

BY ADVS. SRI.P.K.IBRAHIM SMT.K.P.AMBIKA SRI.A.L.NAVANEETH KRISHNAN SMT.A.A.SHIBI RESPONDENT/S: 1 SOFIA POULOSE KANNAPILLY(H),KUNNALINGADI,BRASLAM KANA,MALAYATTOOR VILLAGE,ERNAKULAM,PIN:683574. 2 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA AT ERNAKULAM-31. BY ADVS. SRI.ALEXANDER GEORGE JOHN JOSEPH (ROY) RUSSEL JOY(R-455) MANJU JOSEPH(K/1500/1998) SABIR N.S.(K/1554/2020) OTHER PRESENT: SRI.RENJITH.T.R, SR.PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06.08.2024, ALONG WITH CrI.MC.3870/2017, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC NO. 3629 & 3870 OF 2017 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN TUESDAY, THE 6TH DAY OF AUGUST 2024 / 15TH SRAVANA, 1946 CRL.MC NO. 3870 OF 2017 CRIME NO.63/2013 OF Kalady Police Station, Ernakulam AGAINST THE ORDER/JUDGMENT DATED 31.01.2017 IN CMP NO.38 OF 2016 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KALADY PETITIONER/S: 1 MADHUSOODANAN S/O. GOPALAKRISHNAN, VALIYAKKATUVILAYIL HOUSE,THADIYATTAPARAMBU KARA, SOUTH VAZHAKKULAM VILLAGE, ALUVA-5(ASSISTANT EXCISE INSPECTOR(GRADE),EXCISE RANGE OFFICE, ERNAKULAM) 2 SHAIJU V.S S/O. SUBRAMANYAN, VATTOLAPARAMBIL HOUSE,AYYAMPUZHA VFILLAGE(CIVIL EXCISE OFFICER, EXCISE RANGE OFFICE, KALADY) 3 SIVAKUMAR S/O. SIVAPRASAD, MASAMPADANNA HOUSE,CHERAI KARA,PALLIPPURAM VILLAGE,(CIVIL EXCISE OFFICER, OFFICE OF THE JOINT EXCISE COMMISSIONER, CENTRAL ZONE, KOCHI) 4 PAUL C.A S/O. ANTONY, KAIPRAMBADAN HOUSE,KAIPPATTOR KARA, KALADY VILLAGE,(CIVIL EXCISE OFFICER, EXCISE RANGE

OFFICE,ANGAMALY)

5 SYAM MOHAN S/O. DAYANANDAN, POOTHAYIL HOUSE, PALLITHAZHAM KARA, PARAVUR VILLAGE,NOW RESIDING AT POOTHAYIL HOUSE, THANNIPUZHA, OKKAL P.O, PIN 6835509CIVIL EXCISE OFFICER, EXCISE RANGE OFFICE, ANGAMALY)

6 SIDHEEK C.A S/O. ALIKUNJU, CHERUVALLIKUDY HOUSE,EDAVOOR P.O, KOOVAPPADY VILLAGE, PIN 683544(CIVIL EXCISE OFFICER, EXCISE RANGE OFFICE, ANGAMALY) 7 REJIMON E.K S/O. KRISHNAN CHETTIYAR,T/C NO. CRL.MC NO. 3629 & 3870 OF 2017 3 MANAKKADU,THIRUVANANTHAPURAMNOW RESIDING AT DEEPAM, PONNARA NAGAR, KILLI, KATTAKADA (EXCISE INSPECTOR, EXCISE RANGE OFFICE,ANGAMALY) 8 BINDU S S/O. SUGUNAN, KAITHAVALAPPIL HOUSE,KARRORMURI SIDE, PORAKKATTU KARA, AMBALAPPUZHA VILLAGE,'INSPECTOR, EXCISE CIRCLE OFFICE, MAVELIKKARA) BY ADVS. SRI.P.K.IBRAHIM SMT.K.P.AMBIKA SRI.A.L.NAVANEETH KRISHNAN SMT.A.A.SHIBI RESPONDENT/S: 1 SOFY POULOSE KANNAPILLY, HOUSE,KUNNILANGADI BHAGAM, NADUVATTOM KARA,MALAYATTOOR VILLAGE, ERNAKULAM PIN 683574 2 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA AT ERNAKULAM 31 BY ADVS. SRI.ALEXANDER GEORGE JOHN JOSEPH (ROY) RUSSEL JOY(R-455) MANJU JOSEPH(K/1500/1998) SABIR N.S.(K/1554/2020) THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06.08.2024, ALONG WITH CrI.MC.3629/2017, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC NO. 3629 & 3870 OF 2017 4 P.V.KUNHIKRISHNAN, J ----- CrI.M.C. Nos. 3629 & 3870 of 2017 ----- Dated this the 6th day of August, 2024

ORDER

These two Criminal Miscellaneous Cases are connected and therefore, I am disposing of these two Criminal Miscellaneous Cases by a common order.

2. The petitioner in CrI.MC No.3629/2017 is the

1st accused and the petitioners in CrI.MC No.3870/2017 are accused Nos.2 to 9 in C.C. No.65/2017 on the file of Judicial First Class Magistrate Court, Kalady. The above case is taken on file based on a complaint filed by the 1st respondent as evident by Annexure-A11. According to the petitioners, the

order taking cognizance based on Annexure-A11 is

unsustainable and therefore, the same is to be quashed.

3. Heard the learned counsel appearing for the petitioners and the learned Public Prosecutor. I also heard the CRL.MC NO. 3629 & 3870 OF 2017 5 learned counsel appearing for the 1st respondent.

4. The short point raised by the petitioners is that,

before filing Annexure-A11 complaint, the Police registered a case based on the same set of facts and the same was referred by the Police. Thereafter, the present complaint is filed and without referring the refer report, the learned Magistrate took

cognizance on the same based on Annexure-A13 order

produced in these cases. Therefore, it is submitted that, taking cognizance without considering the refer report is unsustainable.

5. The learned counsel for the 1st respondent

submitted that, registration of the case by the Police is mentioned in Annexure-A13 order and that itself shows that the learned Magistrate considered the same and therefore, this Court may not interfere with the order taking cognizance.

6. This Court considered the contentions of the petitioners and the 1st respondent.

7. The petitioner was an excise official and was working

as Circle Inspector in Janamaithri Excise Squad, Mananthavady. According to the petitioner, while discharging his official duty CRL.MC NO. 3629 & 3870 OF 2017 6 as Circle Inspector of Excise at Aluva, he had attempted to arrest two persons namely Douglas K. Paul and Dennies K. Paul, who are the children of 1st respondent. According to the petitioner, they were accused in Abkari Crime No.63/2013 of Kalady Excise Range which is under the jurisdiction of Excise Aluva Circle. The 1st respondent filed a complaint on 06.08.2013 before the Kalady Police Station alleging that on 03.08.2013 at 8.30 AM, she saw her elder son Douglas being beaten by few Excise Officers and when intervened, she was also beaten up and when the people gathered, the Excise Officers fled away. According to her, in the previous night, the Excise Officers had come to the house of a neighbour namely, Augustikutty and there was verbal exchange between Douglas and Excise Officers and the Excise Officers came the next day only to take vengeance. According to her, they went to MAJ Hospital for treatment, but came on their own without being admitted. On the said complaint of the 1 st respondent, the Kalady Police Station registered Crime No. 792/2013 on 06.08.2013. The case was investigated and the final report was filed before the Judicial First Class Magistrate Court, CRL.MC NO. 3629 & 3870 OF 2017 7 Perumbavoor reporting that it is one instituted on false allegations.

8. It is the case of the petitioners that the 1 st

respondent being the complainant was given notice on the refer report filed before the Court. She did not filed any protest complaint, but she filed a fresh complaint as evident by Annexure-A11. Annexure-A12 series are the statement of the witness including that of the 1 st respondent. Thereafter, Annexure-A13 order is passed by the learned Magistrate taking cognizance based on Annexure-A11 complaint.

9. It is an admitted fact that based on the same

set of facts mentioned in Annexure-A11, the Police registered a case and after investigation submitted Annexure-A10 refer report. Thereafter, Annexure-A11

complaint is filed. Annexure- A13 is the order taking cognizance based on Annexure-A11. A perusal of Annexure-A13 would not show that the learned Magistrate adverted Annexure-A10 refer report while taking cognizance. It is the duty of the learned Magistrate to consider the refer report also, while taking cognizance based on a complaint, when there is a police charge case, which is CRL.MC NO. 3629 & 3870 OF 2017 8 referred.

10. 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 not lawful 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.

11. 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 adverting 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.

12. In the light of the above principle, I am of the

considered opinion that the order taking cognizance is to be set aside and the matter is to be reconsidered by the learned CRL.MC NO. 3629 & 3870 OF 2017 10 Magistrate in the light of the refer report. Therefore, these Criminal Miscellaneous cases are allowed in the following manner : 1) The order dated 31.01.2017 in CMP No. 38/2016 on the file of the Judicial First Class Magistrate Court, Kalady (Annexure-A13 in both cases) is quashed. 2) The Judicial First Class Magistrate Court, Kalady is directed to reconsider Annexure-A11 complaint

in the light of Annexure-A12 statement and also in the light of Annexure-A10 refer report. 3) The learned Magistrate shall also consider the dictum laid down by this Court in Parameswaran Nair's case (supra) and Kader's case (supra) while taking a decision on Annexure-A11 private complaint. Sd/- P.V.KUNHIKRISHNAN JUDGE SKS CRL.MC NO. 3629 & 3870 OF 2017 11 APPENDIX OF CRL.MC 3870/2017 PETITIONER ANNEXURES ANNEXURE A1 TRUE COPY OF THE FIR NO 784/2013

REGISTERED ON 2-8-2013 AT KALADY POLICE STATION AGAINST THE TWO SONS OF THE 1ST RESPONDENT FOR OFFENCES UNDER SECTIONS 294(B) 353,225 B READ WITH SECTION 34 IPC ANNEXURE A2 TRUE COPY OF THE CR 63/2013 AND OCCURRENCE REPORT DATED 2-8-2013 UNDER THE REPORT SUBMITTED BY THE KALADY EXCISE INSPECTOR BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT

ANNEXURE A3 TRUE COPY OF THE FIR NO 785 REGISTERED ON 3-08-2013 AT KALADY POLICE STATION ANNEXURE A4 TRUE COPY OF THE CT SCAN REPORT OF THE PETITIONERE DATED 3-08-2013 ANNEXURE A5 TRUE COPY OF THE FIR REGISTERED ON 6-8- 2013 AS CRIME NO 792 BY THE KALADY POLICE ON THE COMPLAINT OF THE SECOND RESPONDENT ANNEXURE A6 TRUE COPY OF THE COMPLAINT DATED 6-8-2013 FILED BEFORE THE KEREALA WOMEN'S COMMISSION ANNEXURE A7 TRUE COPY OF THE LETTER DATED 13-11-2013 ADDRESSED TO THE CHIEF SECRETARY BY THE CHAIR PERESON OF THE KERALA STATE WOMEN'S COMMISSION ANNEXURE A8 TRUE COPY OF THE LETTER OF THE COMMISSION TO THE CHIEF SECRETARY DATED 3-3-2014 ANNEXURE A9 TRUE COPY OF THE COMMON ORDERS DATED 24- 09-2013 IN B.A NO 5836/13 ANNEXURE A10 TRUE COPY OF THE FINAL REPORT IN CRIME NO CRL.MC NO. 3629 & 3870 OF 2017 12 SUBMITTED BEFORE THE JFCM COURT, PERUMBAOOR ANNEXURE A11 TRUE COPY OF THE PRIVATE COMPLAINT UNDER SECTION 190 R/W 200 DATED 2-2-2016 FILED AS CMP NO 38/2016 BEFORE THE JFCM COURT, KALADY ANNEXURE A12(A) TRUE COPY OF THE DEPOSITION OF THE WITNESS, Y DUGLUS EXAMINED IN CMP NO ANNEXURE A12(B) TRUE COPY OF THE DEPOSITION OF THE

WITNESS SHEEJA EXAMINED IN CMP NO 38/2016 ANNEXURE A12(C) TRUE COPY OF THE DEPOSITION OF THE WITNESS SOFY PAULOSE EXAMINED IN CMP NO 38/2016 ANNEXURE A13 TRUE COPY OF THE ORDER DATED 31-1-2017 OF THE JUDICIAL FIRST CLASS MAGISTRATE, KALADY IN CMP NO 38/2016 ANNEXURE A14 TRUE COPY OF THE ORDER DATED 26-5-2017 IN CRL.M.A NO 5928/2017 IN CRL M.C NO CRL.MC NO. 3629 & 3870 OF 2017 13 APPENDIX OF CRL.MC 3629/2017 PETITIONER ANNEXURES ANNEXURE A1 TRUE COPY OF THE FIR NO.784/2013

REGISTERED ON 2.8.2013 AT KALADY POLICE STATION AGAINST THE TWO SONS OF THE 1ST RESPONDENT FOR OFFENCES UNDER SECTIONS 294(B)353,225 B READ WITHG SECTION 34 IPC. ANNEXURE A2 TRUE COPY OF THE CR 63/2013 AND OCCURRENCE REPORT DATED 2.8.2013 AND THE REPORTS SUBMITTED BY THE KALADY EXCISE INSPECTOR BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT.

ANNEXURE A3 TRUE COPY OF THE FIR NO.785 REGISTERED ON 3.8.2013 AT KALADY POLICE STATION ANNEXURE A4 TRUE COPY OF THE CT SCAN REPORT OF THIS PETITIONER DATED 3.8.2013 ANNEXURE A5 TRUE COPY OF THE FIR REGISTERED ON 6.8.2013 AS CRIME NO.792 BY THE KALADY6 POLICE ON THE COMPLAINT OF THE SECOND RESPONDENT ANNEXURE A6 TRUE COPY OF THE COMPLAINT DATED 6.8.2013 FILED BEFORE THE KERALA WOMEN'S COMMISSION ANNEXURE A7 TRUE COPY OF THE LETTER DATED 13.11.2013 ADDRESSED TO THE CHIEF SECRETARY BY THE CHAIR PERSON OF THE KERALA STATE WOMEN'S COMMISSION. ANNEXURE A8 TRUE COPY OF THE LETTER OF THE COMMISSION TO THE CHIEF SECRETARY DATED 3.3.2014Q ANNEXURE A9 TRUE COPY OF THE COMMON ORDERS DATED 24.9.2013 IN B.A.NO.5836/13 ANNEXURE A10 TRUE COPY OF THE FINAL REPORT IN CRIME NO.792/2013 DATED 12.7.2014 OF KALADY CRL.MC NO. 3629 & 3870 OF 2017 14 POLICE SUBMITTED BEFORE THE JFCM COURT, PERUMBAVOOR ANNEXURE A11 TRUE COPY OF THE PRIVATE COMPLAINT UNDER SECTION 190 R/W 200 DAZTED 2.2.2016 AS CMP NO.38/2016 BEFORE TEH JFCM COURT,KALADY ANNEXURE A12(A) TRUE COPY OF THE DEPOSITION OF THE WITNESS,Y

DUGLUS EXAMINED INB CMP NO.38/2016 ANNEXURE A12(B) TRUE COPY OF THE DEPOSITION OF THE WITNESS SHEEJA EXECUTED IN CMP NO.38/2016 ANNEXURE A12(C) TRUE COPY OF THE DEPOSITION OF THE WITNESS SOFI PAULOSE EXAMINED IN CMP. NO.38/2016 ANNEXURE A13 CERTIFIED COPY OF THE ORDER DATED 31.3.2017 OF THE JUDICIAL FIRST CLASS MAGISTRATE,KALADY IN CMP NO.38/2016.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com