2023/KER/65231

CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 27TH DAY OF OCTOBER 2023 / 5TH KARTHIKA, 1945

CRL.MC NO. 3465 OF 2021

AGAINST THE ORDER/JUDGMENT CC 624/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,KOTTARAKKARA

PETITIONER/ACCUSED NO.2:

K.B.GANESH KUMAR
AGED 55 YEARS

BY ADVS.
S.RAJEEV
K.K.DHEERENDRAKRISHNAN
V.VINAY
M.S.ANEER
R.ANIL R
B.RAMAN PILLAI (SR.)(R-260)

RESPONDENTS/STATE/COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM- 682 031

2 SUDHEER JACOB

BY ADVS.
SRI.S.SREEKUMAR (SR.)
SMT.TINA ALEX THOMAS
SRI.HARIMOHAN

SMT.SREEJA V., PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16.10.2023, THE COURT ON 27.10.2023 PASSED THE FOLLOWING:

CR

P.V.KUNHIKRISHNAN, J.

Crl.M.C.No.3465 of 2021

Dated this the 27th day of October, 2023

ORDER

This Criminal Miscellaneous Case is filed to quash the proceedings in C.C.No.624/2021 on the file of the Judicial First Class Magistrate Court – I, Kottarakkara as against the petitioner.

2. Petitioner is the 2nd accused in the above case. The 2nd respondent herein filed a private complaint before the Judicial First Class Magistrate Court - I, Kottarakkara against the petitioner and another alleging offences punishable under Sections 120B, 192, 193, 182, 469, 471 r/w Section 34 IPC. Annexure-I is the complaint. The learned Magistrate has taken

cognizance under Sections 193, 182, 469, 471 and 120(B) IPC. Aggrieved by the order taking cognizance and also against Annexure-I complaint, this Criminal Miscellaneous Case is filed.

3. The short facts in Annexure-I complaint are like this: The Government of Kerala has constituted a Commission of Inquiry under the Commissions of Inquiry Act for the purpose of making an inquiry into an issue which is known as 'Solar Scam and allied financial transactions'. Accused No.1 in Annexure-I complaint was one of the witnesses before the Solar Scam Commission. It is the case of the 2nd respondent/complainant that the 1st accused in Annexure-I made baseless and wild allegations against the then Chief Minister of Kerala, Ministers, M.L.As etc., in the proceedings before the said Commission as CW 108. Petitioner herein, who is the 2nd accused in Annexure-I complaint, is the Member of the Legislative Assembly from Pathanapuram Assembly Constituency. The 1st accused in Annexure-I complaint produced and marked a letter before the

Commission on 13.05.2016 allegedly written by her on 19.07.2013 as Ext.X-531, X-639(b). According to the complainant, this letter was marked under the pretext that the 1st accused wrote this letter while she was in police custody in relation to the investigation of Crime No.368/2013 of Perumbavoor Police Station. The 1st accused was arrested on 03.06.2013 by the Perumbavoor Police in connection with Crime No.368/2013. She was remanded to judicial custody and was send to the Sub Jail, Pathanamthitta. Before admitting in the jail, her body was searched by the jail authorities and they had found a letter. The 1st accused was permitted to keep the letter in her custody while in jail, is the submission of the complainant in Annexure-I complaint. On 23.07.2013, Adv.Phenny Balakrishnan came to the jail to collect the letter. The Superintendent of jail permitted the 1st accused to hand over the letter to Adv. Phenny Balakrishnan after receiving a proper receipt indicating the number of pages of the letter. After the issuance of a receipt to

Adv. Phenny Balakrishnan, the letter was collected by him from the 1st accused. It is also the case of the complainant in Annexure-I that, in the course of proceedings before the Commission of Inquiry itself, CW58 - Mr.Viswanatha Kurup who was the Superintendent of jail, Pathanamthitta was examined and deposed before the Commission that the 1st accused had handed over a letter/notes to her lawyer, Adv. Phenny Balakrishnan on 23.07.2013 at Pathanamthitta jail. It was deposed by the said Mr.Viswanatha Kurup that, Adv. Phenny Balakrishnan executed a receipt to the effect that the letter has only 21 pages. The receipt was marked as Ext.X-174 before the Commission. Further, it has come out in evidence before the Commission that the 1st accused sent a complaint dated 28.07.2013 through Superintendent, Attakulangara jail to the Additional Chief Judicial Magistrate, Ernakulam which was marked as Ext.X-190 before the Commission. The learned Magistrate forwarded the complaint to the Station House Officer,

Ernakulam North Police Station for investigation. It is submitted that, there is no allegation against anybody in that complaint. However, it is the case of the 2nd respondent/ complainant that, Ext.X-531 and 639(b) letter produced by the 1st accused and marked on 06.06.2016 in the Commission had 25 pages. It is also submitted that in this letter the 1st accused alleged that several persons who are high dignitaries sexually harassed her and also took money from her. The Commission of Inquiry accepted this letter in evidence and acted on it and issued recommendations to the Government. On receipt of the report of the Inquiry Commission, the Government of Kerala constituted a Special Investigation Team and decided to investigate into the recommendations which also contained the allegations in the so-called letter.

4. While so, on 11.11.2017, Adv. Phenny Balakrishnan in a press conference made a disclosure that the letter produced by the 1st accused before the Commission of Inquiry was not the

original letter and the letter produced by the 1st accused in the Commission (Ext.X-531, Ext.X-639(b)) is a fabricated false document. It was also alleged that the false letter was fabricated at the instance of the 2nd accused who is the petitioner herein. It is submitted that the disclosure of Mr.Phenny Balakrishnan was reported by all major dailies. A news item published in the Indian Express Daily dated 12.11.2017 is extracted in Annexure-I complaint. It is also submitted that the above disclosure made by Adv. Phenny Balakrishnan is the disclosure of an information about the commission of offences under the Indian Penal Code. It is submitted by the complainant, the 2nd respondent herein, that Adv. Phenny Balakrishnan reveals that, accused Nos.1 and 2 hatched a criminal conspiracy at Kottarakkara and in pursuance to the criminal conspiracy committed the offence of fabricating false evidence defined under Section 192 of the IPC by making a document containing a false statement intending that it may

appear in a judicial proceeding or a proceeding taken by law before a public servant as such and that false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, entertain an erroneous opinion touching any point material to the result of such proceeding. It is also the case of the complainant that the offence under Section 193 IPC is also committed by the accused. According to the complainant, the accused in Annexure-I complaint has an axe to grind against the then Chief Minister, Cabinet Ministers and other political leaders and hence hatched a criminal conspiracy to create false evidence and produced it before the Commission of Inquiry. It is also submitted that, in pursuance of the criminal conspiracy hatched between the accused, a letter alleged to be written on 19.07.2013 knowing fully well that the contents of the letter are false, was produced before the Commission of Inquiry on 13.05.2016. The Commission of Inquiry wholly relied on this fabricated false

document and submitted certain recommendations to the Government is the submission of the complainant in the complaint before the lower court. Therefore, it is submitted that the accused committed the offences under Sections 120B, 192, 193, 182, 469, 471 r/w Section 34 IPC.

5. After filing the complaint, the sworn statement of eight witnesses were recorded on the side of the complainant. Based on the above statement, the learned Magistrate found that there is *prima facie* evidence to take cognizance against accused Nos.1 and 2 under Sections 193, 182, 469, 471 and 120(B) IPC. Accordingly, summons was issued to the petitioner and the 1st accused. Aggrieved by the issue of process and also challenging Annexure-I complaint, this Criminal Miscellaneous Case is filed.

6. Heard the learned Senior counsel Adv. B.Raman Pillai for the petitioner as instructed by Adv. S.Rajeev and the learned Senior counsel Adv. S.Sreekumar as instructed by Adv.Tina Alex Thomas appearing for the 2nd respondent. I also heard the

learned Public Prosecutor.

7. The learned Senior counsel appearing for the petitioner submitted that, even if the entire allegations in Annexure-I complaint are accepted in toto, no offence is made out. The Senior counsel takes me through Section 193 and 182 of IPC. The Senior counsel submitted that, for taking cognizance of offences under Section 193 and 182, there is a bar under Section 195 of the Criminal Procedure Code. The counsel takes me through Sec.195 Cr.P.C. and submitted that since there is a bar for taking cognizance, the learned Magistrate erred in taking cognizance of offences under Secs.193 and 182 of the IPC. After narrating the ingredients of Secs. 193 and 182 IPC, the senior counsel submitted that even if the entire allegations are accepted, the above offences are not attracted. The senior counsel also submitted that no offence under Secs. 469 and 471 is attracted in this case. Sec.469 states about forgery for the purpose of harming reputation and Sec. 471 states about using

as genuine a forged document or electronic record. The senior counsel submitted that the admitted case of the complainant is that A1 originally prepared a 21 page letter and handed over the same to Adv. Phenny Balakrishnan from the jail. Thereafter, A1 forged her own letter making it a 25 page letter. Even if that contention is accepted, the offence of forgery is not made out is the submission of the senior counsel. The senior counsel relied on the judgment in **Manmohan Shenoy D. and others v. State of Kerala and others** [2019 (4) KHC 482] in which it is observed that, for attracting the offence of forgery, the documents must purport to have been made, signed or sealed by a person who did not in fact make it. In this case, the senior counsel submitted that the complainant only says that the 1st accused corrected her own letter subsequently. That would not amount to forgery is the submission. The senior counsel also relied on the judgment in **Mohammed Ibrahim and others v. State of Bihar and Another** [2009 (8) SCC 751] to

substantiate his contention that the ingredients of forgery is not made out in this case. The senior counsel also relied on the judgment of this Court in **Mathew v. George** [1989 (1) KLT 470] and contended that writing a false statement in an affidavit or other document by the maker himself would not attract the offence of forgery. The senior counsel also relied on the Apex Court judgment in **Dr. Subramanian Swamy v. Arun Shourie** [2014 (3) KLJ 655].

8. The senior counsel, Sri.S.Sreekumar appearing for the 2nd respondent submitted that Sec.195 Cr.P.C. is not attracted in this case because the offence alleged was committed before producing the same before the judicial commission. The senior counsel relied on the judgment of the Supreme Court in **Kishorbhai Gandubhai Pethani v. State of Gujarat and Another.** [2014 (13) SCC 539]. The senior counsel, S.Sreekumar also submitted that the learned Magistrate has only taken cognizance of the offence and the contentions raised by

the petitioner can be raised at the stage of Sec. 244 Cr.P.C. by filing a discharge petition.

9. This Court considered the contentions of the petitioner and the respondents. Annexure-I is a private complaint filed by the 2nd respondent against the petitioner and another. First of all, it is to be noted that the 1st accused in Annexure-I complaint is not made a party in this Crl.M.C. Serious allegations are made against the 1st accused in Annexure-I complaint. At the time of arguing the case, the petitioner contended that the 1st accused committed the mistakes if any and the petitioner is not responsible for the same. Without making the 1st accused as a party in this Crl.M.C, the petitioner cannot blame the 1st accused and try to escape from the criminal proceedings. The contentions raised by the petitioner against the role of the 1st accused in Annexure-I complaint cannot be accepted or discussed by this Court at this stage because the 1st accused is not a party in this Crl.M.C. Without hearing her, it would not be proper on the part

of this Court to accept the case of the petitioner that the 1st accused committed certain mistakes for which the petitioner is not responsible. When a petition is filed under Section 482 Cr.P.C by one of the accused in a private complaint or one of the accused in a final report submitted by the police to quash the criminal proceedings against that accused, and if there is any conflict of interest between the accused persons or if one of the accused contend that, the offence if any is actually committed by the co-accused, without making the co-accused a party, the Criminal Miscellaneous petition is not maintainable. Of course, if the contention of one of the accused is independent or not contradictory to others, in such situations, if the other accused are not made party, there may not be any prejudice to the other accused. But if the case of all the accused is interconnected or if there is an allegation of conspiracy between the accused, without making all the accused as parties, a petition under Section 482 Cr.P.C to quash criminal proceedings is not

maintainable. Here in Annexure-I complaint, conspiracy is alleged between the 1st and 2nd accused. In such circumstances without hearing the other accused, this court cannot decide the matter. For that simple reason itself, this Criminal Miscellaneous case is not maintainable. But some legal contentions raised by the petitioner is to be considered.

10. Before discussing the legal contentions, it is to be noted that, Annexure-I is a private complaint. The learned Magistrate recorded the statement of the complainant under Sec. 200 Cr.P.C. and thereafter, recorded the sworn statement of the seven other witnesses. Based on the sworn statement of the complainant and the other witnesses, the learned Magistrate found that there is sufficient ground for proceeding against the petitioner and the 1st accused. At the stage of issuing process under Sec. 204 Cr.P.C., the duty of the court is only to find out whether there is sufficient ground for proceeding with the case. If the learned Magistrate after considering the statement on oath

of the complainant and of the witnesses is of the opinion that there is no sufficient ground for proceeding, the Magistrate can dismiss the Complaint under Sec. 203 Cr.P.C. Once process is issued under Sec. 204 Cr.P.C. in a private complaint, Sec. 244 Cr.P.C. onwards is applicable because it is a case instituted otherwise than on a police report. At the stage of Secs. 200 and 204 Cr.P.C., the Magistrate is considering whether there is 'sufficient ground for proceeding' based on the statement on oath of the complainant and the witnesses produced by the complainant. But at the stage of Sec.244 Cr.P.C., the complainant has to adduce evidence when the accused appears or is brought before a Magistrate. As per Sec. 244 Cr.P.C., the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. At that stage, the prosecution has to give evidence. Thereafter, if upon taking all the evidence referred to in Sec. 244 Cr.P.C., the Magistrate considers for reasons to be recorded that no case

against the accused has been made out which, if unrebutted would warrant his conviction, the Magistrate shall discharge him. When such evidence has been taken or at any previous stage of the case, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence, he shall frame in writing a charge against the accused. Therefore, the stage of taking of cognizance of the offence and issuing process, and the stage when the charge is to be framed against the accused or alternatively the accused is to be discharged are different stages as per the Code. As I mentioned earlier, at the stage of taking cognizance, the Magistrate only needs to conclude whether there is sufficient ground for proceeding. But at the stage of Section 244 Cr.P.C to Section 246 Cr.P.C, the Magistrate has to consider the evidence produced by the prosecution and decide whether a charge is to be framed or not.

11. In this case, the Magistrate only considered whether there is sufficient reason to proceed with the case. I am of the

considered opinion that Annexure-II is an order passed by the Magistrate after considering the available statements recorded on oath and there is nothing to interfere with Annexure-II order.

12. The main contention raised by the learned Senior Counsel Sri.B.Raman Pillai is that the offences under Sections 193 IPC and 182 IPC are not *prima facie* made out. I do not want to discuss the same in detail at this stage especially because the 1st accused is not a party in this case. Any discussion on that may prejudice the interest of the 1st accused. Therefore, that question is left open and the petitioner can raise that question at the time of Section 244 Cr.P.C by filing a discharge petition.

13. The next legal contention raised by the petitioner is that there is a bar in taking cognizance of offences under Sections 193 and 182 IPC as per Section 195 Cr.P.C. But I am of the considered opinion that the bar under Section 195 Cr.P.C is

not applicable in this case. The admitted case of the prosecution is that the alleged forgery is committed before the alleged forged document is produced before the Judicial Commission. There is no case to the complainant that the forgery happened after producing the document before the Commission. In such circumstances, the dictum laid down by the Apex Court in **Kishorbhai Gandubhai Pethani's case** (supra) is applicable. Paragraphs 10, 12 to 14 are extracted hereunder:

> *"10. In the instant case, admittedly, the documents had been forged and fabricated. The manipulation, if any, had been made prior to filing of those documents in the court. Therefore, the question arises whether in such a fact situation, provisions of Sections 195 and 340 CrPC are attracted.*
>
> *Xxxxxxx*
>
> *12. However, a Constitution Bench of this Court in Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370, after considering a large number of judgments on the issue, held as under: (SCC pp.389-91, paras 31& 33-34).*
>
> > *"31. That apart, the section which we are required to interpret is not a penal provision but is part of a procedural law, namely, the Code of Criminal Procedure which elaborately gives the procedure for trial of criminal cases. The provision only creates a bar against taking*

cognizance of an offence in certain specified situations except upon complaint by court. A penal statute is one upon which an action for penalties can be brought by a public officer or by a person aggrieved and a penal Act in its wider sense includes every statute creating an offence against the State, whatever is the character of the penalty for the offence. The principle that a penal statute should be strictly construed, as projected by the learned counsel for the appellants can, therefore, have no application here.

Xxxxxxx

33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis.

34. In the present case, the will has been produced in the court subsequently. It is nobody's case that any offence as enumerated in Section 195(1)(b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of the District Judge. Therefore, the bar created by Section 195(1)(b)(ii) CrPC would not come into play and there is no embargo on the power of the court to take cognizance of the offence on the basis of the complaint filed by the respondents."

(emphasis added)

13. This Court in Ram Dhan v. State of U.P. considered this very aspect of the matter and relying upon the earlier judgment of this Court in Sachida Nand Singh v. State of Bihar came to the conclusion that if the fabrication of false evidence takes place or the document is tampered with before filing in the court, the provisions of Section 195 CrPC would not be attracted. It is only when the document is tampered with after filing in the court that the bar provided in Section 195 CrPC would be attracted. A similar view has been reiterated on the issue by this Court in P. Swaroopa Rani v. M. Hari Narayana, Mahesh Chand Sharma v. State of U.P., C. Muniappan v. State of T.N., Institute of Chartered Accountants of India v. Vimal Kumar Surana and C.P. Subhash v. Inspector of Police.

14. This Court while considering the issue in Rugmini Ammal v. V. Narayana Reddiar reiterated a similar view while placing reliance upon Sachida Nand Singh explaining as under: (Iqbal Singh Marwah case, (SCC pp. 387-88, paras 25-26)

> *"25. An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed out in Sachida Nand Singh after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed*

indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large.

26. Judicial notice can be taken of the fact that the courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided."

14. The admitted case of the 2nd respondent/complainant in Annexure-I complaint is that the letter was fabricated before producing the same before the Judicial Commission. In the light of the dictum laid down in **Kishorbhai Gandubhai Pethani's case** (supra), the bar under Section 195 Cr.P.C is not applicable in this case for taking cognizance of the offences under Sections 193 and 182 IPC. The admitted case of the complainant is that the forgery is committed by the 1st accused herself by substituting a 21 page letter received by Adv. Phenny Balakrishnan from the jail to a 25 page letter and the same is

produced before the Judicial Commission. Therefore, the alleged forgery has happened before the document is produced before the Judicial Commission. Therefore, in the light of **Kishorbhai Gandubhai Pethani's case** (supra), I am of the considered opinion that Section 195 Cr.P.C bar is not applicable in the facts and circumstances of this case.

15. The next point raised by the petitioner is that there is no forgery even if the prosecution case is accepted. The petitioner relied on the judgment of this Court in **Manmohan Shenoy's case** (supra) and **Mathew's case** (supra) and submitted that if the maker herself corrects a document that will not amount to forgery. As I mentioned earlier, I do not want to make any observation about the same at this stage because the 1st accused is not a party in this case. Any discussion on that point may prejudice the interest of the 1st accused. Therefore, that question too is left open to be decided at the time of framing of charge and the petitioner can also file a discharge

petition at the appropriate stage raising all these contentions.

16. Moreover, even if the learned Magistrate has taken cognizance of offences only under Sections 193, 182, 469, 471 and 120B IPC at that stage of taking cognizance, there is no bar against framing charge with some other offences after the stage of Section 244 Cr.P.C, if any evidence to that effect is adduced. Whether this is a case, which ought to be thrown into the dustbin at the preliminary stage itself is also a question. Very serious allegations are raised by the 2nd respondent in Annexure-I complaint. It is stated that a conspiracy is hatched to trap the former Chief Minister of Kerala and the petitioner is actively involved in it. This court called for the sworn statement of CW1 to CW8 from the lower court and perused the same. CW1 is the complainant himself. He has no direct knowledge regarding the commission of offence. CW2, Adv. Phenny Balakrishnan has given sworn statement before the learned Magistrate to the effect that he collected a letter containing 21 pages from the 1st

accused in the presence of the jail superintendent of Pathanamthitta jail. He also stated that he was the counsel for the 1st accused in 33 cases and subsequently, relinquished vakalath for the 1st accused. As per his sworn statement, the 1st accused required CW2 to reveal names of political leaders suggested by A1. As observed by the learned Magistrate, from the deposition of CW2 it is revealed that A1 annexed four additional pages to the 21 page original letter, as dictated by one Saranya Manoj and one Pradeep Kumar, the personal assistants of A2, as directed by A2. CW3 has no direct knowledge regarding the commission of the offence. CW4 is the then Pathanamthitta District Jail Superintendent and he has deposed that he saw 21 pages of the letter written by A1 in her possession and he handed over the same to CW2. The statement of CW2 is supported by CW4. CW5 is the then Chief Minister, Sri. Oommen Chandy. CW5 has stated that A2 had some displeasure towards him with respect to his ouster from the council of ministers.

CW6, who was the personal staff of A2 deposed that A1 and A2 were in close relationship and A2 had influence over A1. It will be better to extract the relevant portion of the statement given by CW6 here:

> "......എന്നും മന്ത്രിയാകാനുള്ള ആഗ്രഹം അദ്ദേഹം ചില നേതാക്കളെ അറിയിച്ചു. എന്നാൽ ചില കാരണങ്ങളാൽ അതിനു സാധിച്ചില്ല. മന്ത്രിയാകണമെന്ന് അദ്ദേഹം ആഗ്രഹിച്ചിരുന്നു. ആ സമയത്ത് ഞങ്ങൾ നല്ല അടുപ്പത്തിലായിരുന്നു. എന്നാൽ ഒരു കോൺഗ്രസ് പ്രവർത്തകനെന്ന നിലയിൽ മന്ത്രിയാക്കാത്തതിലുള്ള നീരസം എന്നോട് തുറന്ന് പറഞ്ഞു. മുൻ മുഖ്യമന്ത്രി ശ്രീ. ഉമ്മൻ ചാണ്ടിയടക്കമുള്ളവർക്ക് ഞാൻ പണികൊടുക്കുമെന്നും ഇവന്മാരെയൊക്കെ പെണ്ണുകേസിൽ പെടുത്തുമെന്നും ഇവന്മാർ അനുഭവിക്കുമെന്നും അദ്ദേഹം പറഞ്ഞിരുന്നു......."

17. From the above statement it is clear that the 2nd accused made a statement in the presence of CW6 that he wants to implicate the former Chief Minister Oommen Chandi in a sexual harassment case. In the above statement, CW6 also deposed that since he is a congressman, the grievance of the petitioner of not being included in the council of Ministers was shared with him. It is true that these are sworn statements

recorded by the Magistrate. These are not evidence because the same is not tested with cross examination. But, for taking cognizance, a sworn statement given by a witness is relevant. CW6 is none other than the personal staff of the petitioner at that time. CW7 was the subsequent District Jail Superintendent, Pathanamthitta. He also gave a sworn statement. He also produced the interview register showing the details of application submitted by Adv.Phenny Balakrishnan for getting permission to meet Saritha S. Nair. But he stated that the acknowledgment receipt given by Adv.Phenny Balakrishnan to the then Jail Superintendent is seen missing.

18. CW8 is an advocate practicing at Punalur. He is an eye witness. According to him, during the period from 27.06.2001 to 13.09.2014, he was working as personal staff of the 2nd accused/ petitioner, as LD Clerk. He deposed that during the time between 9.30 am and 10 am, on Sunday of 10.05.2015, when he reached the office of the MLA, Pathanapuram, accused Nos.1

and 2 were there and CW8 heard the 2nd accused saying to the 1st accused that “CMനെ കൂടി ഉൾപ്പെടുത്തണം. അല്ലെങ്കിൽ ശരിയാവില്ല. ബാക്കിയെല്ലാം തന്റെ കൈയ്യിലുണ്ട് .” It is true that this is also a sworn statement of the witness given before the Magistrate which is not tested by cross examination. But, for the purpose of taking cognizance, I am of the opinion that the sworn statement given by CW8 cannot be ignored, because he also a member of the personal staff of the petitioner.

19. Therefore, the sworn statement given by CW2, Adv. Phenny Balakrishnan and CW4, the then Pathanamthitta District Jail Superintendent would show that the 1st accused gave a 21 page letter to Adv. Phenny Balakrishnan from the jail. CW5, the then Chief Minister Sri.Oommen Chandi clearly stated that there is displeasure from the side of the petitioner towards him because he was not included in the Council of Ministers. The sworn statement of CW6 who was the personal staff of the

petitioner and the sworn statement of CW8 who was working as personal staff, LD Clerk of the 2nd accused are also important. They need not be disbelieved at this stage, because they are admittedly the personal staff members of the petitioner. After going through these sworn statements of the witnesses, the Magistrate has taken cognizance of the offence. That is more than enough at this stage to take cognizance of the offence. Moreover, whether this amounts to the offence for which the Magistrate has taken cognizance or whether any other offences are made out, is to be decided at the stage starting from Section 244 of the Code of Criminal Procedure.

20. Serious allegations are raised against the petitioner who is a Member of the Legislative Assembly by the 2nd respondent in which conspiracy is also alleged stating that the petitioner hatched a conspiracy with the 1st accused to implicate the former Chief Minister of Kerala Sri.Oommen Chandi. The former Chief Minister has passed away. Such an allegation

should not be in the air because his soul will not forgive the same. The continuation of this case is necessary not only for the soul of the former Chief Minister and his bereaved family, but also to prove the integrity of the petitioner too. Let the soul of our former Chief Minister rest in peace. On the other hand, if such an allegation against the petitioner who is a Member of the Legislative Assembly is incorrect, the petitioner can take appropriate steps for malicious prosecution against the 2nd respondent/ complainant. Therefore, I am of the opinion that this case is to be proceeded and should arrive at a logical conclusion for the interest of the soul of the former Chief Minister and if the allegations are wrong, it will prove the integrity of the petitioner, who is a Member of the Legislative Assembly, a known politician.

21. Therefore, I am not inclined to quash Annexure-I complaint at this stage. The petitioner is free to raise all the contentions at the stage of framing charge by filing a discharge

petition. If such a discharge petition is filed at the appropriate stage, the Magistrate will consider the same untrammelled by any observation in this order. This order is passed based on the order passed by the Magistrate while taking cognizance. The stage of taking cognizance and the stage of framing charges are different. Therefore, the Magistrate should consider the available evidence at the stage of framing charges, untrammelled by any observation in this order and proceed with the case in accordance with law.

The upshot of the above discussion is that there is no merit in this criminal miscellaneous case and hence it is dismissed.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

DM/SKS/das/JV

APPENDIX OF CRL.MC 3465/2021

PETITIONER ANNEXURES

ANNEXURE I	THE CERTIFIED COPY OF THE COMPLAINT IN CC NO.624/2021 PENDING ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I KOTTARAKKARA
ANNEXURE II	THE CERTIFIED COPY OF THE ORDER DATED 28.06.20212

RESPONDENTS EXHIBITS :NIL

//TRUE COPY// PA TO JUDGE