
(2021) 01 KL CK 0227
In the High Court Of Kerala
Case No : Writ Petition (C) No. 12971 Of 2020

K.J. Stephen

APPELLANT

Vs

State Police Chief And Ors

RESPONDENT

Date of Decision : 06-01-2021

Acts Referred:

Indian Penal Code, 1860 — Section 120(B), 419, 420 465, 468

Citation : (2021) 01 KL CK 0227

Hon'ble Judges : Raja Vijayaraghavan V, J

Bench : Single Bench

Advocate : L. Rajesh Narayan, Mansoor B.H

Final Decision : Disposed Of

Judgement

1. The petitioner is a senior citizen. He is the 1st accused in Crime No. 140 of 2019 of the Vagamon police station registered under Sections 465, 468, 419, 120B, 420 r/w. Section 34 of the Indian Penal Code. In the said crime, the son of the petitioner is arrayed as the 2nd accused. There are other accused as well. The de facto complainant in the said crime is the estranged wife of the 2nd accused.

2. The 5th respondent herein, who has been arrayed in his personal capacity, is the investigating officer in the said crime. The petitioner states that the

5th respondent, acting hand in glove with his daughter-in-law, started harassing the petitioner and his family members. He contacted a close friend of

the petitioner herein and demanded a sum of Rs.15 lakhs to reprieve the petitioner from the cooked up allegations. The petitioner approached this

Court and by Ext.P2 order, he was granted an order of anticipatory bail. However, the 5th respondent continued to harass him. In the said

circumstances, the petitioner preferred Ext.P3 complaint before the 1st

respondent narrating his grievance and seeking change of investigating officer.

However, no action was taken by the 1st respondent. Later, he submitted Ext.P4 representation before the State Police Chief. The petitioner further

states that he was the owner of extensive properties at Vagamon and those properties were sold to several persons on the strength of valid title deeds.

Those persons have put up constructions after obtaining permits and licences. After registration of the crime, the revenue authorities refused to accept

basic tax from the purchasers. This led the purchasers to approach the petitioner and threaten him. According to the petitioner, this is the handiwork of

the 5th respondent. He would state that his daughter-in-law instituted O.S.No.161 of 2010 claiming rights over 10 Acres of property and the suit was

decreed by the trial court and confirmed in appeal by the Subordinate Judge, Kattappana. Against the judgment rendered by the courts below, the

petitioner has approached this Court by preferring R.S.A.No.827 of 2018 and by Ext.P1 order dated 29.3.2019, status quo of the disputed property as

it existed on the lower court's decree was ordered to be maintained. In spite of the above, several persons at the instance of the 5th respondent

are frequenting the home of the petitioner, where he is residing with his aged wife and they are being threatened with physical harm. Seeking

protection for his life and liberty, the petitioner has preferred Ext.P5 complaint before the respondents 2 to 4. According to the petitioner, no assistance

was rendered by the said respondents. It is in the afore circumstances that the petitioner has approached this Court seeking a direction to the 4th

respondent to afford adequate protection to the life and property of the petitioner and also for a further direction to the 2nd respondent to initiate action

on Ext.P5 complaint submitted by him and for incidental reliefs.

3. The learned Government Pleader has filed a detailed statement. It is submitted that the 5th respondent is the investigating officer in Crime No.140

of 2019 of Vagamon police station. In the said crime, the allegation against the petitioner, his son and the other accused is that with intent to make

unlawful gain, the accused created bogus pattas in respect of about 10.52 Acres of land owned by the de facto complainant and thereafter, sold the

same to various persons. Though the investigation was initially conducted by the Sub Inspector of Police, Vagamon police station, it was later

transferred to the 5th respondent, who is the Deputy Superintendent of Police,

District Crime Branch. Investigation has revealed that on 26.5.1989, the de facto complainant, the petitioner and their relatives purchased about 54.7 Acres of land covered under Sy. No.813 of Vagamon village, which property is known as Ranimudy Estate. After purchase of the property as aforesaid, the purchasers obtained illegal possession of 110 Acres including 55.3 Acres of non patta Government land, lying adjacent to the patta land. Investigation has revealed that the accused No.1 and his son have forged pattas in the name of non-existent persons and after registering a power of attorney in the name of the 3rd accused, assigned the property to various persons. The total extent of Government land involved is about 46.22 Acres and the loss caused to the Government is estimated at Rs.60 Crores. Besides the sale of Government land as aforesaid, the accused are also alleged to have created bogus pattas in respect of about 54.7 Acres of patta land. Investigation has revealed that the revenue authorities have mistakenly shown the survey number of patta land as 813 instead of 724, which mistake was utilized by the accused for transferring non patta land. It is further stated that the investigating officer has only diligently conducted the investigation with a view to bring out the colossal fraud. It is in order to stifle the investigation that false accusations are raised against the investigating officer.

4. The 5th respondent has filed a counter affidavit reiterating the very same aspects. In his counter, the 5th respondent states that all that he has done is effectively investigate the matter and his diligence has disturbed the petitioner leading to the filing of the writ petition. It is further stated that he has never instigated any person to threaten the petitioner and the assertions made are all false.

5. A reply affidavit has been filed by the petitioner herein controverting the affidavit filed by the learned Government Pleader as well as the 5th respondent. In the reply affidavit, he has reiterated the entire facts and states that the petitioner and his wife who are senior citizens are living in constant fear. It is further stated that several persons had come to the residence of the petitioner herein and he was asked to withdraw the complaint lodged against the 5th respondent. He has also produced Ext.P6 affidavit sworn by a certain M.A. Navas, wherein he asserts that the petitioner and the said person are family friends and that a sum of Rs.15 lakhs entrusted with

him by the petitioner was handed over by him to the 5th respondent.

6. I have anxiously considered the submissions advanced and have gone through the entire records.

7. The prime accused in a crime has filed this writ petition alleging that the investigating officer has been harassing him at the instance of the de facto

complainant. From the statement filed by the learned Government Pleader, it appears that the investigation is still in the early stages. Very serious

accusations of forging pattas and encroachment of Government land are raised against the petitioner. It is submitted across the bar by the learned

Government pleader that the District Collector has already identified 12 bogus pattas issued in the above manner and those pattas have also been

cancelled. There cannot be any doubt that the allegations are extremely grave and require to be investigated in much detail.

8. The specific case of the petitioner is that he is living under constant threat and fear of those persons who had purchased the property from him. He

asserts that they are raising threats at the instance of the 5th respondent who is the investigating officer. It is curious to note that the petitioner has not

arrayed any of the assignees as respondents in this writ petition. Nowhere in Ext.P3 and P4 complaint has the petitioner stated that the purchasers of

the property, at the instance of the 5th respondent had approached him and raised threats. All that is stated in Ext.P5 is that certain persons at the

instance of the 5th respondent have come to his house and have threatened him demanding that the complaint lodged by him against the police officer

should be withdrawn. There are serious inconsistencies in the version of the petitioner in Exts.P3 to P5 complaints and the assertions in the writ

petition. The most serious accusation against the 5th respondent is the handing over of a sum of Rs.15 lakhs by a family friend for refraining from

harassing the petitioner. In paragraph No.5 of the writ petition, the petitioner, without naming any person has averred that as demanded by the 5th

respondent, a sum of Rs.15 lakhs was paid by his son to rescue him from harassment and hardship. However, along with the reply affidavit, the

petitioner has filed an affidavit by a certain M.A.Navas, who states that it was the petitioner, who had handed over a sum of Rs.15 lakhs and the said

amount was handed over to the DYSP. In other words, the petitioner has no consistent version in respect of the handing over of the money as well.

9. Having considered the entire facts, I am of the considered opinion that the institution of the writ petition is only to put a spanner into the investigation which is being diligently conducted by the 5th respondent. If any third party is causing threats to the petitioner, it is for him to approach the 3rd respondent and lodge a complaint giving exact details of the identity of the person and the manner of threat. The 3rd respondent shall look into the complaint and if the same is found genuine, shall afford adequate protection to the petitioner and ensure that no harm is caused. The petitioner on his part shall cooperate with the investigation as directed by this Court in Ext.P2. With those directions, this writ petition is disposed of.