



2024/KER/33170

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 21ST DAY OF MAY 2024 / 31ST VAISAKHA, 1946

CRL.MC NO. 1854 OF 2020

CRIME NO.1911/2018 OF Vaikom Police Station, Kottayam
AGAINST THE ORDER/JUDGMENT IN CC NO.878 OF 2019 OF JUDICIAL
MAGISTRATE OF FIRST CLASS-I, VAIKOM

PETITIONER/ACCUSED:

DON PAUL, AGED 35 YEARS
S/O PAUL PAUL, THENGUMPALLI HOUSE,
MANJOOR.P.O, KOTTAYAM DISTRICT.
BY ADV DON PAUL(Party-In-Person)

RESPONDENTS/STATE/DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERLA, ERNAKULAM-682031.
- 2 TISA DON, AGED 27 YEARS,
D/O GEORGE KURIAKOSE, PALAKKAL HOUSE,
BUS STAND ROAD, VAIKKOM.P.O, KOTTAYAM DISTRICT-
686141.
- 3 SECRETARY
VAIKOM PALLIPRETHUSSERY SERVICE CO OPERATIVE
BANK, NO.923, PALLIPRETHUSSERY.P.O, VAIKOM-686606.
BY ADVS.
SRI.ABRAHAM P.GEORGE
C.C.ANOOP
SMT.M.SANTHY
SENIOR PUBLIC PROSECUTOR SRI RENJITH GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
02.04.2024, THE COURT ON 21.05.2024 PASSED THE FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.***

Crl.M.C No.1854 of 2020-B

Dated this the 21st day of May, 2024***O R D E R***

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure (‘Cr.P.C’ for short) by the 1st accused in Crime No.1911/2018 of Vaikom Police Station, Kottayam, now pending as C.C.No.878/2019 on the files of Judicial First Class Magistrate Court-I, Vaikom. The prayer in the petition is to quash Annexure B final report and all proceedings in C.C.No.878/2019.

2. Heard the petitioner in person, who alleged to have committed offence punishable under Section 406 of Indian Penal Code (‘IPC’ for short). The learned Public Prosecutor also was



heard. Perused the relevant documents.

3. The crux of the case is as follows:- As per Annexure-A complaint, vide CMP.No.8213/2018, the wife of the petitioner/1st accused set criminal law in motion under Section 190 read with Sections 200 to 204 of Cr.P.C before the Judicial First Class Magistrate Court-I, Vaikom, alleging commission of offence punishable under Section 406 of IPC by the accused. The allegation in the complaint is that the marriage of the 1st accused and the complainant was fixed on 08.04.2012 at St.Xavier's Church, Kuruppunthara, Vaikom. Later marriage was solemnised on 14.04.2012 as per the religious rituals and the marriage also was registered. At the time of the marriage proposal, the accused herein demanded 75 sovereigns of gold ornaments and Rs.50 lakh adjusting the same towards the family share of the complainant. Accordingly, Rs.25 lakh was handed over on the date of betrothal and another Rs.25 lakh was kept in fixed deposit in the joint names



of the complainant and the 1st accused on condition that the same would only be used for the benefit of the complainant and children to be born in the wedlock. Further 75 sovereigns of gold ornaments were also given. The further case is that Rs.25 lakh was deposited at Co-operative Bank, Pallippurathussery, Vaikom Taluk on 04.04.2012 by 25 separate fixed deposit receipts each of Rs.1 lakh, in the joint names of the complainant and the 1st accused. It was alleged that the gold ornaments were entrusted with the 1st and 2nd accused as trustees. The specific allegation is that the F.D receipts of 25 Nos. (Rs.1 lakh each) were encashed by the 1st and 2nd accused without the knowledge and consent of the complainant and thereby committed breach of trust. Further the gold ornaments were also misappropriated. Police investigated the crime as directed by the Magistrate under Section 156(3) of Cr.P.C and Annexure B final report was filed alleging commission of offence under Section 406 of IPC by the accused.



4. Now the petitioner would submit that no ingredients to attract offence under Section 406 IPC is made out and the complaint was filed without opting the alternative remedies available under Section 154(1) and 154(3) of Cr.P.C. Hence filing of private complaint and cognizance thereof were illegal and the same are liable to be quashed. In this connection decision reported in [MANU/SC/0214/2022/ (2022) 5 SCC 639], ***Babu Venkatesh & Ors. v. State of Karnataka & Ors.*** is pointed out, where the Apex Court held as under:

“3. This Court has clearly held that, a stage has come where applications under Section 156(3) of CrPC are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

4. In an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The court has noted that, applications under Section 156(3) of the CrPC are filed in a routine manner without taking any responsibility only to harass certain persons.

5. This Court has further held that, prior to the filing of a petition under Section 156(3) of the CrPC, there have to be



applications under Section 154(1) and 154(3) of the CrPC. This Court emphasizes the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from casually invoking authority of the Magistrate, under Section 156(3) of the CrPC. If the affidavit is found to be false, the person would be liable for prosecution in accordance with law.”

5. In the above decision, in para.20, the Apex Court considered the decision in [MANU/SC/0115/1992 : 1992 Supp (1) SCC 335], ***State of Haryana and Ors. v. Bhajan Lal and Ors.*** where it was held as under:

*“20. It will be relevant to refer to the following observations of this Court in the case of **State of Haryana and Ors. v. Bhajan Lal and Ors.** Manu/SC/0115/1992 : 1992 Supp (1) SCC 335 which read thus:*

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be



exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the Accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the Accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the Accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with



mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the Accused and with a view to spite him due to private and personal grudge.”

6. In paragraph 24 of the decision reported in ***Babu Venkatesh & Ors. v. State of Karnataka & Ors.***’s case (*supra*), paragraphs 30 and 31 of the decision reported in [MANU/SC/0344/2015 : (2015) 6 SCC 287] ***Priyanka Srivastava and anr. v. State of Uttar Pradesh & Ors.*** were referred as under:

“30: In our considered opinion, a stage has come in this country where Section 156(3) Code of Criminal Procedure applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the



application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [MANU/SC/1166/2013 : (2014) 2 SCC 1 : (2014) 1 SCC (Cri.) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

7. Finally, in paragraphs 25 to 28 of the decision reported in ***Babu Venkatesh & Ors. v. State of Karnataka & Ors.***’s case (*supra*) it was held as extracted herein above in paragraph 4.

8. In the latest decision reported in [2023 KHC 6519 : 2023 (4) KHC SN 3 : 2023 LiveLaw (SC) 396 : 2023 (3) KLT 431 : 2023 (2) KLJ 897 : 2023 SCC OnLine SC 569]], ***Kailash Vijayvargiya v. Rajlakshmi Chaudhuri*** the Apex Court, after



referring *Priyanka Srivastava and anr. v. State of Uttar Pradesh & Ors.* (*supra*), held that this Court highlighted abuse of the criminal process by the unprincipled and deviant litigants who do knock at the door of the criminal court for malevolent reasons. Reiterating *Lalita Kumari* (*supra*), it was observed that an action under S.156(3) should not be entertained without the complainant taking recourse to sub-section (1) and (3) of S.154 and compliance of these two Sections should be clearly spelt out in the application and necessary documents filed. To check malevolence and false assertions, the Court directed that every petition/application under S.156(3) should be supported by an affidavit so that the person making an application should be conscious of it and to see that no false allegation is made. If the affidavit is found to be false, the complainant will be liable for prosecution in accordance with the law. Vigilance is specially required in cases pertaining to fiscal sphere, matrimonial/family disputes, commercial offences, medical



negligence cases, corruption cases, or cases where there is abnormal delay/laches. Thus, the Magistrate must be attentive and proceed with perspicacity to examine the allegation made and the nature of those allegations. He should not issue directions without proper application of mind which would be contrary to the object and purpose of the Statute. In as much as the challenge raised by the petitioner on the ground that there are no materials to attract offence under Section 406 of IPC is concerned, the available materials are sufficient to hold that *prima facie* offence under Section 406 of IPC is made out warranting trial of the accused.

9. Adverting to the controversy, the questions arose are:

- 1) What are the preconditions to be satisfied before seeking investigation under Section 156(3) of Cr.P.C, before a Magistrate?
- 2) If violation of the preconditions would make the investigation and final report thereof non-est?



10. Retorting to the first question, it is answered that the following preconditions to be satisfied before seeking investigation under Section 156(3) of Cr.P.C before a Magistrate:

“1) Where applications under Section 156(3) of Code of Criminal Procedure are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

2) In an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations.

3) Prior to the filing of a petition under Section 156(3) of the Code of Criminal Procedure, there have to be applications under Section 154(1) and 154(3) of the Code of Criminal Procedure.”

11. While answering the second question posed herein, it is worthwhile to refer Section 465 of Cr.P.C and the same is extracted as under:

“465. Finding or sentence when reversible by reason of error, omission or irregularity.

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation,



order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

12. In the decision reported in [2022 KHC 2 : 2022 (1) KLD 175 : 2022 KHC OnLine 2], ***Midhun v. State of Kerala & Ors.*** a learned Single Judge of this Court, considered the question whether the irregularity occurred due to non-compliance of Sections 154(1) and 154(3) of Cr.P.C is a ground to quash the F.I.R when the final report has already been filed? and held that: *So, in the present case, immediately after the registration of the crime, the petitioner could have resorted to quash the proceedings for non-compliance of S.154(1) of the Code but slept over that and*



waited till the filing of the final report and only after that he approached this Court for quashing the final report. In the present case also, the mere fact that the complaint was not filed to the SHO, but straight away it was filed before the Dy.Superintendent of Police, Chalakkudy is only an irregularity and it has not caused any failure of justice as prescribed under S.465 of the Code. Moreover, the petitioner could have raised his objection at the inception of the registration of the crime. In the present case, the non-compliance of S.154(1) of the Code in not filing a complaint before the SHO and forwarding the complaint by the Magistrate under S.156(3) cannot be challenged at this stage since the petitioner could not establish that it has caused any failure of justice as provided under S.465(2) of the Code. In the present case, the learned counsel for the petitioner was mainly harping upon the non-compliance of S.154(1) and S.154(3) of the Code. But the final report has already been filed and as found earlier, the



*irregularity of non-compliance of S.154(1) and S.154(3) has not been challenged by the petitioner at the right time by challenging the registration of the crime and the final report has subsequently been filed. Hence in view of S.465(2) of the Code, and also as per the dictum laid down in **Pradeep S.Wodeyar**'s case the irregularity so occurred could have been objected at an earlier stage and the petitioner could not prove the failure of justice as contemplated under S.465(2) of the Code and hence the irregularity would not vitiate the entire proceedings and hence continuation of the proceedings against the petitioner cannot be said as an abuse of process of Court.*

13. On reading the facts of the present case where even though compliance of Section 154(1) and 154(3) of Cr.P.C was not established before ordering investigation under Section 156(3), on investigation, a charge alleging commission of the offence punishable under Section 406 of IPC was already filed after



detailed investigation. In the instant case also the petitioner did not challenge the proceedings before filing final report by the police. In such a case, in view of the protection under Section 465(2) of Cr.P.C, violation or non-compliance of the preconditions would not make the investigation and the final report thereof non-est. In such view of the matter, the order of cognizance doesn't require any interference since there is no failure of justice involved.

Holding so, this Crl.M.C stands dismissed with direction to the Magistrate to expedite the trial and disposal of C.C.No.878/2019 on the files of the Judicial First Class Magistrate Court-I, Vaikom, at any rate, within a period of 4 months from the date of receipt of a copy of this order.

Sd/-

(A.BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF CRL.MC 1854/2020**PETITIONER'S ANNEXURES**

- ANNEXURE A** TRUE COPY OF THE PRIVATE COMPLAINT FILED BY THE 2ND RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE-I, VAIKOM.
- ANNEXURE B** TRUE COPY OF THE FINAL REPORT IN CRIME NO.1911/2018 OF VAIKOM POLICE STATION, KOTTAYAM DISTRICT WHICH IS NOW PENDING AS C.C.NO.878/2019 OF THE JUDICIAL FIRST CLASS MAGISTRATE-I, VAIKOM.
- ANNEXURE C** TRUE COPY OF O.P.NO.1281/2015 PENDING ON THE FILES OF THE FAMILY COURT OF KOTTAYAM AT ETTUMANOOR.
- ANNEXURE D** TRUE COPY OF COMMON JUDGMENT IN O.P.NO.1281, 1032 & 892/2015 OF THE FAMILY COURT, KOTTAYAM AT ETTUMANOOR DATED 30.01.2019.
- Annexure E** TRUE COPY OF THE JUDGMENT IN C.C NO. 250/2016 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -I, VAIKOM DATED 01.11.2022.
- Annexure F** TRUE COPY OF THE PETITION FILED UNDER SECTION 216 OF CR.P.C BY THE THE ASSISTANT PUBLIC PROSECUTOR IN C.C NO. 250/2016 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -I, VAIKOM DATED 09.03.2018

RESPONDENTS' ANNEXURES

- Annexure R3A** TRUE COPY OF 25 FIXED DEPOSIT RECEIPTS WITH ITS COUNTERFOILS DATED 05.04.2012
- Annexure R3B** TRUE COPY OF NOTICE DATED 27.09.2018 UNDER SECTION 91 OF CR.P.C WAS ISSUED BY S.I OF POLICE, VAIKOM POLICE STATION
- Annexure R3C** TRUE COPY OF NOTICE DATED 20.10.2018 UNDER SECTION 41A OF CR.P.C WAS ISSUED BY S.I OF POLICE, VAIKOM POLICE STATION.
- Annexure R3D** TRUE COPY OF REPLY DATED 07.11.2018.