

"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

Cr1.MC.No. 670 of 2014 ()

-----

AGAINST THE ORDER IN CRL.RP.NO.7/2012 of ADDL.SESIONS COURT-TRIAL OF  
ABKARI ACT CASES, NEYYATTINKARA DATED 27-11-2013

AGAINST CMP.NO.8054/2009 NUMBERED AS C.C.1657/2013 ON THE FILE OF  
JFCM-I, NEYYATTINKARA, THIRUVANANTHAPURAM.

PETITIONER/1ST ACCUSED IN CMP NO.8054/2009 NOW NUMBERED AS CC 1657/2013:

-----

K.PRADEEP, AGED 40 YEARS,  
S/O. LATE KRISHNAN NAIR,  
NOW WORKING AS CIRCLE INSPECTOR OF POLICE,  
PEROORKADA POLICE STATION,  
THIRUVANANTHAPURAM AND RESIDING AT PRADEEPAM,  
TC 64/426(21), SNEHAPURI, KARUMOM P.O.  
THIRUVANANTHAPURAM-695 002.

BY ADVS.SRI.D.GANESH KUMAR  
SMT.K.I.KAVITHA

RESPONDENTS/STATE AND COMPLAINANT:

-----

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

2. SREEKUMAR , AGED 46 YEARS,  
S/O. VELAYUDHAN, RESIDING AT ARUMBAYAM BUNGLOW,  
VALIYA VAZHI, CHILAMPARA, KEEZHARUR VILLAGE,  
KEEZHARUR P.O., NEYYATTINKARA,  
THIRUVANANTHAPURAM-695 124.

R2 BY ADV. SRI.R.GOPAN  
R1 BY P.P.SMT. S.HYMA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
27.10.2014, THE COURT ON 11-02-2015 PASSED THE FOLLOWING:

Crl.MC.No. 670 of 2014 ()

-----

APPENDIX

PETITIONER'S ANNEXURES:

-----

ANNEXURE 1 : COPY OF THE CHARGE SHEET SUBMITTED BY SUB INSPECTOR OF POLICE, ARYANCODE POLICE STATION IN CRIME NO.281/06.

ANNEXURE 2 : COPY OF WITHDRAWAL PETITION FILED UNDER SECTION 321 CRL.PC DTD.6.5.2009.

ANNEXURE 3 : COPY OF THE CMP NO.8054/2009 PREFERRED BY THE 2ND RESPONDENT AS PETITIONER.

ANNEXURE 4 : COPY OF THE ORDER DTD.6.9.2011 IN CMP NO.8054/2009.

ANNEXURE 5 : COPY OF THE ORDER DTD.27.11.2013 IN CRIMINAL RP NO.7/2012 PASSED BY ADDITIONAL SESSIONS JUDGE, NEYYATTINKARA, THIRUVANANTHAPURAM.

RESPONDENTS' ANNEXURES: NIL

-----

/TRUE COPY/

P.S.TO JUDGE

“CR”

**K. RAMAKRISHNAN, J.**

.....  
Crl.M.C.No.670 of 2014  
.....

Dated this the 11<sup>th</sup> day of February, 2015.

**O R D E R**

The first accused in C.C.No.1657/2013 on the file of the Judicial First Class Magistrate Court-I, Neyyattinkara, Thiruvananthapuram has filed this application to quash the proceedings as against him under section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' for short).

2. The case of the petitioner in the petition was that he is now working as Circle Inspector of Police and he has been arrayed as the first accused in C.M.P.No.8054/2009, a private complaint filed by the second accused, who was the 7<sup>th</sup> accused in C.C.No.17/2007 of Judicial First Class Magistrate Court-I, Neyyattinkara. The allegation in the complaint was that the petitioner along with four others, who were also police officials attached to Aryancode police station, involved in the commission of the offence alleging offences under sections 120(B), 191, 192, 202, 220 and 506 (1) read with section 34 of the Indian Penal Code. The allegation against the petitioner was that

while he was working as Sub Inspector of Police, Aryancode police station, falsely implicated the second respondent herein as the 7<sup>th</sup> accused in Crime No.281/2006 of Aryancode Police Station alleging offences under sections 143, 149, 153 and 283 of the Indian Penal Code on the allegation that the complainant in the lower court along with the others have formed an unlawful assembly and caused traffic block on 6.11.2006 at a place called Karikkottukuzhi junction on the side of Chempooru-Vellarada road in order to cause inconvenience to the public. The incident happened on 6.11.2006 and the crime was registered as Crime No.281/2006 by the petitioner who was then working as Sub Inspector of Police, Aryancode Police station alleging offences under sections 143, 149, 188 and 283 of the Indian Penal Code and the final report was filed on 18.12.2006 before the Judicial First Class Magistrate Court-I, Neyyattinkara, Thiruvananthapuram and it was taken on file as C.C.No.17/2007. The final report was filed against 26 accused persons including the second respondent herein, who was shown as the 7<sup>th</sup> accused in the case. During the pendency of that case, the second respondent filed C.M.P.No.2845/2005 for

further investigation and the learned Magistrate allowed the same and thereafter the investigating officer again conducted further investigation and filed supplementary report under section 173 (2) read with section 173(8) of the Code and there was no materials found out by the investigating officer to come to a different conclusion than the one arrived at by the petitioner in the final report filed by him earlier. Thereafter, the case was withdrawn as per the sanction accorded by the Government and permitted by the court invoking the power under section 321 of the Code. Thereafter in the year 2009, the second respondent filed CMP.No.8054/2009 as a private complaint for prosecuting the petitioner as well as four others, who were in charge of the investigation and after enquiry under section 202 of the Code, the learned Magistrate dismissed the Criminal Miscellaneous Petition by order dated 6.9.2011 under section 203 of the Code. Against the same, the second respondent filed Crl.R.P.No.7/2012 before the Sessions Court, Thiruvananthapuram, which was made over to the Additional Sessions Court, Neyyattinkara for disposal and the learned Additional Sessions Judge allowed the revision setting aside the order of dismissal passed by the court below and remitted

the case to the Magistrate court for disposal of the case in accordance with law. On that basis, the learned Magistrate conducted further enquiry and took cognizance of the case as C.C.No.1657/2013 and issued process to the petitioner and others alleging offences under sections 120B, 191, 192, 202, 220 and 506(1) read with section 34 of the Indian Penal Code. Aggrieved by the same, the present petition has been filed by the petitioner, who was arrayed as the first accused in the case, seeking the following relief:

“In the above facts and circumstances of the case, it is most humbly prayed that this Honourable Court be pleased to pass an order by quashing Annexure 3 complaint and all further proceedings now numbered as C.C.No.1657/2013 on the file of the Judicial First Class Magistrate Court-I, Neyyattinkara, Thiruvananthapuram against the petitioner by allowing this Criminal MC and thereby render justice to the petitioner”.

3. Heard the learned counsel appearing for the petitioner, the second respondent and the learned Public Prosecutor.

4. The counsel appearing for the petitioner submitted that the alleged incident occurred on 6.11.2006, but the complaint was filed only on 19.11.2009, which is more than

three years of the alleged incident. Further, even going by the allegations, it will be seen that the petitioner was the investigating officer, who investigated the case and filed final report and this was done in discharge of his official duty and as such, he is entitled to get protection under section 197 of the Code. Even assuming that there was some excess during the course of discharging his official duty, if it is done as part of the official duty, even then he is entitled to get protection and this aspect has not been considered by the court below before taking cognizance of the case. Further it was barred by limitation as the complaint was filed after three years of the alleged incident and the punishment provided for the offence is upto three years and thereby under section 468 of the Code, it is barred by limitation. Further, even under section 64(3) of the Kerala Police Act, 1960 the action ought to have been taken within six months of the alleged incident, this aspect has not been considered by the court below before taking cognizance. So cognizance is bad.

5. On the other hand, the learned counsel for the second respondent submitted that the order of the Additional Sessions Court setting aside the dismissal of the complaint by the lower

court for want of sanction under section 197 of the Code has not been challenged by the petitioner. Further, there is no document produced by the petitioner to prove that he was really deputed for that purpose and while in discharge of that duty, this was committed. Further, for one of the offences, the punishment provided is more than seven years namely for offence under 220 of the Indian Penal Code and as such, there is no limitation provided. Further, the question of sanction is not applicable to the petitioner as he is not a person removable by the Government. So under the circumstances, the court below was perfectly justified in taking cognizance and the question of sanction or other matters to be considered on the basis of evidence.

6. Heard the Public Prosecutor also.

7. It is an admitted fact that the petitioner while working as Sub Inspector of Police, Aryancode Police station registered a case as Crime No.281/2006 alleging offences under sections 143, 147, 153 and 283 of the Indian Penal Code against some identifiable persons. The allegation was that on 6.11.2006 at about 4.30 p.m when the dead body of the deceased involved in Crime No.262/2006 of Poojappura Police Station

was brought in an ambulance, some identifiable persons blocked the vehicle and obstructed the traffic for more than four hours, thereby committed the above said offences. It is also an admitted fact that the crime was registered by the present petitioner. It is also an admitted fact that after investigation, final report was filed in that case before the Judicial First Class Magistrate Court-I, Neyyattinkara and it was taken on file as C.C.No.17/2007. During investigation, it was revealed that no offence under section 153 of the Indian Penal Code was committed and section 153 of the Indian Penal Code was deleted and 26 persons including the complainant in the lower court namely the second respondent were arrayed as accused in the case. The final report in the case was filed on 18.12.2006 and it was taken on file as C.C.No.17/2007 on 11.1.2007 and summons was issued to the accused directing them to appear on 24.4.2007. It is also an admitted fact that the present petitioner filed C.M.P.No.2845/2005 for further investigation under section 173 (8) of the Code and the same was allowed and the investigation was conducted by the 4<sup>th</sup> accused in this case and he also filed a report stating that there was nothing to be changed and reiterated the conclusion

arrived at by the petitioner in the earlier investigation conducted by him regarding the involvement of the 2<sup>nd</sup> respondent and others in the incident. It is also an admitted fact that, later Government had accorded sanction to withdraw the case under section 321 of the Code and accordingly the Assistant Public Prosecutor filed C.M.P.No.1738/2009 seeking permission to withdraw the case under section 321 of the Code and the same was allowed by the learned Magistrate as per the order dated 8.5.2009 and it was thereafter that Annexure-3 complaint was filed.

8. It is also an admitted fact that after enquiry under section 202 of the Code, as per Annexure-4 order dated 6.9.2011, the learned Magistrate dismissed the complaint under section 203 of the Code for want of sanction under section 197 of the Code. This was challenged by the complainant by filing Crl.R.P.No.7/2012 before the Sessions Court, Thiruvananthapuram and it was made over to Additional Sessions Court, Neyyattinkara by the Sessions Judge and the learned Additional Sessions Judge by Annexure-5 order allowed the revision setting aside the order of dismissal for want of sanction under section 197 of the Code

observing that no sanction under section 197 of the Code is required on the basis of the allegations made and remitted for proper disposal of the case in accordance with law and this order was dated 26.11.2013 and it is thereafter that the learned Magistrate had taken cognizance of the case as C.C.No.1657/2013 under sections 120(B), 191, 192, 202, 220, 506(1) read with section 34 of the Indian Penal Code. It is on the basis of the order of the Additional Sessions Court in the revision that the learned Magistrate has taken cognizance of the case. So, it cannot be said that the Magistrate had committed any illegality or irregularity in taking cognizance of the case noting that no sanction is required as regards the accused are concerned who include the petitioner also.

9. The petitioner was party to the revision and that was not challenged by him independently earlier. Only after the learned Magistrate took cognizance of the case after the orders of the Additional Sessions Court that the present Crl.M.C has been filed raising the contention that taking of cognizance without sanction under section 197 of the Code is bad in law. The order passed by the Additional Sessions Court in the revision has not been challenged in this petition. When a

remedy is available to the petitioner to challenge the order of the subordinate court, in which he was a party and that order was passed after hearing him, then the same cannot be challenged after the Magistrate had taken cognizance of the case in an indirect manner on the ground of want of sanction, which was repelled by the Sessions Court in the revision filed by the complainant after hearing the petitioner as well. So that ground is not now available to the petitioner.

10. Further, no document has been produced either in the lower court or before this Court that he was engaged in law and order duty and it was at that time that the incident happened and exercise of that power in discharge of his duty he had done this act. Engaged in law and order duty and engaged in conducting criminal investigation stand in a different footing. The benefit of notification will be available to the officers mentioned therein only if they fall under the category mentioned under section 197 (3) of the Code. Further, the question as to whether he had discharged his official duty and whether sanction is required or not are all matters of fact and on the basis of the allegations if the Magistrate or the revisional court came to the conclusion that

at that stage question of sanction does not arise, then that can be considered by the court at a later stage on the basis of evidence as observed by the Additional Sessions Judge in Annexure - 5 order. The dictums laid down in the decisions reported in **Choudhury Parveen Sultana v. State of West Bengal** (2009 KHC 118), **Fakhruzamma v. State of Jharkhand** (2013 (8) Supreme 734), **Harikumar B. v. Suresh @ Karupooru Suresh and Another** (2014 (2) KHC 632), **Unnikrishnan v. State of Kerala and Others** (2014 (1) KHC 575) and **Om Prakash and Others v. State of Jharkhand** (2012 KHC 4532) are to be considered on the basis of the evidence at a later stage by the Magistrate on the basis of the evidence available.

11. As regards the question of limitation is concerned, section 64(3) of the Kerala Police Act, 1960 gives limitation for filing complaint of six months from the date on which the offences or wrong is alleged to have been committed by the police officer. If the complaint was filed after the period, it cannot be taken on file, is the contention raised by the counsel for the petitioner. Another contention raised was that, even assuming that section 64(3) of the Police Act, 1960 is not

applicable, the period of three years mentioned under section 468 of the Code is applicable in such cases and the incident occurred on 6.11.2006 but the complaint was filed only on 19.11.2009. So it is barred by limitation.

12. It may be mentioned here that though the incident occurred on 6.11.2006, in the First Information Report the name of the second respondent was not mentioned. The final report was filed only on 18.12.2006 and it was taken on file by the Magistrate only on 11.01.2007, which is seen from the records.

13. Section 468 of the Code reads as follows:

“468. Bar to taking cognizance after lapse of the period of limitation:- (1) Except as otherwise provided elsewhere in this Code, no court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year.

(c ) three years, if the offence is punishable with imprisonment for a term exceeding one year but not

exceeding three years.

[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]”

**14. Section 64 of the Kerala Police Act reads as follows:**

“64. Magistrate or Police Officer not liable for anything done in good faith:-

(1) No Magistrate or Police Officer shall be liable to any penalty or payment of damages on account of any act done or intended to be done in good faith in pursuance of any duty imposed or any authority conferred on him by any provision of this Act or of any other law for the time being in force conferring power on the Magistrate or Police Officer or of any rule, order or direction lawfully made or given thereunder.

(2) Person duly appointed or authorised not liable for anything done in good faith:- No person duly appointed or authorised shall be liable as aforesaid for giving effect in good faith to any such order or direction issued by the Government or by a person empowered in that behalf under this Act or any rule made under any provision thereof.

(3) Suit or prosecution not to be entertained if

instituted more than six months after the date of the act complained of: No court shall take cognizance of any suit or complaint, in respect of any offence or wrong alleged to be committed or done by a Magistrate, Police Officer or other person on account of any act done in pursuance of any duty imposed or authority conferred on him by this Act or any other law for the time being in force or of any rule, order or direction lawfully made or given thereunder unless the suit or complaint is filed within six months of the date on which the offence or wrong is alleged to have been committed or done.

(4) Two months' notice before suit:- No suit as aforesaid shall be instituted against any Magistrate, police officer or other person until the expiration of two months next after notice in writing containing a sufficient description of the wrong complained of and the relief claimed has been given to him.

(5) Complaint to set forth service of notice and tender of amends:- The complaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service, and shall state whether any, and if so what, tender of amends, has been made by the defendant. A copy of the said notice shall be annexed to the complaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof.

(6) Tender of amends made before suit:- Whenever it is proved to the satisfaction of the court, that, before the suit was instituted, tender of sufficient amends has been made to the plaintiff, the plaintiff shall not get his costs nor any relief not included in such tender, and shall pay the costs of the defendant in the suit;

Provided that no action shall lie when such Magistrate, Police Officer or other person has been prosecuted criminally for the same act”.

15. Further one of the offences alleged is section 220 of the Indian Penal Code, for which the punishment provided may extend to seven years. So, if the punishment provided is more than three years, then there is no limitation provided under section 468 of the Code. Whether such an offence is attracted or not, is a matter for evidence. So the contention raised by the counsel for the petitioner that the complaint is barred by limitation cannot be entertained at this stage in view of section 468 of the Code.

16. Further, the dictum laid down in the decision reported in **Arun Kumar S. and Another v. Abdubaker Sidhique and Another** (2012 (3) KHC 724) is not applicable to the facts of

this case.

17. Further in the decision reported in **Unnikrishnan v. Alikutty [2000(3) KLT 483 (SC)]**, the Hon'ble Supreme Court has held that Section 473 of the Code cannot operate in any period of limitation prescribed under any other enactment. Further in the same decision, it has been observed that ban under section 64(3) of the Kerala Police Act is not intended only with respect of offences mentioned under the Act. Further in the same decision it has been observed that:

“The context envisaged in S.197(1) of the Code or the purpose of providing a filter therein, is demonstrably different from the object of S.64(3) of the K.P.Act. S.197(1) of the Code does not impose any absolute ban against taking cognizance of the offence, but it only says that the sanction contemplated therein is a condition precedent for taking such cognizance. It obviously is for preventing public servants from being subjected to frivolous prosecutions for discharging their official duties. On the other hand, S.64(3) of the K.P. Act incorporates an absolute ban against taking cognizance of the offences of the type mentioned therein on the expiry of the period specified therein. That apart the words used in S.197(1) of the Code for qualifying the offence are seemingly wider. Those words are these:”any offence alleged to have

been committed by him while acting or purporting to act in the discharge of his official duty". In S.64(3) of the K.P. Act the offence is qualified as the offence committed by a police officer **"on account of any act done in pursuance of any duty imposed or authority conferred on him**, by this Act or any other law for the time being in force or any rule, order of direction lawfully made or given thereunder". The commission of an offence, while acting or purporting to act in the discharge of his official duty is of a wider radius when compared with an offence committed on account of an act done in pursuance of any duty or authority. In the latter, the act done itself should be an exercise in discharge of his duty or authority and that act should amount to an offence. It is not enough that the act complained of was only purported to be an exercise of his duty though it may be sufficient under the former. So the scope under S.64(3) of the K.P. Act is much narrower than the amplitude of S.197(1) of the Code for a public servant to claim protection.

18. In the same decision it has been observed that:

"Police Officer assaulting a prisoner in lock-up cannot claim such act to be connected with the discharge of his authority or exercise of his duty unless it is established that it was done in his defence or defence of others if a police officer dealing with law and order duty, uses force against unruly persons, either in his own defence or in defence of

others and exceeds such right it may amount to an offence. But such offence might fall within the amplitude of S.197 of the Code as well as S.64(3) of the K.P.Act. But if a police officer assaults a prisoner inside a lock-up he cannot claim such act to be connected with the discharge of his authority or exercise of his duty unless he establishes that he did such acts in his defence or in defence of others or any property. Similarly, if a police officer wrongfully confines a person in the lock-up beyond a period of 24 hours without the sanction of a Magistrate or an order of a court it would be an offence for which he cannot claim any protection in the normal course, nor can he claim that such act was done in exercise of his official duty. A policeman keeping a person in the lock-up for more than 24 hours without authority is not merely abusing his duty but his act would be quite outside the contours of his duty or authority”.

19. Further in the decision reported in **Om Praksh and Others v. State of Jharkhand** (2012 KHC 4532), it has been observed that:

“Requirement of sanction to prosecute affords protection to the policemen, who are sometimes required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack unless unimpeachable evidence is on record

to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given under S.197 of the Code. Previous sanction is a precondition for taking cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea. In a case where on facts it may appear to the Court that a person was killed by the police in a stage managed encounter, the position may be completely different”.

20. In the decision reported in **Choudhury Parveen Sultana v. State of West Bengal** (2009 KHC 118), it has been observed that :

“... all acts done by a public servant purported to be in discharge of his official duties cannot as a matter of course, be brought under the protective umbrella of S.197. Object of S.197 is to enable the authorities to scrutinize the allegations made against a public servant so as to protect him against frivolous, vexatious or false litigation. If the authority vested in a public servant has done something which was not otherwise permitted under law,

such acts cannot claim protection”.

21. In the decision reported in **Fakhruzamma v. State of Jharkhand** (2013(8) Supreme 734), the Hon'ble Supreme Court has held that protection under section 197 will be available only if such public servants who could be removed by sanction of the Government.

22. In the decision reported in **The State of Andhra Pradesh v. N. Venugopal and others** (AIR 1964 SC 33), the three Judges Bench of the Hon'ble Supreme Court while considering the provisions of section 53 of the Madras District Police Act (24 of 1859) regarding the bar of limitation observed that:

“The protection of section 53 also extends to acts done or intended to be done under the provisions of any other law conferring powers of the police. One such law is the Code of Criminal Procedure which confers numerous powers on the police in respect of arrest, search and investigation. Among other laws conferring powers on the police may be mentioned the powers on the police may be mentioned the Opium Act, the Petroleum Act etc. It is clear that unless the act complained of appears to have been done or intended to

be done 'under' the provisions of the Police Act or of the other laws conferring powers on the police, the protection of S.53 will not be available.. If the act complained of is wholly justified by law, it would not amount to an offence at all in view of the provisions of S.79 of the Penal Code. Many cases may, however, arise where in acting under the provisions of the Police Act, or other law conferring powers on the police, the police officer or some other person may go beyond what is strictly justified in law. Though S. 79 of the Penal Code will have no application to such cases, S.53 of the Madras District Police Act will apply. But S.53 applies to only a limited class of persons. So, it becomes the task of the court, whenever any question whether that section applies or not arises, to bestow particular care on its decision. In doing this it has to ascertain first what act is complained of and then to examine if there is any provision of the Police Act, or other law conferring powers on the police under which it may be said to have been done or intended to be done. The Court has to remember in this connection that an act is not 'under' a provision of law merely because the point of time at which it is done coincides with the point of time when some act is done in the exercise of the powers granted by the provision or in performance of the duty imposed by it. To be able to say

that an act is done under a provision of law, one must discover the existence of a reasonable relationship between the provision and the act. In the absence of such a relation the act cannot be said to be done under the particular provision of law”.

23. It is seen from the documents produced by the petitioner that, at the time when the First Information Report was registered, the name of the petitioner was not mentioned and none of the accused persons were identified at that time. It is only thereafter that the name of the present petitioner was shown. According to the petitioner, a false document has been created to falsely implicate him in the above crime. It is also alleged in the petition that, on several occasions with the help of the first accused, who is the petitioner herein, there were attempts to kill the complainant in the case and he had filed complaints against those persons and cases are pending and he had filed a complaint against the present petitioner to the higher authorities in respect of his illegal acts and also on the basis of the orders of the High Court, a crime branch investigation has been ordered and on account of that motive, he has been falsely implicated in the case by the petitioner

herein. So the complainant had alleged malafides against the petitioner in falsely implicating him in a case like this. Once malafides have been alleged, then it has to be proved by evidence that the act done by the petitioner was done in good faith and after proper investigation. Further, it is also alleged that the petitioner was threatening the complainant as well. So, under the circumstances, going through the allegations in the complaint it will be seen *prima facie* that none of the acts will come under the purview of discharge of official duty which requires protection under section 197 of the Code and in such cases, bar under section 64(3) of the Kerala Police Act also will not be applicable unless it was proved by evidence in court that it was a proper investigation and none of the act alleged had happened and he was only discharging his duty conferred on him by law which is a matter for evidence.

24. It is settled law that at the time when the court is exercising the power under section 482 of the Code, the test is whether if on the basis of the allegations made in the complaint no offence is made out and proceeding with the case will amount to abuse of process of court and the court is not expected to go into the genuineness of the allegations made at the time

when it was deciding the question as to whether power under section 482 of the Code has to be invoked or not, the applicability of section 64(3) of the Kerala Police Act and Section 197 of the Code may also be in some cases depends on evidence and in such cases court can only postpone that issue to be decided at a later stage on the basis of evidence. In view of the allegations made in the case, it cannot be said that even on the basis of the allegations it can come to a conclusion that the petitioner is entitled to get protection under section 197 of the Code or it is barred under section 64(3) of the Kerala Police Act, 1960 as it depends on evidence. The ingredients thereon are to be proved by evidence and it cannot be decided at this stage on the basis of the allegations made in the complaint alone. So, under the circumstances, this Court feels that it is not a fit case where power under section 482 of the Code has to be invoked to quash the proceedings. But, it is made clear that the observations made in the petition are only made for the purpose of deciding the test as to whether the allegations are prima facie made out to an offence which entitles protection under section 197 of the Code or section 64 (3) of the Kerala Police Act as claimed by the petitioner or not

and, on the basis of evidence if the court feels that defence set up by the petitioner makes him eligible for such protection, then this observation will not be a bar for the court below to consider those aspects at a later stage and decide the same on the basis of evidence in accordance with law.

In the result, this petition is dismissed with the above observations

Interim order of stay granted as per order in Crl.M.A.No.843/2014 is hereby vacated and Crl.M.A.No.843/2014 is dismissed. The court may consider the question of personal exemption of the petitioner during trial, if he applies an application for that purpose in accordance with law.

Office is directed to communicate this order to the concerned court immediately.

**Sd/-**

**K. RAMAKRISHNAN, JUDGE.**

cl

/true copy/

P.S to Judge

