

**John Thomas Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Aug-06-2015

**Judge :** Honourable Mr.Justice K.Harilal

**Appellant :** John Thomas

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL THURSDAY, THE 6TH DAY OF AUGUST 2015 15TH SRAVANA, 1937 CrI.Rev.Pet.No. 517 of 2012  
----- AGAINST THE

ORDER

IN CRL.M.P.NO.10404/2011 CC7452006 of J.M.F.C., NEDUMKANDOM DATED 28-12-2011 REVISION PETITIONER: ----- JOHN THOMAS, AGED 58 S/O. JOHN, EDACHERRIL VEEDU, KALOOR, ERNAKULAM BY ADV. SRI.BABU PAUL RESPONDENTS: ----- 1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031 2. THE SUB INSEPCTOR OF POLICE, SANTHANPARA. BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. HARILAL, J.

## ORDER

The revision petitioner is the petitioner in Crl.M.P. No.10404 of 2011 in C.C.No.745 of 2006 on the files of the Judicial First Class Magistrate's Court, Nedumkandom. The above C.C. was taken on the files, on receipt of the Final Report; pursuant to an investigation under Sec.156(3) of the Code of Criminal Procedure ordered by the learned Magistrate, on a complaint filed by the petitioner herein against accused Nos.1 to 8 in that petition, alleging the offences punishable under Secs.120B, 468, 465, 420 read with Sec.34 of the Indian Penal Code.

2. The case of the petitioner, in brief, is as Crl.R.P. No. 517 of 2012 -:

2. :- follows: An extent of 1.32 Acres of land comprised in Sy. No.12/5, 12/6 of Chinnkkanal Village belongs to the petitioner as per document No.2745 of the Sub Registrar Office, Rajakumari. While so, accused Nos.1 to 5 conspired with the 6th accused and executed a sale deed in favour the 6th accused and he, in turn, subsequently, conspired with accused Nos.7 and 8 executed another sale deed in their favour and thereby all the accused with a common intention to cheat him and fabricated the sale deeds in their favour and thereby cheated the petitioner. After investigation, the Investigating Officer filed a Final Report against accused Nos.1 to 6 alleging the offences punishable under the sections stated above. Aggrieved by the deletion of accused Nos.7 and 8, the petitioner filed a petition seeking further investigation under Sec.173(8) of the Cr.P.C. before the learned Magistrate. The main grievance projected in the said petition was that in the Final Report accused Nos.7 Crl.R.P. No. 517 of 2012 -:

3. :- and 8 were deleted, though they also have committed the offences along with the other accused. After considering the Final Report and the statements of witnesses, the trial court dismissed the complaint on a finding that there is no glaring irregularity or pitfall in the investigation conducted by the Investigating Officer. The legality and propriety of the above finding is challenged in this revision petition.

3. Heard the learned counsel for the revision petitioner.

4. The learned counsel for the revision petitioner advanced arguments against the finding of the court below that the investigation is devoid of irregularity or any illegality. According to him, the deletion of accused Nos.7 and 8 is fatal, as they also conspired with accused Nos.1 to 6.

5. Per contra, the learned Public Prosecutor advanced arguments to justify the findings whereby the court below dismissed the application under CrI.R.P. No. 517 of 2012 :-

4. :- Sec.173(8) of the Cr.P.C. According to him, even in a private complaint filed by the petitioner, the allegations against accused Nos.7 and 8 are vague and those allegations are not sufficient to constitute the offences alleged against them.

6. Further investigation provided in Sec.173(8) of the Cr.P.C. is not a matter to be resorted to, as of right, by the de facto complainant. As pointed out by the learned Public Prosecutor, I have perused the original private complaint filed by the petitioner. The admitted case of the petitioner is that accused Nos.1 to 5 conspired with the 6th accused with a common intention to cheat him by selling the property which is in the ownership and possession of the petitioner and thereafter, the 6th accused sold away the said property to accused Nos.7 and 8 also. Even in the complaint the allegation is that when the original patta of the said property is still with the petitioner, it is very hard to believe that accused Nos.7 and 8 purchased the CrI.R.P. No. 517 of 2012 :-

5. :- property from the 6th accused with bona fides. As rightly submitted by the learned counsel for the petitioner, the allegations levelled against accused Nos.7 and 8 are mere doubts only and not so certain as that raised against accused Nos.1 to 6. Admittedly accused Nos.7 and 8 have no transaction with accused Nos.1 to 5, who had sold away the property to the 6th accused when the property stood in the name and possession of the petitioner. Investigation is a privilege conferred to the Investigating Officer and the settled legal position is that the court cannot step into the shoes of an Investigating Officer or the court cannot dictate the terms of investigation.

7. As rightly noted by the court below, the only apprehension of the petitioner is that accused Nos.7 and 8 are seen excluded from the party array. Sec.319 of the Cr.P.C. is incorporated in the Cr.P.C. as a check and balance of the Final Report filed by the Investigating Officer. If it comes out in evidence CrI.R.P. No. 517 of 2012 -:

6. :- before the court that the persons who are not arrayed as accused also have committed the offence, certainly, the court has the right to implicate those persons and try along with the existing accused invoking the provision under Sec.319 of the Cr.P.C. In the impugned order, it is seen that the learned Magistrate is well aware of scope of that provision which would enable him to try the accused Nos.7 and 8 also, though they are not arrayed as accused, at present, if it has come out in evidence that they also have conspired with other accused, in furtherance of their common intention to cheat the petitioner and thereby they committed the offence. So, I am sure that if it is found so, the learned Magistrate would invoke the jurisdiction under Sec.319 of the Cr.P.C.

8. In this circumstance, I do not find any reason to interfere with the impugned order under challenge. That apart, the petitioner has a right to file a private complaint alleging the offence against accused Nos.7 CrI.R.P. No. 517 of 2012 -:

7. :- and 8 and if such a complaint is filed and that complaint discloses a cognizable offence, it is incumbent upon the Magistrate to try that complaint also along with this police complaint and both can be disposed of by a joint trial. This revision petition is dismissed. Sd/- (K. HARILAL, JUDGE) Nan/ //true copy// P.S. to Judge

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