

**HIGH COURT OF KERALA**

**Bench : THE HONOURABLE MR. JUSTICE BECHU KURIAN  
THOMAS**

**Date of Decision: April 4, 2024**

WP(CRL.) NO. 1276 OF 2023

CRIME NO.839/2023 OF EDATHALA POLICE STATION,  
ERNAKULAM

**SUBAIR – Represented by self (Party-In-Person)**

**VS**

**STATE OF KERALA – Represented by Public Prosecutor  
Sri.P.Narayanan**

**DISTRICT POLICE CHIEF (DPC), ALUVA**

**THE STATION HOUSE OFFICER, EDATHALA POLICE STATION**

**CENTRAL BUREAU OF INVESTIGATION**

**STATE POLICE CHIEF, KERALA**

**Legislation and Rules:**

Indian Penal Code, 1860 (Sections 167, 191, 192, 196, 201, 203, 270,  
278, 506, 441, 379, 420, 447, 468, 120(b), 34)

Prevention of Damage to Public Property Act, 1984 (Section 3)

Code of Criminal Procedure, 1973 (Section 156(3))

**Subject:** Petition for a direction to entrust investigation of FIR No.754/2023 and FIR No.839/2023 at Edathala Police Station to the Central Bureau of Investigation, involving allegations of property trespass, forgery, and threats.

**Headnotes:**

Quashing of FIR and Direction for CBI Investigation – Writ Petition – Allegations of Forgery and Trespass – Petitioner seeks direction to entrust investigation to Central Bureau of Investigation (CBI) – Petitioner alleges repeated threats and inducements by real estate group to widen road adjacent to his property – Suit filed by petitioner pending consideration before Court with interim injunction – Wife of petitioner files complaint alleging forgery and loss – FIRs registered but petitioner alleges improper investigation – Court examines final reports of related FIRs – Finds incomplete investigation and allegations against Investigating Officer – Directs fair investigation by District Crime Branch – Petition allowed accordingly. [Para 1-15]

Forgery Allegations and Trespass – Investigation – Allegations of forgery and trespass against real estate group and Panchayat Authorities – Complaints filed by petitioner and his wife – Alleged inclusion of petitioner's property in Panchayat's asset register without consent – Suit filed by petitioner with interim injunction against conversion of property into road – Allegations not properly probed, no forensic analysis of documents – Investigation deemed incomplete, further probe by independent agency ordered. [Para 13-14]

Direction for Investigation by District Crime Branch – Fair Probe – Final reports of related FIRs examined – Court finds deficiencies in investigation, including incomplete probe and allegations against Investigating Officer – Orders fair investigation by District Crime Branch into allegations against petitioner and related complaints – Directs immediate transfer of investigation from Edathala Police Station to District Crime Branch. [Para 15]

**Referred Cases: None.**

**Representing Advocates:**

**Petitioner: Subair (Party-In-Person)**

**Respondents: Sri.P.Narayanan (Public Prosecutor)**

## **JUDGMENT**

Petitioner seeks for a direction to entrust the investigation into F.I.R No.754/2023 and F.I.R No.839/2023 of Edathala Police Station to the Central Bureau of Investigation.

2. Petitioner and his wife are the owners of an extent of 10.750 Cents of property in Re.Sy.No.417/5 of Block No.35 of Aluva East Village. Petitioner alleges that, through the eastern boundary of the said property, there was a road having a width of 2.5 metres which led to a paddy field. However, after a real estate group purchased a property nearby to construct an apartment complex, petitioner was subjected to repeated threats and inducements with the ulterior objective of increasing the width of the road to 8 metres. Petitioner alleged that from 2008 onwards, he and his family had been subjected to various atrocities and false actions to compel him to forgo his title over the property to create a wider road. A suit filed by him as O.S. No.415 of 2008 is now pending consideration as R.S.A No.490/2014 before this Court, wherein an interim injunction has been issued, restraining the conversion of petitioner's property as a road.

3. While so, petitioner's wife filed a complaint alleging that ten persons had concocted and forged documents indicating her consent and manipulated the records of the Panchayat and incorporated 4 cents of her property in the asset register of the Panchayath, causing a loss of Rs.30,00,000/-. Since action was not initiated by the police, a direction was issued under Section 156(3) of the Code of Criminal Procedure, 1973

(for short 'Cr.P.C') and thereafter, the police registered a crime as F.I.R No.754/2023 of the Edathala Police Station on 03.11.2023.

4. In the meantime, a complaint was filed by the petitioner also, alleging that the real estate construction group, in collusion with the Panchayath Authorities, had trespassed into his property, with intent to increase the width of the road. The complaint was registered as F.I.R No.839/2023 of Edathala Police Station alleging offences punishable under

Sections 167, 191, 192, 196, 201 203 270, 278, 506 and 441 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC').

5. According to the petitioner, the crimes registered by him and hiswife have not been investigated properly, at the instance of the SHO, Edathala Police Station, who is hand in glove with the culprits and therefore, no investigation worth its name has been conducted. Petitioner also alleges that property of the National Defence Academy is situated close by and the acts of the accused will affect the security of the nation hence, a C.B.I enquiry is essential.

6. The respondents have filed a statement, pursuant to the direction of this Court. It is stated therein that petitioner had preferred a complaint in the year 2022, which was registered as F.I.R No.74/2022 of Edathala Police Station, alleging offences punishable under Sections 379, 420, 447,

441, 468, 120(b) 506 and 34 of IPC apart from Section 3 of Prevention of Damage to Public Property Act, 1984. In the said crime it was alleged that the accused had, under the guise of settling the dispute with the real estate group (M/s. Confident Group), trespassed into his property and committed damages and took away the red earth and also threatened his daughter. It is averred that the said crime was, pursuant to the direction of the District Police Chief, taken over by the District Crime Branch on 29.03.2022 and a final report was filed on 30.11.2022 arraying only one person as the accused, that too, under Section 506(i) IPC after deleting all others from the party array.

7. The statement also mentions that the allegations raised by thepetitioner in Crime No.754/2023 are the same as that of Crime No.74/2023, and therefore, after investigation, a report was filed in the above former crime on 27.12.2023 dropping all further action. As far as Crime No.839/2023 is concerned, the respondents allege that the investigation is continuing and is being conducted properly.

8. In the reply affidavit, petitioner denied any connection with CrimeNo.74/2022 and Crime No.754/2023. It was also stated that the petitioner or his wife had never given consent to the Grama Panchayat or anybody else surrendering their property, and if it was so, such a document ought to have been produced or retrieved by the police. Petitioner also alleged that the CCTV footage will reveal that the boundary stones of his property were forcefully removed, that too in the presence of the SHO, Edathala and that the said officer had even threatened petitioner's children that they will also be booked in criminal cases.

9. I have heard the petitioner who appeared as party in person and Sri.P.Narayanan, the learned Public Prosecutor.

10. During the course of hearing, this Court directed the Prosecutorto produce the copy of final reports in F.I.R No.74/2022 and in F.I.R No.754/2023.

11. A perusal of the final report in F.I.R No.74/2022 reveals that onlyone person has been arrayed as accused in the said case and the offence alleged is only under section 506(i) IPC, stating that during the widening of the road, since the defacto complainant objected, the accused therein had threatened him on 28.10.2021 and through the mobile phone threatened to kill the children of the defacto complainant and thereby committed the offences alleged.

12. From the final report filed in F.I.R No.754/2023, it is evident that,though initially the offences were alleged against 10 persons under sections 420, 464, 468, 474 r/w section 34 of the I.P.C, the Investigating Officer dropped all further action stating that investigation into the said allegations have already been carried out in Crime No.74/2022. In the final report in Crime No.74/2022 only one person was arrayed as accused, that too only for the offence under section 506(i) IPC.

13. On an appreciation of the contentions advanced, it is evidentthat petitioner has been fighting to save his property from being taken over by other persons in an attempt to widen a road from 2.5 metres to 8 metres. The property is alleged to be included in the asset register of the Panchayat. If the owners had not surrendered the property, necessarily, there cannot be any inclusion in the asset register, and if consent is available, records will be there. Since the petitioner alleges forgery and fabrication of records, if any such documents are available, the same ought to have been subjected to forensic analysis as well. Such a procedure is not seen carried out. Therefore, the allegation of the petitioner that his property has been included in the asset register after forging documents has not been specifically probed into. In this context, it is necessary to mention that on 26.05.2014, a learned Single Judge of this Court had, in I.A No.1231/2014 in R.S.A No.490/2014, issued an interim injunction, restraining the defendants therein, which includes the real estate group, from interfering with the possession of the plaintiff over the suit property if not already converted as a road.

14. The said interim order restrains persons from convertingpetitioner's property into a road. The Investigating Officer seems to

have not taken into reckoning the aforesaid aspects as well. Considering the entire circumstances, I am of the view that, the conclusion arrived at in the final report in F.I.R No.754/2023 is bereft of any material basis. The investigation conducted into the said crime is incomplete. Since allegations have been levelled against the Investigating Officer himself, whose presence at the time of the incident is mentioned by the petitioner, a further investigation is to be conducted by an independent agency. Similarly, F.I.R No.839/2023 in which the investigation is pending, also will have to be investigated by the same agency.

15. Having regard to the above circumstances, the final report filed in Crime No.754/2023 of Edathala Police Station is set aside. This Court is of the further view that, in order to provide a fair investigation, the District Crime Branch must investigate the allegations in F.I.R No.754/2023 and F.I.R No.839/2023, both of Edathala Police Station. The District Police Chief, Ernakulam Rural, shall immediately issue appropriate orders handing over the investigation of F.I.R No.754/2023 and F.I.R No.839/2023 of Edathala Police Station to the District Crime Branch, who shall conduct a fair and proper investigation at the earliest.

This writ petition is allowed as above.

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