

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.ANIL KUMAR

WEDNESDAY, THE 14TH DAY OF OCTOBER 2020/22ND ASWINA, 1942

Crl.Rev.Pet.No.3368 OF 2007

AGAINST THE TAKING OF COGNIZANCE AND CONTINUATION OF THE
PROCEEDINGS IN CC 266/2005 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT -II, PATHANAMTHITTA

REVISION PETITIONER/ACCUSED:

C.R.RAJU,
SUB INSPECTOR OF POLICE,
KONNY POLICE STATION,
PATHANAMTHITTA DISTRICT.

BY ADV.SRI.C.S.MANILAL

RESPONDENTS/STATE & COMPLAINANT:

- 1 THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
- 2 SATHEESHKUMAR,
S/O.BALAN,
CHALUMKAROTTU VEEDU,
THAZHAM MURI, KONNI THAZHAM VILLAGE,
KOZHENCHERRY.

BY SENIOR PUBLIC PROSECUTOR SRI.M.S.BREEZ
R2 BY ADV.SRI.V.K.SUNIL

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 08-10-2020, THE COURT ON 14-10-2020 PASSED THE
FOLLOWING:

ORDER

Dated this the 14th day of October, 2020

This memorandum of criminal revision petition is filed under Section 397 read with Section 401 of Code of Criminal Procedure seeking to set aside the order dated 22.9.2005 in C.C.No.266/2005 on the file of the Judicial First Class Magistrate Court-II, Pathanamthitta whereby the learned Magistrate took cognizance of the offences punishable under Sections 323 and 341 of the IPC against the revision petitioner/accused.

2. The revision petitioner/accused (hereinafter referred to as the accused) was working as the Sub Inspector of Police in Konny Police Station during March, 2005. The 2nd respondent filed a private complaint against the accused alleging offence punishable under Sections 294(b), 323 and 341 of the IPC before the learned Magistrate. Upon recording the sworn statement of the 2nd

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respondent/complainant (hereinafter referred to as the complainant), the learned Magistrate registered the case as C.C.No.266/2005 and issued process to the accused. On receipt of the summons, the accused challenged the order of the learned Magistrate in revision before this Court.

3. The prosecution case in brief is that on 15.3.2005, the complainant was summoned by the police to appear before the police station alleging that the complainant assaulted one Mohanan. It is further alleged that, when he reached the police station he was called inside the closed room of the accused and slapped him on his cheeks. The complainant went to the hospital and later filed the complaint. Consequent to the summons, the accused entered appearance on 16.2.2006 and he was enlarged on bail. Particulars of the offence were read over to the accused to which the accused pleaded not guilty. The complainant was examined as PW1.

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4. The learned counsel for the accused submitted that the complainant appeared before the accused pursuant to the notice issued under Section 160 of Cr.P.C. in connection with a petition matter. According to the learned counsel, the occurrence in this case would not have happened if no notice was issued to the complainant under Section 160 of the Cr.P.C. in connection with an enquiry in a petition matter. Therefore, it is contended that the act was done in his official capacity or purported to be performed by the accused.

5. Per contra, the learned Public Prosecutor submitted that the action of the accused in assaulting the complainant was not in due discharge of his official duty and hence no sanction under Section 197 of the Cr.P.C. is required.

6. Heard Sri.C.S.Manilal, the learned counsel for the revision petitioner and Sri.M.S.Breez, the learned Senior Public Prosecutor for the respondent-State.

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7. It is true that protection is available even for an act done or purporting to act in the discharge of official duties. To be protected under Section 197 of Cr.P.C., the act constituting the offence should be so connected with the official duty or any act which is inseparable from such duty. When the act and the official duty are so interrelated that it would be difficult to separate them, it can be reasonably postulated that the act was done in performance of official duty though possibly in excess of the needs and requirements of the situation. The conduct of summoning the complainant to the police station and torturing him at the police station had no relation to the discharge of the official duties of the police. While the case of the complainant is assault on him by the accused at the police station, sanction for prosecution was wholly unnecessary. The act complained of was not an act connected with the discharge of official duty. Where

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search was conducted after obtaining proper warrant from the court, in case an allegation was levelled that the police during the search assaulted the complainant or his relatives sanction under Section 197 of the Cr.P.C. was necessary. A case of search and seizure under the orders of court and while so the complainant was assaulted, there was nexus between the official duty and the alleged assault made by the accused. Similarly, the alleged overt act was employed by the police in the course of an attempt to apprehend an accused in a non-bailable offence, the police could not be prosecuted without sanction under Section 197 of the Cr.P.C. Thus it is clear that in order to attract Section 197 of the Cr.P.C. the offence has to be so connected with the official act so as to form part of the same transaction as if it is inseparable from it. The protection granted under the Section cannot be extended in respect of an accusation which tends to show that the act had absolutely no nexus with his official

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duties. It is not part of the duty of the accused, actual or purported, to assault, abuse or wrongfully restrain the complainant in connection with a petition matter. It is not part of his official duty to commit a criminal offence and never can be. The scope of Section 197 of the Cr.P.C. has been discussed in **Rizwan Ahmed Javed Shaikh & others v. Jammal Patel & others** (AIR (2001) SC 2198), **Sankaran Moitra v. Sadhna Das & another** (AIR (2006) SC 1599), **Sunil Kumar v. State of Kerala** (Annexure-IV Order in Crl.M.C.No.1777/2006 dated 06.03.2007) and in many cases in the manner indicated hereinabove. No other conclusion is possible.

8. Judged by the above standards, this Court is of the view that the accused is not entitled to get the protection under Section 197 of the Cr.P.C. The trial court has taken cognizance of the complaint and proceeded with the complaint in accordance with law. No interference in revision is warranted. Hence the revision is liable to be

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dismissed.

9. In the result, the criminal revision petition is dismissed. The trial court is directed to proceed with the trial of the case and decide on merits untrammelled by the observations contained in this order.

Registry is directed to send back the records to the trial court forthwith.

Sd/-

**N.ANIL KUMAR,
JUDGE**

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