



2025:KER:66812

O.P.(Crl.)No.816/2024

-:1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

TUESDAY, THE 9TH DAY OF SEPTEMBER 2025 / 18TH BHADRA, 1947

OP(CRL.) NO. 816 OF 2024

CRIME NO.822/2010 OF SOORANADU POLICE STATION, KOLLAM

AGAINST THE ORDER DATED 16.10.2024 IN CC NO.1293 OF 2016
OF JUDICIAL FIRST CLASS MAGISTRATE COURT - II, SASTHAMCOTTA

PETITIONER/PETITIONER/DE FACTO COMPLAINANT:

SUNILKUMAR,
AGED 54 YEARS,
S/O KRISHNA KURUP,
RESIDING AT MUDUYIL THAZHATHIL VEETIL,
AYIKKUNNAM MURI,
SOORANADU SOUTH VILLAGE,
KOLLAM., PIN - 690522

BY ADVS.SHRI.S.JAYANT
SHRI.VARGHESE SABU
SHRI.ANOOP P. PILLAI

RESPONDENT/ RESPONDENT/ STATE/ ACCUSED:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERANAKULAM,
PIN - 682031
- 2 SUB INSPECTOR OF POLICE
SOORANADU POLICE STATION,
CHAKKUVALLY, SOORANAD, KOLLAM.,
PIN - 690520
- 3 SURESH KUMAR
S/O GOPALA PILLAI ,
RESIDING AT MUDUYIL PADINJATTATIL VEETIL,
AYIKKUNNAM MURI,



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SOORANADU SOUTH VILLAGE,
KOLLAM., PIN - 690521

- 4 AJAYA KUMAR
S/O GOPALA PILLAI,
RESIDING AT MUDUYIL PADINJATTATIL VEETIL,
AYIKKUNNAM MURI,
SOORANADU SOUTH VILLAGE,
KOLLAM., PIN - 690521
- 5 SHANTAMMA
D/O GOWRIKUTTY,
RESIDING AT MUDUYIL PADINJATTATIL VEETIL,
AYIKKUNNAM MURI,
SOORANADU SOUTH VILLAGE,
KOLLAM., PIN - 690521
- 6 SREEJA
D/O THANKAMANY,
RESIDING AT MUDUYIL PADINJATTATIL VEETIL,
AYIKKUNNAM MURI,
SOORANADU SOUTH VILLAGE,
KOLLAM., PIN - 690521
- 7 SREEJA
D/O SARASSAM,
RESIDING AT MUDUYIL PADINJATTATIL VEETIL,
AYIKKUNNAM MURI,
SOORANADU SOUTH VILLAGE,
KOLLAM., PIN - 690521

SMT PUSHPALATHA M.K., SR. PUBLIC PROSECUTOR

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
09.09.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Ext P12 order of the Judicial First Class Magistrate Court-II, Sasthamcotta, rejecting the request of the de facto complainant in Crime No.822/2010 of Sooranadu Police Station, Kollam, to examine one of the Dy.S.Ps, who had investigated the case, is under challenge in this petition filed by the de facto complainant under Article 227 of the Constitution of India.

2. The case relates to the commission of offences under Sections 452, 294(b), 323, 324, 325 & 427 read with Section 34 of the Indian Penal Code, 1860. It is seen that the further investigation in the case was conducted by two Dy.S.Ps, pursuant to the orders passed by this Court. However, in the final report filed, the name of one of the Dy.SPs, who conducted the investigation, was not included. The other Dy.S.P was examined as PW9. He stated during the cross-examination that it was his predecessor-in-office who had recorded the statement of CW5. According to the de facto complainant and the prosecution, the examination of Dy.S.P. Mr Shanavas, who conducted a part of the investigation, is highly necessary to meet the ends of justice.

3. The request in the above regard was rejected by the learned Magistrate for two reasons. Firstly, it is stated that the evidence in the



case was closed on 18.07.2024, and that there was no specific prayer for re-opening the evidence. Secondly, the learned Magistrate found that the Deputy Superintendent of Police, Mr Shanavas, who had conducted part of the investigation, has not been included in the list of witnesses forming part of the final report.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.

5. It is obvious from the facts and circumstances of the case that the Deputy Superintendent of Police Mr Shanavas had conducted a portion of the investigation in this case, pursuant to the directions of this Court. However, the name of the above person has not been incorporated in the list of witnesses forming part of the final report and the further report. The omission in the above regard cannot be taken as a reason to disallow the prayer for examining the above person as a witness, since it is found that such examination is necessary for a just decision in the case. So also, the learned Magistrate has wrongfully resorted to technicality in disallowing the prayer for examination of the aforesaid Dy.S.P., by stating in paragraph No.5 of the impugned order that there is no petition to re-open the evidence. It appears from the facts and circumstances of this case that the examination of Deputy



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Superintendent of Police, Mr Shanavas, who had conducted a part of the investigation, is necessary for the just decision of the case. Therefore, the impugned order passed by the learned Magistrate, is liable to be set aside.

In the result, the petition stands allowed as follows:

- (i) Ext P12 order passed by the Judicial First Class Magistrate Court-II, Sasthamcotta, disallowing the prayer for examination of the Deputy Superintendent of Police Mr Shanavas, as an additional witness, is hereby set aside.
- (ii) The learned Magistrate is directed to pass appropriate orders to summon and examine the aforesaid person as an additional witness from the part of the prosecution.

Sd/-

G. GIRISH, JUDGE

DST/09.09.25



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APPENDIX

PETITIONER EXHIBITS

- EXHIBIT P1** A TRUE COPY OF FIR NO 822 OF 2020 OF SOORANADU POLICE STATION, KOLLAM
- EXHIBIT P2** A TRUE COPY OF FINAL REPORT PENDING ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE COURT, SASTHAMCOTTA AS CC NO 68/2011
- EXHIBIT P3** A TRUE COPY OF JUDGMENT OF THIS HON'BLE COURT IN CRL MC NO 7143 OF 2017 DATED 07TH DAY OF NOVEMBER 2017
- EXHIBIT P4** THE A TRUE COPY OF DEPOSITION OF CW7 IN CC NO 1293/2016 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT TEMPORARY, SASTHAMKOTTA
- EXHIBIT P5** A TRUE COPY OF THE SPECIMEN SIGNATURE OF WITNESSES WHO ATTESTED THE SCENE MAHAZAR
- EXHIBIT P6** A TRUE COPY OF JUDGMENT OF HON'BLE HIGH COURT OF KERALA IN WP(C) NO 2039 OF 2011 DATED 01-02-2011
- EXHIBIT P7** A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN CRL MC NO 950 OF 2024 DATED 16-02-2024
- EXHIBIT P8** A TRUE COPY OF DEPOSITION OF CW 7 IN CC NO 1293/2016 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT TEMPORARY, SASTHAMKOTTA WHEN HE WAS RECALLED UNDER SECTION 311 OF CRPC
- EXHIBIT P9** A TRUE COPY OF DEPOSITION OF PW10
- EXHIBIT P10** A TRUE COPY OF DEPOSITION OF CW12
- EXHIBIT P11** A TRUE COPY OF CMP NO 1756/2024 CC NO 1293/2016 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT II, SASTHAMKOTTA DATED 09-08-2024



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EXHIBIT P12

**A TRUE COPY OF ORDER IN CMP NO 1756/2024 CC
NO 1293/2016 ON THE FILE OF JUDICIAL FIRST
CLASS MAGISTRATE COURT II, SASTHAMKOTTA
DATED 16-10-2024**