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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 10TH DAY OF MARCH 2023 / 19TH PHALGUNA, 1944

CRL.MC NO. 5261 OF 2022

[TO QUASH ALL FURTHER PROCEEDINGS IN C.C.NO.811/2014 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, NEDUMANGAD ARISING OUT OF CRIME NO.215/1994 OF VANCHIYOOR POLICE STATION]

PETITIONER/ACCUSED NO.2:

ADV. ANTONY RAJU
AGED 60 YEARS
HOUSE NO. 237, SWATHI NAGAR, KOTTAKKAKAM WARD,
VANCHIYOOR, THIRUVANANTHAPURAM, PIN - 695542

BY ADVS.
SRI.P.VIJAYA BHANU, SENIOR COUNSEL
DEEPU THANKAN
UMMUL FIDA
LAKSHMI SREEDHAR
R.RAJANANDINI MENON
SHAHNAS K.P

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

1 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031

2 T. G. GOPALAKRISHNAN NAIR
RETD. SHERISTADAR, SESSIONS COURT, THIRUVANANTHAPURAM
RESIDING AT THAZHATHANGADI THAZHETHADATHIL VEETTIL,
KOTTAYAM, PIN - 686005

R1 BY SRI.VIPIN NARAYAN, PUBLIC PROSECUTOR

R2 BY ADV. HARINDRANATH B.G.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON

13.12.2022, ALONG WITH Crl.MC.7805/2022, THE COURT ON 10.03.2023 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 10TH DAY OF MARCH 2023 / 19TH PHALGUNA, 1944

CRL.MC NO. 7805 OF 2022

[TO QUASH ALL FURTHER PROCEEDINGS IN C.C.NO.811/2014 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, NEDUMANGAD ARISING OUT OF CRIME NO.215/1994 OF VANCHIYOOR POLICE STATION]

PETITIONER/ACCUSED NO.1:

JOSE
AGED 61 YEARS
S/O SOLAMAN JOSEPH, PLAVILAKATHU VEEDU, TC NO 5/376,
INDIRA NAGAR, NEAR TO JJ HOSPITAL, PEROOR KADA,
THIRUVANANTHAPURAM, PIN - 695005

BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
PRERITH PHILIP JOSEPH
ANILKUMAR C.R.

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

1 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR HIGH COURT OF KERALA
ERNAKULAM

2 T.G. GOPALAKRISHNAN NAIR
RETD. SHERISTADAR (SESSION COURT THIRUVANANTHAPURAM)
RESIDING AT THAZHETHADATHIL VEETTIL, THAZHATHANGADI
KOTTAYAM, PIN - 686005

R1 BY SRI.VIPIN NARAYAN, PUBLIC PROSECUTOR

R2 BY ADV. HARINDRANATH B.G.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13.12.2022, ALONG WITH Crl.MC.5261/2022, THE COURT ON 10.03.2023 PASSED THE FOLLOWING:

O R D E R

[Crl.MC Nos.5261/2022 & 7805/2022]

These Crl.M.Cs are filed by the accused in C.C. No 811/2014, on the files of the Judicial Magistrate of First Class-I, Nedumangad. The aforesaid Calendar Case arises from Crime No. 215 of 1994 of Vanchiyoor Police Station, which was registered for the offences punishable under sections 120B,420,201,193 and 217 read with 34 of the Indian Penal Code. Crl.M.C. No. 5261/2022 is filed by the 2nd accused and Crl.M.C. No. 7805/2022 is filed by the 1st accused therein. The 2nd respondent is the defacto complainant. The prayer sought in these Crl.M.Cs is to quash the final report submitted therein and further proceedings pursuant to it.

2. The facts which led to the registration of the aforesaid crime are as follows: An Australian national, named Andrew Salvatore, was a passenger of Indian Airlines Flight I.C. 168 from

Thiruvananthapuram to Mumbai on 04.04.1990. While frisking at the Thiruvananthapuram Airport, he was found in possession of two packets containing 55 gms and 6.6 gms of charas, which were kept concealed in the pocket of his underwear. Thereafter, the said person, along with the seized articles as well as his personal belongings, was entrusted with the custody of Valiyathura Police Station, and in respect of the same, Crime No 60/1990 was registered for the offence punishable under section 20(b)(ii) of the Narcotics Drugs and Psychotropic Substances Act (NDPS Act).

3. The articles seized, including the underwear of the accused therein, were produced as Thondi before the Judicial First Class Magistrate's Court-II, Thiruvananthapuram. The 1st accused herein was the Thondi Clerk, and the articles were entrusted in his custody. The 2nd accused herein was a lawyer practising in Thiruvananthapuram and was the junior lawyer who appeared for the accused, the Australian national. While arresting the accused therein, several articles, including his personal belongings,

also were seized by the police and produced before the court.

4. On 17.07.1990, an application was submitted on behalf of the accused therein to release his personal belongings, which was allowed by the court. Accordingly, the aforesaid articles were released, and the same was collected by the 2nd accused herein, the junior lawyer of the counsel, who appeared for the said Australian citizen. However, even though the release ordered by the court was the personal belongings of the accused in the said case, while releasing the same, the underwear, from which the contraband articles seized, was also released by the 1st accused herein, the Thondi clerk and the same was collected by the 2nd accused herein. On 5/12/1990, the 2nd accused herein returned the said underwear to the 1st accused herein, and later the same was forwarded to the Sessions Court as the case was committed to the Sessions Court.

5. During the trial, the said underwear was marked as MO2, and the specific defence taken by the

accused therein was that, MO2 was too small for him. However, the practical test was not conducted by the trial court. After the trial, the accused therein was found guilty by the Sessions Court, and he was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rupees one lakh. Challenging the said conviction and sentence Crl.A No.20/1991 was filed before this Court, and the said contention was reiterated. During the hearing of appeal, a practical test was ordered to be conducted, and it was found that the MO2 was not that of his size.

6. Accordingly, the accused therein was acquitted vide judgment dated 5.02.1991, but it was observed that there is a strong possibility of MO2 being planted in an attempt to wriggle out of the situation. Therefore, an inquiry into the matter was suggested. Based on the same, the Vigilance Officer of this Court conducted an investigation and a report in this regard was submitted, highlighting the necessity of a detailed investigation into the

matter. Consequently, Office Memorandum dated 27.09.1994 was issued by this court requesting the District Court, Thiruvananthapuram, to direct the Sheristadar to give a first information report before the police. The Crime was registered in such circumstances, and after completing the investigation, the final report was submitted, which is produced as Annexure B in Crl.M.C. No.5261/2002 and Annexure I in Crl.M.C.No.7805/2022. It is alleged that the petitioners have conspired together with the intention to secure the acquittal of the accused in Crime No 60/1990 of Valiyathura Police Station, got the MO2 released, made alterations to the same by making it not suitable for the accused therein and returned the same to the court. The cognizance was taken thereon, and now the matter is pending as C.C 811/2014 before the Judicial First Class Magistrate Court-I, Nedumangad.

7. Heard Sri. P.Vijaya Bhanu, the learned Senior Counsel, assisted by Advocate Deepu Thankan, for the petitioner in Crl.M.C No 5261 of 2022, Sri.S.Rajeev,

the learned Counsel for the petitioner in Crl.MC No.7805 of 2002, Sri.B.G.Harindranath, the learned Counsel for the 2nd respondent/defacto complainant and Sri.Vipin Narayan, the learned Public Prosecutor for the State. Crl.MA 3/2022, Crl.MA 4/2022 and Crl.MA 5/2022 were filed by third parties for getting impleaded in the proceedings, which were not allowed by this Court. However, learned Senior Counsel Sri.George Poonthottam and Advocate Sri.T.Asaf Ali who appeared for the said third parties sought to be impleaded, were permitted to place their arguments on the question of law involved in the matter, with a view to getting their assistance too while adjudicating the issues before this Court, being Senior members of the Bar.

8. The main contention put forward by the learned counsels appearing for the petitioners is that, since the offences for which cognizance was taken, include section 193 of the Indian Penal Code, the cognizance could not have been taken by the learned Magistrate on the police report submitted under section 173(2)

of the Cr.P.C as it was against the special procedure prescribed under section 195(1)(b) of the Cr.P.C. In Crl.M.C.No.7805/2022, besides the aforesaid contention, the petitioner also seeks to quash the final report on merits, contending that the materials placed on record would not make out the offences against the 1st accused.

9. In response to the said contentions, the defacto complainant, who was the Sheristadar of the Sessions Court Thiruvananthapuram at the time of registering the FIR submitted a detailed objection. The circumstances under which the FIR was registered, and the sequence of events which led to the registration of the same were explained in the said objections with the support of the documents.

10. A detailed hearing of all the parties was conducted, and from both sides, a large number of decisions were cited, and this Court shall refer to those decisions, which are relevant to the issue, while answering the questions involved.

11. As mentioned above, the most crucial

contention raised is the violation of the procedure prescribed in section 195(1) of the Cr.P.C. In this regard, it is profitable to extract the said provision for easy reference and the same reads as follows:

> *"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.*
> *(1) No Court shall take cognizance-*
> *(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or*
> *(ii) of any abetment of, or attempt to commit, such offence, or*
> *(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate."*
>
> *(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, section 193 to 196 (both inclusive), 199,200,205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or*
>
> *(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or*
>
> *(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (I) or sub-clause (ii),*
>
> *except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in wring in this behalf, or of some other Court to which that Court is subordinate."*

12. It can be seen that as per Section 195 (1)(b) of the Cr.P.C, if the offences mentioned therein, which include an offence under section 193 of the IPC and any criminal conspiracy to commit any such offence or attempt or abetment thereof, can be taken cognizance of only based on the complaint in writing by the court concerned or by such officer as that court may authorise in writing in that behalf or some other court to which that court is subordinate. In this case, cognizance was taken on the police report submitted under section 173(2) of the Cr.P.C, which was not permissible. The learned Counsel for the petitioners contends that, even though some other offences which are not coming under section 195(1)(b) are also alleged against the petitioners, the act of taking cognizance based on a police report cannot be justified, as all the said offences are arising from the same transactions. To substantiate the said contention, they also place reliance upon the decision rendered by the Honourable Supreme Court in **Banderkar Brothers Private Ltd v. Prasad Vasudev Keni**

[(2020) 20 SCC 1).

13. The learned Counsel for the defacto complainant opposes the contentions raised by the petitioners by contending that, in the facts of this case, it cannot be concluded that the bar contemplated under section 195 (1) comes into play. According to him, the aforesaid bar can be made applicable only in cases where the fabrication of false evidence, which is punishable under section 193, was done when the article was in the court's custody. The prohibition would not be applicable if the fabrication took place outside the court and was later produced before the court as evidence.

14. When considering the rival contentions as mentioned above, the crucial decision to be referred to in this regard is the Constitutional Bench decision of the Honourable Supreme Court in **Iqbal Singh Marwah and another v. Meenakshi Marwah and another [(2005) 4 SCC 370].** In the said decision, a Five Judge bench of the Honourable Supreme Court held that, section 195 (1) (b) (ii) would be attracted

only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court, i.e. during the time when the document was in *custodia legis*. According to the learned counsel for the defacto complainant, in this case, the allegation against the accused is the alteration of MO2 underwear, which got released as per the orders passed by the court. It was pointed out that, even according to the prosecution, the alleged alteration of MO2 had taken place after it was released, and therefore, it cannot be treated as a fabrication that took place while it was in *custodia legis;* hence bar under section 195 (1)(b) would not be applicable.

15. For considering the question, a careful scrutiny of the allegations against the petitioners is to be made. It is to be noted that, along with the final report submitted, the statement of the then Sub Judge Inrinjalakuda, who was Judicial First Class Magistrate-II, Thiruvananthapuram, at the time of

seizure of the articles in Crime No 60/1990 of Valiyathura Police Station, is also produced. It can be seen from the said statement that, while arresting the accused in the said crime, his personal belongings were seized by the police and produced before the court. The personal belongings were produced as T.243/90, which contained 50 items. Among the same, item 23 was one jetty (underwear) of the accused. However, the underwear from which the contraband article seized was produced separately as T 241/93, which contained only one item. While so, an application was submitted on behalf of the accused therein, to release his personal belongings. The said application was allowed by the court after hearing the prosecution, and accordingly, item nos. 1 to 41,45,46 and 49 in T 243/90 were permitted to be released after getting proper acknowledgment. However, the 1st accused herein, the Thondi clerk, while releasing the articles in compliance with the said order, released underwear produced as T 241/90(from which the contraband article was seized)

also, even though, it was not covered as per the order passed by the court. The said articles, including the underwear T.241/90, were received by the 2nd accused herein, who acknowledged the same. Later, the underwear (T 241/90) was returned by the 2nd accused herein, to the court on 5.12.1990. As per the prosecution case, the alteration of the underwear took place during the period when the said underwear was taken by the 2nd accused. According to the defacto complainant, as the said alteration occurred after it was released to the 2nd accused herein and the same was again produced before the court after its alteration, it cannot be concluded that the fabrication took place while it was in *custodia legis* and therefore the bar under section 95(1)(b) would not be applicable.

16. However, I am not inclined to accept the contention for more than one reason. First of all, merely because the article happened to be released, it cannot be treated that the same was not in the court's custody. The term 'custodia legis' means 'in

the custody of the court'. It is true that, at the relevant time, the physical possession of the article (MO2) was with the 2nd accused herein. However, from the materials placed on record, it cannot be treated as a legal possession or legal custody of the 2nd accused herein. As mentioned above, the aforesaid article (MO2) was produced before the court as T 241/90, and the court never ordered the release of the same to the accused in Crime 60/1990 or his representative. On the other hand, as per the allegations in the final report, the 2nd accused herein, with the connivance of the 1st accused herein, got it released along with the articles ordered to be released clandestinely, and the alterations were made. Thus, no order to give legal possession of the aforesaid article was passed by the court, and the court's custody over the article never came to an end, as the 2nd accused herein never acquired any legal right to keep the same in his custody. Therefore, it cannot be held that the article was not in *custodia legis*. Even when the alterations were

made, it continued in the deemed custody of the court, and thus, the bar under section 195(1)(b) would come into play. In **Iqbal Marwah's** case (supra), it was held that the bar would not be applicable when the forgery was committed before the document was produced before the court. In this case, the article was produced initially; later, the same was released to the 2nd respondent without proper authority or order in this regard, and after the alteration, the same was returned. The factual situation, in this case, is entirely different from that of **Iqbal Marwah's** case (supra).

17. There is yet another aspect which supports the view that the bar applies to this case. The offences alleged against the petitioner includes the offence under section 120B of IPC, which is in respect of the criminal conspiracy to commit the offences under section 420,201,193 and 217 of the Indian Penal Code. The offence of 'criminal conspiracy' is defined under section 120A, and it reads 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 done 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."*

18. As per the proviso to section 120A, to attract the offence of criminal conspiracy, besides the agreement between two or more persons to do the acts referred to therein, some act in pursuance thereof has to be done. In other words, when two or more persons commit any further act in pursuance of the agreement between them to commit an illegal act or an act by illegal means, the offence of criminal conspiracy is attracted. In this case, the specific case of the prosecution is that the accused nos. 1 and 2 have entered into a conspiracy and, in pursuance of the same, got the MO2 released, altered the same and returned to the court. Thus, the moment

the article was released to the 2nd accused in pursuance of the criminal conspiracy, section 120B of the IPC was attracted, and later when the same was altered in further execution of their conspiracy, the offence under section 193 of the IPC and other offences were also committed. As per section 195(1)(b)(iii) of the Cr.P.C, the special procedure to take cognizance would be applicable to the criminal conspiracy to commit the offences under sub-sections (i) and (ii) of section 195(1)(b). Thus, the offence under section 120B, in this case, is committed the moment MO2 is released from the court. There cannot be any quarrel on the proposition that, when it was released, the same was in *custodia legis*. Therefore, the bar under section 195(1)(b) would get attracted even if it is assumed for argument's sake that the alteration of MO2 took place when the same was not in the court's custody. Hence the objection raised by the defacto complainant in this regard is only to be rejected.

19. There is one more reason which goes against the

prosecution in this case. The offence under section 193 of the IPC, deals with the punishment for giving or fabricating false evidence. Section 192 of the IPC defines 'fabricating false evidence' which reads as follows:

> **"192. Fabricating false evidence.**—*Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."*

The said provision *inter alia* provides that, whoever causes any circumstances to exist, intending that such circumstance may appear in evidence in a judicial proceeding, and such circumstance, so appearing in evidence, may cause any person in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said 'to fabricate false evidence'. Thus, one of the

ingredients is *'cause any circumstance to exist'*, which in this case is to get the MO2 released, alter it and return it to the court, thereby plant a false evidence. It has three stages, i.e.(1) get the MO2 released, (2) alter it and (3) return it to the court. It starts from the 1st stage and completes by the 3rd stage. As far as the first stage is concerned, i.e the release of MO2, it is evident that, such release was from the custody of the court and at that time, the MO2 was indisputably in *custodia legis*. From the 1st stage itself the commission of the offence has commenced. Therefore, even if it is assumed for argument's sake that, when the alteration of MO2 took place it was not *custodia legis*, since some stage of the offence was committed when it was in the custody of the court, the bar under section 195(1) (b) would get attracted.

20. The learned Counsel for the defacto complainant raises a further contention that when the High Court issues a direction to register a case, the bar under section 195(1(b) cannot be made

applicable. To substantiate the contention, reliance was placed on **Central Bureau of Investigation v. M.Sivamani [(2017) 14 SCC 855].** The relevant observation is in para 12 of the said decision, which reads as follows:

> *"12. We have considered the rival submissions. We find merit in the contention raised on behalf of the appellant. While the bar against cognizance of a specified offence is mandatory, the same has to be understood in the context of the purpose for which such a bar is created. The bar is not intended to take away remedy against a crime but only to protect an innocent person against false or frivolous proceedings by a private person. The expression "the public servant or his administrative superior" cannot exclude the High Court. It is clearly implicit in the direction of the High Court quoted above that it was necessary in the interest of justice to take cognizance of the offence in question. Direction of the High Court is on a par with the direction of an administrative superior public servant to file a complaint in writing in terms of the statutory requirement. The protection intended by the section against a private person filing a frivolous complaint is taken care of when the High Court finds that the matter was required to be gone into in public interest. Such direction cannot be rendered futile by invoking Section 195 to such a situation. Once the High Court directs investigation into a specified offence mentioned in Section 195, bar under Section 195(1)(a) cannot be pressed into service. The view taken by the High Court will frustrate the object of law and cannot be sustained."*

21. It was a case in which an investigation by CB-CID was ordered by the High Court of Madras in respect of a false claim submitted under the provisions of the Motor Vehicles Act. Later the

investigation was taken over by the CBI. It was contended that, as the offence under section 182 was alleged, the bar under section 195(1)(a) of the Cr.P.C would be applicable. However, the crucial aspect to be noticed is that, in the said case, Madras High Court passed a judicial order, ordering investigation initially by CB-CID. Later vide decision reported in **National Insurance Company Ltd v. DG of Police [2006 SCC Online Mad 202]**, investigation was entrusted with the CBI by the Madras High Court with the following observations.

> *"7……..We are , however, refraining from entering upon the details lest it may likely to prejudice either party, but we think that since the accusations are directed mainly against the local police officials, it is desirable to entrust the investigation in the matter to an independent agency like CBI so that all concerned including the insurance companies may feel assured that an independent is looking into the matter and that would lend the final outcome of the investigation credibility……."*

22. Thus, it is evident that, taking into account the public interest involved, the Madras High Court initially entrusted the investigation to the CB-CID and later to CBI. Specific orders were passed by the Madras High Court with a specific objective of

addressing a special situation. By taking note of the same, it was observed by the Honourable Supreme Court in para 12 of **Sivamani's case** (supra) that '……*The protection intended by the section against a private person filing a frivolous complaint is taken care of when the High Court finds that the matter was required to be gone into in public interest. Such direction cannot be rendered futile by invoking Section 195 to such a situation……".* Thus it can be seen that, the Honourable Supreme Court has taken note of the fact that, High Court of Madras, after considering all relevant aspects, directed a CBI inquiry in the matter, taking note of the public interest, and the same cannot rendered futile by invoking section 195. This would indicate that, the Honourable Supreme Court noted the existence of certain special circumstances which necessitated the investigation as ordered in the judicial order passed by the Madras High Court.

23. However, in this case, the circumstances which existed in **Sivamani's case** (supra) are not

there. In this case, the direction was by way of an Office Memorandum from the administrative side of this court, requesting the District Judge, Thiruvananthapuram to direct the Sheristadar to furnish the first information statement. No judicial order as in the case of **Sivamani's** case (supra) was passed. The procedure and legal consequences of a judicial order and administrative order are entirely different. Therefore the principles laid down in **Sivamani's case** (supra), cannot be made applicable to this case.

24. Another contention raised by the learned counsel for the defacto complainant is that, besides the offence of 193 of the IPC, which is covered under section 195(1)(b) the Cr.PC, there are other cognizable offences, alleged against the petitioner and therefore, nothing would preclude the court from taking cognizance on the final report submitted by the police. Reliance was placed on the decision of the Honourable Supreme Court in **A. Subash Babu v. State of Andhra Pradesh and another** [(2011) 7 SCC

616]. The aforesaid case was in respect of a prosecution for the offences punishable under sections 420, 494, 495 and 498A of the Indian Penal Code. It was contended that, as far as the prosecution for the offence under sections 494 and 495 is concerned, the same was possible only based on the complaint submitted by a person aggrieved by the offence. Since, in that case, cognizance was taken based on the police report, it was contended that the same is not legally sustainable. However, the Honourable Supreme Court rejected the said contention by upholding the cognizance taken on the police report. This was mainly on the ground that, though the offences under sections 494 and 495 were non-cognizable as per the provisions of the Cr.P.C, by virtue of the State amendment of Andhra Pradesh to the relevant provisions of the Cr.P.C, the same was made cognizable. Moreover, along with the offences mentioned above, other cognizable offences were also alleged. It was in that circumstances, i.e. due to the impact of State amendment as discussed above and

the existence of other cognizable offences, it was held so in the decision by the Honourable Supreme Court.

25. In this case, the factual scenario and legal provisions applicable are entirely different. It is true that, in this case, some other offences which are cognizable are incorporated. In this regard, the observations made by the Honourable Supreme Court in the **Banderkar Brothers** case (supra) are relevant. In para 44 of the said decision, it was observed as follows:

> *"Equally important to remember is that if in the course of the same transaction two separate offences are made out, for one of which Section 195 of the Code of Criminal Procedure is not attracted, and it is not possible to split them up, the drill of section 195 (1) (b) of the Code of Criminal Procedure must be followed."*

In this case, transactions that attract the offence under section 193 of the IPC and the other offences not covered under section 195 of Cr.P.C are inseparable. The act alleged is taking out the MO2 from the court, altering it and returning the same, to secure the acquittal of the accused in that case. All the offences are attracted from the same

transaction which cannot be split up. Therefore, the procedure as contemplated under section 195(1)(b) cannot be avoided, and it is mandatory. For this reason, the cognizance taken on the final report is not sustainable.

26. Another contention of the learned counsel for the defacto complainant is that,there is delay and latches on the part of the petitioner in approaching this court. It is pointed out that, the crime was registered in the year 1994, the cognizance was taken thereon in the year 2006 and the Crl.MC is filed only in the year 2022. Reliance was placed on a Single Bench decision of the Karnataka High Court,reported in **2010 Cri.L.J 2666 (Dr.G.Ramachandrappa v. Smt. Padma Ramachandrappa).** In the said decision it was held that, when the petition to quash the proceedings is filed after one year, it suffers from delay and latches. In the said decision, the reasonable period was fixed as 90 days. However, I respectfully disagree with the view taken therein. The petitioners are invoking the inherent powers of this court, and

the same cannot be turned down merely because of delay, unless it is clear from the records that, it was filed with the sole purpose of prolonging the proceedings. In this case, the contention raised relates to a fundamental defect in the initiation of the proceedings, which cuts the root of the proceedings. Therefore, it is absolutely necessary in the interest of the prosecution also that, such defect is rectified and the proceedings are initiated in a proper manner in due compliance with the statutory stipulations.

27. Thus, from all the above discussions, the only irresistible conclusion possible is that the cognizance taken on the police report is not legally sustainable as it was in violation of the statutory stipulation in Section 195(1)(b) of the Code of Criminal Procedure.

28. In Crl.M.C No.7805/2022, the petitioner raised a contention that the materials placed on record, even if, accepted would not attract the offences against the 1st accused. However, as I have

found that the cognizance was not properly taken, I am not considering the said contentions and all questions relating to the same are left open.

In such circumstances, these Crl.MCs are allowed. The order of taking cognizance on the final report in Crime No.215/1994 and all further proceedings pursuant to the same, including the proceedings in C.C. No.811/2014 on the files of Judicial First Class Magistrate-I Nedumangad are hereby quashed. However, it is clarified that this would not preclude the competent authority or the court concerned from taking up the matter and pursuing the prosecution in compliance with the procedure contemplated under section 195(1)(b) of the Cr.P.C. Though, this court interfered in the proceedings for technical reasons, it cannot be ignored that the allegations raised are serious in nature. The materials placed before this Court reveal allegations which are of such nature and gravity that interfere with the judicial functions and thereby polluting the mechanism of administration of justice.

Such acts are required to be dealt with strictly with all vigour, and this court expects a positive and effective follow-up action on this from the authorities concerned to ensure that a fair trial in accordance with the law takes place and the culprits are punished adequately. Hence the Registry of this court is directed to take appropriate action in this regard under the relevant provisions of the Cr.PC as referred above, without any delay by taking note of the fact that the offences were allegedly committed in the year 1990, and any further delay in the matter would defeat the entire purpose.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

pkk

APPENDIX OF CRL.MC 5261/2022

PETITIONER'S ANNEXURES:

Annexure A	TRUE COPY OF THE FIR NO. 215 OF 1994 OF VANCHIYOOR POLICE STATION
Annexure B	TRUE COPY OF THE CHARGE SHEET IN C.C.NO. 811 OF 2014 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT - I NEDUMANGAD
Annexure3	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN CRL. APPEAL NO. 20 OF 1991 DATED 5/02/1991

RESPONDENTS' EXHIBITS:

Exhibit - R2(a)	TRUE COPY OF THE ENQUIRY REPORT SUBMITTED ALONG WITH THE ORAL STATEMENTS RECORDED BY THE C.I OF POLICE, VIGILANCE CELL, HIGH COURT OF KERALA DATED 14-01-1993
Exhibit - R2(b)	TRUE COPY OF THE OFFICE MEMORANDUM ISSUED BY THE HIGH COURT OF KERALA DATED 27-09-1994
Exhibit - R2(c)	TRUE COPY OF THE STATEMENT MADE BY THE 1ST ACCUSED
Exhibit - R2(d)	TRUE COPY OF THE STATEMENT MADE BY THE PETITIONER

APPENDIX OF CRL.MC 7805/2022

PETITIONER'S ANNEXURES

Annexure-I	CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO. 215/1994 OF VANCHIYOOR POLICE STATION