



2024:KER:80111

W.A.No.1438 of 2024

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 22ND DAY OF OCTOBER 2024 / 30TH ASWINA, 1946

WA NO. 1438 OF 2024

CRIME NO.120/2023 OF Koduvally Police Station, Kozhikode

AGAINST THE JUDGMENT DATED 25.07.2024 IN
WP(Cr1.) NO.320 OF 2024 OF HIGH COURT OF KERALA

APPELLANT:

ABDU RAHMAN,
AGED 61 YEARS, S/O AHAMMED KUTTY, IYYAD P.O, UNNIKULAM,
BALUSSERY, KOZHIKODE DISTRICT, PIN - 673574.

BY ADVS.M.B.SHYNI
AJITH P.C.
ELDHOSE JOY
SARAFUDHEEN T.
V.R.ANILKUMAR

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, HOME DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.
- 2 STATE POLICE CHIEF KERALA,
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM,
PIN - 695001
- 3 DISTRICT POLICE CHIEF
KOZHIKODE, PAVAMANI RD, TAZHEKKOD, KOZHIKODE,
PIN - 673004
- 4 THE STATION HOUSE OFFICER
KODUVALLY POLICE STATION, KODUVALLY P.O,
KOZHIKODE, PIN - 673572

OTHER PRESENT: SRI K P HARISH, SR GP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22.10.2024, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



2024:KER:80111

W.A.No.1438 of 2024

2

NITIN JAMDAR, C.J.

&

S.MANU, J.

W.A.No.1438 of 2024

Dated this the 22nd day of October, 2024

JUDGMENT

S.MANU, J.

Appellant's son Al Ameen was found dead in a well in the property of one Mohammed.P. in Pannikottur on 28 February 2023 at about 6 am. Crime No.120/2023 was registered under Section 174 of Cr.P.C. by Koduvally Police Station. Body was taken out of the well and inquest was conducted on the same day. Autopsy of the body was conducted in Government Medical College, Kozhikode. Police conducted investigation and concluded that the death was accidental. Final report has been filed stating so.

2. Petitioner is dissatisfied with the investigation by police. He believes that his son was murdered. He submitted representations to the Deputy Superintendent of Police, Thamarassery on 1 March 2023



2024:KER:80111

W.A.No.1438 of 2024

3

and State Police Chief on 30 March 2023 seeking proper investigation. He thereafter filed W.P.(CrI.)No.320/2024 before this Court. The main relief sought in the writ petition is for a direction to the State Police Chief to constitute an investigation team, other than local police and to investigate the case properly.

3. As directed by the learned Single Judge a statement was filed by the SHO, Koduvally Police Station in the writ proceedings. The learned Single Judge heard both sides and by judgment dated 25 July 2024 concluded that it is not a fit case to direct further investigation or investigation by a different team. Aggrieved by the judgment of the learned Single Judge, this intra-court appeal has been filed.

4. We heard the learned counsel for the Appellant and learned Public Prosecutor. The learned Public Prosecutor made the case diary available. We have carefully examined the case diary.

5. Following facts are discernible from the case diary:

The son of the Appellant and some of his friends gathered in the house of their common friend Muhammed Anas on 26 February 2023 at night. Some residents of the locality suspected that they had



2024:KER:80111

W.A.No.1438 of 2024

4

assembled for using narcotic drugs and informed police. A police party from Koduvally Police Station arrived at the house of Muhammed Anas at about 23:45 hours. The deceased and two of his friends on seeing the police vehicle ran out of the house through the back door. Two days later, a body was found floating in the well near the house of the de facto complainant. The body was taken out and was identified as that of the son of the Appellant. Inquest and autopsy were conducted. Some injuries were noticed on the body. Sample of water in the well was collected and diatom examination was conducted. The result of the said examination is to the effect that water found inside the body of the deceased was from the same well. Police interrogated several persons of the locality, friends of the deceased who had assembled with him on the fateful night, collected CCTV visuals from nearby places, recorded statements of the forensic experts as also completed all legal proceedings to be followed in a case of unnatural death. The investigating officer concluded that while running from the house of Muhammed Anas at night on seeing the police party, the deceased accidentally fell into the well and died due to drowning.

6. On careful examination of the case diary, we are satisfied that the police have taken sufficient efforts in this case. We do not notice any



2024:KER:80111

W.A.No.1438 of 2024

5

lapses on the part of police in following the procedures as per law. Investigation by the Sub Inspector of Police of Koduvally Police Station was verified by the Deputy Superintendent of Police. The latter issued several directions to the former as seen from the case diary. Thereafter, the Sub Inspector continued the investigation and took steps in compliance with the directions issued by the Deputy Superintendent of Police. The observations and directions of the Dy.S.P. was after a thorough verification of the investigation till then conducted. Around 50 persons were interrogated by police. Needful scientific and forensic examinations were also conducted. The forensic experts visited the place of occurrence and their opinion was to the effect that all injuries noticed on the body of the deceased would have been caused by fall into the well. It is to be noted that the protective wall of the well, as noticed in the mahazar, was only half feet high and the well was covered only with a net.

7. The materials gathered by the police during the investigation do not indicate any possibility of a murder or involvement of anyone in the unfortunate incident. On the other hand, statements of the persons interrogated by the police lead to the conclusion that the son of the Appellant accidentally fell into the well. Question is as to whether



2024:KER:80111

W.A.No.1438 of 2024

6

interference is required, taking into account only the suspicion and apprehensions of the Appellant, when the verification of the case diary shows that the investigation was satisfactory. We are of the view that it is impermissible.

8. Purpose of investigation is to find out the truth. Ensuring justice to the victims of crimes and society at large by bringing the culprits to law and prosecute them is the solemn duty of state, executed through police. Investigation falls exclusively within the domain of police. Of course, fair investigation is a concomitant of Article 21 of the Constitution. Hence constitutional courts should intervene in appropriate cases to ensure that the above solemn duty is scrupulously discharged by police, strictly in accordance with law. Nevertheless such interventions are impermissible when the police discharge their duty of conducting investigation in accordance with the relevant legal provisions and in a fairly effective and satisfactory manner, as the courts shall not unnecessarily transgress to the domain demarcated to the police. We refer to the following authorities in this regard-

9. The Privy Council, in **Emperor v. Khwaja Nazir Ahmad** [AIR (32) 1945 PC 18] held thus:-



“In their Lordships' opinion however, the more serious aspect of the case is to be found in the resultant interference by the Court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491, Criminal P.C., to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then. It has sometimes been thought that Section 561A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section gives no new



powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code, and that no inherent power had survived the passing of that Act. No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation and for this reason Newsam J. may well have decided rightly in MMST Chidambaram v. Shanmugam Pallai [AIR 1938 Mad. 129]. But that is not this case.”

10. In **Divine Retreat Centre v. State of Kerala and Ors.** [(2008) 3 SCC 542] it was held by the Hon’ble Supreme Court as follows:-

“40. In our view, the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither are the accused nor the complainant or informant entitled to choose their own investigating agency to investigate a crime in which they may be interested.”



“41. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and non-compliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code.”

11. In **State of Bihar and another v. J.A.C. Saldanha and Ors.** [(1980) 1 SCC 554] the Apex Court held as follows:-

“25. There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having



been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This had been recognised way back in King Emperor v. Khwaja Nazir Ahmad (AIR 1944 PC 18), where the Privy Council observed as under:

"In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the



2024:KER:80111

W.A.No.1438 of 2024

11

police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then."

12. In view of the foregoing discussion, we find that no interference is warranted in the investigation in this case. We, hence, affirm the conclusion of the learned Single Judge. The Appeal is therefore dismissed.

Sd/-

**NITIN JAMDAR
CHIEF JUSTICE**

Sd/-

**S.MANU
JUDGE**

skj