IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
WEDNESDAY, THE 14TH DAY OF FEBRUARY 2024 / 25TH MAGHA, 1945
CRL.MC NO. 8376 OF 2023
CRIME NO.1292/2011 OF Vizhinjam Police Station, Thiruvananthapuram
SC 201/2023 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT (FOR TRIAL OF CASES RELATING TO ATROCITIES AND SEXUAL VIOLENCE AGAINST WOMEN & CHILDREN), ERNAKULAM

PETITIONER/3RD ACCUSED:

NOEL JOSEPH, AGED 32 YEARS,
S/O. JOSEPH, MUNDANKATTIL HOUSE, KUTHIYATHODU POST, CHERTHALA,
ALAPPUZHA DISTRICT, PIN - 688533.

BY ADV SEBASTIAN JOSEPH (KURISUMMOOTTIL)

RESPONDENTS/STATE/COMPLAINANT/ACCUSED 1,2 AND 4/VICTIM:

1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,
PIN - 682031.

2 THE STATION HOUSE OFFICER,
VIZHINJAM POLICE STATION, VIZHINJAM POST, THIRUVANANTHAPURAM
DISTRICT, PIN - 695521.

3 SHIHAS @ SHEFFEK, AGED 36 YEARS,
S/O. HUSSAIN, 23 / 789(A) , PANAPPANAMTHARA, S.N. LANE, KMP NAGAR,
PALLURUTHY, EDAKOCHI VILLAGE, ERNAKULAM., PIN - 682006.

4 SHIBIN @ VIJIL, AGED 36 YEARS,
S/O. SHANMUKHAN, NAMBIARPURAM, KANDATHILPARAMBIL HOUSE, PALLURUTHI,
KOCHI, ERNAKULAM DISTRICT-, PIN - 682006.

5 AJMAL, AGED 32 YEARS,
S/O. UBALD, CHAKKAMADAM, MEENMUKKIL, KANDATHIPARAMBIL, HOUSE NO. 7/
147, MATTANCHERI VILLAGE, KOCHI, ERNAKULAM DISTRICT, PIN - 682002.

6 XXXXXXXXXX
XXXXXXXXXX XXXXXXXXXX

SR.PUBLIC PROSECUTOR SRI.VIPIN NARAYAN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14.02.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"CR"

O R D E R

The 3rd accused in SC No.201 of 2023 on the file of Additional District and Sessions Court (for the trial of cases relating to Atrocities and Sexual violence against women and children), Ernakulam (hereinafter referred as Additional District Court, Ernakulam), has filed this Crl.M.C, invoking inherent jurisdiction of this Court under Section 482 of Cr.P.C, to quash Annexure-A1 final report in Crime No.1292 of 2011 of Vizhinjam Police Station, registered under Section 376 read with Section 34 of IPC, and the proceedings in SC No.201 of 2023, and also for a declaration that the Additional District Court has no jurisdiction to try that case.

2. The prosecution allegation is that, on 13.12.2011 at 8.15 a.m, CW2 the victim girl, left her house at Thiruvananthapuram and proceeded to Ernakulam, and while travelling in the bus, she got acquainted with the 1st accused, and under his instigation, she alighted at Palluruthy along with him, and from there, she was taken to various places at Ernakulam by the 1st accused and his friends (A2 to A4), and they sexually assaulted her and committed rape on her.

Thereafter, she was abandoned at Ernakulam Railway Station.

3. The father of the victim lodged a man missing complaint before Vizhinjam Police Station on 14.12.2011 and Crime No.1292 of 2011 under Section 57(1)(a) of the Kerala Police Act was registered on its basis, and SI of Police, Vizhinjam started investigation in that crime. Meanwhile, the victim girl, who was found in Railway Station, Ernakulam, was taken custody by Police and she was kept in Women Police Station at Ernakulam. On getting information that the missing girl was kept in Women Police Station, Ernakulam, Vizhinjam Police proceeded to Ernakulam, and brought the victim girl to Vizhinjam Police Station and recorded her statement. Since her statement revealed sexual assault and rape against accused Nos 1 to 4, she was sent for medical examination, and the FIR, which was registered under Section 57(1)(a) of the Kerala Police Act was altered, incorporating Section 376 r/w Section 34 of IPC, and investigation was continued. On completing investigation, final report was filed before Judicial First Class Magistrate Court-II, Neyyattinkara. That case was committed for trial to POCSO Court, Thiruvananthapuram, and it was made over to the Special Court, Neyyattinkara, for trial.

4. The petitioner herein filed a discharge petition before the Special Court on the ground that, Vizhinjam Police had no territorial jurisdiction to conduct the investigation. His discharge petition was dismissed as per Annexure-A2 order. Subsequently, on request, the case was transferred to Ernakulam, and now it is pending before Additional District Court, Ernakulam, as SC No.201 of 2023.

5. Heard learned counsel for the petitioner and learned Public Prosecutor.

6. Learned counsel for the petitioner would argue that, Vizhinjam Police had no territorial jurisdiction to conduct investigation into an offence, which was committed beyond its territorial limits. In the case on hand, the offences alleged occurred at Ernakulam, within the territorial limits of the Court at Ernakulam, and Police within the local limits of that Court alone could have investigated that crime. So, according to him, Vizhinjam Police had no territorial jurisdiction to conduct investigation in that crime.

7. Learned counsel for the petitioner is relying on the decision of this Court in **T.P Nandakumar v. State of Kerala and another (2007 (3) KHC 975)**, to say that, the territorial jurisdiction of a

Police Station for the purpose of investigation is co-extensive with that of appropriate Court, which is competent to try the offence.

8. Learned counsel for the petitioner would draw attention of this Court to Section 156 of Cr.P.C to substantiate his argument which reads thus:

> **"156. Police officer's power to investigate cognizable cases.-**
>
> (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case, which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
>
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
>
> (3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned".

9. Stressing on Section 156(1) of Cr.P.C, learned counsel would argue that, a Police Officer can investigate into a cognizable offence, only if the Court having jurisdiction over the local area within the limits of such Station is having power to inquire into or try that offence.

10. Learned counsel for the petitioner would further argue that, where a complaint alleging commission of a cognizable offence is made before the Station House Officer of a Police Station which does not have territorial jurisdiction over the place where the alleged offence occurred, he can record the information, but the proper course in such a case would be to forward the same to the Police Station having jurisdiction. According to him, unless the Police had territorial jurisdiction, they could not have registered the crime or investigated it. He would contend that, territorial jurisdiction of a Police Station for the purpose of investigation is co-extensive with that of the Court, which is competent to try that offence. Section 177 of Cr.P.C was also banked upon by learned counsel for the petitioner to say that, the Courts in Thiruvananthapuram had no jurisdiction to try the offence, which was committed at Ernakulam and so, the Vizhinjam Police had no territorial jurisdiction to investigate into that matter. The Vizhinjam Police lacked territorial jurisdiction to investigate into the offence allegedly occurred at Ernakulam and so, there was total lack of jurisdiction and it was not merely a defect or irregularity in investigation that could have been cured or ignored.

So, according to the petitioner, Annexure-A1 final report submitted by Vizhinjam Police after conducting an illegal investigation cannot sustain in the eye of law and so, it is liable to be quashed.

11. Learned counsel for the petitioner pointed out that, final report in Crime No.1292 of 2011 was submitted before Judicial First Class Magistrate Court-II, Neyyattinkara and it was committed to POCSO Court, Thiruvananthapuram where it was taken on file as SC No.223 of 2014 and from there, it was made over to Fast Track Special Court, Neyyattinkara. Subsequently, it was transferred to Additional District Court, Ernakulam, and it is pending there as SC No.201 of 2023. According to him, since the investigation conducted by Vizhinjam Police stands vitiated for lack of jurisdiction, the final report based on that investigation could not have been accepted, to take cognizance of the offences alleged therein. So, his further prayer is for a declaration that the Additional District Court, Ernakulam has no jurisdiction to try that case.

12. Learned Public Prosecutor submitted that, he is in respectful agreement with the jurisdiction of the Criminal Courts in inquiries and trials enshrined in Chapter XIII of Cr.P.C. He drew attention of this

Court to Section 177 of Cr.P.C which reads thus:

> **"177. Ordinary place of inquiry and trial.-**
> Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed".

13. Learned Public Prosecutor would submit that, the petitioner has no dispute with regard to the place of incident alleged by prosecution, i.e., Ernakulam. Since the alleged offence was committed within the local jurisdiction of Additional District Court, Ernakulam, going by Section 177 of Cr.P.C, that offence has to be tried by that Court. Since SC No.201 of 2023 is pending consideration of the Additional District Court, Ernakulam, now the petitioner cannot contend that, the said Court has no jurisdiction to try that case, as the offences alleged were committed within the local limits of that Court.

14. Section 154 of Cr.P.C. speaks about recording of information about the commission of a cognizable offence by an Officer in charge of a Police Station. Section 154(1) of Cr.P.C. reads as follows:

> "**154. Information in cognizable cases.**--(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of

> a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept in such officer in such form as the State Government may prescribe in this behalf."

15. Section 154 of Cr.P.C. does not say that an Officer in charge of a Police Station can record the information, only if the offence was committed within its territorial limits. So it is the duty of a Police Officer in charge of a Police Station, receiving information as to the commission of a cognizable offence, to record the information irrespective of its territorial jurisdiction.

16. In **State of A.P v. Punati Ramulu and others [1994 Supp (1) SCC 590]**, the Apex Court held that, whenever Police receives information about a cognizable offence, he has to record the information, whether or not, that Police Station had territorial jurisdiction over the place of crime. If he refuses to record that information, it would amount to dereliction of duty. Lack of territorial jurisdiction could not have prevented the Police Officer from recording information about the commission of a cognizable offence. Going by

the decision ***Punati Ramulu's case*** cited supra, the Police Officer receiving the information after recording the same could have forwarded it to the Police Station having jurisdiction over the area, in which the crime was said to have been committed.

17. Now let us examine a situation where the Police Officer in charge of a Police Station, recording the information about the commission of a cognizable offence outside its territorial limits and registering the crime and inadvertently proceeding with the investigation without noticing the fact the said Police Station was not having territorial jurisdiction over the place where the crime was said to have been committed. Section 156(2) of Cr.P.C. will save that situation which reads as follows:

> "**156. Police officer's power to investigate cognizable cases.-**
>
> (1) xxx
>
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate".

18. On getting information about the commission of a cognizable offence, if a Police Officer after recording the same

register a crime and investigate the same, that proceedings cannot be called in question on the ground that the said officer was not empowered to conduct that investigation.

19. In **Naresh Kavarchand Khatri v. State of Gujarat and another [2008 KHC 6323 = (2008) 8 SCC 300]**, the Apex Court held that, the Police authorities, in terms of Section 156 of Cr.P.C, exercise a statutory power. The power of Court to interfere with an investigation is limited. The Code of Criminal Procedure has conferred power on the statutory authorities to direct transfer of an investigation from one Police Station to another, in the event, it is found that they do not have any jurisdiction in the matter.

20. In **Rasiklal Dalpatram Thakkar v. State of Gujarat and others [(2010) 1 SCC 1]**, the Apex Court observed that, when a complaint was forwarded under Section 156(3) of Cr.P.C for registering a crime and to conduct an investigation, the Police Officer entrusted with the investigation cannot file a report stating that, he had no jurisdiction to investigate into the complaint, as the entire cause of action had arisen outside the jurisdiction. So, the Apex Court laid down the law that the powers vested in the investigating

authorities under Section 156(1) of Cr.P.C did not restrict the jurisdiction of the investigating agency to investigate into a complaint even if, it did not have territorial jurisdiction to do so. It was further clarified that, it was for the Court to decide whether it had jurisdiction to entertain the complaint, as and when the entire facts were placed before it. So, it is clear that when a complaint is received before the Court, it can decide whether it has got jurisdiction to entertain such a complaint, so as to forward the same for investigation under Section 156(3) of Cr.P.C. But when that complaint is forwarded by the Court under Section 156(3) of Cr.P.C., for investigation, it is imperative on the part of the Police Officer to investigate the same, and he cannot refuse to conduct the investigation on the ground that, he had no jurisdiction to investigate into that complaint.

21. It is mentioned in Section 156(1) of Cr.P.C that the territorial jurisdiction of a Police Station for the purpose of investigation is co-extensive with that of the Court, which is competent to try that offence. But once FIR is registered and investigation is undertaken *bona fide*, omitting to note lack of territorial jurisdiction, then Section 156(2) of Cr.P.C will come into play, and the investigation by that

Police Officer cannot be called in question, at any stage, on the ground that, such Officer was not empowered to investigate, as the offence was committed outside the territorial limits of that Police Station. But, of course, as far as trial is concerned, Section 177 of Cr.P.C. confers jurisdiction only on the Court within the local jurisdiction of which the offence was committed. So, even if, investigation was conducted by a Police Officer having no jurisdiction over the area in which the crime was registered, the investigation will not be vitiated going by Section 156(2) of Cr.P.C. But, the trial has to be conducted by the court having jurisdiction over the area where the offence was committed.

22. In **Satvinder Kaur v. State [2000 KHC 493 = (1999) 8 SCC 728]**, the Apex Court held that, the Station House Officer (SHO) has got a statutory authority under Section 156 of Cr.P.C to investigate any cognizable offence for which an FIR was lodged. At any stage of investigation, there is no question of interference under Section 482 of Cr.P.C, on the ground that the investigating officer had no territorial jurisdiction. After investigation is over, if the investigating officer arrives at the conclusion that the cause of action

for lodging the FIR has not arisen within his territorial jurisdiction, then he is required to submit a report accordingly under Section 170 of Cr.P.C and forward the same to the Magistrate empowered to take cognizance of the offence. The Apex Court was very clear and specific in its finding that the Police Officer is under a statutory authority to investigate a cognizable offence, for which an FIR is registered, and that proceedings cannot be called in question on the ground that the investigating officer had no territorial jurisdiction.

23. Paragraph 10 of ***Satvinder Kaur's case*** cited supra reads thus:

> "10. It is true that territorial jurisdiction also is prescribed under sub-s.(1) to the extent that the officer can investigate any cognizable case which a court having jurisdiction over the local area within the limits of such police station would have power to enquire into or try under the provisions of Chap.13. However, sub-s.(2) makes the position clear by providing that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under S.168, 169 and 170. S.170 specifically provides that if, upon an investigation, it appears to the officer in charge of the police station that there is sufficient

> evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. Further, if the investigating officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then FIR can be forwarded to the police station having jurisdiction over the area in which the crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it".

24. On analysing the factual situations, in the light of judicial pronouncements cited above, the following points could be deduced:

(i) An Officer in charge of a Police Station, irrespective of his jurisdictional competence, shall record every information received orally or in writing, relating to the commission of a cognizable offence.

(ii) The power of an Officer in charge of a Police Station to investigate into a cognizable offence is co-extensive with that of the Court having jurisdiction over the local area within the limits of such Station, having power to enquire into or try that offence.

(iii) A Criminal Court ordinarily gets jurisdiction to enquire

into or try an offence, only if that offence was committed within its local jurisdiction.

(iv) A Police Officer in charge of a Police Station, on recording information as to the commission of a cognizable offence that occurred outside its territorial jurisdiction, or registering an FIR based on that information, the proper course would be to forward the information recorded/FIR registered, to the Police Station having jurisdiction.

(v) There is no absolute prohibition that the offence committed beyond the local territorial jurisdiction cannot be investigated or enquired into by an Officer in charge of a Police Station, who recorded the information and registered the FIR.

(vi) The power of the Court to interfere with the investigation is limited. The investigation once started cannot be called in question by the Court at any stage, on the ground that the Police Officer investigating the same was lacking territorial jurisdiction.

(vii) A Police Officer investigating a case *bona fide* without noticing lack of territorial jurisdiction, or a Police Officer

conducting investigation as per orders of a Court under Section 156(3) of Cr.P.C., even if that offence occurred beyond the territorial limits of that Police Station, the result of such investigation is to be submitted as provided under Sections 168, 169 and 170 of Cr.P.C.

(viii) When an Officer in charge of a Police Station conducts investigation in a case, in which he had no territorial jurisdiction to investigate, and after completing investigation, he is of the opinion that there is sufficient evidence or reasonable ground of suspicion, he has to forward the accused under custody, or if the offence is bailable, after taking security for his appearance, to the Magistrate empowered to take cognizance of the offence/commit/try etc. under Section 170 of Cr.P.C.

(ix) It is for the Court receiving a complaint regarding commission of a cognizable offence to verify the jurisdiction of the Police Station to which the complaint has been forwarded under Section 156(3) of Cr.P.C. to register the crime and to conduct investigation, and once complaint is received as per orders of the Court, the Officer in charge of that Police Station,

has no other go, but to register a crime and to investigate the same, even if the offence alleged was committed beyond its territorial limits.

25. In the case on hand, a girl aged 18, left her house at Thiruvananthapuram and proceeded to Ernakulam by bus. On the way, she got acquainted with the 1st accused, and himself and his friends took her to Ernakulam where she was sexually assaulted and raped by them. After the incident, she was abandoned at Ernakulam Railway Station, and she was taken into custody by Police and kept at Women Police Station, Ernakulam. Vizhinjam Police had already registered a crime for man missing on a complaint filed by her father. On getting information, that the girl was kept in Women Police Station, Ernakulam, Vizhinjam Police proceeded to Ernakulam and took that girl to Vizhinjam Police Station, where she gave a statement disclosing the offence of rape and sexual assault committed by the accused. So, Crime No.1292 of 2011 registered for man-missing was altered into one under Section 376 read with Section 34 of IPC and investigation was done by Vizhinjam Police. The final report was submitted before Judicial First Class Magistrate Court-II,

Neyyattinkara, on completion of investigation. The Sessions Case No.223 of 2014, which was pending before Fast Track Special Court, Neyyattinkara, was subsequently transferred to Additional District Court, Ernakulm so as to comply with Section 177 of Cr.P.C as the alleged offences were committed within the jurisdiction of that Court.

26. The petitioner has no case that any prejudice was caused to him by the investigation conducted by Vizhinjam Police. Moreover, the victim cannot be penalised for the procedural irregularities or technical defects if any committed by the investigating officer. Moreover, from the points we have deduced from the decisions of the Apex Court as well as of this Court, as detailed in paragraph 24, this Court is of the view that the investigation conducted by Vizhinjam Police is not vitiated. The Additional District Court, where the Sessions Case is now pending for trial, is having jurisdiction to try that case, as the offences alleged were committed within its local jurisdiction.

In the result, the Crl.M.C is dismissed as it is devoid of any merits. The trial court is directed to proceed with the trial of SC No.201 of 2023 as expeditiously as possible and dispose the case at

the earliest, at any rate within six months from today, as the incident alleged occurred in the year 2011.

Registry is directed to forward a copy of this order to the trial court forthwith, for compliance and report.

Sd/-
SOPHY THOMAS
JUDGE

DSV/-

APPENDIX OF CRL.MC 8376/2023

PETITIONER'S ANNEXURES:

Annexure A1	**CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.1292/2011 OF VIZHINJAM POLICE.**
Annexure A2	**TRUE COPY OF THE ORDER DATED 06/12/2021 IN C.M.P. NO.150/2021 IN S.C. NO. 223/2014.**
Annexure A3	**TRUE COPY OF THE PETITION DATED 13/04/2022 FILED BY THE STATION HOUSE OFFICER, VIZHINJAM.**
Annexure A4	**TRUE COPY OF THE PROCEEDINGS IN S.C. NO. 201/2023 ON THE FILES OF THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, ERNAKULAM (FOR THE TRIAL OF CASES RELATING ATROCITIES SEXUAL VIOLENCE AGAINST WOMEN AND CHILDREN).**

RESPONDENTS' ANNEXURES: NIL