

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 18TH DAY OF APRIL 2023 / 28TH CHAITHRA, 1945

CRL.M.C. NO.1363 OF 2023

TO QUASH ANNEXURE-A2 ORDER IN CMP NO.1924/2022 PENDING BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-V (SPECIAL COURT FOR MARK LIST CASES), THIRUVANANTHAPURAM.

PETITIONER/COMPLAINANT:

N. SUNDARESHAN,
AGED 83 YEARS, S/O. LATE P.V. NEELAKANDAN,
RETIRED UNDER SECRETARY,
RESIDING AT SREERAGAM, HOUSE NO. MRA 134,
MOONNAMOODU, VATTIYOORKAVU P.O.,
THIRUVANANTHAPURAM, PIN-695 013.

BY ADVS.MAJIDA S.
AJIKHAN M.
MUHAMMED SUHAIL K.H.

RESPONDENTS/STATE, INVESTIGATING OFFICER:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, PIN-682 031.

2 STATION HOUSE OFFICER,
MANNANTHALA POLICE STATION,
THIRUVANANTHAPURAM-695 043.

R1&R2 SMT. V. SREEJA, SENIOR PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18.04.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 18th day of April, 2023

Annexure A2 order passed by the Judicial First Class Magistrate Court-V, Thiruvananthapuram (for short, the court below) is under challenge in this Crl.M.C.

2. The petitioner herein filed a private complaint at the court below against the respondents. The 1st respondent is the wife of the 2nd respondent. It is alleged that the respondents are conducting religious classes and promoting youngsters belonging to high profile family to convert to Christianity under the aid of their Trust named Eternal Truth Ministries Charitable Trust. It is further alleged that the respondents induced the petitioner's brother in law to part with Rs.90,000/- giving a false promise that they will cure the disease of his daughter and cheated him. It is further alleged that thereafter, the respondents demanded a further sum of Rs.8,00,000/- from petitioner's brother in law which he refused to give and

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thereafter, they are tutoring his son against his parents and using him for their illegal activities.

3. The petitioner made a request at the court below to forward the complaint for investigation under Section 156(3) of Cr.P.C. However, the court below turned down the said request and decided to proceed with the enquiry under Section 202 Cr.P.C. as per Annexure A2.

4. Heard Smt. S. Majida, the learned counsel for the petitioner and the learned Public Prosecutor appearing for respondents 1 and 2.

5. Annexure A1 is the private complaint filed by the petitioner at the court below. The narration of the facts therein makes it clear that serious allegations have been levelled against the respondents which require a detailed investigation. The court below relied on the decision of this Court in **Jibin Joseph K.A. v. Union Territory of Lakshadweep and another [2022 (4) KHC 458]** and held that this is not a fit case to be investigated by the police. In **Jibin Joseph** (supra), this Court held that the

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power under Section 156(3) of Cr.P.C. cannot be exercised casually or mechanically by the Magistrate and before forwarding the complaint under Section 156(3) of Cr.P.C., the Magistrate should scrutinize the allegations in the complaint to satisfy himself that it discloses the necessary ingredients of the offence. The Apex Court recently in **XYZ v. State of Madhya Pradesh and others [2022 (5) KHC 403]** has held that in cases wherein documentary or other evidence are alleged to be in the physical possession of the accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the Cr.P.C., the matter ought to be sent to the police for investigation. In appropriate cases where the data/material could better be collected by the police missionaries, certainly the Magistrate should exercise his discretion in forwarding the complaint to the police rather than opting himself to proceed under Section 202 Cr.P.C. The learned counsel for the petitioner submitted that the documentary and other evidence of accepting money from

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the victim are under physical possession of the accused persons.

6. On perusal of the allegations in the complaint and considering the entire facts and circumstances of the case, I am of the view that this is a fit case where the Magistrate ought to have forwarded the complaint to the police for investigation. Hence, Annexure A2 order stands set aside. The learned Magistrate is directed to forward the complaint to the police for investigation under Section 156(3) of Cr.P.C.

The Crl.M.C. is allowed as above.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

bpr

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APPENDIX OF CRL.MC 1363/2023

PETITIONER'S ANNEXURES

Annexure A1	TRUE COPY OF THE COMPLAINT IN CMP NO. 1924/2022 DATED 09/12/2022
Annexure A2	CERTIFIED COPY OF THE ORDER IN CMP NO. 1924/2022 DATED 09/12/2022
Annexure A3	TRUE COPY OF THE JUDGEMENT IN WRIT PETITION NO. 3218/2009 DATED 09/02/2009
Annexure A4	TRUE COPY OF THE REPLY OF THE CI OF POLICE WHO IS THE 3RD RESPONDENT IN THE WRIT PETITION NO. 3218/2009