

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

FRIDAY, THE 1ST DAY OF DECEMBER 2023 / 10TH AGRAHAYANA,
1945

CRL.MC NO. 8198 OF 2023

RC NO.2/2022 OF NATIONAL INVESTIGATION AGENCY KOCHI,
Ernakulam

SC 2/2023 OF SPECIAL COURT FOR TRIAL OF NIA CASES,
ERNAKULAM

PETITIONERS/ACCUSED NOS.38, 40, 41, 44, 45, 46, 56, 57,

58:

- 1 ALI K @ RAGAM ALI, AGED 56 YEARS
S/O.MOIDEENKUTTY, KUNNATHU HOUSE, UMI KUNNU,
PATTAMBI-P.O, PALAKKAD DISTRICT, PIN - 679303
- 2 FAYAS, AGED 29 YEARS
S/O.ABDUL RASHEED, RMF MANZIL,
BEHIND JAMAT MOSQUE, THOTTUPALAM,
CHANDANAMKRUSSE, NURANI P.O,
PALAKKAD DISTRICT, PIN - 678001
- 3 SADDAM HUSSAIN M.K., AGED 31 YEARS
S/O.ALI, MULAYANKAYIL HOUSE, KALLAMKUZHI,
KANJIRAPPUZHA P.O, MANNARKKAD,
PALAKKAD DISTRICT, PIN - 678591
- 4 ASHRAF, AGED 30 YEARS
S/O.SAINUDEEN, KALLAMPARAMBIL HOUSE,
LAKSHAM VEEDU, KAVILPAD, OLAVAKKODE,
PALAKKAD DISTRICT, PIN - 678002
- 5 AKBAR ALI, AGED 26 YEARS
S/O.FAROOQ, PEZHUMKARA, PALLIPURAM P.O,
PALAKKAD DISTRICT, PIN - 678004
- 6 NISHAD, AGED 39 YEARS
S/O.ABOOBACKER, NISHAD MANZIL, PALLIPARAMBU,
PUDANUR, MUNDUR, PALAKKAD DISTRICT, PIN - 678592

VERDICTUM.IN

Crl.M.C.No.8198 of 2023

&

W.P.(Crl.) No.1044 of 2023

-: 2 :-

- 7 RASHED K.T @ KUNJUTTY, AGED 41 YEARS
S/O.ASSAINAR, KOTTILINGAL THODI, MANNENGOD,
KARINGANAD, KOPPAM, PATTAMBI,
PALAKKAD DISTRICT, PIN - 679307
- 8 SAIDALI @ MUTHU, AGED 38 YEARS
S/O.MOOSA, THOTTINGAL HOUSE, KULUKKALLUR,
MAPPATTUKARA, KOPPAM, PATTAMBI,
PALAKKAD DISTRICT, PIN - 679307
- 9 NOUSHAD M, AGED 41 YEARS
S/O.AVARA, MULLAPATTA, PATTAMBI,
VILAYUR WEST P.O,
PALAKKAD DISTRICT, PIN - 679309

BY ADVS.

E.A.HARIS

P.P.HARRIS

S.SREEKUMAR (SR.)

RESPONDENTS/COMPLAINANT:

- 1 UNION OF INDIA
REPRESENTED BY SECRETARY,
MINISTRY OF HOME AFFAIRS, NORTH BLOCK,
NEW DELHI, PIN - 110001
- 2 NATIONAL INVESTIGATION AGENCY
REP. BY SUPERINTENDENT OF POLICE, NIA,
KOCHI., PIN - 682020
- 3 INSPECTOR OF POLICE
NATIONAL INVESTIGATION AGENCY,
KOCHI., PIN - 682020

BY ADVS.

MANU S. DSG OF INDIA

sasthamangalam S. Ajithkumar FOR NIA

SRI. ALEX M.THOMBRA, SENIOR GOVERNMENT PLEADER

SRI.S.U.NAZAR, SPECIAL GOVERNMENT PLEADER

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY
HEARD ON 13.11.2023 ALONG WITH WP(Crl.).1044/2023, THE
COURT ON 01.12.2023, PASSED THE FOLLOWING:

VERDICTUM.IN

Crl.M.C.No.8198 of 2023

&

W.P.(Crl.) No.1044 of 2023

-: 3 :-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

FRIDAY, THE 1ST DAY OF DECEMBER 2023 / 10TH AGRAHAYANA,

1945

WP (CRL.) NO. 1044 OF 2023

CRIME NO.2/2022 OF NATIONAL INVESTIGATION AGENCY KOCHI,

Ernakulam

SC 2/2023 OF SPECIAL COURT FOR TRIAL OF NIA CASES,

ERNAKULAM

PETITIONERS:

- 1 ASHARAF S. @ KARAMANA ASHRAF MOULAVI
AGED 57 YEARS,
S/O SHAHUL HAMEED THOUFEEK MANZIL,
PALLI STREET, KARIMBUVILA, POONTHURA POST,
THIRUVANATHAPURAM, KERALA, PIN - 695026
- 2 SADIK A P @ SADIQ AHMED
AGED 35 YEARS
S/O. K. AHAMMED, PUTHUPARAMBIL HOUSE, PARAL
MUNDUKOTTACKAL POST, PATHANAMTHITTA DISTRICT,
KERALA, PIN - 689649
- 3 SHIHAS @ SHIHAS M.H., AGED 41 YEARS
S/O. HASSAN MAILADIYIL HOUSE, NADAKKAL POST,
THEVARUPPARA, KARAKKAD, ERATTUPETTA KOTTAYAM,
KERALA, PIN - 686121
- 4 ANSARI E.P @ ANSARI, AGED 45 YEARS
S/O. PAREEKOCHU ELAKKAYAM HOUSE, NADAKKAL POST,
KARAKKAD, ERATTUPETTA, KOTTAYAM
KERALA, PIN - 686121
- 5 MUJEEB @ M M MUJEEB, AGED 45 YEARS
S/O. MUHAMMED KUTTY MANKUZHAKKAL HOUSE, NADAKKAL
P O KARAKKAD, ERATTUPETTA, KOTTAYAM DISTRICT
KERALA, PIN - 686121

VERDICTUM.IN

Crl.M.C.No.8198 of 2023

&

W.P.(Crl.) No.1044 of 2023

-: 4 :-

- 6 NEJIMON @ NAJUMUDEEN, AGED 47 YEARS
S/O. ARSHUDHEEN NEDUMPACHAYIL HOUSE,
VANDANPATHAL, RPC POST, MUNDAKKAYAM,
KOTTAYAM KERALA, PIN - 686513
- 7 SAINUDEEN @ SAINUDEEN T S. AGED 47 YEARS
S/O.SAIDUMUHAMMAD, THAVALATHIL HOUSE,
PERUVANTHANAM POST, IDUKKI DISTRICT,
KERALA, PIN - 685531
- 8 P K USMAN @ USMAN, AGED 45 YEARS
S/O. KUNJIPPO PB PANNITHADAM,
NEAR GOVERNMENT LP SCHOOL, PATHIKKARA ROAD,
KUNNAMKULAM THRISSUR DISTRICT,
KERALA, PIN - 680519
- 9 MUHAMMEDALI @ KUNJAPPU, AGED 57 YEARS
S/O.KARAYIL MARAKKAR, KARAYIL HOUSE,
VALANCHERRY POST, KATTIPARUTHI,
MALAPPURAM, KERALA, PIN - 676552
- 10 SULAIMAN C T, AGED 48 YEARS
S/O. ABDUL AZEEZ VPM METTAMMAL HOUSE, ELAMBACHI,
SOUTH THRIKKARIPUR, KASARGOD DISTRICT,
KERALA, PIN - 671310

BY ADVS.

E.A.HARIS

RENJITH B.MARAR

RESPONDENTS :

- 1 UNION OF INDIA
REPRESENTED BY SECRETARY,
MINISTRY OF HOME AFFAIRS, NORTH BLOCK,
NEW DELHI, PIN - 110001
- 2 NATIONAL INVESTIGATION AGENCY
REPRESENTED BY SUPERINTENDENT OF POLICE, NIA,
KOCHI., PIN - 682020
- 3 INSPECTOR OF POLICE
NATIONAL INVESTIGATION AGENCY,
KOCHI, PIN - 682020
- 4 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,

VERDICTUM.IN

CrI.M.C.No.8198 of 2023

&

W.P.(CrI.) No.1044 of 2023

-: 5 :-

HIGH COURT OF KERALA, PIN - 682031

5 ASSISTANT REGISTRAR
D1 SECTION, HIGH COURT OF KERALA,
KOCHI, PIN - 682031

ADDL.R6 HIGH COURT OF KERALA, ERNAKULAM,
REPRESENTED BY THE REGISTRAR GENERAL

IS SUO MOTU IMPEADED AS PER ORDER DATED
11/10/2023 IN WP(CRL.) 1044/23

BY ADVS.

MANU S. DSG OF INDIA

sasthamangalam S. Ajithkumar S

ADVOCATE GENERAL OFFICE KERALA

HARINDRANATH B G FOR R5 AND R6

DIRECTOR GENERAL OF PROSECUTION(AG-10)

P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC
PROSECUTOR()

SHRI.SAJJU.S., SENIOR G.P.()

AMITH KRISHNAN H.(K/000666/2015)

LEJO JOSEPH GEORGE(K/357-C/2017)

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY
HEARD ON 13.11.2023 ALONG WITH CrI.MC.8198/2023, THE
COURT ON 01.12.2023, DELIVERED THE FOLLOWING:

Crl.M.C.No.8198 of 2023

&

W.P.(Crl.) No.1044 of 2023

-: 6 :-

C.R.

P.B.SURESH KUMAR & JOHNSON JOHN, JJ.

Crl.M.C.No.8198 of 2023

&

W.P.(Crl.) No.1044 of 2023

Dated this the 1st day of December, 2023

JUDGMENT

P.B.Suresh Kumar, J.

As some of the questions raised in these matters are common, they are disposed of by this common judgment. Parties and documents are referred to in this judgment, unless otherwise mentioned, as they appear in Crl.M.C.No.8198 of 2023.

2. A crime was registered on 16.04.2022 by Palakkad Town South Police Station as Crime No.318 of 2022 in connection with the murder of one Srinivasan, an activist of Rashtriya Swayamsevak Sangh (RSS)/Bharatiya Janata Party (BJP). After investigation, a final report was filed in the said case against 43 accused under Sections 120B, 34, 118, 119, 109, 143, 144, 147, 148, 449, 341, 201, 212 and 302 read with Section 149 of the Indian Penal Code (IPC) and Section 3(a)(b) (d) read with Section 7 of the Religious Institutions (Prevention

of Misuse) Act, 1988. The allegations in the final report, in essence, are that in retaliation of RSS/BJP activists committing murder of one Subair on 15.04.2022 who was an activist of the organisation, Popular Front of India (PFI), the accused who are activists of PFI conspired together and committed murder of Srinivasan. After complying with the procedures prescribed, the Jurisdictional Magistrate committed the accused for trial to the Court of Session and the case was taken to file by the Court of Session as S.C.No.982 of 2022 and made over the same to the files of the Additional Sessions Court-I, Palakkad.

3. The investigation in the case continued even after submission of the final report and it culminated in two supplementary final reports also, arraying some more persons as accused in the case. The persons arrayed as accused in the supplementary final reports were however not committed for trial and while committal proceedings initiated against them were pending before the Jurisdictional Magistrate as C.P. Nos.41 of 2022 and 61 of 2022, Central Government issued Annexure A2 order on 16.09.2022 invoking sub-section (5) of Section 6 and Section 8 of the National Investigation Agency Act, 2008 (NIA Act) in terms of which, the NIA (National Investigation Agency) was directed to take up investigation of

the offences committed by the leaders, activists and members of PFI. It is stated in Annexure A2 order that the Central Government received information that the office bearers and activists of PFI and its affiliates in Kerala have conspired to instigate communal violence and radicalise its cadres to commit terrorist acts in the State and various other parts of the country; that the office bearers and activists of PFI based in Kerala maintain operational nexus with other proscribed international terrorist organisations like Lashkar-e-Taiba (LeT), Islamic State of Iraq and Syria (ISIS)/Daesh and Al-Qaida; that some of the activists of PFI are also members of these proscribed terrorist organisations and that PFI has created an organisational web which is stretched to recruit vulnerable Muslim youths into proscribed international terrorist organisations to commit terrorist acts and that the activists of PFI are indulging in activities prejudicial to the maintenance of harmony by creating feeling of enmity between people of different religions and groups through violent speeches, publications, articles, social media posts etc. with the intention to disrupt public tranquillity and have been seen to organize a movement intending that the participants be trained to use criminal force against people of other religions and groups so

as to cause fear and alarm besides creating a feeling of insecurity among members of other religions and groups. It is also stated in Annexure A2 order that in the last few years, the said activists have been responsible for many violent incidents and murders in Kerala which have created terror in the minds of general public; that the activists are also indulging in Unlawful Activities which are intended to cause disaffection against India by inciting people and innocent Muslims to defy the Government and Institutions established by law and are thereby committing disruption of the sovereignty and integrity of India and that the above activities attract Sections 120B and 153A of IPC as also Sections 13, 18, 18B, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (the UA(P) Act). It is also stated in Annexure A2 order that the Central Government is of the opinion that a Scheduled Offence under the NIA Act has been committed and having regard to the gravity of the offence and its repercussion on national security, it is required to be investigated by the NIA in accordance with the NIA Act.

4. Pursuant to Annexure A2 order, the NIA registered a case on 19.09.2022 as RC-02/2022/NIA/KOC against the persons named in Annexure A2 order. Annexure A3 is the First Information Report in RC-02/2022/NIA/KOC. While

the investigation in RC-02/2022/NIA/KOC was progressing, the Central Government issued Annexure A4 order invoking sub-section (5) of Section 6 and Section 8 of the NIA Act in continuation of Annexure A2 order directing the NIA to investigate Crime No.318 of 2022 also, which was initially registered at the Palakkad Town South Police Station relating to the murder of the RSS/BJP activist Srinivasan by PFI activists. It is stated in Annexure A4 order that the NIA forwarded a report on 13.12.2022 stating that the said crime is an offence connected to RC-02/2022/NIA/KOC of the NIA and it has come to light that in both the cases, there is a larger conspiracy hatched by the leaders of PFI whose involvement is noted by the presence of senior leaders at Palakkad on the day of the murder of Srinivasan where the conspiracy was hatched and that therefore Crime No.318 of 2022 has grave national and international ramifications which need to be thoroughly investigated to unearth the wider conspiracy and to identify the other accused.

5. In the light of Annexure A4 order, the Superintendent of Police, NIA requested the High Court to transfer the case records relating to S.C.No.982 of 2022 pending before the Additional Sessions Court-I, Palakkad

relating to Crime No.318 of 2022 and the case records relating to the committal proceedings namely, C.P Nos.41 of 2022 and 61 of 2022 to the Special Court for Trial of NIA Cases, Ernakulam. As per Annexure A5 order, High Court allowed the said request and transferred S.C. No.982 of 2022 and C.P.Nos. 41 of 2022 and 61 of 2022 to the Special Court for Trial of NIA Cases, Ernakulam.

6. Thereupon, the NIA continued investigation in Crime No.318 of 2022 also and submitted a consolidated final report before the Special Court for Trial of NIA Cases, Ernakulam in the said case as also in RC-02/2022/NIA/KOC registered pursuant to Annexure A2 order. Annexure A6 is the consolidated final report, and the same has been taken to file by the Special Court for Trial of NIA Cases, Ernakulam as S.C. No.2 of 2023.

7. The petitioners in the Criminal Miscellaneous Case are some among the persons who were arrayed as accused in the initial final report filed by the local police in Crime No.318 of 2022. They seek in this proceedings, orders quashing Annexure A3 First Information Report and all further proceedings thereto including S.C.No.2 of 2023 pending before the Special Court for Trial of NIA Cases, Ernakulam. The

petitioners in the writ petition (crl) are some among the accused in RC-02/2022/NIA/KOC. They seek in the Criminal Miscellaneous Case, orders quashing Annexures A2 and A4 orders of the Central Government, Annexure A3 First Information Report, Annexure A5 order issued by the High Court as also Annexure A6 consolidated final report. In essence, the grievance of the petitioners in both the proceedings pertain to Annexures A2 and A4 orders issued by the Central Government and the consequential proceedings.

8. Heard Sri.S.Sreekumar, the learned Senior Counsel for the petitioners in Crl.M.C.No.8198 of 2023, Sri.Renjith B. Marar, the learned counsel for the petitioners in W.P.(Crl.) No.1044 of 2023, Sri.Sasthamangalam S. Ajithkumar, the learned Standing Counsel for the NIA, and Sri.B.G.Harindranath, the learned counsel for the High Court.

9. In order to appreciate the arguments advanced by the learned counsel for the petitioners in both the matters, it is necessary to refer to Sections 6 and 8 of the NIA Act, which read thus:

6. Investigation of Scheduled Offences.—(1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.

(2) On receipt of the report under sub-section (1), the State Government shall forward the report to the Central Government as expeditiously as possible.

(3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.

(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.

(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence.

(6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.

(7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation.

(8) Where the Central Government is of the opinion that a Schedule Offence has been committed at any place

outside India to which this Act extends, it may direct the Agency to register the case and take up investigation as if such offence has been committed in India.

(9) For the purposes of sub-section (8), the Special Court at New Delhi shall have the jurisdiction.

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8. Power to investigate connected offences.—While investigating any Scheduled Offence, the Agency may also investigate any other offence which the accused is alleged to have committed if the offence is connected with the Scheduled Offence.

10. The learned Senior Counsel for the petitioners in the criminal miscellaneous case submitted that under sub-section (5) of Section 6 of the NIA Act, the Central Government is empowered to direct the NIA to investigate only a pending case and that the Central Government is empowered to direct the NIA to register and investigate a case only under sub-section (8) of Section 6 where the Central Government is of the opinion that a Scheduled Offence has been committed at any place outside India to which the NIA Act extends. The learned Senior Counsel attempted to reinforce the said contention by drawing our attention to the different phraseology used in sub-sections (5) and (8) of Section 6. It was argued that while sub-section (8) categorically uses the expression “to register the case and take up investigation”, such an expression is

conspicuously absent in sub-section (5) and the said sub-section, on the other hand, only uses the expression “direct the Agency to investigate the said offence”. It was also pointed out by the learned Senior Counsel that the Central Government has the power to direct the NIA to investigate a pending case under sub-section (4) of Section 6 also, but in order to exercise the said power, there has to be a reference from the State Government in terms of sub-section (2) of Section 6. In short, according to the learned Senior Counsel, sub-section (5) of Section 6 is only a provision which confers power on the Central Government to order investigation of a pending case by the NIA without there being a reference under sub-section (2) of Section 6 and the said power cannot be exercised to pass an order directing the NIA to register a new case and investigate the same. The decision of the Apex Court in **Naser Bin Abu Bakr Yafai v. State of Maharashtra**, (2022) 6 SCC 308 was placed by the learned Senior Counsel in support of his argument with a caveat that though the said point did not directly arise in the said case, the said decision, according to him, would give an insight for resolving his contention. The learned Senior Counsel has also relied on the decision of the Apex Court in **State of West Bengal v. Suwendu Adhikari**,

2023 KHC 6736 for the said purpose. The learned Senior Counsel has also submitted fairly that a contrary view has been taken by the Madras High Court in Crl.A.No.98 of 2023 and connected cases, and the Rajasthan High Court in Habeas Corpus Petition No.24 of 2023. According to the learned Senior Counsel, the law on the point has not been correctly laid down by the Madras High Court and the Rajasthan High Court in the above referred cases.

11. The learned counsel for the petitioners in the writ petition(crl) endorsed the arguments advanced by the learned Senior Counsel for the petitioners in the criminal miscellaneous case. In order to supplement the contention raised by the learned Senior Counsel for the petitioners in the criminal miscellaneous case, the learned counsel drew our attention to sub-section (6) of Section 6 of the Act which provides for transmission of relevant documents when a direction is issued either under sub-section (4) or sub-section (5) and contended based on sub-section (6) that had the intention of the legislation been to confer power on the Central Government to direct registration of a case, there would not have been a provision at all for transmission of relevant records in sub-section (6). In addition, it was also argued by

the learned counsel that the offence involved in Crime No.318 of 2022 cannot be treated as an offence connected to the offence involved in Crime No.RC-02/2022/NIA/KOC. The expression “connected with the Scheduled Offence”, according to the learned counsel, relates only to those offences which are committed by the accused during the course of the transaction pertaining to the commission of the Scheduled Offence. The learned counsel drew support for the said proposition from Section 14 of the NIA Act which provides that when trying any offence, a Special Court may also try any other offence with which the accused may, under the the Code of Criminal Procedure (the Code) be charged, at the same trial if the offence is connected with such other offence. In addition, it was also argued by the learned counsel that Annexures A2 and A4 orders issued by the Central Government are vitiated by non-application of mind as it contains only generic allegations. In addition, it was argued by the learned counsel that Annexure A5 order issued by the High Court is non-est in the eye of law inasmuch as the High Court cannot, on the administrative side, transfer cases from one court to another, and the said power is to be exercised by the High Court only on the judicial side.

12. The learned Standing Counsel for the NIA argued that going by the plain meaning of the words used in sub-section (5) of Section 6 and the non-obstante clause contained therein, the power of the Central Government to direct the NIA to investigate a case cannot be doubted at all and the only condition to be satisfied for the exercise of the said power is the subjective satisfaction of the Central Government that a Scheduled Offence which is required to be investigated under this Act has been committed. It was asserted by the learned Standing Counsel that the expression “direct the Agency to investigate the said offence” includes registration of a case. It was pointed out that without a direction by the Central Government under sub-sections (4) or (5) of Section 6 of the Act, the NIA cannot conduct investigation and Annexure A4 is an order issued by the Central Government directing the NIA to investigate Crime No.318 of 2022. According to the learned Standing Counsel, once the NIA is authorised to investigate a Scheduled Offence, it is well within the powers of the NIA to investigate any other offence also which the accused is alleged to have committed, if the offence is connected with the Scheduled Offence. Placing reliance on the proposal made by the NIA before the Central

Government seeking orders for transfer of Crime No.318 of 2022 for investigation by NIA, being an offence connected with the Scheduled Offence involved in RC-02/2022/NIA/KOC and the letter addressed by the District Police Chief to the Director General of Prosecution on 13.12.2022, it was asserted by the learned Standing Counsel that the offence involved in Crime No.318 of 2022 is connected to the Scheduled Offence involved in RC-02/2022/NIA/KOC.

13. Sri.B.G.Harindranath, the learned counsel for the High Court contended that the High Court is certainly empowered to issue orders for transfer of cases on the administrative side as well and as such, Annexure A5 order is perfectly in order. The learned counsel relied on the decisions of the Apex Court in **Ranbir Yadav v. State of Bihar**, (1995) 4 SCC 392 and **Kamlesh Kumar v. State of Jharkhand**, (2013) 15 SCC 460, in support of the said arguments. Inasmuch as it was alleged by the petitioners in the writ petition(crl) that Annexure A5 is only an order passed by the Assistant Registrar of the High Court, it was pointed out by the counsel that Annexure A5 is an order issued on behalf of the High Court and not one issued by the Assistant Registrar.

14. We have examined the arguments advanced

by the learned counsel for the parties on either side.

15. The first and foremost question to be considered is whether the power conferred on the Central Government under sub-section (5) of Section 6 of the NIA Act includes the power to direct investigation into a Scheduled Offence after registering a case. At the outset, it has to be mentioned that the said question has not been considered by the Apex Court either in **Naser Bin Abu Bakr Yafai** or in **Suwendu Adhikari** on which reliance was placed by the learned Senior Counsel for the petitioners in the criminal miscellaneous case. As noted, the crux of his arguments is that while sub-section (8) of Section 6 categorically uses the expression “to register the case and take up investigation”, such an expression is conspicuously absent in sub-section (5) of Section 6 and the said sub-section, on the other hand, uses only the expression “direct the agency to investigate the said offence”. In other words, it is in the light of the different phraseology used in the said sub-sections, it was contended by the learned Senior Counsel that sub-section (5) is intended only to confer on the Central Government the power to direct investigation of a pending case by the NIA, notwithstanding the procedure prescribed for the same in terms of sub-sections

(1) to (3) of Section 6. The said argument was attempted to be reinforced by the learned counsel for the petitioners in the writ petition(crl) by placing reliance on the provision contained in sub-section (6) of Section 6 dealing with transmission of the relevant documents and records of the case, once an order is passed by the Central Government either under sub-section (4) or under sub-section (5) of Section 6. No doubt, sub-section (5) is also intended to confer on the Central Government the power to direct investigation of a pending case by the NIA, notwithstanding the procedure prescribed for the same in terms of sub-sections (1) to (3) of Section 6, but that does not lead to the inference that the Central Government cannot direct investigation of a Scheduled Offence which is yet to be reported, after registering a case for the said purpose. According to us, the argument put forward by the learned counsel for the petitioners in both matters omits to take note of the fact that the non-obstante clause contained in sub-section (5) is not a non-obstante clause which overrides the provisions contained in sub-sections (1) to (3) of Section 6 only, but it is a non-obstante clause which overrides all the remaining provisions in Section 6 including sub-sections (6) and (8) as well and the words “notwithstanding anything

contained in this section” must be given full effect [See **Vaishali Abhimanyu Joshi v. Nanasaheb Gopal Joshi**, (2017) 14 SCC 373]. In other words, the provision contained in sub-section (5) has to be understood as an independent provision. If sub-section (5) is understood as an independent provision, the information, on the basis of which power under that sub-section is exercised in respect of a Scheduled Offence, shall be deemed to be information received by the Central Government from other sources. It is profitable at this stage to refer to the long title of the NIA Act. The long title of the NIA Act reads thus:

“An Act to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto”.

If the provision contained in sub-section (5) is understood having regard to the very object of the legislation as explained in its long title, there will not be any difficulty in understanding sub-section (5) as a provision which confers power on the Central Government to direct the NIA to investigate a Scheduled Offence which is brought to the notice of the

Central Government on the opinion that the same is one required to be investigated by the NIA, even if the offence in respect of which no case has been registered, for criminal investigation in terms of the provision contained in the Code presupposes registration of a case, whichever be the investigating agency. We are fortified in this view by the provision contained in sub-section (3) of Section 3 of the NIA Act also which provides that any officer of the NIA has all the powers of an officer-in-charge of the police station and shall be deemed to be an officer-in-charge of the police station discharging the functions of such an officer within the limits of the police station. Sub-section (3) of Section 3 reads thus:

(3) Any officer of the Agency of, or above, the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise throughout India, any of the powers of the officer-in-charge of a police station in the area in which he is present for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station.

Since an officer of the NIA has been conferred with the powers of an officer-in-charge of a police station, the power to register an FIR under Section 154 of the Code is also deemed to have been conferred on the officer of the NIA. We take this view also for the reason that the materials indicate that in terms of a

notification issued by the State Government in exercise of the power under clause (s) of Section 2 of the Code, read with Section 5 of the Kerala Police Act, 2011, the Government of Kerala declared with effect from 18.06.2013, the whole State of Kerala as the area of jurisdiction of the police station of the NIA functioning at Ernakulam in respect of the investigation of the offences scheduled in the NIA Act for exercise of the powers under the Code. Identical view has been expressed by the Madras High Court as also the Rajasthan High Court on similar matters in the cases pointed out by the learned Senior Counsel for the petitioners in the criminal miscellaneous case, and we are in respectful agreement with the view expressed by the learned Judges in the said cases.

16. The next question is whether the offence involved in Crime No.318 of 2022 can be said to be an offence connected with the Scheduled Offence involved in RC-02/2022/NIA/KOC, justifying investigation of the former case also by the NIA in terms of the power conferred on it under Section 8 of the Act. Section 8 of the Act reads thus:

“8. Power to investigate connected offences.—While investigating any Scheduled Offence, the Agency may also investigate any other offence which the accused is alleged to have committed, if the offence is connected with the Scheduled Offence.”

As explicit from the section itself, what is provided therein is only that while investigating any Scheduled Offence, the Agency may also investigate any other offence which the accused is alleged to have committed if the offence is connected with the Scheduled Offence. Section 8 does not mandate permission of the Central Government for conducting such investigations. Be that as it may, Section 14 of the NIA Act which empowers the Special Court in such cases to try and convict the accused in the connected offence as well, is intended to take care of situations where investigations are conducted by the NIA in exercise of its power under Section 8 of the NIA Act and consolidated final reports are filed. A conjoint reading of Sections 8 and 14, in the light of the object of the NIA Act as contained in its long title and the remaining provisions contained in the NIA Act, indicate to us that the expression “connected with the scheduled offence” as contained in Section 8 ought to be understood in a wider perspective as an offence alleged to have been committed by an accused involved in a Scheduled Offence which is being investigated by the NIA and which has a bearing on the Scheduled Offence committed by the accused.

17. Reverting to the facts, the materials indicate

that some of the accused in RC-02/2022/NIA/KOC are accused in Crime No.318 of 2022 also. Further, the proposal submitted by the NIA before the Central Government on 13.12.2022 indicates that during the investigation in RC-02/2022/NIA/KOC, it was revealed that the organisation PFI and its leaders named as accused therein have played a vital role in the conspiracy and subsequent murder of Srinivasan, which is the subject matter of Crime No.318 of 2022. It is in the light of the said facts, the Central Government issued Annexure A4 order directing the NIA to investigate Crime No.318 of 2022 as well, in exercise of the power of the Central Government under sub-section (5) of Section 6, in continuation to Annexure A2 order, treating the offence involved in Crime No.318 of 2022 as an offence connected to the Scheduled Offence involved in RC-02/2022/NIA/KOC. We are unable to find in the above factual background that the offence involved in Crime No.318 of 2022 cannot be considered as an offence connected to the Scheduled Offence involved in RC-02/2022/NIA/KOC. The question is answered against the petitioners in the writ petition.

18. The next question is whether Annexures A2 and A4 orders issued by the Central Government in exercise of

the power conferred on it under sub-section (5) of Section 6 is vitiated due to non-application of mind. According to the petitioners in the writ petition, the said orders of the Central Government only reveal generic allegations of association with an organisation. We do not agree. Inasmuch as investigations undertaken pursuant to the said orders disclosed commission of scheduled offences and culminated in a final report in terms of Section 173 of the Code, the petitioners in the writ petition are not entitled to challenge the orders issued by the Central Government on the ground aforesaid.

19. The last question is whether the High Court has power to transfer cases pending before one court to another in exercise of its administrative power. The question, according to us, is no longer *res integra*. In **Ranbir Yadav**, it was held by the Apex Court that so long as power can be, and is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interests of the parties to any judicial proceeding, there is no reason why the administrative powers must yield place to judicial powers simply because in a given circumstance they coexist. The said decision has been followed by the Apex Court in **Kamlesh Kumar**. Paragraphs 21 and 22 of the judgment in

Kamlesh Kumar read thus:

“21. The High Court does have the power to transfer the cases and appeals under Section 407 CrPC which is essentially a judicial power. Section 407(1)(c) CrPC lays down that, where it will tend to the general convenience of the parties or witnesses, or where it was expedient for the ends of justice, the High Court could transfer such a case for trial to a Court of Session. That does not mean that the High Court cannot transfer cases by exercising its administrative power of superintendence which is available to it under Article 227 of the Constitution of India. While repelling the objection to the exercise of this power, this Court observed in para 13 of *Ranbir Yadav* [*Ranbir Yadav v. State of Bihar*, (1995) 4 SCC 392 : 1995 SCC (Cri) 728] as follows: (SCC p. 400)

“13. We are unable to share the above view of Mr Jethmalani. So long as power can be and is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interests of the parties to any judicial proceeding we do not find any reason to hold that administrative powers must yield place to judicial powers simply because in a given circumstance they coexist.”

22. For the reasons stated above, there is no substance in the objections raised by the petitioners. The High Court has looked into Section 407 CrPC, referred to Articles 227 and 235 of the Constitution of India, and thereafter in its impugned judgment [*Kamlesh Kumar v. State of Jharkhand*, WP (Cri) No. 95 of 2003, decided on 19-7-2012 (Jhar)] has observed as follows:

“Having perused Section 407 CrPC and Articles 227 and 235, I have no hesitation to hold that this Court either on the administrative side or in the judicial side has absolute jurisdiction to transfer any criminal cases pending before one competent court to be heard and decided by another court within the jurisdiction of this Court. This Court in its administrative power can issue direction that cases of

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particular nature shall be heard by particular court having jurisdiction.”

In view of what is stated earlier, we have no reason to take a view different from the one taken by the High Court. Both the special leave petitions (criminal) are, therefore, dismissed.”

The challenge against Annexure A5 decision of the High Court, therefore, fails.

In the light of the discussion aforesaid, the criminal miscellaneous case and the writ petition(crl) are devoid of merits and are accordingly dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

JOHNSON JOHN, JUDGE.

ds 22.11.2023

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APPENDIX OF WP(CRL.) 1044/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE FIR IN RC 2/2022
/NIA/KOC DATED 19/9/2022
- Exhibit P2 TRUE COPY OF THE ORDER DATED 16/9/2022
ISSUED BY SECRETARY TO THE GOVERNMENT
OF INDIA, MINISTRY OF HOME AFFAIRS
CTCR DIVISION
- Exhibit P3 TRUE COPY OF THE ORDER DATED
19/12/2022 ISSUED BY 1ST RESPONDENT
- Exhibit P4 TRUE COPY OF THE RELEVANT PORTION OF
FINAL REPORT IN CRIME NO 318 / 2022 OF
THE PALAKKAD TOWN SOUTH POLICE STATION
- Exhibit P5 TRUE COPY OF THE ORDER DATED 23/1/2023
ISSUED BY THE ASSISTANT REGISTRAR HIGH
COURT OF KERALA
- Exhibit P6 TRUE COPY OF THE FINAL REPORT IN RC NO
2/2022/NIA/KOC NOW PENDING AS SC
NO.2/2023 BEFORE SPECIAL COURT FOR NIA
CASES, ERNAKULAM

RESPONDENT EXHIBITS

- Exhibit R2 (a) The true copy of the order No.
11011/82/2022/NIA dated 16.09.2022 of
Government of India, Ministry of Home
Affairs, CTCR Division
- Exhibit R2 (b) The true copy of the Gazette
notification SRO No. 487/2013 dated
13.5.2013 of Government of Kerala
- Exhibit R2 (c) The copy of the report submitted by
NIA to the Ministry of Home Affairs,
Government of India dated 13.12.2022
showing that Crime No. 318/2022 of
Palakkad Town South PS

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- Exhibit R2 (d)** **The true copy of order No. 11011/82/2022/NIA (Part) dated 19.12.2022 of Government of India, Ministry of Home Affairs, CTCR Division**
- Exhibit R2 (e)** **The copy of the letter dated 30.11.2022 submitted by the District Police Chief Palakkad.**
- Exhibit R2 (f)** **The copy of the legal opinion dated 14.12.2022 submitted by the Id. Addl. Director General of Prosecution**

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APPENDIX OF CRL.MC 8198/2023

PETITIONER ANNEXURES

- Annexure A1** THE TRUE COPY OF THE RELEVANT PORTION OF FINAL REPORT DATED 13.07.2022 IN SC NO.982/2022 ON THE FILES OF ADDITIONAL SESSIONS COURT, PALAKKAD IN CRIME NO.318/2022 OF PALAKKAD TOWN SOUTH POLICE STATION
- Annexure A2** THE TRUE COPY OF THE ORDER NO.11011/82/2022-NIA DATED 16.09.2022 ISSUED BY THE MINISTRY OF HOME AFFAIRS, CTCR DIVISION
- Annexure A3** THE CERTIFIED COPY OF THE FIR DATED 19.09.2022 IN RC NO.2/2022 OF NATIONAL INVESTIGATION AGENCY, KOCHI
- Annexure A4** THE TRUE COPY OF THE ORDER NO.11011/82/2022-NIA(PART) DATED 19.12.2022 ISSUED BY THE MINISTRY OF HOME AFFAIRS, CTCR DIVISION
- Annexure A5** THE TRUE COPY OF THE ORDER NO.HCKL/4301/2022/DI-2 DATED 23.01.2023 ISSUED BY THE ASSISTANT REGISTRAR, HIGH COURT OF KERALA
- Annexure A6** THE TRUE COPY OF THE FINAL REPORT DATED 17.03.2023 IN SC NO. 2 OF 2023 ON THE FILES OF SPECIAL COURT FOR THE TRIAL OF NIA CASES, ERNAKULAM

RESPONDENT ANNEXURES

- annexure R2 (a)** True copy of Govt. of Ministry of Home Affairs, CTCR Division Order No. 11011/82/2022/NIA dated 16/09/2022 in the above case
- Annexure R2 (b)** True copy of Gazette notification of Govt. of Kerala SRO No. 487/2013 dated 13/05/2013

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annexure R2(c)

**True copy of Government of India,
Ministry of Home Affairs CTCR
Division, order No.11011/82/2022/NIA
(part) dated 19/12/2022**