

BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM

W.P.(C) No. OF 2009

Panikkaveetil Kottilungal Jabir,
aged 51 years,
s/o P.K.Moideenkutty,
Panikkaveetil Kottilungal House,
Ovungal, Chavakkad,
Thrissur District,
now at 505, METRO PLAZA,
Market Road, Ernakulam,
Cochin-682014.

}

Petitioner

Vs

1. State of Kerala,
Represented by
Secretary to Government,
Department of Home Affairs,
Government Secretariat,
Trivandrum.

}

Respondents

2. Sub Inspector of Police,
Guruvayoor Police Station,
Guruvayoor.

}

3. Panikkaveetil Kottilungal Abdul Jaleel,
Kottilungal House,
Chavakkad,
Thrissur District.

Petition under Article 226 of the Constitution of India.

1. The petitioner is a citizen of India. He had filed in June 2008 a Criminal Complaint before the Judicial First Class Magistrate, Trichur, CrI. M.P. No.6006 of 2008. A Crime, No.437 of 2008, has been registered on the basis of the said Complaint.

2. The petitioner is aggrieved by the virtual inaction on the part of the 2nd respondent in investigating the matter.

3. Though the Crime was registered in June 2008, no effective action has been taken on the same. The omission on the part of the 2nd respondent has resulted in manifest injustice to the petitioner as would be revealed from the facts narrated below. The petitioner is anguished by the oppressive delay in the investigation of the crime. The tragic story of the petitioner is narrated below as a back-ground of the present petition.

4. The petitioner had effective training in Electro-Mechanical Engineering under reputed establishment in Bombay. Due to his dedication and hard work, he could establish a prosperous engineering establishment in Abu Dhabi, U.A.E., in 1982. The business carried on under the name and style of Ramla Electro-Mechanical Establishment registered quick prosperity by efficient and satisfactory services rendered by it in various activities connected with Electrical Engineering, installation of HVAC, elevators, fire and safety equipments and other such activities. By his dedication and perseverance, the petitioner could acquire the confidence and goodwill of various customers including Royal Families of the UAE.

5. Due to the continuing earnest efforts of the petitioner, the business assets registered an impressive growth. He could acquire a business concern worth Rs.15 crores, earning an annual income of more than Rs.2.5 crores.

6. Yet another establishment worth Rs.10 crores and earning an income of Rs.2 crores per annum was established soon thereafter.

7. By 1987, the activities of the petitioner expanded into various areas. In 1990, the petitioner entered into general contracting work. The activities carried on by Premier General Contracting and Maintenance Establishment organized by the petitioner covered various spheres.

8. As for the petitioner, the assets came to about Rs.30 crores by about 1995 with an annual earnings of Rs.4.95 crores. The details of such assets and activities are given in a certificate issued by the Chartered Accountant, a copy of which is produced herewith marked Annexure A for identification.

9. The 3rd respondent is the petitioner's younger brother. He did not have adequate educational qualifications or employment opportunities at home. The petitioner, out of brotherly affection and concern for the family, took him to UAE. The Visa was issued at the instance of the petitioner. He was looked after by the petitioner and remunerated for the services rendered.

10. The 3rd respondent did not own any asset at the time when he arrived in UAE.

11. A great calamity befelled the petitioner in 1995.

12. There was a business transaction with a UAE local person covering 24 flats in a building proposed to be rented out for a sum of 5,40,000 UAE Dirhams.

13. When a dispute arose with the said UAE business associate, Hassan Saeed and when the influential UAE person resorted to high handed activities, thought of reckless revenge against the petitioner, the petitioner, on the basis of legal advice, instituted a Civil Suit on 26-20-1995.

14. Though the petitioner had acted only as a law abiding citizen, and in accordance with legal advice secured in that behalf, and had only sought relief from a Court of justice, Hassan Saeed took it as a personal affront and planned and executed illegal and violent activities against the petitioner defying, all legal provisions and principles of fair-play. The Police Officials colluded with him.

15. Making a forcible entry into the petitioner's place, the petitioner was threatened to withdraw the Civil Suit by abusing the force of the Police Officials as well. The petitioner could not yield to such illegal and unjust demands and therefore refused to accede to the illegal and unjust demand.

16. In sharp contrast with countries abiding by the Rule of Law, those who live and work in that country do not have the protection of Law in the various activities. Those who have access to the corridors of power can violate the Law with impunity. Due to various considerations, economic and political, the countries from where people migrate, do not fully utilize Defamative to protect their citizens. It happened in the case of the petitioner.

17. Taking advantage of the situation prevailing in that country and securing the help of Police even by resort to all unfair means, Hassan Saeed and his men, with the assistance of the Police, ransacked the entire office and deprived the petitioner of all his assets. The petitioner also went to the extreme step of getting the petitioner arrested and sadistically tortured. He was subjected to the greatest ordeals by being taken to the jail and illegally kept in prison, in total violation of all Human Rights.

18. The violation of Human Rights continued unabated, as is the general situation in that country. Only after four months of the arrest and detention, a false case was registered against the petitioner. Untold sufferings were inflicted on the petitioner as an under-trial prisoner. The gruesome details are not narrated herein as they are not directly related to the relief sought for in the Writ Petition.

19. The petitioner's innocence was, however, established when despite the severe constraints of the petitioner, the Trial Court acquitted the petitioner of all the charges leveled against him and even ordered an enquiry about the conduct of the Police Officials.

20. The Police authorities took up the matter in appeal.

21. The Appellate Court also upheld the finding of the Trial Court and commended adversely and strongly against the illegal and high-handed acts of the officials.

22. In the wake of the concurrent judicial findings of the Court, all the assets illegally taken away should have been restored to the petitioner; he should have been restored to his former status and position and adequately compensated for the mental agony and suffering and pecuniary losses suffered by him.

23. Unfortunately, the Police Officials acted in total defiance of the findings and sentiments expressed by the judicial establishments of the country. On 28-9-1986, they resorted to the high handed action of deporting the petitioner to India in total negation of Human Rights and principles of law. In the passport, they made an endorsement 'NO ENTRY'. The petitioner was not intimated about any grounds justifying such an endorsement. He was not given an opportunity to make any representation against making such an endorsement which would deprive him of his life and liberty as safeguarded under Article 21 of the Constitution of India and other Laws.

24. The situation in which a citizen of India is totally deprived of property has, it is respectfully submitted, its Constitutional implications. The petitioner is advised and it is submitted that the decisions of the Hon'ble Supreme Court of India and the observations of eminent Judge Jurists like Justice K.K.Mathew would bring out the plight and the right of a citizen without property.

25. The legal position is lucidly explained by Justice K.K.Mathew in "Democracy, Equality and Freedom". The following passage is apposite in that context:

“..... people without property have a tendency to become slaves. They become the property of others as they have no property themselves. They will come to say: “Make us slaves, but feed us”. Liberty, independence, self-respect, have their roots in property. Protection of property interests may quite fairly be deemed in appropriate circumstances an aspect of freedom”.

The connection between Constitutional concepts on property is propounded as follows:

“There is no surer way to give men the courage to be free than to ensure them a competence upon which they can rely. This is why the Constitution makers wanted that the ownership of the material resources of the community should be distributed as to subserve the common good. People become a society based upon relationship and status”.

26. The essence of the principle is reiterated in *Muralidhar Dayandeo Kesekar Vs. Viswanath Pandu Barde*, (1995) Supplement to SCC 549: in cases where deprivation of property would lead to deprivation of life or liberty or livelihood, Article 21 springs into action.

27. After surveying the concepts on an international scale, the Hon'ble Supreme Court laid down in *Jilubhai Nanbhai Khachar Vs. State of Gujarat*:

“Property, therefore, accords status. Due to its lack man suffers from economic disadvantages and disabilities to gain social and economic inequality leading to his servitude. *Providing facilities and opportunities to hold property furthers the basic structure of egalitarian social order guaranteeing economic and social equality: In other words, it removes disabilities and inequalities, accords status, social and economic and dignity of person.* Property in a comprehensive term is an essential guarantee to lead full life with human dignity, for, in order that a man may be able to develop himself in a human fashion with full blossom, he needs a certain freedom and a certain security. *The economic*

and social justice, equality of status and dignity of person are assured to him only through property.” (Emphasis is supplied).

28. The claim of the petitioner has also close relation with Section 2(d) of the Protection of Human Rights Act, 1993. Linked with Human Rights, Article 21 has been given a liberal interpretation in judicial decisions. Every scholarly treatise titled on this concept occurs in 73 Harvard Law Review, Page 1595. The elucidation of cognate ideas is given in Page 56 of the recent publication “Time and its legal aspects and other essays” by an eminent Senior Advocate of the Supreme Court, Chella Seetharamiah. Paragraph 95 in Page 56 reads:

“TIME and again the courts in India held that Article 21 is one of the great silences of the Constitution. The right to livelihood cannot be subjected to individual fancies of the person in authority. The sweep of the right to life conferred by Art. 21 is wide and far reaching. An important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation”.

29. The petitioner endeavoured to seek relief against the high-handed action of the Police Officials and the Government of UAE under which they were functioning. However, legal technicalities had been obstructing the petitioner to obtain justice from the cruel and illegal actions of the officials and Government of UAE.

30. The petitioner then felt that he could have at least a retrieval of the assets he had left behind in U.A.E. and which had been entrusted with his own brother, the 3rd respondent.

31. The petitioner had placed total confidence and trust in his young brother who was available on the spot. A Power of Attorney was executed in his favour on 3-8-1996. At that time, he was employed in one of the establishments of the petitioner with a monthly salary of 1800 UAE Dirham. The various powers and

authorities which could be exercised by him are referred to in the said Power of Attorney.

32. The petitioner was under the bonafide impression that the 3rd respondent will perform his duties honestly and legally. Initially, the 3rd respondent used to communicate with the petitioner, making the petitioner believe that he was properly managing the establishments of the petitioner.

33. The 3rd respondent, however, defaulted in forwarding the statement of account and the details of transaction in relation to the petitioner's establishments. It was understood that the 3rd respondent had been making secret visits to India with ulterior motives. He took his family members to UAE, as a part of his illegal intentions for misappropriating the funds of the petitioner and committing breach of trust in respect of those establishments which belonged exclusively to the petitioner.

34. The petitioner came to know that his brother, the 3rd respondent was diverting the funds for his personal gains and fabricating false accounts with evil intentions. As the 3rd petitioner did not visit India, the petitioner was unable to take specific steps for the retrieval of his funds and assets. The petitioner was hoping against hope that his brother would not do heinous offences like cheating and criminal breach of trust. The hopes of the petitioner were, however, belied. The 3rd respondent was manipulating matters for making wrongful gains for himself and appropriating the assets of the petitioner to himself.

35. On 5-5-2004, the petitioner cancelled the Power of Attorney in favour of the 3rd respondent. A fresh Power of Attorney was executed in favour of M.Mohammed Sheriff, the father-in-law of the petitioner. He went to Abu Dhabi to have his accounts settled and the assets ascertained.

36. In spite of the meetings and discussions between Mohammed Sheriff and the 3rd respondent, the 3rd respondent defiantly refused to furnish accounts and resisted the attempts to take stock of the assets of the petitioner.

37. The conduct and behavior of the 3rd respondent did clearly indicate about the evil intentions, and the commission of the grave crimes of criminal breach of trust and cheating.

38. In spite of all such steps, the petitioner felt that a final attempt should be made to have the matters amicably settled taking into consideration the fraternal relationship. A lawyer's notice was accordingly sent on 12-3-2005 to the 3rd respondent seeking the restoration of the petitioner's assets entrusted with the 3rd respondent.

39. The 3rd respondent significantly enough, did not respond to the demands contained in the lawyer's notice. He did not even care to send a reply to the lawyer's notice. It is submitted that this conduct on the part of the 3rd respondent has great significance in the further actions and events which followed. The petitioner came to know about the acquisition of assets by the 3rd respondent in Mammiyoor and Guruvayoor within the jurisdiction of the Court of the Judicial Magistrate, Trichur. There were other activities involving making fixed deposits, purchasing shares etc. by the 3rd respondent.

40. The 3rd respondent came to India in June, 2008.

41. As the 3rd respondent was found to be bent up on perpetuating the gains of his criminal actions like cheating, criminal breach of trust and the like, the petitioner filed before the Judicial First Class Magistrate, Chavakkad, a Criminal M.P.No.6066 of 2008. On the basis of the same, a Crime was registered as Crime No.437 of 2008.

42. It is in spite of this Crime that the petitioner is seriously aggrieved by the unjust and unreasonable delay in the investigation of the Crime. Though the petitioner attended office of the 2nd respondent on very many occasions, no meaningful action whatever had been taken by the 2nd respondent. The statement of the petitioner was recorded. The necessary information had been furnished. As most of the events were covered by documentary evidence, the indications about the same were also revealed. The crucial facts that the averments in the lawyer's notice had not been denied by the 3rd respondent was emphasized before the 2nd respondent. Copies of all relevant documents were furnished to the 2nd respondent. There could therefore be no reason whatever for completing the investigation and report about the same to the Hon'ble Judicial Magistrate Court.

43. The inaction of the 2nd respondent appears to be due to extraneous reasons. The 3rd respondent is in possession of massive funds, and it is apprehended that the inaction of the 2nd respondent has been due to the unjust and illegal influence exerted by the 3rd respondent and his allies working locally.

44. The 2nd respondent when contacted personally pleaded helplessness in not having effective powers to investigate the crime. If at all true, that would only be a ground for entrusting the investigation with another agency. In the light of the principles and precedents, it is submitted that this is a fit case for ordering investigation of the Crime with the CBI or other effective investigating agency.

45. Under the provisions of Section C.P.C., the permission of the Government of India is needed to file a suit against the foreign country. The efforts to secure such permission through legal remedies entailed much time and expenses. The Government of India did not even take up the issue with the Government of U.A.E. despite repeated orders passed by the Delhi High Court in the proceedings initiated by the petitioner in that High Court.

46. The petitioner had raised expectations after the favourable judicial verdict from the judicial authority of U.A.E. However, the hopes have been dashed in the light of the ultimate orders of the Executive Government.

47. It is submitted that the following principles could be taken as regulating the exercise of Court's discretion in transferring a case from one institutional agency to another:

i) The involvement of very huge stakes in the matter under investigation
ii) The international character of the case for which the local Police has inherent limitations in effectively handling the investigation.

iii) Complicated legal questions which may arise, and which could be beyond the competence of the local Police authorities to tackle.

iv) The existence of circumstances where the local Police could be amenable to illegitimate influences including bribery.

48. In the present case, a transfer of investigation is fully justified on the basis of all the above considerations.

- 1) The stakes involved, as indicated above, would be over Rs.30 crores.
- 2) The subject matter of the investigation is so massive as to make or mark the fate of the citizen.
- 3) The anguish resultant from the deprivation of such a huge sum of money earned only through untiring personal efforts, causes mental depression which will virtually make the life only one of vegetable existence.

49. The properties about which the Criminal Complaint relate are situate in Gulf countries and in India. The local Police itself has expressed helplessness in getting information from the various official agencies and institutions and establishments functioning in Abu Dhabi and other Gulf countries. The details of the properties are made available to the local Police. They are, however, not in a position to deal with the materials in a meaningful and effective manner for a successful culmination of the investigation. Only an agency like CBI can deal

with agencies like the Consulate in Dubai, the External Affairs Ministry in Central Government, and if need be the Interpol.

50. The petitioner has been struggling hard for the last two decades, making appeals and approaches to all the Administrative and Legal Authorities. No relief whatever has been obtained despite all the efforts taken for obtaining justice.

51. There are strong indications of undue illegitimate influence operating over the offices and men of the local Police. Though the petitioner appeared on numerous occasions on the direction of the Police officials, a visibly hostile attitude was adopted by them. Virtually, the petitioner was treated as if he was the accused and not a complainant.

52. Thus, the materials available on the records, it is submitted, will make out a case for the exercise of discretion by this Hon'ble Court for transferring the investigation to a powerful and superior investigating agency like the CBI.

53. The principles and precedents wherein such transfer of investigating agency had been made within the State itself, would justify the grant of the prayers of the petitioner who has been brought to a very desperate situation.

54. The petitioner is now in a desperate situation, without any compensation for the illegal and unjust acts to which he had been subjected to. A situation of urgent desperation of life and liberty as guaranteed under Article 21 of the Constitution has thus arisen in the case.

55. It is respectfully submitted that in such circumstances of grave and calculated abdication of duty of the Police Officials, Courts have intervened to ensure the protection of the innocent citizen's right and to render justice to the innocent citizen. In Munna's case for example, inordinate delay and the circumstances were taken note of by a Learned Judge of the Hon'ble Court

(Balakrishnan J as he then was) in what is known as 'Munna's Case'. This Hon'ble Court directed investigation by the CBI, having regard to the various circumstances enumerated in the judgment.

56. It is submitted that the present one is a case where such direction from this Hon'ble Court may be issued in the interest of justice.

57. The petitioner has been suffering all through ever since he had been deported without any asset whatever to India. The 3rd respondent made a meager payment of Rs.20,000.00 for a short period. After selling many of the assets of the petitioner in UAE, the 3rd respondent remitted a very meager portion of the real value of those assets. The entire balance assets and facilities and business contacts have been brought to his personal possession and enjoyment, despite an obligation to render accounts to the petitioner, in proper discharge of the authority he had been given and the trust which had been reposed in him.

58. The criminal actions are solid evidence by a perusal of the documents already furnished to the 2nd respondent. The 2nd respondent has therefore no justification whatever to further delay the investigation and discharge his official duties.

59. The petitioner is deprived of all his assets and personal gains earned by his continuous and dedicated activities for over a long period, has now put to severest difficulties and hardships in the present situation.

60. The criminal intention of the 3rd respondent is self evident in the circumstances. Justice demands that the action is pursued properly, diligently and honestly by the 2nd respondent so as to assist the Court before which the Crime is pending.

61. The petitioner has no other effective alternate remedy in the above circumstances than to seek reliefs of this Hon'ble Court on the following among other:

G R O U N D S.

a) The 2nd respondent is bound to investigate the Crime honestly and legally. Much more than reasonable time required in that behalf has already expired. The delay is totally unjustifiable in the circumstances, particularly when documentary evidence had been furnished to the 2nd respondent to justify a finding of the commission of crime by the 3rd respondent. In such a situation, the 2nd respondent has no justification in further prolonging the investigation of the Crime.

b) Judicial decisions have repeatedly emphasized the necessity for effective and speedy investigation of crimes. This is based on the wholesome principle that 'justice delayed is justice denied'. Permitting a law breaker to retain with him the assets and funds belonging to another person is a grave omission on the part of the official. It has been held that the properties so retained are in the form of trust and could be pursued in spite of the change of hands or transfer across the country where the crime was initially committed. When the illegally amassed funds are invested in a country, That will also furnish a cause of action. The cause of action would arise partly in Mammiyoor and Guruvayoor where, as stated earlier, the 3rd respondent has invested the illegally secreted assets of the petitioner. The 1st respondent State is also under a legal and Constitutional duty that the crimes to be investigated by the Police Officials are so investigated effectively, honestly and expeditiously so as to mete out justice to the aggrieved citizen.

c) A total inaction and a complete silence on the part of the 2nd respondent, it is submitted, is a violation of the basic principles of the Rule of Law and Constitutional function. Such inaction of Constitutional duties are liable to be corrected by this Hon'ble Court by appropriate Writ, order or direction.

d) Involvement of substantial stake in the Crime to be investigated is a factor which has to be recommended in entrusting the investigation to a specialized and expert agency like the CBI. When important legal issues are involved, an Agency like the 2nd respondent may not be in a position to grasp the implications of important legal principles like obligations of an agent under the Law, the arising of cause of action in various places including places where the unjust causes are investigated or consulted, about competence of the cause of action arises within its jurisdiction, the obligation of a person to disgorge unjust benefits derived by him and right of the person unjustly deprived of his assets, to have restoration of the same, and the like. On these grounds as well, it is essential that the investigation is not conducted by the 2nd respondent, who has by itself conducted, demonstrated its inability to investigate the crime with efficiency and efficacy and with the importance assigned to the expedient investigation of crimes under Criminal Jurisprudence.

e) Having regard to the past conduct of the 2nd respondent, the petitioner apprehends that he may not get justice from the 2nd respondent. Consequently, it is just and necessary that the investigation is entrusted with another official Agency, so as to make it effective and impartial.

f) It is respectfully submitted that having regard to the circumstances of the case, particularly the agony suffered by the petitioner for the last 12 years, an effective investigating agency like the CBI should be entrusted with the further investigation of the case. That will facilitate contacting various authorities like the officials of the foreign country and the various Central Government Institutions in the State and outside. The extra ordinary circumstances, it is submitted, justifies such a prayer.

The petitioner therefore prays that this Hon'ble Court may be pleased to call for the records of the case and:

- a) to issue a Writ of Mandamus or other appropriate Writ, Order of Direction, directing the CBI or any other Official Agency, other than the 2nd respondent, to investigate the Crime and report about it to Court.
- b) to issue a Writ of Mandamus to the 2nd respondent to conduct the investigation on Crime No.437 of 2008 and to complete the same within a specified time limit as stipulated by this Hon'ble Court.
- c) to issue a Writ of Mandamus or other appropriate Writ, order or direction directing the 3rd respondent to appear before the 2nd respondent so as to enable the 2nd respondent to expeditiously investigate the Crime.
- g) to pass such other and further orders as are deemed just and necessary in the circumstances of the case.

Dated this the day of March, 2009.

PETITIONER.