



2024:KER:64319

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 22ND DAY OF AUGUST 2024 / 31ST SRAVANA, 1946

CRL.MC NO. 1755 OF 2017

AGAINST THE ORDER IN CC NO.884 OF 2014 OF JUDICIAL
MAGISTRATE OF FIRST CLASS, CHAVAKKAD

PETITIONER/ACCUSED:

PANIKKAVEETIL ABDUL JALEEL
S/O.MOIDEEN KUTTY, PANIKKAVEETIL KOTTUKAL,
ALUMPADI, CHAVAKKAD P.O., NOW RESIDING NEAR
POOKALATHAI TEMPLE, BRAHMAKULAM, THAIKKAD

BY ADVS.
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.D.FEROZE
SRI.K.K.MOHAMED RAVUF
SRI.V.VINAY

RESPONDENTS/STATE/COMPLAINANT:

- 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031(CRIME NO,
437/2008 OF GURUVAYOOR POLICE STATION,
THRISSUR DISTRICT)
- 2 PANIKKAVEETIL K. JABIR, OVUNGAL, CHAVAKKAD,
THRISSUR DISTRICT, KERALA, NOW RESIDING AT 5TH FLOOR,
METRO PLAZA BUILDING, MARKET ROAD, KOCHI

BY ADV SMT.S.KARTHIKA
ADV. RENJITH T R, SR PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
22.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



P. V. KUNHIKRISHNAN, J.

Crl.M.C.No.1755 of 2017

Dated this the 22nd day of August, 2024

ORDER

This Criminal Miscellaneous Case is filed to quash the proceedings in C.C.No.884 of 2014 on the file of the Judicial First Class Magistrate Court, Chavakkad.

2. Annexure-I is the protest complaint filed by the 2nd respondent. Crime No.437/2008 was registered by the Guruvayoor Police on the same set of facts and after investigation, the same is referred as mistake of fact. Thereafter, the present protest complaint is filed.

3. This Court perused the order taking cognizance. A perusal of the same would not show that the learned Magistrate has considered the refer report while taking cognizance. This Court in **Parameshwaran Nair v. Surendran** [2009 (1) KLT 794] considered this point in detail. The relevant portion of the above judgment is extracted hereunder:



“12. If the original complaint stood dismissed by the acceptance of the refer report submitted after investigation the protest complaint if any filed can only be treated as a second complaint. If so, the protest complaint will lie only if there was a manifest error or manifest miscarriage of justice in the earlier order or new facts which the complainant had no knowledge of or with reasonable diligence could not have brought forward in the previous proceedings is adduced. When this is the legal position, it is notlawful to the Magistrate to ignore the final report submitted by the police under Section 173(2) of the Code. Magistrate is bound to consider the final report and decide which of the options available to him is to be exercised.”

4. Similarly in **Kader v. State of Kerala** [1999

(3) KLT 55], this Court considered the same point which is extracted hereunder:

“7. The Court noted that the scope of enquiry under S.202 is the ascertainment of the truth or falsity of the allegations made in the complaint on the materials placed by the complainant before the Court for the limited purpose of finding out whether the prima facie case for issue of process has been made out and for deciding the question purely from the point of view of the complainant without at all advertng to any defence that the accused may have. Nevertheless, the Court has a duty to protect the interest of the absent accused also because at the particular stage, the accused has no say in the matter and the matter is decided without notice to him. It is, therefore, open to the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent the accused therein from being called upon to face obviously frivolous complaint and to find what material there is to support the allegations made in the complaint. The Magistrate has a duty not only to bring to book a person or persons against whom



grave allegations are made in the complaint but also to protect the interest of the absent accused in such matters. What all matters he should take into consideration to arrive at the conclusion that he should take cognizance of the offence, will depend upon the facts and circumstances of each case. He has necessarily to consider the allegations made in the complaint and the statement of the complainant recorded under S.200 Cr.P.C. as also of the witnesses examined under S.202 of the Cr.P.C. Along with that, he has also to consider the result of enquiry or investigation, if any, held by the police. It cannot be said that the said data is not an essential factor. The consideration of the materials under S.202 of the Cr.P.C. is not an empty formality and cannot be done in a perfunctory or mechanical manner or by adopting a superficial approach.”

5. In the light of the above principles, I am of considered opinion that the matter is to be reconsidered by the learned Magistrate in the light of the refer report.

Therefore, this Criminal Miscellaneous Case is disposed of with the following directions:

a) The order taking cognizance dated 14.03.2014 in C.C.No.884/2014 on the file of the Judicial First Class Magistrate Court, Chavakkad is set aside.

b) The trial court is directed to reconsider the matter in the light of the principles laid down by this Court in **Parameshwaran Nair v. Surendran** [2009 (1) KLT 794] and **Kader v. State of Kerala** [1999 (3) KLT 55] and also in the



light of the refer report in Crime No.437/2008 of Guruvayoor Police Station.

c) All the contentions raised by the petitioners and the 2nd respondent are left open.

Sd/-

P. V. KUNHIKRISHNAN
JUDGE

Sbna/22.08.2024

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APPENDIX OF CRL.MC 1755/2017

PETITIONER ANNEXURES

ANNEXURE 1 CERTIFIED COPY OF THE PROTEST COMPLAINT IN
CC NO.884/2014 OF THE JFCM, CHAVAKKAD,
THRISSUR DISTRICT