information Report. But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of

consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him. We may also observe that even though Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit, gives such notice to the injured person or to any particular relative or relatives of the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report."

(emphasis supplied)

11. It was followed by another Bench of the Apex Court in **Union Public Service Commission v. S.Papaiah and others [(1997) 7 SCC 614]** and held that even issuance of notice by the investigating agency regarding a final report under Section 173 Cr.P.C. (refer report/referred charge) to the first informant was not sufficient and laid down that the Magistrate must give notice and an opportunity of hearing to the informant before accepting the final report (a refer report/referred charge) and closing the case. The relevant portions of paragraphs 9,10 and 11 of the said judgment is extracted below for reference:

"9. In the present case, admittedly, no notice was issued by the Vth Metropolitan Magistrate to the appellant before accepting the final report

submitted by the CBI and deciding not to take cognizance and drop the proceedings. This omission vitiates the order of the learned court accepting the final report. The issue is no longer res integra.....

10. As per the law laid down in Bhagwant Singh's case the issuance of a notice by the Magistrate to the informant at the time of consideration of the final report is a "must". This binding precedent which is the law of the land, has not been followed by the Vth Metropolitan Magistrate and was wrongly ignored by the revisional court also.

11. The argument of the learned counsel for the respondent that since the CBI had issued a notice to the appellant, it should be deemed to be sufficient compliance with the requirement of law does not appeal to us. In the first place, the issuance of notice by the CBI to the appellant was not a substitute for the notice which was required to be given by the Magistrate in terms of the judgment in Bhagwant Singh's case. The CBI also did not issue any fresh notice to the UPSC before it resubmitted the final report to the learned Magistrate on 24.2.1995. Learned Magistrate could not in any event "delegate" to the investigating agency its function of issuing notice....."

12. The legal position was reiterated in **Gangadhar Janardan Mhatre's** case (supra). Hence the practice of submitting a casual report for deleting or removing any person from the array of the accused without notice to the first informant, instead of a referred charge (refer report) as envisaged under Section 173(2) and 173(8) Cr.P.C., is deprecated. The report that can be submitted after the stage under Section 157 and 158

Cr.P.C. must be in accordance with the mandate under Section 173(2) Cr.P.C. in the prescribed form enumerating the requirement under sub-clause (a) to (h) to clause (i) and it shall be communicated to the first informant as mandated under clause (ii) of Section 173(2) Cr.P.C. When such report is in respect of a case to which Section 170 Cr.P.C. applies (when there is sufficient evidence or reasonable ground for the trial or for commitment of trial of the accused), the police officer in compliance with the requirement under Section 173(5) Cr.P.C. shall forward to the Magistrate along with the report (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation; and (b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses, subject to the restriction imposed under Section 173(6) Cr.P.C..

13. Then comes the question whether the investigating officer in a refer report (referred charge) is bound to comply with the requirement under

sub-section (5) of Section 173 Cr.P.C. by forwarding all the documents and statement along with the report or a formal refer report without the documents and the statement recorded would be sufficient. It is not addressed anywhere in the Code except under Section 173(4) Cr.P.C., wherein the jurisdiction of discharge of bail bond and such other act alone were addressed. The language employed in clause (ii) of Section 173(2)Cr.P.C. would show that the production of documents collected and statement recorded as mandated under Section 173(5) Cr.P.C. would be applicable with respect to a case which would fall under Section 170 Cr.P.C. (a final report for taking cognizance against the accused person). There is no provision in the Code mandating production of those records with a refer report (referred charge). But it is settled by the Apex Court in **Bhagwant Singh's** case (supra) that there are three options available to the Magistrate on submission of a refer report under Section 173(2) Cr.P.C. that (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for

proceeding further,take cognizance of the offence and issue process or (3)he may direct further investigation to be made by the police under sub-section (3) of Section 156. To exercise these options, especially the last two, the documents collected and the statements recorded including the one under Section 161 Cr.P.C. must be made available to the Magistrate subject to the restriction imposed under Section 173(6) Cr.P.C.. Otherwise, it would amount to curtailing the exercise of jurisdiction by the Magistrate. Hence all the documents or relevant extracts thereof collected during the course of investigation and all statements including statement recorded under Section 161 Cr.P.C., subject to the restriction imposed under Section 173(6) Cr.P.C., must be forwarded along with a refer report (referred charge), so as to enable the Magistrate to exercise his jurisdiction. The said requirement was also taken into consideration by the Apex Court in dealing with the application of Section 173(2) Cr.P.C. in **Gangadhar Janardhan Mhatre's** case (supra) and laid down that :

"The position is, therefore, now well settled that upon receipt of a

police report under Section 173(2), a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not laid down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused."

(emphasis supplied)

It is made clear that all the abovesaid legal positions are squarely applicable to a report to be submitted under Section 173(8) Cr.P.C., which would stand as a supplementary report to the final report submitted under Section 173(2) Cr.P.C..

14. One of the requirements made mentioned under Section 173(2) Cr.P.C. to be complied with while submitting a final report is to answer specifically the offence appears to have been committed and the person who committed the same. It was submitted by the learned

Senior Counsel Sri.P.Vijayabhanu that the said requirement by itself will explain that a final report (charge sheet) alone can be submitted under that provision and it must be a report under Section 170 Cr.P.C. showing sufficient evidence regarding commission of offence alleged and the person who committed it. It is further submitted that in a refer report (referred charge), there cannot be any positive answer to the above said query. It is too difficult to accept the said argument simply because of the reason that, as discussed in earlier paragraphs, it is quite permissible to submit a refer report (referred charge) under Section 173 Cr.P.C. and as such, there is no legal impediment in giving a negative answer to the above said query in the said report against any person of accused named in the FIR or subsequently added during the course of investigation.

15. The learned Senior Public Prosecutor Sri.Suman Chakravarthy produced a Government notification G.O. (P)No.86/93/Home dated 28/6/1993- SRO No.1043/93 by which circulated a format for the report to be submitted under Section 173 Cr.P.C., wherein column

No.13 is to furnish the particulars of accused person not charge sheeted. But it is fairly conceded that the present format did not contain any such clause. He had also raised a doubt as to the permissibility of submitting a refer report (referred charge) under Section 173(2) Cr.P.C. against a particular accused before the completion of investigation as against others. No doubt, a report under Section 173(2) Cr.P.C. should be submitted with respect to each and every accused persons showing their respective offences for the purpose of taking cognizance or a refer report (referred charge) for dropping the proceedings. It is quite permissible to submit a joint report with respect to the same transaction against more than one accused and also a refer report as against some other accused. It is also permissible to file separate final reports against each and every accused persons and as such, when investigation is completed as against any of the accused person, it is permissible to submit a final report as against him either by way of a refer report (referred charge) or a final report (charge sheet) before the completion of investigation as against the

other accused persons.

16. The reports submitted casually for deletion of persons from the array of accused without the compliance of requirement under Section 173(2) Cr.P.C. and without production of the documents or extracts thereof or statement recorded, in any of the pending cases shall be rejected so as to enable the investigating agency to submit a report as envisaged under Section 173(2) Cr.P.C. along with all the documents and records or copies/extracts thereof along with the statement or copies including the statement recorded under Section 161 Cr.P.C.. and it must be notified to the first informant in compliance of mandate under clause (ii) of Section 173(2) Cr.P.C..

17. In the instant case, no final report was submitted against the named accused persons 1,3 and 4 in the FIR as envisaged under Section 173(2) Cr.P.C.. The final report was submitted against accused No.2 named in the FIR. A casual report was submitted seeking deletion of accused No.1, 3 and 4, without the compliance of requirement under Section 173(2) Cr.P.C. and without forwarding the documents and statement

collected during the course of investigation. It has no legal effect or sanctity and hence liable to be rejected. Necessarily, the Station House Officer or the investigating officer, as the case may be, shall submit a report as envisaged under Section 173(2) Cr.P.C. as against the accused No.1, 3 and 4 named in the FIR and it shall be notified to the first informant so as to enable him to exhaust his right of protest complaint.

18. Section 319 Cr.P.C. is an independent provision apart from the other provisions contained in Code and enables the court to proceed against other persons not being an accused when it appears from the evidence that he has committed an offence, for which such person could be tried together with the accused. The said section can be applied irrespective of whether any protest complaint was maintained against any refer report (referred charge) regarding such person or whether the same was ended in dismissal. By its nature, Section 319 Cr.P.C. is independent and can be exercised when it appears from the evidence his involvement in the alleged crime irrespective of whether any protest

complaint was maintained against him and whether the same was ended in dismissal.

19. What is involved in the instant case is centering around the execution of a sale deed in favour of the nominees of the petitioner and the alleged suppression of earlier mortgage over the property. The mortgage created by the seller over the property is admittedly disclosed in the sale deed. But the mortgage created by her predecessor-in-interest, her mother, over the property was not disclosed. Her predecessor-in-interest admittedly is not a party to the sale. The dispute is only a civil one and the purchaser/defacto complainant is equally responsible for not conducting a proper enquiry with respect to its encumbrances prior to the execution of the sale deed. Hence the order of dismissal of the application under Section 319 Cr.P.c. deserves no interference. The Cr1.M.C. is dismissed accordingly.

20. The Registry shall forward a copy of this order to the State Police Chief so as to circulate the same among all the district level police officers and station house officers and a copy to the Principal

District and Sessions Judges so as to circulate the same among the subordinate officers in their respective judicial district.

The valuable service and assistance given by the Amicus Curaie, Sri.P.Vijayabhanu, the learned Senior Counsel, is placed on record with high appreciation, besides the assistance given by the Senior Public Prosecutor Sri.Suman Chakravarthy.

sd/-

P . SOMARAJAN

JUDGE

sv

APPENDIX

PETITIONER'S/S EXHIBITS:

- ANNEXURE A- CERTIFIED COPY OF THE FINAL REPORT FILED IN
FIR NO.749/2010 OF FORT STATION.
- ANNEXURE B- CERTIFIED COPY OF THE DEPOSITION OF THE
PETITIONER AS PW1.
- ANNEXURE C- TRUE COPY OF THE PETITION FILED BY THE
PETITIONER UNDER SECTION 319 OF CRL.P.C.
- ANNEXURE D- CERTIFIED COPY OF THE ORDER DATED
31/01/2017 IN C.M.P.NO.639/16 IN
C.C.NO.31/11.
- ANNEXURE E TRUE COPY OF THE PRIVATE COMPLAINT FILED BY THE
PETITIONER BEFORE THE JUDICIAL FIRST CLASS
MAGISTRATE COURT II, THIRUVANANTHAPURAM AS C.M.P.
NO.1750/2010

/TRUE COPY/

Sd/-

P.S. TO JUDGE