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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 6TH DAY OF NOVEMBER 2024 / 15TH KARTHIKA, 1946

WP(C) NO. 6502 OF 2019

PETITIONERS:

1 APPU NAIR
AGED 68 YEARS,
S/O.NAMBALATTU VETTIL MEENAKSHY AMMA,
KUNNAMKULAM VILLAGE,KIZHOOR DESOM,
THALAPPILLY TALUK-680503.

*2 KRISHNANKUTTY,
AGED 64 YEARS, S/O MEENAKSHI AMMA,
NAMBALATTU VEETTIL HOUSE,
KUNNAMKULAM VILLAGE, KIZHOOR DESOM,
KUNNAMKULAM TALUK,
THRISSUR DISTRICT - 680503

*(ADDL.P2 IS IMPLEADED AS PER ORDER DATED 02-09-2024 IN IA NO.1/2022 IN WPC 6502/2019)

BY ADV RAJIT

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM-695001.

2 MINISTRY OF HOME AFFAIRS,
SECRETARIAT,THIRUVANANTHAPURAM-695001
REPRESENTED BY THE SECRETARY .

3 M.J.SOJAN,
S.I.OF POLICE, KUNNAKULAM,
NOW WORKING AS POLICE INSPECTOR,
VIGILANCE AND ANTICORRUPTION BUREAU,
PALAKKAD-678001.

*4 JOSHI,

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AGED 56 YEARS, S/O. JACOB,
MULAKKAL HOUSE,
MATTOM, ALOOR VILLAGE,
THRISSUR - 680683

***(ADDL.R4 IS IMPLEADED AS PER ORDER DATED 02-09-2024 IN IA NO.1/2024 IN WPC 6502/2019)**

BY ADVS.
SRI.C.K.SURESH, PUBLIC PROSECUTOR
SRI.B.G.HARINDRANATH
SRI.S.RAJEEV
SMT.MARIA PAUL
SRI.THOMAS J ANAKKALLUNKAL
SRI.NIRMAL CHERIYAN VARGHESE
SRI.ABISHEK JOHNY
SRI.JAYARAMAN S.
SRI.V.VINAY
SRI.M.S.ANEER
SRI.ANILKUMAR C.R.
SRI.SARATH K.P.
SRI.PRERITH PHILIP JOSEPH
SRI.K.S.KIRAN KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16.10.2024, THE COURT ON 06.11.2024 DELIVERED THE FOLLOWING:

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BECHU KURIAN THOMAS, J.

W.P.(C) No.6502 of 2019

Dated this the 6th day of November, 2023

JUDGMENT

Petitioner challenges an order declining to grant sanction to prosecute the third respondent.

2. The original petitioner died and his brother has come on record as additional second petitioner. Both petitioners are siblings of late Sri. Narayanan Nair, who died on 02-09-2001. Alleging that the death of the brother was due to police atrocities, a private complaint was filed by the original petitioner before the Judicial First Class Magistrates Court, Kunnamkulam. Though there is a chequered history for the said private complaint, which will be narrated later, as matters now stand, in Crl.M.C No.407/2016 a learned single Judge of this Court quashed the said complaint after concluding that sanction for prosecuting the third respondent herein was essential as the act alleged was part of his official duties. The challenge against the aforesaid order was also dismissed by the Supreme Court. Subsequently, an application was filed on 13.09.2017 by both petitioners herein, seeking sanction to prosecute the third respondent in the private complaint. By the impugned order dated

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02-07-2018, the Government refused to grant sanction. The said order refusing sanction to prosecute the third respondent produced as Ext.P10, is under challenge in this petition under Article 226 of the Constitution of India.

3. Before adverting to the rival contentions, it is appropriate to delve deeper into the circumstances that have resulted in this writ petition. The original petitioner alleged that on 01-09-2001, while the deceased Narayanan Nair was standing at a bus stop, the third respondent, who was then the Sub Inspector of Police of Nilambur Police Station, assaulted and poked the deceased with a lathi while other policemen also assaulted him. Sri. Narayanan Nair fell down and was taken to the Government Hospital from where he was allegedly referred to the Medical College Hospital but, enroute, his condition deteriorated and he was admitted to Mother Hospital at Thrissur, where he succumbed to his injuries. On the death of Sri. Narayanan Nair, Crime No.184/2001 of West Fort Police Station, Thrissur was registered, alleging unnatural death. The doctor who conducted the postmortem opined that the deceased died due to acute myocardial infarction. Subsequently, the said crime was transferred, due to territorial jurisdiction and re-registered as FIR No.653/2001 before the Kunnamkulam Police Station alleging offences under section 324 read with section 34 IPC against the police officers. The said case is now

pending as C.C. No.1441/2003 before the Judicial First Class Magistrates Court, Kunnamkulam. In the meantime, the Human Rights Commission interfered and even directed payment of compensation to the wife of the deceased as an interim relief.

4. While so, a complaint, which is the basis for this writ petition, was filed as Crl.M.P. No.12398/2003 before the Judicial First Class Magistrate's Court, Kunnamkulam by the original petitioner alleging offence under section 302 IPC. The said complaint was initially dismissed by the learned Magistrate, against which a revision petition was preferred as Crl.R.P No.1/2007 before the Sessions Court, Thrissur. The Sessions Court set aside the order of dismissal and directed the Magistrate to reconsider the complaint. On reconsideration, the learned Magistrate took cognizance of the complaint for the offences under sections 325, 326 and 201 read with 34 IPC. Challenging the order taking cognizance, a revision petition was filed by the third respondent, but it was dismissed by the Sessions Court. Crl.M.C No.407 of 2016 was filed before this Court by the third respondent. By judgment dated 18.08.2017, a learned single Judge allowed the petition and quashed C.C. No.197/2011 after observing that the alleged incident occurred during the course of discharge of duty and hence sanction was required to prosecute the third respondent. As mentioned earlier, the Special Leave Petition preferred against the said order was dismissed. Thereafter

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the original petitioner approached the Government seeking sanction to prosecute the third respondent, which was declined as per the impugned order.

5. Since the original petitioner died in the meantime, his brother had himself impleaded as the second petitioner and this petition is being prosecuted by him. Hereafter, the term petitioner will be used to refer to both the original petitioner as well as the second petitioner.

6. Sri Rajit, the learned counsel for the petitioner contended that the deceased died due to the brutal assault by the third respondent and other police officers and hence it is essential to prosecute the accused. It was submitted that considering the nature of assault, sanction itself was not required however, the Government refused sanction due to the clout wielded by the third respondent and also that the sanction was denied for the private complaint based on the materials in the police charge and therefore relevant factors had not been taken into consideration. The learned counsel also argued that the sanctioning authority misconstrued the scope of the request for sanction and on account of irrelevant considerations having been taken into reckoning and relevant considerations omitted, the order refusing sanction is liable to be set aside. According to the learned Counsel, the place of occurrence in the private complaint and the police case were both different, the post-mortem was delayed purposely enabling severe decomposition of the

body and a crime was not even registered on the basis of the statement taken from the deceased at the hospital. It was argued that the aforesaid factors were omitted from consideration by the sanctioning authority rendering the order perverse. He mainly relied upon the decisions in **Rajaram Prasad Yadav v. State of Bihar and Another** (2013) 14 SCC 461, and **Rajendra Prasad v. Narcotic Cell through its officer in charge, Delhi** (1999) 6 SCC 110 apart from other decisions to support his contentions.

7. Sri Suresh P., the learned Public Prosecutor on the other hand contended that all materials were placed before the sanctioning authority as per Ext.P11 report of the Inspector General of Police through the State Police Chief and that Ext.P10 order refusing sanction was issued after considering the relevant factors and that too after perusing the relevant materials. He pointed out that the typographical error in the crime number mentioned in Ext.P10 order is of no significance as the same has been specifically pointed out in the affidavit filed by the first respondent. The learned prosecutor relied upon the decision in **State of Maharashtra v. Ishwar Piraji Kalpatri and Others** (1996) 1 SCC 542.

8. Sri B.G.Harindranath, the learned Senior Counsel instructed by Adv. Thomas J.Anakkallunkal appearing on behalf of the third respondent submitted that the facts as alleged in the writ petition are misleading

and incorrect. It was pointed out that the post-mortem certificate clearly stated that Sri Narayanan Nair died of acute myocardial infarction and that there was no injury of any nature except some superficial scars for which there were no supporting documents as well. The learned Senior Counsel submitted that since by Ext.P6 judgment the criminal proceedings were quashed, there cannot be any revival of the said case. The learned Senior Counsel also submitted that the relief sought by the petitioner is for a direction to grant sanction and such a direction cannot be issued by this Court, as held in **Mansukhlal Vithaldas Chauhan v. State of Gujarat** (1997) 7 SCC 622. It was also submitted that, even otherwise, the required parameters for the grant or refusal of sanction were borne in mind by the authority and once sanction has been refused, this court should seldom interfere. The decision in **State of Punjab and Another v. Mohammed Iqbal Bhatti** (2009) 17 SCC 92 was also relied upon by the learned Senior Counsel.

9. Sri S.Rajeev, the learned counsel for the additional fourth respondent, also submitted that the sanctioning authority had considered all the aspects and had refused to grant sanction, which is not liable to be interfered with.

10. The only issue that requires to be considered is whether the order dated 02-07-2018 produced as Ext.P10, refusing sanction to prosecute the third respondent for the alleged offence that took place on

01.09.2001 should be interfered with.

11. The concept of prosecution sanction is not an idle formality or an unnecessary exercise, but a solemn and sacrosanct act which affords protection to public servants against frivolous prosecutions. The decision in **Mohd. Iqbal Ahmed v. State of Andhra Pradesh** (1979) 4 SCC 172 is relevant in this context. Sanction is a weapon to discourage frivolous and vexatious prosecutions and is a safeguard for the public servant from unnecessary prosecutions. In the decision in **Mansukhlal Vithaldas Chauhan v. State of Gujarat** (supra) it was observed that the validity of the sanction order would depend upon the material placed and the nature of consideration by the sanctioning authority. It was also observed that consideration implies application of mind and if the order of sanction ex facie discloses that the sanctioning authority had considered the evidence and other materials placed before it, the scope of interference is very limited. It was further observed that the question of whether the sanctioning authority had considered all the requisite particulars can even be established by extrinsic evidence by placing relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. The Supreme Court relied upon the decisions in **Jaswant Singh v. State of Punjab** [AIR 1958 SC 124] and **C.S. Krishnamurthy v. State of Karnataka** (2005) 4 SCC 81 while coming to the above conclusion. Apart from the above, in the

decision in **State of Punjab and Another v. Mohammed Iqbal Bhatti** (supra) it was observed that the sanctioning authority must apply its mind to the materials collected during investigation and even if such application does not appear from the order of sanction, extrinsic evidence may be placed before the Court on that behalf.

12. The discretion to grant or not to grant sanction, vests absolutely with the sanctioning authority. If the discretion of the sanctioning authority is not affected by any extraneous considerations and the authority has applied its mind independently to arrive at the conclusion, then this Court ought not to interfere with an order granting or refusing sanction. The purpose of sanction itself being to insulate a public servant from frivolous prosecutions, the said process would become a dead letter, if the orders of the sanctioning authority are interfered with, without any rhyme or reason.

13. In the instant case, as is evident from the order of this Court in Crl.M.C No.407/2016, the third respondent was held to be acting in the discharge of his official duties at the time of the incident. The contention that he was not acting in the discharge of his official duties is hence not open for consideration. Once it is held that an offence was committed while acting in the discharge of official duties, the sanctioning authority's order, either granting sanction or refusing sanction, should not be generally interfered with in the exercise of the power of judicial review.

The well established principle that it is not the decision but the decision making process alone that is under consideration while exercising the power of judicial review ought to deter this Court from interfering with orders of the sanctioning authority, without any legal basis. Circumspection is required while considering such challenges to orders of the sanctioning authority.

14. In Ext.P10, the application of the first petitioner along with the report of the State Police Chief was considered. The report submitted by the Inspector General of Police to the State Police Chief which in turn was placed before the sanctioning authority, is produced as Ext.P11. The said report elaborately refers to every circumstance connected with the incident and recommended not to sanction the prosecution. The report specifically mentions that already the police case is pending and the third respondent is facing prosecution in that case. The private complaint of the petitioner is over and apart from the police charge and therefore it was reported that the public servant is required to be protected from malicious prosecution in respect of acts that were done in connection with his official duties.

15. The sanctioning authority in Ext.P10 had considered the report forwarded by the State Police Chief along with other documents and came to the conclusion that the death of the petitioner's brother was due to a heart attack as revealed from the post-mortem report and that the

incident alleged, occurred when the third respondent waved his lathi for dispersing the crowd to maintain law and order. The impugned order also states in no uncertain terms that, as the police officer was acting in the discharge of his official duties, the request of the petitioner for prosecuting him is declined. However, in the impugned order, the authority had referred to Crime No.653/2001, which is not the crime, for which sanction was sought for by the petitioner. In the counter affidavit filed by the Joint Secretary, Home Department, it was clarified that Crime No.653/2001 mentioned in the impugned order was a clerical mistake, and that sanction was sought for the private complaint.

16. The contention of the petitioner that mentioning the crime number relating to the police charge clearly indicates non-application of mind by the sanctioning authority, though impressive at first blush, it is evident on deeper scrutiny that the said contention has no merits and is not legally tenable. In this context, it is apposite to note that the very consideration by the authority was with respect to the application of the petitioner for prosecuting the third respondent in his private complaint. The application filed by the petitioner is mentioned and referred to in Ext.P10 as reference No.1 while reference No.2 is the judgment of this Court in W.P.(C) No.1926/2018. The question of sanction for prosecuting the accused in Crime No.653/2001 was never raised for consideration. The report of the State Police Chief and the report given by the Inspector

General of Police, all referred to the request for prosecuting the third respondent in the private complaint filed by the petitioner. Viewed in the above perspective and considering the circumstances, this Court is of the view that reference to the wrong crime number in Ext.P10 is not a reflection of non-application of mind and the same is only a clerical mistake having no serious consequences. The clarification in the counter affidavit of the first respondent can hence be accepted as valid as it is only pointing to a typographical error. The legal principle that affidavits of Officials cannot clarify impugned orders will have no application in the instance case as what was clarified was only a typographical error in the order impugned.

17. The contentions on the basis of the alleged delayed conduct of post-mortem, omission to register a crime based on the alleged statement recorded from the hospital and the difference in the police charge and the private complaint were all omitted from consideration by the sanctioning authority are according to me, not germane to the issue of sanction. In this context, this Court bears in mind that already a prosecution is pending against the third respondent for the alleged incident of assault of the deceased on the same day. The said case is now pending as C.C. No.1441/2003 before the Judicial First Class Magistrate's Court, Kunnamkulam. Apart from there being no material to justify the contentions put forth by the petitioner regarding the

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omissions or the delay in conducting post-mortem or even the difference in the nature of the incident, they are not, by themselves, sufficient enough to warrant an interference with the impugned order refusing sanction.

18. Considering the nature and scope of interference against orders, refusing sanction to prosecute a public servant, this Court is of the view that the impugned order has been passed after due application of mind, by considering all the relevant materials including the report of the Inspector General of Police. The order refusing sanction to prosecute the third respondent in the private complaint that was filed as C.C. No.197/2011 on the files of Judicial First Class Magistrate's Court, Kunnamkulam, therefore does not warrant any interference in exercise of the powers under Article 226 of the Constitution of India.

The writ petition lacks merit and it is dismissed.

Sd/-

BECHU KURIAN THOMAS
JUDGE

vps

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APPENDIX OF WP(C) 6502/2019

PETITIONER'S/S' EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE ORDER DTD.4.8.2003 IN HRNP NO.2907/2001 OF THE KERALA STATE HUMAN RIGHTS COMMISSION.**
EXHIBIT P2	**TRUE COPY OF THE COMMUNICATION ISSUED BY THE DEPUTY DIRECTOR OF PROSECUTION DTD.28.5.2001 ALONG WITH A COPY OF THE REQUEST MADE BY THE SUPERINTENDENT POLICE.**
EXHIBIT P3	**TRUE COPY OF THE JUDGMENT DTD.27.9.2004 IN R.P.NO.983/2003 ARISING OUT OF WP(C)38284/2003.**
EXHIBIT P4	**TRUE COPY OF THE ORDER DTD.3.4.2010 IN CRL.RP.NO.1/2007.**
EXHIBIT P5	**TRUE COPY OF THE ORDER IN CRL.R.P.NO.39/2011 DTD.24.9.2012.**
EXHIBIT P6	**TRUE COPY OF THE ORDER DTD.18.8.2017 IN CRL.M.C.407/2016.**
EXHIBIT P7	**TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE RESPONDENTS 1 & 2.**
EXHIBIT P8	**TRUE COPY OF THE REPRESENTATION SUBMITTED AND HIS BROTHER DTD.30.10.2001.**
EXHIBIT P9	**TRUE COPY OF THE JUDGMENT DATED 30.01.2018.**
EXHIBIT P10	**TRUE COPY OF THE ABOVE ORDER DATED 02.07.2018.**
EXHIBIT P11	**TRUE COPY OF THE REPORT OF THE STATE POLICE CHIEF,OBTAINED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT.**