

Crl.RP..No.86 of 2015

1



2024:KER:89173

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 27TH DAY OF NOVEMBER 2024 / 6TH AGRAHAYANA,

1946

CRL.REV.PET NO. 86 OF 2015

CRIME NO.446/2008 OF Nilambur Police Station, Malappuram

AGAINST THE ORDER/JUDGMENT DATED 06.01.2015 IN CC

NO.322 OF 2011 OF JUDICIAL MAGISTRATE OF FIRST

CLASS ,NILAMBUR

REVISION PETITIONER/S:

C.ALAVI

S/O. MUHAMMED, CHOLAKKATUTHODI HOUSE, VELLILA,
MANKADA, MALAPPURAM DISTRICT.

BY ADVS.

SRI.BABU S. NAIR

SMT.SMITHA BABU

RESPONDENT/S:

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

Crl.RP.No.86 of 2015

2



2024:KER:89173

OF KERALA, ERNAKULAM.

**2 ANEESH KUMAR
THEKKEKALAYIL HOUSE, MOOTHEDAM, EDAKKARA,
MALAPPURAM - 679331.**

R1 BY PUBLIC PROSECUTOR SRI G SUDHEER

R2 BY SRI. P JAYAYRAM

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 27.11.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**



“C.R.”

K.BABU, J

Crl.RP No.86 of 2015

Dated this the 27th day of November, 2024

O R D E R

The revision petitioner, who was the Sub Inspector of Police, Nilambur Police Station, is the accused in C.C.No. 322 of 2011 on the file of the Judicial First Class Magistrate Court, Nilambur. The Calendar Case was registered based on a complaint filed by respondent No.2 alleging that on 28.07.2008, the revision petitioner committed the offences punishable under Sections 294(b), 323, 324 and 341 IPC.

2. The facts leading to the filing of the complaint against the accused are as follows:-



On 28.07.2008, the accused received a petition from one Smt. Daisy Mathai against the complainant. In the complaint, Smt. Daisy Mathai alleged that the complainant (respondent No.2) abused her in a public place. The accused summoned the complainant to the Police Station. He reached the Station at 4.30 pm. He was asked to wait till the lady arrived in the Station. Smt. Daisy Mathew came to the station along with her husband in the night. The accused called the complainant, Smt. Daisy Mathai and her husband to his cabin. The accused abused the complainant using filthy language. He also assaulted him. His sister who was employed in the Station as Woman Police Constable attempted to prevent the accused from physically ill-treating him.

3. The Assistant Sub Inspector of Police, Nilambur, had registered Crime No.448/2008 on 28.07.2008 itself



against the accused. The Dy.S.P. concerned investigated into the said crime and submitted a refer report under the caption “false case”.

4. Thereafter, the complainant filed a private complaint before the jurisdictional Magistrate. The learned Magistrate took cognizance of the offences alleged.

5. In response to the summons, he appeared before the Court and raised a contention that the learned Magistrate ought not to have taken cognizance of the offences without the sanction of the Government as envisaged under Section 197(1) of the Cr.P.C. The learned Magistrate rejected the said contention as per order dated 06.01.2015 in CMP No.599 of 2009. This order is under challenge in this revision petition.



6. I have heard the learned counsel for the revision petitioner/accused, the learned counsel for the complainant/respondent No.2 and the learned Public Prosecutor.

7. The learned counsel for the revision petitioner/accused submitted that as the accused was on official duty and discharging duties as a public servant, sanction under Section 197 was mandatory for taking cognizance. The learned counsel for the accused relied on **Rizwan Ahmed Javed Shaikh v. Jammal Patel** [(2001) 5 SCC 7], **Sankaran Moitra v. Sadhna Das and another** [AIR 2006 SC 1599] and **Moosa Vallikkadan v. State of Kerala** [2010 (3) KLT 437] to support his contentions.

8. The learned counsel for the complainant submitted that the accused is not entitled to the



protection contained in Section 197(1) of the Cr.PC. The learned counsel submitted that there must be reasonable connection between the acts alleged and the discharge of official duty. The learned counsel for the complainant submitted that the expression 'official duty' is to be understood as an act in discharge of his duty. It is further submitted that the provision does not extend its protective cover to every acts or omission done by a public servant in service. The learned counsel submitted that 'public order' will not take all duties and responsibilities as in the case of 'law and order' which takes in all duties discharged by the Police officials concerned. The learned counsel for the complainant contended that application of Section 197 Cr.PC does not arise in this case as the accused was not charged with the maintenance of 'public order' at the relevant time. The



learned counsel for the complainant relied on ***Ram Manohar Lohia v. The State of Bihar and another*** [AIR 1966 SC 740] and ***Centre for Public Interest Litigation and another v. Union of India*** [(2005) 8 SCC 202] to fortify his contentions.

9. The learned counsel for the revision petitioner/accused submitted that in view of the notification dated 06.12.1997, all members of the Kerala State Police charged with maintenance of 'public order' are entitled to the protection under Section 197 Cr.PC.

10. I shall first consider the contention of the learned counsel for the complainant on the applicability of the Government Notification dated 06.12.1977. The Government of Kerala issued notification No.61135/A2/77/Home in the year 1977 under Section 197(3) of Cr.PC.



11. The notification reads thus:-

“GOVERNMENT OF KERALA
Home (A) Department
NOTIFICATION

No. 61135/A2/77/Home

Dated, Trivandrum 6th December 1977

S.R.O. No. 1211/77 - In exercise of the powers conferred by sub-section (3) of section 197 of the code of Criminal Procedure, 1973 (Central Act 2 of 1974) the Government of Kerala hereby direct that the provisions of subsection (2) of the said section shall apply to all members of the Kerala State Police, charged with the maintenance of public order.

By order of the Governor,
S. Narayanaswamy,
Special Secretary

Explanatory Note

Section 197 of Criminal Procedure Code affords protection from false vexatious or malafide prosecution to some categories of public servants in the shape of a requirement of previous sanction of the government concerned, when such public servants are accused of an offence, alleged to have been committed while acting or purporting to act in discharge of their official duties. The members of the armed forces of the union are so protected. Government consider that that members of the Kerala Police force who are charged with the maintenance of public order are also in need of similar protection, the notification is issued to achieve this objective.”



12. This Court had considered the application of the notification in ***Moosa Vallikkadan*** (Supra), ***Muhammed v. Sasi*** [1985 KLT 404] and ***Sarojini v. Prasannan*** [1996 (2) KLT 859] . In ***Muhammed v. Sasi*** (Supra), a learned Single Judge of this Court held that the protection under the notification would be available to members of the Kerala Police Force only when they are charged with a duty of maintenance of ‘public order’ and not when they are discharging their official duties by way of ‘law and order’. A Division Bench of this Court in ***Sarojini v. Prasannan*** (Supra) overruled ***Muhammed v. Sasi*** (Supra). In ***Rizwan Ahmed Javed Shaikh v. Jammal Patel*** (Supra), while dealing with the *pari materia* notification issued by the Maharashtra Government, the Supreme Court held that the notification



issued under Section 197(3) of the Cr.PC extends protection to all members of the Police force under Section 197(2) Cr.P.C. though the act in question which is alleged to be an offence committed by the accused person was not referable to maintain public order. The Supreme Court observed that 'maintenance of public order' referred to in the notification need not be assigned a narrow meaning and the police officers do discharge duties relating to maintenance of public order in its wider sense. This Court in ***Moosa Vallikkadan*** following ***Rizwan Ahmed Javed Shaikh v. Jammal Patel*** (Supra) and ***Sarojini v. Prasannan*** (Supra) held that the members of the Kerala Police Force are entitled to the protection by virtue of the notification even though their discharge of duty is not referable to maintenance of public order. Therefore, the contention of the



complainant on the applicability of the notification dated 06.12.1977 cannot be sustained.

13. Now coming to the scope of the protection contained in Section 197 Cr.P.C. The relevant statutory provision is extracted below:-

“197. Prosecution of Judges and public servant.

(1)XXX XXX XXX

(2) No Court shall taken cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein the expression "State Government" was submitted.

(3A)XXX XXX XXX

(3B)XXX XXX XXX

(4)XXX XXX XXX”



14. In ***Hori Ram Singh v. Crown*** [1939 SCC Online FC 2 : (1939) 1 FCR 159], the Federal Court on the relevant subject observed thus:-

“As the consent of the Governor, provided for in that Section, is a condition precedent to the institution of proceedings against a public servant, the necessity for such consent cannot be made to depend upon the case which the accused or the defendant may put forward after the proceedings had been instituted, but must be determined with reference to the nature of the allegations made against the public servant, in the suit or criminal proceeding. If these allegations cannot be held to relate to "any act done or purporting to be done in the execution of his duty" by the defendant or the accused "as a servant of the Crown," the consent of the authorities would, prima facie, not be necessary for the institution of the proceedings. If, in the course of the trial, all that could be proved should be found to relate only to what he did or purported to do "in the execution of his duty," the proceedings would fail on the merits, unless the Court was satisfied that the acts complained of were not done in good faith: Section 270(2). Even otherwise, the proceedings would fail for want of the



consent of the Governor, if the evidence established only official acts. As the Appellate Court has not pronounced any opinion on the evidence, we are not in a position to say whether on the facts proved, the proceedings could be held to fail on either of the above grounds”.

15. The Privy Council approved the view expressed by the Federal Court in ***Hori Ram Singh v. The King Emperor*** [1940 SCC Online FC 2 : (1940) 2 FCR 15]. In ***Shreekantiah Ramayya Munipalli v. State of Bombay*** [(1954) 2 SCC 992 : 1955 (1) SCR 1177], the Supreme Court explained the scope of Section 197 thus:-

“14.Now it is obvious that if Section 197(1) of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning. What it says is ----



“when any public servant . is accused of any offence committed by him while acting or purporting to act in the discharge of his official duty”

We have therefore first to concentrate on the word "offence".

15. Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established. In the present case, the elements alleged against the second accused are, first, that there was an "entrustment" and/or "dominion"; second, that the entrustment and/or dominion was "in his capacity as a public servant"; third, that there was a "disposal"; and fourth, that the disposal was "dishonest". Now it is evident that the entrustment and/or dominion here were in an official capacity, and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity. Therefore, the act complained of, namely the disposal, could not have been done in any other way. If it was innocent, it was an official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because the second accused could not dispose of the goods save by the doing of an official act, namely officially permitting



their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately, there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it.”

16. In ***Amrik Singh Vs. State of PEPSU*** [AIR 1955 SC 309 : 1955 (1) SCR 1302], the Supreme Court summed up the principles thus:-

“8. The result of the authorities may thus be summed up: It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties



so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution.”

17. A Constitution Bench of the Supreme Court in ***Matajog Dobey v. H.C.Bhari*** [AIR 1956 SC 44 : 1955 (2) SCR 925] while holding that Section 197 Cr.PC was not violative of the fundamental rights under Article 14 of the Constitution of India observed thus:-

“15.....Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. It was argued that Section 197, Criminal Procedure Code vested an absolutely arbitrary power in the Government to grant or withhold sanction at their sweet will and pleasure, and the legislature did not lay



down or even indicate any guiding principles to control the exercise of the discretion.

There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction....”

18. The Supreme Court on the test to be adopted for finding out whether Section 197 of the Code was attracted or not observed thus:-

“17. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; ‘any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty’. But the difference is only in language and not in substance. The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only



point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation."

19. In ***Pukhraj v. State of Rajasthan and Another*** [(1973) 2 SCC 701], the Supreme Court held thus:-

"2.....While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest



intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the 'capacity in which the act is performed', 'cloak of office' and 'professed exercise of the office' may not always be appropriate to describe or delimit the scope of section.



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

20. In ***Rakesh Kumar Mishra v. State of Bihar and others*** [(2006) 1 SCC 557], the Supreme reiterating the earlier decisions, held thus:-

“12....The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in the discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned....”

21. The learned counsel for the revision petitioner/accused heavily relied on ***Sankaran Moitra v. Sadhna Das*** (Supra) in support of his contentions.



22. In ***Sankaran Moitra v. Sadhna Das***, the accused therein was acting in his official capacity while the alleged offence was committed. The incident happened in West Bengal. It was the day of election to the State Assembly. The accused was in uniform. On getting information that there was some disturbance in a polling booth, the accused rushed to the spot in his official jeep. The incident took a violent turn. There occurred clashes between the supporters of two political parties. A lathicharge took place. The husband of the complainant sustained injuries in the incident. He fell down in the water at the edge of a lake as he was running away from the scene when the Police personnel chased him. He succumbed to the injuries. On the above facts, the Supreme Court held that it was part of the duty of the accused/Police Officer to prevent any breach of law and



maintain order on the polling day or to prevent the blocking of voters or prevent what has come to be known as booth capturing. The Supreme Court held that the act was done while the Officer was performing his duty and therefore he was entitled to the protection contained in Section 197 of Cr.PC.

23. The learned counsel further relied on ***Rizwan Ahmed Javed Shaikh v. Jammal Patel*** (Supra). In ***Rizwan Ahmed Javed Shaikh***, a Sub Inspector of Police and two Senior Police Inspectors were alleged to have committed offences under Sections 220 and 342 of IPC and Sections 147(c)(d) and 148 of the Bombay Police Act, 1951. In the complaint, the complainant therein alleged that he was mercilessly beaten by the Police Officers after wrongfully confining him at the Police Station. The learned Magistrate after conducting inquiry under Section



202 Cr.PC took cognizance under Sections 220 (commitment for trial or confinement by person having authority who knows that he is acting contrary to law) and 342 (wrongful confinement) of IPC and Sections 147 (Vexatious injury, search, arrest etc. by police officer) and 148 (Vexatious delay in forwarding a person arrested) of the Bombay Police Act, 1951. It is pertinent to note that the learned Magistrate did not take cognizance of the offence under Section 323 IPC. Admittedly the complainants therein were arrested by the Police. The gravamen of the charge or the allegation was failure on the part of the accused Police Officers to produce the complainants before a Magistrate within 24 hours of arrest. On these facts, the Supreme Court held that the accused Police Officers were entitled to the benefit of the protection contained under Section 197(2) Cr.PC.



24. The learned counsel then relied on ***Moosa Vallikkadan v, State of Kerala*** (Supra). In ***Moosa Vallikkadan*** (Supra), the Police Officer was in the process of executing arrest warrant against one Shri. Moideen who was in the office of his Advocate. The Police Officer entered the office room of the complainant-Advocate without her permission. Shri. Moideen was taken into custody and carried in the Police jeep. The Police Officer was alleged to have committed offences punishable under Sections 294(b), 447, 452 and 323 IPC. In ***Moosa Vallikkadan*** (Supra), this Court held that the act of the accused Police Officer was in performance of his official duty and it did not matter even if the matter exceeded what was strictly necessary for the discharge of the duty.



25. Now, I shall consider the allegations levelled against the revision petitioner/accused. The complainant was summoned to the Police Station pursuant to a complaint filed by one Smt. Daisy Mathai. He reached the Police Station in response to the summons at 4.30 pm. He waited till the lady and her husband came there at 8.00 pm. The accused-Inspector also came there. He showered abusive words on the complainant. The accused mercilessly assaulted the complainant. He fisted on his chest. He hit his head against the wall. He also kicked on his abdomen and chest. The complainant's sister, who was attached to the Police Station as a Woman Constable, tried to prevent the accused physically ill-treating him. The sister of the complainant was pregnant at that time. The accused- Inspector assaulted the woman police constable also. The Accident register-cum-



2024:KER:89173

wound Certificate dated 27.08.2008 prepared by the Medical Officer of Taluk Head Quarters Hospital, Nilambur recorded that the complainant complained of chest pain. The Wound Certificate was prepared at 8.45 pm on 28.07.2008. He was admitted in the hospital as an inpatient. The discharge summary, which is produced as Ext.R2(b) showed that he had pain in Right Eliac Region, contusion in the forehead and tenderness in the Right Eliac Fossa.

26. Ext.R2(d) discharge summary issued in favour of Smt. Nisha, the sister of the complainant stated that she had pain in right lower part of abdomen.

27. The facts in the present case are no way similar to the facts considered by the Supreme Court in ***Sankaran Moitra v. Sadhna Das and another*** (Supra) and ***Rizwan Ahmed Javed Shaikh*** (Supra) and the facts



considered by this Court in ***Moosa Vallikkadan*** (Supra). It cannot be said that the acts alleged against the petitioner have a reasonable connection with his official duty. It is not that the acts alleged only exceeded what was strictly necessary for the discharge of the duty. A citizen was summoned to a Police Station on a complaint filed by a lady. He alleged that he was brutally ill-treated there by the Inspector. Can these acts be treated as acts in discharge of his official duty? How can we say that the act of a Police Officer physically torturing a man at the Police Station is to be treated as part of his official duty? The fundamental test appears to be that the accused can reasonably claim that what he did was by virtue of his office. The accused/revision petitioner cannot claim that what he did was by virtue of his office. It is the quality of the act that is important. The alleged acts, at any rate,



would not fall within the scope and range of his official duties. Therefore, he is not entitled to the protection contemplated under Section 197Cr.PC.

I find no reason to interfere with the impugned order. The revision petition stands dismissed.

kkj

Sd/-
K.BABU JUDGE



2024:KER:89173

APPENDIX OF CRL.REV.PET 86/2015

PETITIONER ANNEXURES

- Annexure A:** True copy of the private compliant filed by the 2nd respondent before J.F.C.M., Nilambur
- Annexure B:** True copy of the F.I.R. in Crime No.448/2008 of the Nilambur Police Station dated, 28-7-2008.
- Annexure C:** True copy of the complaint submitted by Daisy Mathai before the petitioner dated, 28-7-2008.
- Annexure D:** True copy of the F.I.R. in Crime No.446/2008 of the Nilambur Police Station dated, 28-7-2008.
- Annexure E:** True copy of the Order dated, 27-8-2014 in Crl.M.C.No.3949/2011 of this Hon'ble Court.
- Annexure R2 (a)** TRUE COPY OF THE WOUND CERTIFICATE DATED 28/07/2008 ISSUED FROM GOVT. TALUK HEADQUARTERS HOSPITAL, NILAMBUR AFTER EXAMINING THE 2ND RESPONDENT
- Annexure R2 (b)** TRUE COPY OF THE DISCHARGE SUMMARY ISSUED TO THE 2ND RESPONDENT
- Annexure R2 (c)** TRUE COPY OF THE DISCHARGE SUMMARY DATED 01/08/2008 ISSUED TO THE 2ND RESPONDENT FROM E.M.S. MEMORIAL CO-OPERATIVE HOSPITAL, PERINTHALMANNA

Crl.RP..No.86 of 2015

31



2024:KER:89173

Annexure R2 (d)

**TRUE COPY OF THE TREATMENT CERTIFICATE
DATED 02/08/2008 ISSUED TO THE 2ND
RESPONDENT'S SISTER, NISHA, FROM TALUK
HEADQUARTERS HOSPITAL, NILAMBUR**