

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 19<sup>TH</sup> DAY OF AUGUST 2022 / 28TH SRAVANA, 1944

CRL.MC NO. 3777 OF 2022

[IN CRIME NO.645/2022 OF CONTONMENT POLICE STATION,  
THIRUVANANTHAPURAM]

PETITIONER/ACCUSED:

SWAPNA PRABHA SURESH  
AGED 39 YEARS  
TANA APARTMENTS, FLAT NO.6C  
NEAR AMBALA NAGAR, KOWDIAR, THIRUVANANTHAPURAM  
NOW RESIDING AT E.G,E BLOCK,BUILTECH AVENUE,  
PIRIVUSALA, CHANDRANAGAR,PALAKKAD, PIN - 678007  
BY ADV. SRI. R.KRISHNA RAJ

RESPONDENTS/STATE AND COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, PIN - 682031
- 2 K.T.JALEEL  
S/O K.T.KUNJI MUHAMMAD HAJI  
GAZAL, THOZHUMANOOR, VALANCHERRY, MALAPPURAM, PIN -  
676552  
  
BY SR.ADV.SRI. T.A.SHAJI, THE DIRECTOR GENERAL OF  
PROSECUTION FOR STATE.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
26.07.2022, ALONG WITH Cr1.MC.4005/2022, THE COURT ON 19.08.2022  
PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 19<sup>TH</sup> DAY OF AUGUST 2022 / 28<sup>TH</sup> SRAVANA, 1944

CRL.MC NO. 4005 OF 2022

[IN CRIME NO.423/2022 OF CUSBA POLICE STATION, PALAKKAD]

PETITIONER/ACCUSED:

SWAPNA PRABHA SURESH  
AGED 39 YEARS  
TANA APARTMENTS, FLAT NO.6C  
NEAR AMBALA NAGAR, KOWDIAR, THIRUVANANTHAPURAM  
NOW RESIDING AT E.G,E BLOCK,BUILTECH AVENUE,  
PIRIVUSALA, CHANDRANAGAR,PALAKKAD, PIN - 678007

BY ADV. R.KRISHNA RAJ

RESPONDENTS/STATE AND COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, PIN - 682031
- 2 C.P.PRAMOD  
SRIPOURNAMY,STADIUM BYPASS ROAD, PALAKKAD, PIN -  
678013

OTHER PRESENT:

BY SR.ADV. SRI. T.A.SHAJI, THE DIRECTOR GENERAL OF  
PROSECUTION FOR STATE.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
26.07.2022, ALONG WITH CRL.M.C.NO.3777/2022, THE COURT ON  
19.08.2022 PASSED THE FOLLOWING:

O R D E R

Both these Crl.M.Cs. are filed by the same petitioner who is the accused in two crimes which contain allegations of similar nature.

2. Crl.M.C.No.3777/2022 is filed by the petitioner for quashing Annexure-A1 F.I.R. registered by the Contonment Police Station, Thiruvananthapuram in Crime No.645/2022. The offences alleged against the petitioner who is the 1<sup>st</sup> accused and another are under Sections 120B and 153 of Indian Penal Code (IPC). Subsequently, a further report was submitted by the Police incorporating Sections 464,469,505(1)(b) r/w. Section 34 of the IPC. The Investigation in the aforesaid case is in progress. Crl.M.C.No.4005/2022 has been filed challenging Annexure-A2 F.I.R. in Crime No.423/2022 of Palakkad Cusba Police Station and the offences alleged are under Section 505(1)(b)

and 465 of IPC and also under Section 65 of the Information Technology Act, 2000.

3. The facts which led to the filing of these Crl.M.Cs. are follows:

The petitioner is one of the accused in S.C. No.610/2020 on the file of the Principal District Sessions Court, Ernakulam which is a Special Court for the trial of offences under the Prevention of Money Laundering Act (hereinafter referred to as 'Special Court for PMLA cases'). She was implicated in two other cases at the instance of National Investigation Agency and Customs. The aforesaid cases are pertaining to the allegations relating to the smuggling of gold through diplomatic channel by using the machinery of the Consulate of United Arab Emirates at Thiruvananthapuram. In connection with the said cases, several allegations are raised against several persons including a senior I.A.S. Officer of the State.

4. The petitioner is already on bail in those cases. While so, the petitioner made a request before the Special Court seeking permission to give statement under Section 164 of Cr.PC in connection with certain acts allegedly committed by the Chief Minister, his wife, his daughter and also an MLA/Ex-Minister of the State who is the 2<sup>nd</sup> respondent in Crl.M.C.3777/2022. Accordingly, the court granted permission to her and on the basis of the same, she appeared before the Judicial First Class Magistrate Court-III, Ernakulam on 7.6.2022 and gave statement revealing the information as to their alleged involvement. When the petitioner came out of the court after giving statement, media persons have asked her about the details of the statement and accordingly she revealed some of the contents of the same. Later, on the next day, the petitioner's friend and one of the co-accused in

the cases already registered against the petitioner, named Sarith was taken into custody by the Police unit of Vigilance and Anti-Corruption Bureau at Palakkad. He was released later from the custody after questioning him.

5. Later, the 2<sup>nd</sup> respondent in Crl.M.C. No.3777/2022 Sri.K.T.Jaleel (hereinafter referred to as 'the 2<sup>nd</sup> respondent'), who is an MLA and was a Minister of the State when the said incidents of smuggling occurred, submitted a complaint before the Station House Officer of Cantonment Police Station, alleging that, the petitioner conspired with the 2<sup>nd</sup> accused Sri.P.C.George, an Ex-MLA and intentionally made false and defamatory statements against the 2<sup>nd</sup> respondent, the Chief Minister of the State and his family members. It was also alleged in the said complaint that, the aforesaid statements were made by the petitioner, with the intention to cause provocation to the people to commit

riot in the State. It was also alleged that, the allegations made by the petitioner against the said persons were false. On the basis of the aforesaid complaint, Annexure-A1 FIR was registered by the Cantonment Police Station.

6. Crime No.423/2022 of Palakkad Cusba Police Station, which is under challenge in Crl.M.C No.4005/2022, is also registered on the basis of the revelations made by the petitioner and the contents of the information furnished by the 2<sup>nd</sup> respondent in the said Crl.M.C, are also of similar nature. In the said complaint, the 2<sup>nd</sup> respondent therein also refers to certain audio clips published by the petitioner through the electronic media which contain her conversation with some persons including one Shaj Kiran, a Media person. It is alleged that, the aforesaid audio clips were manipulated and was created for the purpose of provoking and misleading the followers of the

political parties in the opposition, and to persuade them to commit riot against the State and also against the Chief Minister as well as his family in their individual capacities. In the aforesaid crime, offences under Section 505(1)(b) and 465 of IPC and also the offence under Section 65 of the Information Technology Act were incorporated.

7. These Crl.M.C.s are filed in these circumstances challenging the respective FIRs.

8. In both these cases, the contention raised by the petitioner is that, the initiation of proceedings against the petitioner is with malicious intention and to deter the petitioner from deposing against the Chief Minister, his family and the 2<sup>nd</sup> respondent, about certain illegal acts committed by them. According to the petitioner, what she had revealed is only a part of the information which she shared with the court through the statement given by her under



Section 164 Cr.PC, which contain certain details regarding the acts committed by the persons mentioned above. It is her case that, it is a true statement made from her personal knowledge and the matters she experienced personally. According to her, she only shared some of the contents of her statement when she was asked by the Media persons, and under no circumstances the aforesaid acts would make out any of the ingredients of the offences alleged against her. It is further contended by the petitioner that, the registration of the aforesaid crimes and the investigation thereon are only an attempt made by the State Government to interfere with the investigation which is being conducted by the Enforcement Directorate. It is also pointed out that, the intention behind the same is to prevent the petitioner from giving further details of the involvement of the Chief Minister, his family and the 2<sup>nd</sup> respondent, to

the Enforcement Directorate. Thus, it is contended that, the investigation in the aforesaid cases would become a parallel investigation to the proceedings pending before the Enforcement Directorate, and it is only intended to cause interference to the said investigation. Another contention raised by the petitioner is that, since she had furnished certain information relating to the offences committed by the persons in power, she is entitled for protection under Witness Protection Scheme, 2018 and instead of providing the same, she is being prosecuted.

9. In Crl.M.C.No.3777/2022, a detailed statement has been submitted by the 1<sup>st</sup> respondent, wherein the averments made by the petitioner in the Crl.M.C. are stoutly denied. It is averred that, the statements which were publicly made by the petitioner were malicious

and with the intention to create and promote feeling of enmity, disruption of public tranquillity and hatred between different groups of people in the State. It is also pointed out that, the aforesaid statements were defamatory in nature as against the Chief Minister, his family members and the 2<sup>nd</sup> respondent. It was also contended that, the investigation is in progress and several materials could be collected by the Investigation team, which would clearly indicate the complicity of the accused persons. It was also contended that, the averments in the complaint submitted by the 2<sup>nd</sup> respondent which is produced as Annexure R1(a) along with the statements, would clearly reveal the ingredients of the offences alleged against the petitioner in the FIR. In the investigation conducted, they could collect some other materials which would attract the offences under Sections 469, 464, 505(1)(b) r/w. Section 34 of

the IPC and accordingly, a further report was submitted before the learned Magistrate, adding the aforesaid offences as well.

10. In response to the averments in the said statement, a reply affidavit as well as an additional reply affidavit were filed by the petitioner. In those affidavits, the petitioner, while reiterating the averments in the Crl.MC, raised more allegations against the Chief Minister, his family members and the 2<sup>nd</sup> respondent MLA. In the additional statement, the petitioner also pointed out that, now the Enforcement Directorate has moved the Hon'ble Supreme Court by filing a transfer petition to transfer the trial of the Sessions Case No.610/2020 pending before the Special Court for PMLA cases, Ernakulam to the Special Court hearing the PMLA cases in the State of Karnataka. The memorandum of the said transfer petition is produced as Annexure-A6 wherein the

main reason highlighted by the Directorate of Enforcement is that, Section 164 statement given by the petitioner reveals certain materials against the Chief Minister and his family members and therefore there is the possibility of the interference being caused in the trial of the said case, if it is conducted in the State of Kerala.

11. Heard Sri. R.Krishna Raj, the learned counsel appearing for the petitioner in both the cases and the learned Director General of Prosecution and Senior Counsel Sri.T.A.Shaji for the State.

12. The crucial question that arises in these cases are whether the offences alleged against the petitioner are made out and any interference is warranted at this stage. For the purpose of considering this issue Crl.M.C. No.3777/2022 is taken as the leading case, as the allegations against the petitioner in both

the crimes are similar in nature and both the parties have completed the pleadings in the said case.

13. Crime No.645/2022 was registered by the Cantonment Police Station on the basis of Annexure R1(a), the complaint submitted by the 2<sup>nd</sup> respondent who is the MLA and an Ex-Minister of the State. One of the main offences is under Section 153 of IPC. Thus, the prayers sought for in these Crl.M.Cs. are against the FIR's registered by the Police. When considering the challenge against an FIR, what is relevant are the allegations raised by the person who is making the complaint before the police. Section 154 of the Cr.PC mandates that, if the information furnished to the Police reveals the commission of a cognizable offence, it shall be reduced into writing if it is an oral statement and shall be signed by the person making it. It is also provided that, substance thereof shall

be entered in a book to be kept by the Police in such forms the State Government may prescribe in this behalf. Therefore, the basic requirement for registering an FIR is that, the information received by the Police must reveal the commission of cognizable offence. The aforesaid question has been considered elaborately by this Court in **Gopalakrishnan P. @ Dileep v. State of Kerala and Others**[2022 (3) KLT 1]. The relevant paragraphs of the said decisions are extracted below:

*"13. Before going into the facts of the case, let us examine the requirements specified in S.154 of Cr.PC for registering an F.I.R. S.154(1) reads as follows:*

*"S.154(1) in The Code of Criminal Procedure, 1973.-(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such*

*form as the State Government may prescribe in this behalf."*

14. *The learned Senior Counsel relies upon State of West Bengal and Others v. Sanchaita Investments and Others (1982 KHC 419 : (1982) 1 SCC 561 : (1982) SCC (Cri) 283 : AIR 1982 SC 949 : 1982 CriLJ 819 : 1982 (1) Comp LJ 217), wherein in paragraph 21 it was observed as follows:*

*"21. The position which emerges from these decisions and the other decisions which are discussed by Brother A. N. Sen is that the condition precedent to the commencement of investigation under S.157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed, It is wrong to suppose that the police have an unfettered discretion to commence investigation under S.157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission, of a cognizable offence and they cannot, reasonably have reason so to suspect unless the F.I.R. prima facie discloses the commission of offence. If that condition is satisfied, the investigation must go on, and the rule in Khwaja Nazir Ahmed will apply. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the F.I.R. does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received.*



15. It is true that as per the stipulations contained in S.154 of the Cr.PC, when the information provided to the Police reveals the commission of a cognizable offence, it should be reduced into writing, and the investigation shall be commenced based on the same. Thus, the essential requirement for registration of an FIR and initiation of investigation is the disclosure of 'information' which indicates the commission of a cognizable offence. The crucial aspect to be noticed in this regard is that what is relevant for the purpose of S.154 is not the materials available on record at the time of registration of the FIR, but what is relevant is the 'information' which is the exact word used in S.154 Cr.PC. Since the purpose of S.154 is the commencement of an investigation based on 'information', it is not necessary to insist upon materials disclosing the commission of a cognizable offence at the relevant time. This is mainly because, it is a well settled position of law that the F.I.R. is not an encyclopedia that should contain all the details of the crime. The materials in support of the information/allegation contained in the F.I.R could be revealed only during the investigation. Therefore, for finding out whether an F.I.R. discloses a cognizable offence, what is relevant for consideration is only the 'information' furnished by the 1<sup>st</sup> informant."

14. Thus, the challenge raised in this Crl.M.C. has to be considered in the light of the aforesaid principles. While considering the aforesaid challenge the crucial document

therefore is the complaint submitted by the 2<sup>nd</sup> respondent on the basis of which the F.I.R is registered. The relevant portion of the aforesaid complaint is as follows:

"ഞാൻ കഴിഞ്ഞ 16 വർഷമായി കേരളം നിയമസഭാ അംഗമായും 5 വർഷം കേരള സർക്കാരിലെ മന്ത്രിയായും പ്രവർത്തിച്ചതാണ് . പന്ത്രണ്ടര വർഷക്കാലം തിരുരങ്ങാടി പി.എസ്.എം.ഒ കോളേജിലെ ചരിത്രവിഭാഗം അധ്യാപകനായും പ്രവർത്തിച്ച വ്യക്തിയാണ്. ഒരു പൊതുപ്രവർത്തകനെന്ന നിലയിൽ അത്യന്തം വേദനാജനകവും രാഷ്ട്രീയ ദുരുദ്ദേശത്തോടെയുമുള്ള നൂണുപചാരണമാണ് കഴിഞ്ഞ ദിവസം മാധ്യമങ്ങളിലൂടെ കേരള മുഖ്യമന്ത്രി ശ്രീ.പിണറായി വിജയനും കുടുംബത്തിനും എതിരായും വ്യക്തിപരമായി എനിക്കെതിരായും ഒരു സ്വർണക്കടത്ത് കേസിലെ പ്രതിയായ സ്വപ്ന സുരേഷ് നടത്തിയിട്ടുള്ളത്.

നിരവധി തവണ കോടതി മുമ്പാകെ CrPC 164 വകുപ്പ് അനുസരിച്ചുള്ള മൊഴി നൽകിയിട്ടുള്ള പ്രസ്തുത വ്യക്തി രാഷ്ട്രീയമായി എന്നെയും കേരളത്തിലെ ഇടതുപക്ഷ സർക്കാരിനെയും വിശിഷ്ട കേരളത്തിന്റെ ആദരണീയനായ മുഖ്യമന്ത്രി ശ്രീ. പിണറായി വിജയനെയും അപകീർത്തിപ്പെടുത്തുന്നതിനാണ് പ്രസ്തുത പ്രസ്താവനയിലൂടെ ശ്രമിച്ചിരിക്കുന്നത്. ഇന്നലെ ടെലിവിഷൻ ചാനലുകളിലൂടെ (ന്യൂസ് 18, റിപ്പോർട്ടർ, കൈരളി, etc.) ഒരു വോയ്സ് ക്ലിപ്പ് സംപ്രേഷണം ചെയ്യുന്നതും ഞാൻ കേട്ടു. പി.സി ജോർജ്ജ് എന്ന് പറയുന്ന വ്യക്തി 2 മാസം മുമ്പ് ഒരു ഗൂഢാപചരണ തയ്യാറാക്കുന്നതിന്റെ വിവരങ്ങളാണ് പ്രസ്തുത വോയ്സ് ക്ലിപ്പിൽ പ്രതിപാദിച്ചിട്ടുള്ളത്.

കേരളത്തിലെ ഇടതുപക്ഷ ജനാധിപത്യ മുന്നണി സർക്കാരിനെ അട്ടിമറിക്കാൻ ഉദ്ദേശിച്ചു കൊണ്ട് ഒരു രാഷ്ട്രീയ ഗൂഢാലോചന സംഘടിപ്പിക്കുന്ന തരത്തിലാണ് ശ്രീ .പി.സി ജോർജ്ജ് സംസാരിക്കുന്നത് കേട്ടത്. ജനങ്ങൾ തെരഞ്ഞെടുത്ത് അധികാരത്തിലേറ്റിയ സർക്കാരിനെ നിയമവിരുദ്ധമായി അസ്ഥിരപ്പെടുത്താനും അപകീർത്തിപ്പെടുത്താനും ഉദ്ദേശിച്ചുകൊണ്ടുള്ള ഗൂഢാലോചനയുടെ ഭാഗമായാണ് പ്രസ്തുത ടെലിഫോൺ സംഭാഷണത്തെ കാണേണ്ടത്.

ഇത്തരമൊരു നൂണുപചാരണ വാർത്താമാധ്യമങ്ങളിലൂടെ പ്രചരിപ്പിച്ച ശേഷം ഇന്നലെ (07.06.2022) ഇന്നുമായി സംസ്ഥാനത്തിന്റെ പല ഭാഗങ്ങളിലും ആസൂത്രിതമായ കലാപത്തിനുവേണ്ടിയുള്ള ശ്രമങ്ങളും ഇവർ നടത്തിക്കൊണ്ടിരിക്കുകയാണ്. യുഡിഎഫിലും ബിജെപിയിലും ഉൾപ്പെട്ട യുവാക്കളെ തെറ്റിദ്ധരിപ്പിച്ച് തെരുവിലിറക്കുകയും പോലീസിനെ ആക്രമിക്കുകയും, അതുവഴി നാട്ടിലാകെ സംഘർഷം വ്യാപിപ്പിക്കാനുമാണ് ഇവർ ശ്രമിക്കുന്നത്. കേരളത്തിൽ ബോധപൂർവ്വം കലാപം അഴിച്ചുവിടാനുള്ള ഗൂഢാലോചനയുടെ ഭാഗമാണ് ഒരു ഭാഗത്ത് ഇത്തരം നൂണുപചാരണ പ്രചരിപ്പിക്കുകയും മറുഭാഗത്ത് ആസൂത്രിതമായ സംഘർഷം അഴിച്ചുവിടുകയും ചെയ്യുന്നത്.

എന്നെ വ്യക്തിപരമായി തേജോവധം ചെയ്യുംവിധം ഇല്ലാക്കാരുങ്ങൾ കെട്ടിച്ചമച്ച് കള്ളം പ്രചരിപ്പിച്ചതിനും ആദരണീയനായ കേരള മുഖ്യമന്ത്രി ശ്രീ. പിണറായി വിജയനെതിരെയും അദ്ദേഹത്തിന്റെ കുടുംബത്തിനെതിരെയും ഇത്തരം അപകീർത്തികരമായ നൂണുപചാരണ പരഞ്ഞതിലും, നാട്ടിൽ കലാപം സൃഷ്ടിക്കുന്നതിലും കടുത്ത ദുഃഖവും പരാതിയും ഉണ്ട്.

വിശ്വസ്തതയോടെ,

(ഒപ്പ്)  
ഡോ.കെ.ടി. ജലീൽ "

15. Thus, the first question to be considered is whether the contents of the said complaint discloses the commission of an offence under section 153 of IPC. The aforesaid section reads as follows

*"153. Wantonly giving provocation with intent to cause riot—if rioting be committed—if not committed.— Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both."*

In order to attract the offence under Section 153 of IPC, the information/materials should contain the following elements:

- i) The accused did an act which is illegal;*
- ii) The accused thereby gave provocation to any person;*
- iii) The aforesaid act was done by him malignantly and wantonly;*

*iv) The aforesaid act must have been done with the intention to cause provocation to any person to commit rioting or with the knowledge that such act likely to cause provocation to any person to commit an offence of rioting.*

16. When considering the first element mentioned above, what is crucial is whether the act allegedly committed by the accused is illegal or not. The expression "illegal" is defined under section 43 of the Indian Penal Code which reads as follows:

*"43. "Illegal", "Legally bound to do". – The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit."*

What is crucial in this regard is that, going by the definition of the word illegal, it can be seen that, even something which furnishes ground for a civil action would come within its purview. Therefore, when the aforesaid wider

meaning is taken into consideration for the purpose of this case, it can be seen that, the averment in the complaints submitted by the 2<sup>nd</sup> respondent contains an averment that the statements made by the petitioner are defamatory in nature. It is also asserted in the said complaint that all the said statements are false and they were made with the intention to defame the complainant, the Chief Minister and his family members. As mentioned above, at the time of registration of FIR, what is relevant for consideration for the police is the information furnished by the complainant and not the veracity of the said allegations. In this case, the complaint contains a specific averment that, the statements made by the petitioner are in relation to the alleged involvement of the 2<sup>nd</sup> respondent, the Chief Minister and his family members. It is also a fact that, even in the memorandum of Crl.M.Cs. and also in the reply

affidavits filed by the petitioner, she reiterates the aforesaid allegations. A cursory glance in the aforesaid allegations would reveal that, if those statements are not correct, it would be defamatory as against the persons named therein. It is true that, the question whether the statements and the allegations made by the petitioner against the said persons are correct or not is a matter which is under investigation. But, that will not preclude the police from registering an FIR once an information to that effect is revealed before the police. Since the word 'illegal' takes in, even something which is a ground for civil action, a very wide interpretation has to be given to the same, while considering the same as an ingredient for the purpose of Section 153. As mentioned above, since the statements admittedly made by the petitioner, is prima facie defamatory, I am of the view that, making of such statement would

amount to an illegal act, atleast for the purpose of conducting an investigation to find out whether an offence under Section 153 of IPC has been committed or not.

17. The second aspect to be considered is whether it created any provocation to any persons. While considering this question, what is crucial is the impact of the statements admittedly made by the petitioner. In the statements submitted by the 1<sup>st</sup> respondent, it is specifically mentioned that, as a consequence of the statements made by the petitioner through the media on 7.6.2022, wide public outrage has occurred at the instance of political parties in opposition, and it resulted in wanton rioting and breach of peace and public tranquillity. It is also pointed out that, on the date of the making the statement itself, twelve cases were registered in the different parts of the State relating to the agitation involving

rioting, wherein public property were damaged. As of now, about 745 cases were already registered by the police in connection with the rioting occurred on different parts of the State following the statement of the petitioner. The aforesaid aspect is undisputed and hence it is evident that, the statement of the petitioner which she admittedly made, had caused provocation to certain persons. Therefore, that limb of Section 153 is seen to have been satisfied.

18. The 3<sup>rd</sup> element is whether the aforesaid act committed by the petitioner is malignantly or wantonly. As per Oxford dictionary 3<sup>rd</sup> edition 'malignant' means evil in nature or effect; malevolent. 'Wantonly' means deliberate or unprovoked. The meaning of the word 'malignantly' is discussed in detail with specific reference to the precedents in a decision rendered by the High Court of Delhi in



Sabhajeet Maurya v. State NCT of Delhi [2020 SCC OnLine Del 1525]:[(2021) 276 DLT 439]. The relevant observations made in the said decision in this regard are as follows:

"105. In *Queen-Empress v. Kahanji*, ILR (1893) 18 Bom 758 at p. 775, the Bombay High court observed that that the word *malignantly* implies a sort of general malice.

106. In *Bromage v. Prosser*, (1825) 4 B and C 247 at p. 255 : (1825) 107 ER 1051 at p.1054, Vide *Bayley, J* observed that "Malice in common acceptation means ill will against a person but in its legal sense it means a wrongful act done intentionally, without just cause or excuse."

107. In *Gangadharan Nair v. State of Kerala* : Crl. MC. No. 1873 of 2019 (D) decided on 6 th October, 2020, the Kerala High Court observed that "any unlawful act done intentionally without just cause or excuse would come within the purview of malignant act."

108. The expression '*malignantly*' is synonymous to '*maliciously*'. In *State Government, Madhya Pradesh v. Indarsingh Labhsingh* : AIR 1962 MP 292, a Division Bench of the Madhya Pradesh High Court had observed that "the word '*malignantly*' implies, the doing of a thing with malice or ill-will". The said decision as well as the decision in *Gangadharan* (supra) and *Kahanji* (supra) were rendered in the context of Section 153 of the IPC and in that context it is apparent that, the expression '*malignantly*' was construed as general malice. However, that does not restrict the import of the said expression.

109. The word malignant is a synonym of malice. 'Malice' means a "formed design of doing mischief to another, technically called *militia praecogitata*, or malice prepense of afore-thought.. Aforethought does not necessarily imply premeditation, but implies intention which must necessarily precede the act intended.." (Jowitt's Dictionary of English Law, 4 th Ed).

110. Malice can also be implied in certain cases of gross negligence and complete disregard to the probable consequences of an act. This is illustrated by the maxim, *Culpa lata dolo aequiparatur* - when negligence reaches a certain point, it is the same as intentional wrong.

111. Plainly, the words 'malice' and 'maliciously' are of a wide import and cannot be interpreted to be restricted only to acts, which are done with general malice and not malice towards any one person. Whether an act is malignant or not is determined by the intention of doing such act xxx xxx"

In this case, as mentioned above, statement admittedly made by the petitioner, would amount to defamatory statement and hence it is an illegal act which comes within the meaning of Section 153 IPC. When a person is doing an illegal act without just cause or excuse that would come within the purview of a malignant act. It is true that, as of now, there are no

materials indicating that the statements made by the petitioner are without any just cause or excuse. However, in these Crl.M.Cs. I am concerned about the allegations in the complaints or the statements made by the respective complainants and not with respect to the correctness of the same. This is because, the case is only under investigation and the challenge is against the registration of the FIR's. The averments in both the respective complaints contain specific allegation against the petitioner that the statements made by the petitioner was with a malafide intention to defame the Chief Minister, his family members and the 2<sup>nd</sup> respondent in Crl.M.C.No.3777/2022. Therefore, since the complaints contain such an allegation, it satisfies the definition of the word 'malignantly' for the purpose of registration of FIR.

19. When coming to the meaning of "Wantonly", it is much wider than "malignant". The said word would take within it, any reckless or thoughtless act made unprovoked. In this case, the petitioner was making certain personal allegations against the Chief Minister, his family members and the 2<sup>nd</sup> respondent who is an Ex-Minister of the State. The allegations in the FIR and the FI statements in both the cases specifically contained the averments regarding the nature of the allegations made by the petitioner and it was described as done wilfully. Therefore, the statement made by the petitioner could be treated as statements made malignantly or wantonly, at least for the purpose of registration of an FIR. However, it is made clear that this would not mean that, there are materials already placed on record which establish the aforesaid aspects, but the view

which is taken by me is that it is sufficient for conducting an investigation.

20. The next element to be considered is whether the aforesaid statements were made by the petitioner with the intention to cause provocation to some persons to create rioting or with the knowledge that such provocation is likely to result in rioting. In this case, it is evident from the records that, as of now 745 cases have been registered against several persons for committing rioting and arson on various parts of the State and thereby affecting the peace and tranquillity. Considering the gravity of the allegations which the petitioner has raised through her statements made to the media, under no circumstances it can be assumed that while making such statements she was not aware that her statement would create provocation to some person to commit rioting. In other words, no prudent man can make such kind

of statements unmindful of its consequences, given the gravity of the statements and also the positions, the persons named in the said statements are holding. Therefore, I am of the view that, atleast for the purpose of conducting an investigation for the offence under Section 153 of IPC, the contents in the FIR/FIS are sufficient.

21. Another offence alleged against the petitioner is under Section 464 and 469 of IPC. Section 464 deals with making a false document and Section 469 is for committing forgery for the purpose of harming the reputation of any person. As per the allegations against the petitioner, the petitioner had manipulated certain electronic records, with the intention to harm the reputation of the Chief Minister, his family and the 2<sup>nd</sup> respondent. The question whether are there materials to support the aforesaid allegations or not, is a matter to be

investigated by the police. Prima facie, it contains the allegations that, the petitioner had created audio clips and circulated through the media, which contain defamatory statement and it is alleged to have been manipulated. Therefore, the genuineness of the said allegations is a matter for investigation and the same cannot be adjudicated at this stage. The same reasoning would apply to the offence under section 65 of the Information Technology Act, 2000 as well.

22. The next offence is under Section 505(1)

(b) of IPC which reads as follows:

**"505. Statements conducing to public mischief .-**

*[1] Whoever makes, publishes or circulates any statement, rumour or report,-*

*(a) xxx xxx*

*(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility."*

Going through the allegations contained in the FIR in both cases, it can be seen that, there are allegations to the effect that the petitioner had made statements with the intention to cause fear or alarm to the public or to any section of people whereby any person was induced to commit an offence against the State or against the public tranquillity. In this case, it is an undisputed fact that, consequent to the statements made by the petitioner, large scale violence and public outrage took place on various parts of the State and as of now 745 cases were registered in connection with the same. Therefore, I am of the view that, the interference is not required in respect of the investigation being conducted for the aforesaid offence as well, at this stage.

23. One of the crucial contentions raised by the petitioner is that, proceedings initiated against the petitioner is with malicious



intention and to interfere with the investigation that is being conducted by the Enforcement Directorate. In my view, the aforesaid contention cannot be considered at this point of time. There are allegations raised against the petitioner which prima facie attract the offences alleged against the petitioner and therefore the genuineness of the same is a matter of evidence. Under normal circumstances, merely on the ground of the malicious nature of the allegations, interference cannot be made at the preliminary stage. The main contention of the learned counsel for the petitioner is by placing reliance upon the decision rendered by the Hon'ble Supreme Court in **State of Haryana and Others v. Ch.Bhajan Lal and Others** reported in [1992 Suppl 1 SCC 335] wherein it was observed that, where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an

ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge, interference can be made by the High Court under section 482 of Cr.P.C. Therefore, the question is whether there is any manifest malafides are seen from the records. While considering the case from that perspective, one aspect that appears to be crucial is that, the petitioner admittedly made certain statements, which are prima facie defamatory in nature. The 2<sup>nd</sup> respondent in Crl.M.C.No.3777/2022 is the person who is personally named by the petitioner in those statements, as one of the cuplrits. Therefore, since the complaint has been submitted by a person directly affected by the acts of the petitioner, it cannot be simply termed as malafide proceedings maliciously instituted with an ulterior motive, as observed by the Hon'ble Supreme Court in **Ch.Bhajan Lal's** case (supra).

24. It is also to be noted in this regard that, the consistent view that is being taken by the Hon'ble Supreme Court in the matter of interference in the FIR is that, the powers under Section 482 Cr.PC has to be exercised in such circumstances with care caution circumspection. In **Sanapareddy Maheedhar v. State of Andhra Pradesh (AIR 2008 SC 787 : 2007 (13) SCC 165)**, 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 the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under S.482 CrPC."*

25. Moreover, in **Satvinder Kaur v. State (Govt. of NCT of Delhi) and Another** (1999 (8) SCC 728 : AIR 1999 SC 3596), after referring **Pratibha Rani v. Suraj Kumar and Another** (1985 (2) SCC 370: AIR 1985 SC 628), 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 S.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."*

26. In this case, while examining the contentions made by the petitioner for quashing the F.I.Rs in the light of the principles set out by the Hon'ble Supreme Court as referred to above, I do not find any reason justifying the invocation of the power of this Court under

Section 482 Cr.PC. The allegations raised against the petitioner in both the FIRs are similar in nature and it contains necessary ingredients for attracting the offences alleged against her. As mentioned above, malicious nature of proceedings cannot be considered at this stage of this proceedings as it is premature. The investigation is in progress and the same has to reach at its logical conclusions.

27. Another contention of the petitioner is relating to the protection available to her under Witness Protection Scheme, 2018. The petitioner contends that, she is a person having materials in her possession indicating the role of the Chief Minister and others who are in power, in commission of certain criminal acts and therefore she satisfies the definition of witness for the purpose of the Witness Protection Scheme as mentioned above. However,

the crucial facts to be noticed is that, the petitioner had given a statement under Section 164 of Cr.P.C, in a case where the petitioner is an accused. The statements made by the petitioner also contains self-incriminating materials. Therefore, since she being an accused in the case in which she made revelations, under no circumstances she can be treated as a witness. It is also to be noted in this regard, the petitioner can be treated as a witness only if she is granted pardon as contemplated under section 306 of Cr.PC and admittedly no such proceedings are taken in this case. Therefore, the contentions raised by the learned counsel for the petitioner in this regard are not legally sustainable.

28. The further contention of the petitioner is that, investigation of the case would result in a parallel inquiry being conducted along with the investigation of the

Directorate of Enforcement. However, I am of the view that, the said contention is also not sustainable. This is particularly because, the scope of investigation being conducted by the Directorate of Enforcement is relating to gold smuggling conducted by certain persons including the petitioner herein by using the diplomatic channel of the consulate of UAE. On the other hand, the investigation that is being conducted in these crimes are relating to certain statements admittedly made by the petitioner which contain defamatory materials against certain persons allegedly with the intention to cause riot. It is true that, the defamatory nature of the said statement is because of the reason that, the same is pertaining to the alleged involvement of the Chief Minister, his family and the 2<sup>nd</sup> respondent in commission of the offences which are the matters of investigation before the Directorate of Enforcement. Basically, both are

different allegations, though it overlaps each other at certain points. However, in my view, such overlapping by itself would not render an investigation in this case unsustainable. In other words, the investigation that is being conducted by both agencies can be continued without crossing their paths with each other, despite the overlapping of the same at some points. Therefore, I do not find any reason to accept the said contention as well.

29. It was also contended that, what the petitioner stated to the media on 7.6.2022 are the contents of the statement given by her under Section 164 Cr.PC. According to her, the correctness of the same is being investigated by the Enforcement Directorate. Therefore, it is contended that, revelation of something which she mentioned before a court of law under Section 164 Cr.PC cannot be treated as a statement which attracts the offences. This



contention is raised mainly on the ground that, she made the said statement when she was questioned by the media persons while she was coming out from the court after making statement under Section 164 Cr.PC. However, it is evident from the records including the statements submitted by the 1<sup>st</sup> respondent that, the registration of the crime was not in respect of a single instance of revealing the contents of a statement made by her under Section 164 Cr.PC. To be precise, it is not a case of single incident where a statement was happened to be made by the petitioner when she was questioned by the media persons. On the other hand, it is evident that, the petitioner made and published a series of statements on several days through various TV programmes, through various news channels. Therefore, it cannot be treated as a single incident of making a statement as projected by the petitioner in the Crl.MC.

Moreover, whether what she revealed is the contents of Section 164 statement or not is also not clear from the materials available on record. Therefore, on that ground no interference can be made in the ongoing investigation.

30. Thus, after going through the entire materials available before this Court, I am of the view that, the challenge raised by the petitioner is pre-mature. The petitioner could not make out a case for interference at this stage and I do not find any justifiable reasons for interference in the present investigations. It is a well settled position of law that, the quashing of an FIR could be ordered only in rarest of rare cases, the principles relating to which are specifically laid down by the Hon'ble Supreme Court in **Bhajan Lal's** case (supra). After considering all the contentions and the materials placed by the petitioner, I am not

satisfied that, these are cases which would fall under any of the seven categories mentioned by the Hon'ble Supreme Court in **Bhajan Lal's** case (supra).

Hence, I do not find any merit in these Crl.M.Cs. and accordingly those are dismissed. However, it is made clear that, all the observations and findings in this order were made only for the purpose of verifying whether the petitioner has made out a case for invocation of the powers of this Court under Section 482 of Cr.PC for quashing the F.I.Rs, registered against her in these cases. Under no circumstances the observations made herein may cause prejudice to her in raising a challenge against the final report, if any, filed against the petitioner by the Police after completing the investigation.

Sd/-

**ZIYAD RAHMAN A.A.**  
**JUDGE**

pkk

APPENDIX OF CRL.MC 3777/2022.PETITIONER'S ANNEXURES:

- ANNEXURE A1 TRUE COPY OF THE FIR IN CRIME NO.645/2022 OF CONTONMENT POLICE STATION DATED 8.6.2022
- ANNEXURE A2 TRUE COPY OF THE STATEMENT OF SHIVASANKAR BEFORE THE CUSTOMS DATED 6.12.2020
- ANNEXURE A3 TRUE COPY OF THE STATEMENT OF SHIVASANKAR BEFORE THE CUSTOMS DATED 7.12.2020
- ANNEXURE A4 TRUE COPY OF THE WHATS APP CHAT OF K.T.JALEEL SEND FROM HIS PHONE NUMBER 9447896600 TO THE PETITIONER ON 25.06.2020 ALONG WITH THE ATTACHMENTS VIZ. THE LETTER
- ANNEXURE A5 TRUE COPY OF THE PAPER REPORT IN MADHAYAMAM DAILY DATED 24.06.2020
- ANNEXURE A6 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C)NO.7641 OF 2021 DATED 16.04.2021
- ANNEXURE A6 (A) TRUE COPY OF THE TRANSFER PETITION FILED BY THE ENFORCEMENT DIRECTORATE, TRANSFER PETITION (CRIMINAL)NO.. OF 2022 DATED NIL BEFORE THE HON'BLE SUPREME COURT OF INDIA
- ANNEXURE A7 TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONER BEFORE THE PMLA COURT DATED 02.06.2022

RESPONDENTS' ANNEXURES:

- ANNEXURE R1 (A) A COPY OF THE COMPLAINT OF THE SECOND RESPONDENT DATED NIL SUBMITTED BEFORE THE STATION HOUSE OFFICER, CONTONMENT POLICE STATION
- ANNEXURE R1 (B) A COPY OF THE STATEMENT OF THE SECOND RESPONDENT RECORDED ON 10.06.2022
- ANNEXURE R1 (C) A COPY OF THE REPORT DATED 13.06.2022 SUBMITTED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-III, THIRUVANANTHAPURAM.

