C.R

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 23RD DAY OF DECEMBER 2022 / 2ND POUSHA, 1944

OP(CRL.) NO. 608 OF 2022

CRIME NO.6/2015 OF Agathi Police Station, Lakshadweep

AGAINST THE ORDER/JUDGMENT IN CC 24/2016 OF CHIEF JUDICIAL MAGISTRATE, AMINI, LAKSHADWEEP

PETITIONERS:

1 MOHAMMED NAZER M.P
AGED 46 YEARS.
S/O ATTAKOYA,
MULLIPURA HOUSE, AGATTI ISLAND,
U.T OF LAKSHADWEEP- 682553

2 ABOO SALAM KOYA P
AGED 72 YEARS, S/O LATE ABOOBACKER KOYA,
PETTAMBALAM HOUSE, AGATTI ISLAND,
U.T OF LAKSHADWEEP- 682553

3 KASMIKOYA B
AGED 56 YEARS, S/O ABOOBACKER KOYA, BIYYAMMABIYODA (H),
AGATTI ISLAND, U.T OF LAKSHADWEEP- 682553

4 ABDUL NAZER
AGED 45 YEARS, S/O KASMIKOYA, POOVINODA(H)
AGATTI ISLAND, U.T OF LAKSHADWEEP- 682553

5 AHMAD KOYA
AGED 55 YEARS, S/O ABDUL KHADIRIKOYA,
CHACHALAKAPADA PATTINIYODA PUTHIYAILLAM(H) AGATTI ISLAND,
U.T OF LAKSHADWEEP- 682553, PIN - 682553

6 ABDUL SHUKOOR
AGED 48 YEARS, S/O ABOOBAKER,
KUTTIYAM MUKRIYODA (H) AGATTI ISLAND,
U.T OF LAKSHADWEEP- 682553

7 ABDUL GAFOOR
AGED 45 YEARS, S/O ABOOBAKER,
KUTTIYAM MUKRIYODA(H) AGATTI ISLAND,
U.T OF LAKSHADWEEP- 682553

8 ABDUL KHADER KOYA
AGED 55 YEARS, S/O KUNHIKOYA, BANDER (H)
AGATTI ISLAND, U.T OF LAKSHADWEEP- 682553

9 ANWER SADIK
AGED 47 YEARS, S/O POOKOYA, KULI (H), AGATTI ISLAND,
U.T OF LAKSHADWEEP- 682553

10 SAYED MOHAMMED K.I
AGED 61 YEARS, S/O MOHAMMED KOYA, KEELAILLAM (H), AGATTI ISLAND, U.T OF LAKSHADWEEP- 682553

11 CHERIYA KOYA T.P
S/O KONJAN KOYA, THEKPUTHIYAILLAM (H),
AGATTI ISLAND, U.T OF LAKSHADWEEP- 682553

12 SEETHI KOYA
AGED 66 YEARS, S/O ABOOBAKER KOYA, PONTHINODA (H),
AGATTI ISLAND, U.T OF LAKSHADWEEP- 682553

13 THANGA KOYA K.I
AGED 64 YEARS S/O MOHAMMED KOYA, KEELAILLAM
AGATTI ISLAND, U.T OF LAKSHADWEEP- 682553

14 SAYED MOHAMMED
AGED 45 YEARS, S/O ALIKOYA, BEEKUTTIYODA (H)
AGATTI ISLAND, U.T OF LAKSHADWEEP- 682553

15 CHERIYAKOYA
AGED 75 YEARS, S/O SAYED KOYA,
CHACHADA PATTINIYODA (H) AGATTI ISLAND,
U.T OF LAKSHADWEEP- 682553

BY ADVS.
LAL K.JOSEPH
KOYA ARAFA MIRAGE
SURESH SUKUMAR
ANZIL SALIM
AKASH GEORGE

RESPONDENTS:

1 UNION TERRITORY OF LAKSHADWEEP
REPRESENTED BY THE STANDING COUNSEL HIGH COURT OF KERALA

2 THE STATION HOUSE OFFICER
AGATTI POLICE STATION, AGATTI ISLAND,
U.T. OF LAKSHADWEEP- 682553

3 (*ADDL.R3 IMPLEADED)
K.CHERIYAKOYA

FORMER SUB JUDGE/CHIEF JUDICIAL MAGISTRATE, AMINI, LAKSHADWEEP, WHO IS NOW WORKING AS SECRETARY OF THE DISTRICT LEGAL SERVICE AUTHORITY, LAKSHADWEEP-682 553
(*IS SUO MOTU IMPLEADED AS ADDITIONAL 3RD RESPONDENT VIDE ORDER DATED 28/11/2022 IN OP(CRL)NO.608/2022)
BY ADV Sajith Kumar V.

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 14.12.2022, ALONG WITH OP(Crl.).609/2022, THE COURT ON 23.12.2022 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 23RD DAY OF DECEMBER 2022 / 2ND POUSHA, 1944

OP(CRL.) NO. 609 OF 2022

CRIME NO.6/2015 OF Agathi Police Station, Lakshadweep

AGAINST THE ORDER/JUDGMENTCC 24/2016 OF CHIEF JUDICIAL MAGISTRATE, AMINI, LAKSHADWEEP

PETITIONERS:

1 MOHAMMED NAZER M.P
AGED 46 YEARS. S/O ATTAKOYA,
MULLIPURA HOUSE, AGATTI ISLAND,
U.T OF LAKSHADWEEP- 682553

2 ABOO SALAM KOYA P
AGED 72 YEARS, S/O LATE ABOOBACKER KOYA, PETTAMBALAM HOUSE, AGATTI ISLAND,
U.T OF LAKSHADWEEP- 682553.

3 KASMIKOYA B
AGED 56 YEARS, S/O ABOOBACKER KOYA,
BIYYAMMABIYODA (H) AGATTI ISLAND,
U.T OF LAKSHADWEEP- 682553

BY ADVS.
LAL K.JOSEPH
AKASH GEORGE
MUHAMMED YAHIYA
DARSANA VIKRAM
P.MURALEEDHARAN (THURAVOOR)
T.A.LUXY
KOYA ARAFA MIRAGE
ANZIL SALIM

RESPONDENTS:

1 UNION TERRITORY OF LAKSHADWEEP
REPRESENTED BY THE STANDING COUNSEL, HIGH COURT OF KERALA

2 THE STATION HOUSE OFFICER
AGATTI POLICE STATION, AGATTI ISLAND, U.T. OF LAKSHADWEEP- 682553

3 (*ADDL.R3 IMPLEADED)
K.CHERIYAKOYA,
FORMER SUB JUDGE/CHIEF JUDICIAL MAGISTRATE, AMINI, LAKSHADWEEP, NOW WORKING AS THE SECRETARY, DISTRICT LEGAL SERVICE AUTHORITY, LAKSHADWEEP-682 553 (*IS SUO MOTU IMPLEADED AS ADDITIONAL 3RD RESPONDENT VIDE ORDER DATED 28/11/2022 IN OP(CRL)NO.608/2022)
BY ADV Sajith Kumar V.

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 14.12.2022, ALONG WITH OP(Crl.).608/2022, THE COURT ON 23.12.2022 DELIVERED THE FOLLOWING:

“CR”

P.V.KUNHIKRISHNAN, J

O.P.(Crl.) Nos. 608 & 609 of 2022

Dated this the 23rd day of December, 2022

JUDGMENT

This is a strange case in which serious allegation of forgery is alleged against the Chief Judicial Magistrate, Amini Island. It is alleged that some of the accused in a criminal case pending in that court filed a complaint before the administrative side of this Court against the conduct of the Chief Judicial Magistrate, Amini, who is also acting as the Sub Judge, in the trial of their civil case. Aggrieved by the same, the Chief Judicial Magistrate forged the evidence of an Investigating officer and convicted the accused in the absence of the accused and issued warrant to them is the allegation. The learned Magistrate sentenced the accused person to undergo a sentence of 4½ years under different sections of Indian Penal Code and directed them to serve the sentence separately with a malafide intention to put

the accused behind bars is the further allegation.

2. If the allegation against the Chief Judicial Magistrate is true, it is unfortunate and unheard of. The immense faith of the citizens of this country in the Indian Judiciary itself is the backbone of our judicial system. So, the judicial officers should be above board. But of course, there may be criticism against judicial officers and that is only because of the immense faith of the people in this system. Fair criticisms will undoubtedly improve the system. The judicial officers however, need not respond to those criticisms, but they should concentrate on their commitment to the system and prove their integrity and fair play while decision making. The pen of a judicial officer is powerful, but it should be used with great caution, of course without fear and favour. The famous Roman statesman, lawyer, scholar, and philosopher, Marcus Tullius observed that "*The magistrates are the ministers for the laws, the judges their interpreters, the rest of us are servants of the law, ……..*". If the allegation raised by the petitioners/accused against the Chief Judicial Magistrate, Amini is true, the said Magistrate is not fit to continue in any position, for a second.

3. The short facts of the case are like this: Petitioners in OP(Crl.) No.608/2022 are the accused Nos.1 to 15 in C.C.No.24/2016 on the file of the Chief Judicial Magistrate Court, Amini. The above case is charge sheeted against the petitioners alleging offences punishable under Sections 143, 147, 188, 186 and 353 r/w Section 149 IPC.

4. The prosecution allegation is that a, a contractor by the name V.K.Dawood who was engaged in plucking coconut from the Government land requested the Deputy Collector/ Sub Divisional Magistrate, Agatti for seeking police assistance for plucking coconut on the southern side of Panchayath stage in Ward No.7 Agatti Island. The Deputy Collector/Sub Divisional Magistrate, Agatti issued an order directing the Amin, Agatti and Deputy Surveyor, Agatti to supervise the aforesaid work of plucking the coconut with police assistance. It is further alleged that when the Amin, Deputy Surveyor and the contractor was supervising the plucking of coconut, a mob of around 40 persons led by the 1st and 2nd accused formed into an unlawful assembly with an intention of rioting, obstructed the Amin, Surveyor, contractor and the coconut climbers. It is also alleged that, they

forcefully took the coconuts plucked and obstructed their duty. Hence crime No.6/2015 of Agatti Police Station was registered which was investigated and final report was submitted before the Chief Judicial Magistrate Court, Amini. The learned Magistrate took cognizance of the offence and numbered the case as C.C.No.24/2016. The accused appeared before the learned Magistrate on summons and they were enlarged on bail.

5. The trial in this case started and PW1 to PW5 were examined on 07.03.2019. PW6 was examined on 08.03.2019. On 28.02.2020, CW19, the Investigating officer mounted the box as PW7. But he was not ready to depose because the Assistant Public Prosecutor (APP) was not present, thus the learned Magistrate adjourned the matter. The case of the petitioners is that, on 19.10.2022, even though the witnesses were not present, the learned Chief Judicial Magistrate issued warrant to the petitioners. The accused persons subsequently advanced the case and appeared on 03.11.2022 to recall the warrant. It is stated in the Original petition that, on that day, the learned Chief Judicial Magistrate on seeing the

petitioners on the veranda of the Court, before calling the case instructed the Mukthiar that, warrant is already recalled and they can go home. It is the case of the petitioners that, on 10.11.22, summons was issued to CW18 for giving evidence. On 10.11.22, CW18 was examined as PW8. It is the specific case of the petitioners that the counsel for the accused submitted to the learned Magistrate to issue summons to PW7 who is the Investigating officer for cross examining him. It is the case of the petitioners that, to their utter surprise and dismay, the learned Chief Judicial Magistrate informed that CW19/PW7 was already examined on 24.03.2021 at Kadamath Island Camp Sitting. It is also the case of the petitioners that on a perusal of the 'A Diary', no such proceedings regarding the examination of PW7 was noted on 24.03.2021. It is also the case of the petitioners that, if PW7 was examined on that day, definitely there will be a signature of the witness in the deposition. The petitioners obtained the alleged deposition of PW7 recorded by the learned Magistrate on 24.03.2021, which is produced as Ext.P2. A perusal of Ext.P2 will show that it is not signed by CW19/PW7. Therefore, it is stated that

Ext.P2 is a forged evidence by the learned Magistrate to convict the petitioners. It is specifically stated in the original petition that the Chief Judicial Magistrate has personal enmity towards the accused in this case because some of the accused are the plaintiffs in a civil suit and they have filed a complaint against the prejudiced view of the Chief Judicial Magistrate before the Registrar (Subordinate Judiciary) of the High Court of Kerala. It is stated that the same is pending enquiry. Hence it is contented that the action of conducting trial on the part of the learned Chief Judicial Magistrate is tainted and thus it is not a fair trial. It is also stated that the Chief Judicial Magistrate is taking a vindictive action against the petitioners. Petitioners submitted Ext.P3 written statement before the learned Magistrate narrating the grievance. Thereafter the petitioners also submitted an application under Section 311 of the Code of Criminal Procedure, 1973 to re-examine PW7. Ext.P4 is the application. The petitioners also submitted a list of 7 defence witnesses to be examined on their side and filed a petition to issue summons. Ext.P5 is the application. It is the specific case of the petitioners that without considering Exts.P4 and P5, the

case was posted for judgment on 15.11.2022. On 15.11.2022 the learned Magistrate convicted the accused and imposed a sentence of imprisonment for a period of 4 ½ years under different Sections of IPC, and directed the accused persons to undergo the sentence separately. Thereafter, the learned Magistrate issued warrants to the petitioners. At this stage these original petitions are filed.

O.P.(Crl.) No.609/2022 is filed with the following prayers:

i. To pass an order transferring the case C.C. No.24/2016 pending before the Chief Judicial Magistrate Court, Amini to any other Court for proceeding with the trial of the case,

ii. To call for the entire records in C.C. No.24/2016 pending before the Chief Judicial Magistrate Court, Amini leading to Exbt. P2 and direct the Chief Judicial Magistrate Court to reexamine PW7 afresh,

iii. To pass an order directing the Chief Judicial Magistrate Court, Amini to grant the certified copy of the order dated 14/11/2022 in Exbt P4 and Exbt P5 within a specific time frame.

iv. Pass an order dispensing with the filing of the translation of vernacular documents marked as Exhibits-P1 and P2.

(SIC)

6. The above original petition came up for consideration before this Court on 17.11.2022. Since there are serious allegations

against the Chief Judicial Magistrate, this Court passed the following order on 17.11.2022:

> "The Registrar (District Judiciary) will get a report from the Chief Judicial Magistrate Court, Amini, about the allegations raised in this original petition, especially the allegations in paragraphs 6 to 10. The allegations raised in this original petition are very serious and therefore, the Registrar (District Judiciary), after getting the report, will give a remark about the same and append the report to this original petition. The Registrar (District Judiciary) will get the report forthwith.
>
> Post on 28.11.2022.
>
> Till then, no coercive steps shall be taken against the petitioners."

7. Thereafter, O.P.(Crl.) No.608/2022 came up for consideration on 17.11.2022 and this Court directed the Registry to post O.P.(Crl.) No.608/2022 along with O.P.(Crl.) No.609/2022. The prayers in O.P.(Crl.) No.608/2022 are extracted hereunder:

i. To pass an order directing the Chief Judicial Magistrate Court, Amini to grant the certified copy /free copy of the judgment dated 15/11/2022 in. C.C. No.24/2016 on the file of the Chief Judicial Magistrate Court, Amini to the counsel for the petitioners within a specific time frame.

ii. To call for the entire records in C.C. No.24/2016 pending before the Chief Judicial Magistrate Court, Amini leading to Exbt. P2 and enquire into the same,

Iii. To direct the Chief Judicial Magistrate Court to keep all coercive proceedings for such period this honourable Court deems fit in the interest of justice.

v. Pass an order dispensing with the filing of the translation of vernacular documents marked as Exhibits-P1 to P3.

(SIC)

8. Thereafter, O.P.(Crl.) Nos.608/2022 and 609/2022 came up for consideration before this Court on 28.11.2022 with the report of the Chief Judicial Magistrate, Amini along with the remarks of the Registrar (District Judiciary). This Court perused the report of the Chief Judicial Magistrate and the remarks of the Registrar (District Judiciary). Thereafter this Court passed the following order on 28.11.2022:

> "When O.P.(Crl.) No.609/2022 came up for consideration on 17.11.2022, this Court passed the following order:
>
> > "The Registrar (District Judiciary) will get a report from the Chief Judicial Magistrate Court, Amini, about the allegations raised in this original petition, especially the allegations in paragraphs 6 to 10. The allegations raised in this original petition are very serious and therefore, the Registrar (District Judiciary), after getting the report, will give a

remark about the same and append the report to this original petition. The Registrar (District Judiciary) will get the report forthwith.

Post on 28.11.2022.

Till then, no coercive steps shall be taken against the petitioners."

2.Thereafter O.P.(Crl.) No.608/2022 also tagged with that original petition. As per the direction of this Court, the then Chief Judicial Magistrate gave a report and the Registrar (District Judiciary) produced the same with remarks. I am prima facie of the opinion that the explanation given by the Chief Judicial Magistrate is not acceptable. The main allegation against him is that, he manipulated the evidence of a witness. It is fundamental in criminal law that if a witness is examined before the Court, the deposition should be read over to the witness and he should sign the deposition then and there. The explanation of the Magistrate shows that PW7, the Investigating Officer in this case, after giving evidence, left the court premises without signing the deposition. Even if this is accepted, I am of the prima facie opinion that this is a clear case of dereliction of duty. If PW7 has committed that mistake, he is also responsible.

3.K.Cheriyakoya, Former Sub Judge/Chief Judicial Magistrate, Amini, Lakshadweep, who is now working as Secretary of the District Legal Service Authority, is suo motu impleaded as additional 3rd respondent in these original petitions.

4.This Court is of the opinion that a show cause notice is to be issued to the Chief Judicial Magistrate, who is now working as Secretary of the District Legal Service Authority, for not recommending disciplinary proceedings against him. In the

meanwhile, the petitioners in these cases can appear through their lawyer before the lower court and the present Presiding Officer will issue a copy of the judgment to the petitioners so that the petitioners can file appeal before the appropriate court in accordance to law.

Therefore, following directions are issued:

1. Issue show-cause notice to the additional 3rd respondent for explaining; why disciplinary proceedings shall not be recommended against him. The additional 3rd respondent shall file his explanation to the show-cause notice before the next posting date. Registry will communicate this order to the additional 3rd respondent through e-mail forthwith.
2. The petitioners are free to approach the Chief Judicial Magistrate Court, U.T. of Lakshadweep, Amini Island, through Mukthiyar and the Magistrate will issue a copy of the judgment to the Mukthiyar on behalf of the petitioners. The petitioners are free to file an appeal before the appropriate court in accordance to law.
3. No coercive steps shall be taken against the petitioners for a period of one month from today.
4. CW-19, who was examined as PW7 in C.C.No.24/2016 on the file of the Chief Judicial Magistrate Court, Amini will appear before this Court on the next posting date.

Post on 12.12.2022."

9. Subsequently on 12.12.2022, CW19, who was examined as PW7 in C.C.No.24/2016 on the file of the Chief Judicial Magistrate, Amini appeared in person before this Court as directed. This Court

asked him about the recording of his evidence on 24.03.2021 and he categorically said that he has not given any evidence before the court on 24.03.2021. Therefore this Court instructed the officer to file an affidavit to that effect on that day itself. The order passed by this Court on 12.12.2022 is extracted hereunder:

> "PW7 appeared before this Court in person and submitted that he has not given any any evidence before the court on 24.03.2021. The same is recorded. PW7, the Officer will file an affidavit before this Court to that effect today itself.
> Post on 14.12.2022."

10. Based on the above direction, CW19, who was examined as PW7, filed an affidavit before this Court. It will be better to extract the affidavit filed by PW7, which is produced in O.P.(Crl.) No.608/2022:

> "AFFIDAVIT FILED BY THE CIRCLE INSPECTOR/PW7 IN CC 24/16 CJM AMINI ISLAND AS DIRECTED BY THIS HONOURABLE COURT ON 12.12.2022
>
> I, Mohammed Sameer.M S/o. M.C.Kidave(Late), aged 45 years, Presently, Circle Inspector, Police Head Quarters, Kavaratti, Union Territory of Laksadweep, Pin-682555, do hereby solemnly affirm and state as follows:-

1. I am the Investing Officer in Crime No. 6/2015 of the Agatti Police Station which was numbered as CC 24/2016 by the Honourbale CJM Court Amini. This Affidavit is being filed as directed by the Honourble Court in OP(Crl) 608/2022 and OP(Crl) 609/2022 by order dated 12/12/2022.

2. The Crime No. 6/2015 of the Agatti Police Station was registered by the Station House Officer, Mr. Ali Akbar and on his transfer the investigation was specifically entrusted to this deponent, then SHO of Kavaratti. The matter was investigated and on filing final report, the case was numbered as CC 24/2016 by the Honourbale CJM Court, Amini.

3. This deponent being the Investigating Officer was listed as CW 19(PW7). This deponent on receipt of summons had appeared before the Honourable CJM on 28/2/2020. Since, the APP was not available at station, a request was made in the open court that the case shall be adjourned to a date convenient for the APP. The said request of the deponent was recorded and his signature was also affixed on 28/02/2020.

4. On the next posting date on 24/03/2021, this deponent appeared before the Honourable CJM. The APP took the stand the PW7 could be examined only after examining Mr. Ali Akbar (CW 18), then SHO who registered the FIR. Mr. Ali

Akbar was not present on that date. Therefore the case was adjourned without proceeding any further. I have not given any evidence on 24/03/2021.

5. It is submitted that the Petitioner had signed the proceeding/deposition dated 28/02/2020 (Exhibit P1) but had not given any deposition as reflected in Exhibit P2.

6. All what is stated above is true to the best of my personal knowledge and belief and I have not suppressed any material facts.

Dated this the 12th day of December 2022.

sd/-
Deponent

Solemnly affirmed and signed before me by the deponent whom I know personally on this the 12th day of December 2022 in my office at Emakulam.

Sd/-
V. SAJITH KUMAR
Advocate"

Thereafter, these original petitions were listed on 14.12.2022. On that day, the additional 3rd respondent, the then Chief Judicial Magistrate, who was impleaded in these cases in his personal capacity, filed a

counter affidavit.

11. I heard Adv.Lal K.Joseph, who appeared for the petitioners and Adv.Sajith Kumar V, the Standing Counsel appearing for the Union Territory of Lakshadweep. I also heard Adv.P.Sanjay, who appeared for the 3rd respondent.

12. This Court already directed the Chief Judicial Magistrate, Amini to issue a copy of the judgment delivered in C.C.No.24/2016 and coercive steps are deferred for a period of one month to facilitate the petitioners to approach the appellate court with an appeal against the conviction and sentence. Therefore no further orders are necessary as far as the same is concerned and the petitioners are free to agitate all their contentions raised in these original petitions before the appellate court in accordance with law.

13. However, this Court cannot end the matter there. Here is a case where serious allegations are raised against a Chief Judicial Magistrate. I am aware of the settled legal position that, we are bound to accept the statements of the Judges as far as the court proceedings are concerned. It is also true that the statement of

Judges need not be contradicted by the statement or affidavit or any other evidence. If a Judge or a Magistrate state in their proceedings that something was done, said or admitted before them, that has to be the last word on that subject. It is also well settled that the statements of facts as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. But if there is personal allegation of prejudice or malafides alleged against a judicial officer and if it is found that there is some substance in such allegation, the above general presumption may not be applicable.

14. Here is a case where there is an allegation from the side of the petitioners who are the accused in C.C.No.24/2016 to the effect that the Chief Judicial Magistrate, Amini who is arrayed as the 3rd respondent in this original petitions has a personal enmity towards the petitioners. Ground B of O.P.(Crl.) No.609/2022 is extracted hereunder:

> "The learned Chief Judicial Magistrate who is holding the post of Subordinate Judge is also hearing several Civil Suit in respect of

> the same subject matter where the actual dispute is between the Union Territory of Lakshadweep Administration and the land owners. The several landowners had already filed complaint against the prejudiced view of the learned Chief Judicial Magistrate before the Registrar (Subordinate Judiciary) of this Honourable Court and the same is pending enquiry. The illegal action of conducting the trial on the part of the learned Chief Judicial Magistrate is tainted and hence for carrying out a fair trail, it is highly necessary to transfer the trial to any other Chief Judicial Magistrate within the jurisdiction of this honourable Court."

15. The complaint filed by the accused against the 3rd respondent is admitted by the Registrar (District Judiciary) in his remarks dated 25.11.2022 submitted in O.P.(Crl.) No.609/2022. Therefore, it is an admitted fact that some of the accused filed a complaint against the Chief Judicial Magistrate/Subordinate Judge, Amini, who is the 3rd respondent herein, in connection with the conduct of their case. In this background, the averments in these original petitions are to be considered.

16. It is fundamental in criminal law that if the evidence of a witness is taken in open court and is completed it shall be read over

to the witness in the presence of the accused, if in attendance or of his pleader, if he appears by pleader and shall, if necessary, be corrected. It will be better to extract Section 278 of the Code of Criminal Procedure, 1973:

> "**278. Procedure in regard to such evidence when completed.**
>
> (1) As the evidence of each witness taken under section 275 or section 276 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.
>
> (2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or presiding Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks necessary.
>
> (3) If the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language, the record shall be interpreted to him in the language in which it was given, or in a language which he understands."

17. It is the bounden duty of the presiding officer to record

the evidence of each witness in a warrant case and the record in warrant cases is explained in Section 275 of the Code of Criminal Procedure, 1973 which is extracted hereunder:

> "**275. Record in warrant-cases.**
>
> (1) In all warrant-cases tried before a Magistrate, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the Magistrate himself or by his dictation in open Court or, where he is unable to do so owing to a physical or other incapacity, under his direction and superintendence, by an officer of the Court appointed by him in this behalf.
>
> Provided that evidence of a witness under this subsection may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence.
>
> (2) Where the Magistrate causes the evidence to be taken down, he shall record a certificate that the evidence could not be taken down by himself for the reasons referred to in sub-section (1).
>
> (3) Such evidence shall ordinarily be taken down in the form of a narrative, but the Magistrate may, in his discretion take down, or cause to be taken down, any part of such evidence in the form of question and answer.
>
> (4) The evidence so taken down shall be signed by the Magistrate and shall form part of the record."

18. Section 276 of the Code deals with the record in trial before the Court of Sessions. Once the evidence is recorded as per Section 275 of the Criminal Procedure Code or under Section 276 of the Criminal Procedure Code, it is the duty of the Magistrate/Judge concerned to read over the evidence recorded to the witness in the presence of the accused, if in attendance, or of his pleader, if he appears through a pleader, and shall, if necessary, be corrected. If the witness denies the correctness of any part of the evidence read over to him, the Magistrate or Presiding Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness and shall add such remarks as he thinks is necessary. This is a salutary provision in the Criminal Procedure Code. But several Magistrate Courts and the Sessions Courts are not following the above procedure because of the lack of time. It is true that the Magistrates and Judges are overburden with trial and if the chief examination and cross examination is to be read over in open Court in each and every case, it will necessarily be a time-consuming process. But when the Code prescribes certain

procedures to be done in certain manner, it is the duty of the Magistrate and the Judges to follow the same. If due to any circumstance the presiding officer is not able to read over the evidence recorded, the Magistrate or the Judge concerned should record the reason for not following the same. In such cases, after recording the reason, the magistrate or the judge can allow the witness to read the evidence in the presence of a court staff from inside the court hall and that too in a place in the court hall under the direct supervision of the presiding officer. This procedure shall be avoided as far as possible except in unavoidable situations. Thereafter, the witness has to sign the deposition in the light of Rule 57 of the Criminal Rules of Practices in Kerala. It will be better to extract Rule 57 of the Criminal Rules of Practice here:

> "**57. Signing of depositions.**- After a deposition has been read over to the witness, the last page thereof shall be signed in full by him. The Judge shall initial every page if the deposition is not recorded in his hand. A certificate in the following form shall be appended at the foot of the deposition and the Judge shall affix his signature with date thereto over his name:
>
> "Taken down by me/before me in open Court, interpreted/read

over to the witness and admitted by him to be correct."

19. Thereafter, the Judges/Magistrates shall affix his signature with date thereto over his name to the effect that "taken down by me/before me in open court, interpreted/read over to the witness and admitted by him to be correct". Therefore, the procedure prescribed in Sections 275, 276 and 278 of the Code of Criminal Procedure and the Rule 57 of the Criminal Rules of Practice in Kerala are a mandatory procedures to be adopted by the Magistrates/Judges. If at any stage, the Magistrates/Judges are not able to read over the evidence of each witness taken under Section 275 or 276 Cr.P.C, the Judge/Magistrate shall record the reason for the same. In such situation, the Magistrate/Judge shall depute an officer of the court and in his presence, the witness should read the entire evidence and thereafter put his signature. The deposition shall not be allowed to take out from the court hall and it should be read by the witness under the strict supervision of the Judge/Magistrate and if anything happens to the evidence recorded, the Presiding Officer is directly responsible. Therefore, the Magistrate/Judge should be very careful

in this procedure and must try to comply with the procedures contemplated in section 278 Cr.P.C in its letter and spirit as far as possible.

20. In this case, the allegation against the Chief Judicial Magistrate, who is arrayed as the 3rd respondent in this writ petition is that he has not recorded the evidence of CW18, who is examined as PW7. Ext.P2 produced in this cases is the evidence alleged to be given by PW7. Admittedly there is no signature of the witness in Ext.P2. In addition to this, when this Court directed PW7 to appear before this Court in person, PW7 appeared before this Court on 12.12.2022 and submitted that he has not given any evidence before the Court on 24.03.2021. This Court directed the officer to file an affidavit to that effect and accordingly an affidavit was filed by PW7 before this Court in which he clearly stated that on 24.03.2021, he appeared before the Chief Judicial Magistrate, but he has not given any evidence on that date. Then the question is how Ext.P2 deposition came into existence? This creates serious doubts about the recording of evidence by the additional 3rd respondent, the Chief Judicial

Magistrate of PW7 on 24.03.2021.

21. This Court has to suspect that Ext.P2 evidence which according to the additional 3rd respondent is the evidence given by PW7, is created by the additional 3rd respondent. That is why this Court impleaded the Chief Judicial Magistrate, Amini as a party in these original petitions in his personal capacity. A counter affidavit is filed by the additional 3rd respondent in these cases in which the averments in the original petitions are denied. The stand of the additional 3rd respondent, the Chief Judicial Magistrate, Amini regarding the alleged recording of the evidence of PW7 is mentioned in para No.6 of his counter affidavit. The same is extracted hereunder:

> *"Summons was ordered to CW-19 and remaining witness and the case was posted on 23.03.2021. On 23.03.2021 the accused were again not present. They filed applications through counsel and the same were allowed. CW-19 was present. Counsel for the accused and the APP sought for a posting the next day, i.e., on 24.03.2021. On 24.03.2021 CW-18 was not present but CW-19 was present. The APP and counsel for accused suggested that CW18 be examined first. But since CW-19 was continuously appearing and was earlier not examined because APP was absent it was agreed by both sides that he could be examined. Accordingly CW-19 mounted the box and the name of CW-19 was written by the Bench Clerk Sri. P.P.*

Muthukoya on the deposition sheet handed over to this respondent. CW-19 was partly examined as PW-7 and the deposition sheet handed over to the court staff for getting the signature of the witness. The case was then posted to 09.04.2021."

As far as the absence of the signature of PW7 in Ext.P2 is concerned, an explanation is given in the counter affidavit in para No.17 and the same is also extracted hereunder :

17. "The grounds raised in A to D are mere repetition of the averments made earlier in the statement of facts. In reply to ground E, it is submitted that PW-7 was examined but it is much later that this respondent discovered that the signature of the said witness was not affixed by the court staff after the examination got over on 24.03.2021. This respondent has therefore called for explanation from the staff, who have replied stating that the said witness left the court premises even before his signature could be obtained purportedly to catch the boat to reach the island where he works. True copy of the reply dated 21-11-2022 given by the Bench Clerk, Sri. P.P. Muthukoya is produced herewith and may be marked as Exhibit R4 (d). True copy of the reply dated 22-11-2022 given by the LD Clerk (Bench Assistant), Smt. A.C. Puthunni is produced herewith and may be marked as Exhibit R4 (e). Ground F is also not true. Certified copy was issued on application after producing enough court fee stamp on 17.11.2022. At any rate the accused and counsel have abstained from appearing in court though they were very much available on the island itself."

22. According to the learned Magistrate, he discovered that the signature of the witness was not obtained by the court staff after the examination got over on 24.3.2021. There is no such case for the 3rd respondent in the explanation given by him as per the order dated 17.11.2022. In the remarks, what is stated by the 3rd respondent is that, PW7 after examination in the court, proceeded to the station without signing the deposition. First of all, if PW7's evidence was recorded, in normal parlance, it is to be presumed that, the signature of the witness is recorded then and there. But, the learned Magistrate blamed the court staff for not getting the signature of the witness in the deposition. If PW7 was examined on that day, it is the bounden duty of the 3rd respondent-Chief Judicial Magistrate to read over the evidence recorded to PW7 and to get his signature then and there. Moreover, a certificate as contemplated in Rule 57 of the Criminal Rules of Practice is seen with the signature of the magistrate in Ext P2. Even after putting the signature in Ext P2, the 3rd respondent did not check for the signature of witness. This is surprising and cannot be accepted. Even if the case of the additional 3rd respondent is

accepted, there is serious dereliction of duty on the part of the additional 3rd respondent. Moreover, I cannot accept the explanation of 3rd respondent at this stage for the simple reason that the averments in the affidavit filed by PW7 before this Court nullify the above stand of the learned Magistrate. It is true that the version of a Magistrate is to be accepted in normal parlance. But in this case there is allegation from the petitioners/accused to the effect that there is personal enmity from the learned Magistrate towards the accused and hence, without examining PW7, the learned Magistrate created Ext.P2 evidence. PW7 who filed affidavit before this Court in which it is categorically stated that, he has not given any evidence before the Chief Judicial Magistrate Court, Amini on 24.3.2021. If that is the case, this Court has to presume prima facie that the additional 3rd respondent created or forged the evidence of PW7.

23. The learned Magistrate is relying on Exts.R4(d) and R4(e), reply given by the Bench Clerk and the LD Clerk (Bench Assistant) to support his case. First of all, the duty is on the part of the additional 3rd respondent to see that the evidence of a witness is recorded in his

presence and the same is read over to the witness and signature of the witness is obtained in the deposition in his presence. Therefore, I cannot accept the explanation given by the Bench Clerk and the LD Clerk (Bench Assistant). Moreover, in Exts.R4(d) and R4(e), it is stated that the witness (PW7) left the court premises without waiting to complete the court proceedings to catch a boat to another Island, where he is working. These types of explanations cannot be accepted. This Court has to prima facie presume that the Bench Clerk and the LDC Clerk (Bench Assistant) is also colluding with the additional 3rd respondent to justify the actions of their superior officer. If the averments in Annexure R4(d) and R4(e) are accepted, there is serious dereliction of duty on the part of the Bench Clerk and the LD clerk (Bench Assistant). Genuineness of Annexure R4(d) and R4(e) statements can be verified only after hearing the authors of that statement. In the facts and circumstances of this case, this Court has to conclude prima facie that the additional 3rd respondent - the Chief Judicial Magistrate committed forgery by creating the evidence of PW7, which is produced as Ext.P2 in these original petitions. The

explanation alleged to be given by the Bench Clerk and the LD Clerk (Bench Assistant) as evident by Exts.R4(d) and R4(e) is also not prima facie acceptable. If Annexure R4(d) and R4(e) are genuine statements, this Court is of the considered opinion that the Bench Clerk and the LD Clerk (Bench Assistant) is colluding with their superior officer – the additional 3rd respondent to justify the acts of their superior.

24. From the above discussions, I am of the prima facie opinion that the additional 3rd respondent forged the evidence of PW7 and he is liable to be proceeded as per Sec.340 of the Cr.P.C. I am of the opinion that it is expedient in the interest of justice that an enquiry should be made into the offence referred to in clause (b) of sub-section (1) of Sec.195 Cr.P.C because the additional 3rd respondent appears to have been committed the offence. Prima facie, I am of the opinion that a preliminary enquiry is to be conducted. Whether the Bench Clerk and the LD Clerk (Bench Assistant) are involved in aiding the additional 3rd respondent is to be decided based on their statement before this Court in the preliminary enquiry. If

Exts.R4(d) and R4(e) is correct, they are also liable to be proceeded in accordance with law. Therefore, notice is to be issued to the Bench Clerk and LD Clerk (Bench Assistant) also under Sec. 340 Cr.P.C. for conducting preliminary enquiry. Moreover, I am of the considered opinion that disciplinary proceedings is to be initiated against the additional 3rd respondent. Prima facie, I am of the opinion that the additional 3rd respondent committed serious misconduct and dereliction of duty. The disciplinary authority of the additional 3rd respondent is the Administrator, Union Territory of Lakshadweep. In the peculiar facts and circumstances of this case, I am of the opinion that the disciplinary authority should place the additional 3rd respondent under suspension pending enquiry. It is true that whether a person is to be placed under suspension pending enquiry is to be decided by the Disciplinary Authority. But in extra ordinary situations, extra ordinary orders are necessary to protect the interest of justice. I am of the opinion that this is a fit case in which this Court has to direct the Administrator Union Territory of Lakshadweep, to place the 3rd respondent under suspension pending enquiry. It is true that now

the additional 3rd respondent is working as Secretary, District Legal Service Authority. But even then, since he is in the service, there are chances to influence the witness and even intrude into the documents by the additional 3rd respondent. Therefore, I am directing the Administrator to place the 3rd respondent under suspension pending enquiry. Such a direction is necessary to protect the faith of the public in the system. Even if a person is occupying the post of Magistrate or Judge, the law of the land is applicable to all. If there is any dereliction of duty, the constitutional courts should step in to strengthen the trust of the people in the judiciary. The Magistrate, Judges and other presiding officers are not above the law and if they commit any dereliction of duty, they have to face the consequences. This should be a lesson to all.

Therefore, these original petitions are disposed of with the following directions:

1) The Administrator, Union Territory of Lakshadweep is directed to place the additional 3rd respondent under suspension forthwith and conduct a detailed enquiry about his actions mentioned in

this order forthwith and take appropriate steps in accordance with law, untrammelled by any observation in this judgement.

2) The petitioners in these cases are allowed to raise all their contentions raised in these original petitions before the appellate court by filing appeal against the conviction and sentence imposed in CC No. 24/2016 on the file of the Chief Judicial Magistrate Court, Amini, Lakshadweep. If no appeal is filed so far, no coercive steps shall be taken against the petitioners for a further period of one month from today.

3) Issue notice under Sec.340 Cr.P.C. to the additional 3rd respondent, Sri.K.Cheriyakoya, Former Sub Judge/Chief Judicial Magistrate, AMINI, LAKSHADWEEP, now working as the secretary, District Legal Service Authority, LAKSHADWEEP, Sri.P.P.Muthukoya, Bench Clerk, Chief Judicial Magistrate Court Court, Amini and Smt. A.C.Puthunni, LD Clerk (Bench Assistant), Chief Judicial Magistrate Court, Amini for conducting a preliminary enquiry because this Court is of the opinion that it is expedient in the interest of justice that such an enquiry should

be made into the offences referred in Clause (b) of sub-section (1) of Sec. 195 Cr.P.C. The Registry will enclose a copy of this order also along with the notice issued under Sec.340 Cr.P.C. to the persons mentioned above.

4) The Registry will give a separate number to the Sec.340 Cr.P.C. proceedings in accordance with law and post the case on 23.1.2023 for the appearance of the additional 3rd respondent and other persons mentioned above. Advocate Dheerendrakrishnan K.K is appointed as Amicus curie to assist the court during the preliminary enquiry under Section 340 Cr.P.C. Registry will show the name of the Amicus curie in the cause list.

5) Registry is directed to forward a copy of this judgement to the Administrator, Union Territory of Lakshadweep forthwith.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

DM
JV
DAS
SKS

APPENDIX OF OP(CRL.) 609/2022

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE CHIEF EXAMINATION OF PW7 IN PART DATED 28/02/2020 IN C.C 24/2016 BEFORE THE CHIEF JUDICIAL MAGISTRATE, AMINI
Exhibit P2	TRUE COPY OF THE DEPOSITION OF PW7 DATED 24/03/2021 IN C.C 24/2016 BEFORE THE CHIEF JUDICIAL MAGISTRATE, AMINI
Exhibit P3	TRUE COPY OF THE WRITTEN STATEMENT DATED 14/11/2022 IN C.C. 24/2016 FILED BY THE PETITIONERS/ACCUSED BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, AMINI.
Exhibit P4	TRUE COPY OF THE PETITION FILED UNDER SECTION 311 OF THE C.R.P.C DATED 14/11/2022 TO RE-EXAMINE PW7 IN C.C 24/2016 FILED BY THE PETITIONER/ACCUSED BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, AMINI
Exhibit P5	TRUE COPY OF THE PETITION DATED 14/11/2022 TO ISSUE SUMMONS TO THE DEFENCE WITNESSES FILED BY THE PETITIONER/ACCUSED

APPENDIX OF OP(CRL.) 608/2022

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE CHIEF EXAMINATION OF PW7 IN PART DATED 28-2-2020 BEFORE THE CHIEF JUDICIAL MAGISTRATE, AMINI.
Exhibit P2	TRUE COPY OF THE DEPOSITION OF PW7 DATED 24-3-2021, PURPORTEDLY TO HAVE BEEN MADE ON 24-03-2021 IN THE ABSENCE OF ASSISTANT PUBLIC PROSECUTOR.
Exhibit P3	TRUE COPY OF THE WRITTEN STATEMENT DATED 14-11-2022 IN C.C. 24/2016 FILED BY THE PETITIONERS/ACCUSED BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, AMINI
Exhibit P4	TRUE COPY OF THE PETITION FILED UNDER SECTION 311 OF THE CR.P.C DATED 14-11-2022 TO RE-EXAMINE PW7 IN C.C. 24/2016 FILED BY THE PETITIONERS/ACCUSED BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, AMINI
Exhibit P5	TRUE COPY OF THE PETITION TO ISSUE SUMMONS DATED 14/11/2022 TO THE DEFENSE WITNESSES FILED BY THE PETITIONERS.

RESPONDENT EXHIBITS

Exhibit R4(a)	True copy of the communication dated 15.11.2022
Exhibit R4(b)	True copy of the deposition of PW-7 on 24-03-2021
Exhibit R4(c)	True copy of the order dated 14-11-2022
Exhibit R4(d)	True copy of the reply dated 21-11-2022 given by the bench clerk, Sri.P.P.Muthukoya.
Exhibit R4(e)	True copy of the reply dated 22-11-2022 given by the LD Clerk (Bench Assistant) Smt. A.C.Puthunni.

True copy

P.A.TO JUDGE