VERDICTUM.IN

[C.R]

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 5TH DAY OF APRIL 2022 / 15TH CHAITHRA, 1944

WP(C) NO. 32519 OF 2010

PETITIONER/S:

ANILKUMAR A.B.

S/O.BALAKRISHNA PILLAI,, AZHATHIL PUTHAN VEEDU,, AYILARA P.O.,AYIRANALLOOR VILLAGE,PATHANAPURAM, KOLLAM-691312.

BY ADV SRI.SABU GEORGE

RESPONDENT/S:

1 STATE OF KERALA

CHIEF SECRETARY,, GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM-1

2 JOINT EXCISE COMMISSIONER

EXCISE HEAD QUARTERS,, THIRUVANANTHAPURAM -1

3 S.MOHANAN AGED 41 YEARS

S/O.SREEDHARAN,, SREEDHAR BHAVAN, PUTHENKAVUVILA,, MARANALLUUR VILLAGE,NEYYATTINKARA-695 512.

4 A.MUHAMMED RASHEED, S/O.ABDUL RAHMAN

52 YEARS,KAVUVILA VEEDU,ELEMPAZHANNUR, KADAKKAL VILLAGE,KOTTARAKKARA - 691 536

5 A.ANZAR, AGED 33 YEARS

S/O.HASSANKANNE, HANEEZ MANZIL, CHAKKUVARACHKAL,KOTTARAKKARA-691508

6 BIJU KUMAR,

S/O.GOPALAKRISHNA PILLAI, AGED 38 YEARS, BIJU MANDIRAM, ETTIMOOD, THACHONAM MURI, KUMMIL VILLAGE, KOTTARAKKARA, PIN - 691 536

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7 SUDARSHANAN, S/O.KATHIRESAN
SUMITHA BHAVAN, OIL PALM GATE, 11TH MILE,
EZHAMKULAM, ANCHAL, KOLLAM - 691 306

BY ADVS.

GOVERNMENT PLEADER

SRI.MATHEW B. KURIAN-R5

C.UNNIKRISHNAN (KOLLAM) – R4 AND R6

SRI.B.ASHOK SHENOY

SRI.ABU MATHEW

SRI.K.V.GEORGE

SRI.V.M.KURIAN

SMT.LAKSHMI B.SHENOY

SRI.H.B.SHENOY-R3

SRI.SOBHAN GEORGE

SRI.K.T.THOMAS

OTHER PRESENT:

SMT.DEEPA NARAYANAN, SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24.03.2022, ALONG WITH WP(C).24692/2011, THE COURT ON 05.04.2022 DELIVERED THE FOLLOWING:

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 5TH DAY OF APRIL 2022 / 15TH CHAITHRA, 1944

WP(C) NO. 24692 OF 2011

PETITIONER/S:

R.PRAKASH,RESIDING AT KUTTITHARAYIL

VEEDU, ADINADU SOUTH P.O., KARUNAGAPALLY,, KOLLAM DISTRICT.

BY ADVS.

SRI.M.V.THAMBAN

SRI.B.BIPIN

SRI.R.REJI

SMT.REVATHY P.NAIR

SMT.THARA THAMBAN

RESPONDENT/S:

1 STATE OF KERALA,REPRESENTED BY

SECRETARY TO THE GOVERNMENT, DEPARTMENT OF TAXES,, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2 THE COMMISSIONER OF EXCISE

THIRUVANANTHAPURAM-695001.

3 THE JOINT COMMISSIONER OF EXCISE

EXCISE INTELLIGENCE AND INVESTIGATION BUREAU,, EXCISE HEADQUARTERS, THIRUVANANTHAPURAM-695001.

4 THE ASSISTANT EXCISE COMMISSIONER
KOLLAM, KOLLAM DISTRICT-691001.

5 THE EXCISE RANGE INSPECTOR
KARUNAGAPALLY EXCISE RANGE, KOLLAM DISTRICT-690518

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6	THE EXCISE RANGE INSPECTOR KARUNAGAPALLY EXCISE RANGE, KOLLAM DISTRICT-, 690518.
7	VIKRAMAN NAIR KOLABHAGATHU HOUSE KULASEKHARAPURAM VILLAGE, KLAPPANA P.O., KARUNAGAPALLY TALUK, KOLLAM DISTRICT, PIN-690518.

BY ADV GOVERNMENT PLEADER, SMT. DEEPA NARAYANAN, SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24.03.2022, ALONG WITH WP(C).32519/2010, THE COURT ON 05.04.2022 DELIVERED THE FOLLOWING:

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[C.R]

P.V.KUNHIKRISHNAN, J.

W.P.(C).Nos. 32519 of 2010 & 24692 of 2011

Dated this the 5th day of April, 2022

JUDGMENT

Mahatma Gandhi shared his jail experience in these words: "Men in prison are "civilly dead" and have no claim to any say in policy"[1]. Nelson Mandela, the great fighter against apartheid, described his prison life in the following words: "No one truly knows a nation until one has been inside its jail. A nation should not be judged by how it treats its highest citizens, but its lowest ones"[2]. An American journalist by

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[1] Mahatma Gandhi shared his jail experience in different issues of Young India. Also available in : Mahatma Gandhi, *"The Collected Works of Mahatma Gandhi"*, New Delhi : Publication Division, Ministry of Information and Broadcasting, Government of India (1969).

[2] Nelson Mandela in his book, "Long Walk to Freedom".
Citation : Nelson Mandela, *Long Walk to Freedom*, Little Brown and Company, (1994), p.23

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name Mumia Abu Jamal said the following about his prison life: "Prison is a second-by-second assault on the soul, a day-to-day degradation of the self, an oppressive steel and brick umbrella that transforms seconds into hours and hours into days."[3].

2. Petitioners in these cases were admittedly arrested and were in confinement for more than 50 days in connection with two separate Abkari cases. It is also an admitted fact that they were subsequently found to be innocent and were exonerated by the investigating agency by filing subsequent reports before the Court concerned. The petitioners are

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[3] Mumia Abu Jamal in his book, "Live from Death Row".
Citation : Mumia Abu Jamal, *Live from Death Row*, ed. Addison Wesley Publishing Company, (1995).

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claiming compensation from the State for the infringement of their fundamental rights under Article 21 of the Constitution of India. Since common issues are coming for consideration in these two cases, I am disposing of these two writ petitions by a common judgment.

Facts of the case

W.P.(C). No.24692 of 2011

3. Petitioner was the accused in Crime No.45/2006 of Karunagapally Excise Range, Kollam District. The allegation in the above case was that on 25.02.2006 at 5.15 P.M, the petitioner was found in possession of 4 litres of arrack in a 5 litre bottle near Pavumba Thekkum Muri in Karunagapally Taluk by the Excise party headed by the Preventive Officer one Mr.Vasudeva Kurup. The petitioner was arrested on the spot, and he was in judicial custody for 76 days; and later, he was enlarged on bail. According to the petitioner, the above case is registered at the instance of the 7th respondent, who is

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also an officer of the Excise Department, because of some personal enmity with him. Subsequently, an enquiry was conducted by the 6th respondent, and it was found that the petitioner was falsely implicated. The 2nd respondent ordered re-investigation of the crime which resulted in Ext.P3 final report, by which it is concluded by the 3rd respondent that the petitioner is innocent. In such a situation, the above writ petition is filed with the following prayers:

i. To issue a writ of mandamus or any other writ or order directing the 1st and 2nd respondents to implement Exhibit P1 and P3 reports and to take appropriate action against the 7th respondent.

ii. To grant compensation of Rs. 5,00,000/- to the petitioner for having kept him in the prison on the basis of a false and vexatious case and by misusing the official machinery.

iii. To issue such other further reliefs as this Honourable Court may deem fit and proper in the facts and circumstances of this case.

(SIC)

W.P.(C). No.32519 of 2010

4. According to the petitioner in this case, the 7th

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respondent in this writ petition was the leader of a gang of illicit liquor traders. It is the definite case of the petitioner that the 7th respondent had close nexus with some of the officials in Anchal Excise Range and with some local political leaders. It is contended by the petitioner that all the activities done by the 7th respondent and his gang were with the connivance of the officials in the Excise Range Office, Anchal. The petitioner claims to be an agriculturist, and according to him, he is conducting a rubber nursery and also cultivating pineapple and banana in 3 acres of land taken on lease. It is the case of the petitioner that the 7th respondent, his wife Mallika and one Mani *alias* Auto Mani, S/o.Sadasivan, was engaged in the distillation of illicit arrack near the petitioner's farm. Their illicit distillation of arrack caused troubles to the cultivation of the petitioner. The petitioner submitted several complaints to Anchal Excise Range Office, but there was no response. He then filed a complaint before Eroor Police Station and the Police party raided the area and arrested the

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7th respondent. An FIR was registered against him as Crime No.81/2004 on 20.04.2004, under Section 55(g) of the Abkari Act. The petitioner was a signatory to the mahazar in that case, and in the final report, the petitioner was cited as the 5th witness. Exhibit P1 is the final report submitted in Crime No.81/2004. Consequently, the 7th respondent was put in jail in connection with the said case. In vengeance to the same, after the release of the 7th respondent from jail, respondents 5 and 7 colluded together and manhandled the petitioner. The 4th respondent was the Preventive Officer and respondents 5 and 6 were Excise Guards in Anchal Excise Range Office at that point of time. It is the case of the petitioner that on 13.06.2004, the 7th respondent and the 5th respondent Excise Guard, with the assistance of one Suresh, S/o.Sundareshan and Thulaseedharan Pillai, S/o.Chellappan Pillai, wrongfully restrained the petitioner by force while traveling on his motorbike by putting a jeep across and assaulted him, and even attempted to kill him. The petitioner further contended

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that he somehow escaped from the scene and made a complaint before Eroor Police Station. Subsequently, on 18.06.2004, respondents 3 to 6, along with 3 other excise guards, namely Satheesan K, C.L. Sunil and Soman Pillai, came to the farmhouse of the petitioner and arrested him, saying that it was based on the order of the Minister. He was implicated in Crime No.31/2004 of Anchal Excise Range. It is the case of the petitioner that respondents 5 and 6 had brutally assaulted the petitioner while he was in custody at the Excise Range, Anchal and demanded bribe to release him from the case. The petitioner refused the demand, and it is the case of the petitioner that he was produced before the Court concerned and was remanded. The petitioner was released on bail only on 12.08.2004, i.e., after 55 days of imprisonment. Subsequently, on enquiry with the Eroor Police Station, the petitioner came to know that no case was registered on the incident that occurred on 13.06.2004. Then he filed a private complaint before the Judicial First Class

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Magistrate Court – I, Punalur on 03.09.2004 and the same was forwarded to the Police and subsequently Crime No.174/2004 was registered. After investigation, the final report was submitted in the above case and the same is pending as C.C.No.100/2005. Ext.P2 is the final report dated 30.05.2005.

5. Meanwhile, the petitioner sent complaints to the Chief Minister of Kerala and other officials, as evident by Ext.P3. As per the direction of the Commissioner of Excise, the matter was enquired into by the Excise Vigilance Officer, Thiruvananthapuram and as per Ext.P4 report, the Excise Vigilance Officer found that the petitioner was falsely implicated in Crime No.31/2004 due to the nexus of respondents 5 and 6 with notorious criminals. It is also requested by the enquiry officer to suspend respondents 5 and 6 from the service and to initiate disciplinary action against respondents 3 to 6. It was further asked to investigate Crime No.31/2004 of Anchal Excise Range Office

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by an Officer above the rank of Circle Inspector. Based on Ext.P4, respondents 5 and 6 were suspended from service, and the Circle Inspector of Excise, Excise Enforcement and Anti Narcotic Special Squad, Kollam, was directed to investigate Crime No.31/2004. Later disciplinary proceedings were initiated against respondents 3 to 6, which resulted in Ext.P5 enquiry report. Crime No.31/2004 was investigated by the Circle Inspector of Excise, Excise Enforcement and Anti Narcotic Special Squad, Kollam and the investigating officer submitted a refer report before the Court in Crime No.31/2004, as evident by Ext.P6. But Ext.P6 was not accepted by the learned Magistrate and Ext.P7 order was passed by the Court to conduct investigation in this case according to law. Subsequently, the petitioner obtained the details regarding the disciplinary proceedings initiated against respondents 3 to 6. Exts.P8 to P11 are the proceedings of the Joint Excise Commissioner, Thiruvananthapuram dated 21.07.2007, regarding the disciplinary proceedings initiated

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against respondents 3 to 6. The 2nd respondent had imposed a penalty by barring two increments without cumulative effect for two years, after taking a lenient view.

6. Thereafter the petitioner filed an application under the Right to Information Act 2005 in the Excise Range Office, Anchal, on 26.05.2010 regarding his case and he was informed vide letter dated 03.06.2010 that final report in Crime No.31/2004 had been filed on 25.03.2010. Ext.P12 is the letter dated 03.06.2010 of the Public Information Officer, Excise Range Office, Anchal. The petitioner approached the Judicial First Class Magistrate Court-I, Punalur and obtained the final report filed by the Circle Inspector of Excise, Excise Enforcement and Anti Narcotic Special Squad, Kollam. In the final report, the petitioner and the 3rd accused in that crime were deleted from the array of accused. Ext.P13 is the final report. It is the case of the petitioner that the petitioner was falsely and maliciously implicated in a crime by the officials of

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the 1st respondent and he was in illegal confinement for 55 days in violation of Articles 21, 14, 19(1)(d) and (g) of the Constitution of India. Hence this writ petition is filed with following prayers:

i. Issue a writ of mandamus order or direction in the nature thereof directing the 1st respondent to pay sufficient and adequate compensation fixed by this Hon'ble Court to the petitioner within a time frame.

ii. Issue a writ of mandamus order or direction in the nature thereof directing the 2nd respondent to impose proper, effective and adequate penalty on respondents 3 to 6 in accordance with the gravity of offences committed by them against the petitioner.

iii. Issue a writ of mandamus order or direction in the nature thereof directing the respondents 1 and 2 to initiate criminal prosecution against respondents 3 to 6 in accordance with law.

iv. Issue such other writ order or direction as this Honourable Court deems fit and necessary in the circumstances of the case.

(SIC)

Contentions raised by the parties

7. Heard Adv.Sabu George for the petitioner in W.P.

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(C). No.32519 of 2010 and Adv.R.Reji for the petitioner in W.P.(C). No.24692 of 2010. The learned Senior Government Pleader Adv.Deepa Narayanan appeared for the official respondents in both these writ petitions. Heard Adv.H.B.Shenoy for the 3rd respondent, Adv.Mathew B. Kurian for the 5th respondent and Adv.C.Unnikrishnan for respondents 4 & 6 in W.P.(C). No.32519 of 2010. Adv.Siju Kamalasanan who filed vakkalath for 7th respondent in W.P.(C). No.24692 of 2010 originally submitted that he relinquished the vakalath. Subsequently no fresh vakkalath was filed by any other lawyer on behalf of the 7th respondent.

8. The counsel for the petitioners in these writ petitions raised common points. They submitted that the petitioners in these writ petitions were in illegal confinement thus violating their fundamental rights guaranteed under Article 21 of the Constitution of India. The counsel submitted that even the Investigating agency concluded that the petitioners were falsely implicated in the case. In such

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circumstances, the counsel submitted that, it is the duty of the State to compensate the petitioners for infringing their fundamental right under Article 21 of the Constitution of India. The counsel for the petitioners relied on the judgments of the Apex Court in ***Smt. Nilabati Behera alias Lalita Behera* v. *State of Orissa and Others*** [1993 KHC 919], ***Nambi Narayanan S.* v. *Siby Mathews and Others*** [2018 (4) KHC 598], ***Shyam Balakrishnan* v. *State of Kerala and Others*** [2015 (3) KHC 84] to support their argument that this Court can invoke the jurisdiction under Article 226 of the Constitution of India to pay compensation in appropriate cases in addition to the private law remedies available to the aggrieved parties by approaching the Civil Court. The counsel for the petitioners submitted that, the petitioner's personal liberty was illegally restrained by the officials of the State and in such circumstances, the State is bound to pay compensation to the petitioners. The counsel appearing for the petitioners in these writ petitions

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submitted that they are confining their relief for getting compensation alone because the disciplinary proceedings are already concluded by the disciplinary authority.

9. The learned Government Pleader, on the other hand submitted that the State is not responsible for paying compensation to the petitioners because it is only a dereliction of duty on the part of certain excise officials. The Government Pleader submitted that appropriate disciplinary proceedings is already taken against those officials. Moreover, the Government Pleader also submitted that this Court may not entertain these type of writ petitions under Article 226 of the Constitution because the State may not be able to adduce evidence to substantiate their case. The submission is that remedy of the petitioners is to file a suit before the Civil Court so that both parties will get an opportunity to adduce evidence. Hence the Government Pleader submitted that this Court may not entertain the writ petition for compensation under Article 226 of the Constitution of India.

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10. The counsel appearing for respondents 3 to 6 in W.P.(C)No.32519/2012 also submitted that this Court may not entertain a writ petition under Article 226 of the Constitution of India for deciding the question of compensation. The counsel submitted that they will be able to establish before a competent Civil court that they are innocent, if a Civil Suit is filed. The counsel submitted that in these type of cases, the private law remedy is to be followed so that the affected parties will get opportunity to substantiate their case.

Power of the High Court to award compensation under Article 226 of the Constitution of India.

11. Article 21 of the Constitution of India protects the life and personal liberty of a person. Article 21 says that, "No person shall be deprived of his life or personal liberty except according to a procedure established by law." It is a settled position that, when the infringement of the fundamental right is established, the Constitutional Court should not stop by

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giving a mere declaration; it must proceed further and provide compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done due to breach of public duty by the State for not protecting the fundamental right to the life of the citizen (***D. K. Basu* V. *State of West Bengal*** [1997 KHC 245]). In paragraphs 42 and 44 of ***D.K.Basu's case*** (*supra*) the Apex Court considered this point in detail, which is extracted hereunder:

> "42. Some punitive provisions are contained in the Indian Penal Code which seek to punish violation of right to life. S.220 provides for punishment to an officer or authority who detains or keeps a person in confinement with a corrupt or malicious motive. S.330 and 331, provide for punishment of those who inflict injury or grievous hurt on a person to extort confession or information in regard to commission of an offence. Illustrations (a) and (b) to S.330 make a police officer guilty of torturing a person in order to induce him to confess the commission of a crime or to induce him to point out places where stolen property is deposited. S.330, therefore, directly makes torture during interrogation and investigation punishable under the Indian Penal Code. These statutory provisions are, however, inadequate to repair the wrong done

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to the citizen. Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.

42A. Art.9(5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that "anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation". Of course, the Government of India at the time of its ratification (of ICCOR) in 1979 had made a specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to Covenant. That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen. (See with advantage Rudal Shah v. State of Bihar, 1983 (4) SCC 141 : AIR 1983 SC 1086; Rajendra Singh v. Smt. Usha Rani, 1984 (3) SCC 339 : AIR 1984 SC 956, Sebastian M. Hongrey v. Union of India, 1984 (3) SCC 82 :

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AIR 1984 SC 1026; Bhim Singh v. State of Jammu and Kashmir, 1985 (4) SCC 677 : AIR 1986 SC 494, Saheli v. Commissioner of Police, Delhi, AIR 1990 SC 513. There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. (See : Neelabati Behera v. State (1993 AIR SCW 2366) (supra)).

44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Art.21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Art.32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Art.21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect

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the fundamental rights of the citizen."(emphasis supplied)

12. In paragraph 10 of the judgment in ***Rudul Sah V. State of Bihar and Another*** [AIR 1983 SC 1086:1983 KHC 498], the Apex Court observed like this:

> "10. We cannot resist this argument. We see no effective answer to it save the stale, and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip service to his fundamental right to liberty which the State Government has so grossly violated. Art.21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. <u>One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the</u>

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mandate of Art.21 secured, is to mulct its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."(emphasis supplied)

13. In ***Railway Board V. Chandrima Das*** [AIR 2000 SC 988: 2000(1) KLT 655: 2000 KHC 120], the Apex Court again considered this matter. Paragraph 9 of the above judgment is extracted hereunder:

"9. Various aspects of the Public Law field were considered. It was found that though initially a petition under Art.226 of the Constitution relating to contractual matters was held not to lie, the law underwent a change by subsequent decisions and it was noticed that even though the petition may relate essentially to a contractual matter, it would still be amenable to the writ jurisdiction of the High Court under

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Art.226. The Public Law remedies have also been extended to the realm of tort. This Court, in its various decisions, has entertained petitions under Art.32 of the Constitution on a number of occasions and has awarded compensation to the petitioners who had suffered personal injuries at the hands of the officers of the Government. The causing of injuries, which amounted to tortious act, was compensated by this Court in many of its decisions beginning from Rudul Sah v. State of Bihar, 1983 (3) SCR 508 : 1983 (4) SCC 141 : AIR 1983 SC 1086, (See also: Bhim Singh v. State of Jammu & Kashmir, 1985 (4) SCC 677 : AIR 1986 SC 494; People's Union for Democratic Rights v. State of Bihar, JT 1987 (1) SC 18 : 1987 (1) SCR 631 : 1987 (1) SCC 265 : AIR 1987 SC 355; People's Union for Democratic Rights Thru. Its Secy. v. Police Commissioner, Delhi Police Headquarters, JT 1989 Supp SC 1 : 1989 (4) SCC 730 : 1989 (1) SCALE 599; Saheli, A Woman's Resources Centre v. Commissioner of Police, Delhi, JT 1989 (4) SC 553 : 1990 (1) SCC 422 : 1989 (Supp.) SCR 488 : AIR 1990 SC 513; Arvinder Singh Bagga v. State of U.P., JT 1994 (6) SC 478 : 1994 (6) SCC 565 : AIR 1995 SC 117; P. Rathinam v. Union of India, 1989 Supp (2) SCC 716; In Re. Death of Sawinder Singh Grower, 1995 Supp (4) SCC 450 : JT 1992 (6) SC 271 : 1992 (3) SCALE 34; Inder Singh v. State of Punjab, JT 1995 (9) SC 627 : 1995 (3) SCC 702 : AIR 1995 SC 1949; D. K. Basu v. State of West Bengal, JT 1997 (1) SC 1 : 1997 (1) SCC 416 : AIR 1997 SC 610).”

14. In paragraph 35 of the judgment in ***Sube Singh***

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V. *State of Haryana and Others* [AIR 2006 SC 1117: 2006 KHC 386], the Apex Court after quoting the earlier decision in Nilabati Behera v. State of Orissa (1993 SCC (Cri) 527) observed like this:

> "35. The law was crystallised in Nilabati Behera v. State of Orissa (1993 SCC (Cri) 527). In that case, the deceased was arrested by the police, handcuffed and kept in police custody. The next day, his dead body was found on a railway track. This Court awarded compensation to the mother of the deceased. J.S. Verma, J. (as he then was) spelt out the following principles:
>
> "[A]ward of compensation in a proceeding under Art.32 by this Court or by the High Court under Art.226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. (SCC p. 758, para 10)
>
> * * *
>
> ... enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention. ... 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict

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liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Art.32 and 226 of the Constitution. (SCC pp. 762-63, paras 16-17)" (emphasis supplied)".

15. Again in ***Shyam Balakrishnan* v. *State of Kerala and Others*** [2015 (3) KHC 84], this Court also observed that there could not be any difficulty in holding that Article 226 can be molded for compensation for a victim of an unlawful arrest. Similarly, in paragraph 3 of the judgment in ***Bhim Singh, MLA* v. *State of J. and K. and Others*** [1985(4) SCC 677: 1985 KHC 761], the Apex Court observed

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like this:

> "3. However the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in Rudul Sah v. State of Bihar, 1983 (3) SCR 508 : AIR 1983 SC 1086 and Sebastian M. Hongray v. Union of India, AIR 1984 SC 1026. When a person comes to us with the complaint that he has been arrested and imprisoned with mischevous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs. 50,000/- within two months from today. The amount will be deposited with the Registrar of this Court and paid to Shri Bhim Singh."

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16. In ***Nilabati's case*** (*supra*), the Apex Court considered the matter in detail in paragraphs 33, 34 and 35 which is extracted hereunder:

> "33. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Art.32 by this Court or under Art.226 by the High Courts, for established infringement of the indefeasible right guaranteed under Art.21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the Court moulds the relief by granting "compensation" in proceedings under Art.32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong

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done due to breach of public duty of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

34. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course, has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings. Of course, relief in exercise of the power under Art.32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the Court in the facts and circumstances of the case is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar, (1983) 3 SCR 508 : (AIR 1983 SC 1086), granted

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monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Art.32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is In that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under Art.21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self restraint, lest proceedings under Art.32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J.

35. In the facts of the present case on the findings already recorded, the mode of redress which commends appropriate is to make an order of monetary amend in favour of the petitioner for the custodial death of her son by ordering payment of compensation by way of exemplary damages. For

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> the reasons recorded by Brother Verma, J., I agree that the State of Orissa should pay a sum of Rupees 1,50,000/- to the petitioner and a sum of Rs. 1,000/- by way of costs to the Supreme Court Legal Aid Committee. I concur with the view expressed by Brother Verma, J. and the directions given by him in the judgment in all respects."

17. Article 9(5) of the International Covenant on Civil and Political Rights, 1966 states that, "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation." Though, our country has not endorsed the above Covenant, the apex court has approved the above right in a catena of decisions.

18. In ***Nambi Narayanan's case*** (*supra*), the Apex Court considered this point again in paragraph 37 of the judgment and the same is extracted hereunder:

> "37. If the obtaining factual matrix is adjudged on the aforesaid principles and parameters, there can be no scintilla of doubt that the appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation. The lackadaisical attitude of the State police to arrest anyone and put him in police custody has made the

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appellant to suffer the ignominy. The dignity of a person gets shocked when psycho - pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self - respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional Court to grant compensation taking recourse to public law. The Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the appellant."

19. In ***Shyam Balakrishnan's case*** (*supra*), this Court after considering all other decisions as on that date, observed in paragraph 21 like this:

"21. Thus, there cannot be any difficulty in holding that Art.226 can be moulded for compensation for a victim of an unlawful arrest. The petitioner claimed a sum of Rs.1,00,000/- as compensation. No doubt, he would have been entitled for a higher amount of compensation considering the trauma and mental agonies suffered by him. In that view of the matter, with liberty to claim any compensation if otherwise can be claimed by him before the Civil Court, the State shall pay to the petitioner a sum of Rs.1,00,000/- (Rupees one lakh only) as compensation."

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20. From the above decisions of the Apex Court and this Court, it is clear that, if the fundamental right of a citizen guaranteed in the Constitution is found to be infringed, the Constitutional Court cannot stop by giving a mere declaration. As observed by the apex Court, it must proceed further and give compensatory relief not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done due to breach of public duty by the State for not protecting the fundamental right guaranteed by the Constitution to the life of the citizen. If a person is confined in a prison and it is subsequently found that the confinement is illegal because the person was falsely implicated in the case, it is a clear case of infringement of the fundamental right guaranteed to a person under Article 21 of the Constitution of India. In such a situation, the Constitutional Court should step in and compensate the aggrieved party. In appropriate case, the Constitutional Court can allow the victims to approach the Civil Court for getting

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compensation in addition to the amount fixed by the Constitutional Court, invoking the powers under Article 226 of the Constitution of India.

Whether there is illegal confinement of the petitioners in these cases.

21. In these two writ petitions, the petitioners were in judicial custody because of a case registered by the Excise department. I will deal with the facts of these two cases separately:

a) W.P.(C)No.32519/2010

22. In this case the petitioner was arrested in connection with the registration of Crime No.31/2004 by the Anchal Range and the case was registered under the Abkari Act. The petitioner was one of the accused and the other accused were one Raghu and Thulaseedharan Pillai. The petitioner was in jail for 55 days in connection with the above case. According to the petitioner, the case was registered at the instance of respondents 3 to 6 who are the Excise officials

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and 7th respondent who according to the petitioner was a leader of illicit liquor traders. The petitioner submitted a complaint before the Chief Minister and other officials alleging false implication. The matter was enquired into by the Excise Vigilance Officer, Thiruvananthapuram and Ext.P4 enquiry report was submitted by the Excise Vigilance officer. The conclusions in Ext.P4 is important and the same is extracted hereunder:

> "VII.Conclusion:-
>
> It is revealed in the Enquiry that the Excise Officials who are bound to take legal action against the illicit liquor traders not only have failed to book them but also have arrested this innocent petitioner in an abkari case who had given information regarding illicit distillation leading to the arrest of a notorious criminal. The nexus of Sri.Bijukumar and Anzar, Excise Guards with this notorious criminal alone is the motive behind this trap. This intention is also made clear by assaulting the petitioner inside the Excise Range Office, Anchal on 18.06.04 after 4.30 PM by these two Excise Guards.
>
> 1. This petitioner A.B Anilkumar was falsely implicated in Cr.No.31/04 u/s 55(g) of Abkari Act of Anchal Range Office by A.Mohammed Rasheed, Preventive Officer.
>
> 2. The seizure mahazar prepared by Sri.A.Mohammed Rasheed, Preventive Officer contains false

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statements and narrations. Though this seizure mahazar is narrated to be prepared at 2.30 PM on 18.06.04 at Parapathalil near oil palm estate, Eroor, actually this mahazar was prepared at Excise Range Office, Anchal, after 4.30 PM on 18.06.04.

3. The Asst.Excise Inspector, S.Mohanan has miserably failed to function as a superior officer and shurked from responsibility and made corrections by erasing General Diary entries at 4.30 PM on 18.06.04, for his convenience and safety.

4. Excise Guards Sri.A.Anzar and G.Bijukumar had nexus with the illicit liquor traders and they had mislead the Asst.Excise Inspector and the Preventive Officer Mohammed Rasheed and managed to implicate Anilkumar, this petitioner, falsely as an accused in Cr.No.31/04 of Anchal Range Office on the interest of the illicit liquor traders and also assaulted this petitioner at Anchal Excise Range Office on 18.06.04 after 4.30 PM. The Asst.Excise Inspector and Preventive Officer were misled by giving false information by Mr.Bijukumar and Ansar and there by succeeded in implicating this innocent petitioner falsely as accused in an abkari case. This was done intentionally by Sri.Bijukumar and Ansar on the interest of the illicit liquor traders of the locality with whom they had close nexus.

I request disciplinary action may be initiated against Sri.A.Mohammed Rasheed, preventive Officer (Now Excise Guard) and S.Mohanan, Asst.Excise Inspector.

I request that in-dependable and crooked Excise Guards

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Sri.A.Ansar and G.Bijukumar may be suspended from service for the ill deeds narrated in Para 4 above and disciplinary action may be initiated. I also request these two Excise Guards may not be posted in Kollam District in case of reinstatement.

Instruction may be given to get Cr.No.31/04 of Anchal Range Office investigated by an officer of or above the rank of Circle Inspector and to delete the petitioner Anilkumar from the array of accused.

The Excise Officers even of the rank of Circle Inspectors are found incapable to supervise the investigation of cases. There is no system in this Department for supervising the investigation done by subordinates and for rectifying the defects and irregularities, if any, done by the subordinates. So I request necessary action may be taken to give training and workshop on investigation of cases to all officers."

23. From the above conclusions, it is clear that the enquiry officer found that the Excise Guards had nexus with the illicit liquor traders and they had misled the Asst. Excise Inspector and the Preventive Officer and consequently, managed to implicate the petitioner falsely as an accused in Crime No. 31/2004 of Anchal Range Office. It is also found that the petitioner was falsely implicated in crime No.31/2004

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under Sec.55(g) of the Abkari Act of Anchal Range Office by A.Muhammed Rasheed, the Preventive Officer who is the 4th respondent in this case. The involvement of the other officers is also clearly mentioned in the enquiry report. There are several other suggestions also in the report.

24. Based on Ext.P4 report, the respondent Nos. 5 and 6 were suspended from service and the Circle Inspector of Excise Range Enforcement and Anti Narcotic Special Squad, Kollam was directed to investigate crime No.31/2004. Later, disciplinary proceedings was initiated against respondent Nos. 3 to 6, which resulted in Ext.P5 enquiry report. The findings of the enquiry officer in Ext.P5 is extracted hereunder:

> "**FINDINGS**
>
> Considering all facts and circumstances of the case as revealed in my inquiry, I find that the Abkari case detected on 18.6.2004 against Sri.Anil Kumar is a fabricated case. He is falsely implicated as an accused. Śri.Biju Kumar, Excise Guard had collected information on storing of wash. It is his part of duty. But the actual culprits involved were not ascertained either by him or by the Preventive Officer or by the AEI. AEI and party moved based on the feed back given

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by Sri. Biju Kumar that Anil Kumar is behind the brewing of wash. In other words, Sri. Biju Kumar misled the whole team and as a result Sri. Anil Kumar was falsely implicated as an accused. Though wash was seized and Reghu arrested from Parappathal, the whole team tried to suppress the truth and tried to fabricate it in such a way that Anil Kumar is involved and he was caught red-handed. This shows conspiracy. AEI is primarily responsible for such conspiracy and of the fabrication of this case. He, being under command and supervision of the raid, made Sri.Mohammad Rasheed a scapegoat and escaped from being figure out in whole records. He made corrections in GD and Log Book and thereby altered the genuineness of official records."

25. The finding with regard to the charges against respondent Nos. 3 to 6 are also extracted hereunder :

"**FINDINGS WITH REGARD TO CHARGES**

1. The charge specified under Para IV (1) against Sri. A. Anzar is not proved.

2. The charge specified under Para IV (2) against Sri. G. Biju Kumar is proved to the extent that he misled the detecting officer in implicating Sri AB. Anil Kumar falsely as an accused in CR 31/04. The charge that Sri. Anil Kumar was implicated in the interest of illicit liquor traders is disproved. The charge that he assaulted Sri AB. Anil Kumar

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at Anchal Range Office on 18-5-2004 after 4.30 PM is not proved.

3. The charge specified under Para IV (3) against Sri A. Mohammad Rasheed is proved to the extent that he falsely implicated Sri AB. Anil Kumar as accused in CR. 31/04 by colluding with and under the influence of AEI.

4. The charge specified under Para IV (4) against Sri. S. Mohanan, Asst. Excise Inspector is proved to the extent that he failed to function as a responsible superior officer. It is also proved that he acted in a manner inconsistent with his duty. Though he led the team and effected the seizure and arrest, he didn't prepare a genuine Mahzar but influenced the subordinates to draw up a false Mahzar. He made entries in General Diary and Log Book in such a manner as to avoid his name being figure out in records. Later he made corrections thus altered the genuineness of official records. He suppressed truth and conspired with the Preventive Officer to fabricate a false case. He, being under command and supervision of the raid, made Sri.Mohammed Rasheer (Preventive Officer) a scapegoat and escaped from being figure out in official records. Knowing that the Mahzar is fabricated, he proceeded further and prepared a false Crime and Occurrence Report whereby Sri.Anil Kumar was subsequent put in remand."

26. Meanwhile, the case was reinvestigated by the

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Circle Inspector of Excise, Excise Enforcement and Anti Narcotic Special Squad, Kollam and found that the petitioner was falsely implicated in this case by respondent Nos. 3 to 6. Ext.P6 is a refer report submitted by the officer concerned. It is true that Ext.P6 was not accepted by the Judicial First Class Magistrate Court – I, Punalur. The Court directed the officer concerned to investigate the matter in accordance with law. But even then, the investigating officer found that the petitioner had not committed the offence and he was exonerated by deleting his name from the final report confining the guilt on the 2nd accused Mr. Raghu. Ext.P13 is the final report. As far as the disciplinary action is concerned, disciplinary proceedings were initiated against respondent Nos. 3 to 6 which resulted in Exts.P8 to P11. On the perusal of Ext.P10, it is clear that the 2nd respondent has not accepted the findings of the enquiry officer regarding the charge against the 5th respondent. The 2nd respondent found that the respondent Nos. 3 to 6 are guilty of the charges

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framed against them. They were imposed with penalty by way of barring two increments without cumulative effect for 2 years after taking a lenient view.

27. Ext.P8 is the order imposing penalty against the 3rd respondent. The relevant paragraph of Ext.P8 order is extracted hereunder :

> "The enquiry report was examined in detail with connected records and relevant facts of the issue. It is seen that the charges against the delinquent officer are proved. He miserably failed to function as a superior officer and shirked from responsibility by forcing the Preventive Officer to prepare the seizure mahazar. He yielded to the ill desires of two Excise Guards under him to implicate an innocent person in an Abkari case. His action in having made corrections in General Diary reveals his effort to slip away from the responsibility. He being the under command and supervision of the raid had adopted some crooked ways to evade from his responsibilities. Therefore, he deserves a suitable punishment according to the gravity of the offence. However considering the fact that he was holding the additional charge in that office for a very short period and having no major indisciplinary back ground, taking a very lenient view in the matter his next two increments are barred without cumulative effect for two years under rule 11 (i) (iii) of Kerala Civil Services (Classification, Control &

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Appeal) Rules, 1960 and the disciplinary action finalized accordingly."

28. Ext.P9 is the order of the 2nd respondent imposing punishment to the 4th respondent. The finding in Ext.P9 is extracted hereunder :

"The enquiry report was examined in detail with connected records and relevant facts of the issue. It is seen that the charges against the delinquent officer are proved. His action in having yielded to the ill desires of two Excise Guards and falsely implicated an innocent person in an Abkari case is totally unfit to a person working in a uniformed force. He miserably failed in performing his official duty with integrity and due care. His above acts amounts to gross misconduct and dereliction of duty. Therefore, he deserves a suitable punishment according to the gravity of the offence. However taking a lenient view in the matter his next two increments are barred without cumulative effect for two years under rule 11 (i) (iii) of Kerala Civil Services (Classification, Control & Appeal) Rules, 1960 and the disciplinary action finalized accordingly."

29. The disciplinary action taken against the respondent No.5 is Ext.P10 and the relevant portion of Ext.P10 is

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extracted hereunder :

> "The enquiry report was examined in detail with connected records and relevant facts of the issue. The disciplinary authority differed with the finding of the Enquiry Officer that the charges against Sri. Anzar is not proved. It is very clear from the records that the whole issue of false implication of Sri. Anil Kumar in the Abkari Case is the furtherance of the dispute between Sri. Anzar and Anil Kumar . He had an unholy nexus with illicit liquor trader and they assaulted the petitioner on 13.6.04 for which a criminal case as CR No. 174/04 was registered at Eroor Police Station in which Sri. Anzar is the fourth accused. This Abkari case against Sri . Anil Kumar was fabricated in vengeance to the above incident at the interest of the illicit liquor traders. He succeeded in giving false and 'ill motivated information to his superiors and thereby implicating an innocent person in an Abkari case and remand him in prison for 55 days. A person who wears uniform to ensure that no Abkari criminals escape from the law has no business to be friendly with or associate with those who are suspected of Abkari crimes. The act of the delinquent official to assault the petitioner along with illicit liquor trader is totally unsuited to a person working in a uniformed force. For this act he is not only guilty of serious misconduct and dereliction of duty, but also bring a very bad name to the whole Excise Department. Therefore he deserves a suitable punishment according to the gravity of

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the offence committed. However taking a lenient view in the matter, his next two increments are barred without cumulative effect for 2 years under Rule 11(i) (iii) of Kerala Civil Services (Classification, Control & Appeal) Rules, 1960 and the disciplinary action finalized accordingly."

30. Ext.P11 is the order imposing penalty on respondent No 6 and relevant portion of Ext.P11 is extracted hereunder :

"The enquiry report was examined in detail with connected records and relevant facts of the issue. It is seen that the charges against the delinquent Officer are proved. Sri. Biju Kumar having nexus with illicit liquor traders had succeeded in giving false and ill motivated information to his superiors and thereby implicating an innocent person in an Abkari case. Being an Excise Guard he is bound to take legal action against the illicit liquor traders, not only had failed to book them but also had connived with them and implicated an innocent person in an Abkari case and manhandled him while in custody. The above acts of the delinquent officer are totally unfit to a person who wears uniform to check such illegal activities. Therefore, he deserves a suitable punishment according to the gravity of the offence committed. However, taking a lenient view in the matter, his next two increments are barred without cumulative effect for 2 years under rule 11(i) (iii) of Kerala

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Civil Services (Classification, Control & Appeal) Rules, 1960 and the disciplinary action finalized accordingly."

31. Admittedly, Exts.P8 to P11 became final. The same is not challenged by respondent Nos. 3 to 6, and hence it can be concluded that they are accepting the same. It is also clear that the State agrees with the contention that the petitioner was falsely implicated in the case. It is also an admitted fact that the petitioner was in judicial custody for about 55 days in connection with the above case. There is no dispute regarding the arrest of the petitioner and his custody. Similarly, there is no dispute that subsequently, the Excise machinery itself found that the petitioner was innocent and that he was falsely implicated. In such circumstances, no further evidence is necessary to conclude that there is violation of the fundamental right guaranteed under Article 21 of the Constitution of India in the case of the petitioner in W.P.(C.) No.32519/2010. It is clear that he was illegally detained.

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b) W.P.(C.) No. 24692/2010

32. Crime No.45/2006 was registered against the petitioner in this case by the Excise Range Office, Karunagappally under Secs.8(1) and (2) of the Kerala Abkari Act on 25.2.2006. The allegation against the petitioner is that on 25.2.2006 at 5.15 p.m., the Preventive Officer and his party have found the accused transporting 4 litres of arrack in a plastic can having 5 litre capacity carried in a plastic bag. The petitioner was arrested on the spot. It is the definite case of the petitioner that the petitioner was falsely implicated in the case at the instance of the 7th respondent, who is an Excise officer. Ext.P1 is the enquiry report submitted by the 6th respondent in which there is clear finding to the effect that the petitioner was falsely implicated in the case. There is a clear finding that at the instance of the 7th respondent, the petitioner was falsely implicated. The relevant portion of Ext.P1 is extracted hereunder :

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"എന്നാൽ പരാതിക്കാരൻ, ഇങ്ങനെയൊരു പരാതി വിക്രമൻനായർക്കെതിരെ അയയ്ക്കാൻ ഇടയായ സാഹചര്യത്തെക്കുറിച്ച് നടത്തിയ അന്വേഷണത്തിൽ ആശാസ്യമല്ലാത്ത ചില കാര്യങ്ങൾ വെളിവാകുന്നു. പരാതിക്കാരനായ പ്രകാശിനെതിരെ 2006 ഫെബ്രുവരി മാസം 25-)o തീയതി കരുനാഗപ്പള്ളി എക്സൈസ് സർക്കിൾ ഓഫീസിൽ ഒരു അബ്കാരി കേസ് രജിസ്റ്റർ ചെയ്തിട്ടുണ്ടെന്നും ടി കേസിൽ പ്രകാശ് നിരപരാധിയാണെന്നും ടി കേസ് എടുപ്പിച്ചതിനു പിന്നിൽ പ്രവർത്തിച്ചത് വിക്രമൻ നായർ എന്ന പ്രിവന്റീവ് ഓഫീസർ ആണെന്നും മനസ്സിലാക്കാനായിട്ടുണ്ട്. ഇക്കാരണത്താലാണ് വിക്രമൻ നായർക്കെതിരെ പ്രകാശ് ഇത്തരത്തിലൊരു പരാതി അയച്ചതെന്ന് വ്യക്തമാകുന്നുണ്ട്.

പരാതിക്കാരനായ പ്രകാശ്, പാവുമ്പ ജംഗ്ഷനു സമീപത്തുള്ള വാഴപ്പിള്ളി വീട് വാടകയ്ക്കെടുത്ത് വിവിധതരത്തിലുള്ളതും വിലപിടിപ്പുള്ളതുമായ പട്ടികളെ വളർത്തി വരുന്ന സമയത്ത് എക്സൈസ് പ്രിവന്റീവ് ഓഫീസർ വിക്രമൻനായർ ടിയാനോട് മൂന്നു പട്ടിക്കുട്ടികളെ ആവശ്യപ്പെടുകയുണ്ടായി. വിലകുറഞ്ഞു എന്ന കാരണത്താൽ പ്രകാശ് പട്ടികളെ നൽകാതിരിക്കുകയും അവർ തമ്മിൽ വാഗ്വാദമുണ്ടാവുകയും ചെയ്തു. പ്രസ്തുത സാഹചര്യമാണ് പ്രകാശിനെതിരെ കേസ് എടുക്കുന്നതിലേയ്ക്കും പ്രകാശ് എഴുപത്തിയാറു ദിവസം ജയിലിൽ കിടക്കാൻ ഇടയായ സാഹചര്യത്തിലേയ്ക്കും കാര്യങ്ങളെ കൊണ്ടുചെന്നെത്തിച്ചത് എന്ന് അനുമാനിയ്ക്കാവുന്നതാണ്.

എക്സൈസ് പ്രിവന്റീവ് ഓഫീസറായ വിക്രമൻനായർ വളരെ സമർഥമായി തന്നെ പ്രകാശിനെ അറസ്റ്റുചെയ്യിക്കുകയായിരുന്നു എന്നത് സുവ്യക്തമാണ്. ടിയാൻ റെയ്ഡ് പാർട്ടിയിൽ നിന്ന് മാറിനിന്ന് മറ്റ് എക്സൈസ് ഉദ്യോഗസ്ഥന്മാരെക്കൊണ്ട് കേസ് എടുപ്പിക്കുകയാണുണ്ടായത്. നേരത്തെ തന്നെ പ്രകാശ് താമസിയ്ക്കുന്ന വീടിനു സമീപത്തുള്ള കുളത്തിൽ മറ്റാരോ കൊണ്ടുവന്നുവച്ച ചാരായത്തെ സംബന്ധിച്ച് തന്റെതന്നെ ഓഫീസിലേയ്ക്ക് വിക്രമൻനായർ മറ്റാരേയൊക്കൊണ്ട് രഹസ്യവിവരം കൊടുപ്പിച്ച് റെയ്ഡ് നടത്തി പ്രകാശിനെ അറസ്റ്റു ചെയ്യിക്കുകയുമാണുണ്ടായതെന്ന് അന്വേഷണത്തിൽ തെളിയുന്നു. മുപ്പത്തിയൊമ്പത് വയസ്സുള്ള പ്രകാശ് നാളിതുവരെ ഒരു അബ്കാരി കേസിലും പ്രതിയായിരുന്നില്ല എന്ന് മാത്രമല്ല

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ടിയാൻ ഇങ്ങനെയൊരു കൃത്യം ചെയ്യുമെന്ന് നാട്ടുകാരും കരുതുന്നില്ല. ടി കേസ് എടുക്കുന്നവരെ വിക്രമൻനായരുമായി പ്രകാശിന് എന്തെങ്കിലും വിരോധമുള്ളതായും കാണുന്നില്ല. എന്നാൽ പ്രകാശിനെ അറസ്റ്റുചെയ്ത ഉദ്യോഗസ്ഥന്മാരാകട്ടെ ടി കേസ് സത്യസന്ധമാണെന്നുതന്നെ ഇപ്പോഴും വിശ്വസിയ്ക്കുന്നു. ഇതിനുപിന്നിൽ പ്രിവന്റീവ് ഓഫീസറായ വിക്രമൻനായർക്ക് പങ്കുള്ളതായി ഒരു പക്ഷേ കേസ് എടുത്ത ഉദ്യോഗസ്ഥന്മാർ അറിഞ്ഞിരിക്കാൻ ഇടയില്ല. എന്നാൽ പ്രകാശിനെ റോഡിൽ നിന്നാണ് പിടിച്ചത് എന്ന രീതിയിൽ തയ്യാറാക്കിയ മഹസ്സർ തീർത്തും ശരിയല്ല എന്ന് മഹസ്സർ സാക്ഷിയും നാട്ടുകാരും വ്യക്തമാക്കുന്നുണ്ട്. വാടക വീടായതിനാൽ വീട്ടുടമസ്ഥനെ രക്ഷിക്കുന്നതിനായി പ്രകാശിനെ റോഡിൽ നിന്നാണ് പിടിച്ചതെന്ന് വരുത്തിതീർത്തതായും മനസ്സിലാക്കാവുന്നതാണ്.

തന്നെ അറസ്റ്റ ചെയ്യുന്നവരുടെ കൂട്ടത്തിൽ വിക്രമൻനായർ ഇല്ലാതിരുന്നതിനാലും എന്നാൽ അതിനു പിന്നിൽ പ്രവർത്തിച്ചത് ടിയാനാണെന്നു മനസ്സിലാക്കിയതിനാലുമാണ് വിക്രമൻനായർക്കെതിരെ ഇത്തരത്തിലുള്ളൊരു പരാതിയുമായി പ്രകാശ് രംഗത്തെത്തിയത്. തനിയ്ക്കെതിരെ അബ്കാരി കേസ് എടുത്തത് നീതിയുക്തമല്ലെന്ന പരാതിയുമായി മുന്നോട്ടുപോയാൽ വിക്രമൻനായർ ശിക്ഷിക്കപ്പെടാനായില്ല എന്നു തിരിച്ചറിഞ്ഞ പ്രകാശ് വിക്രമൻനായർക്കെതിരെ പൊരുതിജയിക്കാനുള്ള അവസാനപിടിവള്ളിയായിട്ടാണ് ടി പരാതിയെ കാണുന്നത് എന്നും മനസ്സിലാക്കാവുന്നതാണ്. നിരപരാധിയായ താൻ ജയിലടയ്ക്കപ്പെട്ടതിന്റെയും നാട്ടിൽനിന്നും വീട്ടിൽനിന്നും ഏറ്റുവാങ്ങിയ അപമാനത്തിന്റെയും ആഴമറിഞ്ഞ പ്രകാശിന്റെ വൈകാരികമായ പ്രതികരണമായി ടി പരാതിയെ കാണാവുന്നതാണ്.

എക്സൈസ് പ്രിവന്റീവ് ഓഫീസറായ വിക്രമൻനായർക്കെതിരെ ചവറയിൽ നിന്ന് ശിവദാസൻ എന്നയാൾ ടി ഓഫീസിൽ നേരിട്ട് അയച്ച മറ്റൊരു പരാതിയിന്മേൽ നടത്തിയ രഹസ്യാന്വേഷണത്തിൽ കരുനാഗപ്പള്ളി കുന്നേൽമുക്ക് എന്ന സ്ഥലത്തുള്ള വിദേശമദ്യഷാപ്പിൽ നിന്നും അളവിൽ കൂടുതൽ മദ്യം വാങ്ങിവരുന്നവരെ തടഞ്ഞുനിറുത്തി ഭീഷണിപ്പെടുത്തി കേസ്സെടുക്കുന്നതായി വരുത്തിതീർക്കുകയും പ്രതികളിൽ നിന്ന് വൻതുക

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കൈപറ്റി അവരെ വിട്ടയയ്ക്കുകയും ചെയ്യുന്ന പ്രിവന്റീവ് ഓഫീസർ വിക്രമൻനായർ മറ്റുപലപ്രകാരത്തിലും പണം പിരിയ്ക്കുന്നുണ്ട് എന്നു കണ്ടെത്തുകയുണ്ടായി, മാത്രമല്ല പ്രകാശിന്റെ ആരോപണത്തിൽ പറയുന്നതുപോലെ വിക്രമൻനായർ വളരെക്കാലം കരുനാഗപ്പള്ളി സർക്കിളിൽ ജോലി ചെയ്തിരുന്നുവെന്നതും സർവ്വീസ് രേഖകളിൽ നിന്ന് വ്യക്തമാകുന്നുണ്ട്.

33. The recommendation in Ext.P1 enquiry report is also extracted hereunder :

എങ്കിലും പരാതി അയയ്ക്കാൻ ഇടയായ സാഹചര്യം കണക്കിലെടുത്തും പട്ടിക്കുട്ടികളെ കൊടുത്തില്ല എന്ന ഒറ്റക്കാരണത്താൽ നിരപരാധിയായ ഒരാളെ അറസ്റ്റ ചെയ്യിക്കുന്നതിന് ഇടയാക്കിയ സാഹചര്യം സൃഷ്ടിച്ചതുകൊണ്ടും ഇപ്പോഴും സർവ്വീസ് ചട്ടങ്ങൾക്കു വിരുദ്ധമായുള്ള പലവിധ അവിഹിത ഏർപ്പാടുകൾ തുടരുന്നു എന്നതുകൊണ്ടും, തന്റെ ജന്മദേശമായ കരുനാഗപ്പള്ളിയിലും പരിസരങ്ങളിലും പലതരത്തിലുള്ള തെറ്റായബന്ധങ്ങളും സ്വാധീനവും ഉണ്ടാക്കിയിട്ടുണ്ട് എന്നുള്ളതുകൊണ്ടും വിക്രമൻനായർ എന്ന എക്സൈസ് പ്രിവന്റീവ് ഓഫീസറെ ഉടനടി സ്ഥലം മാറ്റണമെന്നും ടിയാന് സർവ്വീസ് അവശേഷിയ്ക്കുന്ന കാലയളവിൽ ടിയാന്റെ വീടിനു സമീപമുള്ള കരുനാഗപ്പള്ളി സർക്കിൾ, കുന്നത്തൂർ സർക്കിൾ എന്നിവയുടെ പരിധിയിലുള്ള ഒരു ഓഫീസുകളിലും പോസ്റ്റിങ്ങ് കൊടുക്കരുതെന്നും ശുപാർശ ചെയ്തുകൊള്ളുന്നു.

കൂടാതെ കരുനാഗപ്പള്ളി എക്സൈസ് റേഞ്ച് ഓഫിസിൽ രജിസ്റ്റർ ചെയ്തിട്ടുള്ള CR 45/2006-)o നമ്പർ കേസിന്മേൽ ഒരു പുനരന്വേഷണം നടത്താൻ കൊല്ലം ഡിവിഷനിലെ ഏതെങ്കിലും സർക്കിൾ ഇൻസ്പെക്ടറെ ചുമതലപ്പെടുത്തേണ്ടതും ടി കേസ് എടുത്തതിൽ ഉദ്യോഗസ്ഥന്മാരുടെ ഭാഗത്തുനിന്നുണ്ടായ വീഴ്ചയെപ്പറ്റി വിശദമായ റിപ്പോർട്ടു വാങ്ങി മേൽ നടപടി സ്വീകരിക്കേണ്ടതുമാണ്."

34. Based on Ext.P1, the 7th respondent was suspended

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and re-investigation was conducted in the crime as evident in Ext.P2 order. Based on Ext.P2, the 3rd respondent re-investigated and submitted a detailed final report before the Judicial First Class Magistrate Court, Karunagappally as evident by Ext.P3. In Ext.P3 also, there is clear finding that the petitioner was falsely implicated in the case. It will be beneficial to extract the relevant portion of Ext.P3.

> "ഈ കേസിന്റെ വിശദമായ അന്വേഷണത്തിൽ 25.02.2006 ന് ഒന്നാം സാക്ഷിയുടെ നേതൃത്വത്തിലുള്ള പെട്രോൾ പാർട്ടി, പ്രതിയായ പ്രകാശ് താമസിക്കുന്ന വീടിന്റേയും പരിസരത്തും പരിശോധനകൾ നടത്തിയിട്ടുള്ളതും 22, 23 എന്നീ സാക്ഷികൾ ആയത് നേരിട്ട് കണ്ടിട്ടുള്ളതുമാണ്. ടി പരിശോധനയിൽ 1-)o സാക്ഷിയും കൂട്ടരും കോട കണ്ടെത്തി നശിപ്പിക്കുകയും ടി പരിസരത്തുള്ള കുളത്തിൽ നിന്നും കണ്ടെടുത്തതായ ചാരായം പ്രകാശിന്റേതാവാം എന്ന നിഗമനത്തിൽ പ്രകാശിനെ അറസ്റ്റ് ചെയ്തിട്ടുള്ളതുമാണെന്ന് കരുതുന്നു. പ്രകാശ് താമസിച്ചിരുന്ന വീടിന്റെ പരിസരത്തുള്ള കുളത്തിന്റെയടുത്തു നിന്നും കണ്ടെത്തിയതായ ചാരായം പ്രകാശിന്റെതല്ലായെന്നതാണ് അന്വേഷണത്തിൽ ബോദ്ധ്യപ്പെട്ടിട്ടുള്ളതാണ്. 38-)o സാക്ഷിയുടെ അന്വേഷണത്തിൽ വെളിപ്പെട്ട കാര്യങ്ങളും ഇപ്രകാരം തന്നെയാണ്.
>
> പ്രകാശിനെ അറസ്റ്റ് ചെയ്തതായി തയ്യാറാക്കിയ റോഡരുകിൽ വെച്ചുള്ള മഹസ്സർ തെറ്റായി തയ്യാറാക്കിയതാണ്. ജീപ്പ് നിർത്തി പ്രതിയെ അറസ്റ്റ് ചെയ്തുവെന്ന കാര്യം 7, 8, 22, 23 എന്നീ സാക്ഷികളുടെ മൊഴികളിൽ നിന്നും ശരിയല്ലായെന്നും പൂർണ്ണമായി തെളിഞ്ഞിട്ടുള്ളതുമാണ്. ഈ കേസിലെ തൊണ്ടിയായ 5 ലിറ്റർ കന്നാസിൽ ഉദ്ദേശം 4 ലീറ്റർ ചാരായം 25.02.2008 ന് കണ്ടെടുത്തതായി കൃത്യസ്ഥലം, മഹസ്സറിൽ പറയുന്നതല്ല. ഈ കേസിൽ ഉൾപ്പെട്ടതായ ചാരായം കണ്ടെടുത്തത് പ്രതിയായ പ്രകാശ് വാടകക്ക് താമസിച്ചിരുന്ന വീടിന്റെ പരിസരത്തുള്ള കുളത്തിന്റെയടുത്തുനിന്നുമാണ്.

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സാക്ഷി മൊഴികളുടേയും, അന്വേഷണത്തിൽ കണ്ടെത്തിയ തെളിവുകളുടേയും അടിസ്ഥാനത്തിൽ പ്രകാശിന് ചാരായ കച്ചവടം ഉള്ളതായോ 25.02.2006 ന് കണ്ടെത്തിയ ചാരായം ടിയാന്റെതാണെന്ന് സംശായതീതമായി തെളിയിക്കുവാൻ തക്ക തെളിവുകൾ യാതൊന്നും തന്നെ കണ്ടെത്തിയിട്ടില്ല. എന്നാൽ ടി ചാരായം 1-)o സാക്ഷിയുടെ നേതൃത്വത്തിൽ ടി കുളത്തിനടുത്ത് നിന്നാണ് കണ്ടെടുത്തത്.

കേസ് കണ്ടുപിടിച്ചതായ ഉദ്യോഗസ്ഥർ കുളത്തിൽ നിന്നും കണ്ടെടുത്ത ചാരായം പ്രകാശിന്റേതാകാം എന്ന് കരുതിയാകാം 1-)o സാക്ഷിയും പാർട്ടിയും ടിയാനെ പ്രതിസ്ഥാനത്ത് ചേർത്തതായി മനസ്സിലാക്കുന്നത്. ചാരായം കണ്ടെടുത്ത സംഭവസ്ഥലം പ്രകാശ് വാടകക്ക് താമസിച്ചിരുന്ന വീടിന്റെ പരിസരത്തുള്ള കുളത്തിന്റെയടുത്ത് നിന്നും മാറ്റി ഗോപിപ്പിള്ളയുടെ വീടിന് മുൻവശം വച്ച് പ്രകാശ് കൈവശം ഒളുക്കം ചെയ്ത് കൊണ്ടുവന്നതായി മഹസ്സറിൽ പറയുന്നത് തീർത്തും ശരിയല്ലായെന്ന് ബോധ്യപ്പെട്ടിട്ടുള്ളതാണ്. യഥാർത്ഥത്തിൽ നടന്ന കാര്യങ്ങൾക്ക് വ്യത്യസ്തമായാണ് രേഖകൾ തയ്യാറാക്കിയിട്ടുള്ളത് എന്നും കണ്ടെത്തിയിട്ടുള്ളതാണ്.

അന്വേഷണത്തിൽ പ്രകാശ്, പട്ടികച്ചവടമുൾപ്പടെ നിരവധി തൊഴിലുകൾ ചെയ്ത് ഉപജീവനം നടത്തിവന്നതായും, ടിയാന് ചാരായ കച്ചവടവുമായി യാതൊരു തരത്തിലുള്ള ബന്ധമില്ലായെന്നും, ഈ കേസിലെ തൊണ്ടിയായി കണ്ടെടുത്ത ചാരായം പ്രകാശിന്റെതല്ലായെന്ന് അന്വേഷണത്തിൽ വെളിവായിട്ടുള്ളതാണ്.

മേൽപ്പറഞ്ഞ അന്വേഷണത്തിലെ കണ്ടെത്തലുകളുടേയും, സാക്ഷിമൊഴികളുടേയും അടിസ്ഥാനത്തിൽ കരുനാഗപ്പള്ളി എക്സൈസ് റേഞ്ചിലെ സി. ആർ. നം 45/06 -)o നമ്പർ കേസിലെ പ്രതിയായ കൊല്ലം ജില്ലയിൽ കരുനാഗപ്പള്ളി താലൂക്കിൽ ആദിനാട് വടക്കേ മുറിയിൽ കുറ്റിയിൽ തറയിൽ വീട്ടിൽ രാഘവൻ മകൻ പ്രകാശ് കുറ്റക്കാരനല്ലായെന്ന് ഉത്തമബോധ്യം വന്നിട്ടുള്ളതാണ്.

അന്വേഷണത്തിലെ കണ്ടെത്തലുകൾ പ്രകാരം, ഈ കേസിലെ പ്രതിയാക്കി ചേർത്തിട്ടുള്ള കൊല്ലം ജില്ലയിൽ കരുനാഗപ്പള്ളി താലൂക്കിൽ കുലശേഖരപുരം വില്ലേജിൽ ആദിനാട് വടക്ക് മുറിയിൽ കുറ്റിത്തറയിൽ വീട്ടിൽ രാഘവൻ മകൻ പ്രകാശ് എന്നയാൾ കുറ്റക്കാരനല്ലാത്തതിനാൽ ഈ കേസിലെ

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പ്രതിസ്ഥാനത്ത് നിന്നും കുറവ് ചെയ്യുന്നതിനായി ബഹു: കോടതി മുമ്പാകെ അപേക്ഷിച്ചുകൊള്ളുന്നു.

കരുനാഗപ്പള്ളി റേഞ്ചിലെ സി.ആർ. 45/06 ൽ ഉൾപ്പെട്ടതായ കേസിലെ തൊണ്ടി ചാരായം പ്രകാശ് എന്നയാൾ വാടകയ്ക്ക് താമസിച്ചിരുന്ന വീടിനടുത്തുള്ള കുളത്തിൽ നിന്നും കണ്ടെടുത്തതിനാലും, പ്രകാശിന് യാതൊരു പങ്കില്ലായെന്ന് കണ്ടെത്തിയിട്ടുള്ളതിനാലും, ടി ചാരായത്തിന്റെ യഥാർത്ഥ ഉടമസ്ഥരെപ്പറ്റി അന്വേഷണങ്ങൾ നടത്തിയതിൽ, അന്നേദിവസം കണ്ടെടുത്ത, ചാരായവുമായി വീട്ടുടമസ്ഥയായ കൊല്ലം ജില്ലയിൽ കരുനാഗപ്പള്ളി താലൂക്കിൽ പാവുമ്പ വില്ലേജിൽ പാവുമ്പ തെക്കുമുറിയിൽ അശ്വതിയിൽ സദാശിവൻ ഭാര്യ അരുന്ധതിക്കോ, കൊല്ലം ജില്ലയിൽ കരുനാഗപ്പള്ളി താലൂക്കിൽ തഴവ പഞ്ചായത്തിൽ പാവുമ്പ വില്ലേജിൽ പാവുമ്പ തെക്കുമുറിയിൽ 7/655 ശ്രീലക്ഷ്മി വീട്ടിൽ താമസിച്ചിരുന്നതും ഇപ്പോൾ തഴവ പഞ്ചായത്ത് 3-)o വാർഡിൽ 375/08 നമ്പർ കെട്ടിടത്തിൽ താമസിക്കുന്നതുമായ കെ.കെ ഗോപാലൻ മകൻ രാജുവിനൊ, കൊല്ലം ജില്ലയിൽ കരുനാഗപ്പള്ളി താലൂക്കിൽ തഴവ പഞ്ചായത്തിൽ പാവുമ്പ വില്ലേജിൽ പാവുമ്പ തെക്കുമുറിയിൽ 7/655 ശ്രീലക്ഷ്മി വീട്ടിൽ താമസിച്ചിരുന്നതും ഇപ്പോൾ തഴവ പഞ്ചായത്ത് 3-)o വാർഡിൽ 375/08 നമ്പർ കെട്ടിടത്തിൽ താമസിക്കുന്നതുമായ ശ്രീലക്ഷ്മി വീട്ടിൽ രാജു ഭാര്യ ആശാരാജുവിനൊ യാതൊരു അറിവും ബന്ധവും ഉള്ളതായി അന്വേഷണത്തിൽ കണ്ടെത്തിയിട്ടില്ല.

ഈ കേസിലുൾപ്പെട്ട ചാരായം, ആരുടേതാണെന്ന് ഇതുവരെയും വെളിവായിട്ടില്ല. ടി ചാരായത്തിന്റെ യഥാർത്ഥ ഉടമയെയോ സൂക്ഷിപ്പുക്കാരനെയോ കണ്ടെത്തുവാൻ കഴിഞ്ഞിട്ടില്ലാത്തതുമായ സാഹചര്യത്തിൽ കരുനാഗപ്പള്ളി റേഞ്ചിലെ സി.ആർ. 45/06-)o നമ്പർ കേസിലെ തൊണ്ടിയായ ചാരായത്തിന്റെ ഉടമസ്ഥനെ/സൂക്ഷിച്ചിരുന്നയാളെപ്പറ്റി തെളിവ് ലഭിക്കുന്ന മുറക്ക് അന്വേഷണം തുടരുവാൻ, ഈ കേസ് തെളിയേണ്ടും പട്ടികയിൽ ചേർത്ത് ഉത്തരവാകുന്നതിന് ബഹു. കോടതി മുമ്പാകെ സവിനയം അപേക്ഷിച്ചുകൊള്ളുന്നു."

35. It is true that the suspension of the 7th respondent was challenged by the petitioner before this Court which

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resulted in Ext.P6 judgment by which the Division Bench of this Court set aside the suspension order. But in Ext.P6, this Court has not considered the merit of the allegation raised against the 7th respondent. This Court observed that, it is to be established in the disciplinary proceedings and departmental enquiry. Moreover, a perusal of Ext.P7 bail order will show that similar allegations are there against the 7th respondent and this Court was even pleased to grant anticipatory bail to the accused in that case exercising the extraordinary jurisdiction under Sec.438 Cr.P.C.

36. Therefore, it is clear that the petitioner was implicated in crime No. 45/2006 of Karunagappally Excise Range falsely at the instance of the 7th respondent, and he was in jail for 76 days in connection with the above case. Hence, there is a violation of the fundamental right of the petitioner guaranteed under Article 21 of the Constitution of India and therefore, the petitioner is entitled to compensation from the State.

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Payment of compensation

37. This Court has already found that the fundamental right guaranteed under Article 21 of the Constitution of India to the petitioners are infringed in these cases. In such circumstances, the State is bound to pay compensation to the petitioners. In both these cases, this Court already found that the cases registered against the petitioners are falsely foisted at the instance of the officials and other parties. Some of them are parties in this writ petition. This Court has issued notice to them. Some of them appeared and argued the case. Some of them refused to appear in the case. The State is now directed to pay compensation because of the illegal activities of some identifiable persons, which is dealt with by this Court in the earlier paragraphs in detail. Therefore, the State should pay the compensation to the petitioners in this case and the same should be recovered from the persons, who are responsible for the illegal confinement and illegal registration of cases against the petitioners in these writ petitions. The

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tax paying citizens should not be burdened with this liability. Therefore, the State should pay the amount and should take appropriate steps to recover the same from the parties who are responsible for the registration of the cases against the petitioners and who are responsible for the illegal confinement of the petitioners by infringing the personal liberty of the petitioners.

The Quantum of compensation

38. The fixation of the quantum of compensation is a difficult task in a writ petition even if the victims are entitled to compensation under the public law remedies for the infringement of fundamental right. Therefore, this Court can fix a reasonable amount considering the facts and circumstances of each case and the petitioners can be allowed to approach the civil Court, if they are entitled more amount as compensation. The quantum of compensation depends upon the facts and circumstances of each case. In ***Sube Singh*** **v.*State of Haryana and others*** **[(2006) 3 SCC**

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178], the Apex Court considered this point in paragraph 38, which is extracted hereunder :

> "38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Art.21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under S.357 of the Code of Criminal Procedure."

39. In ***Shyam Balakrishnan's*** case (supra), this Court, after ordering compensation, observed that the petitioner in that case would have been entitled to a higher amount of compensation considering the trauma and mental agonies suffered by him. Hence, this Court was pleased to grant liberty to claim compensation through Civil Court after directing the State to pay a sum of Rs.1,00,000/-. The petitioner in W.P.(C.) No. 32519/2010 was aged 40 at the

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time of filing this writ petition (in the year 2010). He was in illegal confinement in the year 2004. As far as the petitioner in W.P.(C.) No. 24692/2011 is concerned, he was aged 42 in the year 2011, that is when this writ petition was filed. He was in illegal confinement in the year 2006. A man in jail alone will know the trauma faced by him. Even if the jail is constructed with beautiful walls and contain a good atmosphere, it is not a consideration at all for fixing compensation, because jail is always jail. As I observed in the beginning of this judgment that the father of the Nation said that "men in prison are civilly dead and have no claim to any say in policy". Nelson Mandela said, no one truly knows a nation until one has been inside its jail. The famous legend Malayalam Poet 'Vallathol Narayana Menon' in one of his poem stated like this :

"ബന്ധുര കാഞ്ചന കൂട്ടിലാണെങ്കിലും

ബന്ധനം ബന്ധനം തന്നെ പാരിൽ"

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The background of the above poem is about the confinement of a parrot in a cage and it is a conversation between a small girl child with a parrot. The girl is requesting the parrot to speak to her after giving fruits, milk, and honey to the parrot in a silver bowl. But the poet narrates the feeling of the parrot and said that even if the cage is constructed with gold, the confinement is always a confinement. Just like that, the four walls of a jail create a complete restrain to a prisoner, even if there is good food, good climate, beautiful walls, or good people around the prisoner.

40. Therefore, confinement is always confinement and if a person wants to know about the same, he should face that situation. If the door of a room or a toilet is unfortunately locked from the outside when a person is inside, that person knows the effect of confinement. Therefore, this Court cannot fix the compensation in tune with the mental trauma faced by the petitioners in these

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cases through money. It is an admitted fact that the petitioner in W.P.(C). No.32519 of 2010 was in custody for 55 days and the petitioner in W.P.(C). No.24692 of 2011 was in custody for about 76 days. It is also now an admitted fact that the registration of case against these petitioners was with some ulterior motive and it is a false case registered against them at the instance of some other persons. The petitioner in W.P.(C). No.24692 of 2011 prayed an amount of Rs.5,00,000/- as compensation. The petitioner in W.P.(C). No.32519 of 2010 has not claimed any fixed amount, but his prayer is to pay sufficient and adequate compensation fixed by this Court. From the facts and circumstances of these cases, I think the State should pay an amount of Rs.2,50,000/- each to the petitioners and the petitioners are at liberty to approach the competent civil Court, if they are entitled to more compensation in the peculiar facts and circumstances of these cases.

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The Search, seizure, arrest and investigation of Abkari cases in the State

41. A perusal of the facts in these two cases will raise a serious question about the search, seizure, arrest etc: in abkari cases in the State. The State Government should take serious note of the same. This Court while hearing criminal appeals against conviction and sentence imposed by the trial court, it could be seen that 50% of the cases are with same stereo type allegations. The same stereo type allegations will be like this: When the Excise party is proceeding in a jeep or through a passage, a person will be coming from the opposite side with a can or a bottle. After seeing the Excise party, the person will be perplexed and he will try to escape. Then the Excise party will apprehend him and seize the contraband. One of the senior lawyers who argued before this Court in an appeal filed against a conviction and sentence in an abkari case said that he is coming from an area where maximum number of abkari cases are registered. The lawyer said that

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he had never seen a person coming with a can through the road in that area in his lifetime, as stated by the stereo type versions of the Excise officials. The lawyer also argued that why the suspected persons are coming only through the way in which the Excise officials are passing itself will create a doubt. I do not want to make any observation about the same because hundreds of such cases are pending before this Court and in the trial court. Any general observation by this Court may influence the pending cases in the lower courts. But, as I observed, there are stereo type allegations in these type of cases. In these two cases also, the prosecution case against them is the same. The petitioners were in the road and the Excise officials found them and the petitioners perplexed and thereafter on search, the contraband is seized. In these two cases, after further investigation, the Excise officials found beyond any reasonable doubt that the allegation against the petitioners are false and it is a foisted case against the petitioners at the instance of their enemies. The same is the

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defence taken by the accused in almost all criminal cases. In such situation, in my opinion, a detailed study or enquiry is necessary by a competent person appointed by the State about the manner in which arrest, seizure, investigation, etc in abkari cases have been made at least for the last 5 years and whether there is any further change in the mode of investigation is necessary. The sentence that can be imposed by the Court in abkari cases is severe. Section 41A of the Abkari Act contemplates serious restrictions for granting bail to an accused. It will be better to extract Section 41A of the Abkari Act:

> "41A. Offences to be cognizable and non-bailable. -
> (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974),-
>
> (a) every offence punishable under this Act shall be cognizable;
>
> (b) no person accused of an offence punishable for a term of imprisonment of three years or more under this Act shall be released on bail or on his own bond unless-
>
> (i) the Public Prosecutor or the Assistant Public Prosecutor, as the case may be, has been given an opportunity to oppose the application for such release, and

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(ii) where the Public Prosecutor or the Assistant Public Prosecutor, as the case may be, opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause(b) of sub section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (Central Act, 2 of 1994) or any other law for the time being in force on granting of bail]"

42. If the Public Prosecutor or Assistant Public Prosecutor opposed the bail application, the Court can grant bail only if the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. How the Court can decide whether an accused will or will not commit the offence in future or how the Court can decide at the stage of bail, that the accused has not committed the offence? Therefore once an allegation is raised against the accused in an Abkari case, the jurisdiction of the Court to release the accused is very limited. This Court and the Sessions Court invoke the powers under Section 438

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Cr.P.C only rarely in Abkari cases. Of course these restrictions were imposed because of the serious nature of the offence and to eradicate the illicit manufacture of liquor. But in such situation, there cannot be any false implications against innocent persons due to private disputes. Now, if an abkari officer is having enmity with a person, he can easily implicate that person as an accused if there is a bottle and small quantity of illicit liquor. These two cases are the classic examples in which two innocent citizens were implicated falsely in an Abkari case. In the Narcotic Drugs and Psychotropic Substance Act cases, the search is necessary in certain situations in the presence of a gazetted officer. But as per Section 36 of the Abkari Act, while conducting the search the same is to be made in accordance to the Code of Criminal Procedure, provided that the persons called upon to attend and witness such searches shall include at least two persons neither of whom is an Abkari, Police or Village Officer. If a study is conducted in the disposed cases in Abkari matters, it

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can be seen that in 70% to 90% of cases, the independent witnesses are turned hostile. There may be several reasons for the hostile attitude of the independent witnesses. But when the independent witnesses turning hostile in almost all cases, this is a serious concern which is to be looked into by the Government and legislature. Therefore the manner in which the search, seizure and investigation of the Abkari cases is conducted in the State is to be revisited by the Government/Legislature by conducting an appropriate study or enquiry and based on the same, if necessary, should make appropriate amendment in the Abkari Act. Of course this Court cannot direct to make legislation by the Legislature but can observe that it is a serious concern to be looked into by the Government and Legislature. Therefore a copy of this judgment is to be forwarded to the Chief secretary to Government for a detailed study/enquiry and an action taken report should be submitted before this Court by the 1st respondent within six months.

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Conclusions

In the light of the above discussion, these two writ petitions are disposed of in the following manner:

i. The petitioners in W.P.(C)Nos.32519/2010 and 24692/2011 are entitled Rs.2,50,000/-(Rupees Two lakhs fifty thousand only) as compensation for their illegal arrest and detention by the Excise Officials.

ii. The 1st respondent will pay the above compensation amount of Rs.2,50,000/-(Rupees Two lakhs fifty thousand only) each to the petitioners in these writ petitions, within a period of two months from the date of receipt of a copy of this judgment.

iii. The State will recover the above amount from the persons responsible for the illegal arrest and detention of the petitioners after giving them an opportunity of hearing.

iv. The State Government will conduct a study/enquiry about the search, seizure, arrest and

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investigation made in Abkari cases for the last five years by appointing an appropriate person and will do the needful in accordance with law.

v. The action taken report based on this direction should be submitted by the 1st respondent before this Court within six months.

vi. Registry will forward a copy of this judgment to the Chief Secretary, State of Kerala, forthwith.

sd/-
P.V.KUNHIKRISHNAN
JUDGE

JV
DM
SKS

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APPENDIX OF WP(C) 32519/2010

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE FINAL REPORT IN CRIME NO.81/2004 DATED 14.05.2004 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, PUNALUR.
EXHIBIT P2	TRUE COPY OF THE FINAL REPORT DATED 30.05.2005 IN CRIME NO.174/2004 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, PUNALUR.
EXHIBIT P3	TRUE COPY OF THE COMPLAINT DATED 22.09.2004 FILED BY THE PETITIONER BEFORE THE COMMISSIONER OF EXCISE.
EXHIBIT P4	TRUE COPY OF THE INQUIRY REPORT SUBMITTED BY THE EXCISE VIGILANCE OFFICER, THIRUVANANTHAPURAM DATED 09.02.2005.
EXHIBIT P5	TRUE COPY OF THE INQUIRY REPORT SUBMITTED BY P.SALIM, DY.COMMISSIONER OF EXCISE, EXCISE INTELLIGENCE AND INVESTIGATION BUREAU, THIRUVANANTHAPURAM DATED 30.01.2007 .
EXHIBIT P6	TRUE COPY OF THE FINAL REPORT (REFER CHARGE) FILED BY J.SASIDHARAN PILLAI, CIRCLE INSPECTOR OF EXCISE, EXCISE ENFORCEMENT AND ANTI NARCOTIC SPECIAL SQUAD, KOLLAM IN ANCHAL EXCISE RANGE CRIME NO.31/2004 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, PUNALUR DATED 20.12.2006
EXHIBIT P7	TRUE COPY OF THE ORDER OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, PUNALUR DATED 11.01.2007 IN ANCHAL EXCISE RANGE CRIME NO.31/2004.
EXHIBIT P8	TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 21.07.2007 REGARDING THE 3RD RESPONDENT.

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EXHIBIT P9	TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 21.07.2007 REGARDING THE 4TH RESPONDENT.
EXHIBIT P10	TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 21.07.2007 REGARDING THE 5TH RESPONDENT.
EXHIBIT P11	TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 21.07.2007 REGARDING THE 6TH RESPONDENT.
EXHIBIT P12	TRUE COPY OF THE LETTER DATED 03.06.2010 OF THE PUBLIC INFORMATION OFFICER, EXCISE RANGE OFFICE, ANCHAL.
EXHIBIT P13	TRUE COPY OF THE FINAL REPORT FILED BY P.K.SANU, CIRCLE INSPECTOR OF EXCISE, EXCISE ENFORCEMENT AND ANTI NARCOTIC SPECIAL SQUAD, KOLLAM IN ANCHAL EXCISE RANGE CRIME NO.31/2004 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, PUNALUR DATED 25.03.2007.
EXHIBIT P14	TRUE COPY OF THE LAWYER NOTICE DATED 08.09.2010.

RESPONDENT EXHIBITS

EXHIBIT R5(A)	TRUE COPY OF THE JUDGMENT DATED 04.01.2019 IN C.C.NO.100/2005 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT -II, PUNALUR.
EXHIBIT R5(B)	TRUE COPY OF THE ORDER DATED 09.02.2010 ISSUED BY GOVERNMENT OF KERALA.

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APPENDIX OF WP(C) 24692/2011

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE INQUIRY REPORT DT. 11.3.2008 SUBMITTED BY THE 6TH RESPONDENT BEFORE THE SECRETARY TO THE GOVERNMENT, DEPARTMENT OF TAXES
EXHIBIT P2	TRUE COPY OF THE ORDER DT. 03.05.2008
EXHIBIT P3	TRUE COPY OF THE FINAL REPORT IN CRIME NO.45/2006 ON THE FILE OF HONOURABLE JFCM AT KARUNAGAPALLY
EXHIBIT P4	TRUE COPY OF THE LETTER NO. 2282/F2/2011 DT 9.3.2011
EXHIBIT P5	TRUE COPY OF THE JUDGMENT DT. 09.07.2008 IN WPC NO. 20619/2008
EXHIBIT P6	TRUE COPY OF THE JUDGMENT DT. 05.09.2008 IN WA NO. 1718/2008
EXHIBIT P7	TRUE COPY OF THE ORDER OF THIS HONOURABLE COURT IN BA NO. 6541/2008 DT .14.11.2008

RESPONDENT EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

SKS