IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

TUESDAY, THE 1ST DAY OF APRIL 2025 / 11TH CHAITHRA, 1947

CRL.MC NO. 5702 OF 2019

AGAINST THE ORDER DATED 09.07.2019 IN CMP NO.583 OF 2018 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, CHOTTANIKKARA

PETITIONERS:

1 T.G.RAJARAM SHENOY,AGED 50 YEARS
S/O. GOVINDA SHENOY, RADHESHYM,
T. D. EAST SANNIDHI ROAD,
COCHIN 682 035.

2 K.J. SUDHAKARA KAMATH,S/O. JANARDHANA KAMATH,
M/S. COCHIN SANITARY DURGA TEMPLE, BUILDINGS,
T.D. ROAD, COCHIN 682 035.

BY ADVS.DINESH R.SHENOY
SRI.EBIN MATHEW
SRI.P.ROHIT PREMANANDAN SHENOY

RESPONDENTS:

1 PROF.K.K.HARI PAI, AGED 62 YEARS
S/O. KRISHNA PAI, 40/5575,
PADMAVILAS BUILDING TD ROAD, FLOWER JUNCTION,
COCHIN 682 035.

2 STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,M HIGH COURT OF KERALA,
ON BEHALF OF THE SUB INSPECTOR OF POLICE,
AMBALAMEDU POLICE STATION, KARIMUGHAL.

BY ADVS. SRI.K.J.JOSEPH (ERNAKULAM) FOR R1
SRI.B.DEEPAK FOR R1
SRI.SANGEETHARAJ.N.R, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 25.03.2025, THE COURT ON 01.04.2025 PASSED THE FOLLOWING:

O R D E R

The order dated 09.07.2019 in C.M.P.No.583/2018 on the files of Judicial First Class Magistrate Court, Chottanikkara is under challenge in this petition filed under Section 482 Cr.P.C at the instance of the person arraigned as accused Nos.11 and 14 in the aforesaid C.M.P. The learned Magistrate, by the impugned order, had forwarded the above C.M.P to the S.H.O of Police, Ambalamedu for the registration of F.I.R and report.

2. The allegations against the petitioners herein in the complaint filed as C.M.P.No.583/2018 before the learned Magistrate, in conspectus, are as follows:

> The petitioner/complainant in that C.M.P is a devotee of late Swami Sudheendra Theertha, the devotional Guru of Gauda Saraswata Brahmin community, and the supreme head of Kashi Math. Accused Nos.1 to 7 and Accused Nos.10 to 16, who are associated with the above community, conspired with Accused Nos.8 and 9 who are respectively the Managing Director of Seven Hills Hospital, Mumbai and a Doctor of the said hospital who treated Swami Sudheendra Theertha, to commit murder of the above said Swami, and got the said Swami discharged from that hospital on 16.01.2016 at a time when the

physical and mental condition of the said Swami were totally deplorable. Swami Sudheendra Theertha, who was aged 90, was admitted in that hospital in the month of December, 2015, and he was undergoing treatment there for multiple ailments including age related issues. At about 06:30 a.m on 16.01.2016, the said Swami was discharged from that hospital in accordance with the conspiracy of the accused, and airlifted to Dehradun. Thereafter, by about 01:30 p.m on the same day, the said Swami was taken to Kashi Math at Haridwar by road at a time when his condition was extremely worse. On 17.01.2016, at about 01:30 a.m, a formal declaration was made by the second accused that Shrimad Sudheendra Theertha Swami attained samadhi at 01:30 a.m. The accused were fully aware of the fact that the above said Swami would not survive if he was discharged from the hospital in that condition and taken to Haridwar where there was a bitter cold climate of extreme winter. The accused did not care to take the said Swami to a hospital at Haridwar with the deliberate intention to ensure his death. The conspiracy to execute the murder of Sudheendra Theertha Swami, was hatched at the Kashi Math Ashram at Ambalamedu in Ernakulam District. After the death of the Swami, his body was placed in 'Padmasana' and consecrated at the Haridwar Ashram. All the above acts were pre-planned and executed by the

accused to accomplish their vested interests. Though complaints were preferred before the police about the above criminal acts committed by the accused, they did not take any action due to the influence of the accused. Hence, a complaint was filed before the Judicial First Class Magistrate Court, Chottanikkara as C.M.P.No.937/2016, which is pending enquiry before the said Court. Therefore, it is highly necessary that the complaint has to be forwarded to the Police under Section 156(3) Cr.P.C for investigation and report.

3. The complaint in the above regard was initially posted along with C.M.P.No.937/2016 pending enquiry under section 202 Cr.P.C. before the learned Magistrate in respect of the same incident. The learned Magistrate, instead of sending C.M.P.No.937/2016 to the police under Section 156(3) Cr.P.C, had proceeded with the case in accordance with Chapter XV of the Code of Criminal Procedure. At the time of filing of C.M.P.No.583/2018, the complainant in C.M.P.No.937/2016 and one witness (who is none other than the complainant in C.M.P.No.583/2018, himself) were already examined on oath, and the relevant medical records were summoned from Seven Hills Hospital, Mumbai. It was in the meanwhile that the first witness in C.M.P.No.937/2016 had filed C.M.P.No.583/2018 in respect

of the same incident with a request to direct the police to register a crime and to commence investigation upon the allegation of murder of Swami Sudheendra Theertha. After posting the above C.M.P. for some time along with C.M.P.No.937/2016, the learned Magistrate, on 09.07.2019, passed the impugned order forwarding C.M.P.No.583/2018 to the S.H.O of Police, Ambalamedu for registration of F.I.R and report.

4. In the present petition, the petitioner would contend that the procedure adopted by the learned Magistrate in forwarding C.M.P.No.583/2018 to the police under Section 156(3) Cr.P.C, is alien to the known and established procedures of law. It is stated that, after taking cognizance of the offence in C.M.P.No.937/2016, the learned Magistrate cannot revert back to pre-cognizance stage and forward another complaint filed by a witness in C.M.P.No.937/2016, in respect of the same incident, to the police under Section 156(3) Cr.P.C. It is the further contention of the petitioner that the complaint about the alleged murder of Swami Sudheendra Theertha is totally baseless and mala fide, and that it is preferred on the basis of mere speculations. According to the petitioner, the complaint is the outcome of the ill motivated struggle of one Sivananda Pai @

Raghavendra Theertha for grabbing the position of 'Madathipathi of Sree Kashi Math Samsthan'.

5. Heard the learned counsel for the petitioners, the learned counsel for the first respondent and the learned Public Prosecutor representing the State of Kerala.

6. As stated above, C.M.P.No.937/2016 filed at the instance of a person by name Anand K Prabhu, was pending enquiry under Section 202 Cr.P.C before the Judicial First Class Magistrate Court, Chottanikkara at the time when C.M.P.No.583/2018 was filed by the first respondent herein in connection with the same incident relating to the death of Swami Sudheendra Theertha. So also, the complainant in C.M.P.No.583/2018 is the first witness who had been examined in the enquiry conducted by the learned Magistrate in C.M.P.No.937/2016. Even before the complainant in C.M.P.No.937/2016 tendering sworn statement, Crl.M.C.No.7378/2016 was filed by him before this Court to set aside the order of the learned Magistrate taking cognizance of the offence in the said C.M.P, and for a direction for police investigation. The above said Crl.M.C was dismissed as not pressed on 08.03.2017. It is thereafter that the first respondent filed C.M.P.No.583/2018, which

the learned Magistrate posted along with C.M.P.No.937/2016 for some time.

7. As already stated above, the crime alleged in C.M.P.No.583/2018 and C.M.P.No.937/2016, is one and the same. The moment when the learned Magistrate decided to record the sworn statement of the complainant in C.M.P.No.937/2016, the law envisages cognizance of the offence being taken. It is also pertinent to note that the learned Magistrate had gone a long way in the enquiry under Section 202 Cr.P.C in C.M.P.No.937/2016 by even summoning the medical records pertaining to the treatment of Swami Sudheendra Theertha at Seven Hills Hospital, Mumbai. According to the petitioners, after advancing to such an extent pursuant to the cognizance being taken in respect of the offence involved in this case, the learned Magistrate cannot revert back to the pre-cognizance stage for the sole reason that another complaint has been filed by a witness in C.M.P.No.937/2016 in respect of the same incident. Thus, the legal issue involved in this matter is whether the Magistrate is justified in reverting back to the pre-cognizance stage, and directing investigation under Section 156(3) Cr.P.C., upon the complaint of the first respondent, after cognizance having already

been taken upon the crime in the earlier complaint filed as C.M.P.No.937/2016 by another person.

8. In **S.A.S.Infratech Pvt. Ltd. v. State of Telangana [2024 SCC OnLine SC 4046 : 2024 KHC 8245],** a two judge bench of the ApexCourt held that once the Magistrate takes cognizance of the offence and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3) Cr.P.C. It was so held by following the dictum laid down by the Apex Court in **Devarapalli Lakshminarayana Reddy and Ors. v. V. Narayana Reddy and Ors. [MANU/SC/0108/1976 : 1976:INSC:136 : (1976) 3 SCC 252].** However, a three judge bench of the Hon'ble Supreme Court, in **Vinubhai Haribhai Malaviya v. State of Gujarat & Another [(2019) 17 SCC 1],** held that the above dictum in **Devarapalli Lakshmi Narayana Reddy** (supra) is one rendered without taking note of the definition of "*investigation"* under Section 2(h) of Cr.P.C., and hence not the correct exposition of law. It has been laid down by the three judge bench of Hon'ble Apex Court in **Vinubhai** (supra) that there is no legal embargo in the Magistrate

resorting to Section 156(3) Cr.P.C. even after taking cognizance of the offence. The relevant paragraph in the above judgment is as follows:

> *"28. Section 2(h) is not noticed by the aforesaid judgment at all, resulting in the erroneous finding in law that the power under Section 156(3) can only be exercised at the pre-cognizance stage. The "investigation" spoken of in Section 156(3) would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun. For these reasons, the statement of the law contained in para 17 in Devarapalli Lakshminarayana Reddy [Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252 : 1976 SCC (Cri) 380] cannot be relied upon."*

9. True that the above verdict has been rendered while dealing with the powers of the Magistrate in ordering further investigation under Section 173(8) Cr.P.C., but still the law laid down by the Apex Court on the legal issue involved in this case, has to be followed by this Court. Therefore, the mere reason that the learned Magistrate had already taken cognizance of the offence involved in this case, cannot be termed as a disqualification in passing the impugned order

under section 156(3) Cr.P.C. directing the Police to register a crime and investigate.

10. The learned counsel for the petitioners, by referring to Annexure A8 Medical Records pertaining to the treatment of Swami Sudheendra Theerdha, pointed out that the condition of the said Swamy was such that he would have suffered death, at the same time, as happened, even if he had not been discharged from the hospital, since he was not responding to medicines. According to the learned counsel, the Swamy was discharged from hospital and taken to Haridwar Ashram to fulfil his cherished desire to be there in that Ashram at the time of his last breath. Thus, it is argued that the act of the petitioners and other disciples taking the Swamy to the Haridwar Ashram on 16-01-2016 cannot be termed as culpable homicide within the meaning of Section 299 IPC. Accordingly, it is submitted that the averments in the complaint, even if accepted as such, will not constitute any offence as alleged. With regard to the above submission, it has to be stated at the outset that, in a proceedings under section 482 Cr.P.C., this Court cannot embark upon an enquiry as to the health condition of the deceased Swamy as revealed from Annexure A8 Medical Records, and whether it indicated

that the Swamy would not have survived even if he was retained in that hospital for some more days. It is a matter to be decided after the examination of the doctors who treated the Swamy, with specific reference to the contents of the above Medical Records.

11. As already stated above, the learned Magistrate has already taken cognizance of the offence alleged in this case, and gone a long way in the enquiry conducted under section 202 Cr.P.C. in the earlier complaint filed before him as C.M.P.No.937/2016. He is yet to arrive at the logical conclusions of the above enquiry, and decide whether there are sufficient grounds to proceed against the accused in connection with the offence alleged. At this stage, it is not at all desirable and proper for this Court to embark upon the question whether the allegations in the complaint, filed by the first respondent as C.M.P.No.583/2018, in respect of the same incident, would constitute the offence alleged against the petitioners and others. This is especially so in view of the fact that the decision by this Court on that point would definitely have an impact on the enquiry being conducted by the learned Magistrate in C.M.P.No.937/2016. If this Court finds that the offence alleged against the petitioners are not attracted even if the allegations in C.M.P No.583/2018 are accepted

as such, then the learned Magistrate would be put to the precarious position of winding up the enquiry in C.M.P.No.937/2016 in the midway. Likewise, if this Court finds that the allegations in C.M.P.No.583/2018 would make out the offence alleged, then also the finding in the above regard would affect the independent decision of the learned Magistrate in the enquiry being conducted under section 202 Cr.P.C. in C.M.P.937/2016. Therefore, it may not be proper for this court to express any opinion as to the mixed question of facts and law on the point whether the allegations in C.M.P.No.583/2018 would bring home the offence of culpable homicide, or not. Such a course would definitely render the enquiry in C.M.P.No.937/2016, as well as the procedures which the Investigating Agency is bound to follow as per law in C.M.P.No.583/2016, nugatory. Hence the challenge raised by the learned counsel for the petitioners on the merits of the allegations in C.M.P.No.583/2018, cannot be looked into at this stage. As a conclusion to the above discussions, I find that the prayer in this petition to quash Annexure A1 order dated 09.07.2019 in C.M.P.No.583/2018 of the Judicial First Class Magistrate, Chottanikkara, cannot be allowed.

In the result, the petition is hereby dismissed.

(sd/-)

G. GIRISH, JUDGE

jsr

APPENDIX

PETITIONER ANNEXURES

ANNEXURE A1	**CERTIFIED COPY OF THE ORDER DATED 9/7/2019 IN CMP. NO. 583/2018, JUDICIAL FIRST CLASS MAGISTRATE COURT, CHOTTANIKKARA.**
ANNEXURE A2	**TRUE PHOTOCOPY OF CMP NO. 937/2016 JFCM CHOTTANIKKARA.**
ANNEXURE A3	**TRUE PHOTOCOPY OF CRL.M.C. NO. 7378/2016, HIGH COURT OF KERALA.**
ANNEXURE A3(A)	**TRUE PHOTOCOPY OF CASE DETAILS OF CRL.M.C. NO. 7378/2016 HIGH COURT OF KERALA.**
ANNEXURE A4	**TRUE PHOTOCOPY OF REPORT DATED 6/7/2018 SUBMITTED BY SO OF POLICE, AMBALAMEDU POLICE STATION, IN CMP NO. 937/2016, JFCM CHOTTANIKKARA.**
ANNEXURE A5	**TRUE PHOTOCOPY OF THE PROCEEDINGS IN CMP. NO. 937/2016, JFCM CHOTTANIKKARA.**
ANNEXURE A6	**TRUE PHOTOCOPY OF THE SWORN STATEMENT OF THE DEFACTO COMPLAINANT IN CMP. 937/2016, JFCM CHOTTANIKKARA.**
ANNEXURE A7	**TRUE PHOTOCOPY OF CMP NO.583/2018, JUDICIAL FIRST CLASS MAGISTRATE COURT, CHOTTANIKKARA.**
ANNEXURE A8	**TRUE PHOTOCOPY OF CERTIFIED COPY OF THE MEDICAL REPORTS DATED17/9/2019 PRODUCED FROM SEVEN HILLS HEALTH CITY ON SUMMONS.**
ANNEXURE A9	**4ITRUE PHOTOCOPY OF CERTIFIED COPY OF THE PETITION FILED BY ANAND K PRABHU IN CRL.MP NO.937/2016, JFCM,CHOTTANIKKARA, TOGETHER WITH WITNESS LIST AND DETAILS OF DOCUMENTS SUMMONED.**
ANNEXURE A10	**TRUE PHOTOCOPY OF CERTIFIED COPY OF THE DEPOSITION OF K.K.HARI PAI DATED5/8/2017 IN CRL .MP NO.937/2016, JFCM I,**

CHOTTANIKKARA.

ANNEXURE A11	**TRUE PHOTOCOPY OF ORDER DATED 8/3/2017 IN CRI.MC NO.7378/2016, HIGH COURT OF KERALA**