

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

MONDAY, THE 04TH DAY OF NOVEMBER 2019 / 13TH KARTHIKA, 1941

OP(Crl.).No.483 OF 2019

CC 378/2010 OF JUDICIAL MAGISTRATE OF FIRST CLASS
-III, NEYYATTINKARA

CRIME NO.74/2010 OF Vellarada Police Station, Thiruvananthapuram

PETITIONER/1st ACCUSED:

MARIAMMA JOHN @ MERCY,
AGED 61 YEARS
D/O.MARIAMMA MATHEW, VALLOMTHARAYIL VEEDU,
KUDAPANAMOODU, KANNANNOOR, KOVILLOOR DESOM, AMBOORI
VILLAGE, KATTAKADA TALUK, THIRUVANANTHAPURAM.

BY ADVS.
SRI.THIRUMALA P.K.MANI
SRI.NAVEEN RADHAKRISHNAN

RESPONDENTS/STATE:

- 1 DEPUTY SUPERINTENDENT OF POLICE,
CRIME BRANCH (CBCID), EOW-1, KOLLAM - 691 001.
- 2 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA - 682 031.

SRI C S HRITHWIK-SR PP

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 28.10.2019,
THE COURT ON 04.11.2019 DELIVERED THE FOLLOWING:

R.NARAYANA PISHARADI, J

O.P.(Crl) No.483 of 2019

Dated this the 4th day of November, 2019

ORDER

The petitioner is the first accused in the case C.C.No.378 of 2010 on the file of Court of the Judicial First Class Magistrate-III, Neyyattinkara.

2. The case was originally registered as Crime No.74/2010 of Vellarada police station against four persons for the offence punishable under Section 420 read with 34 I.P.C. The allegation in the case was that the accused therein obtained a total amount of Rs.3,95,000/- as deposit from the de facto complainant Varghese Mathew on behalf of Aiswarya Finance and that they did not return the amount to him and thereby cheated him.

3. After completing the investigation, the Sub Inspector of Police, Vellarada police station filed charge sheet in Crime No.74/2010 against three persons for the offence punishable under Section 420 read with 34 I.P.C. The petitioner herein was not made an accused in that charge sheet. Cognizance was taken by the learned Magistrate and the case was numbered as C.C.No.378/2010 on 08.06.2010.

4. Subsequently, the Crime Branch conducted further investigation in the case and filed charge sheet on 06.06.2015 against four persons, including the petitioner as the first accused, for the offences punishable under Sections 406 and 420 read with 34 I.P.C and Sections 45S and 58B of the Reserve Bank of India Act.

5. On 31.08.2018, the Deputy Superintendent of Police, CBCID (EOW) filed Ext.P4 report in the Magistrate's Court stating that further investigation of the case is being conducted under Section 173(8) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') and prayed that the trial

of the case may be stopped. As per Ext.P5 order dated 17.09.2018, the learned Magistrate granted permission to conduct further investigation and directed the investigating officer to file report in the court.

6. The petitioner has filed this original petition under Article 227 of the Constitution of India for setting aside Ext.P5 order passed by the learned Magistrate and to direct the Deputy Superintendent of Police, Crime Branch to drop the further investigation being conducted in the case and also to issue direction to the learned Magistrate to expedite the trial of the case.

7. Heard learned counsel for the petitioner and the learned Public Prosecutor.

8. The petitioner has challenged the further investigation being conducted by the Crime Branch in the case on the following grounds: 1) Further investigation cannot be conducted after the commencement of the trial of the case by the court. (2) The reasons stated for conducting further investigation are not

sustainable in law. (3) Further investigation to rectify the defects in the investigation already conducted is not permissible.

9. Before examining the merits of the aforesaid contentions, it has to be noted that the allegation against the accused in the charge sheet filed by the Crime Branch is that they had obtained a total amount of Rs.1,27,07,375/- as deposit in the Aiswarya Finance from 66 persons and that the accused did not return the amount to them and also that gold ornaments pledged by seven other persons were also not returned and that the accused acted in violation of the provisions contained in the Reserve Bank of India Act. It is also to be noted here that the role of the petitioner herein in the case is that she worked as a collection agent of Aiswarya Finance and that she purchased the property of the second accused in the case who had also worked as a collection agent of the aforesaid finance company.

10. Section 173 of the Code provides for submission of a report by an officer in charge of a police station on completion of the investigation to the Magistrate empowered to take

cognizance of the offence. Sub-section (8) of Section 173 provides that nothing in that section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, whereupon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and that the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

11. True, as per Ext.P5 order, learned Magistrate has granted permission to the investigating officer to conduct further investigation of the case. But, it is not necessary for the investigating officer to seek any permission from the court to conduct further investigation.

12. The law does not mandate taking prior permission from the Magistrate for further investigation (See **Rama**

Chaudhary v. State : AIR 2009 SC 2308). Therefore, permission granted by the learned Magistrate for conducting further investigation of the case is of no consequence. Even without any permission from the court, investigating officer has power to conduct further investigation. It is only as a matter of courtesy that the investigating officer is required to inform the court regarding the further investigation being conducted in the case so as to enable the court to stop the trial of the case and to await the report in respect of such investigation.

13. Learned counsel for the petitioner contended that many witnesses have already been examined in the case and that further investigation cannot be conducted after commencement of the trial of the case. There is no merit in the aforesaid contention. There is no restriction on the power of the investigating officer to conduct further investigation after the commencement of the trial of the case.

14. In **Rama Chaudhary** (supra), the objection raised by the accused to the further investigation was as follows:

"Mr. U.U. Lalit, learned senior counsel for the appellant, after taking us through relevant materials as well as Section 173(2) and (8) of the Code of Criminal Procedure, 1973 contended that 'further investigation' referred to in sub-clause (8) does not mean 'reinvestigation' against the accused persons who are already facing trial in the case. He further pointed out that, in the present case, after submission of charge sheet under Section 173(2) in the year 2003, the cognizance of the offence was taken by the Chief Judicial Magistrate and the case was remitted to the Court of Sessions. Trial was commenced and altogether 21 witnesses have been examined. At a belated stage, the prosecution has filed the present report for further investigation with a view to delay the disposal of the trial. According to him, further investigation as contemplated in Section 173(8) of the CrPC cannot be allowed to be made into the very same offence in relation to the same accused if the trial had already commenced"

The Apex Court negated the contention above and observed as follows:

"The prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hands of investigating agency for

further investigation should not be tied down on the ground of mere delay. In other words, the mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the Court in arriving at the truth and do real and substantial as well as effective justice. If we consider the above legal principles, the order dated 19/02/2008 of the trial court summoning the witnesses named in the supplementary charge sheet cannot be faulted with. It is true that after enquiry and investigation charges were framed on 11/03/2004 and thereafter in the course of trial about 21 witnesses were examined. In the meantime, police submitted supplementary charge sheet with certain new materials and on the basis of supplementary charge sheet, the prosecution filed an application on 12/01/2008 in a pending Sessions Trial No. 63 of 2004 to the trial court for summoning the persons named in the charge sheet for their examination as prosecution witnesses. On a careful perusal of the application, the trial court, by order dated 19/02/2008, allowed the same and has summoned those witnesses named in the supplementary charge sheet”.

15. Ext.P4 report filed by the Deputy Superintendent of Police, CBCID in the court below shows that further investigation was proposed to be conducted in the case to cure some procedural and technical irregularities in the filing of the charge sheet. It is stated in Ext.P4 report that the allegation against the accused is that they had separate transactions with 73 witnesses and therefore, separate charge sheet has to be filed with regard to each transaction. It is also stated that a complaint has to be filed separately in respect of the offences allegedly committed by the accused under the Reserve Bank of India Act.

16. The fact that further investigation is being conducted to cure some procedural or technical irregularities in the charge sheet already filed before the court, cannot be a sufficient ground to issue a direction to the investigating officer to drop such investigation.

17. In this context, it is also to be noted that an accused in a case has no right with reference to the manner of investigation or the mode of prosecution (See **Romila Thapar v.**

Union of India : AIR 2018 SC 4683).

18. In the aforesaid circumstances, the petitioner is not entitled to get any relief prayed for by her. The petition is liable to be dismissed.

19. Consequently, the original petition is dismissed. However, it is made clear that, by virtue of this judgment, the petitioner will not be precluded from challenging the legality of any supplementary report, which may be filed by the Crime Branch on the basis of the further investigation conducted by it.

(sd/-)

R.NARAYANA PISHARADI, JUDGE

jsr/02/11/2019

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1** TRUE COPY OF THE FIR IN CRIME NO.74/2010 DATED 02/02/2010 OF THE VELLARADA POLICE STATION.
- EXHIBIT P2** TRUE COPY OF THE CHARGE SHEET IN CRIME NO.74/2010 SUBMITTED BY THE VELLARADA POLICE.
- EXHIBIT P3** TRUE PHOTOCOPY OF THE FRESH CHARGE SHEET DATED 06/06/2015 SUBMITTED BY THE 1ST RESPONDENT.
- EXHIBIT P4** TRUE PHOTOCOPY OF THE PETITION SUBMITTED BY THE 1ST RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-III, NEYYATTINKARA FOR FURTHER INVESTIGATION.
- EXHIBIT P5** TRUE COPY OF THE OFFICE MEMORANDUM DATED 17/09/2018 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-III, NEYYATTINKARA.
- EXHIBIT P6** TRUE PHOTOCOPY OF THE LETTER DATED 17/10/2019 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

PS TO JUDGE