

**IN THE COURT OF THE SESSIONS JUDGE, SESSIONS DIVISION, ALAPPUZHA**  
**Present: Smt.BHARATHI.S, Addl. Sessions Judge II**

Tuesday the 30<sup>th</sup> day of January 2024.

**CRIMINAL REVISION PETITION.16/2022 (Filed on 06.10.2022)**

(CMP.1297/2022, Judl. First Class Magistrate Court-I, Chengannur)

**Petitioner:**

Ramesh Babu, aged 51 years,  
S/o Raveendran Nair  
Vengoor Veedu, Lakassery Muri,  
Chengannur.

By Adv.G.Priyadarsan Thampi

**Respondents:**

1. Ashok Ammanchi, aged 42 years,  
Panthaplapelil Veedu, Keezhcherry Muri,  
Chengannur.
2. Karippalil Madu @ Jayakrishnan, aged 45 years,  
Karippalil Veedu, Keezhcherry Muri,  
Chengannur.
3. Jayakumar, aged 53 years,  
Kallooriyeth Veedu, Chengannur.
4. Jayakrishnan @ Manikuttan, aged 35 years,  
Kizhakottalil Veedu, Keezhcherry Mel Muri,  
Chengannur.
5. Sujith, aged 42 years,  
Thazhathemuriyil Puthenveedu,  
Keezhcherry Mel Muri,  
Chengannur.
6. K.G.Katha, aged 62 years,  
Gokulam Veedu,

Keezhcherry Mel Muri,  
Chengannur.

7. C.Murali @ Manikuttan, aged 57 years,  
Vambazhavelil Veedu,  
Keezhcherry Mel Muri,  
Chengannur.
8. Yogesh, aged 40 years,  
Mattavana Illam,  
Keezhcherry Mel Muri,  
Chengannur.
9. Sarathchandran, aged 35 years,  
Vijaya Bhavanam,  
Keezhcherry Mel Muri,  
Chengannur.
10. Aneesh, aged 35 years,  
Kandankalayath Veedu,  
Keezhcherry Mel Muri,  
Chengannur.
11. Sunilkumar @ Unni(Ammus Hotel), aged 38 years,  
MadathilPuthen Veedu,  
Keezhcherry Mel Muri,  
Chengannur.
12. Sreekumar, aged 51 years,  
Panamoottil Veedu,  
Keezhcherry Mel Muri,  
Chengannur.
13. Ravi, aged 62 years,  
Kalluriyeth Veedu,  
Keezhcherry Mel Muri,  
Chengannur.

14. Unnikrishnan, aged 58 years,  
Kuttiyil Veedu,  
Keezhcherry Mel Muri,  
Chengannur.
15. Akhil Sivan, aged 34 years,  
Venadu Veedu,  
Keezhcherry Mel Muri,  
Chengannur.
16. Anu Sivan, aged 32 years,  
Venadu Veedu,  
Keezhcherry Mel Muri,  
Chengannur.
17. Sunil Kumar, aged 50 years,  
Thekkenada Madhukuzhiyil Veedu,  
Keezhcherry Mel Muri,  
Chengannur.
18. Deepu, aged 36 years,  
Parameswarath Puthen Veedu,  
Keezhcherry Mel Muri,  
Chengannur.
19. Vidhu Krishnan @ Kichu, aged 40 years,  
Lakshmi Sadanam,  
Keezhcherry Mel Muri,  
Chengannur.
20. State of Kerala,  
Represented by the chief-Secretary,  
Through the Public Prosecutor, Alappuzha.

(R1 to 4,6 to 14-By Adv. Krishnakumar.V)  
(R5,15 to 19 Remined absentt. R20-By Additional  
Public Prosecutor, Alappuzha)

This Criminal revision petition having been finally heard on 29.01.2024 and the court on 30.01.2024 delivered the following:-

**ORDER**

1. This Criminal Revision Petition is filed u/S.397 of the Code of Criminal Procedure against the order of Judicial First Class Magistrate Court – I, Chengannur posting the case for recording sworn statement without forwarding the complaint filed by the revision petitioner u/S.156(3) of the Code of Criminal Procedure.
2. The revision petitioner has filed a complaint before the Judicial First Class Magistrate Court -I, Chengannur against the respondents herein alleging offence punishable u/Ss.379, 441, 506, 294(b), 120B r/wS.34 of the Indian Penal Code as CMP.1297/2022. The learned Judicial First Class Magistrate without forwarding the complaint u/S.156(3) of the Code of Criminal Procedure decided to proceed u/S.202 of the Code of Criminal Procedure by posting the case for recording sworn statement. Aggrieved by the said order, the complainant preferred this criminal revision petition.
3. Brief allegations in the complaint of the revision petitioner are the following:-  
On 19.04.2022 and on 24.04.2022, respondents trespassed to the property of Chengannur Keezhcherrymel Sasthamkulangara Narasimha Swamy Temple

and attempted to install a name board 'Sreekrishna Vilasam NSS Karayogam Temple' by removing the existing name board. When the complainant obstructed the same, respondents committed theft of items belonging to the temple such as "nilavilakku, nettipattam, vessels etc. from the office of the temple. They have also threatened the complainant that he would be killed. Though the complainant has filed a complaint before the Station House Officer, Chengannur, no action was taken. Thereafter the complainant has preferred a complaint to the District Police Chief, Alappuzha. But, no action was taken on the said complaint as well. Hence the complaint.

4. In the revision petition, revision petitioner/complainant contended that the main offence alleged in the complaint is u/S.379 of the Indian Penal Code wherein recovery of stolen articles is necessary. It is contended that the learned Magistrate ought to have forwarded the complaint to the Police. According to the revision petitioner, the learned Magistrate did not properly apply his judicial mind and did not appreciate the scope of Section 156(3) of Code of Criminal Procedure. The order to take sworn statement of the complainant does not have clarity and not in the form of a speaking order. He therefore requested to set aside the said order.

5. Respondents 5 and 15 to 19 remained absent in spite of service of notice in the criminal revision petition.
6. Following are the points for consideration:-
  1. Whether the impugned order of the learned Judicial First Class Magistrate is incorrect, improper or illegal ?
  2. Whether any interference is required on the impugned order?
7. Lower court records were called for and perused records.
8. Heard both sides.

**Point Nos.1 and 2:**

9. The only one argument advanced on behalf of the revision petitioner is that the learned Judicial First Class Magistrate did not exercise the discretion in CMP.1297/2022 judiciously. There can be no doubt that u/S. 156(3) of the Code of Criminal Procedure, it is the discretion of the Judicial Magistrate to order investigation, while dealing with a complaint. On getting complaint, the Magistrate can either forward the complaint u/S.156(3) of the Code of Criminal Procedure or he can take recourse to his power u/S.202 of the Code of Criminal Procedure, in which case the issue of process is to be postponed and inquiry has to be conducted into the case by himself or direct an

investigation to be made by a Police Officer or by such other person as he thinks fit, for the purpose of deciding whether or not there are sufficient ground for proceedings.

10. In **Femina E v. State of Kerala** reported in **2023 (2) KHC 52**, the Hon'ble High Court of Kerala held that *the test to be applied, while considering the question whether a complaint is to be referred to the Police for the investigation, is the "need for Police investigation"*. It was further held that *in a case where the allegations warrant a recovery u/S.27 of the Evidence Act, it would be necessary to entrust that task to the Police and in such case without ordering an investigation as provided under 156(3), the complainant cannot be in a position to retrieve the relevant evidence regarding his allegations.*
11. In the case on hand, the specific contention of the revision petitioner is that the allegations involve an offence u/S.379 of the Indian Penal Code for proving which recovery of the alleged stolen articles is required and he therefore pressed for forwarding the complaint u/S.156(3) of Code of Criminal Procedure. At the same time, the learned counsel appearing for the respondents argued that the offences alleged in the complaint are not at all attracted and therefore there is no need for forwarding the complaint.

However, it is not for this court to decide at this stage as to whether the offence alleged would attract or not, considering the scope of a revision.

12. On going through the criminal revision petition, it is found that the revision petitioner did not specify the date of order under challenge in this case. It is stated that the revision petition is filed aggrieved by the order of the Magistrate by which the learned Magistrate proceeded to conduct inquiry u/S.202 of the Code of Criminal Procedure instead of forwarding the complaint to the Police for investigation u/S.156(3) of the Code of Criminal Procedure. A copy of the proceedings of the learned Judicial First Class Magistrate -I, Chengannur in CMP.1297/2022 has been produced. Copy of the proceedings sheet contains proceedings dated 18.05.2022, 15.06.2022 and 06.08.2022. The complaint CMP.1297/2022 also has been forwarded to this court along with lower court records. As per the proceedings in CMP.1297/2022, it is seen that the learned Magistrate on 18.05.2022 has posted the case for sworn statement to 15.06.2022. Again on 15.06.2022, the petitioner (complainant) was absent and the case was adjourned to 06.08.2022. On 06.08.2022, it was again adjourned for sworn statement to 14.09.2022. Therefore, it can be seen that on 18.05.2022 itself, the learned Magistrate has refused to forward the complaint u/S.156 (3) of the Code of

Criminal Procedure and decided to record the sworn statement ( as part of Section 202 inquiry) and posted the case to 15.06.2022. From the certified copy of the lower court order produced along with the criminal revision petition, it is seen that copy of the proceedings sheet containing proceedings of 18.05.2022, 15.06.2022 and 06.08.2022 was given to the revision petitioner on 16.08.2022. The date of filing of copy application is seen as 10.08.2022. Since the challenge of the revision petitioner is against the order of the Magistrate, in which the learned Magistrate has decided to take sworn statement, it is to be presumed that the challenge is against the order dated 18.05.2022 on which day the learned Magistrate has refused to forward the complaint u/S.156(3) of the Code of Criminal Procedure and decided to proceed u/S.202 of the Code of Criminal Procedure. Without challenging the said order, the revision petitioner cannot challenge the subsequent order dated 06.08.2022 on which day also the case was adjourned for sworn statement.

13. Article 131 of the Limitation Act deals with the period of limitation with respect to criminal revision. As per this Article, the period of limitation is 90 days from the date of the order sought to be revised. Therefore the limitation in this case starts from 18.05.2022 on which day the CMP is posted for sworn

statement. Revision petitioner is not entitled for execution of the time taken to get the copy also, since he filed the copy application only on 10.08.2022. The criminal revision petition herein has been filed only on 06.10.2022. No delay condonation petition has been filed. Therefore, it is found that the criminal revision petition has been filed beyond a period of limitation and it is barred by limitation. The criminal revision petition is therefore not maintainable. No interference is therefore required on the impugned order. Points are answered accordingly.

14. In the result, Criminal Revision Petition stands dismissed.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 30<sup>th</sup> day of January, 2024.

**BHARATHI S.  
ADDL. SESSIONS JUDGE-II**

**Appendix:-NIL**

**ADDL. SESSIONS JUDGE-II**

Typed by:Sr  
Compd by:Sb