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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 19TH DAY OF APRIL 2022 / 29TH CHAITHRA, 1944

CRL.MC NO. 1106 OF 2022

[CRIME NO.6/2022 OF CRIME BRANCH, ERNAKULAM]

PETITIONER/S:

P. GOPALAKRISHNAN @ DILEEP
AGED 53 YEARS
PADMASAROVARAM, KOTTARAKADAVIL ROAD,
ALUVA, ERNAKULAM DISTRICT 683 101.

BY ADVS.
SRI.SIDDHARTH AGGARWAL, SR.COUNSEL
THOMAS T.VARGHESE
NITYA R.
PHILIP T.VARGHESE
SUJESH MENON V.B.
ACHU SUBHA ABRAHAM
V.T.LITHA
K.R.MONISHA

RESPONDENT/S:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682 031

2 THE SUPERINTENDENT OF POLICE
CRIME BRANCH, KOCHI 683 104., PIN - 683104

3 BAIJU POULOSE
DY.SP, CRIME BRANCH, POLICE CLUB,
ALUVA 683101.

4 THE STATE POLICE CHIEF
POLICE HEADQUARTERS, VAZHUTHACAD,
THIRUVANANTHAPURAM 695 014.

5 S. SREEJITH IPS
ADDL. DGP, CRIME BRANCH
POLICE HEADQUARTERS,
VAZHUTHACAD, THIRUVANANTHAPURAM 695 014.

6 UNION OF INDIA
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF PERSONNEL AND TRAINING,
NORTH BLOCK, NEW DELHI -110 001.

7 THE SECRETARY, MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA, NEW DELHI -110 003.

8 CENTRAL BUREAU OF INVESTIGATION
REPRESENTED BY ITS DIRECTOR,
NEW DELHI- 110 003.

9 THE SUPERINTENDENT OF POLICE
CENTRAL BUREAU OF INVESTIGATION,
KOCHI UNIT, KOCHI 682 017.

R1 TO R5 BY SRI.T.A.SHAJI, DIRECTOR GENERAL OF PROSECUTION,
SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR
SHRI.SAJJU.S., SENIOR G.P.
FOR R6 TO R9 SRI.MANU S., ASG OF INDIA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 31.03.2022, THE COURT ON 19.04.2022 PASSED THE FOLLOWING:

ORDER

The petitioner is the 1st accused in Crime No.6/2022 of Crime Branch Police Station, (hereinafter referred to as Crime No.6/2022). This Crl.M.C. is filed for quashing all further proceedings pursuant to the FIR registered in the said case, which is produced as Annexure-9. The said crime is registered against him and four others, alleging offences punishable under Sections 506, 116, 118, 120B r/w. Section 34 of the Indian Penal Code (IPC).

2. The allegation against the petitioner and other accused is that on 15.11.2017, they threatened and hatched a criminal conspiracy to do away with Smt.B.Sandhya, the present Director-General of Police (Fire & Rescue), Sri. A.V. George, present Inspector General of Police, Sri.Sudharsan and Sri. Sojan, both presently working as Superintendent of Police and the 3rd respondent in this Crl.M.C, who is a Deputy Superintendent of Police (Crime Branch). The alleged motive of

the petitioner and other accused is that, in an earlier criminal prosecution, the investigation was conducted by a Special Investigation Team consisting of the above persons, and the petitioner was implicated as one of the accused.

3. Before going to the facts of Crime No.6/2022, which is the subject matter of this case, it is necessary to go into the facts which led to the registration of that previous crime, as it has some intrinsic connection with this case. The aforesaid crime is numbered as 297/2017 of Nedumbasserry Police Station. The trial of the same is now pending as S.C.No.118/2018 before the Additional Special Judge (SPE/CBI Court-III), Ernakulam. The aforesaid case is a prequel to the present case. The circumstances under which the aforementioned case was registered are as follows:

On 17.02.2017, a well-known film actress in the Malayalam film industry was subjected to sexual assaults and verbal threats in a moving vehicle. The aforesaid sexual assaults were

captured on a camera by the assailants with the intention to blackmail her. In connection with the said incident, F.I.R. No.297/2017 was registered by Nedumbassery Police Station for the offence punishable under Section 120B, 342, 366, 376D, 506(1), 201, 212 and 34 of the Indian Penal Code. After completing the investigation thereon, Annexure-I final report was submitted by the Police on 18.05.2017 against seven accused persons. The aforesaid final report was submitted based on an investigation conducted by the Special Team under the direct supervision of Smt.B. Sandhya, the then Additional Director General of Police (South Zone) and also consisted of 6 officers of the rank of DySP and many officers below that rank, including the 3rd respondent. Subsequently, based on the additional evidence gathered by the Special Investigation Team, the petitioner herein was implicated as the 8th accused, and a supplementary final report was submitted in this regard on 22.11.2017. The

allegation against the petitioner was that the act of sexual assault was committed by the other accused on the instructions given by the petitioner herein, who was nursing some personal grudge against the victim because, the petitioner believed that, it was the victim who was instrumental for the termination of his marriage with his first wife. The petitioner was allegedly under the impression that the victim disclosed to the first wife of the petitioner about the relationship of the petitioner with another person. In connection with the investigation of the aforesaid case, the petitioner was arrested and detained in custody for a period of 84 days. The said case is pending trial, and all the witnesses cited by the prosecution therein except the investigation officer, who is the 3rd respondent herein, were examined. The examination of 3rd respondent is now to take place.

4. While so, on 25.12.2021, one Balachandra Kumar, who is one of the Directors of the

Malayalam Film Industry, made certain revelations through a Malayalam News channel with regard to certain acts of the petitioner in connection with the subject matter of Crime No.297/2017 and also revealed some information about certain discussions made by the petitioner and other persons indicating a criminal conspiracy against the investigation team which conducted the investigation in Crime No.297/2017. The aforesaid revelations were made on the strength of certain audio clips, which contained certain conversations of the petitioner and the other accused in this case. The said Balachandra Kumar also forwarded a complaint to the Nedumbassery Police Station, the contents of which were the same as in another complaint he originally submitted before the Hon'ble Chief Minister of the State almost one month ago. In the said complaint, he requested to give protection to him, as he apprehended a threat from the petitioner herein since the petitioner is aware of the materials available with him, which

could be used as evidence for the complicity of the petitioner in Crime No.297/2017. The aforesaid complaint was forwarded to the 3rd respondent herein, as per the orders of the District Police Chief, since the 3rd respondent was the Investigation Officer of Crime No.297/2017, and the revelation made by the said Balachandra Kumar contained information that is intrinsically connected with criminal acts which are the subject matter of the aforesaid crime. Thereafter, based on such revelations, a report for further investigation in Crime No.297/2017, which is pending as S.C.118/2018, was submitted before the trial court by the 3rd respondent herein. Annexure-6 is the aforesaid report.

5. As part of further investigation, statements of Sri. Balachandra Kumar was recorded on 01.01.2022 and 03.01.2022, which are Annexures 11 and 12 in this Crl.M.C. Based on the same, the 3rd respondent herein submitted a complaint to the Additional Director General of Police (ADGP),

Crime Branch Head Quarters, Thiruvananthapuram, highlighting the aforesaid aspects. In the said complaint, it was mentioned that the statement of the said Balachandra Kumar and the audio clips furnished by him indicate certain acts amount to criminal conspiracy and criminal intimidation on the part of the petitioner and four others for doing away with Smt.B.Sandhya, DGP, Sri. A.V.George, Inspector General of Police, Sri. K.S.Sudharsan, Superintendent of Police, Sri.M.J. Sojan, Superintendent of Police and the 3rd respondent herein. The aforesaid complaint was forwarded by the ADGP Crime Branch to the Superintendent of Police (Crime Branch-Ernakulam) for registration of the crime and to conduct an investigation thereon. Annexure-10 is the aforesaid complaint submitted by the 3rd respondent herein with the endorsement of the ADGP in this regard. Based on the same, Annexure-9 F.I.R. was registered with Crime No.6/2022 on 9.1.2022 for the offences punishable under Sections 116, 118,

120B, 506 read with Section 34 of the Indian Penal Code. Subsequently, on 14.1.2022, a further report was submitted by the Police by which Section 120B of Section 302 was also incorporated. The investigation by the 2nd respondent is now in progress in Annexure-9 F.I.R. The other accused in the aforesaid crime are Sri. Anoop, the brother of the petitioner herein, Sri.T.N.Suraj, Appu, Byju B.R. (Baiju Chengamanad) and one identifiable person (not named).

6. All the named accused persons had earlier moved applications for Anticipatory Bail before this Court, and as per Annexure-18 order, all of them were granted pre-arrest bail.

7. This Criminal M.C. is filed in such circumstances praying for quashing all further proceedings pursuant to Annexure-9 F.I.R. The specific case put forward by the petitioner is that the registration of the F.I.R. violated Section 154 of the Code of Criminal Procedure (Cr.PC) as the same does not disclose any

cognizable offence. It was contended that, even if the entire allegations in the F.I.R. are taken for their face value, no offences are made out. It was also the case of the petitioner that the registration of the case itself was as part of a larger conspiracy at the instance of the 3rd and 5th respondents to create false evidence against the petitioner in Crime No. 297/2017 to see that the petitioner is punished. With the said intention, a false story, with the connivance of the said Balachandra Kumar, was created by them, and registration of this crime is part of the said design. In this Crl.M.C., an alternate prayer was also sought to the effect that, if this Court is not inclined to quash the FIR, the investigation may be handed over to a specialized agency, namely, the Central Bureau of Investigation (C.B.I.), which is the 8th respondent herein. The said prayer is sought mainly on the ground that, according to the petitioner, the investigation is proceeding in a biased manner. According to the

petitioner, since the allegation itself is in respect of a threat against Senior Police Officers who are at the helm of the affairs of the Home Department, the investigation is likely to be influenced by those superior officers. To substantiate the biased nature of the investigation and the alleged motive on the part of the 3rd respondent in seeing the accused implicated in the offence, a specific averment was made by the petitioner to the effect that, prior to the registration of Annexure-9 F.I.R., the 3rd respondent had personally met Sri. Balachandra Kumar, the person who made revelations in this case and held discussions with him on three occasions, i.e. on 2.10.2021, 6.11.2021 and 27.12.2021. It is also pointed out that, immediately after a report for further investigation in Crime No.297/2017 was submitted, the Special Investigation Team was re-constituted by including the 5th respondent herein, who is the Additional Director General of Police (Crime

Branch). According to the petitioner, the said Balachandra Kumar and the 5th respondent have close acquaintance. To substantiate the same, certain Whatsapp communications between the petitioner and one Nadirsha, a close friend of the petitioner herein, are relied on, which are produced as Annexure-17 in this Crl.M.C. The contents of Annexure-17 are to the effect that the said Balachandra Kumar had made a recommendation to the said Nadhirshah, a Director of Malayalam movies, to give a chance to a young singer who is closely related to the 5th respondent. It is also pointed out that Annexure-17 Whatsapp messages specifically refer to the name of the 5th respondent and also reveal the relationship which the said Balachandra Kumar has, with the family of the person recommended. Apart from the above, certain documents in the form of Annexure-15 series were also relied on to indicate certain disciplinary proceedings and adverse remarks against the 5th respondent in connection with some

other cases. On the strength of the above materials, it was contended by the petitioner that the investigation which is being conducted by the 2nd respondent, who is directly subordinate to the 5th respondent and the some of the victims in the crime, is likely to be influenced by them. Hence, no proper investigation can be expected from the 2nd respondent in such circumstances. The alternate prayer for changing the investigation agency was sought in such circumstances.

8. A statement was submitted by the 2nd respondent in response to the averments contained in the Crl.M.C. The allegations and averments made by the petitioner in the Crl.M.C. were specifically denied. It was alleged that, the filing of Crl.M.C is made by making false allegations, with the intention to interfere with the ongoing investigation. The circumstances under which Annexure-9 FIR happened to be registered by the Crime Branch were explicitly explained by the 2nd respondent. Initially, the said

Balachandra Kumar had submitted a complaint on 25.11.2021 to the Hon'ble Chief Minister of Kerala seeking protection of life from the petitioner and his men. The said complaint revealed certain incriminating materials against the petitioner herein in connection with the subject matter of Crime No.297/2017. As the aforesaid complaint did not yield any response, the said Balachandra Kumar made the revelations through a visual media on 25.12.2021, wherein he stated about the evidence available with him revealing the role played by the petitioner in commission of the crime which is the subject matter of Crime No.297/2017 and also the petitioner's relationship with the 1st accused in the said crime. The link of the said program was forwarded to him by the survivor of Crime No.297/2017. Later a complaint was submitted by the said Balachandra Kumar to the Station House Officer, Nedumbassery Police Station, on 28.12.2021, which happened to be forwarded to 3rd respondent. Based on the said revelation, a report

for further investigation in Crime No.297/2017 was submitted by the 3rd respondent, and further investigation was commenced. During the said investigation, statements of the said Balachandra Kumar were recorded from 1.1.2022 and 3.1.2022. He also handed over the audio clips to the Police. From the complaint and the statements of the said Balachandra Kumar, a criminal conspiracy on the part of the petitioner and the other accused to cause harm to the members of the Special Investigation Team which investigated Crime No.297/2017 came to light. Accordingly, Annexure-10 report/complaint was submitted by the 3rd respondent to ADGP (Crimes), the 5th respondent herein, seeking necessary action. Since the contents of Annexure-10 revealed the commission of cognizable offences, the ADGP (Crimes) directed the registration of crime by the Crime Branch Police Station. The crime was registered in such circumstances. It was pointed out that no circumstances exist warranting interference in

Annexure-9 FIR as, according to the 2nd respondent, cognizable offences are made out from the allegations contained therein. The investigation is in progress, and it is being conducted in an unbiased manner without any external influence. It was also pointed out that the petitioner had approached this Court with unclean hands. The contention above was put forward by the 2nd respondent by highlighting certain acts on the part of the petitioner and the other accused by which an attempt was made by them to delete the contents of mobile phones which were being used by the accused during the relevant period. It was further stated that on 29.1.2022, an order was passed by this Court in B.A.Nos. 248, 288 and 300 of 2022, which were submitted by the accused in this case, wherein this Court directed the accused to produce seven mobile phones used by them in a sealed box before the Registrar General of this Court by 10.15 a.m. on 31.1.2022. Later, they produced six phones, and the said phones were

subjected to Forensic examination. Annexure R2(e) is the Forensic Examination Report of the mobile phones (6 in numbers) surrendered by the accused, wherein it was found that certain data were deleted. It was pointed out that most of the interference of the data in some of the phones has taken place during the period after passing the order dated 29.1.2022 of this Court and before surrendering of the phones in compliance with the said order. On the strength of the above, it is highlighted that it was a conscious attempt on the part of the accused to tamper with the evidence and hence he cannot be treated as a person who came to this Court with clean hands. With regard to the allegations raised against the 5th respondent on the basis of Annexure-15 series orders/proceedings, it was pointed out that none of the same has any relevance to the present dispute. It was also highlighted that all those proceedings were closed without any serious consequences against the 5th respondent. The 2nd

respondent also opposed the prayer for transfer of investigation to the 8th respondent by highlighting that no circumstances are in existence warranting such transfer.

9. A reply was also submitted by the petitioner in response to the aforesaid statement, denying the averments contained therein. The allegations of tampering with the data in the mobile phones were also specifically denied, and the circumstances by which the aforesaid phones were entrusted to M/s.Lab Systems India Pvt. Ltd. for restoration of certain data was also explained.

10. Heard Sri. Siddharth Aggarwal, the learned Senior Counsel assisted by Sri. Philip T.Varghese, the learned counsel for the petitioner and Sri. T.A. Shaji, the learned Senior Counsel and Director General of Prosecution (DGP), assisted by Sri.P.Narayanan, the Additional Public Prosecutor for the State and Sri.Manu S. the Assistant Solicitor General of India for CBI.

11. The learned Senior Counsel for the petitioner reiterated the contentions raised in the Crl.M.C with the support of several judicial precedents in this regard. The learned D.G.P. replied to the said submission in detail and also cited many decisions in his support. I shall deal with said contentions and refer to the relevant decisions cited at the appropriate stages of the order.

12. The first contention raised by the learned counsel for the petitioner is that the registration of Annexure-9 FIR violates Section 154 of the Cr.P.C. According to him, Annexure-9 does not make out any cognizable offences, and in the absence of the same, the registration of FIR was illegal. According to him, Annexure-9 FIR was registered on 9.1.2022 for the offences punishable under Sections 116, 118, 120B, and 506 read with Section 34 of the IPC. Subsequently, on 14.1.2022, a report was submitted incorporating the offence of Section 120B of 302 IPC. The specific case of

the petitioner is that none of the aforesaid offences is attracted from the averments contained in Annexure-9.

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

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

14. The learned Senior Counsel relies upon **State of West Bengal and Others v. Sanchaita Investments and Others [(1982)1 SCC 561],** wherein in paragraph 21 it was observed as follows:

> *"21. The position which emerges from these decisions and the other decisions which are discussed by Brother A. N. Sen is that the condition precedent to the commencement of investigation under S.157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed, It is wrong to suppose that the police have an unfettered discretion to commence investigation under S.157 of the Code. Their right of inquiry*

> *is conditioned by the existence of reason to suspect the commission, of a cognizable offence and they cannot, reasonably have reason so to suspect unless the F.I.R. prima facie discloses the commission of offence. If that condition is satisfied, the investigation must go on, and the rule in Khwaja Nazir Ahmed will apply. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the F.I.R. does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received."*

15. It is true that as per the stipulations contained in Section 154 of the Cr.PC, when the information provided to the Police reveals the commission of a cognizable offence, it should be reduced into writing, and the investigation shall be commenced based on the same. Thus, the essential requirement for registration of an FIR and initiation of investigation is the disclosure of 'information' which indicates the commission of a cognizable offence. The crucial aspect to be noticed in this regard is that what is relevant for the purpose of Section 154 is not the materials available on record at the time of registration of the FIR, but what is relevant is

the 'information' which is the exact word used in Section 154 Cr.PC. Since the purpose of Section 154 is the commencement of an investigation based on 'information', it is not necessary to insist upon materials disclosing the commission of a cognizable offence at the relevant time. This is mainly because, it is a well settled position of law that the F.I.R is not an encyclopedia that should contain all the details of the crime. The materials in support of the information/allegation contained in the F.I.R could be revealed only during the investigation. Therefore, for finding out whether an F.I.R discloses a cognizable offence, what is relevant for consideration is only the 'information' furnished by the 1st informant.

16. The contents of Annexure-9 FIR are to be considered from that perspective. The relevant portion of Annexure-9 is extracted for easy reference.

"ഈ സംഗതിക്ക് 1-ആം പ്രതിയെ നെടുമ്പാശ്ശേരി പി.സ്.ക്രൈം .297 / 2017 നമ്പർ കേസിലെ 8-ആം നമ്പർ പ്രതിയാക്കി അറസ്റ്റ് ചെയ്ത് നിയമ നടപടികൾക്ക്

വിധേയമാക്കിയതിന്റെ വിരോധത്തിൽ ടി കേസിൽ അന്വേഷണ ഉദ്യോഗസ്ഥനായ ആവലാതിക്കാരനെയും കേസിൽ മേൽനോട്ടം വഹിച്ച മറ്റ് മേലുദ്യോഗസ്ഥരെയും അപായപ്പെടുത്തണമെന്നുള്ള ഉദ്ദേശത്തോടും കരുതലോടും കൂടി 1 മുതൽ 6 വരെ പ്രതികൾ ചേർന്ന് 15.11.2017-ആം തീയതി ആലുവ കൊട്ടാരക്കടവിലുള്ള 1-ആം പ്രതിയുടെ പത്മാസരോവരം വീട്ടിലെ ഹാളിൽ വച്ച് കൂറ്റകരമായ ഗൂഢാലോചന നടത്തി മേൽ നമ്പർ കേസിൽ മാധ്യമങ്ങളോട് സംസാരിക്കുന്ന S.P. A.V.ജോർജിന്റെ വീഡിയോ യൂട്യൂബിൽ ഫ്രീസ് ചെയ്ത് വച്ച് ദൃശ്യങ്ങളിൽ S.P. A.V.ജോർജിന് നേരെ 1-ആം പ്രതി കൈ ചൂണ്ടി "നിങ്ങൾ അഞ്ച് ഉദ്യോഗസ്ഥർ അനുഭവിക്കാൻ പോവുകയാണ്.... സോജൻ, സുദർശൻ, സന്ധ്യ, ബൈജു പൗലോസ്, പിന്നെ നീ, പിന്നെ ഇതിൽ എന്റെ ദേഹത്ത് കൈവച്ച സുദർശന്റെ കൈ വെട്ടണം" എന്ന് 1-ആം പ്രതി പറയുന്നതും "ബൈജു പൗലോസിനെ നാളെ പോകുമ്പോൾ ഏതെങ്കിലും വല്ല ടക്കോ അല്ലെങ്കിൽ വല്ല ലോറിയോ വന്നു സൈഡിൽ ഇടിച്ചാൽ....ഒന്നരക്കോടി നോക്കേണ്ടിവരും അല്ലെ " എന്ന് 3-ആം പ്രതി പറഞ്ഞും. 1 മുതൽ 6 വരെ പ്രതികൾ ഗൂഢാലോചന നടത്തി ഭീഷണി മുഴക്കുന്നതും ബാലചന്ദ്രകുമാർ എന്നയാൾ നേരിട്ട് കാണാനും കേൾക്കാനും ഇടയാക്കി പ്രതികൾ കുറ്റം ചെയ്ത എന്ന കാര്യത്തിന് നെടുമ്പാശ്ശേരി പി.സ്. ക്രൈം 297 /2017 നമ്പർ കേസിലെ പുനരന്വേഷണ ഭാഗമായി ശ്രീ. ബാലചന്ദ്ര കുമാർ എന്നയാൾ അന്വേഷണ ഉദ്യോഗസ്ഥന് നൽകിയ മൊഴിയുടെയും ശബ്ദരേഖകളുടെയും അടിസ്ഥാനത്തിൽ മേൽ നമ്പർ കേസിന്റെ അന്വേഷണ ഉദ്യോഗസ്ഥനായ ആവലാതിക്കാരൻ ADGP, ക്രൈംബ്രാഞ്ച് മുമ്പാകെ നൽകിയ റിപ്പോർട്ടിന്മേൽ ബഹു : ADGP ക്രൈം ബ്രാഞ്ചിന്റെ ഉത്തരവ് നമ്പർ Ptn-649/2022/CB Dated 09.01.2022 പ്രകാരം Cr.No.06/2022U/S 116, 118, 120B, 506 and 34 IPC പ്രകാരം ഈ കേസ് രജിസ്റ്റർ ചെയ്ത് അന്വേഷണത്തിനായി Cr.No.06/CB/EKM/D/2022 എന്ന നമ്പറായി Sri.Mohanachandran Nair M.P., Supdt. Of Police, CB, Ernakulam Unit-ന നൽകുന്നു. അസ്സൽ Report (Sheet No.1 to 3), ടി റിപ്പോർട്ടിൽ ഉള്ളടക്കം ചെയ്തിട്ടുള്ള നെടുമ്പാശ്ശേരി പി .സ്.ക്രൈം 297/2017 നമ്പർ കേസിലെ പുനരന്വേഷണഭാഗമായി രേഖപ്പെടുത്തിയ പി.ബാലചന്ദ്രകുമാർ എന്നയാളുടെ മൊഴി പകർപ്പുകൾ (Sheet No.1 to 7), ടി റിപ്പോർട്ടിൽ ഉള്ളടക്കം ചെയ്തിട്ടുള്ള മേൽ നമ്പർ കേസിൽ തയാറാക്കിയ സീ ഷർ മഹസ്സറിന്റെ പകർപ്പ് (Sheet No.1 to 4) , അസ്സൽ FIR, ADGP ക്രൈം ബ്രാഞ്ചിന്റെ ഉത്തരവിന്റെ പകർപ്പ് എന്നിവ ബഹു:കോടതിക്കും, FIR, റിപ്പോർട്ട്, മൊഴി, സീഷർ മഹസ്സർ, ഉത്തരവ് എന്നിവയുടെ പകർപ്പുകളും ടി റിപ്പോർട്ടിനോടൊപ്പം ഹാജരാക്കിയ പെൻഡ്രൈവ്-ഉം അന്വേഷണർത്ഥം അന്വേഷണ ഉദ്യോഗസ്ഥനും നൽകുന്നു."

The aforesaid information is recorded in the F.I.R based on Annexure-10 complaint submitted by the 3rd respondent herein. The relevant portion of Annexure-10 is extracted hereunder:

> "ഈ പരാതി വിശദമായി പരിശോധിച്ചതിൽ എനിക്ക് ഈ കേസ് തുടരന്വേഷിക്കേണ്ടതാണെന്ന് ഉത്തമ ബോധ്യം വരികയാൽ സെക്ഷൻ 173(8) Cr.P.C. പ്രകാരം റിപ്പോർട്ട് തയാറാക്കി സ്പെഷ്യൽ പബ്ലിക് പ്രോസിക്യൂട്ടർ മുഖാന്തിരം 29.12.2021 തീയതി വിചാരണ കോടതിയിൽ സമർപ്പിച്ചിട്ടുള്ളതും തുടർന്ന് ഈ കേസിന്റെ തുടരന്വേഷണം ഞാൻ നടത്തിവരികയുമാണ്. ആയതിന്റെ ഭാഗമായി 01.01.2022, 03.01.2022 തീയതികളിൽ ശ്രീ.ബാലചന്ദ്രകുമാർ എന്ന സാക്ഷിയുടെ മൊഴികൾ രേഖപ്പെടുത്തിയിട്ടുള്ളതും 03.01.2022 തീയതി ടിയാൾ ഹാജരാക്കി തന്ന 24 ശബ്ദരേഖകൾ അടങ്ങിയ പെൻഡ്രൈവ് ബന്തവസ്സിൽ എടുത്തിട്ടുള്ളതുമാണ്. ദിലീപ് എന്ന് വിളിക്കുന്ന ഗോപാലകൃഷ്ണൻ, ടിയാന്റെ സഹോദരൻ അനൂപ്, ടിയാന്റെ സഹോദരി ഭർത്താവായ സുരാജ് , അനൂപിന്റെ ഭാര്യ സഹോദരൻ അപ്പു , ദിലീപിന്റെ സുഹൃത്ത് ബൈജു ചെങ്ങമനാട്, സാക്ഷിയായ ബാലചന്ദ്രകുമാറിന് കണ്ടാൽ തിരിച്ചറിയുമെന്ന് പറയുന്ന മറ്റൊരാളും മറ്റും ചേർന്ന് 15.11.2017 തീയതി ദിലീപ് എന്ന് വിളിക്കുന്ന ഗോപാലകൃഷ്ണനന്റെ ആലുവ കൊട്ടാരക്കടവിലുള്ള പത്മസരോവരം എന്ന വീട്ടിലെ ഹാളിൽ വച്ച് സൂചന ഒന്ന് പ്രകാരം പറഞ്ഞിരിക്കുന്ന കേസിൽ ടിയാനെ പ്രതി ചേർത്ത് അറസ്റ്റ് ചെയ്ത് നിയമനടപടികൾക്ക് വിധേയമാക്കിയതിന്റെ വിരോധത്തിൽ ടി കേസിന്റെ അന്വേഷണത്തിന് മേൽനോട്ടം വഹിച്ച ബഹു: ഫയർ ഫോഴ്സ് മേധാവിയും ഡി.ജി.പിയുമായ ഡോ.ബി.സന്ധ്യ IPS (മുൻ ADGP സൗത്ത് സോൺ), കോഴിക്കോട് കമ്മീഷണറും IGP യുമായ ശ്രീ A.V.ജോർജ് IPS (മുൻ ജില്ലാ പോലീസ് മേധാവി എറണാകുളം റൂറൽ) തൃശ്ശൂർ ക്രൈം ബ്രാഞ്ച് S.P.ശ്രീ K.S.സുദർശൻ, എറണാകുളം ക്രൈം ബ്രാഞ്ച് സെൻട്രൽ യൂണിറ്റ് II

SP ശ്രീ.M.J.സോജൻ എന്നിവരെയും കേസിന്റെ അന്വേഷണ ഉദ്യോഗസ്ഥനായ എന്നെയും അപായപ്പെടുത്തുവാൻ കൂറ്റകരമായ ഗൂഢാലോചന നടത്തിയതായും അതേക്കുറിച്ച് മേല്പറഞ്ഞ പത്മാസരോവരം വീട്ടിൽ വച്ച് ചർച്ച നടത്തിയതായും എനിക്ക് ബോധ്യപ്പെട്ടിരുന്ന . 15.11.2017 തീയതി ദിലീപിന്റെ പത്മാസരോവരം വീടിന്റെ ഹാളിൽ വച്ച് എറണാകുളം ജില്ലാ പോലീസ് മേധാവി ആയിരുന്ന ശ്രീ .A.V ജോർജ് സാർ ഈ കേസിനെ പറ്റി മാധ്യമങ്ങളോട് സംസാരിക്കുന്ന വീഡിയോ യൂട്യൂബിൽ ഫ്രീസ് ചെയ്ത് വച്ച് ദൃശ്യങ്ങളിൽ കണ്ട S.P ജോർജ് സാറിന് നേരെ ദിലീപ് കൈ ചൂണ്ടി "നിങ്ങൾ അഞ്ച് ഉദ്യോഗസ്ഥർ അനുഭവിക്കാൻ പോവുകയാണ്.... സോജൻ, സുദർശൻ, സന്ധ്യ, ബൈജു പൗലോസ് , പിന്നെ നീ, പിന്നെ ഇതിൽ എന്റെ ദേഹത്ത് കൈവച്ച സുദർശന്റെ കൈ വെട്ടണം" എന്ന് ദിലീപ് പറയുന്നതും ഗ്രണ്ടാ പണി നോക്കുന്നതിനെയും മറ്റും സംസാരിക്കുന്നതിനിടയിൽ "ബൈജു പൗലോസിനെ നാളെ പോകുമ്പോൾ ഏതെങ്കിലും വല്ല ടക്കോ അല്ലെങ്കിൽ വല്ല ലോറിയോ വന്നു സൈഡിൽ ഇടിച്ചാൽ ....ഒന്നരക്കോടി നോക്കേണ്ടിവരും അല്ലെ " എന്ന് സുരാജ് പറയുന്നതും അതിനെ കുറിച്ചും മറ്റും അവർ തമ്മിൽ സംസാരിക്കുന്നതും മേൽ പറഞ്ഞ ബാലചന്ദ്രകുമാർ നേരിട്ട് കണ്ടുവെന്നും കേട്ടുവെന്നും ടിയാൾ നൽകിയ മൊഴികളിൽ നിന്നും ഹാജരാക്കി തന്ന ശബ്ദരേഖകളിൽ നിന്നും കണ്ടെടുത്ത മറ്റ് രേഖകളിൽ നിന്നും വ്യക്തമാകുന്നുണ്ട്. പ്രതികൾ മേൽ പറഞ്ഞ വിധത്തിൽ ഗൂഢാലോചന നടത്തിയതിന്റെ അടിസ്ഥാനത്തിൽ ടിയാന്മാർ അന്വേഷണ സംഘത്തിലെ മേല്പറഞ്ഞ ഉദ്യോഗസ്ഥരെ അപായപ്പെടുത്താൻ ശ്രമിക്കുന്നതായി ഞാൻ വിശ്വസിക്കുന്നു. ഇക്കാര്യത്തിൽ പ്രതികൾക്കെതിരെ ഉചിതമായ നിയമനടപടികൾ സ്വീകരിക്കണമെന്ന് അപേക്ഷിക്കുന്നു.”

From the aforesaid documents, it is evident that the basic information which the 3rd respondent received was from the complaint submitted by the said Balachandra Kumar and also from the

statements recorded by the 3rd respondent as part of further investigation of the Crime No.297/2017. Annexures-11 and 12 are the statements of the said Balachandra Kumar recorded on 1.1.2022 and 3.1.2022, respectively. Even though most of the contents of the same are related to the subject matter of Crime No.297/2017, the aforesaid statements also reveal certain aspects relating to this case. The relevant portion of Annexure-11 statement is extracted for easy reference as follows:

> "ദിലീപിനെ അറസ്റ്റ് ചെയ്ത പഴയ വിഷ്വൽസ് യൂട്യൂബിൽ കാണുന്നതിനിടയിൽ S.P എ.വി. ജോർജിന്റെ വിഡിയോ കണ്ട് "അഞ്ച് ഉദ്യോഗസ്ഥന്മാർ - നിങ്ങൾ അനുഭവിക്കും" എന്ന് ദിലീപ് പറഞ്ഞു. ഇതിനിടയിൽ ദിലീപ് ഇടയ്ക്കിടെ അകത്ത് പോയി മദ്യപിക്കുന്നുണ്ടായിരുന്നു. അന്നേരം അവിടെ ദിലീപിന്റെ ഒരു സുഹൃത്ത് എത്തി. അയാളുടെ പേര് എനിക്കറിയില്ല. അയാളുടെ സംസാരത്തിനിടയിൽ 'ഇൻഷാ അള്ളാ' എന്ന് പറയുന്നത് കേട്ടു. അയാൾ ഏതോ ഒരു മന്ത്രിയുടെ അടുത്ത സുഹൃത്താണെന്ന് അയാളുടെ സംസാരത്തിൽ നിന്നും എനിക്ക് വ്യക്തമായി. അന്വേഷണ സംഘത്തിലെ ഏതോ ഒരു ഉദ്യോഗസ്ഥന്റെയോ മറ്റോ അനുജനുമായി അയാൾ സംസാരിച്ചുവെന്നും അയാളവിടെ പറഞ്ഞു. "പൾസർ സുനിയും സംഘവും പുറത്തേക്കിറങ്ങിയാൽ അവർക്ക് പണി കൊടുക്കണമെന്ന് എല്ലാവരും ചേർന്ന് ചർച്ച നടത്തുകയും ചെയ്തു. സാഗർ എന്ന സാക്ഷി വീണ്ടും മൊഴി പൊലീസിന് അനുകൂലമായി കൊടുത്തേക്കുമോ എന്ന ദിലീപിന്റെ ചോദ്യത്തിന് അവിടെ വന്ന ദിലീപിന്റെ സുഹൃത്ത് മറുപടി കൊടുക്കുന്നുണ്ടായിരുന്നു . ഏതോ ഉദ്യോഗസ്ഥയോട് സാഗർ എന്ന സാക്ഷിയുടെ കാര്യം സാസംസാരിച്ചുവെന്നും, ആ

ഉദ്യോഗസ്ഥയെ താൻ നേരിൽ കണ്ടുവെന്നും അയാൾ ദിലീപിനോട് പറഞ്ഞു. അന്വേഷണ ഉദ്യോഗസ്ഥർക്ക് പണി കൊടുക്കണമെന്നും അവർ മൊത്തത്തിൽ തീരുമാനമെടുത്തു. അന്വേഷണ ഉദ്യോഗസ്ഥരിൽ സോജൻ, സുദർശൻ എന്നീ രണ്ട് പേർക്കും നല്ല ശിക്ഷയായിരിക്കും കൊടുക്കുന്നതെന്ന് ദിലീപ് പറയുന്നതും ഞാൻ കേട്ടു."

These are the basic information on which Annexure-9 F.I.R was registered. Therefore, the crucial question is whether this information attracts the offences alleged in Annexure -9 FIR.

17. The specific contention put forward by the learned Senior Counsel for the petitioner is that the contents of the statements as referred to above are only mere utterances made by the petitioner while he was in his residence. The further contention is that there are no materials indicating any further steps taken in pursuance to the same, and in the absence of such further steps, no such offences are attracted. Even if it is assumed that the petitioner was keeping a grudge against the police officers and wanted to cause harm to them, that by itself is not sufficient to prosecute the petitioner for the

offences alleged, points out the learned Senior Counsel. According to him, there must be materials indicating a specific design to do away with or otherwise cause harm to the police officers concerned, and in the absence of the same, he cannot be implicated for the offences alleged.

18. While considering the said contentions, it is to be noted that some of the crucial offences incorporated in Annexure-9 are under Sections 116 and 118 of the IPC, which relate to the abetment of offences, including the offence punishable with death or imprisonment for life. The offence of 'abetment' is defined under Section 107 IPC which reads as follows:

> "107. Abetment of a thing
>
> A person abets the doing of a thing, who-
>
> First-Instigates any person to do that thing; or
>
> Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
>
> Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing."

In this case, what is relevant is the offence described in the above provision as "Secondly". A careful reading of the said provision would indicate that, in order to attract the offence of abetment by conspiracy, an act for illegal omission, should take place in pursuance of that conspiracy. In other words, the commission of an act or an illegal omission in furtherance of a conspiracy is a mandatory requirement for attracting the offence of abetment. This is clear from the words used in 'Secondly" of the said provision, i.e. *"if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing"*. **In Pramatha Nath Talukdar v. Saroj Ranjan Sarkar [AIR 1962 SC 876],** the aforesaid position of law was made clear, and the relevant portion of the said decision, which was made while discussing the distinction between the offences of abetment and criminal conspiracy, are extracted below:

> *"Section 120-A which defines the offence of criminal conspiracy and Section 120-B which punishes the offence are in Chapter V-A of the Indian Penal Code. This Chapter introduced into the criminal law of India a new offence, namely,*

the offence of criminal conspiracy. It was introduced by the Criminal Law Amendment Act, 1913 (8 of 1913). Before that, the sections of the Indian Penal Code which directly dealt with the subject of conspiracy were those contained in Chapter V and Section 121-A (Chapter VI) of the Code. The present case is not concerned with the kind of conspiracy referred to in Section 121A. The point before us is the distinction between the offence of abetment as defined in Section 107 (Chapter V) and the offence of criminal conspiracy as defined in Section 120-A (Chapter V-A). Under Section 107, second clause, a person abets the doing of a thing, who engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing. Therefore, in order to constitute the offence of abetment by conspiracy, there must first be a combining together of two or more persons in the conspiracy; secondly, an act or illegal omission must take place in pursuance of that conspiracy and in order to the doing of that thing. It is not necessary that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed. It is worthy of note that a mere conspiracy or a combination of persons for the doing of a thing does not amount to an abetment. Something more is necessary, namely, an act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing for which the conspiracy was made. Before the introduction of Chapter V-A conspiracy, except in cases provided by Sections 121-A, 311, 400, 401 and 402 of the Indian Penal Code, was a mere species of abetment where an act or an illegal omission took place in pursuance of that conspiracy, and amounted fee a distinct offence. Chapter V-A, however, introduced a new offence defined by Section 120-A. That offence is called the offence of criminal conspiracy and consists in a mere agreement by two or more persons to do or cause to be done an illegal act or an act

> *which is not illegal by illegal means; there is a proviso to the section which says that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. The position, therefore, comes to this. The gist of the offence of criminal conspiracy is in the agreement to do an illegal act or an act which is not illegal by illegal means. When the agreement is to commit an offence, the agreement itself becomes the offence of criminal conspiracy. Where, however, the agreement is to do an illegal act which is not an offence or an act which is not illegal by illegal means, some act besides the agreement is necessary. Therefore, the distinction between the offence of abetment by conspiracy and the offence of criminal conspiracy, so far as the agreement to commit an offence is concerned, lies in this. For abetment by conspiracy mere agreement is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for. But in the offence of criminal conspiracy the very agreement or plot is an act in itself and is the gist of the offence. Willes, J. observed in Mulcahy v. Queen [(1868) LR 3 HL 306 at 317] :*
>
> > *"When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for the use of criminal means."*

From the aforesaid provision, it is clear that in order to attract the offence of abetment, as defined under section 107, there must be some positive act or an illegal omission in pursuance

of a conspiracy between the accused. Since the offences under sections 116 and 118 are different forms of offences of abetment, the essential requirement for making out the said offences are the same as mentioned above. On going through the contents of Annexure-9, no such positive act or illegal omission is seen. It only mentions a design or agreement without any consequent action or omission. Therefore, it cannot be concluded that the offences under Sections 116 and 118 of IPC are made out from the information furnished. However, the aforesaid provisions can be incorporated if there are allegations against the accused, which would attract the offence under section 120B. This is because, as per section 120B of IPC, the punishment for the criminal conspiracy (in case no express punishment is provided in IPC) is provided in the same manner as if the accused had committed the offence of abetment. Therefore, in such circumstances, if the accused is found to have committed criminal conspiracy to commit an

offence for which no express punishment is provided in the IPC, he is deemed to have committed the offence of abetment, for the purpose of imposing punishment. Thus the same depends upon whether the offence under section 120B of IPC is made out and I shall deal with the said question when considering the ingredients of section 120B IPC at a later part of this order.

19. Another offence is under Section 506 which reads as follows:

> **"506. Punishment for criminal intimidation:**
>
> *Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;*
>
> ***If threat be to cause death or grievous hurt, etc*** *— And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."*

In **Manik Taneja and Another v. State of Karnataka and Another [(2015)7 SCC 423]** in paragraphs 11 and 12, it was observed as follows:

" 11. Section 506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation", as defined in Section 503 IPC is as under;

*"**503. Criminal intimidation.**- Whoever,threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom the person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or omit to do any act, which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.*

Explanation.—A threat to injure the reputation of any deceased person in whom the person is interested , is within this section"

A reading of the definition of 'criminal intimidation' would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intend to cause alarm to the person threatened or it must be to do an act which he is not legally bound to do, or omit to do an act which he is legally entitled to do.

12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered for deciding as to whether what he has stated comes within the meaning of "criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant……."

Thus, it is evident that unless the threat, which is the subject matter of the offence, is conveyed to the victim or was intended to be conveyed to him so as to cause an alarm in the mind of the complainant or the victim, it cannot be treated as criminal intimidation. In this case, the offence of Section 506 is seen incorporated in Annexure-9 based on certain utterances made by the petitioner while he was in his own residence. The aforesaid utterances were made while seeing the images of five police officers in a video. The manner and circumstances in which the aforesaid utterances were made would not amount to any criminal intimidation, as under no stretch of the imagination, it can be concluded that the same was intended to be conveyed to the victims or, in fact, conveyed to them. The said statements can never be treated as the statements made with the intention to cause alarm to the minds of the said police officers. The utterances were made only to the images of the alleged victims and not to them

directly, and there was nothing to indicate that, it was intended to be conveyed to the said victims. Moreover, the materials showing the intention of the petitioner to cause an alarm in the minds of the said police officers and to compel/persuade them to do an act or omit to do something, are also lacking in this case. It is pertinent to note in this regard that the aforesaid utterances were allegedly made on 15.11.2017, and the crime is registered in the year 2022, when the said Balachandra Kumar made revelations in this regard. In such circumstances, in the absence of specific allegations in Annexure-11 or Annexure-10 complaint, which form the basis of Annexure-9, it cannot be concluded that the offence under Section 506 is attracted.

20. What remains is the offence under Section 120B of IPC. The punishment for the offence under Section 120B IPC in respect of criminal conspiracy to commit an offence with death, imprisonment for life or rigorous imprisonment for a term of two

years or upwards, shall, where no express provision is made in the IPC for punishment for such conspiracy, be punishable in the same manner as if he had abetted such offence. Thus, it was pointed out that the punishment of section 120B depends upon the offence for the commission of which the conspiracy was hatched. Therefore, it was contended that, in this case, while registering Annexure-9 FIR, no specific offence for which conspiracy is allegedly hatched is seen mentioned. Other than section 120B, the offences alleged are under Sections 116, 118 and 506 of the IPC. Thus the petitioner contends that, since the aforesaid offences are not made out from the information furnished, the offence of conspiracy would not lie independently. It is true that, I had already found that the offences under Sections 116, 118 and 506 of IPC are not attracted from the allegations contained in Annexure-9. However, it is a fact that, subsequently, a further report was submitted by the police

incorporating the offence under Section 302 IPC. The contention of the learned Senior Counsel in this regard is that since the conspiracy alleged in Annexure-9 is in respect of the commission of an offence under Sections 116, 118 and 506 IPC, which are not attracted, it cannot be concluded that it reveals any cognizable offence. In such circumstances, the registration of Annexure-9 was illegal, and subsequent inclusion of Section 302 IPC cannot improve the case of the police, contends the learned Senior Counsel for the petitioner. However, I am not inclined to accept the aforesaid contention. This is particularly because what is relevant is not the offences mentioned explicitly in the FIR but what is revealed from the contents of the information furnished therein. Merely because a particular provision of the offence was omitted to be included in the First Information Statement, it cannot be concluded that the aforesaid offence is not attracted. In case the contents of the First

Information Report reveal the commission of a particular offence, non mentioning the provision of the said offence is not material, and it would not adversely affect the prosecution case. In **Bijumon V. State of Kerala and Anr. [2018 (3)KLT 627,** the aforesaid situation was dealt with by this Court in paragraph 18 thereof in the manner as follows:

> *"18. The fact that the penal provision of S.295A IPC is not mentioned in the first information report is of little consequence. Mentioning a wrong provision of law in the first information report should not be a ground for rejecting the prosecution case. It should not also be a ground for granting anticipatory bail to the accused. The question is whether the allegations levelled against the accused would constitute an offence and if so, which penal provision is attracted. At any stage of the investigation of the case, the investigating officer could correct a mistake in mentioning a particular section of offence. Even after the charge sheet is filed, the Court may alter or add to any charge at any time before judgment is pronounced, as provided in S.216 of the Code. S.215 of the Code provides that no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice. If this is the position of law in respect of an error in the charge, an error in mentioning the section of offence in the first information report would not definitely cause prejudice to the accused and it would not entitle him to the grant of anticipatory bail (See Prakash v. State of Kerala, 2009 (4) KHC 329 : 2009 (4) KLT 348)."*

21. Thus, the question to be considered in this case is whether the offence under Section 120B IPC is attracted, even if the other offences mentioned in the FIR are not seen attracted. Section 120B IPC deals with criminal conspiracy. Section 120A of IPC defines '*criminal conspiracy*' in the manner as follows:

> ***"120A. Definition of criminal conspiracy***
> *When two or more persons agree to do, or cause to be done,-*
> *(1) an illegal act, or*
> *(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*
> *PROVIDED that* ***no agreement except an agreement to commit an offence*** *shall amount to a criminal conspiracy unless some act besides the agreement is one by one or more parties to such agreement in pursuance thereof.*
> *Explanation: It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."*

The careful reading of the aforesaid definition, particularly the proviso to Section 120A, would reveal that with regard to the conspiracy to commit the offence, an agreement to commit an offence by itself is an offence. It is not necessary that some acts besides the agreement are

to be performed for attracting the offence of criminal conspiracy to commit an offence. In other words, agreement to commit an offence by itself is an offence as defined under Section 120A IPC which is punishable under Section 120B. Therefore, the crucial question that arises here is whether the FIR contained an allegation/information revealing an agreement to commit an offence. I have already extracted the relevant provisions of the FIR and the complaint which formed the basis of the said FIR, which are produced in the Crl.MC as Annexures-9 and 10, respectively. It is true that, the primary allegation raised in the said F.I.R is based on some utterances made by the petitioner while he was sitting in his residence. I am of the view that the aforesaid utterances by themselves cannot be treated as a material for attracting the offence of criminal conspiracy. For the said purpose, an agreement or a design for the commission of a crime is required. When the contents of Annexures 9 and 10, along with the

statements of Sri.Balachandra Kumar produced in this Crl.M.C as Annexures 11 and 12 are taken into consideration; it reveals an allegation that on 15.11.2017, the petitioners have arrived at an agreement for causing harm to the police officers. A specific statement to that effect is contained therein. In my view, in this case, the offence of Section 120B IPC is attracted not because of the utterances allegedly made by the petitioner, but because of the statement of the said Balachandra Kumar, which is also recorded in the complaint of 3rd respondent, that accused have decided to cause harm to five police officers named therein. It is true that it does not specifically state the commission of any murder, but the agreement is apparently for causing physical harm to the police officers. The petitioner also reported having stated that the hands of Sri.Sudharsan, one of the police officers, would be chopped off. The specific contention of the learned DGP is that the aforesaid utterances are, in fact, the reflections

of the agreement which they arrived at and intended to execute at a future point of time. It is true that the aforesaid information does not contain any details as to the nature of the agreement and the extent thereof or the further steps they have taken in pursuance to the same. However, as I have already observed above, to consider the question as to whether a cognizable offence is attracted or not, what is relevant is the information furnished and not the materials produced. When the averments in the FIR and the related documents are considered in that perspective, the aforesaid allegations may constitute a cognizable offence, i.e. the offence of criminal conspiracy to commit an offence, as it refers to an agreement between the accused, for committing an offence. This is particularly because the contents of Annexures 9 and 10 reveal the formation of an agreement to cause harm to the police officers, and the reading of the allegations as a whole, prima facie, suggests an

intention to cause physical injuries to the police officers, including chopping off hands. Therefore, it reveals an allegation of formation of an agreement to commit an offence punishable with imprisonment for more than two years.

22. The position of law with regard to the offence as defined under Section 120A, which is punishable under Section 120B IPC, and the independent existence thereof even in the absence of further steps in pursuance of a conspiracy, has been a subject matter in a large number of decisions. In **Nirmal Chandra De v The King-Emperor (AIR 1927 Cal 265)**, it was observed by the Calcutta High Court, in the manner as follows:

> *"5. Criminal conspiracy consists in the agreement of two or more persons to commit an offence punishable by law. It is undoubtedly true that the law does not take notice of the intention or the state of mind of the offender and there must be some overt act to give expression to that intention. It was observed in the case of Mulcahy v. The Queen [1868] 3 H.L. 306 by Willes, J., as follows:*
>
> > *"A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable, when two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against*

> *promise, actus contractum, capable of being enforced, if lawful, punishable if for a criminal object or for the use of criminal means"*
>
> *6. This dictum has been accepted as good law. The overt act therefore, in a case of conspiracy consists in the agreement of the parties and this is the view which has been adopted by the Indian Legislature in the definition of "conspiracy" as given in Section 120A I.P.C., in which the proviso says that:*
>
> *"no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof".*
>
> *7. This definition excludes the agreement to commit an offence from the category of such conspiracies in which it is necessary that the agreement should be followed by some act."*

In State of **Madhya Pradesh v. Sheetla Sahai and Others [(2009) (8) SCC 617],** the Hon'ble Supreme Court was pleased to observe in paragraphs 37, 38, 39 and 40 as follows:

> *" 37. Criminal conspiracy is an independent offence. It is punishable separately. Prosecution,therefore, for the purpose of bringing the charge of criminal conspiracy read with the aforementioned provisions of the Prevention of Corruption Act was required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of bringing a criminal misconduct on the part of an accused.*
>
> *38. A criminal conspiracy must be put to action inasmuch as so long a crime is generated in the mind of an accused, it does not become punishable. What is necessary is not thoughts, which may even be criminal in character, often involuntary, but offence*

> *would be said to have been committed thereunder only when that take concrete shape of an agreement to do or cause to be done an illegal act or an act which although not illegal by illegal means and then if nothing further is done the agreement would give rise to a criminal conspiracy.Its ingredients are*
> *(i) an agreement between two or more persons;*
> *(ii) an agreement must relate to doing or causing to be done either (a) an illegal act; (b) an act which is not illegal in itself but is done by illegal means.*
>
> *39. What is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means.While saying so, we are not oblivious of the fact that often conspiracy is hatched in secrecy and for proving the said offence substantial direct evidence may not be possible to be obtained. An offence of criminal conspiracy can also be proved by circumstantial evidence.*
>
> *40. In Kehar Singh and Ors. v. State (Delhi Administration), [(1988) 3 SCC 609 at 731], the following passage from Russell on Crimes (12th Edn. Vol 1):*
>
> > *"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough"*

Thus, from the observations of the Hon'ble Supreme Court as above, it is evident that, if there is a concrete agreement or meeting of mind by two or more persons to commit an offence, that by itself is an offence punishable under Section 120B IPC.

In this case, it is true that, Annexure-9 FIR does not contain any substantiating materials indicating the nature of the agreement and the stage of execution of such agreement. However, it contains information as to the existence of an agreement to commit an offence punishable with more than two years. In such circumstances, no discrepancies or any legal infirmity can be attributed to the registration of the said FIR. The contention of the learned counsel for the petitioner is that the registration of FIR is a violation of Section 154 Cr.PC is, therefore, liable to be rejected.

23. The main prayer sought by the petitioner is to quash Annexure-9 FIR, as according to him, the offences alleged against him are not made out. It is also his case that the registration of the case itself is with malafide intentions. To support the aforesaid contentions, it is alleged that the 3rd respondent, the first informant had interacted with the said Balachandra Kumar on

three occasions, i.e. on 2.10.2021, 16.11.2021 and 27.12.2021. In addition to that, by placing reliance upon Annexure-15 series, it is highlighted that the 5th respondent, who has ordered the registration of crime in this case based on Annexure-10 complaint submitted by the 3rd respondent, is not a person with a clean track record in his service. The acquaintance of the 5th respondent with the aforesaid Balachandra Kumar is also sought to be established by certain Whatsapp messages produced as Annexure-17. The fact that the 5th respondent was inducted into the Special Investigation Team for conducting further investigation in Crime No.297/2017 immediately after the revelations made by the said Balachandra Kumar was also relied on by the petitioner to substantiate the malafide intention and concerted efforts on the part of the 3rd and 5th respondents to implicate the petitioner in this Crime. On examining the petitioner's contentions in the matter of malafides and materials relied on by

him, I am unable to accept the same. I am of the view that there are no sufficient materials produced by the petitioner to substantiate the same, apart from mere allegations. Even though it was contended that the 5th respondent was acquainted with the said Balachandra Kumar, the only material is certain Whatsaap messages in which the 5th respondent was not a party. His name is seen referred to therein. The message does indicate that the 5th respondent is a family friend of the young singer who was recommended by Sri.Balachandra Kumar. However, the contents of the said message cannot be accepted as a material showing the close direct relationship between the said parties. Therefore we are not concerned with the alleged tainted past of the 5th respondent as well. The investigation is being conducted by the 2nd respondent, and there are no allegations raised against him. In such circumstances, I do not find any reason to accept the contentions of the learned counsel for the petitioner. In my view,

even otherwise, the aforesaid contentions cannot be treated as a valid ground for quashing the proceedings. **In Umesh Kumar v. State of A.P. [(2013)10 SCC 591],** it was observed by the Hon'ble Supreme Court as follows:

> *"15. The issue of malafides looses its significance if there is a substance in the allegation made in complaint moved with malice. In Sheo Nandan Paswan v. State of Bihar & Ors., AIR 1987 SC 877, this Court held as under:*
>
> *"It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or complainant."*
>
> *16. In Parkash Singh Badal v. State of Punjab & Ors., AIR 2007 SC 1274, this Court held as under:*
>
> *"The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence.Therefore, the plea of mala fides as raised cannot be maintained."*
>
> *17. In State of A.P. v. Goloconda Linga Swamy & Anr., AIR 2004 SC 3967, this Court held as under:*
>
> *"It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of malafides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding."*
> *(See also: K. Karunakaran v. State of Kerala, (2007) 1 SCC 59).*
>
> *18. Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the*

> *applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal."*

24. In this case, I have already found that there are sufficient allegations contained in Annexure-9 FIR and the documents based on which the same was registered, for attracting the offence of Section 120B IPC. Therefore, the question of malafides loses its significance by virtue of the same, in the light of the observations made by the Hon'ble Supreme Court.

25. Another contention put forward by the learned Senior Counsel for the petitioner was by placing reliance upon the judgment of the Hon'ble Supreme Court in **Lalita Kumari v. Govt. of U.P. and Others [(2014)2 SCC 1].** In the said judgment, a constitutional bench of the Hon'ble Supreme Court considered the circumstances under which a preliminary inquiry is warranted before the registration of the FIR. In paragraph 120.6, the

nature of the cases in which preliminary inquiry may be made which reads as follows:

> *"120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*
> *(a) Matrimonial disputes/family disputes*
> *(b) Commercial offences*
> *(c) Medical negligence cases*
> *(d) Corruption cases*
> *(e)Cases where there is abnormal delay/latches in initiating criminal prosecution, for example, over three months' delay in reporting the matter without satisfactorily explaining the reasons for the delay."*

It was pointed out by the learned Senior Counsel that one of the instances mentioned by the Hon'ble Supreme Court is abnormal delay/latches in initiating criminal prosecution over three months delay in reporting the matter before satisfactorily explaining the delay. By placing reliance upon the same, it is contended that, in this case, the alleged conspiracy took place on 15.11.2017, and the revelation in this regard was made only during the month of December 2021. The crime was registered on 9.1.2022. In such circumstances, it was pointed out that the registration of FIR without a preliminary inquiry

was not proper. I am of the view that, the lack of any preliminary inquiry by itself cannot be a reason to quash the proceedings. The purpose of preliminary inquiry is to allow the investigation officer to satisfy himself that an offence was indeed committed and the complaint was not false. It is true that the alleged conspiracy took place on 15.11.2017, and the crime was registered only in the year 2022. This was because of the reason that the revelation about the conspiracy was made only during the month of December 2021, and the knowledge of the same by the alleged victims was only at that time. Therefore, the proceedings cannot be quashed on that ground. Apart from the above, another crucial aspect to be noticed is that even though the revelation of the said Balachandra Kumar was made through visual media on 25.12.2021, his statements were recorded subsequently. The audio clips produced by him to substantiate his claims were also examined. The F.I.R was registered thereafter. Therefore, it was

not a case where the case was registered merely upon getting the information, but some inquiry is seen conducted before the same. In such circumstances, I do not find any merit in the contention of the learned counsel for the petitioner.

26. About the power of this Court to interfere in an investigation, the settled position of law is that it is very much limited. In **State of Haryana and Others v. Ch.Bhajan Lal and Others[(1992) Supp(1) SCC 335]** the Hon'ble Supreme Court framed guidelines regarding the manner by which the exercise of the powers of the High Court in the matter of interfering with the investigation. The guidelines prescribed by the Hon'ble Supreme Court in paragraph 104 are extracted hereunder:

> "104. In the backdrop of the interpretation of the various relevant provisions of the Code under Chap.XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Art.226 or the inherent powers under S.482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be

exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F. I. R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156 (1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

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

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2)of the Code.

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

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

> providing efficacious redress for the grievance of the aggrieved party.
>
> 7. Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The learned counsel for the petitioner places reliance upon guidelines numbers 5 and 7 thereof and contends that the same is attracted in the facts of this case. I do not find any merit in the said contentions. Of course, it is true that, at the moment, there are no materials substantiating the aforesaid allegations. It is relevant to note that while considering the Bail Applications submitted by the accused in this case, this Court observed in Annexure-18 order that the materials placed on record do not attract the offences alleged against the petitioner. However, it is to be noted that, in the aforesaid order itself, it has been clarified by this Court that the observations made by the Court were only to consider the question of whether the petitioners are entitled to bail or not. In this case, the

question that is being considered is whether interference in the investigation is warranted by invoking the power under Section 482 Cr.PC. To consider the invocation of the said powers while interfering with the FIR, the relevant consideration can only be the allegation contained in the FIR and not the materials placed in support of the same. I have already observed that the materials substantiating the allegations are to be collected through the process of investigation, which has to commence based on the registration of the FIR. Therefore, the observations made by this Court in the order passed in the Bail Application cannot be relied upon to consider an application under Section 482 Cr.PC, even though I am prepared to accept the contention of the petitioner that, at the moment, there are no conclusive materials substantiating the allegations in the FIR. As already observed, what is relevant at this time is whether the allegations constitute an offence, which I have already found against the petitioner.

Even if what is revealed from the allegations is a doubtful case for making out the offences, in my view, at the stage of FIR, the benefit of the doubt should go in favour of the investigation and not to the accused. This is mainly because, an interference in the investigation at this stage would foreclose all opportunities for the police to collect materials in support of the allegations. In my view, the duty of the court is not confined to seeing that no innocent person is punished but also to ensuring that proper punishment is granted to the real culprits. Therefore a balance has to be struck, and I find that a proper balancing can be made in this case, by allowing the investigation to continue.

27. Similarly, another contention is that the criminal proceedings are manifestly attended with malafides, and therefore, guideline No.7 in Bhajan Lal's case is applicable. I have already entered a finding in this regard against the petitioner, and

hence the said contention of the petitioner is not sustainable.

28. Even otherwise, the power of this Court under Section 482 Cr.PC in the matter of interference at the stage of FIR is very much limited. In **S.M. Datta v. State of Gujarat [(2001) 7 SCC 659],** it was observed by the Hon'ble Supreme Court in paragraph 9 of the judgment as follows:

> "9. We respectfully record our concurrence therewith. Criminal proceedings, in the normal course of event sought not to be scuttled at the initial stage, unless the same amounts to an abuse of the process of law. In the normal course of events thus, quashing of a complaint should rather be an exception and a rarity than an ordinary rule. The genuineness of the averments in the FIR cannot possibly be gone into and the document shall have to be read as a whole so as to decipher the intent of the maker thereof. It is not a document which requires decision with exactitude neither it is a document which requires mathematical accuracy and nicety, but the same should be able to communicate or indicative of disclosure of an offence broadly and in the event the said test stands satisfied, the question relating to the quashing of a complaint would not arise. It is in this context however one feature ought to be noticed at this juncture that there cannot possibly be any guiding factor as to which investigation ought to be scuttled at the initial stages and investigations which ought not be so scuttled. The First Information Report needs to be considered and if the answer is found on a perusal thereof which leads to disclosure of an offence even broadly, law Courts are barred from usurping the jurisdiction of the police since two organs of the State operate in two

> specific spheres of activities and one ought not to tread over the other sphere."

In the light of the judicial precedents discussed above and applying the principles laid down therein in the facts of this case, the only conclusion possible is that the petitioner could not make out a case, warranting interference at this stage. Even though the power of this Court under Section 482 Cr.PC is very wide; when it comes to the question of quashing an FIR, the same can be invoked only in the rarest of rare cases. I do not find that this is a case that falls in that category, and hence I do not find any circumstances warranting interference in this case. Therefore the prayer for quashing Annexure-9 FIR is hereby declined.

29. The next question that arises is the alternative prayer sought by the petitioner; transfer of investigation of the case to the 8th respondent, i.e., CBI, to ensure fair, impartial and truthful investigation. The main reasons

highlighted by the petitioner in support of the aforesaid prayers are as follows:

a) The allegation against the petitioner is entering into a conspiracy to do away with some police officers, including a DGP. Therefore, senior police officers are interested in the matter, and they are likely to influence the investigating officer;

b) The first informant, who is the 3rd respondent in this Crl.M.C. and also the investigation officer in Crime No.297/2017, has a personal grudge against the petitioner, and the registration of the crime is the outcome of the same;

c) The 3rd respondent and the Balachandra Kumar, who provided the information to him as to the commission of the crime, had mutual discussions on three occasions before the registration of the crime;

d) Immediately after the registration of the crime in this case and also after commencing

the re-investigation in Crime No.297/2017, a search was conducted in the residences of the accused persons jointly by the special investigation team (consisting of 3rd respondent), which is conducting re-investigation in Crime No.297/2017 and also by the investigation officer of this crime. According to the petitioner, the same was with malafide intention and to create false evidence supporting the allegations;

e) Personal acquaintance of the said Balachandra Kumar with the 5th respondent herein who ordered registration of the crime in this case on getting the complaint from the 3rd respondent. The fact that the 5th respondent was inducted as one of the members of the special investigation team for supervising the further investigation of Crime No.297/2017. The disciplinary proceedings and certain adverse remarks against the 5th respondent made in some other proceedings were also relied on;

f) The registration of crime in the year 2022 regarding a criminal conspiracy alleged to have hatched on 15.11.2017, and there was no evidence of any further steps being taken in pursuance of such alleged criminal conspiracy.

30. The learned Senior counsel appearing for the petitioner places reliance upon the decision rendered by the Honourable Supreme Court in **Babubhai v. State of Gujrat and Others [(2010) 12 SCC 254],** wherein it was observed that, not only a fair trial but a fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India.

31. Before going into the merits of the aforesaid contention, the crucial aspect to be considered is about the maintainability of the relief of transfer of investigation to CBI. It is to be noted that, in this case, the prayer for transfer of investigation is sought in a petition under Section 482 Cr.P.C by invoking the inherent powers of this Court. In **State of Punjab v.**

Davinder Pal Singh Bhullar and Others [(2011) 14 SCC 770], this Court made the following observations:

> "60.The rule of inherent powers has its source in the maxim "*quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa, esse non potest*" which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist. The order cannot be passed by-passing the procedure prescribed by law. *The court in exercise of its power under Section 482 Cr.P.C. cannot direct a particular agency to investigate the matter or to investigate a case from a particular angle or by a procedure not prescribed in Cr.P.C.* Such powers should be exercised very sparingly to prevent abuse of process of any court. Courts must be careful to see that its decision in exercise of this power is based on sound principles."

However, in the said decision, it was made clear that, the High Court can issue appropriate directions in this regard by invoking powers under Article 226 of the Constitution of India.

32. In such circumstances, even if the prayer for transfer of investigation to CBI is not maintainable under Section 482 Cr.P.C., nothing precludes this Court from issuing appropriate directions in this regard by exercising powers under Article 226 of the Constitution of India.

When it comes to the invocation of the said powers, the next question that arises for consideration is whether the petitioner being an accused, has a right to seek such a prayer. While scanning through the precedents on the point, one of the crucial observations in this regard is found in **Sivakumar E. v. Union of India and others [(2018)7 SCC 365],** which was rendered by the Honourable Supreme Court. The relevant observations in Paragraph No.9, which reads as follows:

> *"9. .....But a person who is named as an accused in the FIR, who otherwise has no right to be heard at the stage of investigation or to have an opportunity of hearing as a matter of course, cannot be heard to say that the direction issued to transfer the investigation to CBI is a nullity. This ground, in our opinion, is an argument of desperation and deserves to be rejected."*

33. It is true that, the above observations were made by the Honourable Supreme Court while considering a challenge raised by the accused therein against the direction issued by the High Court transferring the investigation to CBI. The prayer for transfer of investigation to another

agency, at the instance of the accused, was considered in **Sanjiv Rajendra Bhatt v. Union of India and Others [(2016) 1 SCC 1]**, wherein it was observed that the accused has no right concerning the manner of investigation or mode of prosecution.

34. Similarly, in **Romila Thapar and others v. Union of India and Others [(2018) 10 SCC 753]**, the Honourable Supreme Court again considered the specific question as to whether the investigating agency can be changed at the behest of the accused. After elaborately discussing the various judicial precedents in this regard, it was observed in paragraph No.30 as follows:

> *"In view of the above, it is clear that the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court-monitored investigation."*

35. The aforesaid view was reiterated by the Honourable Supreme Court in **Arnab Ranjan Goswami v. Union of India and Others [(2020) 14 SCC 12]**.

36. Thus, from the principles laid down by the Honourable Supreme Court in the aforesaid decisions, it is evident that the petitioner/accused does not have any right to seek a change of investigation agency. The reason highlighted by the Honourable Supreme Court is that, during the course of the investigation, the accused does not have any right to be heard. In **Romila Thapar's** case, there is a dissenting judgment favouring transfer of agency, but even in that, the finding is that such a direction ought to be issued by invoking the powers of the Honourable Supreme Court under Article 142 of the Constitution of India, which is not available to the High Court.

37. The question regarding the circumstances under which transfer of investigation can be ordered by the High Court while exercising its constitutional powers has been considered by the Honourable Supreme Court in **State of W.B v. Committee of Protection of Democratic Rights**

[(2010) 3 SCC 571], and in paragraph No.70 it is held as follows:

> "Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

38. The learned counsel for the petitioner relied on **K.V.Rajendran v. Superintendent of Police CBCID and Others** [(2013) 12 SCC 480], wherein it was observed that the court could exercise its constitutional powers for

transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases, such as where high officials of State authorities are involved, or the accusation itself is against top officials of the investigating agency, thereby allowing them to influence the investigation. The learned counsel for the petitioner also places reliance upon the observations made by the Honourable Supreme Court in **Divine Retreat Center v. State of Kerala [(2009) 6 SCC 65]**, to the effect that neither the accused nor the complainant or informant are entitled to choose there own investigating agency, to investigate the crime in which they are interested.

39. At the same time learned DGP places reliance upon the observations made in paragraph No.13 of **K.V.Rajendran's case** supra, which reads as follows:

> "...This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the

> State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies."

40. According to the learned DGP, no such circumstances are in existence in this case, warranting an order of transfer of the case to CBI. It was pointed out that a fair and unbiased investigation is going on.

41. Thus, when the question of the necessity to refer the investigation to another agency is considered, the main contention put forward by the petitioner is regarding the interest that the police have in this case. This is mainly because the allegation is regarding a conspiracy hatched to do away with the police officers, including a senior officer at the helm of affairs of the Department. The reliance placed on the observations in **K.V.Rajendran's** case made by the

petitioner in this regard is not sustainable. This is mainly because that was a case in which the allegation was related to the involvement of the police in the commission of the crime, whereas, in this case, such a situation is not there. Merely because the conspiracy alleged against the petitioner is to commit a crime against the police officers, it cannot be concluded that the police are interested in the matter, and it would affect the neutral status of the police. In **Committee for Democratic Rights case (supra)**, it was categorically held by the Honourable Supreme Court that the transfer of investigating agency could not be made as a routine merely because a party has levelled some allegation against the police. In this case, on going through the allegations raised by the petitioner against the police, I do not find any sufficient force in them to conclude that no proper and fair investigation is possible in this case. The petitioner has indeed raised specific

allegations regarding the collusion of the 3rd respondent with the said Balachandra Kumar before registering the crime. The petitioner also cited certain clandestine meetings between them. However, apart from mere allegations, there are no materials substantiating the same. Even though certain documents, which indicated some suspected blemish in the service record of the 5th respondent, were also relied on, I am of the view that the same is not relevant for this case. The investigation is being conducted by the 2nd respondent herein, and conspicuously, the petitioner did not raise any allegations against him. The 5th respondent is indeed a superior officer to the 2nd respondent, and one of the alleged victims of the crime is also a superior officer. However, in the absence of any material indicating influence being thrust upon him at the instance of such superior officers, an order for transferring the investigation to another agency cannot be made. Concerning the registration of

crime against the petitioner based on an incident which has occurred on 15.11.2017, possibly there may be some abnormality. On scrutinizing the circumstances under which registration of the crime is made, traces of over-zealousness on the part of the authorities concerned can be found. However, unless the same is found to be tainted with malafides, no interference can be made at the said investigation. In this case, I could not find any materials revealing any ulterior motive or malafide on the part of the investigating agency. In such circumstances, I do not find any reason to allow the prayer sought for the transfer of investigation in this case.

42. In the result, this Crl.M.C. is dismissed.

However, it is made clear that the findings and observations made in this order were only to ascertain whether the petitioner has made out a case for invocation of powers of this Court under Section 482 of Cr.P.C. at this stage. None of the findings and observations in this order shall

preclude the petitioner from raising his contentions at appropriate stages and invoking his remedies for challenging the final report, if any, filed against him in this case.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

pkk

APPENDIX OF CRL.MC 1106/2022

PETITIONER'S ANNEXURES:

Annexure 1	TRUE COPY OF THE FINAL REPORT IN CRIME NO.297/17 OF NEDUMBASSERY POLICE STATION DATED 17.04.2017
Annexure 2	TRUE COPY OF THE FINAL REPORT IN CRIME NO. 297/17 OF OF NEDUMBASSERY POLICE STATION DATED 22.11.2017
Annexure 3	TRUE COPY OF THE ORDER OF HONOURABLE JUDICIAL FIRST CLASS MAGISTRATE, ANGAMALY IN CMP NO. 985/2017 IN CRIME NO. 297/2017 OF NEDUMBASSERY POLICE STATION DATED 17.01.2018
Annexure 4	TRUE COPY OF THE ABOVE ORDER IN MISCELLANEOUS APPLICATION NO. 328/2021 IN CRL A NO. 1794/2019 OF HONOURABLE SUPREME COURT OF INDIA DATED 01-03-2021
Annexure 5	TRUE COPY OF THE PETITION PREFERRED BEFORE THE CHIEF MINISTER OF KERALA DATED 27-12-2021
Annexure 6	TRUE COPY OF THE PETITION FILED BY THE 3RD RESPONDENT IN S.C. 118 OF 2018 AS CRL M.P 2466/2021 DATED 29.12.2021 (WITHOUT ANNEXURES)
Annexure 6(a)	THE TYPED COMPLAINT OF SRI. BALACHANDRA KUMAR
Annexure 7	TRUE COPY OF THE CONTEMPT PETITION FILED BY THE PETITIONER AS CRL MP NO. 2478 A/2021 IN S.C.NO.118/18 DATED 30.12.2021 (WITHOUT ANNEXURES)
Annexure 8	TRUE COPY OF THE COMPLAINT FILED BY PETITIONER TO THE STATE POLICE CHIEF DATED 01.01.2022
Annexure 9(a)	TRUE COPY OF REPORT ADDING SECTION 302 FILED BEFORE JFCMC ALUVA DATED 13.01.2022
Annexure 10	TRUE COPY OF THE LETTER BY 3RD RESPONDENT TO ADGP DATED 09.01.2022.
Annexure 11	TRUE COPY OF THE STATEMENT OF MR BALACHANDRA KUMAR U/ 161 CRPC DATED 01.01.2022
Annexure 12	TRUE COPY OF THE STATEMENT OF MR BALACHANDRA KUMAR U/ 161 CRPC DATED 03.01.2022
Annexure 13	VOICE CLIP OF BALACHANDRA KUMAR DT 14.04.2021 IN PENDRIVE
Annexure 13(a)	TRUE TRANSCRIPT OF THE ABOVE VOICE NOTE

	DATED 14.04.2021
Annexure14	TRUE COPY OF THE MESSAGE SENT TO DIMITHRAN BY BALACHANDRA KUMAR
Annexure15	TRUE COPY OF ORDER NO.B 1/9198/08ER OF INSPECTOR GENERAL OF POLICE, ERNAKULAM DATED 30.09.2008
Annexure 15(a)	TRUE COPY OF ORDER NO.80/CAMP /ADGP-CRIMES/08 DATED 07.11.2008 ISSUED BY ADDL DIRECTOR GENERAL OF POLICE
Annexure 15(b)	TRUE COPY OF G.O (RT) NO. 1028/2013/GAD DATED 06.02.2013 OF GOVERNMENT OF KERALA
Annexure 15 (c)	TRUE COPY OF JUDGMENT DATED 18.06.2008 IN WP (C) NO.18058/2007 OF HIGH COURT OF KERALA
Annexure 15(d)	TRUE COPY OF JUDGMENT OF HIGH COURT OF KERALA IN WP C 21648 OF 2020 DATED 20.10.2020
Annexure 15(e)	TRUE COPY OF ORDER IN IA NO. 3/2021 IN WP (C)NO. 16674/2021 DATED 2.12.2021
Annexure 16	TRUE COPY OF SEARCH LIST (3 NOS) IN THE CRIME NO.6/2022 SUBMITTED TO JUDICIAL FIRST CLASS MAGISTRATE COURT NO. I , ALUVA
Annexure 17	TRUE COPY OF WHATSAPPMESSAGE SENT BY SRI BALACHADRA KUMAR TO NADIRSHA
Annexure 18	TRUE COPY OF ORDER ORDER DATED 07.02.2022 IN B.A. NO. 248/2022 PASSED BY HIGH COURT OF KERALA

RESPONDENT'S ANNEXURES:

Annexure	ANNEXURE R2A OF STATEMENT FILED IN CRLMC 1106-20222
Annexure	ANNEXURE R2B OF STATEMENT FILED IN CRLMC 1106-2022
Annexure	ANNEXURE R2B1
Annexure	ANNEXURE R2B2
Annexure	ANNEXURE R2B3
Annexure	ANNEXURE R2B4 OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2B5 OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2B6 OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2C OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2D OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2E OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2G OF THE STATEMENT IN CRLMC

	1106-2022
Annexure	ANNEXURE R2H OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2i OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2B1
Annexure	ANNEXURE R2E OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2i OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2A OF STATEMENT FILED IN CRLMC 1106-20222
Annexure	ANNEXURE R2D OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2F OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2J OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2F OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2B OF STATEMENT FILED IN CRLMC 1106-2022
Annexure	ANNEXURE R2B4 OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2B5 OF THE STATEMENT IN CRLMC 1106-2022
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Annexure	ANNEXURE R2C OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2J OF THE STATEMENT IN CRLMC 1106-2022
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Annexure	ANNEXURE R2B4 OF THE STATEMENT IN CRLMC 1106-2022
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Annexure	ANNEXURE R2B2
Annexure	ANNEXURE R2B3
Annexure	ANNEXURE R2B4 OF THE STATEMENT IN CRLMC 1106-2022
Annexure	ANNEXURE R2B5 OF THE STATEMENT IN CRLMC 1106-2022
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Annexure	ANNEXURE R2B3
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