

**Devaki Amma Vs. State of Kerala, rep by Public Prosecutor and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/1181413](http://sooperkanoon.com/1181413)

**Court :** Kerala

**Decided On :** Feb-04-2016

**Judge :** B. Kemal Pasha

**Appeal No. :** Crl. MC. No. 26 of 2016

**Appellant :** Devaki Amma

**Respondent :** State of Kerala, rep by Public Prosecutor and Others

**Judgement :**

1. Heard the learned counsel for the petitioner and the learned Public Prosecutor.
2. What is under challenge is Annexure-A10. The petitioner has sought for a further investigation in the matter relating to S.T.No.2252 of 2012 of the Judicial First Class Magistrate's Court-I, Ottapalam, on the ground that the 1<sup>st</sup> accused in the First Information Report has not been arraigned as accused in the Final Report. Presently, the 1<sup>st</sup> accused in the First Information Report is not an accused in S.T.No.2252 of 2012.
3. According to the petitioner, she along with her sons are the co-owners in respect of the property as is evident from Annexure-A11 release deed. In such case, she can also be treated as a victim of offence.
4. Relying on the decision in Bhagwant Singh v. Commissioner of Police and another [(1985) 2 SCC 537], the learned counsel for the petitioner has pointed out

that the petitioner also can be treated as a victim. In the decision in Bhagwant Singh (Supra) it was held:

"The injured person or any relative of the deceased who is not an informant, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report; the Magistrate is bound to hear him. The Magistrate may also, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative or relatives of the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report."

5. Here, in this particular case, the petitioner can also be treated as a victim of offence as her property was allegedly trespassed into and mischief was committed upon. The court below has dismissed the petition through Annexure-A10 mainly on the ground that the petitioner is not the defacto complainant or a witness in the case. It is evident that the petitioner is a co-owner in respect of the property in question and therefore, she can also be treated as a victim. Therefore, it cannot be said that she has no locus standi to file such a petition.

6. At the same time, it can be seen that the matter has been investigated and the Final Report has been filed. Any further investigation to rope in the 1st accused in the First Information Report also as an accused in the case, is not required. As observed by the court below in Annexure-A10 order, in case of any evidence forthcoming in the matter as against the 1st accused in the First Information Report, the court below can make the 1st accused in the First Information Report also as an accused in the case, by invoking the power of the court under Section 319 Cr.P.C. Matters being so, presently there is absolutely nothing to interfere with the said observation made by the court below. The petitioner or any of the other witnesses can also move the court below under Section 319 Cr.P.C. in such case.

With the said observations, this Crl.M.C. is disposed of.