

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

Crl.MC.No. 5544 of 2013

**C.C.NO.1515/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
NEYYATINKARA**

PETITIONER(S)/ACCUSED :

**AKBAR, IPS, AGED 37 YEARS,
S/O.ABU, SUPERINTENDENT OF POLICE, ANALYSIS WING,
CRIME BRANCH CID, THIRUVANANTHAPURAM.**

BY ADV. SRI.ANIL K.MOHAMMED

RESPONDENT(S)/STATE :

**1. ANIL,
S/O.SREEDHARAN, SANKARAVILASOM VEEDU,
MARAYAMUTTOM DESOM, PERUNKADAVILA VILLAGE,
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM- 695 001.**

**2. STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

R1 BY ADV. SRI.G.SUDHEER

R2 BY SRI.K.I.ABDUL RASHEED, ADDITIONAL D.G.P

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 25-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE I:** CERTIFIED COPY OF THE COMPLAINT IN C.C.NO.1515/2013 ON THE FILE OF JFCM-1, NEYYATTINKARA.
- ANNEXURE II:** TRUE COPY OF THE ORDER DATED 24/10/2013 PASSED BY THE JFCM-1, NEYYATTINKARA IN C.C.NO.1515/2013.
- ANNEXURE III:** TRUE COPY OF THE FIR IN CRIME NO.261/2008 OF NEYYATTINKARA POLICE STATION.
- ANNEXURE IV:** TRUE COPY OF THE FINAL REPORT IN CRIME NO.261/2008 OF NEYYATTINKARA POLICE STATION.
- ANNEXURE V:** TRUE COPY OF G.O(RT) NO.1470/2009/GAD DATED 27/02/2009.
- ANNEXURE VI:** A COPY OF THE LIST OF CRIMINAL CASES AGAINST THE 1ST RESPONDENT.
- ANNEXURE VII:** TRUE COPY OF THE JUDGMENT IN RP NO. 374/2009 IN W.P(C).NO.897/2009.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 5544 of 2013

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Dated this the 25th day of May, 2015

ORDER

The prayer in this Criminal Miscellaneous Case instituted under the provisions of Sec.482 of the Code of Criminal Procedure seeking the invocation of the inherent powers conferred on this Court as per that provision, is for an order to set aside the impugned Anx.II order dated 24.10.2013 in Calendar Case, C.C.No. 1515/2013 on the file of the Judicial First Class Magistrate's Court-I, Neyyattinkara, and to quash the impugned Anx.I private criminal complaint filed by the 1st respondent before the said Magistrate's court and all further proceedings arising therefrom.

2. It is averred that the petitioner is a Indian Police Service (IPS) officer, currently working as Superintendent of Police in the Crime Branch CID. That he has arrayed as accused in aforementioned impugned proceedings, which led to the institution of Calendar Case, C.C.No.1515/2013 on the file of the said Magistrate's court registered for offences alleged under Secs.341, 323 and 294(b) of the IPC, on the basis of the impugned Anx.1

private criminal complaint. It is stated that the gist of the factual allegations in the impugned criminal complaint is that on 25.5.2008, one Lawrence, a native of Marayamuttam, Vadakara, died under suspicious circumstances and his body was kept in the mortuary at Neyyattinkara Taluk Hospital and on the next day at 10.30 a.m. the accused (the petitioner herein) reached the Taluk hospital and directed the relatives of the deceased to take the dead body to the residence without conducting post-mortem examination. As the death was under suspicious circumstances, the 1st respondent herein (defacto complainant in Anx.1) objected to the said act of the petitioner herein and that the petitioner caught hold of the shirt of the 1st respondent herein and had given him a blow on his chest and abused him in abusive words in public. The Magistrate court accepted Anx.1 complaint to its file. It appears that the 1st respondent had submitted a representation dated 25.10.2008 before the State Government contending that the above said acts of the petitioner herein, though amount to criminal offences, require the sanction of the Government as envisaged under Sec.197 of the Code of Criminal Procedure in order to prosecute the petitioner and that the Government should grant him such sanction in terms of Sec.197 of the Cr.P.C. so as to enable him

to prosecute the petitioner herein. Alleging in-action on the part of the Government in taking a decision on his request, the 1st respondent approached this Court by filing Writ Petition (Civil), W.P.(C).No.897/2009 seeking appropriate directions in the matter so as to enable him to secure sanction from the Government as per Sec.197 of the Code. This Court as per judgment dated 9.1.2009 dismissed W.P.(C).No. 897/2009 on the ground that such sanction under Sec.197 is not required on the factual allegations raised by the 1st respondent against the petitioner herein. The petitioner herein was arrayed as respondent No.1 in W.P.(C).No.897/2009. It appears that immediately after rendering the judgment in W.P.(C). No. 897/2009 by this Court on 9.1.2009, the 1st respondent herein had preferred the impugned Anx.1 private criminal complaint on 18.2.2009 before the said Magistrate's court complaining of the above said offences alleged to have been committed by the petitioner herein. The petitioner herein who was arrayed as respondent No.1 in W.P.(C).No.897/2009, preferred a Review Petition as R.P.No.374/2009 praying that this Court's judgment dated 9.1.2009 rendered in W.P.(C).No. 897/2009 may be reviewed to the extent it is found that no sanction under Sec.197 of the Cr.P.C. is required for prosecuting the petitioner herein. This Court

was specifically alerted that the 1st respondent herein has preferred the impugned Anx. A1 private criminal complaint immediately after the judgment dated 9.1.2009 in W.P.(C).No.897/2009, on the premise that no sanction is required under Sec.197 Cr.P.C. This Court, on a consideration of the matter in R.P.No.374/2009, noted that even going by the pleadings of the 1st respondent herein in his Writ Petition, W.P.(C).No. 897/2009, he has admitted the case that the acts alleged against the petitioner herein were committed by him in discharge of his official duties and therefore it requires sanction under Sec.197 of the Cr.P.C. and hence he submitted Ext.P-4 application therein moving the Government to grant such sanction. Therefore, this Court held that it is not necessary for this Court in that Writ Petition to decide on that issue and accordingly, the said Review Petition was allowed and the judgment in W.P.(C). No.897/2009 to the extent it was observed as stated above, was recalled as it could cause prejudice to the petitioner herein. This Court made it clear that adjudication of that issue is not warranted at that stage in that Writ Petition and that the petitioner herein could urge that the private criminal complaint is defective for any reason including for want of sanction, it is for him to urge this contention before the criminal court.

3. According to the petitioner, upon receiving the information in Neyyattinkara Police Station regarding the death of the above said Lawrence, who is said to have died under suspicious circumstances, the Police authorities had registered Crime No.268/2008 of Neyyattinkara Police Station, on 26.5.2008 at 9.30 a.m. under the caption, "unnatural death" and that on the same day, the S.I. of Police of the said Police Station reached the Taluk Headquarters Hospital, Neyyattinkara, to hold inquest and to send the body for post mortem examination and while the Sub Inspector of Police was in the mortuary, some people under the leadership of the 1st respondent herein trespassed into the mortuary shouting slogans against the Police and obstructed to the smooth conduct of the inquest by the police. The Sub Inspector was constrained to inform the matter to his superior officers and at about 10 a.m. the petitioner herein, who was holding the post of Asst. Superintendent of Police, was present in the office. He was directed by the Superintendent of Police, Thiruvananthapuram Rural over telephone to immediately proceed to the Neyyattinkara Taluk Headquarters Hospital and to do the needful, as the Circle Inspector of Police was then on court duty. That the petitioner along with few Policemen went to the hospital and when reached there 50 people had

gathered in front of the mortuary shouting slogans against police and that they demanded that the inquest should be conducted by the R.D.O. That the mob led by the 1st respondent herein after forming themselves into an unlawful assembly forcibly and unlawfully physically prevented the Sub Inspector and his police party from holding the inquest. Despite the various requests made by the petitioner herein, the 1st respondent and his men did not relent and though the petitioner herein explained to them the illegal procedure involved, they were adamant. In this regard, Anx.III FIR in Crime No.261/2008 of the Neyyattinkara Police Station was registered against the 1st respondent herein for offences under Secs.143,147, 353 read with 149 of the Indian Penal Code. The police, after due investigation submitted Anx.IV final report/charge sheet in Anx.III Crime No.261/2008. That the petitioner had immediately given direction to the Sub Inspector concerned to conduct the inquest and send the body to the police surgeon for post-mortem examination. It is only after a lapse of nearly two hours, that the Sub Inspector was able to conduct inquest and accordingly, the Sub Inspector proceeded to Taluk Hospital to hold inquest in that case and the further formalities in that case like unnatural death were also duly performed by the police authorities

concerned.

4. It is averred by the petitioner that in this context that the 1st respondent herein had submitted a false private complaint, which led to the impugned criminal proceedings against the petitioner herein. It is pointed out that the petitioner herein was recruited to the Indian Police Service in 2005 and that he has impeccable service record, whereas the 1st respondent herein was accused in more than nine criminal cases registered by the Neyyattinkara Police Station since 2001 including the cases of assaulting Police officers.

5. The court below as per the impugned Anx. II order dated 24.10.13 rejected the plea of the petitioner herein regarding sanction and held therein that on the factual allegations raised in Anx. I complaint, no sanction under Sec. 197 Cr.P.C. is required, as he is not entitled to get the protection of Sec.197 of the Cr.P.C. This Court, while admitting this Crl.M.C., had ordered on 25.11.2013 that further proceedings in the impugned criminal proceedings is stayed, which was extended from time to time. This Court had directed the Public Prosecutor to furnish instructions in the matter, especially regarding the allegation of the petitioner that many crimes were pending against the 1st respondent herein. Accordingly, Sri.K.I.Abdul Rasheed, learned Additional Director General of

Prosecution and Additional State Prosecutor submitted that about 14 crimes were registered against the 1st respondent on various occasions and the details in that regard are as follows:

S.L.No	Police Station	Crime No.	Section of Law	Position in the array of accused
1	Neyyattinkara	704/03	Sec.143, 147, 148, 149 & 324 IPC	A1
2	"	261/08	Sec.143, 147, 149 & 353 IPC	A1
3	"	319/08	Sec.143, 147, 149, 188 & 283 IPC	A5
4	"	703/08	Sec.143, 147, 148, 149, 332 & 308 IPC	A2
5	"	704/08	Sec.143, 147, 341, 294(b), 353 & 506(i) IPC	A2
6.	"	719/13	Sec.143, 147, 148, 447, 451, 427 R/W 149 IPC	A1
7.	"	170/14	Sec.143, 147, 148, 149, 506 (i) 323, 324, 427 IPC	A1
8.	"	262/14	Sec.143, 145, 147, 148, 149, 506(i), 323, 324, 427 IPC	A2
9	Marayamuttam	195/14	Sec.447, 427, 379 & 34 IPC	A2
10	"	262/14	Sec.143, 145, 147, 149, 294 (b), 188 IPC	A2
11	"	265/14	Sec.143, 145, 147, 149, 188 & 283 IPC	A1
12	"	266/14	Sec.354(D) & 504 IPC	Sole accused
13	"	285/14	Sec.143, 145, 147, 149, 283, 188, 294 (b) IPC & 77 of KP Act.	A2
14	"	726/14	Sec.294(b), 506(1), 353 IPC	Sole accused.

6. Heard the learned Advocates appearing for the petitioner and the 1st respondent as well as the Public Prosecutor.

7. The 1st respondent contended that sanction is not required in this case and that therefore there is no legal bar in the initiation and continuation of the impugned Anx.I criminal proceedings, etc.

8. The petitioner reiterated the submissions and

contentions raised in the Crl.M.C. and the learned Additional State Prosecutor and the Additional Director General of Prosecution submitted that this is a fit case for this Court to exercise its discretion to quash the impugned proceedings, as the Government has rightly rejected the request of the 1st respondent herein for grant of sanction to prosecute the petitioner herein as evident from Anx.V G.O(Rt) No.1470/2009/GAD dated 27.2.2009. It is also pointed out by the petitioner that the 1st respondent himself has stated and contended before the Government as well as before this Court in W.P.(C).No. 897/2009 that sanction is required under Sec.197 of the Cr.P.C. in the facts of this case and Government should be directed to consider that request, etc. That the Government considered the said request of the 1st respondent and rejected the same by issuing Anx.V G.O(Rt) No.1470/2009/GAD dated 27.2.2009. That Anx.I G.O. has not been interfered with in the manner known to law and that in the light of the legal principles laid by the Apex Court in the case SANKARAN MOITRA V. SADHINA DAS AND ANOTHER reported in (2006) 4 SCC 584, prosecution cannot be launched without sanction.

9. Having considered the submissions on either side and taking into account the totality of the facts and circumstances of

this case, this Court is of the considered opinion that discretion under Sec. 482 of the Cr.P.C. could be fittingly exercised in the facts and circumstances of this case. In view of the facts and circumstances narrated above, it is also to be noted that Anx.III FIR in Crime No. 261/2008 of Neyyattinkara Police Station for offences under Secs.143, 147, 353 read with Sec.149 of the IPC was registered against the 1st respondent herein and others and this has led to the filing of Anx.III final report/charge sheet against the 1st respondent herein and others in the said crime. Obviously the entire transaction alleged was in relation to the aforementioned incidents and it cannot be denied that the petitioner was called upon as per his official duties to be at the given spot to control the situation, which led Anx.III crime, etc. Therefore, the Government is fully right in holding that sanction under Sec.197 Cr.P.C. is required in the facts and circumstances of this case. Moreover, on a reading of Anx.V GO(Rt)No.1470/2009/GAD dated 27.2.2009 it can be seen that the Government was convinced that the 1st respondent herein is seeking prosecution of the petitioner herein, who is an IPS officer, who has bona fide discharged his official duties and that therefore the Government cannot be found fault with for having committed any illegality or perversity in denying the request for such sanction

under Sec.197 of the Cr.P.C. Sec.197(1) of the Cr.P.C. reads as follows:

“Sec.197.Prosecution of Judges and public servants.– (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction–

- (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
- (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

xxx xxx xxx xxx”

10. Moreover Sec.113 of the Kerala Police Act, 2011, provides as follows:

“Sec.113. Protection of action taken in good faith:– (1) No suit, prosecution or other legal proceedings shall lie against the Government or any Police officer or any public servant duly appointed or authorized under this Act or anything done or intended to be done in good faith in the due discharge or official duties under the provisions of this Act.

(2) No Court shall take cognizance of any offence under this Act and alleged against police officer except with the prior permission of the Government.”

11. Therefore, on an appreciation of the totality of the facts and circumstances of this case, as revealed in Anx.V Government Order, this Court is of the considered opinion that sanction under the above said statutory provision is mandatory and as the Government has given its due consideration and has denied the

request for sanction, the initiation and continuation of the criminal proceedings against the petitioner herein as per the private criminal complaint, are untenable and illegal. It is also to be kept in mind that if sanction in such factual situation is not insisted against the public servant, especially in facts as in the one involved in this case, then any such officers of the Government would be put to peril and risk of facing such criminal prosecution and it would deter officials from independently and freely performing their due official functions and this would be highly detrimental to the public interest. As observed in Anx. VII judgment of this Court, the 1st respondent herein has clearly admitted in W.P.(C).No. 897/2009 that the acts allegedly committed by the petitioner herein are in discharge of his official duties.

12. It is to be brought out that the petitioner herein was a member of the Indian Police Service and therefore he comes within the ambit of a public servant, who is removable from his office only with the sanction of the Government as envisaged in Sec.197 of the Cr.P.C. Moreover, the entire factual aspects should be appreciated in the context of grave situation that was faced by the police party, which led to Anx.III Crime No. 261/2008 of Neyyattinkara Police Station. Therefore, the acts in question could be said to have been

committed by the petitioner herein only while acting or purporting the act in discharge of his official duties. No doubt in such cases there will be allegations and counter allegations that the police officer had used abusive language against the private complainant, etc. But the issue as to whether sanction under Sec. 197 Cr.P.C. or under Sec.113 of the Kerala Police Act is required or not should be adjudged not merely on the technicalities stated in the private criminal complaint, but on the over all context emerging from the fact situation in the case.

13. The law in this regard has been delineated by the Apex Court in the case SANKARAN MOITRA V. SADHINA DAS AND ANOTHER reported in (2006) 4 SCC 584, more particularly in paragraphs 12 to 21 thereof, after relying on some of the leading decisions on that point, which reads as follows:

“12. We may first try and understand the scope of Section 197 and the object of it. This Court in Shreekantiah Ramayya Munipalli v. State of Bombay [(1995) 1 SCR 1177 = AIR 1955 SC 287] explained the scope of Section 197 thus: (SCR pp. 1186–87)

“Now it is obvious that if Section 197 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 alleged to have been 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’.

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.”

(emphasis in original)

This Court therefore held in that case that Section 197 of the Code of Criminal Procedure applied and sanction was necessary and since there was none, the trial was vitiated from the start.

13. Again in *Amrik Singh v. State of Pepsu* [(1995) 1 SCR = AIR 1955 SC 309] this Court after referring to the decisions of the Federal Court and the Privy Council referred to earlier and some other decisions summed up the position thus: (SCR p. 1307)

“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.”

14. After noticing the facts of that case, Their Lordships stated: (SCR pp. 1307–08)

“In our judgment, even when the charge is one of misappropriation by a public servant, whether sanction is required under Section 197(1) will depend upon the facts of each case. If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.”

15. Their Lordships then quoted with approval the observations in the decision in Shreekantiah Ramayya Munipalli v. State of Bombay [(1995) 1 SCR 1177 = AIR 1955 SC 287].

16. A Constitution Bench of this Court had occasion to consider the scope of Section 197 of the Code of Criminal Procedure in Matajog Dobey v. H.C. Bhari [(1955) 2 SCR 925 = AIR 1956 SC 44] after holding that Section 197 of the Code of Criminal Procedure was not violative of the fundamental rights conferred on a citizen under Article 14 of the Constitution, this Court observed: (SCR pp. 931–32)

“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.”

17. On the test to be adopted for finding out whether Section 197 of the Code was attracted or not and to ascertain the

scope and meaning of that section, Their Lordships stated: (SCR pp. 932–33)

“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.”

18. After referring to the earlier decisions of the Federal Court, the Privy Council and that of this Court, Their Lordships summed up the position thus: (SCR pp. 934–35)

“The result of the foregoing discussion is this: There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.”

Their Lordships then proceeded to consider the stage at which the need for sanction under Section 197(1) of the Code had to be considered. Their Lordships stated: (SCR p. 935)

“The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case.”

19. In the light of the above decision it does not appear to be necessary to multiply authorities. But we may notice some of them briefly. In *Pukhraj v. State of Rajasthan* [(1973) 2 SCC 701 =

1973 SCC (Cri.) 944] this Court held: (SCC p. 703, para 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 *B. Saha v. M.S. Kochar* [(1979) 4 SCC 177 = 1979 SCC (Cri.) 939] this Court held: (SCC p. 185, para 18)

“18. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.”

21. In *Bakhshish Singh Brar v. Gurmej Kaur* [(1987) 4 SCC 663 = 1988 SCC (Cri.) 29] this Court stated that it was necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, and that is the rationale behind Section 196 and Section 197 of the Code. But it is equally important to emphasise that rights of the citizens should be protected and no excesses should be permitted. Protection of public officers and public servants functioning in discharge of

their official duties and protection of private citizens have to be balanced in each case by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. In the recent decision in Rakesh Kumar Mishra v. State of Bihar [(2006) 1 SCC 557 = (2006) 1 SCC (Cri. 432)] this Court after referring to the earlier decisions on the question stated: (SCC p. 564, para 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.””

14. Evaluating the present case in the light of the aforementioned legal principles, this Court is of the considered opinion that sanction was required for the aforementioned reasons and therefore the considered decision taken by the Government in rejecting the grant of sanction as evident from Anx. V, would inevitably lead to the conclusion that the impugned criminal proceedings are liable to be interdicted by this Court. Otherwise, it would amount to abuse of process of court and leading to miscarriage of justice. For these reasons, the impugned Anx. II order dated 24.10.2013 passed by the court below is quashed. Accordingly, impugned proceedings at Anx.1 and all further proceedings arising therefrom pending against the petitioner, which has led to the pendency of C.C.No. 1515/2013 of J.F.C.M.–I,

Neyyattinkara, also stand quashed in the interest of justice. It is made clear that the trial in the case against the 1st respondent herein as per Anx. IV charge sheet/final report in Crime No. 261/2008 of Neyyattinkara Police Station, shall not in any way be affected by the observations and the findings in this order and such trial in that case, if pending, shall not in any way be influenced or tramelled by the observations and findings in this order. The petitioner will produce certified copies of this order before the S.H.O. concerned and the court below concerned.

With these observations and directions, the Crl.M.C. stands finally disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge