

Prasanth.P.M. vs State of Kerala

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Court : Kerala

Decided On : Jun-05-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Crl.MC/8428/2022

Appellant : Prasanth.P.M.

Respondent : State of Kerala

Advocate for Pet/Ap. : Sri. Swathy Kumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS MONDAY, THE 5TH DAY OF JUNE 2023 / 15TH JYAISHTA, 1945 WP(CRL.) NO. 267 OF 2022 PETITIONER: PRASANTH P.M AGED 35 YEARS PUTHILLAM HOUSE, PARANNUR, CHOONDAL, THRISSUR, NOW RESIDING AT ANUGRAHA, PULINCHUVADU, VAIKOM.P.O, KOTTAYAM. BY ADVS. B.S.SWATHI KUMAR ANITHA RAVINDRAN HARISANKAR N UNNI SARANGADHARAN P. N.S.SHAMILA RESPONDENTS: 1 THE DI 2022 STRICT POLICE CHIEF KOTTAYAM,PIN-686002. 2 THE DEPUTY SUPERINTENDENT OF POLICE VAIKOM ,KOTTAYAM,PIN-686141. 3 THE STATION

HOUSE OFFICER VAIKOM POLICE STATION, KOTTAYAM, PIN-686141. 4 THE SUB INSPECTOR OF POLICE, VAIKOM POLICE STATION, KOTTAYAM, PIN-686141.

-:2:- BY ADV SREEJA V PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05.06.2023, ALONG WITH Crl.MC.8428/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:3:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS
MONDAY, THE 5TH DAY OF JUNE 2023 / 15TH JYAISHTA, 1945 CRL.MC NO. 8428 OF 2022 IN C.C. NO.697/2022 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,VAIKOM PETITIONER/ACCUSED: PRASANTH.P.M. AGED 35 YEARS PUTHILLAM HOUSE, PARANNUR, CHOONDAL, THRISSUR, NOW RESIDING AT ANUGRAHA, PULINCHUVADU, VAIKOM.P.O., KOTTAYAM., PIN - 686141 BY ADVS. B.S.SWATHI KUMAR ANITHA RAVINDRAN HARISANKAR N UNNI RESPONDENTS/STATE & COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM., PIN - 682031 2 THE SUB INSPECTOR OF POLICE, VAIKOM POLICE STATION, KOTTAYAM, PIN - 686141 THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05.06.2023, ALONG WITH WP(Crl.).267/2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -:4:-

BECHU KURIAN THOMAS, J.

===== W.P.(Crl.) No.267 of 2022 & Crl.M.C. No.8428 of 2022
===== Dated this the 5th day of June, 2023

JUDGMENT

On 21.01.2022 at around 11.50 am, one Sri.Karthikeyan suffered

a road accident. A motorbike travelling from Vaikom towards Vypinpadhi hit on the said Karthikeyan, who fell down and suffered a head injury. An FIR was registered on 22.01.2022 specifying an unknown person as the accused. During the course of investigation, petitioner was identified as the person who drove the motorbike and hence was arrayed as the accused.

2. W.P.(Crl) No.267 of 2022 is filed seeking a direction to entrust

the investigation into Crime No.84 of 2022 of Vaikom Police Station to a Special Investigation Team and also to produce the report of the Motor Vehicle Inspector and the report of the Forensic Examination of the motorbike.

3. Crl.M.C. No.8428 of 2022 is filed challenging the final report in Crime No.84 of 2022, which is now pending as C.C. No.697 of 2022 on the files of the Judicial First Class Magistrate's Court, Vaikom.

4. Petitioner claims to be employed as a Melsanthi of a temple -:5:-

at Vaikom. Though a pious and god-fearing person, petitioner alleges that a police personnel came to him and showed some photographs of a person riding a bike on the mobile phone and enquired whether petitioner was the person riding the said bike. Though petitioner could not identify the rider, he stated that he had travelled to Udayanapuram Temple on the date of alleged accident. Petitioner was subsequently taken to the police station and later his bike was taken into custody. Soon petitioner was asked to confess to the accident and was made to sign various papers. Alleging that the police is attempting to implicate the petitioner in a false crime, he sought through the writ petition a direction for handing over the investigation to a Special Investigation Team.

5. While W.P.(Crl.) No.267 of 2022 was pending consideration, the police filed a final report in Crime No.84 of 2022 arraying the

petitioner as the accused as having committed the offences punishable under sections 279, 337, 338 and 304A of the Indian Penal Code, 1860 (for short 'IPC') apart from sections 34A and 34B of the Motor Vehicles Act, 1988. The final report dated 31.05.2022 was submitted to the court on 16.08.2022.

6. According to the petitioner, the investigation conducted into

the crime and arraying the petitioner as an accused is without any basis or without any evidence. According to him, the forensic report obtained, after subjecting the bike to an analysis, revealed that there -:6:- was no trace of any impact on the bike, which certificate was concealed by the Investigating Officer while implicating the petitioner as an accused.

7. It is the specific contention of the petitioner that there is

absolutely no incriminating evidence to connect the petitioner with the crime and therefore arraying him as an accused in Crime No.84 of 2022 and the consequent taking cognizance of the offence as C.C. No.697 of 2022 on the files of the Judicial First Class Magistrate's Court, Vaikom, is an affront to criminal jurisprudence.

8. A statement has been filed by the learned Public Prosecutor

along with the instructions submitted by the investigating officer in W.P.(Crl.) No.267 of 2022. As per the statement, it is informed that on 21.01.2022 at 11.50 hours, the accused drove the red coloured motorbike in a rash and negligent manner and hit Sri.Karthikeyan, who was standing in front of a shop. He fell down and sustained serious

injuries on his head. Subsequently the said Karthikeyan, who was admitted in the hospital, was not in a position to give any statement and later on 23.01.2022 he succumbed to his injuries. Therefore the offence under section 304A IPC was also included.

9. It was pointed out in the statement that during the course of

investigation, eye witnesses present at the place of occurrence including the defacto complaint, gave statements that a red coloured motorbike came in a high speed and the handle of the bike hit the -:7:-

victim, who fell down and sustained serious injuries. It was also stated that the rider of the bike did not stop and instead drove away without caring for the injured. On a perusal of the visuals of the CCTV camera near the place of occurrence, the

witnesses identified the bike. It is further mentioned that from the statement of eye witnesses and the circumstantial evidence adduced, it became clear that the petitioner had driven the motorbike in a negligent manner through Vaikom-Udayanapuram road on 21.01.2022 and caused to hit the victim, who later succumbed to the injuries. It is also stated that the petitioner is attempting to wriggle out of the case by raising complaints against the investigation. The Investigating Officer has that from the investigation conducted, it was undoubtedly revealed that the petitioner is the accused and hence he is charged with the offences including 304A IPC.

10. I have heard Sri. Swathy Kumar, learned counsel for the petitioner as well as Smt.Sreeja V., learned Public Prosecutor. I have also perused the case diary to ascertain the nature of investigation conducted.

11. Though petitioner asserts that he had not met with any

accident while he was driving the bike on the ill fated day, the materials collected during investigation led the investigating officer to conclude that on the date of accident, petitioner was driving the red motorbike which met with an accident. Though the scientific examination of the motorbike through AMVI reported no evidence of -:8:- an accident on the bike, the respondents asserted that since the handle of the bike alone had hit the victim, the possibility of evidence of an accident visible on the bike is remote, if not impossible.

12. The materials collected during investigation including the statement of witnesses identifies the petitioner as the driver of the

motorbike that met with an accident. Whether it was in fact the petitioner who drove the bike or whether it was some other bike that was involved in the incident are all matters of factual dispute, which will have to be analysed and appreciated during trial. A perusal of the case diary reveals that the investigating officer had collected materials to justify his conclusion, as seen from the final report. The question of whether those materials are sufficient to prove the guilt of the accused or whether those materials are reliable pieces of evidence can be decided only during trial.

13. It is settled that the jurisdiction under section 482 of the

Cr.P.C or 226 of the Constitution of India to quash the proceedings or to interfere with concluded investigation is very limited. The Supreme Court had in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335] categorically held that if the admitted allegations in the FIR or in the final report make out the offences alleged, the court under section 482 cannot interfere to quash the proceedings.

14. Bearing in mind the aforesaid principle, it is evident that the contentions now advanced by the learned counsel for the petitioner -:9:-

through the writ petition as well as through the petition under section 482 Cr.P.C., are all matters which can be decided only at a trial. The investigation so far conducted, as evident from the case diary, does not reveal any infirmity warranting an investigation by a superior agency as sought for by the petitioner. Therefore there is no merit in the writ petition.

15. Similarly the exercise of the inherent power under section

482 Cr.P.C. being exceptional in nature, no sufficient reasons are made out for invoking the said jurisdiction. Therefore there is no merit in the petition under section 482 Cr.P.C. also.

In view of the above discussion, there is no merit in the writ petition as well as in the Crl.M.C. Therefore they are both dismissed. Sd/- BECHU KURIAN THOMAS JUDGE jka -:10:- APPENDIX OF WP(CRL.) 267/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE FIR IN CRIME NO.84/2022 DATED 22-1-2022 OF VAIKOM POLICE STATION. Exhibit P2 TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 19-2-2022. Exhibit P3 TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT DATED 19.2.2022 ISSUED BY THE 1ST RESPONDENT. Exhibit P4 TRUE COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER DATED NIL. Exhibit P5 TRUE COPY OF THE PHOTOGRAPH HANDED OVER TO THE PETITIONER ALONG WITH EXT.P4. -:11:- APPENDIX OF CRL.M.C.NO.8428/2022 PETITIONER ANNEXURES Annexure A TRUE COPY

OF THE ANNEXURE.A FIR IN CRIME NO. 84/2022 OF VAIKOM POLICE STATION DATED 22-1-2022. Annexure B TRUE COPY OF THE FINAL REPORT IN CRIME NO. 84/2022 OF VAIKOM POLICE STATION DATED 31-5-2022. Annexure C TRUE COPY OF THE REPORT OF THE EXAMINATION NO. 538/2022/DFSL/KTM DATED 28-1-2022. Annexure D TRUE COPY OF THE STATEMENT OF SUBAIR DATED 22-1-2022. Annexure E TRUE COPY OF THE ADDITIONAL STATEMENT OF SUBAIR DATED NIL. Annexure F TRUE COPY OF THE STATEMENT OF DEEPUKUMAR MANDAL DATED NIL. Annexure G TRUE COPY OF THE STATEMENT OF IBRAHIM DATED NIL.

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