

(2023) 10 KL CK 0198
In the High Court Of Kerala
Case No : Writ Petition (Crl.) No.719 Of 2022

Asif Azad

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 26-10-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Prevention of Corruption Act, 1988 — Section 2(c), 3
Indian Penal Code, 1860 — Section 467

Citation : (2023) 10 KL CK 0198

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : Sajju.S., P Narayanan

Final Decision : Dismissed

Judgement

P.V.Kunhikrishnan, J

1. This writ petition is filed with the following prayers:

1. "A writ, order or direction in the nature of mandamus to monitor the investigation of FIR 250/2022 dated 17.04.2022 lodged at Chirayinkeezhu Police Station.

2. a writ, order or direction in favour of the petitioners this Hon'ble Court may graciously be pleased to pass an order to not allow any other officials to intervene into the investigation of FIR 250/2022 lodged at Chirayinkeezhu Police Station.

3. a writ, order or direction in favour of the petitioners this Hon'ble Court may graciously be pleased to direct the police to conduct a search to recover the stolen cheque book and agreements to send it to the Forensic Science Laboratory.

4. a writ, order or direction in favour of the petitioners this Hon'ble Court may graciously be pleased to direct the Station House Officer of Fort Police Station to

file a report regarding the original agreements and cheques mentioned in the FIR 1150/2021 dated 04.06.2021 lodged at Fort Police Station.

5. a writ, order or direction in favour of the petitioners this Hon'ble Court may graciously be pleased to direct the respondent no. 3 to allow petitioner to oversee the investigation progress.

6. To issue any other suitable order or direction in the nature to which this Hon'ble Court deems just proper in favour of the petitioners.

7. To allow this petition with cost."

(SIC)

2. The petitioner appeared in person before this Court. It is submitted that he is the CEO of a company called M/s. Frshar Cosmos Pvt Ltd. It is submitted that the accused in FIR 250/2022 lodged at Chirayinkeezhu Police Station is intentionally putting the petitioner in danger and portraying the petitioner as a bad person in front of the public by fabricating evidence, fabricating stories, and writing fictitious sums on stolen cheques by bringing false charges against the petitioner company and the petitioner's parents. It is also submitted that this is done by the accused in FIR 250/2022 of Chirayinkeezhu Police Station by defrauding, confusing, and tricking the Courts and Police. According to the petitioner, there was an attempt to arrest the petitioner and his mother at the instance of the accused in Chirayinkeezhu Police Station case by filing a CMP against the petitioner and his mother which resulted in an FIR against the petitioner and his mother. Then the petitioner filed CrI.M.C. No.5392/2021 before this Court at that time to quash the FIR, and the FIR against the petitioner and his mother was transferred to Fort Police Station, Thiruvananthapuram. The accused filed a case against the petitioner and the petitioner's mother before the Sub Court, Thiruvananthapuram with a forged and altered story (different from the CMP filed) with fabricated documents and stolen cheques is the submission. It is submitted that the petitioner filed an application before the Sub Court, Thiruvananthapuram and obtained certified copies of the fabricated agreement and stolen cheques from that Court. It is also submitted that the petitioner lodged a complaint against the forged agreement and stolen cheques at Chirayinkeezhu Police Station and consequently FIR 250/2022 was registered. Ext.P1 is the FIR. The accused in Ext.P1 FIR obtained bail as per Ext.P2 order. The petitioner submitted a Right to Information request before Chirayinkeezhu Police Station to know whether the accused in FIR 250/2022 produced any original documents before Chirayinkeezhu Police Station or not.

3. It is submitted by the petitioner that the Chirayinkeezhu Police Station on 25.07.2022 informed that the accused in FIR No.250/2022 had not produced any original documents nor cheques before the Chirayinkeezhu Police Station. Ext.P3 is the Right to Information Report. It is also submitted that the petitioner has filed an RTI before the Sub Court, Thiruvananthapuram to know whether the accused in FIR No. 250/2022 produced any original documents before Sub Court,

Thiruvananthapuram. The Sub Court, Thiruvananthapuram informed the petitioner as per Ext.P4 that the accused in FIR No. 250/2022 did not produce any original documents nor cheques before the Sub Court. Hence, it is submitted that the accused in FIR No. 250/2022 of Chirayinkeezhu Police Station and the investigating officer are defrauding and manipulating the investigation by stating a lie that the statement taken was on 04.08.2022, when the statement was already taken on 19.07.2022. It is also submitted that the tampering has already happened thus violated the bail order and the ongoing investigation by the Sub Inspector of Police of Chirayinkeezhu Police Station is for favouring the accused in FIR 250/2022 of Chirayinkeezhu Police Station. Exhibit P 5 is the Right to Information report from Chirayinkeezhu Police received by the petitioner. According to the petitioner, the accused in FIR No. 250/2022 of Chirayinkeezhu Police Station is defrauding and convincing the courts with fabricated documents and fabricated stories. According to the petitioner, the following questions of law remain to be decided :

- a. Why after taking the FIR the statement of the accused was not taken?
- b. What was the intention on prolonging the investigation?
- c. What was the intention of the investigating officer to not inform about the theft before the Sessions Court?
- d. Why didn't conduct any search to recover the theft/stolen cheque book?
- e. Did this prolonged investigation make irreparable loss to petitioner?
- f. Why the investigating officer file any application before the Honourable Court to collect the original document under 41 CrPC?
- g. Why the investigating officer never give any notice to the accused under 41 CrPC to summon the original document till to the date of RTI petitioner filed?
- h. How the police can ask sign on the refer charge notice without finding the original document and without sending it to the Forensic Science Laboratory and without a search to recover the theft/stolen item?
- i. Does this prolonged investigation cause irreparable loss to petitioner or not and for the Honourable Sub Court from defrauding?"

4. With these pleadings and prayers, this writ petition is filed.

5. Heard the petitioner, Mr. Asif Azad, who appeared in person and also the Public Prosecutor, Sri.P. Narayanan.

6. This Court perused the pleadings in the writ petition and heard the arguments of the petitioner. The main prayer in this writ petition is to monitor the investigation in Crime No. 250/2022. There are other connected reliefs also. A statement of facts is submitted by the Inspector of Police and Station House Officer of Chirayinkeezhu Police Station on 18.10.2022. In the statement of fact, the Station House Officer submitted that the case in brief is that the accused

person Haja Maheen prepared a bogus agreement in stamp paper between the petitioner and Haja Maheen by putting signatures similar to that of the complainant and produced it before the Subordinate Court-I, Thiruvananthapuram along with a suit for recovery of money filed by Haja Maheen against the petitioner. It is also submitted that there are several litigations between the petitioner and the accused in the case. The investigation done so far in the case is stated in the statement in detail. It will be beneficial to extract the same.

"I. In order to verify the claim of the Petitioner who is the defacto complainant in Crime 250/2022 of Chirayinkeezh Police Station, the signature put in the question document is to be got compared with the original signature of the Petitioner through 'FSL. For this purpose the original question documents along with admitted signature of the Petitioner need to be send to FSL for comparison. The original document is submitted before the Hon'ble Subordinate Court - I Thiruvananthapuram in Money Recovery suit 33/2022 by Haja Maheen. Application was Submitted by the investigating officer before the Hon'ble Subordinate Court - I Thiruvananthapuram to avail the original document for the Propose in investigation of crime 250/2022 of Chirayinkeezh Police Station. The reply is yet to be received.

II. In the Criminal Miscellaneous Petition filed-by- Asif Azad against Haja Maheen and 6 others vide CMP No 2572/21 of Hon'ble Judicial 1st Class Magistrate Court 1, it is learned that there are some admitted facts that relates to this crime. Hence in order to verify all those admitted facts by the Petitioner, application to avail certified copy of CMP 2572/2021, the sworn statement of the Petitioner before the court and the judgement of the CMP 2572/2021 were submitted before the Hon'ble Judicial 1st Class Magistrate Court- 1 Attingal by the investigating officer. The reply is yet to be received.

III. For the effective investigation of crime 250/2022 of Chirayinkeezh Police station the FIR of Crime 1150/2021 U/s 420, 34 IPC of Fort Police Station Thiruvananthapuram is to be verified. Hence the investigating officer sent request to Hon'ble Judicial 1st Class Magistrate Court -II Thiruvananthapuram for the certified copy of FIR. The reply is yet to be received.

IV. In order to verify the money transaction details between the Petitioner and Haja Maheen, request was sent to the Branch Manager, Dhanlaxmy Bank, Manacad Thiruvananthapuram for providing the same for the relevant period, under the provisions of Banker's Book of Evidence Act.

V. The signature of one Muhsin Sadath is seen in the question document of this case as witness. He was identified as Muhsin Sadath age 47, S/o S.F Pookkoya Thangal, residing at TC-67/618(2), Kallattumukku, Mythri Nagar, Manacad Village Thiruvananthapuram. He was questioned and his statement was recorded by the investigating officer. According to him, the agreement was signed at the office room adjacent to his house. Asif Azad, Haja Maheen and himself were present at

that time. The document prepared in the handwriting of Haja Maheen. He signed in the document as witness and witnessed the incident. He introduced Azif Azad to Haja Maheen. He is .conversant with the facts and circumstances that relates to the signing of an agreement between the Petitioner and Haja Maheen.”

7. The investigating officer submitted that the crucial evidence of the case are yet to be received from various authorities. In the light of the above statement, I am of the considered opinion that the prayers in this writ petition to monitor the investigation in Crime No. 250/2022 of Chirayinkeezhu Police Station is not necessary. As on today, the investigation is going on smoothly and there is no reason to interfere with the investigation. Therefore, recording the statement submitted by the Station House Officer, this writ petition can be closed.

8. But this writ petition cannot be disposed of like this. The learned Public Prosecutor submitted that the petitioner is filing petition after petition in this case. The learned Public Prosecutor submitted that about 10 Interlocutory Applications are filed in this case with unnecessary averments against the judiciary and also against the Public Prosecutor. It is also submitted that some of the Interlocutory Applications are filed contradictory to the prayers in the Writ Petition(Crl). Therefore, the learned Public Prosecutor submitted that this Writ Petition(Crl) may be dismissed with cost. The learned Public Prosecutor also submitted that another Writ Petition(Crl) No.202/2023 filed by the petitioner was dismissed by this Court with cost as per judgment dated 3/4/2023. The above judgment is confirmed by the Division Bench in judgment dated 24/5/2023 in WA No.776/2023. Therefore, the learned Public Prosecutor submitted that the petitioner may be directed to withdraw the allegations in the affidavit filed in the above Interlocutory Applications, especially against the government pleader and judiciary. This Court asked the petitioner, whether he wants to withdraw the affidavits filed along with the petitions. But the petitioner submitted that he is sticking to the averments in the affidavits and he is not withdrawing the averments in the affidavits. In such circumstances, this Court decided to consider the contentions of the learned Public Prosecutor.

9. The first Interlocutory Application is filed as IA No.1/2022. The prayer in IA No.1/2022 is to stay all further proceedings in OS No.33/2022 pending before the Sub Court, Thiruvananthapuram. It is stated in the affidavit filed along with this petition that the petitioner is not seeking another agency to investigate the case because the petitioner has good faith in the Kerala Police and the witnesses. According to the petitioner, the proceedings in OS No.33/2022 of the Sub Court, Thiruvananthapuram will cause serious injuries to the petitioner and injuries cannot be reversed at any cost. First of all, in a writ petition(Crl) filed under Section 226 of the Constitution of India, a suit pending before the civil court cannot be stayed. Since the prayer in IA 1/2022 is to stay a pending suit in a civil case, the same cannot be entertained and therefore, IA No.1/2022 is dismissed.

10. IA No. 2/2022 is filed to produce certain documents as Ext.P6 to P9. Since

the writ petition(Crl) itself is disposed of by this Court, those documents need not be accepted at this stage and the contentions based on those documents are left open. Therefore, IA No. 2/2022 can be closed, leaving open the contentions of the petitioner based on those documents.

11. The next application filed is IA No.3/2022. The prayer in this Interlocutory Application is interesting. The petitioner prays to pass an order in the nature of mandamus to quash the entire proceedings in FIR No.250/2022 of Chirayankeezhu Police Station. The main prayer in the Writ Petition(Crl) is to monitor the investigation in FIR No.250/2022, Now in the Interlocutory Application, the petitioner want to quash the proceedings in FIR 250/2022. The prayer in the Interlocutory Application is contradictory to the prayer/main relief in the Writ petition. In the affidavit filed along with this petition, the petitioner submitted that he has no faith in the Kerala Police. Certain observations are there in the affidavit against the learned judge who heard this case earlier. Paragraphs 9 and 10 of the above affidavit accompanying IA No.3/2022 is important. The same is extracted hereunder:

"9. That this Hon'ble court is not listening petitioner words and not going through the documents produced as Exhibits proving the violation of Anticipatory Bail order.

10. That this Hon'ble Court is not understanding the situation and the Hon'ble court is giving more and more time to the police to help accused."

12. In paragraph 9 it is stated that this Court is not listening to the petitioner's words and not going through the documents produced as exhibits. These type of statements cannot be tolerated. The Judges are sitting in court to hear the grievances of the parties and sufficient respect and accommodation will be given to parties who are appearing in person. But, when unnecessary arguments are raised by a party in person without knowing the decorum of the court, this Court has to interfere. The petitioner ought not have averred in the affidavit that the Court is not listening the petitioner without any basis. Moreover, the prayer in this petition is to quash an FIR for which the petitioner himself prayed in the writ petition for an investigation with the monitoring of this Court. I am of the considered opinion that this is a frivolous petition filed by the petitioner and it is to be dismissed with cost because he is making unnecessary comments against the court also.

13. In IA No. 4/2022 also, the prayer is to quash the proceedings in FIR No.250/2022. The affidavit along with the petition was filed on 13/10/2022 and the affidavit accompanying IA No.3/2022 was filed on 12/10/2022. In IA 4/2022, paragraph 3(b) and (c) is important. The same is extracted hereunder:

"3. xxxx

(b). Thus, petitioner approach Hon'ble High Court and the Hon'ble Justice Devan Ramachandran Lordship intervene into the matter and give protection to

petitioners.

c. Due to the fear with Hon'ble Justice Devan Ramachandran Lordship the special branch (special branch intervene when petitioner filed complaint with chief minister) investigate into the matter and took my statement and handover it to Chirayinkeezhu police station."

14. These are unnecessary comments from the side of the petitioner without any basis. The court is deciding cases and not the individual judges. Moreover The prayer in I.A.No.3/2022 and IA No. 4/2022 are almost similar. Therefore, I am of the opinion that I.A.No.4/2022 is also to be dismissed.

15. IA No.5/2022 is filed to issue direction to the 1st respondent to handover the investigation to any other independent agency other than Kerala Police and Crime Branch. There is no such a prayer in the writ petition. Moreover in the affidavit filed on 29/8/2022 in I.A.No.1/2022, the petitioner submitted that he has got confidence in Kerala Police. So it is clear that, conflicting pleadings are raised by the petitioner in the writ petition and in the Inter Interlocutory applications. Moreover, this Court already found that the present investigation is going smoothly and the prayer in this Interlocutory Application need not be considered. Therefore, IA No. 5/2022 is also to be dismissed.

16. IA No. 6/2022 is filed to issue directions to the 3rd respondent to file an affidavit in one paragraph showing the reason on why in between 17/4/2022 to 29/9/2022, respondent No.3 did not file application to get original agreements, cheques from the Sub Court, Thiruvananthapuram. In the affidavit accompanying this petition, the petitioner submitted that he is not using any brain to file this petition. It is also submitted that the petitioner wants to congratulate the advocate who favoured respondent No.3. I do not understand why this petitioner is filing these type of petitions. There is no basis in this petition also, therefore, I am dismissing the same.

17. Thereafter, the petitioner filed IA No. 1/2023. This is a petition to receive Exts. P10 to P17 documents. These documents include some of the complaints filed before the Chief Minister, the Chief Justice of India, the President of India etc. Those are not relevant in the facts and circumstances of the case, therefore, IA 1/2023 is also dismissed.

18. IA No. 2/2023 is filed to implead respondents 4 and 5 herein in that application as respondents 4 and 5 in writ petition(Crl). The 4th respondent is a Government Pleader who appeared in this case earlier. Unnecessary averments are made against the Government Pleader. It will be better to extract paragraphs 4 and 5.

"4. That initially, the police were only helping the accused, but now it appears that the government pleaders are also supporting the crimes committed in FIR 250/2022 of Chirayinkeezhu Police Station. Specifically, the Government Pleader named SEENA C (respondent no. 4) is making arguments for the accused in the

case instead of providing information about the stage of the investigation. Given this, it is necessary to add SEENA C (respondent no. 4), the government pleader, as a respondent in their personal capacity. While it is not a problem for the government pleader to argue for the accused, the petitioner in this case is the de facto complainant and victim, and the accused is the one who committed theft and forgery, which is a crime punishable under section 467 of the Indian Penal Code with a maximum punishment of life imprisonment. The actions of the government pleaders appear to be working like a mafia to protect the accused.

5. That there is a doubt that the police and government pleader named SEENA C [respondent no.4), who are helping the accused, have taken bribe and the allegations against them remain unresolved. Therefore, a serious investigation should be conducted against the police and SEENA C (respondent no. 4) under sections 2(c) and 3 of the Prevention of Corruption Act, 1988. Failure to do so would be an insult to the law and judiciary, especially given that the matter is currently before this Honourable High Court and the police are still assisting the accused in evading the law. Additionally, the illegally obtained anticipatory bail has not been questioned. To investigate these crimes and shed light on the matter, it is necessary for the Vigilance and Anti-corruption Bureau to conduct an investigation to uncover the mystery of the bribe.”

19. The petitioner is making allegations against a Government Pleader of this Court without any basis. This cannot be entertained. No document is produced to support the averments in paragraphs 4 and 5. Since the petitioner is appearing as party in person, this court usually close these type of cases without much discussion. But there is a limit for tolerating these types of litigants. The petitioner is not an illiterate person and he is well educated. Such a person is making unnecessary allegations against a Government Pleader of this court. The court is not sitting to protect the rights of the litigants alone, but the court has to protect the interest of lawyers and Government Pleaders who are part of the Judiciary, when there is unnecessary allegations are raised against them by a litigant without any basis. I am of the firm opinion that the averments in paragraphs 4 and 5 against the learned Government Pleader is false and it is an unnecessary averment from the side of the petitioner. Therefore, this petition is also to be dismissed.

20. The next petition is filed as IA No. 3/2023. It is a petition in which the prayer is to issue direction to the 5th respondent, Director of Vigilance and Anti-Corruption Bureau to take cognizance of the offences under the Prevention of Corruption Act against the 4th respondent who is the Government Pleader and the 3rd respondent Station House Officer, Chirayinkeezhu police station and officers of the Sub court and the Additional Sub Court, Thiruvananthapuram. Here also unnecessary comments are made in the affidavit against the the Government Pleader. I do not want to extract those averments in this writ petition(Crl) because those are without any basis and is to be ignored. Therefore, IA No. 3/2023 is also to be dismissed.

21. The next application filed is IA No. 4/2023. There the prayer is to receive certain additional documents. Some of the judgments of the Apex court is also produced. I am of the opinion that the same is also not relevant in the facts and circumstances of the case. Therefore IA No. 4/2023 is also dismissed.

22. When this court asked the petitioner, whether he is withdrawing the unnecessary averments in the affidavit filed along with the Interlocutory applications, he said that, he is sticking to the same. The petitioner filed a writ petition before this Court earlier as WP(Crl) No. 202/2023. That Writ Petition(Crl) was dismissed by this court as per judgment dated 3/4/2023 in WP(Crl) No.202/2023 with cost. The relevant portion of the above judgment is extracted hereunder:

"13. In the above circumstances, I find no merit in this writ petition. Due to the frivolous nature of this writ petition, it is dismissed with costs of Rs.25,000/- payable by the petitioner to the Kerala Legal Services Authority. If the costs imposed are not paid by the petitioner within 30 days from today, the Kerala Legal Services Authority shall be entitled to initiate proceedings to recover the same by resorting to appropriate steps in accordance with law.

This writ petition is dismissed."

23. The above judgment was confirmed by the Division Bench of this Court in WA No.776/2023. The relevant portion of the judgment dated 24/5/2023 in WA No.776/2023 is extracted hereunder:

"7. The petitioner does not point out any specific instance of any violation of his constitutional rights, or any statutory rights. Challenging an order passed by the Magistrate in his complaint and simultaneously filing the writ petition alleging complaints against those persons who are respondents in the complaint can be an example of abuse of the process of law whether by design or being deliberate. The learned single Judge had dismissed the writ petition relying on the judgment of the Hon'ble Supreme Court and imposed a cost of Rs.25,000/-. Hence the appeal.

The above narrative in the writ appeal makes it clear that allegations are raised against this Court. The Hon'ble Supreme Court has cautioned that easy access to justice should not be misused as a license to file misconceived or frivolous petitions. We have gone through the writ petition and the writ appeal thoroughly. We do not see any specific instance of violation of any rights of the petitioner. We also feel that the learned single Judge was gracious enough only to award a cost of Rs.25,000/- for filing such a frivolous writ petition. We do not find any grounds to interfere with the findings of the learned single Judge and therefore the writ appeal fails and is dismissed."

24. In the light of the above judgments, this Court specifically asked the petitioner whether he is withdrawing the affidavits filed along with the petitions. But the petitioner submitted that he is not withdrawing the affidavits and he is

sticking to the above affidavits. Even after imposition of cost in an earlier proceeding, the petitioner is continuing with his frivolous litigations.

25. In such circumstances, I am of the opinion that, exemplary cost is to be imposed on the petitioner while dismissing this writ petitions.

Therefore, this Writ Petition (Crl) and all the interlocutory applications filed in this writ petitions are dismissed with cost of Rs.50,000/-, payable by the petitioner to the Kerala Legal Services Authority. If the cost imposed is not paid by the petitioner within 30 days from today, the Kerala Legal Services Authority shall be entitled to initiate proceedings to recover the same by resorting to appropriate steps in accordance with law.