

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 8<sup>TH</sup> DAY OF MARCH 2022 / 17<sup>TH</sup> PHALGUNA, 1943

CRL.MC NO. 803 OF 2022

**PETITIONER/8TH ACCUSED:**

P. GOPALAKRISHNAN ALIAS DILEEP  
AGED 54 YEARS,  
S/O LATE G.PADMANABHA PILLAI,  
PADMASAROVARAM, KOTTARAKADAVIL ROAD,  
ALUVA, ERNAKULAM DISTRICT 683 101., PIN - 683101

BY ADVS.  
THOMAS T.VARGHESE  
PHILIP T.VARGHESE  
SUJESH MENON V.B.  
V.T.LITHA  
K.R.MONISHA  
SHRUTHI SARA JACOB  
NITYA R.  
B.RAMAN PILLAI (SR.)

**RESPONDENTS/STATE AND INVESTIGATING OFFICER:**

- 1 STATE OF KERALA REPRESENTED BY THE PUBLIC  
PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM 682 031.
- 2 THE INVESTIGATING OFFICER IN CRIME NO.297/2017 OF  
NEDUMBASSERY POLICE STATION HAVING OFFICE AT  
POLICE CLUB, ALUVA 683 101.

\*3       XXXXXXXXXX  
          XXXXXXXXXX XXXXXXXXXXXX (VICTIM)

\*ADDL.3RD RESPONDENT IS IMPEADED AS PER ORDER IN  
CRL.MA.NO.3/2022 IN CRL.M.C.NO.803/2022 DATED  
21/2/2022.

BY ADVS.  
SRI.T.A.SHAJI, DIRECTOR GENERAL OF PROSECUTION  
SRI.S.SREEKUMAR, SR ADV FOR ADDL.R3  
SHRI.SAJJU.S., SENIOR P.P.  
SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 24.02.2022, THE COURT ON 8.03.2022 PASSED THE FOLLOWING:

**"C.R."**

**O R D E R**

Dated this the 8<sup>th</sup> day of March, 2022

This CrI.M.C. has been preferred by the accused No.8 in SC No.118/2018 on the file of the Additional Special Sessions Court (SPE/CBI)-III, Ernakulam (for short, 'the court below') challenging the investigation undertaken and being carried out by the investigating agency under Section 173(8) of the Code of Criminal Procedure (for short, Cr.P.C.) pursuant to Annexure 10 report dated 29/12/2021.

2. The petitioner along with the remaining accused faces trial for the offence punishable under Sections 120(B), 109, 342, 366, 354, 354(B), 357, 376(D), 506(1), 201, 212 r/w 34 of the Indian Penal Code and Sections 66(E) and 67(A) of the Information Technology Act, 2008 (for short, 'the IT Act').

3. The prosecution case in short is that, on the night of 17/2/2017, the victim, a South Indian cine actress, was abducted and sexually assaulted by the accused Nos.1 to 6 in a moving vehicle at Ernakulam while returning from the shooting location

pursuant to a conspiracy allegedly schemed by the petitioner, a South Indian Cine actor and producer.

4. The crime was registered on the date of occurrence itself. The investigation was conducted by a special team. The final report was initially filed on 18/4/2017 against the accused Nos.1 to 7. Annexure 2 is the said final report. Thereafter another special team conducted further investigation and filed further report on 22/11/2017 against 12 accused persons including the petitioner. Annexure 6 is the said report. The petitioner is arrayed as the accused No.8.

5. The Judicial First Class Magistrate Court, Angamaly took cognizance of the offence and committed the case to Sessions Court, Ernakulam on 7/2/2018. Thereafter, the case was made over to the Court below for trial and disposal.

6. The accused Nos.11 and 12 were discharged by this Court. The charge was framed against the remaining accused. During the course of trial, the Court below granted pardon to the accused No.10 and on acceptance of pardon, he was taken as a witness and examined as PW176.

7. The examination of the prosecution witnesses

commenced at the Court below on 30/1/2020. As many as 202 witnesses (PWs1 to 202) were examined on the side of the prosecution. It is submitted at the Bar that CW355 alone remains to be examined.

8. On 29/12/2021, the Investigating Officer (CW355) filed Annexure 10 report u/s 173(8) of Cr.P.C. informing the Court below that the investigating agency is intending to conduct further investigation in the matter. It is stated in Annexure 10 that the further investigation was necessitated on account of certain revelations made by one Sri. Balachandra Kumar, a film director, pertaining to the involvement of the petitioner in the crime. Sri.Balachandra Kumar alleged to have sent a petition dated 22/11/2021 to the Chief Minister of Kerala for further investigating the case on his disclosures and also to provide protection of the person and properties of himself and his family members. According to CW355, a copy of the said petition was sent by Sri. Balachandra Kumar to the SHO, Nedumbasserry on 27/12/2021 via *e-mail*, who on receipt of the same mailed it to him for necessary action. The copy of the said mail is produced along with Annexure 10. CW355 found it necessary to make

further investigation pursuant to the revelations made by Sri.Balachandra Kumar in his petition and accordingly Annexure 10 report was filed.

9. According to the petition of Sri.Balachandra Kumar, on a day in the month of December, 2016, he went to the residence of the petitioner at Aluva to discuss about a movie. On that day, he happened to travel along with Sri.Suni @ Pulsar Suni (accused No.1), who was also there in the house of the petitioner along with Sri.Anoop, the brother of petitioner, in a red Swift car. It is stated that, Sri.Anoop introduced Suni @ Pulsar Suni to him while travelling in the car. It is further stated that in the month of February and April, 2017, he had discussion with the petitioner about Pulsar Suni and during the said discussion, the petitioner had told him certain details of the sexual offences committed on the victim. According to him, the petitioner further instructed him not to disclose the fact that he met Pulsar Suni at his residence. Sri. Balachandra Kumar further stated in his petition that the brother of the petitioner Sri.Anoop called him on 12/9/2017 on WhatsApp and informed him that the petitioner, who was at jail at that time, wanted to see him. Thereupon on 13/9/2017, he

-:7:-

reached Sub Jail at Aluva and made an application to the Jail Superintendent and met the petitioner. He was treated very well by the petitioner and when he came out of Sub Jail after visiting the petitioner, the brother and brother-in-law of the petitioner were waiting outside and the brother-in-law gave him ₹50,000/-. Further, according to him, on 6/10/2017, the brother of the petitioner sent him a WhatsApp message informing him that the petitioner wanted to meet him. Accordingly he went to the residence of the petitioner at North Paravoor, VIP Road on 6/10/2017 and spent a whole day with him. It is stated that on that day, the petitioner told him not to disclose anyone that he met Pulsar Suni at his residence. Again on 14/11/2017, he was called at the residence of the petitioner for discussing the details of a movie. On 14/11/2017, he had only little discussion with the petitioner. On 15/11/2017, he visited the petitioner in the morning and engaged in discussion with him about the movie. During their discussion, one Mr.Baiju, a friend of the petitioner, came there and they engaged in talks about the "clips" and, on suspicion, he had recorded certain portions of their conversation. According to him, the said conversation recorded by him pertains

- : 8 : -

to the offence committed in this case. He further stated that the petitioner and his brother talked over phone and portion of the same also was recorded by him. Thereafter, the brother of the petitioner, his sister, sister's husband and brother-in-law of the brother of the petitioner visited the petitioner's house and at that time, the brother and brother-in-law of the petitioner informed him as to how witness Sagar was influenced by him and for that an amount of ₹5,00,000/- was given to him. A part of the conversation between the petitioner and his brother Anoop was also stated to be recorded by him during the said talk. Similarly, the statement of Sri. Suraj, the brother-in-law of the petitioner, to the petitioner as to how witness Sagar was influenced was also recorded by him, it is stated. He has further mentioned in his petition that during the discussion, the petitioner told that an amount of ₹1.5 crores would have been easily paid by him. On hearing the said version, his brother-in-law Suraj had also opined that Sri. Pulsar Suni could have come and collected the amount from any place of his choice. He also stated that, another friend of the petitioner had also come there and had discussion about the investigation of this case and planned for retaliation after the

release of Sri. Pulsar Suni and gang from the jail. The petitioner had fears about the statement which Sagar would give to the police and there were discussions about the same. Sri.Balachandra Kumar in his petition added that the person who visited the petitioner on that day came inside the room with a tablet computer and the petitioner, his brother-in-law Sri. Suraj, brother Sri. Anoop and Sri. Appu had seen a video and the petitioner invited him also to see the same stating that the same pertain to the "cruel deeds of Pulsar Suni". Sri.Balachandra Kumar also expressed his fear that the petitioner or his men may kill him and even the manager of the petitioner Sri.Das requested him not to disclose anything about this case at least for the sake of his (Balachandra Kumar) life. This is the sum and substance of the revelations made by Sri.Balachandra Kumar in his petition.

10. It is seen from the records that after the receipt of the copy of the petition from Sri.Balachandra Kumar, CW355 recorded his statements on 1/1/2022 and 3/1/2022. Sri.Balachandra Kumar has produced a pen drive containing 24 voice clips to substantiate his allegation in the petition to CW355 who seized it. Thereafter, CW355 gave Annexure 18 report to ADGP Crimes,

-:10:-

Crime Branch Headquarters, Thiruvananthapuram stating that on questioning Sri.Balachandra Kumar, it was revealed that the petitioner, his brother, their brother-in-law, brother of the wife of the petitioner's brother etc. committed conspiracy to do away with the police officers who supervised and conducted investigation of the crime. On the basis of the said report, a crime was registered as Crime No.6/2022 against the above said persons on 9/1/2022.

11. Annexure 10 report submitted by CW355 u/s 173(8) of Cr.P.C on 29/12/2021 was considered by the Court below on 4/1/2022 and accepted it. The Court below in Annexure 13 proceedings dated 4/1/2022 observed that the law does not mandate any permission from the Court to conduct further investigation and directed the investigating officer to file further report on or before 20/1/2022. It is submitted that thereafter the time was extended till 1/3/2022.

12. The petitioner in this Cr1.M.C seeks to quash Annexure 10 report and all further proceedings pursuant to the same. The petitioner also seeks to declare the further investigation carried out as illegal.

-:11:-

13. The victim filed an application as Cr1.M.A.No.3/2022 to get herself impleaded in the Cr1.M.C. The said application was allowed and accordingly she was impleaded as the 3<sup>rd</sup> respondent.

14. I have heard Sri.B.Raman Pillai, the learned Senior Counsel appearing for the petitioner, Sri.T.A.Shaji, the learned Director General of Prosecution appearing for the respondents 1 and 2 and Sri.S.Sreekumar, the learned Senior Counsel appearing for the 3<sup>rd</sup> respondent/victim.

15. Sri.Raman Pillai, the learned Senior Counsel for the petitioner, pointed out that after the submission of the initial final report u/s 173(2) of Cr.P.C., against the accused Nos.1 to 7 on 18/4/2017, further investigation was conducted and supplemental report was filed u/s 173(8) of Cr.P.C against the accused Nos.1 to 12 on 22/11/2017. The trial had commenced and altogether 202 witnesses except CW355 were already examined. At a belated stage, the prosecution has filed the present report for further investigation with a view to delay the disposal of the trial. According to the learned Senior Counsel, Annexure 10 report is evidently not because of existence of any facts or circumstances

-:12:-

warranting the power u/s 173(8) of Cr.P.C., but rather it is motivated by the sole objective to sabotage the trial. The learned Senior Counsel further submitted that it is crystal clear that the revelations allegedly made by Sri.Balachandra Kumar is nothing but a script got prepared by CW355 for using it as a document to falsely seek further investigation. The learned Counsel also submitted that in the name of further investigation, what is being carried on is a series of vindictive acts by a set of police officers who have manifested their malafides against the petitioner and the entire proceedings are maliciously instituted with ulterior motive. Annexure 10 report is nothing but a colourable exercise of power vested in the investigating agency u/s 173(8) of Cr.P.C and if such a power is allowed to be exercised, according to the whims and fancies of an investigating officer, it will result in grave miscarriage of justice which warrants interference of this Court u/s 482 of Cr.P.C., added the Senior Counsel.

16. Sri.T.A.Shaji, the learned Director General of Prosecution submitted that sub-section (8) of S.173 of Cr.P.C recognises the right and confers statutory duty on the

investigating agency to conduct further investigation and submit supplementary charge sheet on the basis of fresh materials at any stage and, as such, it is the right and duty of the investigating agency to investigate on the startling revelations made by Sri.Balachandra Kumar touching the material part of the crime. The learned Director General of Prosecution further submitted that there is absolutely no malafides or ulterior motive on the part of the investigation agency, much less CW355, as alleged by the petitioner.

17. Sri.S.Sreekumar, the learned Senior Counsel appearing for the victim, submitted that further investigation pursuant to the revelations made by Sri.Balachandra Kumar is necessary to arrive at the truth. The learned Senior Counsel further submitted that the petitioner has absolutely no say in the matter of further investigation and, thus, he has no *locus standi* to challenge Annexure 13 proceedings of the Court below.

18. The power of the police to conduct further investigation, after laying final report, is statutorily recognized under Section 173(8) of the Code. In fact, there was no provision in the old Code (Code of Criminal Procedure, 1898) prescribing

-:14:-

the procedure to be followed by the police, where after the submission of the final report in terms of Section 173(1) and after the court took cognizance of the offence, fresh facts came to light which required further investigation. There was no express provision as well prohibiting the police from launching upon an investigation into the fresh facts coming to light after the submission of the final report or taking the cognizance. The Law Commission in its 41<sup>st</sup> report recognized the position and recommended that the right of the police to make further investigation should be statutorily affirmed. Accordingly in the new Code (Code of Criminal Procedure, 1973), a new provision Section 173 (8) was incorporated. It reads thus:

**"173. Report of police officer on completion of investigation:-**

XXXX

XXXX

XXXX

*(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report*

-:15:-

*or reports as they apply in relation to a report forwarded under sub-section (2).*

xxxx

xxxx

xxxx"

19. The right of the police to make further investigation *dehors* any direction from the court even after it took cognizance has been recognized by the Apex Court in a catena of decisions [See **Ram Lal Narang v. State (Delhi Admn)** AIR 1979 SC 1791; **Sri.Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P & Others** (1999) 5 SCC 740; **Hemant Dhasmana v. CBI and Another** AIR 2001 SC 2721; **Minu Kumari and Another v. State of Bihar and Others** AIR 2006 SC 1937; **Rama Chaudhary v. State of Bihar** (2009) 6 SCC 346; **Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel and Others** (2017) 4 SCC 177 and **Vinubhai Haribhai Malaviya v. State of Gujarat and Another** (2019) 17 SCC 1]. In **Vinay Tyagi v. Irshad Ali** [(2013) 5 SCC 762], the Apex Court held that the power vested in the investigating agency to conduct further investigation in terms of sub-section (8) of Section 173 of the Code is very wide.

20. The learned Senior Counsel Sri.B.Raman Pillai at the outset submitted that no further investigation can be undertaken

-:16:-

once trial starts and here is a case where further investigation was sought at the fag end of the trial after the examination of all the prosecution witnesses except the investigating officer with the malafide design to delay the trial. There is no merit in the said contention. It is trite that the mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation. The hands of the investigating agency should not be tied down on the ground of mere delay as the ultimate object is to arrive at the truth [***Hasanbhai Valibhai Qureshi v. State of Gujarat*** (2004) 5 SCC 347].

21. There is no restriction on the power of the investigating officer to conduct further investigation after the commencement of the trial of the case. In ***Amrutbhai Shambhubhai Patel*** (supra), it was held that the power of the investigating agency to conduct further investigation can be invoked at any stage of the proceedings. In ***Rama Chaudhary*** (supra), the further investigation was sought after the trial was commenced and twenty one witnesses were examined. It was contended that the prosecution filed report to further investigation with a view to delay the disposal of the case.

Repelling the contention, the Apex Court held that the material collected in further investigation cannot be rejected only because it has been filed at the stage of the trial. A similar plea was taken before this Court in ***Mariamamma John @ Mercy v. Deputy Superintendent of Police and Another*** (2019 KHC 5634). This Court rejected the contention that further investigation cannot be conducted after commencement of trial and examination of many witnesses on the side of the prosecution. The Division Bench of this Court in ***J.Prabhavathiamma and Another v. State of Kerala and Others*** (2007 (4) KHC 72) has held that if there is necessity for further investigation, the same can be done as prescribed by law notwithstanding the fact that the trial has started.

22. The learned Senior Counsel next submitted that Annexure 10 report is unsustainable in law for the mere reason that it goes against the clear judicial pronouncement of the Apex Court against investigating further after the framing of charge and commencement of trial without obtaining prior permission of the Court. The Counsel heavily relied on the decision of the Apex Court in ***Vinay Tyagi*** (supra) in support of the said submission.

23. Section 173(8) of Cr.P.C does not mandate to seek leave of the court to conduct further investigation or to file supplementary report. However, the Apex Court has consistently held that it has been a procedure of propriety that the police has to inform the Court and seek formal permission to make further investigation. It is a well-accepted legal practice based on principles of courtesy and propriety. In **Ram Lal Narang** (supra), the Apex Court has held thus:

*“We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light..... Where the police desired to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation”.*

In **Abdul Latheef v. State of Kerala** (2014 (3) KLT 905), a Division Bench of this Court explained the decision of the Apex Court in **Ram Lal Narang** (supra) as follows:

*“Apart from holding that ‘it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation’, cautiously the*

*Supreme Court has not imposed a restriction that only on obtaining the permission from the Court the Investigating Officer should conduct such further investigation”.*

It was further held thus:

*“When the investigating agency wants to conduct such a further investigation, it is ordinarily desirable that the Investigating Officer should inform the said matter to the concerned Court and seek formal permission for conducting such an investigation, when the Court has already taken cognizance of the offences based on the final report already filed in the matter. After informing the Court regarding the proposed further investigation and seeking such a formal permission, the Investigating Officer can continue with such further investigation, even without waiting for any such permission from the Court”.*

In **State of A.P. v. A.S. Peter** (AIR 2008 SC 1052), it was held thus:

*“Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the charge sheet is a statutory right of the police. A distinction also exists between further investigation and re-investigation. Whereas re-investigation without prior permission is necessarily forbidden, further investigation is not”.*

Again in **Rama Chaudhary** (supra), it was held thus:

*“The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge sheet is a statutory right of the police. Re-investigation without prior*

-:20:-

*permission is prohibited. On the other hand, further investigation is permissible”.*

However, in **Vinay Tyagi** (supra), the Apex Court took the view as follows:

*“It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct ‘further investigation’ or file supplementary report with the leave of the Court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the Courts to conduct ‘further investigation’ and file ‘supplementary report’ with the leave of the Court. The Courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the Court to conduct ‘further investigation’ and/or to file a ‘supplementary report’ will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code.....Such a view can be supported from two different points of view. Firstly, through the doctrine of precedence, as afore-noticed, since quite often the Courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of doctrine of contemporanea expositio. Even otherwise, to seek such leave of the Court would meet the ends of justice and also provide adequate safeguard against a*

*suspect/accused”.*

24. Further investigation is the privilege and prerogative of the investigating officer. Permission for it is only a formality. It is only as a matter of courtesy that the investigating officer is required to inform the court regarding the further investigation so as to enable the court to decide the further action to be taken in the case. In **Ram Lal Narang** (supra), the Apex Court has only stated that it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation. In **Rama Chaudhary** (supra) and **A.S.Peter** (supra), the Apex Court has categorically held that the law does not mandate obtaining prior permission from the Magistrate for further investigation and that carrying out further investigation even after filing of the charge sheet is the statutory right of the police. **Vinay Tyagi** (supra) only recognizes the legal practice adopted by the investigating agencies to seek permission of the court for conducting further investigation [See **Vigilance and Anti-Corruption Bureau, Tvm v. K.Sasikala and Others** 2021 KHC 196]. In **Ram Lal Narang** (supra), the Apex Court held that absence of permission by the court does not render the

further investigation illegal.

25. Annexure 10 report was submitted on 29/12/2021. The court below considered the said report on 04/01/2022, accepted it holding that law does not mandate any permission from the court to conduct further investigation and directed the investigating officer to file further report. The grievance of the petitioner is that the court below did not hear the petitioner before accepting the report and giving such a direction. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any direction for further investigation is made. In ***Samaj Parivartan Samudaya v. State of Karnataka*** [(2012) 7 SCC 407], the Apex Court has held that there is no requirement to hear the accused before any direction to further investigation is made. The further grievance of the petitioner is that even before the Court below considered Annexure 10 report on 04/01/2022, the investigating officer recorded the statements of Sri.Balachandra Kumar on 3/01/2022 and on 04/01/2022. At any rate, formal permission was granted by the court on 04/01/2022 as evident from Annexure 13. Thus, the investigation, if any, conducted in between 29/12/2021 and 04/01/2022 stands

ratified.

26. As stated already, further investigation was initiated pursuant to the revelations made by Sri.Balachandra Kumar in the petition given to SHO, which has been detailed in paragraph 9 above. Highlighting the circumstances leading to filing of Annexure 10 report, the learned Senior Counsel appearing for the petitioner submitted that Sri.Balachandra Kumar is none other than a tool in the hands of CW355 and the new disclosure allegedly made by him is nothing but a narrative got prepared at the behest of CW355 to fabricate evidence against the petitioner when he realised that the evidence brought in was insufficient to convict the petitioner. The learned Senior Counsel pointed out that Annexure 10 report containing new information was submitted by CW355 on 29/12/2021, the exact date on which the officer was scheduled to be examined as a last witness for the prosecution. The learned counsel further pointed out that on 25/12/2021, a stage managed talk/interview of Sri.Balachandra Kumar was published in a news channel called 'Reporter' in which he claimed that he has given a petition before the Chief Minister. This was only as a prelude of filing a petition for further

-:24:-

investigation and to canvass adverse opinion against the petitioner and his family through media for that purpose and the role of the said news media in acting as a partner to CW355 is very apparent, submitted the counsel. The counsel also submitted that the petitioner upon coming to know about the TV show understood that some foul play is being designed and, hence, he immediately preferred a petition on 27/12/2021 (Annexure 9) to the Chief Minister of Kerala and requested him not to take any action on the petition, if any, filed by Sri.Balachandra Kumar. According to the learned counsel, CW355 on coming to know about the filing of Annexure 9 petition, with undue haste, made Sri.Balachandra Kumar to file a copy of a petition dated 22/11/2021 sent to the Chief Minister to SHO, Nedumbasserry in the night of 28/12/2021 and laid hand on it when the said petition got forwarded to him on the night of 28/12/2021 itself and on the next day at 11.00 a.m. itself, he filed Annexure 10 report at the Court informing the Court that he has initiated further investigation even without ascertaining its veracity or getting sanction from his superior officers. These circumstances have been highlighted by the petitioner to show

malafides, enmity and bias by CW355 against the petitioner.

27. It is trite that jurisdiction under Section 482 Cr. P.C., which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice, has to be exercised with great care and caution. The Apex Court has repeatedly deprecated the interference by the High Court in exercise of its inherent powers under Section 482 of Cr.P.C. in a routine manner. The scope and ambit of the power by the High Court under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India to quash the FIR/investigation has been expounded by the Apex Court in a catena of decisions.

28. In ***Kurukshetra University v. State of Haryana*** (1977 KHC 711), it was observed and held that inherent powers under Section 482 Cr.P.C. do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice; that statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. In the celebrated decision ***State of Haryana v. Bhajan Lal*** (1992 KHC 600), the Apex Court considered in detail the scope of the High Court

-:26:-

powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, the Court identified the following cases in which FIR/complaint can be quashed:

*"102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section\_155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without*

-:27:-

*an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

In **State of A.P v. Golconda Linga Swamy** (2004 KHC 1342), after considering the decision in **Bhajan Lal** (supra) and other decisions on the exercise of inherent powers by the High Court under Section 482 Cr.P.C., it was held that exercise of power under Section 482 of the Code is the exception and not the rule. It was observed in paragraph 8 thus:

*“If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.”*

In **Zandu Pharmaceutical Works Ltd. v. Sharaful Haque**

(2004 KHC 1204), in paragraph 11, it was observed and held

thus:

*“11. ... the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in*

*their true perspective without sufficient material. of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.”*

In **Sanapareddy Maheedhar and Another v. State of Andhra Pradesh and Another** (2008 (1) KHC 224), in paragraph 31, it was observed and held thus:

*“....Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that*

- : 30 :-

*the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 CrPC."*

In **Satvinder Kaur v. State (Govt. of NCT of Delhi) and Another** [(1999) 8 SCC 728], after referring **Pratibha Rani v. Suraj Kumar and Another** [(1985) 2 SCC 370], it was observed and held thus:

*"It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations."*

In **Rashmi Kumar v. Mahesh Kumar Bhada** [(1997) 2 SCC 397], the Apex Court sounded a word of caution and stated that power under Section 482 of Cr.P.C should be sparingly and cautiously exercised only when the court is of the opinion that otherwise there will be gross miscarriage of justice. The Court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against society as a whole. In **P. Chidambaram v. Directorate**

**of Enforcement** [(2019) 9 SCC 24], the Apex Court while considering the powers of the investigating agency to investigate the cognizable offence, has observed in paragraphs 61 and 64 as under:

*“61. The investigation of a cognizable offence and the various stages thereon including the interrogation of the accused is exclusively reserved for the investigating agency whose powers are unfettered so long as the investigating officer exercises his investigating powers well within the provisions of the law and the legal bounds. In exercise of its inherent power under Section 482 CrPC, the Court can interfere and issue appropriate direction only when the Court is convinced that the power of the investigating officer is exercised mala fide or where there is abuse of power and non-compliance of the provisions of the Code of Criminal Procedure. However, this power of invoking inherent jurisdiction to issue direction and interfering with the investigation is exercised only in rare cases where there is abuse of process or non-compliance of the provisions of the Criminal Procedure Code.*

XXX XXX XXX

*64. Investigation into crimes is the prerogative of the police and excepting in rare cases, the judiciary should keep out all the areas of investigation.”*

Recently in **M/s.Neeharika Infrastructure Pvt. Ltd v. State of Maharashtra** (AIR 2021 SC 1918), it was held that when a

prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. It was observed that the court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

29. A careful reading of the above noted judgments make it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or where a criminal proceeding is manifestly attended with malafides or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance or the High Court is convinced

that it is necessary to interfere to prevent abuse of the process of the Court. The further investigation under Section 173 (8) of Cr.P.C being the continuation of the earlier investigation, the same parameters which shall be applicable while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India to quash the FIR/investigation can be made applicable to quash further investigation as well.

30. Coming to the facts, along with his petition Sri.Balachandra Kumar has annexed copies of the voice clips and few documents to substantiate his allegations. He has also given explanation for the delay in making the complaint. The detailed statement of Sri.Balachandra Kumar was recorded twice which are produced as Annexures 14 and 15. Sri.Balachandra Kumar has produced to the police a pen drive containing voice clips, images of the documents, photos etc. According to Sri.Balachandra Kumar, the voice clips contain the conversation pertaining to the offence committed in this case between the petitioner, his brother, brother-in-law and his friends at his house on 15/11/2017. According to Annexure 15 statement of

-:34:-

Sri.Balachandra Kumar, the pen drive also contains WhatsApp messages between the petitioner and himself and also his photos and videos along with the petitioner and his relatives. Sri.Balachandra Kumar has also stated in Annexure 15 statement that the soft copy of the bill showing his stay at Aluva Guest House from 14/11/2017 to 16/11/2017 is also there in the pen drive in a folder. In the petition, Sri.Balachandra Kumar has stated that he has enclosed the copy of the application given by him to the Jail Superintendent, Sub Jail, Aluva on 13/09/2017 seeking permission to visit the petitioner at the jail and copy of the WhatsApp message sent by the brother of the petitioner to him asking him to meet the petitioner. The learned Director General of Prosecution submitted that already voice sample of the petitioner was taken and it along with the voice clips furnished by Sri.Balachandra Kumar were sent for forensic examination.

31. The revelations made by Sri. Balachandra Kumar and the supporting materials furnished by him, if found to be true, may have bearing on the case. The truthfulness or veracity of the said statement can neither be believed nor disbelieved at this stage. It is not possible for this Court at this stage to examine the

correctness or otherwise of the revelations or to sift or weigh the materials and then come to the conclusion one way or other under the exercise of power under Section 482 of Cr.P.C The question is whether the so called revelations are to be subjected to further investigation or not.

32. It is nowhere stated in Section 173(8) that further investigation could be conducted only after getting further materials in connection with the crime. The legislature has specifically used the expression 'nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Section 173 (2) has been forwarded to the Magistrate' which unambiguously indicates the legislative intent that it is open to the investigating agency to conduct further investigation on receiving any new or fresh information on the crime. Mention about further evidence, oral or documentary, made in that sub clause refers to collection of the same during the course of further investigation. In **Antony Scaria v. State of Kerala** (2001 KHC 363), the Division Bench of this Court has categorically held that further investigation of a crime as per Section 173(8) of Cr.P.C. is possible when the police authority

which conducted investigation of the crime or any other superior finds it necessary to do so.

33. Once additional materials or fresh information pertaining to the crime are received after filing of the final report, it is the right and duty of the police to enquire into the same and to find out whether there is any truth in it or not. This statutory right and duty of the police cannot be circumscribed without any valid reason. The Privy Council in ***King Emperor v. Khwaja Nazir Ahmad*** (AIR 1945 PC 18) stressed upon the restraint of the judiciary against interference with the police in matters which were within its province, holding that the roles of these two institutions were complimentary and not overlapping subject however to right of the courts to intervene in an appropriate case for direction in the nature of habeas corpus. It would be premature at this embryonic stage to pronounce conclusion based on hazy facts that revelations need not be probed into or that it amounts to abuse of process of law. This is an area which should be left to the investigating agency. On completion of the further investigation, if the investigating officer finds that there is substance in the revelations, he may file an appropriate report

which may be considered by the Court in accordance with law. The criticism that a further investigation by the police would trench upon proceedings before the court is really not of very great substance since whatever the police may do, the final discretion in regard to further action is with the Court. That the final wordings with the court is sufficient safeguard against excessive use or abuse of power of the police to make further investigation [**Ram Lal Narang** (supra)].

34. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. The ultimate aim of all investigation and enquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed the crime are correctly booked, and those who are not arraigned to stand trial. The Constitutional guarantee under Art.21 of the Constitution of India embraces both the life and liberty of the accused and the interest of the victim as well as of the society at large and cannot be alienated from each other.

35. As in the case of investigation, this Court should be loath to interfere with the further investigation as well. The

inherent power vested with this court under Section 482 of Cr.P.C to quash further investigation could only be exercised sparingly and with circumspection save in exceptional cases such as, the further investigation is frivolous, vexatious, or it is maliciously initiated with an ulterior motive for wreaking vengeance on the accused, or is barred by any law, or the power of the investigating officer under Section 173 (8) is exercised malafide, or where there is abuse of power, or such exercise is justified by the test specifically laid down in the provision itself. For the reason stated in the preceding paragraphs, I am of the view that the petitioner could not establish any of these grounds.

36. The further investigation was commenced on 1/1/2022. Now more than two months have been elapsed. The investigating agency took already two months to complete the initial investigation and to file Annexure 2 final report and took another six months to complete the further investigation and to file Annexure 6 further report. On a query by the court, the learned Director General of Prosecution submitted that three more months are required to complete the further investigation. The learned Director General of Prosecution has, in a sealed

- :39:-

cover, submitted the details of 38 points identified by the investigating team for the purpose of further investigation. The learned Director General of Prosecution further submitted that the statement of 40 witnesses were already recorded and the voice sample of the petitioner was taken and the same along with the voice clips produced by Sri.Balachandra Kumar were already forwarded to the Forensic Laboratory for examination. The time fixed by the Apex Court by its order dated 16<sup>th</sup> August, 2021 to complete the trial has already been expired on 15/2/2022. Considering the entire facts and circumstances of the case, and also considering the remaining part of the further investigation to be carried out as revealed from the submission of the learned Director General of Prosecution and the report submitted in a sealed cover, I am of the view that it would be just and proper if the investigating agency is given time till 15/4/2022 to complete the further investigation.

For the reasons recorded above, I hold that the petitioner is not entitled to the reliefs sought for in the CrI.M.C. The investigating agency can go on with the further investigation. However, it shall complete the further investigation and file the

Cr1.M.C.No.803/2022

-:40:-

further report as expeditiously as possible, at any rate, not later than 15/4/2022. It is made clear that this Court has not made any findings or observations as to the veracity, truthfulness or reliability of the disclosures made by Sri.Balachandra Kumar in his petition or as to the genuineness, relevance or acceptability of any material collected by the investigating agency so far in the ongoing further investigation. With these observations, Cr1.M.C. stands dismissed.

sd/-

**DR. KAUSER EDAPPAGATH**

**JUDGE**

**Rp**

**APPENDIX OF CRL.MC 803/2022**

PETITIONER'S ANNEXURES

- Annexure 1 TRUE COPY OF ORDER DATED 19.02.2017 IN RESPECT OF CREATION OF SPECIAL INVESTIGATION TEAM IN CRIME NO. 297/2017
- Annexure 3 TRUE COPY OF FACEBOOK POST AND PETITION FILED BY PETITIONER
- Annexure 4 TRUE COPY OF PETITION FILED BY PETITIONER
- Annexure 5 TRUE COPY OF WRITTEN COMPLAINT OF PETITIONER ADDRESSED TO STATE POLICE CHIEF
- Annexure 7 TRUE COPY OF ORDER OF THE COURT OF JFCM, ANGAMALY DATED 17.01.2018
- Annexure 8 TRUE COPY OF ORDER OF HON'BLE SUPREME COURT OF INDIA DATED 01.03.2021
- Annexure 9 TRUE COPY OF PETITION PREFERRED BEFORE THE CHIEF MINISTER OF KERALA DATED 27.12.2021
- Annexure 10 CERTIFIED COPY OF REPORT FILED BY IO (CW355) IN SC NO. 118 OF 2018 AS CRL M.P NO. 2466 OF 2021
- Annexure 11 TRUE COPY OF PETITION FILED AS CRL M.P NO. 2478A
- Annexure 12 TRUE COPY OF COMPLAINT DATED 01.01.2022 FILED BY PETITIONER BEFORE STATE POLICE CHIEF

-:42:-

- Annexure 13 CERTIFIED COPY OF PROCEEDINGS IN CRL M.P NO. 2466 OF 2021
- Annexure 14 TRUE COPY OF STATEMENT OF BALACHANDRA KUMAR CLAIMED TO BE RECORDED ON 01.01.2022
- Annexure 15 TRUE COPY OF STATEMENT OF BALACHANDRA KUMAR CLAIMED TO BE RECORDED ON 03.01.2022
- Annexure 16 TRUE COPY OF PETITION CRL M.P NO. 90 OF 2022 FILED BY PETITIONER
- Annexure 17 TRUE COPY OF FIR IN CRIME NO. 6 OF 2022 OF CRIME BRANCH POLICE STATION
- Annexure 18 TRUE COPY OF LETTER DATED 09.01.2022 OF CW355 TO THE ADGP
- Annexure 19 TRUE COPY OF SEARCH LIST OF RESIDENCES AND OFFICE OF THE PETITIONER AND HIS BROTHER
- Annexure 20 TRUE COPY OF PETITION FILED BEFORE THE TRIAL COURT DATED 13.01.2022
- Annexure 21 PENDRIVE CONTAINING TRUE COPY OF THE VOICE CLIP SENT BY MR.BALACHANDRA KUMAR TO THE PETITIONER ON 14.4.2021.
- Annexure 22 THE TRANSCRIPT OF THE VOICE NOTE IN ANNEXURE 21 PENDRIVE