2025:KER:20255

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 11TH DAY OF MARCH 2025 / 20TH PHALGUNA, 1946

OP(CRL.) NO. 263 OF 2015

AGAINST THE ORDER DATED 8/5/2015 IN CMP NO.188 OF 2014 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, ALAPPUZHA

PETITIONERS:

1 AJAYNATH
AGED 43 YEARS
CIRCLE INSPECTOR OF POLICE,ALAPPUZHA NORTH POLICE STATION, ALAPPUZHA (NOW WORKING AS CIECLE INSPECTOR OF POLICE, VIGILANCE & ANTI CORRUPTION,KOLLAM)

2 S. BINU
CIRCLE INSPECTOR OF POLICE,PULINCUNNU,ALAPPUZHA, (NOW WORKING AS CIRCLE INSPECTOR OF PLICE, CRIME BRANCH, ALAPPUZHA)

3 V.N BABURAJ (CPO 5016)
CIVIL POLICE OFFICER, ALAPPUZHA NORTH POLICE STATION, ALAPPUZHA

BY ADVS.
SRI.M.K.CHANDRA MOHANDAS
SRI.K.SATHIYANANDAN PILLAY
SRI.SHAKTHI PRAKASH
HARIKRISHNAN M.S.(D/3672/2019)

RESPONDENTS:

1 N.SHAJITHA BEEVI
ADVOCATE, W/O. ADV. BIJILY JOSEPH,SAMATHA, KALATH WARDM, ALAPPUZHA 688 502

2 STATE OF KERALA
REPRESENTED BY THE GOVERNMENT PLEADER, HIGH COURT OF KERALA,ERNAKULAM 682 031

*3 BIJILY JOSEPH, AGED 58 YEARS,
S/O JOSEPH, RESIDING AT 'SAMATHA' KALATH WARD
ALAPPUZHA -688006.

*4 MEDHA B.S, AGED 25 YEARS,
D/O BIJILY JOSEPH, RESIDING AT'SAMATHA' KALATH WARD
ALAPPUZHA -688006
{*ADDITIONAL RESPONDENTS 3 AND 4 IMPLEADED AS PER ORDER DATED 3/2/2025 IN IA NO.1/24}

BY ADVS.
SRI.DIPU JAMES
S.SHANAVAS KHAN FOR ADDL.R3 AND R4
SRI.GEORGE MATHEW FOR R1
SRI.M.D.SASIKUMARAN
SRI.SUNIL KUMAR A.G
S.INDU
KALA G.NAMBIAR
SMT.SREEJA V. SR.PUBLIC PROSECUTOR

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 12.02.2025, THE COURT ON 11.03.2025 DELIVERED THE FOLLOWING:

"C.R."

JUDGMENT

The petitioners are serving police officers in the Kerala Police. The 1st petitioner was working as a Circle Inspector of Police at Alappuzha North Police Station; the 2nd petitioner was working as a Circle Inspector of Police, Pulincunnu, Alappuzha, and the 3rd petitioner was working as a Civil Police Officer at Alappuzha North Police Station, at the time of the alleged incident. The 1st respondent is an Advocate by profession. The 3rd respondent is the husband, and the 4th respondent is the daughter of the 1st respondent.

2. On 29/12/2013, the Sub Inspector of Police, Alappuzha South police station registered Ext.P1 FIR against the 3rd respondent before the Judicial First-Class Magistrate Court, Alappuzha (for short, the trial court) alleging offence punishable under Sections 294(b) of IPC and 117(E) of the Kerala Police Act (for short, the KP Act). The allegations in the FIR were that while the 3rd petitioner was discharging his official duty in connection with the beach festival, Alappuzha, at the main gate of the venue, the 3rd respondent came in his car and tried to park it in the VIP parking area causing obstacles to other vehicles. Thereupon, the 3rd petitioner requested the 3rd respondent to park the vehicle at the designated places at police ground. The 3rd respondent refused to obey his directions and openly

abused him. Though the 3rd petitioner reminded him that he was only discharging his duty and, therefore, he was bound to obey his direction, the 3rd respondent verbally abused him again in public in front of the people assembled there to see the festival.

3. After twelve days of registration of Ext.P1 FIR, i.e., on 10/1/2014, the 1st respondent filed Ext.P2 private complaint against the petitioners before the trial court as CMP No.188/2014. The allegations in Ext.P2 private complaint are as follows:

4. The respondents, Nos.1, 3 and 4, together came to see the beach festival at Alappuzha on 29/12/2013 in their private car. When the 3rd respondent attempted to park the car in front of the beach park on the western side of the beach road in the car parking area at about 7.10 p.m., the 3rd petitioner, without any provocation, rushed to them and shouted to take the car from there. When the 3rd respondent replied that he was parking the car only in the parking area, the 3rd petitioner verbally abused him. It was recorded by the 3rd respondent on his mobile phone. The 3rd petitioner left the scene and immediately came back with the 1st and 2nd petitioners. The 1st petitioner snatched the mobile phone by force from the 3rd respondent using abusive words. The 2nd petitioner caught hold of the collar of the 3rd respondent and pushed him into the police vehicle by using excessive force. The 1st respondent, who tried to object to the forceful removal of the 3rd respondent, was taken into custody and forcefully pushed

into the police vehicle. The 1st petitioner took hold of the hair of the 1st respondent while taking her into the police vehicle. When the police vehicle reached the police station, fellow advocates who reached the police station intervened in the matter and the petitioners returned the mobile phone and key of the car. The respondents 1, 3 and 4 sought medical treatment in the Alappuzha General Hospital. The petitioners destroyed the memory card from the mobile phone. Thus, the petitioners have committed the offences punishable under Sections 323, 294(b), 339, 352, 354, 354B, 84, 120B, 204, 211, 166, 503, 509, 500 and 34 of IPC.

5. The trial court conducted an enquiry under Section 202 of Cr.P.C. The 1st respondent was examined as CW1. The doctor of the General Hospital, Alappuzha, who examined the respondents 1, 3 and 4, was examined as CW2. The wound certificates issued by her were marked as Exts.P1 to P3. The 3rd respondent was examined as CW3. Two independent witnesses were examined as CW4 and CW5. The 4th respondent was examined as CW6. After conducting enquiry, the trial court found that there is ground for proceeding against the petitioners under Sections 323, 294(b) 339, 352, 354, 354B, 384, 120(b), 204, 211, 503, 509, 500 r/w 34 of IPC and Section 23 of the Juvenile Justice Act and issued summons to the petitioners under Section 204 of Cr.P.C. as per Ext.P3 order. The original petition has been filed to set aside Ext.P3 order on the ground that cognizance taken by the trial

court was bad for want of sanction under Section 197 of Cr.P.C.

6. I have heard Sri. Harikrishnan M.S., the learned counsel for the petitioners, Sri.George Mathew, the learned counsel for the 1st respondent, Sri. S. Shanavas Khan, the learned counsel for additional respondents 3 and 4, and Smt.Sreeja V., the learned Senior Public Prosecutor.

7. The petitioners, at the time of the alleged incident, were working as police officers in the Kerala Police and thus are public servants. They challenge Ext. P3 order and continuation of proceedings pursuant to it on the sole ground that the trial court ought not to have taken cognizance of the alleged offences and issued the process to them without sanction from the State Government under Section 197 of Cr.P.C. The trial Court found that sanction is not required on two grounds: (i) the petitioners were not acting or purporting to act in the discharge of their official duties, (ii) the petitioners were not officers not removable from office except with the sanction of the Government.

8. The learned counsel for the petitioners submitted that the alleged act done by the petitioners was reasonably connected with the discharge of their official duties, and at no stretch of the imagination can it be held that they acted in their private capacity so as to dis-entitle them the privilege under Section 197 of Cr.P.C. Reliance was placed on *Om Prakash and Others v. State of Jharkhand Through The*

Secretary, Department of Home, Ranchi and Another [(2012) 12 SCC 72] and *Sankaran Moitra v. Sadhna Das and Another* (AIR 2006 SC 1599). The learned counsel further submitted that the finding of the trial Court that the petitioners are not public servants not removable from office, save with the previous sanction of the State Government, is wrong in view of sub-section (2) of Section 197 and Notification No. 61155/A2/Home dated 06.12.1977. Reliance was placed on *Sarojini v. Prasannan* (1996 KHC 414). The learned counsel appearing for the respondents 1, 3 and 4, on the other hand, submitted that the sanction for prosecution was not necessary since the acts complained of did not form part of their official duties. The learned counsel further submitted that the trial Court considered all facts and materials placed before it and rightly held that sanction was not necessary. At any rate, the sanction was not required for the offences alleged under Sections 354 and 354B of IPC going by the Explanation to Section 197(1) of Cr.P.C., added the counsel.

9. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without

reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. Section 197(1) and (2) of Cr.P.C read as under:

> *"197. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction --*
>
> *(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;*
> *(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:*
>
> *Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.*
>
> *Explanation. - For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code.*
>
> *(2) No court shall take cognizance of any offence alleged to have been committed by any member of the armed forces of the Union while acting*

or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government."

10. The section falls in the chapter dealing with conditions requisite for initiation of proceedings. The jurisdiction of a Magistrate to take cognizance of any offence is provided under Section 190 of Cr.P.C., either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence by any court is barred under Section 197 of Cr.P.C unless sanction is obtained from the appropriate authority if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, "No court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and "shall" make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. A court, therefore, is precluded from entertaining a complaint, taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an

offence alleged to have been committed during the discharge of his official duty. This protection has, however, certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule [*K. Kalimuthu v. State by DSP*, [(2005) 4 SCC 512].

11. Of course, it is not part of an official duty to commit an offence and never can be. But to apply Section 197, the test is not whether the act complained of was part of the official duty or not; the test is whether the act complained of was committed by the public servant while acting or purporting to act in the discharge of his official duty. To put it differently, the question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. If it was done in the performance of duty or in purported performance of duty, Section 197(1) cannot be bypassed by reasoning that an offence could not be committed in an official capacity, and consequently, Section 197(1) could not be attracted [See *Sankaran Moitra* (supra)].

12. A Constitution Bench of the Supreme Court had occasion to consider the scope of Section 197 of Cr.P.C in ***Matajog Dobey v. H. C. Bhari*** (AIR 1956 SC 44). After holding that Section 197 of Cr.P.C was not violative of the fundamental rights conferred on a citizen under Article 14 of the Constitution of India, the Supreme Court observed:

> *"Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. It was argued that S.197, Criminal Procedure Code vested an absolutely arbitrary power in the Government to grant or withhold sanction at their sweet will and pleasure, and the legislature did not lay down or even indicate any guiding principles to control the exercise of the discretion. There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction."*

13. On the test to be adopted for finding out whether Section 197 of the Cr.P.C was attracted or not and to ascertain the scope and meaning of that section, it was observed:

> *"Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in S.197 of the Code; 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty'. But the difference is only in language and not in substance. The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under S.197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the*

discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation."

14. After referring to the earlier decisions of the Federal Court, the Privy Council and that of the Supreme Court itself, the Bench summed up the position thus:

"The result of the foregoing discussion is this: There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

15. The Bench then proceeded to consider the stage at which the need for sanction under Section 197(1) had to be considered. It was stated:

"The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

16. In ***Pukhraj v. State of Rajasthan*** [(1973) 2 SCC 701], the Supreme Court laid down the test to determine whether the alleged action, which constituted an offence, has a reasonable and rational nexus with the official duties required to be discharged by the public servant. It was held thus:

"While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the 'capacity in which the act is performed', 'cloak of office' and 'professed exercise of the office' may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty."

17. In ***Gauri Shankar Prasad v. State of Bihar and Another*** (AIR 2000 SC 3517), the appellant, in his official capacity as Sub-Divisional Magistrate, had gone to the place of the complainant for the purpose of removal of encroachment. It was when entering the chamber of the

complainant that he used filthy language and dragged him out of his chamber. It was held that the act has a reasonable nexus with the official duty of the appellant. Hence no criminal proceedings could be initiated without obtaining sanction. It was observed thus:

> *"8. What offences can be held to have been committed by a public servant while acting or purporting to act in the discharge of his official duties is a vexed question which has often troubled various Courts including this Court. Broadly speaking, it has been indicated in various decisions of this Court that the alleged action constituting the offence said to have been committed by the public servant must have a reasonable and rational nexus with the official duties required to be discharged by such public servant.*
>
> *xxxx xxxx*
>
> *xxxx*
>
> *14. Coming to the facts of the case in hand, it is manifest that the appellant was present at the place of occurrence in his official capacity as Sub-Divisional Magistrate for the purpose of removal of encroachment from government land and in exercise of such duty, he is alleged to have committed the acts which form the gravamen of the allegations contained in the complaint lodged by the respondent. In such circumstances, it cannot but be held that the acts complained of by the respondent against the appellant have a reasonable nexus with the official duty of the appellant. It follows, therefore, that the appellant is entitled to the immunity from criminal proceedings without sanction provided under S.197 CrPC. Therefore, the High Court erred in holding that S.197 CrPC is not applicable in the case."*

18. In ***Abdul Wahab Ansari v. State of Bihar and Another*** (AIR 2000 SC 3187), firing was made by the Police Inspector while removing encroachments, due to which one person was killed and two were injured. A private complaint was filed under Section 302, Section 307, etc., on which the Magistrate issued a summons to the Police

Inspector. A challenge was made to the cognizance taken by the Magistrate by filing a petition under Section 482 before the High Court. The High Court held that the question of sanction can be raised at the time of framing of the charge. The Supreme Court has observed that the question of sanction under Section 197 Cr.P.C has to be considered at the earlier stage of the proceedings. Ultimately, on facts, it was held that the Police Inspector was entitled to protection, and without sanction, he could not have been prosecuted. Thus, the criminal proceedings instituted without sanction were quashed.

19. In ***P. K. Pradhan v. State of Sikkim represented by the Central Bureau of Investigation*** [(2001) 6 SCC 704], the Supreme Court considered the scope of the expression "while acting or purporting to act in the discharge of his official duty" found in Section 197(1) of Cr.P.C and laid down thus:

> *"5. The legislative mandate engrafted in sub-section (1) of S.197 debarring a Court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the Court itself. It is a prohibition imposed by the Statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in S.197 of the Code: "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". The offence alleged to have been committed must have something to do, or must*

be related in some manner, with the discharge of official duty. No question of sanction can arise under S.197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a Court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation".

20. In ***K. Kalimuthu*** (supra), the Supreme Court has observed that official duty implies that an act or omission must have been done by the public servant within the scope and range of his official duty for protection. It does not extend to criminal activities but where there is a reasonable connection in the act or omission during official duty, it must be held to be official. It was also observed that the question whether the sanction is necessary or not, may have to be determined from stage to stage. In ***Devinder Singh and Others v. State of Punjab through CBI*** [(2016) 12 SCC 87], it was held that even in facts of a case when a public servant has exceeded in his duty, if there is a reasonable connection, it will not deprive him of protection under Section 197 Cr.P.C. It was further held that in case the assault made is intrinsically connected with or related to the performance of official duties, the sanction would be necessary under Section 197 Cr.P.C, but such relation to duty should not be a pretended or fanciful claim. The

offence must be directly and reasonably connected with official duty to require sanction. It is not part of the official duty to commit the offence. In case the offence was incomplete without proof, the official act, ordinarily, the provisions of Section 197 Cr.P.C, would apply. In *State of H. P. v. M. P. Gupta* (AIR 2004 SC 730), the Supreme Court has considered the provisions contained under Section 197 and has observed that the same are required to be construed strictly while determining its applicability to any act or omission during the course of his service. Once any act or omission is found to have been committed by a public servant in the discharge of his duty, liberal and wide construction is to be given to the provisions so far as its official nature is concerned.

21. The issue of 'police excess' during the investigation and the requirement of sanction for prosecution in that regard was the subject - matter of *Om Prakash* (supra). It was held thus:

> *"32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant Singh). The protection given under S.197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the*

public servant of the protection (Ganesh Chandra Jew). If the above tests are applied to the facts of the present case, the police must get protection given under S.197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under S.197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood."

22. In ***Sankaran Moitra*** (supra), the complaint disclosed that the deceased was a supporter of a political party beaten to death by the police at the instance of an appellant Police Officer near a polling booth on election day. On the facts, it was held that the appellant committed the act in question during the course of the performance of his duty, and sanction under Section 197(1) was necessary for his prosecution. The Supreme Court has observed thus:

"25. The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, S.197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently S.197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of

jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under S.197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under S.197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of learned counsel for the complainant that this is an eminently fit case for grant of such sanction."

23. In ***Rizwan Ahmed Javed Shaikh v. Jammal Patel*** [(2001) 5 SCC 7] the Supreme Court was dealing with officers who were brought within the protective umbrella of Section 197 of Cr.P.C by a notification issued under Section 197(3) thereof. Cognizance had been taken for the offence under Sections 220 and 342 of IPC and Sections 147 and 148 of the Bombay Police Act. The gist of the charge was the failure on the part of the accused police officers to produce the complainants before a Magistrate within 24 hours of their arrest for alleged offences under the IPC. The police officers have claimed the protection of Section 197(1) of the Code. The Supreme Court after referring to the earlier decisions held:

"15. The real test to be applied to attract the applicability of S.197(3) is whether the act which is done by a public officer and is alleged to constitute an offence was done by the public officer whilst acting in his official capacity though what he did was neither his duty nor his right to do as such public officer. The act complained of may be in the exercise of the duty or in the absence of such duty or in dereliction of the duty, if the act complained of is done while acting as a public

officer and in the course of the same transaction in which the official duty was performed or purported to be performed, the public officer would be protected."

24. In the light of the principles emerging from the aforementioned decisions, the law on the issue of sanction under Section 197 of Cr.P.C can be summarised as follows:

(i) To attract Section 197, the act complained of must be an offence other than those mentioned in the Explanation to sub-section (1).

(ii) To apply Section 197, the test is whether the act complained of was committed by the public servant while acting or purporting to act in the discharge of his official duty.

(iii) The protection of Section 197 is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act.

(iv) There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. It depends upon the facts and circumstances of each case.

(v) The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public

office. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant.

(vi) If the public servant acted in excess of his duty while performing his official duty, but there is a reasonable connection between the act and the performance of the official duty, it will not deprive him of protection under Section 197 Cr.P.C.

(vii) An act merely because it was done negligently does not cease to be one done or purporting to be done in the execution of a duty.

(viii) The bar created by Section 197 is absolute. In the absence of sanction where Section 197 applies, cognizance of the offence is barred. However, the question whether the sanction is necessary or not can be raised at any stage.

25. Coming to the merits of the case, the materials on record show that the alleged act occurred while the petitioners were discharging their official duties at Alleppey Beach in connection with

the beach festival. The petitioners were in their uniform. When the respondents 1, 3 and 4 allegedly attempted to park their car in a parking area earmarked for VIP vehicles; the 3rd petitioner asked the 3rd respondent to remove the car from there, which resulted in an exchange of words between them and the alleged incident. The 3rd respondent was taken into custody and taken to the police station in a police jeep. The 3rd petitioner filed a report against the 3rd respondent, and Ext.P1 FIR was registered on 29/12/2013 itself. Ext.P2 private complaint was filed only on 10/01/2014. From this sequence of events, it is evident that the act complained of was allegedly committed by the petitioners while acting in the discharge of their official duty. There was a reasonable connection between the alleged offensive conduct and the performance of their official duty. The whole allegation is on police excess in connection with the discharge of official duty. In ***Rizwan Ahmed*** (supra), the Supreme Court has held that the act complained of may be in the exercise of the duty or in the absence of such duty or in dereliction of the duty, if the act complained of is done while acting as a public officer and in the course of the same transaction in which the official duty was performed or purported to be performed, the public officer would be protected.

26. The second ground on which the trial court took the view that the sanction is not required is that the petitioners are not public servants not removable from office, save with the previous sanction of

the State Government. It appears that the trial Court held so on the premises that the power to dismiss or remove them from service has been conferred under the relevant provisions in the Kerala Police Act and Rules upon the I.G., D.I.G., A.I.G. and S.Ps.

27. Under sub-section (2) of S.197 Cr.P.C., there is a bar in taking cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government. Under sub-section (3), the State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever, they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted". The State Government has issued a Notification No. 61155/A2/Home on 06/12/1977 directing that the provisions of sub-section (2) shall apply to all members of Kerala State Police Force charged with the maintenance of Public Order. By the notification mentioned above, the provisions of sub-section (2) have been made applicable to members of Kerala Police charged with 'maintenance of public order' who form a class of the police force. The Division Bench of this Court in ***Sarojini*** (supra) has held that

'maintenance of public order' can fall within the definition of 'law and order', the former being an extension of the latter. Hence, the petitioners would come within the scope of this Notification and be entitled to its protection.

28. The upshot of the above discussion is that the challenge against the prosecution on the ground that no prosecution sanction was obtained under Section 197 of Cr.P.C must succeed. I hold that the trial Court should not have taken cognizance without the previous sanction of the State Government. The cognizance was taken for the offences under Sections 323, 294(b) 339, 352, 354, 354B, 384, 120(b), 204, 211, 503, 509, 500 r/w 34 of IPC and Section 23 of the Juvenile Justice Act. As per Explanation to Section 197(1), no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 354 or 354B of IPC. Therefore, the cognizance taken for the offences except under Sections 354 and 354B of IPC is liable to be set aside. The learned counsel for the petitioners submitted that no case under Sections 354 and 354B of IPC had been made out on merits. But there is no such challenge in the original petition. The challenge is only on the grounds of want of sanction. Hence the impugned order to the extent of taking cognizance against the petitioners for the offences under Sections 323, 294(b) 339, 352, 384, 120(b), 204, 211, 503, 509, 500 r/w 34 of IPC and Section 23 of the Juvenile Justice Act is hereby set aside.

However, this judgment will not stand in the way of the 1st respondent for approaching the State Government seeking sanction under Section 197 of Cr.P.C. The petitioners shall also be free to seek discharge of the offences under Sections 354 and 354B of IPC at the trial Court in accordance with law.

The original petition is disposed of as above.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

Rp

APPENDIX OF OP(CRL.) 263/2015

PETITIONER EXHIBITS

EXHIBIT P1	**COPY OF FIR DATED 29-12-2013**
EXHIBIT P2	**COPY OF THE PRIVATE COMPLAINT-CMP NO 188/2014**
EXHIBIT P3	**ORDER IN CMP NO 188/2014 DT. 8-5-2015**