

Thomaskutty Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1130885

Court : Kerala

Decided On : Feb-18-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Thomaskutty

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN TUESDAY, THE 18TH DAY OF FEBRUARY 2014 29TH MAGHA, 1935 WP(C).No. 30050 of 2013 (E) ----- PETITIONER: ----- THOMASKUTTY, S/O.THOMAS, AGED 45 YEARS, THEKKUMMOOTTIL HOUSE, PIRAVOM KARA, MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT. BY ADV. SRI.PAUL K.VARGHESE RESPONDENTS: ----- 1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY, (HOME DEPARTMENT), GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. THE DIRECTOR OF GENERAL OF POLICE, (LAW AND

ORDER

POLICE CHIEF), POLICE HEAD QUARTERS, THIRUVANANTHAPURAM - 695 001.

3. THE DISTRICT INSPECTOR GENERAL OF POLICE, ERNAKULAM.

4. THE SUPERINTENDENT OF POLICE, ALUVA, RURAL ALUVA, ERNAKULAM.

5. THE CIRCLE INSPECTOR OF POLICE, PIRAVOM POLICE STATION, PIRAVOM, ERNAKULAM, PIN:

686. 664.

6. THE SUB INSPECTOR OF POLICE, PIRAVOM POLICE STATION, PIRAVOM, ERNAKULAM.

7. THE SUB INSPECTOR OF POLICE, MULANTHURUTHY POLICE STATION, MULANTHURUTHY ERNAKULAM DISTRICT, PIN:

682. 314.

8. PRASAD, AGED52YEARS, S/O.SIVARAMAN KADEKKAL HOUSE, MULANTHURUTHY, PERUMBILLY MULANTHURUTHY, PERUMBILLY, ERNAKULAM, PIN:

682. 314.

9. AMMINI PRASAD, AGED45YEARS, W/O.PRASAD, KADEKKAL HOUSE, MULANTHURUTHY, PERUMBILLY, ERNAKULAM. R1 TO R7 BY PUBLIC PROSECUTOR SMT.S.HYMA THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON1802-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Msd. WP(C).No. 30050 of 2013 (E)

----- APPENDIX ----- PETITIONER(S)' EXHIBITS: ----- EXT.P1: A TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE CIRCLE INSPECTOR OF POLICE, PIRAVOM POLICE DATED0811/2013. EXT.P2: A TRUE COPY OF THE ACKNOWLEDGMENT FOR RECEIPT OF EXHIBIT P1COMPLAINT ISSUED FROM THE OFFICE OF THE CIRCLE INSPECTOR OF POLICE PIRAVOM TO THE PETITIONER DATED0811/2013. EXT.P3: A TRUE COPY OF THE COMPLAINT FILED BY P.P.MATHAI BEFORE THE CIRCLE INSPECTOR OF POLICE, PIRAVOM DATED0511/2013. EXT.P4: A TRUE COPY OF THE ACKNOWLEDGMENT FOR RECEIPT OF EXHIBIT P3 COMPLAINT ISSUED

FROM THE OFFICE OF THE PIRAVOM POLICE STATION TO SRI.P.P.MATHAI DATED0611/2013. EXT.P5: A TRUE COPY OF THE COMPLAINT FILED BY PRASAD B. BEFORE THE SUB INSPECTOR OF POLICE, MULANTHURUTHY POLICE STATION DATED1910/2013. EXT.P6: A TRUE COPY OF THE ACKNOWLEDGMENT FOR RECEIPT OF EXHIBIT P5 COMPLAINT ISSUED BY THE SUB INSPECTOR OF POLICE, MULANTHURUTHY POLICE STATION TO PRASAD DATED2810/2013. EXT.P7: A TRUE COPY OF THE FIR IN CRIME NO.610/2011 OF MULANTHURUTHY POLICE STATION DATED0211/2011. EXT.P8: A TRUE COPY OF THE

JUDGMENT

IN WPC NO.13674/2009 OF THIS HONOURABLE COURT DATED1103/2011. EXT.P9: A TRUE COPY OF THE

JUDGMENT

IN WPC NO.35419/2008 OF THIS HONOURABLE COURT DATED0312/2008. EXT.P10: A TRUE COPY OF THE

JUDGMENT

IN WRIT APPEAL NO.WA.109/2013 OF THIS HONOURABLE COURT DATED2801/2013. RESPONDENT(S)' EXHIBITS: -----
NIL //TRUE COPY// P.A.TO JUDGE. Msd. K. RAMAKRISHNAN, J.

----- W.P.(C). No.30050 of 2013
----- Dated this the 18th day of
February, 2014

JUDGMENT

This is an application filed by the petitioner, seeking direction to register First Information Report on the basis of Ext.P1, P3 and P5 complaints and for proper investigation under Section 482 of the Code of Criminal Procedure (hereinafter called the 'Code').

2. It is alleged in the petition that the petitioner is residing along with his family in the address mentioned in the petition. The petitioner and others were cheated by

8th and 9th respondents by receiving money in one way or other. Though three complaints have been submitted before the police and no action has been taken against the 8th and 9th respondents. So the petitioners filed this petition, seeking the following reliefs. "a. Issue a writ of mandamus or other appropriate writ, order or direction commanding the respondents No.2 to 7 to register case against the respondents No.8 and 9 based on Ext.P1, P3 and P5 complaints and to conduct W.P.(C). No.30050 of 2013 2 proper enquiry and submit charge against them before the magistrate court within a time specified by this Hon'ble court. b. Issue a writ of mandamus or other appropriate writ order or direction commanding the respondents No.2 to 4 to conduct proper investigation with respect to all complaints including Ext.P1, P3 and P5 against 8th and 9th respondents with law within a time specified by this Hon'ble Court. c. Issue such other writ order or direction as may be necessary in the facts and circumstances of the case." 3. On the basis of this petition, a report has been called for from the 7th respondent, regarding this aspect and the 7th respondent filed a statement stating as follows: "It is respectfully submitted that Sri.Thomaskutti, S/o. Thomas, Thekkummootoil House, Piravom had submitted a petition against Smt. Ammini Prasad, and her husband Sri.K.S.Prasad regarding cheating of money before the Inspector of Police, Piravom on 8.11.2013 (Ext.P7) the same was sent to the S.I. of Police, Mulanthuruthy Police Station for equity and this petition was registered as No.216/O/Ptn/13/E2. On enquiry it was revealed that the petitioner has filed a case against the above persons before the Hon'ble Judicial First Class Court, Muvattupuzha as S.T.5013/12 regarding the same matter. Since a case regarding the above matter is pending before the Hon'ble Court, no case was registered in this regard. It is also submitted that the counter petitioner Sri.K.S. Prasad is the accused in Cr.610/2011 U/s. 465, 458, 471 & 420 I.P.C. and Cr.436/2013 U/s. 353 I.P of Mulanthuruthy Police Station. The case in Cr.610/2011 was charge sheeted and this case is pending before W.P.(C). No.30050 of 2013 3 Judicial First Class Magistrate Court, Kolencherry as C.C. 984/13. Sri. K.S. Prasad was arrested in Cr.436/2013 and was produced before the Hon'ble Court and he was remanded and enlarged on bail later. Apart from it there are many petitions against Sri. K.S. Prasad in the Mulanthuruthy Police Station. I also submit that there is no petition or case against Sri. Thomaskutti in Mulanthuruthy Police Station. It is also

submitted that enquiry is conducted on Ext.P3 the complaint filed by Sri. P.P. Mathai against K.S. Prasad and also on Ext.P5, a complaints filed by Sri. Prasad, accused in Crime No.610/2011. Since the subject matter of both complaints were of civil matter, they were advised to seek remedy through proper courts." 4. The counsel for the petitioner submitted that, though in their statement, it was mentioned that the complaints filed by the petitioner as Ex.P3 and P5 were closed by the police authorities, stating that it is of civil nature. Even in the statement it was mentioned that, there were several complaints filed against the 8th respondent on this aspect. So it is necessary to conduct a detailed enquiry by a superior officer for this purpose.

5. It is true that in the decision reported in (ILR20134) Kerala 633) Lalitakumari v. Government of U.P. and others, the constitution of the Hon'ble Supreme Court has held that, when a complaint has been filed by the W.P.(C). No.30050 of 2013 4 persons and if a cognizable offence has been made out, they will have to register a crime and then conduct enquiry and file final report. But in the decision reported in Sakiri Vasu v. State of U.P. [2008 (1) KLT724(SC)], the Hon'ble Supreme Court has held that on the basis of the complaint field, if the police did not take any action or if it is closed stating some reasons, then the remedy of the complainant is to approach the criminal court by filing a private complaint, which the learned magistrate may enquire into by himself under Section 202 of the Code of Criminal Procedure or forward the same to the police for conducting investigation under Section 156(3) of the 'Code'. When alternative remedies are available to the petitioner under the code, the High Court cannot invoke the power under Section 226 of the 'Code' and give directions to the police department, in what manner they will have to act on those applications. So under the circumstances, in view of the statement filed by the learned Government Pleader that W.P.(C). No.30050 of 2013 5 on the basis of Ext.P1 a case was registered and as regards Ext.P3 and P5 are concerned, the same were closed as of civil nature. Then the remedy of the petitioner is to file a private complaint, if he is not satisfied with the action of the police in closing the petitions and seek his remedy in accordance with law. With the above observation, the petition is disposed of. Sd/- K. Ramakrishnan, Judge // True Copy // P.A. to Judge ss