



2023/KER/72897

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 21ST DAY OF NOVEMBER 2023 / 30TH KARTHIKA, 1945

CRL.REV.PET NO. 647 OF 2023

CRIME NO.116/2001 OF MANNARKAD POLICE STATION,
CC No.207/2001 OF JUDICIAL MAGISTRATE OF FIRST CLASS,
MANNARKAD

REVISION PETITIONER/ACCUSED:

1 P.B. PRASOBH

2 K.V. LAL

3 SELVAKUMAR C.

BY ADV

AJEESH K.SASI

RESPONDENTS/DEFACTO COMPLAINANT & STATE:

1 K.A MUHAMMED FAISAL

2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682 031.



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BY ADVS.

JACOB SEBASTIAN
WINSTON K.V(K/147/2010)
ANU JACOB(K/1072/2013)
DIVYA R. NAIR(K/1317/2021)
SEENA C. - PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 21.11.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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N. NAGARESH, J.

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.....

Dated this the 21st day of November, 2023

ORDER

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The petitioners, who are accused 1 to 4 and 5 in CC No.207/2001 on the files of the Judicial First Class Magistrate's Court, Mannarkkad, have filed this Crl.R.P. invoking Section 397 read with Section 401 Cr.P.C. challenging the chargesheet dated 13.06.2022 framed against the revision petitioners.

2. The allegation against the petitioners is that on 09.03.2001 at about 5 pm the 1st respondent was slapped and punched on different parts of the body by the 1st accused.



Thereafter, other accused forcibly took the complainant to the police jeep. The 1st accused then kicked the complainant. The complainant was taken to police station and he was assaulted in the police station also. The accused have thereby committed offence under Sections 143, 147, 148, 341, 342, 355, 323 and 324 read with Section 149 IPC.

3. The petitioners state that Crime No.116/2001 was earlier registered under Sections 143, 147, 148 and 324 read with Section 149 IPC and under Section 3(1) of the PDPP Act against 25 persons for pelting stones on police driver PC.3960. For the attempt made by those persons to murder the 2nd petitioner, Crime No.117/2001 was registered.

4. The 1st petitioner took up the investigation of the above crimes and on investigation, it was revealed that the 1st respondent-complainant was involved in both the crimes. Therefore, on 09.03.2001 at 6 pm, the 1st respondent was arrested and he was produced before the jurisdictional Magistrate's Court on 10.03.2001. The 1st respondent was remanded to Sub Jail till 24.03.2002. The Sessions Court



granted bail to the 1st respondent on 23.03.2001.

5. The petitioners state that after three months of arrest, the 1st respondent filed a private complaint against the petitioners. The petitioners would submit that the said complaint was filed by the 1st respondent is on an afterthought, only to spite the petitioners who were discharging official duties as public servants.

6. The petitioners state that they have protection under Section 197 Cr.P.C. and they cannot be prosecuted without prior sanction. The petitioners therefore filed a petition before the Magistrate's Court invoking Section 245(2) Cr.P.C. seeking premature termination of the proceedings by way of discharge, on the ground of want of sanction. The said petition was dismissed as per order dated 06.10.2005. The petitioners challenged the said order dated 06.10.2005 filing Crl.R.P. No.175/2005 before the Court of the Additional Sessions Judge-I, Palakkad. The revisional court allowed the Crl.R.P. and directed the Magistrate to reconsider the discharge petition adverting to the claim of the petitioners



based on want of sanction.

7. The petitioners moved CMP No.7713/2015 before the Magistrate's Court seeking discharge on the ground of sanction under Section 245(2) Cr.P.C. The court below ordered that the petition for discharge shall be considered after pre-charge evidence under Section 244 Cr.P.C. The petitioners would submit that the procedure adopted by the Magistrate is illegal. The Code of Criminal Procedure provides for discharge of an accused in a warrant trial proceedings instituted otherwise than on a police report at two stages – one under Section 245(2) i.e. without and before recording pre-charge evidence under Section 244 Cr.P.C. and under Section 245(1) Cr.P.C. i.e. after recording pre-charge evidence under Section 244 Cr.P.C.

8. In the petitioners' case, the cognizance itself would be barred for want of sanction. Therefore, the court below went wrong in delaying consideration of the plea for discharge on the ground of lack of sanction. The petitioners argued that when the alleged act on the part of the petitioners who are



public servants was performed by them in discharge of or in purported discharge of official duty, the petitioners will have to be protected. The court below ought to have taken note of the fact that the 1st respondent is the prime accused in two crimes. The complaint of the 1st respondent was intended to harass police officers. Therefore, the charge framed against the petitioners is liable to be set aside.

9. Counsel entered appearance on behalf of the 1st respondent and resisted the prayer made by the petitioners. The counsel for the 1st respondent argued that the 1st respondent was manhandled by petitioners. The 1st accused slapped the 1st respondent and punched the 1st respondent on different parts of the body. The petitioners forcibly dragged the complainant to the police jeep and the 1st accused kicked the complainant. The 1st respondent was taken to police station and he was assaulted at the police station also.

10. On behalf of the the 1st respondent, it is argued that there was no resistance of any kind on the part of the 1st



respondent and he was slapped and kicked and assaulted unnecessarily. Such criminal acts on the part of the police officers cannot be described as part of discharging of official duty. It is an instance of police excess. If such acts cannot be treated as integrated to the discharge of their official duties, then the question of sanction under Section 197 does not arise.

11. I have heard the learned counsel for the petitioners and the learned counsel appearing for the 1st respondent. I have also heard the learned Public Prosecutor representing the 2nd respondent.

12. Section 197 Cr.P.C. provides that when a public servant who is not removable from his office save by or with the sanction of the government, is accused in any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties, no court shall take cognizance of such offence except with the previous sanction, in the case of a person who is employed or, as the case may be, was at the time of commission of the



alleged offence employed, in connection with the affairs of a State or the State Government.

13. Adverting to the requirement of prior sanction under Section 197, the Hon'ble Apex Court, in the judgment in ***Choudhuri Parveen Sulthana v. State of West Bengal and another*** [(2009) 3 SCC 398] held that all acts done by a public servant purported to be in discharge of his official duties cannot as a matter of course, be brought under the protective umbrella of Section 197. Object of Section 197 is to enable the authorities to scrutinise the allegations made against a public servant so as to protect him against frivolous, vexatious or false litigation. The Apex Court held that if the authority vested in a public servant has done something which was not otherwise permitted under law, such acts cannot claim protection.

14. In the judgment in ***S.B. Saha and others v. M.S. Kochar*** [(1979) 4 SCC 177], the Apex Court held that in considering the question whether or not sanction for prosecution was required, it is not necessary for the court to



confine itself to the allegations in the complaint.

15. From the submissions made in the Crl.R.P., it is evident that the 1st respondent is involved in Crime No.116/2001 and Crime No.117/2001 of Mannarkkad Police Station. The petitioners wanted to arrest the 1st respondent in connection with the said crimes. In fact, the 1st respondent was arrested on 09.03.2001 and the jurisdictional Magistrate's Court remanded the 1st respondent to judicial custody. The 1st respondent remained in Sub Jail till 23.03.2001 on which date, the Sessions Court granted regular bail to the 1st respondent.

16. The complaint of the 1st respondent is that on 09.03.2001 at about 5 pm, the petitioners slapped him, punched him on different parts of the body, took him to police station and assaulted him while he was in police station also. It is evident that the presence of the 1st respondent was required in connection with investigation into Crime Nos.116/2001 and 117/2001 of the Mannarkkad Police Station.



17. In the judgment in ***Ohm Prakash and others v. State of Jharkhand*** [2012 KHC 4532], the Apex Court held that the requirement of sanction to prosecute affords protection to the policemen who are some time required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack unless unimpeachable evidence on record to establish that their action is indefensible, *mala fide* and vindictive, they cannot be subjected to prosecution.

18. Therefore, the protection given under Section 197 would be available when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If there is a reasonable connection between the act and the performance of the official duty, the excess will not be sufficient ground to deprive the public servant of the protection.

19. Considering the context in which the incidents occurred, I am of the view that the police action was in



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connection with the investigation of a criminal case and the conduct of the petitioners is reasonably connected with the performance of the official duty of the petitioners. The learned Magistrate therefore could not have taken cognizance of the case without the previous sanction of the State Government.

20. In the circumstances, the charge dated 13.06.2022 of the Judicial First Class Magistrate's Court, Mannarkkad is set aside. It is made clear that this judgment is only on the issue of sanction and I have not considered the matter on merits and that this judgment shall not stand in the way of the 1st respondent / prosecution in approaching the State Government for sanction under Section 197 Cr.P.C. In case such sanction is obtained and the same is produced before the learned Magistrate, the learned Magistrate may proceed further in the case in accordance with law.

The Crl.R.P. is disposed of as above.

Sd/-

N. NAGARESH, JUDGE

aks/20.11.2023