

**IN THE COURT OF THE ADDITIONAL SPECIAL SESSIONS JUDGE,  
(SPE/CBI)-III, ERNAKULAM**

Present :-

**SRI. SABARINATHAN. P, SPECIAL JUDGE.**

Thursday, the 19<sup>th</sup> day of September, 2024/ 28<sup>th</sup> Bhadra, 1946.

**S C No. 421/2020**

**Complainant:** Inspector of Police, Valapattanam Police Station,  
Kannur.

&

Additional Superintendent of Police, Central Bureau  
of Investigation, Special Crime Branch,  
Thiruvananthapuram.

Represented by : Sri. M. Navas, Senior Public Prosecutor.

**Accused:**

1. Sumesh.K.V, S/o. Chandran, aged 39/24 years,  
Kizhakkevalappil House, Poomalakkavu,  
Cherukunnu Ambalam Road, Kannapuram.
2. Ganesan.P, S/o. Balan Nair, aged 47/24 years,  
Parayil House, Raj Quarters, China Clay Road,  
Kannupuram.
3. Anoop, S/o. Balan, aged 44/24 years,  
Kaniyarathvalappil House, Kannupuram,  
Idakkepuram.
4. Vijesh @ Babbotty, S/o. Krishnan,  
aged 39/24 years, Thaiyyil House, Morazha.
5. Prakasan. K, S/o. Sreedharan, aged 44/24 years,  
Pappinisserikkaran Kannothe House, panthottam,  
Near K.K.N. Smaraka Vayanasala, Morazha.

6. Umesan.V, S/o. Gopalan, aged 44/24 years, Pattuvam Ariyil, dharmakinnar.
7. Pavithran. P, S/o. Kunjappa, aged 50/24 years, Porayil House, Karakkunnu Road, Keezhara, Kannur.
8. Latheesh. C, S/o. Kunjambu, aged 41/24 years, Chalil House, Muthuvani, Morazha.
9. Manoharan. P.V, S/o. Late Kunjiraman, aged 46/24 years, Palangottuvalappil House, Kannapuram, Keezhara, Valluvankadavu.
10. N.P. Dinesan @ Maina Dinesan, S/o. Kunjiraman, aged 52/24 years, Naduvilepurayil House, Kannapuram, Keezhara, Valluvankadavu.
11. C.N.Mohanan, S/o. Govindan, aged 50/24 years, Chevan Naroath House, Morazha, Near Grameena Vayanasala.
12. Bijumon, S/o. Vady Ravi, aged 44/24 years, Vady House, C.H. Nagar, Morazha.
13. N. Nidhin, S/o. Narayanan, aged 35/24 years, Naduvilepurayil House, Kannapuram, Keezhara, Valluvankadavu.
14. E.P. Radhakrishnan, S/o. Kunjiraman, aged 49/24 years, Eliyanpola House, Valluvankadavu, Keezhara, Kannapuram.
15. Shijin Mohan @ Shijin, S/o. Mohanan, aged 33/24 years, Naduvilepurayil House, Kannapuram, Keezhara, Valluvankadavu.
16. K.V. Sajith, S/o. Chandran, aged 42/24 years, Kizhakkevalappil House, Kannapuram, Idakkepuram.

17. Sudhakaran @ Conductor Sudhakaran, S/o. Kannan, aged 50/24 years, Moolayil House, Morazha.
18. Naveen. N.P, S/o. Narayanan, Naduvilepurayil House, Kannapuram, Keezhara, Valluvankadavu.
19. Syamjith, S/o.Govindan, age not known, Syamala Nivas, Mottamayal, Morazha.
20. Sareesh. A, S/o. Narayanan, aged 39/24 years, Aachali House, Koranpeedika, Morazha. (No more).
21. Shaji.K.V, S/o. Kunjiraman, aged 46/24 years, Koolothvalappil House, Periyadavu, Vellakkeel, Morazha.
22. Prakasan Muthuvany, S/o. Kappadan Kannan, aged 49/24 years, Kappadan House, Muthuvany, Morazha Colony Road.
23. Ajayakumar.N. P @ Ajayan, S/o. Kumaran aged 53/24 years, Naduvilepuram, Kannapuram, Keezhara, Valluvankadavu.
24. Rajeevan. P, S/o. Narayanan, aged 54/24 years, Poyil House, Pattuvam, Ariyil.
25. V.V. Mohanan, S/o. Balan, aged 60/24 years, Naduvilepurayil House, Kannapuram, Keezhara, Valluvankadavu.
26. Purushothaman.M.V @ Purushu, S/o. Koran, aged 56/24 years, Melothvalappil House, Kannapuram, Keezhara, Valluvankadavu.
27. P. K.Ajithkumar, S/o. Raveendran Nambiyar, aged 54/24 years, Kondoth House, Morazha, Pannery.

28. P.P. Suresan, S/o. Narayanan, aged 53/24 years, Padinjarepurayil House, Pattuvam, Idamudavu, Kaichanthadam.
29. K. Babu, S/o. Balan, aged 51/24 years, Karangadan House, Pattuvam, Ariyil, Dharmakkinar.
30. G.V. Venu, S/o. Kunjiraman, aged 61/24 years, Ubravalappil House, Mulloor, Pattuvam.
31. A.V. Babu, S/o. Krishnan, aged 49/24 years, Anthoorveetil House, Vellikkeel, Morazha. (No more)
32. P. Jayarajan, S/o. Kunjiraman, aged 67/24 years, Kairali House, Pookkode, Koothuparambu.
33. T.V. Rajesh, S/o. Chanthukkutty, aged 50/24 years, Athrakkal House, Kulappuram, Cheruthadam.

**A1 to A19, A21 to 26 and 28 to 30**-Represented by-  
Advs. Muhammed Shaheel.B and Nicholas Joseph.

**A27**- Represented by-Advs. M.Sunilkumar, Thomas Abraham  
and Mahesh Bhanu.S.

**A32 and A33**- Represented by-Advs. Sri. K. Viswan & Arun Bose D.

**Mother of the Deceased:**

P.C. Aathikka, R/o. Puthiyarampath, Near Kuthirappuram  
Mosque, Ariyil. P.O, Thaliparamba, Kannur.

**Represented by-** Adv. P.A. Muhammed Shah.

This case is coming on for hearing on 24<sup>th</sup> day of August, 2024 in the presence of Counsel on both sides and having stood over for consideration till this day, the Court passed the following:

**ORDER**

This is a case originally charge sheeted by the Inspector of Police, Valapattanam against the accused, thirty three in number, alleging offence punishable u/s. 143, 147, 148, 447, 450, 294(b), 506(i), 364, 341, 323, 324, 307, 302, 109, 201, 118 and 120B r/w. 149 IPC, in crime No. 136/2012 of Kannapuram police station.

2. The prosecution case in short is as follows:- On 20.02.2012, at about 12.15 hours, while CWs 1, 3 and 4, named P. Zacharia, N.K. Haris and Abdul Salam.P, along with one Abdul Shukkoor (the deceased) were walking after crossing the Valluvan Kadavu for the purpose of taking CW.2, Ayoob P.V, to the St. Martin D' Poris Hospital, Cherukunnu, as he sustained injuries while playing cricket on the same day at about 9.00 am, the accused Nos. 4, 10, 13, 15 and 18 followed them, misunderstanding that they were involved in assaulting the accused Nos. 32 and 33, Sri. P. Jayarajan and Sri. T.V. Rajesh, who were the Secretary of CPM, Kannur District Committee and MLA respectively, on the same day at 11.45 am, the accused Nos. 7 to 9, 21, 22, 23 and 26 along with some other persons came in front of the aforesaid witnesses and deceased, seeing them the witnesses and the deceased due to fear of attack by the aforesaid persons, took shelter in the house of one Muhammed Kunhi (CW6). Thereafter, the accused Nos.

6,11,12,14,17,19,20,24,25,27,28 and 29 along with above mentioned accused and 10-16 unidentified persons formed themselves into an unlawful assembly, armed with deadly weapons like iron rod, iron pipe etc., and wrongfully restrained CWs 1,2,3 and 4 referred to above and Abdul Shukkoor (the deceased) in the house of CW.6 referred to above from 12.30 noon till 2.00 p.m and criminally intimidated them. The accused No. 10 took photos of CWs 1, 3 and 4 and Abdul Shukkoor in his mobile phone, the accused No.11 take down the name and address of the aforesaid persons, the accused No.10 informed the details to accused No. 31, who was there in room No. 315 of Co-operative Hospital, Thaliparamba, where the accused Nos. 32 and 33 were admitted for treatment, the accused Nos.30, 28 and 29 were also present in the said hospital, the accused Nos. 28 to 31 hatched a criminal conspiracy inside the aforesaid room and also from outside the room of the said hospital between 1.00 p.m to 1.20 p.m, in furtherance of the said criminal conspiracy, the accused No.30 stated to handle the Muslim League workers who were confined in the house of CW.6 and authorized accused No. 29, the Branch Secretary of CPM at Ariyil for that purpose; thereupon, accused No. 29 went to the house of CW.6 along with accused No.17 and gave direction to the accused Nos. 10 and 11 to execute the plan and thereafter the accused No.10 contacted the second accused over phone,

thereupon the second accused along with first accused came to the scene of occurrence on the motor cycle bearing Regn. No. KL-13/W-9804 owned by the second accused, the third accused came there on his motor cycle bearing Reg. No. KL-13/V-3601 and the 5<sup>th</sup> accused also reached there. The accused Nos. 1 to 3 and 5, armed with deadly weapons, hide themselves near a vegetable garden panthal, by that time, CWs 2 to 4 referred to earlier were brought from the house of CW.6 forcibly by accused Nos.4, 6,7,8,9,10,12,13 and 15 to the paddy field named Chulliyottuvayal, which situates 300 metres north west from the house of CW.6 and at about 2.15 pm, the accused Nos. 1 and 6 slapped on the face of CW2, the accused No. 8 attempted to inflict injury to the aforesaid witnesses by means of an iron rod and the accused No.9 by means of an iron pipe and fearing attack the aforesaid witnesses ran away from the paddy field. Thereupon, the accused persons again went to the house of CW.6 and forcibly took CW.1 and Abdul Shukkoor to the aforesaid paddy field and from the ridge on the middle side of the paddy field at about 2.30 p.m, the accused Nos. 1 to 3 armed with daggers along with accused Nos 4,7 and 10 formed themselves into an unlawful assembly, the accused No.10 shouted to do away with CW.1 and Abdul Shukkoor and thereafter, the accused Nos. 4 and 7 caught hold on both hands of CW.1 towards rear side, the first accused slapped on the face of CW.1, the second

accused inflicted injury on the back of left shoulder of CW.1 by means of a dagger and the third accused inflicted injury on the right hand muscle and forearm of CW1 by means of a dagger and thereby attempted to murder CW.1. Seeing the said incident and on fear of death, Abdul Shukkoor attempted to ran away from there, at that time the accused Nos. 1 to 5 attempted to restrain Abdul Shukkoor, he escaped from the clutches of the accused and while he was running away from there, the second accused from the ridge of the paddy field, inflicted injury on the abdomen of Abdul Shukkoor by means of a dagger and the first accused inflicted injury near the left chest of Abdul Shukkoor by means of another dagger. On getting information about restraining of some IUML workers by the CPM activists in the house of CW.6, the police party under the leadership of one Narayanan, Grade Sub Inspector of Kannapuram police station (CW.56) reached there at about 2.30 pm, they took CW1, who came along the road with injury, to the St. Martin D' Poris Hospital, Cherukunnu. Later Abdul Shukkoor was seen at the ridge of paddy field inside the grasses with serious injuries, he was taken to the Medical College Hospital, Pariyaram, but unfortunately he succumbed to the injuries on his way to the hospital. The accused No. 16 concealed the dagger used by the first accused for inflicting injury to the witnesses and Abdul Shukkoor with intention to cause

disappearance of evidence of the offence. The accused Nos. 32 and 33 have knowledge about the plan to commit the aforesaid offence as a result of criminal conspiracy by accused Nos. 28 to 31 from inside room No. 315 and also from outside the said room of the Co-operative Hospital, Thaliparamba to commit an offence punishable with death or imprisonment for life, willfully concealed the said plan by not divulging to others. The acts of the accused persons were in furtherance of their common object. Thus the accused Nos. 1 to 31 alleged to have committed the offence punishable u/s. 143, 147, 148, 447, 450, 294(b), 506(i), 364, 341, 323, 324, 307, 302, 109, 201 and 120B r/w. 149 IPC and the accused Nos. 32 and 33 alleged to have committed the offence punishable u/s. 118 r/w. 364, 307 and 302 IPC.

3. FIR in Crime 136/2012 of Kannapuram police station was registered by CW.56, referred to above on the basis of first information statement of CW.1 and after completing the investigation, the Inspector of Police, Valapattanam laid final report before the JFCM Court - I, Kannur.

4. On the basis of the final report, cognizance has been taken by the learned Magistrate referred to above for the said offences and registered the case as CP. 73/2012. All the accused, except A5, A18, A20 and A23, entered appearance before the learned Magistrate and they were already on bail during the course of the investigation. A20 was reported no more and

accused Nos. 5, 18 and 23 were reported absconding. Copies of the relevant prosecution records were furnished to the accused, who entered appearance before the Committal Court u/s. 207 Cr.P.C and as per order dated 30.10.2012, the learned Magistrate has committed the case against A1 to 4, 6 to 17, 19, 21, 22 and 24 to 33 to the Hon'ble Court of Session, Thalassery u/s. 209(a) Cr.P.C and case against A5, A18 and A23 was split up and refiled as CP.95/2012. Subsequently, on appearance of A5, after complying sec. 207 Cr.P.C. the case against him was also committed to the Hon'ble Court of Session referred to above as per order dated 22.12.2012 and case against A18 and A23 was split up and refiled as CP.106/2012.

5. On receipt of the records from the Committal Court referred to earlier, the Hon'ble Court of Session, Thalassery took cognizance of the offences referred to earlier and registered the case as SC.845/2012.

6. Meanwhile the mother of the deceased Abdul Shukkoor, one Smt. P.C. Athikka preferred Writ Petition before the Hon'ble High Court of Kerala as W.P.(C) No. 25123 of 2013 (M) to order further investigation by the CBI in order to rope in A32 and A33 for the offence punishable u/s. 120B of IPC instead of 118 IPC charged by the police. The Hon'ble High Court of Kerala as per judgment dated 08.02.2016, allowed the said application and ordered further investigation as requested by the petitioner

therein and entrusted the CBI for the same. On the basis of the said judgment, the CBI, Thiruvananthapuram has registered FIR No. RC.9(S)/2016/CBI/SCB/TVPM and conducted further investigation. After completing further investigation, Sri.Y.Harikumar, Additional Superintendent of Police, CBI/SCB/SPE/Thiruvananthapuram has laid supplementary final report u/s. 173 (8) Cr.P.C against the accused Nos. 32 and 33 for the offence punishable u/s. 120B r/w. 364, 307 and 302 IPC, before the Chief Judicial Magistrate, Ernakulam. The said final report has been returned by the CJM Court, Ernakulam to the CBI for filing before the proper Court, i.e. the Hon'ble Sessions Court, Thalassery, which has already taken cognizance of the offence on the basis of the police report. Accordingly, supplementary final report has been submitted before the Hon'ble Sessions Court, Thalassery. Thereafter the Hon'ble High Court of Kerala as per order in TR. P (CRL) No. 43 of 2019 dated 17.06.2019, has withdrawn the final report along with the supplementary charge laid by the CBI in SC. 845/2012 from the Hon'ble Court of Session, Thalassery and ordered to transmit the same to the CJM, Ernakulam with a direction to commit the case to this Court for trial and disposal. Accordingly, the records were transmitted to the CJM Court, Ernakulam.

7. On receipt of the records, the CJM Court, Ernakulam has registered the case on the basis of the police report as CP. 3/2019 and the case on the basis of the supplementary charge was registered as CP. 4/2019.

8. The accused Nos. 1 to 19 and 21 to 33 entered appearance before the CJM Court, Ernakulam. The accused Nos. 18 and 23 were released on bail by the said Court. As stated earlier, A20 was reported no more and the remaining accused were already on bail. After complying the formalities, the case against the accused was committed by the CJM Court, Ernakulam to the Hon'ble Court of Session, Ernakulam u/s. 209 (a) Cr.P.C as per two separate orders in CP. 3/2019 and 4/2019 dated 06.03.2020.

9. On receipt of the records, the Hon'ble Court of Session, Ernakulam took cognizance of the offences referred to earlier and registered the case against A1 to A33 on the basis of the final report as SC. 421/2020 and the case on the basis of the supplementary final report by the CBI as SC. 420/2020. These cases were made over to this Court for trial and disposal.

10. All the accused except A20 entered appearance before this Court. SC. 420/2020 has been clubbed with SC.421/2020, ie., the present case as A32 and A33 are already arraigned in the present case. During the pendency of this proceeding, the accused No.31 is reported no more, the copy of the death certificate has been produced and accordingly, charge

against A31 stands abated. The accused Nos. 32 and 33 have filed Criminal M.P. 155/2023 for discharging them u/s. 227 of Cr.P.C. No application has been filed by the remaining accused for discharge.

11. It is contended by the accused Nos. 32 and 33 in Criminal M.P. 155/2023 that the allegation that they have committed the offence punishable u/s. 118 and 120B r/w. 364, 307 and 302 IPC is without any basis, they were not parties to the criminal conspiracy as alleged by the prosecution and the further report has been submitted by the CBI on the basis of the Judgment of the Hon'ble High Court of Kerala in W.P.(C). 25123/2013 dated 08.02.2016, without applying the mind and considering the materials on record, the prosecution and the mother of the deceased, who entered appearance through a counsel at her choice have filed counter opposing the application. It is contended by them in the counter that charge is to be framed against all the accused, considering the final report submitted by the police and further report submitted by the CBI.

12. I heard both sides on the question of framing charge. The Criminal M.P. 155/2023 was also taken up for hearing while hearing on framing charge. As stated earlier, no application for discharge has been filed by the accused Nos. 1 to 19 and 21 to 30. The learned counsel appearing for them fairly conceded that charges can be framed against them.

13. Now the points that arise for consideration are as follows:-

- (i) Whether there are sufficient materials to frame charge against all the accused for the offence alleged against them?
- (ii) Whether Criminal M.P. 155/2023 is allowable?

14. **Points:-** These points can be considered together. The case of the prosecution and the allegation against the accused has already been narrated. As stated earlier, the Inspector of Police, Valapattanam has filed final report against the accused Nos.1 to 33 before the JFCM Court-I, Kannur. As per the police charge, accused Nos. 1 to 31 are alleged to have committed the offence punishable u/s. 143, 147, 148, 447, 450, 294(b), 506(i), 364, 341, 323, 324, 307, 302, 109, 201 and 120B r/w. 149 IPC and the accused Nos. 32 and 33 alleged to have committed the offence punishable u/s. 118 r/w. 364, 307 and 302 IPC. Now the CBI has submitted supplementary report after conducting further investigation and as per the same, the accused Nos. 32 and 33 are also alleged to have committed the offence punishable u/s. 120B r/w. 364, 307 and 302 IPC.

15. The learned counsel appearing for the accused Nos.32 and 33/petitioners in Criminal MP. 155/2023 has vehemently argued that the allegation in the supplementary final report that the accused Nos. 32 and 33 were parties to the criminal conspiracy is not liable to be accepted. It is true

that the accused Nos. 32 and 33 were admitted in room No. 315 of Co-operative Hospital, Thaliparamba for treatment for the injury sustained to them in an earlier incident, by which stones were pelted against the vehicle in which they were travelling. The accused No.32 is a 'X' category personnel, who has been provided with a Security Police Officer, named Pramod.K, he was interrogated by the CBI, recorded his statement and cited as witness No. 16 in the supplementary final report. The said police officer is the best person to speak about the criminal conspiracy, if any transpired in the presence of the accused No. 32, whereas the statement given by him before the CBI did not show anything about the criminal conspiracy, to which the accused No. 32 is a party. The CBI has interrogated the witnesses cited by the police again and recorded their statements, to allege that the accused Nos.32 and 33 were also parties to the criminal conspiracy for committing murder of Abdul Shukkoor. The only statement relied on by the prosecution is that of one Abu.P.P and Muhammed Swabir who stated before the police as well as before the CBI that they have heard one U.V.Venu (A30) shouting to P.P. Suresan (A28) and A.V. Babu (A31) to deal with the Muslim League Activists properly and the same was heard by the accused Nos. 32 and 33, if there was such a shouting by A30 as stated by the witnesses, the best person to say about the same is the Security Police Officer, named Pramod,

but as stated earlier, his statement does not reveal anything about the same. So, according to the learned counsel appearing for the accused Nos. 32 and 33, there are no sufficient grounds to frame charge against the accused Nos. 32 and 33 for the offence punishable u/s. 120B IPC. Likewise absolutely, there are no materials to frame charge for the offence u/s. 118 IPC as alleged by the police. Hence they are certainly entitled for discharge u/s. 227 of Cr.P.C. The learned Senior Public Prosecutor for CBI and the learned counsel appearing for the mother of the deceased, on the other hand argued that the available materials collected by the police during investigation and additional evidence collected by the CBI during further investigation are sufficient to frame charge u/s. 120B r/w. 364, 307, 302 IPC. The statement of the witnesses recorded by the police and the CBI clinchingly establishes the presence of accused Nos. 28 to 31 at the Co-operative Hospital, Thaliparamba, they were inside the room No.315 along with accused Nos. 32 and 33 and the master mind behind the criminal conspiracy to commit murder of Abdul Shukkoor is that of accused No. 32 and 33, who were allegedly attacked by Muslim League Workers, by pelting stones, while they were travelling in the vehicle. It is very hard to believe that the accused No.32 will permit the presence of his PSO named Pramod inside the room while there was discussion and conspiracy to commit the offence. So

the non-mentioning of the details by the PSO is of no consequences. The police willfully avoided sec.120B against the accused Nos. 32 and 33 and only after interference by the Hon'ble High Court of Kerala on a request by the mother of the deceased, further investigation has been conducted and supplementary charge submitted by the CBI alleging offence u/s.120B against the accused Nos.32 and 33. The call details collected by the investigating officers also show the presence of accused Nos. 28 to 31 at the Co-operative Hospital, Thaliparamba and the accused No.29 was also present at the scene of occurrence. There was frequent contact by A29 over phone with A30, U.V. Venu. It is also evident that A31 contacted over phone with A4, A8, A10 and A11 on the date of the incident. The accused Nos. 28 and 29 were also present at the scene of occurrence. So it is evident from the available materials on record that accused Nos. 32 and 33 also conspired along with accused Nos. 28 to 31 to do away with Abdul Shukkoor and assault others. So, absolutely no grounds are available to discharge accused Nos. 32 and 33 for the offence punishable u/s. 120B r/w. 364, 307 and 302 IPC. Therefore, it is prayed by them that charges are to be framed against all the accused, except A20 and A31, for the offence alleged against them and Criminal M.P. 155/2023 filed by A32 and A33 is only to be dismissed.

16. I have considered the submission made by either side and perused the records. As stated earlier, as per the final report submitted by the police, the accused Nos.32 and 33 are alleged to have committed the offence punishable u/s. 118 r/w. 364, 307 and 302 IPC and now after further investigation, the CBI has submitted further report alleging that the accused Nos. 32 and 33 are alleged to have committed the offence punishable u/s. 120B r/w. 364, 307 and 302 IPC.

17. Criminal conspiracy is defined in Sec. 120A of IPC, which says that when two or more persons agree to do, or cause to be done, -

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation:- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

18. The punishment for criminal conspiracy is provided in sec. 120B of IPC which read as follows:- “**120-B.** Punishment of criminal conspiracy:- (1) Whoever is a party to a criminal conspiracy to commit an

offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

19. Now it is well settled by a catena of decisions that the essence of the offence of conspiracy lies not in doing the act or effecting the purpose for which the conspiracy has been hatched, but in forming the scheme or agreement between the parties. Generally, a conspiracy is hatched in secrecy, and it may be difficult to adduce direct evidence for the same. The law does not, therefore, enjoin a duty on the prosecution to lead evidence of such character, which is impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is only to lead such evidence which it is capable of leading, having regard to the facts and circumstances of each case [See the recent decision of the Hon'ble High Court of Kerala in **State Vs. R.Baiju (2024 KHC OnLine 727)**]. It is also to be mentioned that Sec. 10 of the Evidence Act is also relevant in this

regard, which says that, where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. Sec.10 of the Evidence Act carves out an exemption to the settled law that an act or action of one of the accused cannot be used as evidence against the other, in case of conspiracy.

20. The statement of the witnesses recorded by the police and the CBI clinchingly establishes the presence of accused Nos. 28 to 33 at the Co-operative Hospital, Thaliparamba inside and outside room No. 315 of the said hospital. It is also prima-facie indicated that the accused No. 30 shouted to accused Nos. 28 and 31 by standing on the door way of the room to deal with the Muslim League Workers, who were restrained at the scene of occurrence. It is also the statement of the witnesses that the said shouting was heard by the accused No. 32 and 33. The non mentioning of the details of conspiracy by CW16, PSO Pramod is of no consequence, as it is the common knowledge that no one will permit the presence of a PSO, who is a

police officer, while engaged in criminal conspiracy. So the prima-facie inference can only be that the accused Nos. 28 to 33 were parties to the criminal conspiracy and the prosecution to be given an opportunity to lead evidence to prove the said conspiracy by direct and circumstantial evidence. Hence, I am of the considered view that the prayer for discharge by the accused Nos. 32 and 33 for the offence punishable u/s. 120 B r/w. 364, 307 and 302 IPC is not allowable. They have to face trial for the said offence. Since 120 B of IPC is prima-facie attracted there is no need to frame charge u/s. 118 of IPC against accused Nos. 32 and 33.

21. As stated earlier, the remaining accused, who entered appearance have no claim for discharge. They are alleged with the offence punishable u/s. 143, 147, 148, 447, 450, 294(b), 506(i), 364, 341, 323, 324, 307, 302, 109, 201 and 120B r/w. 149 IPC. Absolutely no materials are available to show the exact obscene words uttered by the accused and as such I am of the considered view that the offence u/s. 294(b) IPC is not prima-facie attracted and as such no charge is to be framed for the said offence, but charges are to be framed against accused Nos. 1 to 19, 21 to 29 and 31 for the remaining offences.

22. In view of what is stated above, I order that charges to be framed against accused Nos. 1 to 19, 21 to 29 and 31 to 33 as indicated above.

Therefore, Criminal M.P. 155/2023 filed by accused Nos.32 and 33 for discharge u/s. 227 Cr.P.C is only to be dismissed and I do so.

Dictated to the Confidential Assistant, transcribed and prepared by her in computer, corrected by me and pronounced in open Court on this the 19<sup>th</sup> day of September, 2024.

Sd/-  
**Sabarinathan.P**  
**Special Judge, (SPE/CBI) – III**  
**Ernakulam**

**Appendix:- Nil.**

Sd/-  
**Special Judge, (SPE/CBI)-III.**

Typed by:-  
Compd by:-

Order in S.C 421/2020  
Dated 19.09.2024