

**John Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Jan-07-2014

**Judge :** Honourable Mr. Justice a.Hariprasad

**Appellant :** John

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD TUESDAY,THE7H DAY OF JANUARY201417TH POUSHA, 1935 CrI.MC.No. 1445 of 2012 ()  
----- AGAINST THE

ORDER

/

JUDGMENT

IN CC3412011 of JUDICIAL FIRST CLASS MAGISTRATE COURT, VAIKOM CRIME NO. 691/2010 OF KADUTHURUTHI POLICE STATION , KOTTAYAM  
----- PETITIONER(S)/ACCUSED NO.1: -----  
JOHN, S/O.VARGHESE, KAVALAPADIYIL HOUSE, THALAPARA BHAGOM, THALAYOLAPARAMBU, VAIKOM. BY ADVS.SRI.SOORAJ T.ELENJICKAL SRI.P.A.MARTIN ROY SRI.K.NIRMALAN COMPLAINANT/COMPLAINANT:  
----- STATE OF KERALA, THROUGH SUB

INSPECTOR OF POLICE, KADUTHURUTHY POLICESTATION, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.BINDU GOPINATH THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 0701-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: PJ CrI.MC.No. 1445 of 2012 ----- APPENDIX PETITIONER(S) EXHIBITS ----- ANNEXURE-1 CERTIFIED COPIES OF THE STATEMENTS RECORDED BY THE SUB INSPECTOR OF POLICE, KADUTHURUTHY DURING HIS COURSE OF INVESTIGATION IN CRIME NO.691/2010 OF KADUTHURUTHY POLICE STATION. ANNEXURE-II CERTIFIED COPY OF THE FINAL REPORT SUBMITTED BY THE SUB INSPECTOR OF POLICE, KADUTHURUTHY IN CRIME NO.691/2010 OF KADUTHURUTHY POLICE STATION, BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, VAIKOM. RESPONDENTS' EXHIBITS ----- NIL. / TRUE COPY / P.S. TO JUDGE PJ A.HARIPRASAD, J.

----- CrI.M.C.No.1445 of 2012

----- Dated this the 7th day of January, 2014.

## ORDER

Petitioner is the first accused in Crime No.691/2010 of Kaduthuruthy Police Station. The case is now pending as C.C No.341/2011 before the Judicial First Class Magistrate Court, Vaikom. The offences charged against the petitioner are punishable under Sections 3, 4, 5 and 7 of the Immoral Traffic (Prevention) Act, 1956 ( in short 'the Act').

2. Gist of allegations is that on 29-09-2010 at about 1.30 PM, the Circle Inspector of Police, Kaduthuruthy conducted a raid in a residential building and found accused 2 to 6 indulging in sexual activity and the brother was run by the petitioner/first accused. Maintainability of the prosecution is challenged by the petitioner.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. Annexure II final report was filed by Sub Inspector of Police, Kaduthuruthy. According to the learned counsel for the petitioner he is incompetent to conduct investigation and file a final CrI.M.C.No.1445 of 2012 2 report in this matter, in view of the specific provisions contained in the Act. My attention was drawn to Section 2(i) of the Act, which defines the term 'special police officer' in the following lines : " 2(i) "special police officer" means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act;" 5. Section 13 of the Act is also pressed into service to contend that the investigation and filing of charge was done by an incompetent officer. Section 13 of the Act says that there shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area. The expression 'dealing with the offences under this Act' have been considered and interpreted by a learned Single Judge of this court in Joseph v. State of Kerala (2011(2) KHC958. Paragraph 4 of that decision is CrI.M.C.No.1445 of 2012 3 quoted hereunder for benefit : " There is also yet another aspect that is requires to be looked into. Under Section 13 of the Act, a Special Police Officer shall be appointed " for dealing with the offences under this Act in that area." "Dealing with the case" means doing everything connected with the progress of the case. The Supreme Court in the decision referred supra considered that question and held that the expression would include detection, prevention and investigation of offences and other duties which have been specifically imposed on the Special Police Officer under the Act. It is seen from the records that investigation of the case was conducted by the Circle Inspector though, as authorised by the Special Police Officer and the role of the Special Police Officer was only to verify the investigation and submit final report. Section 14 (ii) of the Act does not empower the Special Police Officer to authorise investigation of the CrI.M.C.No.1445 of 2012 4 case to be conducted by any other officer. If that be so the investigation conducted by the officer other than the Special Police officer is against the provisions of law." 6. Considering the legal issues involved in this case, I am of the view that the final report and all proceedings subsequent thereto cannot be legally sustained. In the result, this CrI.M.C is allowed. Annexure II final report and all proceedings pending as C.C

No.341/2011 before the Judicial First Class Magistrate Court, Vaikom are hereby quashed. All pending interlocutory applications will stand dismissed. Sd/- A.HARIPRASAD, JUDGE. //True Copy// P.Ato Judge amk

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