



2026:KER:73609

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 24TH DAY OF SEPTEMBER 2026 / 2ND ASWINA, 1948

CRL.MC NO. 6240 OF 2026

CRIME NO.3/2014 OF VACB, KOZHIKODE, Kozhikode

CC NO.29 OF 2023 OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE

(VIGILANCE), KOZHIKODE

PETITIONER/ACCUSED NO.8:

P. IMBICHI KOYA

AGED 67 YEARS

S/O.MOIDEENKUTTY HAJI, ADVOCATE AND KERALA STATE NOTARY,
PONNUS VILLA, GOLF LINK ROAD, MALAPARAMBA, KOZHIKODE, PIN
- 673009

BY ADVS.

SHRI.S.RADHAKRISHNAN

SHRI.S.RAJMOHAN

SRI.ADITYA THEJUS KRISHNAN

SMT.ASWATHY P.V.

RESPONDENTS/COMPLAINANT NO.1& 2:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682031
- 2 DEPUTY SUPERINTENDENT OF POLICE
KOZHIKODE UNIT, THONDAYAD, KOZHIKODE, KERALA, PIN -
673017
BY SR.PUBLIC PROSECUTOR SRI.K.BIJU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
13.08.2026, THE COURT ON 24.09.2026, PASSED THE FOLLOWING:



2026:KER:73609

CR

ORDER

Dated this the 24th day of September, 2026

Accused No.8 in C.C.No.29/2023 on the files of the Enquiry Commissioner and Special Judge, (Vigilance), Kozhikode, has filed this Criminal Miscellaneous Case, seeking the following prayers:

“To set aside the final report (Charge sheet no 05/2023/ KKD dated 07.07.2023) filed before the Court of the Enquiry Commissioner and Special Judge, Kozhikode in CC No 29/2023 to the extent it applies to the petitioner who is arrayed as the 8th accused and all further proceedings against him in CC No 29/2023 in the Court of the Enquiry Commissioner and Special Judge, Kozhikode.”

2. In this case, as per Annexure 2 final report, the prosecution case is that accused Nos.1 to 9 committed offences punishable under Sections 13(1)(d) r/w 13(2) of the Prevention

2026:KER:73609

of Corruption Act, 1988 (for short, 'the PC Act' hereinafter) as well as under Sections 466, 468, 471, 477A and 120(b) of Indian Penal Code (for short, 'the IPC' hereinafter), in the matter of grant of building permit.

3. This petition has been filed at the instance of the 8th accused, who is a Notary Public and the contention raised by the learned counsel for the petitioner to quash the case against the 8th accused could be seen from paragraph Nos.4 to 7 of the Criminal Miscellaneous Case. According to him, since Section 13(1) of the Notaries Act, 1952 (for short, 'the Notaries Act' hereinafter), provides that *no Court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon a complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf*, the cognizance of an offence against a notary public in respect of acts done in the exercise or purported

2026:KER:73609

exercise of his functions under the Notaries Act cannot be taken except upon such a complaint being made by an officer so authorized. According to the learned counsel for the petitioner, in the instant case, the authorized officer is the Secretary, Department of Law, and therefore, in order to proceed against the petitioner, a complaint in writing made by the authorised officer is necessary. However, in the instant case, no such complaint in writing has been made and, in such view of the matter, the prosecution against the petitioner cannot be sustained.

4. Whereas, it is submitted by the learned Public Prosecutor that, in the instant case, a consent letter was attested by the Notary without the consent of the alleged executant of the document, as stated by the alleged executant. It is further submitted that the Notary himself has committed the offence of forgery and, in order to suppress the issuance of such a forged consent letter, he had willfully not entered the execution of the

2026:KER:73609

consent letter in the Notarial Register. The Protection contemplated under Section 13 of the Notaries Act is available only in respect of acts performed by a Notary in the lawful discharge or purported discharge of his statutory functions. It does not extend to offences committed with criminal intent or acts which are wholly outside the scope of the statutory duties of the Notary. The preparation or participation in the preparation of a forged document in the year 2011, by falsely certifying that it had been executed in the year 2009 could not, by any stretch of imagination, be regarded as an act done in the discharge or purported discharge of the petitioner's functions as a Notary. Consequently, the protection under Section 13 of the Notaries Act is not available to the petitioner. Therefore, the mandate contained in Section 13(1) of the Notaries Act has no application to the present case and, consequently, this Criminal Miscellaneous Case is liable to be dismissed on the said ground.

5. In fact, as submitted by the learned counsel for the

2026:KER:73609

petitioner, in the decision in **V.P.Jyolsna v. State of Kerala & Anr** reported in **[2021 (1) KLJ 117]**, a learned Single Judge of this Court considered in paragraph No.3 an identical situation dealt in paragraph No.10. Thereafter, in paragraph No.22, the learned Single Judge observed as under:

“3. The petitioner herein has been arrayed as the second accused. Annexure-A3, FIR was registered against the three accused persons. On completion of the investigation, Annexure- A6 Final Report was filed. It is alleged in the charge that on 27.07.2011 in Room No.53 of Kannur Stadium Complex in the office of the petitioner/second accused, first accused created a power of attorney authorising the sale of a flat owned by the first accused and the defacto complainant in Thane, Mumbai, without the knowledge of the defacto complainant with the aid of the second accused and using the forged power of attorney as original, the first accused sold the flat in Mumbai and thereby cheated the defacto complainant. Hence, accused persons committed offences punishable under Sections

2026:KER:73609

463, 464, 465, 467, 468, 471, 472 & 474 r/w. 34 IPC.

10. To support the contention the learned counsel placed reliance upon various decisions. *Chandmal Motilal Bora v. State of Maharashtra* [2004(2)MHLJ 41] was drawn to my attention first. That was a case in which a practising Advocate and Notary approached the High Court of Bombay for discharging him from criminal prosecution involving offences under Sections 395, 344, 347, 365, 387, 324, 506 r/w. S. 120b of IPC. In that case, while dealing with the scope of Section 13(1) of the Act and the application of mind by the court whether the act alleged is an official act or not of a notary public the following discussions have been made which seem very relevant in this context to be extracted and same reads as follows:

"5. THEREFORE, if any allegation is made against a Notary which touches the official performance as a Notary, the Criminal Court is forbidden from taking cognisance unless the complaint in writing is made by an officer authorised by the Central Government or

2026:KER:73609

State Government by general or special order in this behalf. Therefore, whenever an official act of Notary comes in picture, it becomes the duty of the Criminal Court to see, whether the allegations is directly concerned with his official duty or the performance which he has to do as indicated in S.8 of Notaries Act. The Court which has been requested to take cognisance of the complaint has to apply its judicial mind and to see whether the act which is the subject-matter of the complaint is the official act of a notary or it is an act which is beyond his official performance. Suppose if the notary is alleged to have committed an offence by his act directly in his personal capacity, then there is no need of sanction, because, the said act is not connected with his official performance, like an allegation showing that notary committed the murder or Notary assaulted a person for the purposes of causing simple hurt, grievous hurt etc. If the allegations show that by an act which is not in accordance with the provisions of Notaries Act, the Notary has been alleged to have

2026:KER:73609

committed an offence, there is no need of having a sanction to the complaint in writing of an officer as contemplated by provisions of S.13 of Notaries Act. But if act alleged is touching his official performance, the Court has to be on guard when it has been requested to take cognisance of the allegations against the Notary."

From the above, it is clear that whenever a question of official act of Notary comes for determination, it is the duty of the criminal court to find whether the allegations are directly concerned with his official duty or the performance which he has to do as indicated in Section 8 of the Act. The court has to apply its judicial mind and to see whether the subject matter of the complaint is the official act of a notary or is an act beyond his official performance. The unauthorised acts of a notary is also illustrated by stating commission of murder or assault of a person for causing hurt, grievous hurt etc. So if at all the allegations against the Notary is such unofficial acts or acts not connected with his/her official duties definitely the sanction under Section 13(1) need not be obtained. Paragraph

2026:KER:73609

No.6 of the said decision makes the matters more clear which is extracted as follows:

"6. If such protection is not granted to the Notary, he would be involved, implicated and roped in, in number of offences, because number of documents are being notarised before him in his Notarial register. Some documents may be purporting to be for the offence of cheating, blackmailing or offence of commercial transactions. He would be involved in number of offences concerned with the disposing of property, transfer of the property, sale of the property, exchange of property. He would be also coming in picture as an accused in number of offences connected with number of commercial crimes. A Notary is not supposed to know each and every person before him for the purpose of notifying a document in his Notarial register. He is not supposed to know the truth behind the documents brought before him for entries. He is generally introduced to parties by persons

2026:KER:73609

who happen to be persons of his acquaintance. Such person may be advocates, clerks of the advocates, or some persons who are connected with him by his profession as Notary or by his profession generally as a lawyer. If such protection is not granted to a Notary, it would be very difficult for him to work as notary and members of public at large would be facing number of difficulties at every step and with this object S.13 has been enacted by the Legislature with a foresight."

22. As found earlier cognizance taken against the petitioner/2nd accused in non compliance of Section 13(1) of the Notaries Act, 1952 is bad in law. So the continuance of all the proceedings in C.C.No.851/ 2014 on the files of the Judicial First Class Magistrate Court-I, Kannur against the petitioner as second accused would be an abuse of process of law. Hence, I am of the considered view that this is a fit case to invoke the inherent powers vested with this Court to quash the proceedings against the petitioner."

2026:KER:73609

6. As pointed out by the learned counsel for the petitioner in Crl.M.C.No.7127/2022 in **Malu K. v. State of Kerala** also, this Court found the same ratio. Here, CW2 and CW3 gave statements to the police to that effect that they had not appeared before the Notary for signing the consent letter. In the facts and circumstances of the case, the question that falls for consideration is whether the cognizance taken against the petitioner/accused No.8 is bad in law for want of compliance of Section 13(1) of the Notaries Act.

7. Viewing the legislative intent behind the incorporation of Section 13(1) of the Notaries Act, it could be decipherable that, if a Notary does an act not in accordance with the provisions of the Notaries Act and is alleged to have committed an offence, there is no need for a sanction to the complaint in writing by an officer, as contemplated under Section 13 of the Notaries Act. Similarly, when a Notary is alleged to

2026:KER:73609

have committed an offence by his act directly in his personal capacity, Section 13(1) of the Notaries Act has no application. Thus, the intention behind Section 13 of the Notaries Act is to give protection to a Notary for the official acts done by him and from false prosecution based on such acts, to ensure that a Notary should not be subjected to the trauma of criminal prosecution for the official acts he has done. For example, if a Notary attests a true copy of a forged document without knowing that the said original document was forged, he would get the protection under Section 13 of the Notaries Act. Thus, the protection is available to a Notary when his *mens rea* in committing the offence/offences could not be found *prima facie*, as referred to hereinabove. At the same time, when the facts of the case reveal that the Notary had *mens rea* and had not taken the necessary precautions while performing the functions of a Notary, as contemplated under Section 8 of the Notaries Act, and had taken part in execution of documents in the absence of the executants, the

2026:KER:73609

Notary is taking part in the act of forging a document. Forging a document by a Notary could not be held to be an act done by a Notary in the exercise or purported exercise of his functions under the Notaries Act, and the same is outside the scope of Section 13 of the Notaries Act. It is apropose to note that in the instant case, the *mens rea* of the petitioner in doing the act of forging the disputed consent letter is foreseeable as the prosecution specifically alleges that he did not make the necessary entries in the Notarial Register and other records regarding the execution of the forged consent letter with a view to screen himself for the act of forgery, *prima facie*. Therefore, a straight-jacket formula could not be laid down to hold that each and every offence committed by a Notary, which has a connection with his functions as a Notary, would get protection under Section 13 of the Notaries Act, even though he would get protection under Section 13 only for an act done while exercising or purportedly exercising the functions of a Notary, and not beyond the

2026:KER:73609

same.

8. In the instant case, as already discussed, the allegation of the prosecution is that the consent in the name of CW3, Sri.Rajan Nair, was executed in the presence of the petitioner, a Notary, on 02.11.2009, and according to CW3, he did not appear before the Notary or execute the consent letter. His statement would further show that either he himself or his siblings never visited the office of Sri.Imbichi Koya, the Notary Public who certified the execution of the forged consent letter. If so, the execution of a document by a Notary in the absence of the party executing the same is not an act to be construed as one while exercising or purporting to exercise the functions of a Notary, and the same is outside the scope of Section 13(1) of the Notaries Act. Thus, on facts of this case, the plea raised by the petitioner to quash the criminal proceedings against him for want of compliance of Section 13(1) of the Notaries Act would not succeed and in such view of the matter, this petition is liable



2026:KER:73609

to fail.

In the result, this petition is dismissed. The interim order of stay, if any, shall stand vacated, with liberty to the Special Court, Kozhikode, to proceed with the trial.

Registry is directed to forward a copy of this order to the Special Court, Kozhikode, for information and compliance.

Sd/-
A. BADHARUDEEN
JUDGE

Bb



2026:KER:73609

APPENDIX OF CRL.MC NO. 6240 OF 2026

PETITIONER'S ANNEXURES

- Annexure 1 THE CERTIFIED COPY OF THE FIR DATED
17.02.2014 FILED BY THE DEPUTY
SUPERINTENDENT OF POLICE VACB KOZHIKODE
ALONG WITH THE TYPED VERSION
- Annexure 2 THE CERTIFIED COPY OF THE FINAL REPORT
IN CC NO.29/2023 PENDING BEFORE THE
ENQUIRY COMMISSIONER AND SPECIAL JUDGE,
KOZHIKODE

RESPONDENTS' ANNEXURES : NIL