



2025:KER:12932

Crl.M.C.Nos.6461 & 6462/2019

-1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

MONDAY, THE 17TH DAY OF FEBRUARY 2025 / 28TH MAGHA, 1946

CRL.MC NO. 6461 OF 2019

CRIME NO.1435/2017 OF ELOOR POLICE STATION, ERNAKULAM

AGAINST THE ORDER IN CC NO.716 OF 2018 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT, KALAMASSERY

PETITIONER/ACCUSED:

A.L.ABHILASH,
AGED 38 YEARS,
S/O.APPU PILLAI, SUB INSPECTOR OF POLICE,
ELOOR POLICE STATION, ALAPPUZHA-688533,
NOW RESIDING AT POLICE QUARTERS NO.A5,
KALAMASSERY P.O., ERNAKULAM-683104.

BY ADV A.RAJASIMHAN

RESPONDENTS/STATE AND ANOTHER:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT, ERNAKULAM-682031.
- 2 MANOJ,
S/O.SHEELAN, PANDARAPARAMBIL HOUSE,
PONNARIMANGALAM, MULAVUKADU P.O.,
ERNAKULAM-682504.

BY ADV SMT.V.S.SANGEETHA
SMT. SEETHA S., SR. PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13.02.2025,
ALONG WITH CRL.MC.6462/2019, THE COURT ON 17.02.2025 PASSED THE
FOLLOWING:



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Crl.M.C.Nos.6461 & 6462/2019

-2:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

MONDAY, THE 17TH DAY OF FEBRUARY 2025 / 28TH MAGHA, 1946

CRL.MC NO. 6462 OF 2019

CRIME NO.1435/2017 OF ELOOR POLICE STATION, ERNAKULAM

AGAINST THE ORDER DATED 26.02.2019 IN CC NO.242 OF 2019 OF
JUDICIAL FIRST CLASS MAGISTRATE COURT, KALAMASSERY

PETITIONER/ACCUSED:

A.L.ABHILASH,
AGED 38 YEARS
S/O.APPU PILLAI,
SUB INSPECTOR OF POLICE,
ELOOR POLICE STATION,
ALAPPUZHA-688533,
NOW RESIDING AT POLICE HEADQUARTERS NO.A5,
KALAMASSERY P.O., ERNAKULAM-683104.

BY ADV A.RAJASIMHAN

RESPONDENTS/STATE AND ANOTHER:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT, ERNAKULAM-682031.
- 2 PRASAD P.R.,
S/O.REMESHAN, PANDARAPARAMBIL HOUSE,
PONNARIMANGALAM, MULAVUKADU P.O.,
ERNAKULAM-682504.

BY ADV SMT.V.S.SANGEETHA
SRI. SANGEETHARAJ N.R., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13.02.2025,
ALONG WITH CRL.MC.6461/2019, THE COURT ON 17.02.2025 PASSED THE
FOLLOWING:



COMMON ORDER

Both these petitions are filed under Section 482 of the Code of Criminal Procedure, 1973(*in short, 'Cr.PC'*) by the former Sub Inspector of Eloor Police Station to quash the proceedings in C.C.Nos.716/2018 & 242/2019 on the files of the Judicial First Class Magistrate Court-I, Kalamassery, initiated by the learned Magistrate upon the complaints preferred by two prisoners by name Manoj and Prasad alleging custodial torture.

2. The aforesaid complainants are the accused in Crime No.1435/2017 of Eloor Police Station, registered in connection with the commission of offence under Section 511 of 379 read with Section 34 of the Indian Penal Code, 1860,(*in short, 'IPC'*). As per the allegations in Annexure-A1 First Information Report registered in connection with the above crime, the above complainants (second respondent in these petitions) attempted to commit theft of the battery of a Torus lorry parked by the side of container road at about 11:30 pm on 14.12.2017. It is further stated thereunder that when the de facto complainant in the above crime raised a hue and cry, the offenders took to their heels. Subsequently, on the same night, the present complainants (second respondent in these



petitions) were arrested and remanded to judicial custody. Thereafter, while they were being detained in District Jail, Ernakulam, they preferred undated complaints before the Superintendent of Prison which were forwarded to the Jurisdictional Magistrate. It is stated in the aforesaid complaints (Annexure-A2) that they had disclosed about the custodial torture perpetrated upon them by the Sub Inspector and other Police personnel of Eloor Police Station, to the Jail officials when they asked why they were found limping. Thereafter, the complainants are said to have been sent for treatment at the General Hospital, Ernakulam.

3. The learned Magistrate, after recording the sworn statements of the complainants and one witness, and after perusing the treatment records from the hospital concerned, arrived at the finding that a prima facie case has been brought out against the petitioner herein that he, along with some unidentifiable Policemen, subjected the complainants to custodial torture. It has been further observed in the aforesaid orders that the petitioner is not entitled for the protection of Section 197 Cr.PC since the alleged act is completely unconnected with the discharge of his official duty as a public servant.



4. In the present petitions, the petitioner would contend that the learned Magistrate went wrong in holding that the sanction under Section 197 Cr.PC is not required for the prosecution initiated against the petitioner.

5. Pursuant to the notice served in these petitions, the respondents (respondent no.2 in these cases) appeared through their counsel and filed counter affidavits affirming their allegation of custodial torture at the instance of petitioner. However, the learned counsel for respondent no.2 did not choose to appear, or advance any arguments at the time when the case was posted for hearing.

6. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the first respondent.

7. The complaint against the petitioner pertains to the alleged custodial torture perpetrated upon the second respondent in these petitions consequent to their arrest in the night of 14.12.2017 for the alleged act of attempted theft committed on the same night. It is pertinent to note that no complaint of custodial torture was raised at the time when they were produced before the learned Magistrate for the purpose of remand. There is no explanation offered by the complainants for their failure to raise the complaint of custodial torture at the first instance when



they were having the opportunity to disclose such incidents before the Jurisdictional Magistrate. On the other hand, it is after two days that the complainants opted to submit the complaint before the learned Magistrate through the Superintendent of the prison concerned. The above aspect has not been considered by the learned Magistrate in the impugned order.

8. As regards the sanction envisaged under Section 197 Cr.PC, it is to be noted that the alleged act of physical assault upon the complainants were at a time when the petitioner was acting in purported discharge of his official duty relating to the apprehension of the accused in Annexure-A1 FIR. It is true that custodial torture of an accused cannot be termed as act done in the discharge of the official duty of the officer in charge of a Police Station or the Investigating Officer in that crime. But at the same time, it is pertinent to note that if the officers concerned are said to have acted in strict conformity with the discharge of their official duty, then there arises no occasion to classify such act as an offence, to consider the applicability of Section 197 Cr.PC.

9. As regards the applicability of Section 197 Cr.P.C., the Apex Court has observed in **B. Saha v. M.S. Kochar, (1979) 4 SCC 177** as follows:-



*" The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, **directly and reasonably** connected with his official duty will require sanction for prosecution under the said provision. As pointed out by Ramaswami, J., in **Bajnath v. State of M.P.** [AIR 1966 SC 220, 227 : (1966) 1 SCR 210 : 1966 Cri LJ 179] , "it is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted".*

10. As far as the present case is concerned, the objectionable acts are attributed to the petitioner in the interregnum period after the arrest of the complainants and before their production before the Jurisdictional Magistrate. Obviously, the above period would come under the time frame while the petitioner was purportedly exercising his official duty towards production of the offenders (complainants) before the Magistrate concerned. True that the petitioner is not expected to resort to third degree



measures to get inputs about the mode of commission of offence or to extract confession, and the law does not afford the protection of Section 197 Cr.P.C. to such uncivilized acts. But at the same time it is to be borne in mind that the chances of persons involving in crimes getting injured due to multiple reasons like consequences of public ire, incidents occurring during escape bids, self-inflicted injuries etc., and the tendency to implicate the Investigating Officers for those injuries as defensive tactics, are rampant now a days. Therefore, it is imperative to examine whether the aggrieved persons have complained against such atrocious acts, as expected from persons of ordinary prudence. If at all there was a complaint that the petitioner had exceeded the limits of his official duty and resorted to the commission of a crime, the aggrieved persons were having their opportunity to reveal the same to the learned Magistrate before whom they were produced within a short while. The fact that the complainants did not opt to raise any such complaints at the time when they were produced before the learned Magistrate would in effect support the contention of the petitioner that what all committed by him were within the parameters of his official duty and that there was no custodial torture as alleged by the complainants. When viewed in the above perspective, the contention of



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the petitioner about the legal invalidity of initiation of proceedings against him without the sanction envisaged under Section 197 Cr.PC, is well founded. That being so, the prayer of the petitioner for quashing the proceedings in the cases initiated on the basis of Annexure-A2 complaints, has to be allowed.

In the result, both these petitions stand allowed. The proceedings against the petitioner in C.C.Nos.716/2018 & 242/2019 on the files of the Judicial First Class Magistrate Court-I, Kalamassery, are hereby quashed.

(Sd/-)

G. GIRISH, JUDGE

DST



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Crl.M.C.Nos.6461 & 6462/2019

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APPENDIX OF CRL.MC 6461/2019

PETITIONER ANNEXURES

- ANNEXURE A1** TRUE COPY OF THE FIR NO.1435/2017 OF ELOOR POLICE STATION.
- ANNEXURE A2** CERTIFIED COPY OF CMP NO.2709/2017 SENT BY THE 2ND RESPONDENT TO THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KALAMASSERY.
- ANNEXURE A3** CERTIFIED COPY OF THE ORDER OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KALAMASSERY IN CC NO.716/2018 DATED 22.6.2018.

RESPONDENT ANNEXURES

- ANNEXURE R2 (a)** TRUE COPY OF PHOTOGRAPHS AT THE TIME OF TREATMENT IN MEDICAL COLLEGE.
- ANNEXURE R2 (b)** TRUE COPY OF THE OFFICIAL MEMORANDUM DATED 19.12.2017 ISSUED FROM HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT, KALAMASSERY.



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APPENDIX OF CRL.MC 6462/2019

PETITIONER ANNEXURES

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| ANNEXURE A1 | TRUE COPY OF THE FIR NO.1435/2017 OF ELOOR
POLICE STATION. |
| ANNEXURE A2 | CERTIFIED COPY OF CMP NO.2708/2017 SENT BY THE
2ND RESPONDENT TO THE JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, KALAMASSERY. |
| ANNEXURE A3 | CERTIFIED COPY OF THE ORDER OF JUDICIAL FIRST
CLASS MAGISTRATE COURT-I, KALAMASSERY IN CC
NO.242/2019 DATED 26.2.2019. |