IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 19TH DAY OF FEBRUARY 2024 / 30TH MAGHA, 1945

CRL.A NO. 892 OF 2014

CRIME NO.433/2012 OF Vadakara Police Station, Kozhikode

AGAINST THE ORDER DATED 16.8.2014 IN CRL.M.P.NO.109/2014 IN SC 867/2012 OF SPECIAL ADDITIONAL SESSIONS JUDGE (MARAD CASES) KOZHIKODE

APPELLANT/PETITIONER:

K.K.KRISHNAN, AGED 68 YEARS
[redacted]

BY ADVS.
SRI.K.VISWAN
ARUN BOSE.D ABD

RESPONDENTS/COUNTER PETITONERS:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM 682031

2 JOSY CHERIAN
DEPUTY SUPERINTENDENT OF POLICE, VADAKARFA, VADAKARA P.S.L

3 PRAMOD @ PRAMOD MUKKATT
AGED 36 YEARS
S/O BALAKRISHNAN M.K, ARTIST, MUKKATT KUNI HOUSE, P.O, ORKKATTERI VADAKARA TALUK, KOZHIKODE DISTRICT 673103, EDACHERY POLICE STATION LIMIT

4 K.N. VASUDEVAN
AGED 44 YEARS
S/O MADHAVAN NAMBIAR, CHERUVOTT HOUSE, KARAYAD P.O, MEPPAYYUR (VIA) 673524, KOYILANDY S.C.P.O 6203, KOYILANDY POLICE STATION, (NOW S.C.P.O 6203 KOYILANDY POLICE STATION, KOYILANDY)

BY ADVS.SRI.P.KUMARANKUTTY, SPL. PP
SRI.JOHN SEBASTIAN RALPH V
SRI. SAPHAL.K.(K/2595/1999), ASST. SPL PP
VISHNU CHANDRAN(K/001339/2018)
RALPH RETI JOHN(K/001520/2018)
APPU BABU(K/000634/2020)
SHIFNA MUHAMMED SHUKKUR(K/000671/2020)
GIRIDHAR KRISHNA KUMAR(K/00744/2022)
VISHNUMAYA M.B.(K/002474/2021)
GEETHU T.A.(K/3389/2022)
APOORVA RAMKUMAR(K/002237/2021)

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 25.01.2024, THE COURT ON 19.02.2024 DELIVERED THE FOLLOWING:

"C.R."

J U D G M E N T

Dr.Kauser Edappagath, J.

Can prosecution for perjury be maintained against a public servant under Section 340 r/w 195 of Cr. P.C unless prior sanction under Section 197 of Cr.P.C is obtained? – this is the interesting question that falls for consideration in this criminal appeal filed under Section 341 of Cr.P.C.

2. The appellant was the 10th accused in SC No.867/2012 on the file of the Court of Session, Special Additional Sessions Judge (Marad Cases), Kozhikode (for short, "the trial court"). The appellant, along with fifty-one others, was tried for the offences punishable under Sections 143, 147, 148, 302 r/w 149, 465, 471, 118, 201, 212, 120B, 109 of IPC and Sections 3 and 5 of the Explosive Substances Act, 1908. The 2nd respondent was one of the investigating officers, and the 4th respondent was a police officer who was a member of the investigating team of the above case. The 3rd respondent was an attestor to Ext.P61 mahazar marked in the above case.

3. The prosecution allegation, in brief, in SC No.867/2012, is that pursuant to a criminal conspiracy hatched by A8 to A14, with the assistance of A1, A3, A5, A7, A15 to A18, A20 to A25, and A27 to A30, at about 22.10 hours, on 4/5/2012, A1 to A7 came in an Innova car bearing a false registration number driven by A1 and rammed the car into the motorbike driven by Sri.T.P.Chandrasekharan, who was a leader of the Revolutionary Marxist Party. After causing the latter to be thrown on the road, they hacked him to death on the public road at a place called Vallikkad by striking him with swords. A3 also used a country bomb to cause an explosion that would prevent witnesses from approaching the scene of the crime, A1 to A7 then fled the scene of the crime and were assisted by other accused who either harboured them or destroyed valuable evidence that pointed to them.

4. The charge against the appellant was under Sections 120B and 302 r/w 109 of IPC. After a full-fledged trial, the trial court convicted A1 to A7, A8, A11, A13, A18 and A31 and acquitted the remaining accused, including the appellant. In appeal, this court convicted the appellant by a separate

judgment passed today.

5. After the conclusion of the trial in SC No.867/2012, the appellant preferred Crl. M.P.No.109/2014 invoking Section 340 of Cr.P.C. before the trial court against the respondents 2 to 4. It was alleged that while the 2nd respondent was investigating the case, during the investigation, he falsely created Ext.P61 observation mahazar showing the presence of A8 K.C. Ramachandran in it. One of the instances of conspiracy alleged by the prosecution is that sometime between 3.00 and 3.30 p.m. on 2/4/2012, A8 K.C. Ramachandran, A9 C.H.Asokan, A10 K.K. Krishnan (appellant) and A14 P. Mohanan met at the flower shop owned by A30 Raveendran at Orkatteri and conspired to take the life of T.P. Chandrasekharan. The 2nd respondent arrested A8 at 17.00 hrs on 16/5/2012. The 2nd respondent gave evidence as PW165 that after the arrest, A8 gave a confession statement to him that if he were taken, he would point out the flower shop where they conspired to murder T.P.Chandrasekharan and pursuant to the said disclosure statement, as led by A8, he reached Orkatteri town and prepared Ext.P61 observation mahazar of the flower shop which was pointed out to him by A8.

The 3rd respondent is the attestor to Ext.P61, and the 4th respondent is the Senior CPO attached to Koyilandy police station who assisted the 2nd respondent in preparing Ext.P61. The 2nd respondent, however, deposed in cross-examination that after arrest, A8 was produced before the Judicial First-Class Magistrate Court, Kunnamangalam, only at about 18.30 hours on that day, and he obtained police custody of A8 only at about 19.00 hours. However, Ext.P61 observation mahazar was prepared at 17.00 hours on 17/5/2012. It is alleged that Ext.P61 is a fabricated document and that respondents 2 to 4 gave false evidence before the trial court with the intention to procure the conviction of the appellant and the remaining accused under Section 302 of I.P.C. which is an offence punishable under Section 195 of I.P.C.

6. The trial court, without issuing notice to respondents 2 to 4, dismissed the application as not maintainable for want of sanction under Section 197 of Cr.P.C. It is challenging the said order; the appellant is before us invoking Section 341 of Cr.P.C.

7. We have heard Sri.K.Viswan, the learned counsel for the appellant, Sri.Kumarankutty, the learned Special Public Prosecutor for the 1st respondent and Sri.John S.Ralph, the

learned counsel for the 2nd respondent.

8. The appellant has filed the application invoking Section 340 of Cr.P.C. to initiate prosecution for perjury against the respondents 2 to 4 under Section 195 of I.P.C. The law governing taking cognizance of such an offence is contained in Section 195 (1)(b) of Cr.P.C. The said provision puts a clear bar on taking of cognizance by a court of an offence punishable, *inter alia*, under Section 195 of I.P.C. unless it is on a complaint in writing of the court or such officer of the court as that court may authorise in writing in that behalf, in relation to a judicial proceeding of which court, the offence is alleged to have been committed. Section 340 of Cr. P.C. provides for the procedure enumerated in Section 195(1)(b). Section 340 of Cr.P.C. makes it clear that a prosecution under this Section can be initiated only at the instance of the court under whose proceedings an offence referred to in Section 195(1)(b) has allegedly been committed. The crucial question however is, when the offence referred to in Section 195(1)(b) of Cr.P.C is committed by a public servant while discharging his official duty, whether prior sanction under Section 197 of Cr.P.C is required for the court to take action in terms of

Section 340 of Cr.P.C. Here, going by the case of the appellant, the offence under Section 195 of IPC was committed by respondents 2 and 4, who were public servants while discharging their official duty.

9. Section 195 of Cr.P.C creates a bar, and Section 340 of Cr. P.C confers jurisdiction on the court to proceed for the offences mentioned in clause (b) of sub-section (1) of Section 195. These two provisions are supplementary to each other. One creates a bar on the filing of the complaint, and the other removes the bar and confers exclusive jurisdiction on the court to file the complaint after satisfying itself *prima facie* about the correctness of the offences said to have been committed and covered by clause (b) of sub-section (1) of Section 195. A conjoint reading of Sections 195 and 340 of Cr. P.C makes it clear that it is for the court alone to proceed against the party who committed the offence enumerated in clause (b) of sub-section (1) of Section 195. However, the action under Section 195 of Cr.P.C can be activated in terms of the procedure laid down under Section 340 of Cr.P.C by anybody on an application or by the court *suo motu*. In other words, when the court concerned does not initiate action

as contemplated under section 340 of Cr.P.C, the aggrieved party is not remediless. The aggrieved party can very well approach the court concerned with an application and alert the court to initiate proceedings under section 340 [See *Natarajan v B.K. Subba Rao*, AIR 2003 SC 541, *Patel Laljibhai Somabhai v. State of Gujarat*, AIR 1971 SC 1935)]. When such an application is filed, the court can, after holding such preliminary enquiry, if any, as contemplated under Section 340 of Cr.P.C, make a complaint thereof in writing to the jurisdictional magistrate. It is not necessary that the application should be made during the proceedings out of which it arises or immediately thereafter. Such an application by an aggrieved party is maintainable even after the termination of the proceedings [*Sreejith Premachandran v. Biju Ramesh* 2021 (1) KLT Online 1060].

10. The offences falling under clause (b)(i) of Section 195(1) are those which relate to false evidence and offences against public justice. Those offences are intricately connected with the administration of justice. It is the predominant requirement of the public justice system that the prosecution of an alleged offender, referable to offences falling under clause (b)

(i) of Section 195(1), must be determined by the justice delivery system itself. These offences have been selected for the Court's control because of their direct impact on the judicial process. This is the reason why it is the court before which such an offence is seen, shown or alleged to have been committed that would have to *prima facie* come to a conclusion as to whether it is a fit case to put an alleged offender to trial and whether such a prosecution is necessary in the interest of justice as provided under Section 340 Cr. P.C. It has been consistently held by the Apex Court that prosecution for perjury be sanctioned by the courts only in those cases where perjury appears to be deliberate and that prosecution ought to be ordered where it would be expedient in the interest of justice to punish the delinquent. In ***Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another*** [(2005) 4 SCC 370], a Constitution Bench of the Apex Court has gone into the scope of Section 340 Cr.P.C. Paragraph 23 deals with the relevant consideration:

> *"23. In view of the language used in S.340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in S.195(1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice".*

> *This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in S.195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint."*

The same principle was reiterated in ***Chintamani Malviya v. High Court of Madhya Pradesh*** (AIR 2018 SC 2656) and in ***Chajoo Ram v. Radhey Shyam and Another*** (AIR 1971 SC 1367).

11. Sections 195 and 340 of Cr. P.C are provisions that effectively interdict prosecutions when public interest cannot be

served. They provide protection to persons from prosecutions on insufficient grounds and ensure that there shall be prosecution only when the Court, after due consideration, is satisfied that there is a proper case to put a party to trial, striking a balance between the public requirement to bring an offender against public justice to face the consequences and to insulate misuse of the law. As the crime directly affects the administration of justice and sullies the purity of the Court's proceedings, the Court is considered to be the only party clothed with the right to complain against the guilty party, that too by following the procedure prescribed in Section 340. [*Patel Laljibhai Somabhai* (supra)]. Since the court makes the complaint regarding the commission of an offence referred to in Section 195(1)(b) of Cr.P.C, after holding a preliminary enquiry and forming an opinion by applying its judicial mind that it is expedient in the interest of justice that enquiry should be made into any such offences, a further sanction under Section 197 of Cr. P.C, in case the offender is a public servant, is neither desirable nor contemplated. Insisting on sanction in such cases would not only create an anomalous situation where the executive acting in its administrative capacity

would be able to sit over the decision made by the court in a judicial proceeding but also run counter to the scheme of independence of the judiciary and separation of powers envisaged under the Constitution. It is relevant to note that where the court acts under Section 340 and makes a complaint, it is the court and not the private party who as a complainant moves the jurisdictional Magistrate court by an application for taking action. When the court is convinced after following the procedure contemplated under Section 340 r/w 195 of Cr.P.C., that it is a fit case to put the alleged offender on trial and that a prosecution is necessary in the interests of justice, a further sanction from the Government under section 197 of Cr.PC is not at all necessary. As to the argument of the learned counsel for the 2nd respondent that Explanation to Section 197(1) of Cr.P.C, which excludes certain offences from the application of the Section, does not contain the offences mentioned in Section 195(1)(b) of Cr.P.C, we are of the view that the Explanation does not mention those offences because the section itself was never intended to apply in such cases. We say so because, Section 197(1)(b) puts an embargo against taking cognizance in the absence of a

sanction of the Government only in cases where an offence is alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duty. In a case where the court or its authorized officer is the complainant, the provisions of Section 340 Cr.P.C ensure that there is not merely an allegation of the commission of an offence, but a preliminary *prima facie* finding as well. For these reasons, we are unable to agree with the finding of the trial court that the respondents 2 and 4 being public servants, sanction for prosecution under Section 197 of Cr.P.C is necessary.

12. We, therefore, set aside the impugned order and remit back the matter to the trial court to proceed under Section 340 of Cr. P.C. in accordance with law. We make it clear that we have not expressed any opinion on the merits of the contentions raised in the application. Needless to say, the mere fact that a person has given false evidence in a judicial proceeding is not by itself always sufficient to justify a prosecution under Section 195 of I.P.C, but it must be shown that he has given false evidence with intention or knowledge that such evidence would lead to the conviction of the accused. In order to initiate prosecution for

perjury, the court must *prima facie* reach a conclusion after holding a preliminary enquiry that there has been a deliberate and conscious effort to misguide the court and interfere in the administration of justice [*Ashok Kumar Aggarwal v. Union of India and others* AIR 2014 SC 1020]. Even after the above position has emerged, the court still has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence having regard to the overall facts and circumstances as well as the probable consequences of such a prosecution.

The appeal stands allowed as above.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

Rp