



2026:KER:57634

W.P.(Crl.)No.658/2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

FRIDAY, THE 31ST DAY OF JULY 2026 / 9TH SRAVANA, 1948

WP(CRL.) NO. 658 OF 2026

PETITIONER:

MIDHUN. M
AGED 27 YEARS
S/O. MOHANAN,
RANDILAPPA, KOLLENGODE. P.O,
PALAKKAD DISTRICT,
PIN - 678506

BY ADVS.
SRI.K.R.RAJKUMAR
SHRI.JAGADEESH LAKSHMAN
SHRI.AROMALUNNI M.S.
SRI.R.K.RAKESH
SHRI.SREERAM OJAS
SMT.SREELAKSHMI P.S.

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY,
HOME (J) DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM,
PIN - 695001
- 2 DINOOP
CPO 5963, KOLLENGODE POLICE STATION,
CHITTUR TALUK,
PALAKKAD DISTRICT,
PIN - 678506



- 3 KAILASAM
CPO, KOLLENGODE POLICE STATION,
CHITTUR TALUK PALAKKAD DISTRICT,
PIN - 678506
- 4 JIJO
CPO, KOLLENGODE POLICE STATION,
CHITTUR TALUK PALAKKAD DISTRICT,
PIN - 678506
- 5 VINEETH
CPO, KOLLENGODE POLICE STATION,
CHITTUR TALUK PALAKKAD DISTRICT,
PIN - 678506
- 6 RAJESH
S.I. OF POLICE, KOLLENGODE POLICE STATION,
CHITTUR TALUK
PALAKKAD DISTRICT,
PIN - 678506

SMT. NEELANJANA NAIR, PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 29.07.2026, THE COURT ON 31.07.2026 DELIVERED THE
FOLLOWING:

**J U D G M E N T**

The order dated 27.08.2025 of the Judicial First Class Magistrate Court-I, Chittoor directing the complainant in C.M.P No.5822/2019 on the files of the said Court to produce the sanction from the Government under Section 197 Cr.P.C to proceed against the accused arraigned in that petition, is under challenge in this writ petition filed under Article 226 of the Constitution of India.

2. The petitioner who was working as a Sepoy in the Indian Army, is alleged to have been subjected to severe physical assault by the respondents who were Civil Police Officers and Sub Inspector of Kollemgode Police Station on 05.01.2019 at the premises of Kollemgode Temple while he was attending the 'Aarattu' festival there. The petitioner was taken to the District Hospital, Palakkad and admitted there by 11:30 p.m on 05.01.2019. After his discharge from the hospital on 07.01.2019, he filed a complaint before the Superintendent of Police, Palakkad against the aforesaid physical torture meted out to him by the S.H.O and Civil Police Officers of Kollemgode Police Station. The Commanding Officer of the petitioner is also said to have requested



the District Police Chief to take the necessary action. However, the police, instead of taking any action on the complaint of the petitioner, registered an F.I.R against him on 13.01.2019 in respect of the offences under Sections 341, 323 and 353 r/w Section 34 I.P.C alleging that he along with certain others physically assaulted the police party and caused obstruction to the discharge of their official duty at about 8:30 p.m on 05.01.2019. Realising that the petitioner may not get justice from the police, he is said to have filed a complaint before the learned Magistrate against the commission of the offences under Sections 341, 323, 324, 325 and 352 r/w Section 34 I.P.C upon him by the respondents 2 to 6 herein. The learned Magistrate took cognizance of the offences, and proceeded with the enquiry under Section 200 Cr.P.C by examining the petitioner and four witnesses as CW1 to CW4. At that juncture, the learned Magistrate came to the conclusion that sanction under Section 197 Cr.P.C was required for taking cognizance against the respondents 2 to 6 and directed the petitioner to produce the sanction order from the Government. The petitioner challenged the aforesaid verdict by filing Crl.R.P No.14/2022 before the Sessions Court, Palakkad. The learned Sessions Judge, after going through the



impugned order, found that the learned Magistrate had not applied his judicial mind on the facts of the case since there were no discussions about the materials on record. It was further observed in that order that the learned Magistrate did not consider the aspect whether the alleged offences were committed by the respondents 2 to 6 herein, in discharge of their official duty. Accordingly, the case was remitted back to the learned Magistrate to take fresh decision on the matter. It is thereafter that the learned Magistrate passed the impugned order reiterating his earlier finding that sanction under Section 197 Cr.P.C was required to take cognizance of the offences alleged against the respondents 2 to 6, and accordingly, directed the petitioner to produce the sanction from the Government. In the meanwhile, the petitioner had approached the Government seeking sanction under Section 197 Cr.P.C for taking cognizance against the offences alleged to have been committed by respondents 2 to 6. The aforesaid request of the petitioner was rejected by the Government vide Ext.P8 order stating the reason that the petitioner got injured in a fight between two factions during the percussion orchestra performed during the course of 'Aarattu' festival at Kollemgode, and that none of the police personnel



on duty had assaulted him. It is in the aforesaid circumstances that the petitioner has approached this Court with this writ petition for quashing Ext.P7 order of the learned Magistrate and Ext.P8 order of the Government, and for a direction to the learned Magistrate to proceed with the case by deferring the question as to the requirement of sanction under Section 197 Cr.P.C to the trial stage.

3. Though notices were duly served to respondents 2 to 6, they did not choose to appear before this Court or to prefer any counter.

4. Heard the learned counsel for the petitioner, and the learned Public Prosecutor representing the State of Kerala.

5. The fact that the petitioner sustained substantial physical injuries at the hands of the offenders in the night of 05.01.2019 at the festival site of Kollemgode temple, is undisputed. The specific case of the petitioner is that the 6th respondent, who was the S.I of Police, Kollemgode and the respondents 2 to 5, who were Civil Police Officers associated with the above police station, mounted severe physical assault upon him at the premises of the Kollemgode Temple at about 8:00 p.m on 05.01.2019, while he was attending the 'Aarattu' festival of



the temple. The aforesaid allegation is narrated in his statement as CW1 before the learned Magistrate. The statements of the other witnesses examined as CW2 to CW4, appear to have confirmed the above version of the petitioner. Though the Kollemgode Police registered Ext.P5 F.I.R against the petitioner alleging that he had physically assaulted the police and obstructed their official duty at about 8:30 p.m on 05.01.2019 at the premises of Kollemgode Temple, the aforesaid F.I.R is seen to have been registered only on 13.01.2019, after the petitioner preferred a complaint before the District Police Chief, Palakkad against the alleged assault of the police personnel upon the petitioner. Apparently, the delayed registration of the above F.I.R against the petitioner partakes the character of a counterblast in defence against the complaint preferred by the petitioner. At any rate, the respondents 2 to 6 are not expected to cause physical harm upon a person not involved in any violence under the pretext of the discharge of their official duties though they were entitled to apply reasonable and minimum force for maintaining law and order at the festival site.

6. As far as a case instituted otherwise than on Police report is concerned, the Magistrate is expected to have taken cognizance at the



moment when he decides to record the sworn statement of the complainant and to proceed with the enquiry under Section 200 Cr.PC. In the case on hand, the learned Magistrate had already adopted the above course of procedure and examined the complainant and three witnesses as CW1 to CW4. Thus, virtually the learned magistrate had taken cognizance of the offence alleged by the petitioner herein in the complaint filed by him. Still, it is open to the court below to look into the question whether the cognizance so taken is barred under Section 197 Cr.PC. But, in the peculiar facts and circumstances of this case, the question whether the respondents 2 to 6 resorted to the physical violence upon the petitioner in discharge of their official duty is a matter which could be ascertained only after evaluating the evidence in detail. This is especially so in view of the fact that there occurred an unexplained delay of about nine days in registering a crime against the petitioner in connection with the alleged act of assaulting the Police personnel and obstructing them from the discharge of the official duty. As already stated above, the contention of the petitioner that the aforesaid crime was registered against him in retaliation of the act of the petitioner preferring a complaint before the District Police Chief



against the unjustified physical violence perpetrated upon him by the respondents 2 to 6, cannot be ignored. All the above aspects could be scrutinised by the court below, only at the stage of trial.

7. In ***P.K. Pradhan v. State of Sikkim represented by the Central Bureau of Investigation [(2001) 6 SCC 704]*** the Hon'ble Supreme Court has held as follows:

"15. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

8. The same view has been followed in ***Devinder Singh & Ors. v. State of Punjab through CBI [(2016) 12 SCC 87]*** wherein it has been held that whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending on the facts of each case, and the question of sanction can be considered at any stage of the proceedings. It is further observed thereunder that in some cases it may not be possible to decide the question effectively and finally without giving opportunity to the



defence to adduce evidence. In ***Om Prakash and Others v. State of Jharkhand*** [2012 (12) SCC 72], the Hon'ble Supreme Court observed as follows on the point of the stage at which the question of sanction under Section 197 Cr.PC would be considered.

"41. The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the Police Officer or public servant was acting in performance of his official duty and is entitled to protection given under S.197 of the Code. It is not possible for us to hold that in such a case, the Court cannot look into any documents produced by the accused or the public servant concerned at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea. ..."

9. Having regard to the peculiar facts and circumstances of this case as stated above, I am of the view that it is too premature for the Trial Court to decide at this stage as to whether the respondents 2 to 6 are entitled for the protection of Section 197 Cr.PC for their alleged acts of subjecting the petitioner to severe physical torture. The court below shall decide the aforesaid aspect in the further course of trial of



the case after looking into the evidence as to whether there existed any reasonable nexus between the official duty claimed by the respondents 2 to 6, and their alleged act of thrashing the petitioner.

In the result, the writ petition stands allowed as follows:

- (i) Ext P7 order dated 27.08.2025 of the Judicial First Class Magistrate Court-I, Chittoor, in C.M.P.No.5822/2019 directing the complainant therein to produce sanction from the Government, is hereby set aside.
- (ii) The court below is directed to proceed with the aforesaid complaint as per law by relegating the issue as to whether the case required sanction under Section 197 Cr.PC., or not, to the stage after the completion of the evidence.
- (iii) It is made clear that the court below shall proceed with the complaint untrammelled by Ext P8 order dated 02.12.2025 of the Government.

(sd/-)

G. GIRISH, JUDGE



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APPENDIX**PETITIONER EXHIBITS**

- EXHIBIT P1** THE TRUE COPY OF THE PRIVATE COMPLAINT FILED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, CHITTUR, NUMBERED AS CMP NO. 5822/2019, DATED 30.07.2019, WITHOUT DOCUMENTS
- EXHIBIT P2** THE TRUE COPY OF THE DISCHARGE CERTIFICATE ISSUED BY THE DISTRICT HOSPITAL, PALAKKAD TO THE PETITIONER, DATED 07/01/2019
- EXHIBIT P3** THE TRUE COPY OF THE COMMUNICATION DATED 23/02/2019 ISSUED BY MAJOR S.P. MISHRA, COMMANDANT OF THE PETITIONER, TO THE DISTRICT POLICE CHIEF, PALAKKAD
- EXHIBIT P4** THE PHOTOGRAPH EVIDENCING THE INJURIES INFLICTED UPON THE PETITIONER
- EXHIBIT P5** THE TRUE COPY OF THE FINAL REPORT IN CC NO 409/2019 OF THE JUDICIAL FIRST-CLASS MAGISTRATE COURT, CHITTUR, PALAKKAD IN CRIME NO. 27/2019 OF KOLLENGODE POLICE STATION, PALAKKAD DISTRICT, DATED 25.07.2019
- EXHIBIT P6** THE TRUE COPY OF THE ORDER DATED 07/03/2024 IN CRIMINAL REVISION PETITION NO. 14 OF 2022 OF THE SESSIONS DIVISION COURT, PALAKKAD
- EXHIBIT P7** THE TRUE COPY OF THE ORDER DATED 27-08-2025 IN CMP NO. 5822 DATED 2019 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT I, CHITTUR
- EXHIBIT P8** THE TRUE COPY OF THE ORDER NO. J2/564/2025/HOME DATED 02/12/2025 OF THE 1ST RESPONDENT