

**Babu Kumar Vs. the Director**

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**Court :** Kerala

**Decided On :** Jul-31-2013

**Judge :** Honourable Mr.Justice V.K.Mohanan

**Appellant :** Babu Kumar

**Respondent :** The Director

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN THURSDAY, THE 27TH DAY OF SEPTEMBER 2012 5TH ASWINA 193 WP(C).No. 18031 of 2012 (D) ----- PETITIONER : - ----- BABU KUMAR, AGED 4 YEARS, S/O.THANKAPPAN, VAVARA VEEDU, KARIKODU.P.O., KOLLAM BY ADVS.SRI.DILEEP P.PILLAI SRI.B.N.HASKAR RESPONDENTS : - ----- 1. THE DIRECTOR, THE CENTRAL BUREAU OF INVESTIGATION, NEW DELHI 11003 .

2. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI - 110038 3. THE DIRECTOR GENERALA OF POLICE, THE SECRETARY, MINISTRY OF HOME AFFAIRS, SECRETARIATE, THIRUVANANTHAPURAM-695007 RBY ADV. SRI.P.PARAMESWARAN NAIR, ASG OF INDIA BY SRI.P.CHANDRASEKHARA PILLAI, C.B.I. BY GOVERNMENT PLEADER SRI. R. RANJITH THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-09-2012, THE COURT ON THE

SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 18031 of 2012 (D) APPENDIX PETITIONER'S EXHIBITS : EXT P1 : TRUE COPY OF THE F.I.R. IN CRIME NO.55 OF 2011.KOLLAM EAST POLICE STATION. EXT P2 : TRUE COPY OF THE ACCIDENT CUM WOUND CERTIFICATE ISSUED BY UPASANA HOSPITAL, KOLLAM IN CONNECTION WITH CRIME NO.55/2011 KOLLAM EAST POLICE STATION. EXT P3 : TRUE COPY OF THE REQUEST DATED 21 10.2009 FILED BY THE PETITIONER BEFORE THE 1st RESPONDENT. EXT P4(a) : TRUE COPY OF THE NEWS PAPER, MATHRUBHUMI DATED 20 05.2011. EXT P4(b) : TRUE COPY OF THE NEWS PAPER REPORT MATHRUBHUMI 22 10.2009. EXT P4(c) : TRUE COPY OF THE NEWS PAPER REPORT. EXT P4(d) : TRUE COPY OF THE NEWS PAPER MALAYALA MANORAMA DATED 27 04.2012. EXT P5 : TRUE COPY OF THE REPORT DATED 4 6.2012 FILED BY THE INVESTIGATING OFFICER. EXT P6 : TRUE COPY OF THE ORDER DATED 29 6.2012 IN CrI.M.P. NO.3411/2012 IN CRIME NO.55/2011 OF KOLLAM EAST POLICE STATION. RESPONDENTS' EXHIBITS : NIL. JUDGMENT NO REPRESENTATION FOR PETITIONER TODAY ALSO. PETITION IS DISMISSED. 27.09.2012 Sd/- S.S.SATHEESACHANDRAN JUDGE // TRUE COPY // P.A. TO JUDGE DMR/- V.K.MOHANAN, J.

----- W.P.(C) No.18031 of 2012 ----- Dated this the 31st day of July, 2013.

## JUDGMENT

The petitioner is presently working as Head Constable in Kerala Police. According to him, he is a sincere police officer and considering his efficiency, he was honoured by giving several rewards by the Higher Officials as well as the Government of Kerala. According to him, due to his efficiency and courage, there were several threats against the life of himself and his family members, and the anti social elements are deadly against him. It is the further case of the petitioner that he was a member under the squad of Chavara Circle Inspector of Police, during the years 2006-08. During the said period, the petitioner actively involved in seizing thousands of litres of spirit and he was gifted with rewards and cash awards by the police department. According to the petitioner, while so, an 2 W.P.(C) No.18031 of 2012 incident was occurred in Asramam Guest House on

12.10.2009, in which superior police officials are involved and about which, a news item was reported in Mathrubhoomi daily by the staff reporter through one V.B.Unnithan. According to the petitioner, the senior police officials suspects that it was the petitioner who leaked out the said incident to the said V.B.Unnithan so as to enable him to make the report in the Mathrubhoomi Daily. Thus according to the petitioner, thereafter he was being harassed and threatened on several occasions by using several means and thus he was compelled to file Ext.P3 representation before the Director General of Police who is the 3rd respondent herein. According to the petitioner, on 11.1.2011, he was brutally attacked by a gang and he was very seriously injured. The petitioner asserts that, it was a clear attempt to murder him and connected with the above incident, Crime No.55/11 for the offence punishable under section 307 of IPC, was registered in the Kollam East police 3 W.P.(C) No.18031 of 2012 station. Ext.P1 is the true copy of the FIR in the above crime and Ext.P2 is the copy of the Accident Cum Wound Certificate issued from Upasana Hospital, Kollam, connected with the above crime, showing the injuries sustained by the petitioner.

2. According to the petitioner the attempt to commit murder of him is not a single and isolated incident, and it is the firm case of the petitioner that the above incident has connection with several other incidents including the assault of Journalist V.B.Unnithan and also connected with the murder of one Happy Rajesh. The above incidents, has got nexus with the names of several superior police officers from Kollam district and there were paper reports to the above effect. So, according to the petitioner, the above 3 incidents, including the attack against him, are intra connected as part of the chain of incidents. As senior police officials are involved, there would not be any fruitful turnout, from the investigation of the local police and 4 W.P.(C) No.18031 of 2012 therefore the investigation in the above crime has to be entrusted with an agency other than the Kerala Police. Thus the above writ petition is filed praying inter alia to issue a writ of mandamus or any other appropriate writ directing the 1st respondent to investigate and to find out the truth behind the incident occurred in Crime No.55/2011 of Kollam East Police Station.

3. Subsequently, I.A.No.1558/13 was filed for amending the writ petition by making modification in the cause title of the 3rd respondent, namely the Director General of Police, the Secretary Ministry of Home Affairs, Secretariate, Thiruvananthapuram and adding respondent nos.3 and 4 respectively as, 'The Director General of Police, Police Headquarters, Vazhuthakad, Thiruvananthapuram, Pin-695 001', and 'State of Kerala, represented by its Secretary to Government, Home Department, Government Secretariat, Thiruvananthapuram, Pin-695 001', and the said petition was allowed by order dated 1.2.2013. 5 W.P.(C) No.18031 o

4. Heard Adv.Sri.K.R.Krishnakumari, learned counsel for the petitioner and Adv.Sri.Rajesh Vijayan learned Public Prosecutor. I have also heard Adv.Sri.P.Chandrasekhara Pillai, learned standing counsel for CBI.

5. In terms of the averments contained in the above writ petition and based upon the reply affidavit dated 28.5.2013 filed to the statement dated 18.3.2013 of the Circle Inspector of Police, Kollam police station and after taking me through the materials produced along with the writ petition as well as the reply affidavit, the learned counsel vehemently submitted that though Ext.P1 crime was registered as early as on 11.1.2011, no proper investigation is conducted so far and therefore the petitioner was constrained to file Crl.M.P.No.3411/12 in the above crime for a speedy investigation, before the court of Judicial First Class Magistrate-I, Kollam, and accordingly the learned Magistrate called for a report from the Investigating Officer in the above crime, who in turn filed 6 W.P.(C) No.18031 of 2012 Ext.P5 report whereby it is stated that when the above incident was taken place, one Mahesh, Happy Rajesh, Container Santhosh and Penty Edwin were present and investigation was going on to ascertain the involvement of persons mentioned above. Inviting my attention to Ext.P6, the counsel submitted that though the learned Magistrate directed the Investigating Officer to conduct proper investigation and submit time bound report regarding the investigation and file the charge sheet expeditiously as possible, so far nothing has happened. In order to substantiate the above submission, learned counsel invited my attention to Ext.P10 which is the B'diary proceedings of the court of Judicial First Class Magistrate-II, Kollam, and submitted that inspite of the order dated 29.6.2012

referred above, ie., Ext.P6, there is no progress in the investigation and no report is filed so far.

6. The learned counsel for the petitioner has strenuously pointed out that, with regard to the murder of 7 W.P.(C) No.18031 of 2012 Happy Rajesh, whose name was mentioned by the Investigating Officer in the present crime as evident from Ext.P6, the widow of the said Rajesh approached this Court by filing W.P.(C) No.16408/11, with a prayer to hand over the investigation of the murder of her husband, namely Happy Rajesh, to CBI-the 2nd respondent in the said case and by judgment dated 20.12.2012 in W.P.(C) No.16408/11, this Court has ordered accordingly and the investigation in Crime No.484/11 of CBCID, Kollam, is undertaken by the CBI. Inviting my attention to the above referred judgment, the learned counsel submitted that the investigation in the assault of V.B.Unnithan, reporter of Mathrubhoomi daily, has already handed over to the CBI, the 1st respondent herein. Thus, according to the learned counsel for the petitioner, the two crimes, namely the assault on V.B.Unnithan and murder of Happy Rajesh, are being now investigated by the CBI. According to the learned counsel, the attack on the petitioner resulted in registering Ext.P1 8 W.P.(C) No.18031 of 2012 FIR as part of series of crimes which covers the above two crime cases as well. So, according to the learned counsel, the present case also requires a serious investigation, to be undertaken by an investigating agency, other than the Kerala Police and therefore the investigation in Ext.P1 FIR crime has to be entrusted with the 1st respondent CBI.

7. On the other hand, the learned public Prosecutor sticking on the facts stated in the statement dated 18.3.2013 filed by the Circle Inspector of Police, Kollam Police station, has submitted that the present crime was registered on the basis of the statement given by one Vidhu Krishnan, who is the son of the younger brother of the petitioner herein and according to the learned Public Prosecutor, the incident in the present case was occurred due to enmity between the petitioner and the accused in the present crime. As per the version stated in the above statement, the case of the prosecution is that, the accused in the present crime, trespassed into the house of one Unni 9 W.P.(C) No.18031 of 2012 and manhandled him and at the instigation and instance of the petitioner, the said Unni

lodged a complaint before the police authorities and that the sand illegally mined and kept by the accused at Asramam was seized by police and it was the petitioner who informed the matter to police. There is also a case for the prosecution that the accused in the above crime had trespassed into a resort at Asramam and committed mischief and the petitioner helped the resort owner to file a complaint against the accused and all the above incidents and the role of the petitioner in it, infuriated the accused to grudge against the petitioner.

8. According to the police, during the investigation, the accused surrendered before the Investigating Officer on the basis of the order passed by this Court and accordingly the accused was arrested and produced before the court. In the statement it is also mentioned that during the course of investigation, the statement of the petitioner was recorded under section 164 of Cr.P.C., wherein the 10 W.P.(C) No.18031 of 2012 petitioner had mentioned the role of one Mahesh, Rajesh @ Happy Rajesh, Santhosh @ Container Santhosh and Penty @ Penty Edvin. According to the police, the investigation conducted revealed the fact that the petitioner and the accused Vinesh were close friends and were residing in nearby places at Asramam and they were organisers of "Kollam Pooram" in connection with the festival of Sreekrishna Swamy Temple at Asramam and there was some disputes between them regarding the collection of fund from private persons for the conduct of Kollam Pooram. According to the police, the accused had strong vendetta towards the petitioner as the accused suspected that it was the petitioner who informed all the illegal activities of the accused to the police authorities since the petitioner was working in the Police Department and thus on 11.1.2011 at 10.45 a.m., while the petitioner was giving instructions to the labourers engaged in the construction of his new house at Asramam, the accused came to the spot in 11 W.P.(C) No.18031 of 2012 a motor cycle and had altercation with the petitioner, during which, the accused taken out a knife which was concealed in his body, stabbed the petitioner and inflicted injuries on his abdomen and chest. According to the police, the petitioner was taken to Upasana Hospital in the petitioner's car driven by one Bijonydas accompanied by Mahesh, Rajesh and Penty Edvin and the petitioner has undergone an urgent surgery and subsequently recovered. It is also stated that as Happy Rajesh was murdered, which is the subject matter of Crime No.48/2011 for the offence under section 302

of IPC of Kollam East police station, the said Rajesh could not be questioned in connection with this case, and hence, the said Mahesh, Penty Edwin and Santhosh @ Container Santhosh were questioned by the Investigating officer's predecessor, while they were undergoing judicial custody in Crime No.484/11 of Kollam East police station. It is specifically stated that except Santhosh, the other persons mentioned above were present 12 W.P.(C) No.18031 of 2012 at the place of occurrence at the relevant time of occurrence of this case and Container Santhosh was travelling towards Ernakulam at that time and no evidence is obtained to connect the above mentioned persons with the crime, wherein the petitioner is attacked. Thus, there is no evidence, to connect the persons, against whom allegations are raised, with the present crime, and according to the police, even the 164 statement of the petitioner does not disclose any specific offence against the above persons. So, according to the police, they have conducted a trustworthy investigation and further stated that they are ready to obey any direction issued by this Court with regard to the investigation of this case.

9. Considering the reliefs sought in the above writ petition, I have extensively heard Adv.Sri.Chandrasekhara Pillai, learned standing counsel for CBI. Learned counsel for the CBI strenuously submitted that the offence alleged in the present crime is only under section 307 of IPC and 13 W.P.(C) No.18031 of 2012 having regard to the facts and circumstances involved in the case, under which the petitioner sustained injuries, no investigation by the CBI is warranted. According to the learned Standing Counsel, though the petitioner has got a case that he is attacked as part of chain of crimes, there is no material to substantiate such contention and therefore the writ petition is liable to be dismissed, permitting the Kerala Police to continue the investigation.

10. I have carefully considered the arguments of all the learned counsel referred above and I have perused the materials produced by the petitioner in the above writ petition and I have thoroughly gone through the statement filed by the Investigating Officer in the above crime.

11. This Court cannot ignore the fact that the petitioner before this Court is not an ordinary citizen, who is seeking relief for investigation to be carried on other than

the Kerala Police. It is pertinent to note that the petitioner himself is part and parcel of the Kerala Police and he is 14 W.P.(C) No.18031 of 2012 working as a senior civil Police Officer in Kerala Police. The fact beyond dispute is that he was brutally attacked by a gang on 11.1.2011 and the real culprits are not arrested so far. According to me, the facts and circumstances involved in the case that pointed out by the petitioner and his counsel in support of their prayer for investigation by the 1st respondent CBI, cannot be simply brushed aside, but the same warrant a serious consideration.

12. In this juncture it is pertinent to note that much before the occurrence of the present case, on 21.10.2009 itself, by filing Ext.P3 informing the State Police Chief, as to the threat exists against his life and his family members and requested him to take requisite steps to abate such apprehension and to prevent the threat and to save him from the endangered situation. It is thereafter the petitioner was brutally attacked and according to the petitioner, it was an attempt to finish him. It is also relevant to note that, according to 15 W.P.(C) No.18031 of 2012 the petitioner, the senior Police Officials suspect that it was the petitioner who conveyed relevant materials to the Mr.V.B.Unnithan - the reporter of Mathrubhoomi Daily about the incident taken place in the Asramam Guest house, on the basis of which news appeared in the Mathrubhoomi Daily as reported by the said Unnithan-the staff reporter, for which he was subsequently attacked. In the judgment dated 20.12.2012 in W.P.(C) No.16408 of 2011, the learned Single Judge considered the question whether the murder of Rajesh had any nexus with the assault made on the staff reporter Unnithan. On addressing the above question, the learned Single Judge has found that no serious attempt has been made by the Investigating agency on the most important question and no attempt was made to find out whether any nexus exists between the two crimes, namely the assault on V.B.Unnithan and the murder of Happy Rajesh. The learned Single Judge has further observed that while the investigation in the crime over the assault on 16 W.P.(C) No.18031 of 2012 Unnithan continued, the murder of Rajesh took place and no attempt has been made by CBCID during the course of investigation of the murder of Rajesh to ascertain from the CBI whether they had obtained any material in the investigation of the crime carried out by them showing complicity of any of the accused in Unnithan's case in the murder of Rajesh. The

learned Single Judge further found that, Rajesh was one among the assailants in Unnithan's case, if that be so, essentially whether his murder was on account of his complicity in such crime, requires a serious probe and necessarily by the same Investigating agency, CBI, which is entrusted with the investigation in Unnithan's case.

13. In the present case also, as I indicated earlier, though the crime was registered as early as on 11.1.2011, there is no progress in the investigation and I have already referred to the report of the investigating officer as spell out from the statement filed by him before this Court and 17 W.P.(C) No.18031 of 2012 the same shows that, they are still groping in the dark. Suffice to say that, no attempt is seen made, as observed by the learned Judge in the above referred judgment, to contact the CBI officials, who conducted the investigation in the assault of Unnithan and who undertaken the investigation in the murder of Happy Rajesh, to find out whether the accused in the assault on the petitioner has got any link with the crime in the case of the murder of Happy Rajesh and also in the assault of staff reporter Unnithan.

14. In this juncture it is relevant to note that, according to the petitioner, as per the averments contained in the present writ petition as well as in the petition filed before the court of Judicial First Class Magistrate-II, Kollam, ie., CrI.M.P.No.3411/12, which is produced here as Ext.P6, wherein it is stated that, while he was attacked by the accused, one Mahesh, Container Santhosh, Penti Edwin and also Happy Rajesh were present at the relevant time. The said fact was confirmed by the Circle Inspector of 18 W.P.(C) No.18031 of 2012 Police, Kollam East Police Station as per Ext.P5 report filed before the court below. It is a fact beyond dispute that Happy Rajesh was subsequently murdered after the attack on the staff reporter V.B.Unnithan. The case of the petitioner is that the senior police officials are under the belief and suspect that, it was the petitioner who gave the details of the incident taken place on 12.10.2009 in the Asramam Guest House to the Mathrubhoomi reporter, which was the subject matter of the report appeared in the Mathrubhoomi daily as reported by V.B.Unnithan who is subsequently attacked, and the attack on the petitioner was on 11.1.2011. Whereas, Happy Rajesh found dead in a sitting position in an autorikshaw on 28.4.2011 and attack

on the Mathrubhoomi reporter Unnithan was on 15.4.2011. So, according to me, the contention of the petitioner and his counsel that, attack on the petitioner was an intention to commit murder on him as part of the chain of crimes, ie., the assault on the staff reporter V.B.Unnithan and the 19 W.P.(C) No.18031 of 2012 murder of Happy Rajesh who was reportedly present at the time of attack on the petitioner as admitted by the Circle Inspector of police as per Ext.P5, cannot be ruled out.

15. It is pertinent to note that in the above referred judgment of this Court, connected with the case of murder of Happy Rajesh, the learned Single Judge has observed that, if one has any nexus with the assault made on the staff reporter Unnithan, then the investigation of both the crimes by the same agency is idle, especially when serious imputations have been made against some senior police officers of the State Police Force. In the present case also, the petitioner, who is also a member of State police constabulary, has raised a contention to the effect that senior police officials have maintained a doubt that it was the petitioner who conveyed the materials about the incident taken place in the Kollam Asramam Guest house on 12.10.2009 and it is thereafter V.B.Unnithan-staff reporter was attacked and thereafter Happy Rajesh was seen 20 W.P.(C) No.18031 of 2012 murdered. The murdered Happy Rajesh was seen present when the petitioner was attacked on 11.1.2011, which was confirmed as per Ext.P5 report. So, according to me, the nexus between the attack on both the petitioner and V.B.Unnithan and the murder of Happy Rajesh cannot be ruled out and in the above circumstances, particularly when the investigation in the above crime is at the stage when it was started, it is only just and proper to entrust the investigation with the 1st respondent CBI, who investigated the crime of assault on V.B.Unnithan and with whom the investigation with regard to the murder of Happy Rajesh is entrusted with, as per the judgment dated 20.10.2012 in W.P.(C) No.16408/11. In the result, this writ petition is allowed, directing respondent nos.3 and 4 to hand over the investigation in Crime No.55/11 of Kollam East Police Station with the 1st respondent CBI and the 4th respondent State Government is directed to issue orders to hand over the investigation in 21 W.P.(C) No.18031 of 2012 Crime No.55/11 to the 1st respondent CBI, issuing notification to the above effect within one month from today and also direct them to furnish all infrastructures to the CBI

and on issuing such notification, the 1st respondent is directed to take over the investigation and shall conduct a comprehensive investigation and file a final report as expeditiously as possible. Sd/- V.K.MOHANAN, Judge ami/ //True copy//  
P.A. to Judge

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