

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

Crl.MC.No. 5725 of 2013 ()

AGAINST THE JUDGMENT IN S.T. 2227/2013 OF J.M.F.C.-II, KOLLAM

PETITIONER(S)/PETITIONER/ACCUSED:

**TITUS, AGED 49 YEARS,
S/O.NEPOLIAN, KODIYIL VEETIL, MYLACADU CHERRI,
KOLLAM.**

**BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN**

RESPONDENT(S)/RESPONDENT/COMPLAINANT/STATE:

**STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682 031 (CRIME NO 692/2010
OF KOTTIYAM POLICE STATION,
NOW PENDING AS S.T. NO 2227/2013
BEFORE THE JUDICIAL
MAGISTRATE OF FIRST CLASS-II,
KOLLAM).**

BY PUBLIC PROSECUTOR SRI. REJI JOSEPH

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 14-01-2015,
ALONG WITH CRMC. 5726/2013, CRMC. 5727/2013, CRMC. 5728/2013, CRMC. 5729/2013,
CRMC. 5730/2013, CRMC. 5731/2013, CRMC. 5732/2013, CRMC. 5733/2013, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:**

:2:

Crl.MC.No. 5725 of 2013 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE-I : COPY OF THE ORDER DATED 28.09.2012 IN
C.C.NO.2228/2010 PASSED OF THE JUDICIAL
MAGISTRTE OF FIRST CLASS-II, KOLLAM.**

**ANNEXURE-II : CERTIFIED COPY OF THE COMPLAINT IN
S.T.NO.2227/2013.**

RESPONDENT(S)' EXHIBITS : NIL

// True Copy//

P.A. to Judge

ss

K. RAMAKRISHNAN, J.

[C.R.]

.....
Crl. M.C. Nos. 5725, 5726, 5727, 5728,
5729, 5730, 5731, 5732, 5733 of 2013
.....

Dated this the 14th day of January, 2015

ORDER

Crl.M.C.No.5725/2013 was filed by the sole accused in S.T.No.2227/2013, while Crl.M.C.No.5726/2013 was filed by the first accused in S.T.No.2228/2013, Crl.M.C.No.5727/2013 was filed by the sole accused in S.T.No.2225/2013, Crl.M.C.No.5728/2013 was filed by sole accused in S.T.No.2229/2013, Crl.M.C.No.5729/2013 was filed by sole accused in S.T.No.2221/2013, Crl.M.C.No.5730/2013 was filed by sole accused in S.T.No.2222/2013, Crl.M.C.No.5731/2013 was filed by sole accused in S.T.No.2226/2013, Crl.M.C.No.5732/2013 was filed by sole accused in S.T.No.2223/2013 and Crl.M.C.No.5733/2013 was filed by sole accused in S.T.No.2224/2013, all on the file of the Judicial First Class

Magistrate Court-II, Kollam, for quashing the proceedings under Section 482 of the Code of Criminal Procedure (hereinafter called the 'Code').

Crl.M.C.No.5725/2013

Petitioner is the sole accused in S.T.No.2227/2013 on the file of the Judicial First Class Magistrate Court-II, Kollam. On 25.05.2010 at about 11.00 a.m., Kottiyam West police got information that petitioner was engaged in illegal storage of river sand near Vadakemailakad Cheriyl near Kattadi Kadavu and immediately the Sub Inspector of Police went to that place and found river sand was stocked in the property of the petitioner and thereby he had committed the offence punishable under Section 20 and 21 of the Kerala (Protection of River Banks & Regulation of Removal of Sand Act), hereinafter called the Sand Act. He had seized the articles and registered a case as Crime No.692/2010 of Kottiyam police station against the petitioner under Section 20 and 21 of the above said Act

and after investigation final report was filed and it was taken on file as C.C. No.2228/2010 on the file of the Judicial First Class Magistrate Court-II, Kollam. On the basis of the decision reported in **Ismayil v. State of Kerala (2010(3) KLT 706)**, where it has been observed that, as per Section 25 of the above said Act, court can take cognisance of the offence upon receipt of the complaint by the person authorised by the Government or District Collector or Geologist. The Magistrate passed a judgment under Section 258 of the Code of Criminal Procedure dated 28.09.2012, dropping the proceedings and released the accused. Thereafter, the Sub Inspector of Police Kottiyam police station filed Annexure-II complaint on 06.04.2013 and the learned magistrate has taken cognisance of the case as S.T.No.2222/2013 and issued process to the accused. This is being challenged by the petitioner by filing this petition.

Crl.M.C.No.5726/2013

Petitioner is the first accused in

S.T.No.2228/2013 on the file of the Judicial First Class Magistrate Court-II, Kollam. The allegation was that on 17.02.2010 the Sub Inspector of Police, Kottiyam police station while doing patrol duty got information that, illegal sand mining was done and unauthorised stocking of river sand was kept in the property of the petitioner near Alum Kadavu and at about 6.10 p.m., when he went there, he found sand was stocked in several places. When it was enquired about, it was revealed that, as per the directions of the present petitioner and with his consent, accused Nos. 2 to 4 had stocked the same in that place in violation of the provisions of the above said Act and he had seized the articles and registered crime No.210/2010 of Kottiyam police station under Section 20 and 21 of the above said Act against petitioner and three others. After investigation, final final report was filed and it was originally taken on file as C.C.No.2116/2010 on the file of the Judicial First Class Magistrate Court-II, Kollam. While so, the learned

magistrate relying on the decision reported in **Ismayil v. State of Kerala (2010(3) KLT 706)** passed Annexure-1 judgment dated 28.09.2012, dropping further proceedings and released the accused under Section 258 of the Code of Criminal Procedure. Thereafter, the Sub Inspector of Police, Kottiyam filed Annexure-II complaint against the accused persons including the present petitioner, alleging the above said offence under Section 25 of the Sand Act read with Section 200 of the Code of Criminal Procedure, on 06.04.2013 and the learned magistrate had taken cognisance of the case as S.T.No.2228/2013 against all the accused persons including the present petitioner and process was issued to them. This is being challenged by the petitioner who is the first accused in the above case.

Crl.M.C.No.5727/2013

Petitioner is the sole accused in S.T.No.2225/2013 on the file of the Judicial First Class Magistrate Court-II, Kollam. The allegation was that, on

12.11.2010 at about 9.10 a.m., the petitioner had stocked river sand after mining the same unauthorizedly in his property at Vadakke Mailakad Cheriyl Kodyil Kadavu and accordingly he had seized the same as per rules and registered Crime No.1589/2010 under Section 20 and 21 of the Sand Act against the petitioner and after investigation final report was filed and it was originally taken on file as C.C.No.2769/2010 on the file of the Judicial First Class Magistrate Court-II, Kollam. While so, the learned magistrate relying on the decision reported in **Ismayil v. State of Kerala (2010(3) KLT 706)**, passed Annexure-A1 judgment dated 25.09.2012, dropping further proceedings and releasing the accused under Section 258 of the Code of Criminal Procedure. Thereafter, the Sub Inspector of Police, Kottiyam police station filed Annexure-II private complaint against the petitioner alleging commission of the above said offence under Section 25 of the Sand Act on 06.04.2013 and that was taken on file as S.T.No.2225/2013 by the learned

magistrate and issued process to the petitioner. That is being challenged by the petitioner by filing this petition.

Crl.M.C.No.5728/2013

Sole accused in S.T/.No.2229/2013 on the file of the Judicial First Class Magistrate Court-II, Kollam, is the petitioner herein. The allegation was that, on 11.12.2010 at about 8.30 a.m., the river sand was stocked near Kattadi Kadavu by making illegal mining and the Sub Inspector of Police had seized the articles as per rules and registered a case as Crime No.1728/2010 against the petitioner under Section 20 and 21 of the Sand Act. After investigation, final report was filed and it was originally taken on file as C.C.No.47/2011 on the file of the Judicial First Class Magistrate Court-II, Kollam. After sometime, relying on the decision reported in **Ismayil v. State of Kerala (2010(3) KLT 706)**, the learned magistrate passed Annexure-1 judgment dated 25.09.2012, dropping the proceedings and releasing the accused under Section 258 of the Code of

Criminal Procedure. Thereafter, the Sub Inspector of Police, Kottiyam filed a private complaint under Section 25 of the Sand Act, which was taken on file as S.T.No.2229/2013 by the learned magistrate and issued process to the petitioner, which is being challenged by the petitioner by filing this petition.

Crl.M.C.No.5729/2013

Sole accused in S.T/.No.2221/2013 on the file of the Judicial First Class Magistrate Court-II, Kollam, is the petitioner herein. The allegation was that, on 12.11.2010 at about 9.25 a.m., near Kattadi Kadavu, the accused had stocked river sand illegally mined and the same was seized as per rules and a case was registered as Crime No.1590/2010 of Kottiyam police station and after investigation, final report was filed and it was taken on file as C.C.No.2770/2010 on the file of the Judicial First Class Magistrate Court-II, Kollam. Thereafter, relying on the decision reported in **Ismayil v. State of Kerala (2010(3)**

KLT 706), the learned magistrate passed Annexure-1 judgment dated 24.09.2012, dropping the proceedings and releasing the accused under Section 258 of the Code of Criminal Procedure. Thereafter the Sub Inspector of Police, Kottiyam filed Annexure-II complaint under Section 25 of the Sand Act, which was taken on file as S.T.No.2221/2013 by the learned magistrate against the petitioner and issued process to the petitioner, which is being challenged by the petitioner by filing this petition.

Crl.M.C.No.5730/2013

Sole accused in S.T/.No.2222/2013 on the file of the Judicial First Class Magistrate Court-II, Kollam, is the petitioner herein. The allegation was that on 16.01.2011 at about 3.30 p.m., the petitioner was found to be in possession of river sand, illegally mined from Kattadi Kadavu and stocked in his property and the same was seized by the Police and registered a case as Crime No.67/2011 of Kottiyam police station under Section 20 and

21 of the Sand Act. After investigation, final report was filed and it was taken on file as C.C.No.148/2011 on the file of the Judicial First Class Magistrate Court-II, Kollam. After sometime, relying on the decision reported in **Ismayil v. State of Kerala (2010(3) KLT 706)**, the learned magistrate passed Annexure-1 judgment dated 28.10.2012, dropping further proceedings and released the accused under Section 258 of the Code of Criminal Procedure. Thereafter, the Sub Inspector of Police, Kottiyam filed Annexure-II complaint under Section 25 of the Sand Act, which was taken on file as S.T.No.2222/2013 by the learned magistrate and issued process to the petitioner, which is being challenged by the petitioner by filing this petition.

Crl.M.C.No.5731/2013

Sole accused in S.T/.No.2226/2013 on the file of the Judicial First Class Magistrate Court-II, Kollam, is the petitioner herein. The allegation was that, on 25.10.2010 at about 5.45 p.m., the accused had stocked river sand in his

property near Kattadi Kadavu and that was seized and a case was registered as Crime No.1489/2010 of Kottiyam police station under Section 20 and 21 of the Sand Act. After investigation, final report was filed and it was originally taken on file as C.C.No.2820/2010 on the file of the Judicial First Class Magistrate Court-II, Kollam. After sometime, relying on the decision reported in **Ismayil v. State of Kerala (2010(3) KLT 706)**, the learned magistrate passed Annexure-1 judgment dated 17.09.2012, dropping further proceedings and released the accused under Section 258 of the Code of Criminal Procedure. Thereafter, the Sub Inspector of Police, Kottiyam, filed Annexure-II complaint before the Judicial First Class Magistrate Court-II, Kollam, under Section 25 of the Sand Act, which was taken on file as S.T.No.2226/2013 by the learned magistrate and issued process to the petitioner, which is being challenged by the petitioner by filing this petition.

Crl.M.C.No.5732/2013

Sole accused in S.T/.No.2223/2013 on the file of the Judicial First Class Magistrate Court-II, Kollam, is the petitioner herein. The allegation was that, on 11.12.2010 at about 9.00 a.m., the accused had stocked river sand illegally mined from Kattadi Kadavu and the same was seized and a crime was registered as Crime No.1729/2010 against the petitioner under Section 20 and 21 of the Sand Act. After investigation, final report was filed and it was taken on file as C.C.No.19/2011 on the file of the Judicial First Class Magistrate Court-II, Kollam. After sometime, relying on the decision reported in **Ismayil v. State of Kerala (2010(3) KLT 706)**, the learned magistrate passed Annexure-1 judgment dated 20.09.2012 dropping further proceedings and releasing the accused under Section 258 of the Code of Criminal Procedure. Thereafter, the Sub Inspector of Police, Kottiyam police station filed Annexure-II complaint under Section 25 of the Sand Act, which was

taken on file as S.T.No.2223/2013 by the learned magistrate and issued process to the petitioner, which is being challenged by the petitioner by filing this petition.

Crl.M.C.No.5733/2013

Sole accused in S.T/.No.2224/2013 on the file of the Judicial First Class Magistrate Court-II, Kollam, is the petitioner herein. The allegation was that, on 25.10.2010 at about 5.45 p.m., the accused was found to be in possession of river sand in his property near Kattadi Kadavu and the same was seized and registered a case as Crime No.1491/2010 against the petitioner under Section 20 and 21 of the Sand Act. After investigation, final report was filed and it was originally taken on file as C.C.No.2821/2010 on the file of the Judicial First Class Magistrate Court-II, Kollam. After sometime, relying on the decision reported in **Ismayil v. State of Kerala (2010(3) KLT 706)**, the learned magistrate passed Annexure-1 judgment dated 25.09.2012, dropping further proceedings and released the

accused under Section 258 of the Code of Criminal Procedure. Thereafter, the Sub Inspector of Police, Kottiyam, filed Annexure-II complaint before the Judicial First Class Magistrate Court-II, under Section 25 of the Sand Act, which was taken on file as S.T.No.2224/2013 by the learned magistrate and issued process to the petitioner, who is the sole accused in this case, which is being challenged by the petitioner by filing this petition.

2. Since common question of law arose in all these cases, the cases have been disposed of by a common order.

3. The counsel for the petitioner in all these cases submitted that, Annexure-I order in all these cases dropping the earlier proceedings under Section 258 of the Code of Criminal Procedure will have the effect of a deemed discharge and in the case of deemed discharge under Section 258 of the Code of Criminal Procedure, in view of Section 300(5) of the Code of Criminal Procedure, he can be

tried for the same offence only with the consent of the court which discharged him or from the higher court to which the earlier court is subordinate. So it is clear from this that, the consent of the court for filing of a fresh complaint is a condition precedent and that will have to be obtained at the time when the discharge order was passed by the trial court or by the higher court to which the former court was a subordinate. In this case, no such consent has been obtained. Further, all the complaints have been barred under Section 468 of the Code of Criminal Procedure, as it was filed beyond the time mentioned therein in that section. Further, S.T.No.2226/2013 and 2224/2013 which are subject matters of Crl.M.C.No.5731/2013 and 5733/2013 were said to have been committed on the same date and time, which is not probable, that shows that, it is a false case. Further, if while construing a penal statute, if two views are possible, then one view in favour of the person to be affected has to be taken and that benefit must be given

to him. If there is doubt as to whether the consent will have to be obtained prior to the filing of the complaint or after filing of the complaint under Section 300(5) of the Code of Criminal Procedure, then the one in favour of the accused has to be taken and that benefit must be given to him. He had relied on the decisions reported in **Govind Impex Private Limited and Others v. Appropriate Authority, Income Tax Department (2011(1) SCC 529)**, **Santhamma v. District Magistrate (2010(1) KLT 172)**, **R. Kalyani v. Janak C. Metha and Others (2009(1) SCC 516)** and **Regional Provident fund Commissioner v. Hooghly Mills Company Limited and Others (2012(2) SCC 489)** in support of his case. He had also relied on certain extracts in the book Maxwell of Interpretation of Statutes 12th Edition by P. St. J. Langan in support of that proposition.

4. On the other hand, the learned Public Prosecutor submitted that, in the case of discharge, 2nd

complaint is not barred. Further it is not a condition precedent for getting prior permission for filing a 2nd complaint in the case of disposal of the case under Sections 258 under Section 300(5) of the Code of Criminal Procedure. So taking cognisance is not barred and it is a curable defect which can be cured by producing a consent from that court later.

5. It is an admitted fact that, in all these cases, the case was originally taken on the basis of a police report under Section 173(2) of the Code of Criminal Procedure, alleging offence under Section 20 and 21 of Sand Act. This court in **Ismayil v. State of Kerala (2010(3) KLT 706)** observed that, case under that Act can be taken only on the basis of a complaint filed by the persons mentioned therein under Section 25 of the Act and the police report cannot be taken as a complaint as contemplated in that section, and the cognisance was bad and the case was quashed. So relying on that decision, court below had stopped further

proceedings and dropped the proceedings and released the accused in all these cases under Section 258 of the Code of Criminal Procedure as per Annexure-I order in all these cases. It is thereafter that, Annexure-II complaint in all these cases have been filed and respective cases have been taken on file and the court had taken cognisance of the case for the same offence on the basis of the complaint filed and summons was issued to the accused in the case.

6. Date of commission of offence and date of discharge and date of filing of the present complaint in each case is scheduled as follows:

Case No. before this court	Present case before the trial court	Date of alleged offence	Old case No. and order date	Date of filing of the present complaint
Crl.M.C.5725/13	S.T.2227/2013	25.05.2010 at 11 a.m.	C.C.2228/10 (Crime No.692/10 of Kottiyam police station); discharged on 28.09.2012	06/04/12
Crl.M.C.5726/13	S.T.2228/2013	17.02.2010 at 6.15 p.m.	C.C.2116/10 (Crime No.210/10 of Kottiyam police station); order dated 28.09.2012	06/04/12
Crl.M.C.5727/13	S.T.2225/2013	12.11.2010 at 9.10 a.m.	C.C.2769/10 (Crime No.1589/10 of Kottiyam police station); order dated 25.09.2012	06/04/12

Crl.M.C.5728/13	S.T.2229/2013	11.12.2010 at 8.30 a.m.	C.C.47/11 (Crime No.1728/10 of Kottiyam police station); order dated 25.09.2012	06/04/12
Crl.M.C.5729/13	S.T.2221/2013	12.11.2010 at 9.25 a.m.	C.C.2770/10 (Crime No.1590/10 of Kottiyam police station); order dated 24.09.2012	06/04/12
Crl.M.C.5730/13	S.T.2222/2013	16.01.2011 at 03.30 p.m.	C.C.148/11 (Crime No.67/11 of Kottiyam police station); order dated 28.12.2012	06/04/12
Crl.M.C.5731/13	S.T.2226/2013	25.10.2010 at 5.45 p.m.	C.C.2820/10 (Crime No.1489/10 of Kottiyam police station); order dated 17.09.2012	06/04/12
Crl.M.C.5732/13	S.T.2223/2013	11.12.2010 at 9.00 a.m.	C.C.19/11 (Crime No.1729/10 of Kottiyam police station); order dated 20.09.2012	06/04/12
Crl.M.C.5733/13	S.T.2224/2013	25.10.2010 at 5.45 p.m.	C.C.2821/10 (Crime No.1491/10 of Kottiyam police station); order dated 25.09.2012	06/04/12

7. Punishment provided for the offence under Section 20 and 21 of the Sand Act is imprisonment for a term which may extend to two years or with fine which may extend to ₹25,000/- or with both and in case of continuing contravention with an additional fine which may extend to ₹1,000/- for each day during which the said contravention continues.

8. Section 468 of the Code of Criminal

Procedure deals with limitation for taking cognizance of a case for the offence, which 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.]

9. Section 469 and 470 of Criminal Procedure deals with commencement of period of limitation and exclusion of time in certain cases, which reads as follows:

469. Commencement of the period of limitation.-

(1) The period of limitation, in relation to an offender, shall commence,-

- (a) on the date of the offence; or
- (b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or
- (c) where it is not known by whom the offence was

committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

470. Exclusion of time in certain cases.-

(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender-

(a) has been absent from the India or from any

territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

10. Section 468(2)(c) says that, the period of limitation shall be three years, if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years. Since in this case, the punishment is up to two years, the period of limitation will be three years from the date of detection of the offence for filing the complaint, or taking cognisance of the offence under this Act.

11. Section 470(1) of the Code of Criminal Procedure says that, the time during which any person has been prosecuting with due diligence, another prosecution whether in court of first instance or any court of appeal or revision against the offender shall be excluded, provided that, such an exclusion shall be made, unless the prosecution relates to the same facts and is prosecuted in good faith in a court which from defect of jurisdiction or

other process of like nature is unable to entertain it. So in this case, the period during which the case was earlier pending before the court, till the petitioner was discharged under Section 258 of the Code of Criminal Procedure, has to be excluded, as the case was filed on the bona fide belief that case can be entertained on the basis of police report and cognisance was taken by the court and only by virtue of the decision of this court, it was found that, such cognisance is bad in law and it was on that basis, that the petitioner was discharged under Section 258 of the Code. If this period is excluded, then, all the complaints in the above case filed on 06.04.2013 by way of a private complaint as provided under Section 25 of the Sand Act is perfectly within time and so the submission made by the counsel for the petitioner that, some of the cases are barred by limitation is without any substance.

12. For the purpose of understanding the impact of Sections 258 and 300(5) of Criminal Procedure Code, one

will have to consider the provisions prior to coming into force of 1973 Code and the legislative object of making the changes in the present section.

13. Section 249 in the old code was the corresponding Section for Section 258 of the present Code, which deals with dropping and releasing the accused, which reads as follows:

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or with the previous sanction of the District Magistrate, any other Magistrate, may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

14. The corresponding present Section 258 of the present code reads as follows:

258. Power to stop proceedings in certain cases.- In any summons case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

In the present Code, the effect of order under Section 258 has been explicitly mentioned as, if the evidence was taken, then court can pass a judgment acquitting the accused and in any other case, drop the proceedings and release the accused and such release shall have the effect of discharge. Such provision was not there in the earlier Section. So if the proceeding has been stopped and the accused was released without taking evidence under Section 258 of the present code, it will have the effect of discharge.

15. Section 403 of the old code is the corresponding Section for Section 300 of the present Code.

Section 403 of the old Code reads as follows:

403.(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236, or for which he might have been convicted under Section 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under Section 235, sub-Section (1).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such

act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of Section 26 of the General Clauses Act, 1897, or Section 188 of this Code.

16. Present Section 300 of the Code reads as follows:

300. Person once convicted or acquitted not to be tried for the same offence.-

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or

were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under Section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

17. In the explanation to Section 403 of the old code, it has been specifically mentioned that, the dismissal of the complaint, a stopping of the proceedings under Section 249, the discharge of the accused or any entry made upon a charge under Section 273 is not an acquittal for the purpose of this Section. So it is clear from the above that, any order passed under Section 249 of the old code will not be a bar for prosecuting the accused for the same offence on a subsequent stage under Section 403 of the Code of Criminal Procedure, which prohibits trial of the

accused for the same offence for which the accused was acquitted or convicted on an earlier occasion after trial. But, the present section 300(5) is a newly incorporated provision, which was not there in Section 403 of the old Code, which says that, a person discharged under Section 258, shall not be tried again for the same offence, except with the consent of the court by which he was discharged or any other court to which the first mentioned court is subordinate. What is prohibited under Section 300(5) is trial of the case for the same offence of the same accused, in respect of which, order of deemed discharge under Section 258 of Criminal Procedure has been made.

18. It is seen from the object of incorporating the provision that it is in order to avoid unnecessary harassment of the person from successive trial for the same offence on same set of facts, that this provision has been incorporated. Further it will be seen from Section 258, that court will be passing the order only if the court is satisfied

that allegation are groundless and no purpose is proceeding with case further. The dropping of proceedings can be possible on technical ground of want of sanction or procedural defect in filing complaint and taking cognisance on such complaints and in such circumstances, the interpretation of section 300(5) of the Code should stand in a different footing and it should not be interpreted in such a way as to help the person who had committed the offence affecting public interest and interpreting in liberal manner in favour of such person will affect the public morality thereof and give a wrong message to the society.

19. It is true that, in the decisions reported in **Govind Impex Private Limited and Others V. Appropriate Authority, Income Tax Department (2011 (1) SCC 529)**, the Hon'ble Supreme Court has held that, while interpreting the statutes, which makes an act of penal offence or imposes penalty is to be strictly considered, if two views are possible, one favourable to the citizen is to be

ordinarily preferred.

20. In the decision reported in **Santhamma v. District Magistrate (2010(1) KLT 172)**, it has been observed that, it is axiomatic that the statutes which have the effect of depriving a citizen of his life or liberty must receive a strict construction. A piece of legislation which has the effect of exposing the citizens to the risk of arrest and detention without trial, and not punitively, on the basis of suspicion and hypothesis that he may commit offences deserves, by that very same reason, a strict construction.

21. In the decision reported in **Regional Provident Fund Commissioner v. Hooghly Mills Company Limited and Others. (2012(2) SCC 489)**, the Hon'ble Supreme Court has held that, the normal canvassing of interpretation is that a remedy of the statute receives liberal construction whereas a penal statute clause for strict construction. In the case of remedial statutes, if there is any doubt, the same is resolved in favour of the class of

persons for whose benefit the statute is denied, but in the case of penal statutes, if there is any doubt, the same is normally resolved in favour of the alleged offender.

22. In the decision reported in **R. Kalyani v. Janak C.Mehta and Others (2009(1) SCC 516)**, how a penal statute has been interpreted, has been dealt within paragraph 36 to 40 of that decision, which reads as follows:

36. Although the legal principle that a penal statute must receive strict construction, it is not in doubt or dispute, we may notice some authorities in this behalf. In Section 263 of Francis Bennion's Statutory Interpretation it is stated:

"A principle of statutory interpretation embodies the policy of the law, which is in turn based on public policy. The court presumes, unless the contrary intention appears, that the legislator intended to conform to this legal policy. A principle of statutory interpretation can therefore be described as a principle of legal policy formulated as a guide to legislative intention."

37. Maxwell in The Interpretation of Statutes (12th Edn.) says:

"The strict construction of penal statutes seems to manifest itself in four ways: in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."

38. In Craies Statute Law (7th Edn. at p.529) it is said that penal statutes must be construed strictly. At p. 530 of

the said treatise, referring to *U.S v. Wiltberger*¹⁶ (5 L Ed 37 : 18 US (5 Wheat.) 76 (1820) it is observed, thus:

"The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, what is the true construction of the statute? I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law. This rule is said to be founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the legislature, and not in the judicial department, for it is the legislature, not the court, which is to define a crime and ordain its punishment."

39. In *Tuck & Sons v. Priester*¹⁷ (1887) 19 QBD 629 (CA), which is followed in *London and country Commercial Properties Investments Ltd. v. Attorney General*¹⁸(1953) 1 WLR 312: (1953) 1 All ER 436), it is stated:

"We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation, which will avoid the penalty in any particular case, we must adopt that construction. Unless penalties are imposed in clear terms they are not enforceable. Also where various interpretations of a section are admissible it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive."

40. Blackbur, J. in *Willis v. Thorp*¹⁹ (1875) LR 10 QB 383) observed:

"When the legislature imposes a penalty, the words imposing it must be clear and distinct."

With this principles in mind, the provision in the Section is the Code has to be considered.

23. Section 300 of the present Criminal

Procedure Code deals with bar or trial of offences in respect of which a person has already been tried or acquitted on an earlier occasion by a competent court. Further by virtue of explanation to Section 300, it is made clear that, dismissal of a complaint or the discharge of the accused is not an acquittal for the purpose of this section. But Section 300(5) carves out an exception in respect of discharge of a person in a summons case instituted otherwise than a complaint under Section 258 of the Code of Criminal Procedure. So it is clear from the section that, what is barred is trial of the offence and not filing a 2nd complaint or taking cognisance of the case on the basis of a 2nd complaint. In the case of summons case, the trial starts only after the particulars of offence were read over and not prior to that. So it is not an absolute bar as provided under Section 197 of the Code of Criminal Procedure in respect of taking cognisance of the case without sanction. For the purpose of understanding the difference, it is better to see

Section 188 of Criminal Procedure Code in respect of offences committed outside India, which reads as follows:

188. Offence committed outside India.- When an offence is committed outside India-

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offences as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

24. Proviso to that Section says that, notwithstanding anything in any of the proceeding section of this chapter, no such offence shall be enquired into except with previous sanction of the Central Government. Decisions interpreting this section has been observed that, prior sanction is not required for the purpose of investigation or for taking cognisance of the case, but without getting the previous sanction of the Central Government, such offences should not be enquired into or tried and in interpreting the word 'enquired into' or 'tried',

has been observed as in the case of summons trial after the particulars of offence is recorded and in the case of warrant trial, after the charge is framed. So it is clear from the word used 'tried' in Section 188 of Criminal Procedure Code and 300(5) of Criminal Procedure Code can be treated alike. What is barred is only trial of the case and not taking cognisance of the case, without getting consent of the court which passed the order of discharge or the higher court to which the earlier court was subordinate.

25. The legislature was very careful in using the words in each section what is barred etc. Wherever cognisance is barred without sanction or it is condition precedent for that purpose, it has been mentioned that cognisance it self is barred. In all other cases the words used is “enquired into or tried” which means, this sanction can be produced later during the pendency of the proceedings before trial of the case started and in such cases court must give an opportunity to produce sanction as

required in the section to the complainant and if he did not comply with the same, the court can proceed with the case in accordance with law. See the decision reported in **Venkaterswaralu v. State of Andra Pradesh (2011(3) KLT 909 (SCC), Abdul Rahiman v. State of Kerala (2012(4) KLT 901)** and **Souda Beevi v. Inspector of Police (2011(4) KLT 52)**. So under the circumstances, and in view of discussions made above, filing of 2nd complaint in the case of deemed discharge under Section 258 of the Code of Criminal Procedure is not barred, but trial of the case without consent from the court which passed the order of discharge under Section 258 of the Code of Criminal Procedure or from the court to which the earlier court was a subordinate, if such order was passed by that court alone is barred.

26. Further, if we analyse the Section with a corresponding provision in the Code of Civil Procedure, namely, order 23 Rule I, it can be seen that, if a person

wants to withdraw a suit and file of fresh suit on the same cause of action, then leave of the court must be obtained for the purpose of withdrawal of that suit with liberty to file a fresh suit. If the reading of the provisions in both these enactments will go to show that, the withdrawal itself must be made with liberty to file fresh suit on the same cause of action and if such liberty is not given, then second suit on the same cause of action is barred. But in the case of a discharge, there is no act on the part of the person who filed the complaint or who initiated the prosecution, but it is the act of the court, which makes the order of discharge under Section 258 of the Code of Criminal Procedure. So under the circumstances, since a person has not been acquitted or convicted on the basis of evidence, then second complaint is not automatically barred, but by virtue of Section 300(5) of the Code of Criminal Procedure, trial of the case for the same offence on the basis of the second complaint, will be barred as unless sanction of the court

which passed the order of deemed discharge under Section 258 of the Code of Criminal Procedure or of the higher court to which the earlier court was subordinate is obtained and produced, he cannot be proceeded with trial of the case. So the submission made by the counsel for the petitioners that, the second complaint itself is barred and cognisance is bad under Section 300(5) of the Code of Criminal Procedure is without any merit and on that ground the complaints cannot be quashed. It is made clear that, the magistrate may postpone the trial of the case, giving an opportunity to the complainant to produce the sanction of the court, which passed the order of deemed discharge under Section 258 of the Code of Criminal Procedure and thereafter proceed with the case, in view of the bar for trial of the same offence in respect of the same accused under Section 300(5) of the Code of Criminal Procedure. So the prayer in the petitions cannot be granted.

27. As regards the submission made by the

counsel for the petitioner that, two complaints have been filed in respect of the same incident in S.T. No.2226/2013 and 2224/2013 has to be considered by the court on the basis of evidence, whether it was in respect of the same sand which was seized on different occasions has to be decided on the basis of evidence, though a reading of the allegations may lead to inference that it relates to the same subject matter and that will have to be considered on the basis of the mahazar prepared in respect of each case and not on the basis of the allegations made alone. So in such circumstances, the same cannot be quashed, invoking the power under Section 482 of the Code of Criminal Procedure. So the petitioner in all these cases is not entitled to get the relief claimed and the petitions are liable to be dismissed.

In the result, the petitions are dismissed. The court below is directed to proceed with the case, as observed by this court, regarding sanction to be obtained

for trial of the case as required under Section 300(5) of the Code of Criminal Procedure.

Interim order granted is hereby vacated and the interim applications filed for this purpose are dismissed.

Sd/-
K. RAMAKRISHNAN, (Judge)

// True Copy //

P.A. to Judge

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