*IN THE HIGH COURT OF KERALA AT ERNAKULAM*

*PRESENT*

*THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.*

*TUESDAY, THE 5TH DAY OF APRIL 2022 / 15TH CHAITHRA, 1944*

*CRL.MC NO. 2588 OF 2018*

*PETITIONERS/ACCUSED NOS.1 & 2:*

1 *M.S.PAULOSE,*
*AGED 65 YEARS,*
*S/O.SAMUEL, AGED 65 YEARS, RESIDING AT*
*MADATHIKUDIYIL HOUSE, KALAMPOOR KARA,*
*ENANALLOOR VILLAGE,*
*MUVATTUPUZHA, ERNAKULAM - 686 673.*

2 *K.C.IYPE,*
*AGED 82 YEARS,*
*S/O.CHAKCO, AGED 82 YEARS, RESIDING AT*
*KAKKANATTUPARAMBIL HOUSE,*
*PARAMBENCHERRY KARA, ENANALLOOR VILLAGE,*
*MUVATTUPUZHA, ERNAKULAM - 686 673.*

*BY ADVS.*
*ROSHEN.D.ALEXANDER*
*TINA ALEX THOMAS*
*HARIMOHAN*

*RESPONDENTS/STATE & DE FACTO COMPLAINANT:*

1 *STATE OF KERALA,*
*REPRESENTED BY THE SUB INSPECTOR OF POLICE,*
*MOOVATTUPUZHA POLICE STATION, ERNAKULAM, THROUGH*
*THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,*
*KOCHI - 682 031.*

*2 MEEKHAYEAL RAMBAN,*
*S/O.GEORGE, PULIMOOTTIL HOUSE, KUTHUKUZHI,*
*KOTHAMANGALAM VILLAGE,*
*ERNAKULAM - 686 691.*

*BY ADVS.*
*SRI.P.V.ELIAS*
*K.RAMAKUMAR (SR.)*

*THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24.01.2022, THE COURT ON 05.04.2022 PASSED THE FOLLOWING:*

**“CR”**

**O R D E R**

Petitioners are the accused Nos.1 and 2 in Crime No.1194 of 2018 of Muvattupuzha Police Station. Initially, a private complaint was submitted by the 2nd respondent herein, which is produced as Annexure-A4 and the same was referred by the Judicial First Class Magistrate Court, Muvattupuzha, to the police for investigation under Section 156(3) of Cr.P.C. Annexure A1 is the FIR registered consequently and the offences alleged against the petitioners are under Sections 468, 471 and 120B of Indian Penal Code and Section 12 of Press and Registration of Books Act, 1867.

2. The averments in Annexure-A4 complaint is as follows:

The 2nd respondent/complainant is the Addl.12th defendant in O.S.No.15 of 2016, pending before the Sub Court, Muvattupuzha. The aforesaid suit was instituted by the

petitioners herein and some other persons, praying for a decree of declaration that St.Johns Besphage Orthodox Syrian Church, Pulinthanam is a constituent parish Church of Malankara Orthodox Syrian Church and to declare that the plaint schedule church is to be administered in accordance with the provisions of 1934 Constitution of the Malankara Orthodox Syrian Church and other consequential reliefs. The plaint above is Annexure-A2, and in support of the contentions therein, petitioners have produced a document claiming to be the Constitution of Malankara Orthodox Syrian Church. According to the 2nd respondent/complainant, the aforesaid document is a forged one as it contains certain marked differences in clauses Nos.1 and 3 thereof when compared with the original of the aforesaid document. It is also alleged that the aforesaid document did not contain any registration number and stamp paper. Another allegation is that the said document does not contain the necessary declaration as required under Section 3 of the Press and Registration of Books Act, 1867, to print the same. Therefore, the same attracts offence under Section 12 of the

said Act. Based on the said complaint and the same being forwarded for investigation, Annexure-A1 FIR was registered by Muvattupuzha Police as Crime No.1194 of 2018.

3. The petitioners who are the accused Nos.1 and 2 therein, filed this Crl.M.C., praying for quashing the aforesaid proceedings.

4. Heard Sri.Roshen D. Alexander, learned counsel for the petitioners, Sri.Sudheer Gopalakrishnan, learned Public Prosecutor for the State and Sri.K.Ramakumar learned Senior Counsel appearing for the 2nd respondent.

5. The contention of the learned counsel for the petitioners is that, even according to the averments in the complaint, the document which was produced in O.S.No.15 of 2016 pending before the Sub Court, Muvattupuzha is the certified copy of the Constitution of Malankara Orthodox Syrian Church, which was produced in O.S.No.1 of 2008 on the file of the District Court, Ernakulam. The aforesaid document was not printed, published or executed by the petitioners herein. With regard to the alterations allegedly made in the aforesaid

document, it is contended that the 1934 Constitution as contained in the aforesaid document, which is produced in this Crl. M.C., as Annexure-A10, was considered by the Honourable Supreme Court in **K.S.Varghese and Others v. Saint Peter's and Saint Paul's Syrian Orthodox Church and Others [(2017) 15 SCC 333]**. After appreciation of relevant documents, it was found that the said clauses are binding upon the Church and the administration thereof has to be made in tune with the same. It is also pointed out by the learned counsel for the petitioners that, the contention that the Constitution produced before the Honourable Supreme Court contained certain illegal modifications (which is as highlighted in this complaint) was considered by the Honourable Supreme Court in another petition submitted by one of the factions of the church to which the 2nd respondent is a party and the said contention was rejected as per Annexure-A6 order. Similarly, the question of lack of registration of the 1934 Constitution and its impact was also considered by the Honourable Supreme Court in **K.S.Varghese's case** (*supra*) and found that the non-

registration of the same cannot be taken as a contention by any of the parties. With regard to the offences punishable under the provisions of the Press and Registration of Books Act, it was contended that the aforesaid document was not admittedly printed or published by the petitioners herein and what they have done is that they have obtained a certified copy from a court of law and produced such certified copy in the suit filed by them. The learned counsel places reliance upon the decisions in **Kapil Agarwal and Others v. Sanjay Sharma and Others [(2021) 5 SCC 524]** , **Mohammed Ibrahim and Others v. State of Bihar and Another [(2009) 8 SCC 751]**, **Sheila Sebastian v. R.Jawaharaj [(2018) 7 Scc 581]**, **K.S.Varghese and Others v. Saint Peter's and Saint Paul's Syrian Orthodox Church and Others [(2017) 15 SCC 333]** and **Most Rev.P.M.A.Metropolitan & Ors. v. Moran Mar Marthoma & Another [(1995) Supp. 4 SCC 286]**.

6. In reply to the same, the learned Senior Counsel appearing for the *de facto* complainant contends that the question whether the alterations in the copy of the 1934

Constitution were effected by the petitioner or not is a question of fact, and the same cannot be considered at this stage. The learned Senior Counsel points out that the aforesaid matter is to be investigated. It is premature to interfere in such investigation at this stage as it would prejudice the complainant herein. It was also pointed out that, considering the limited scope of jurisdiction of this Court in quashing the proceedings at the stage of FIR by invoking powers under Section 482 Cr. P.C, the dispute sought to be resolved by the petitioner herein in this Crl.M.C is beyond the scope of present proceedings. The learned counsel for the petitioners places reliance upon the decisions in **Parbatbhai Ahir @ Parbatbhai v. The State of Gujarat [(2017) 9 SCC 641]** and **Dineshbhai Chandubhai Patel v. State of Gujarat and Others [(2018) 3 SCC 104]**.

7. The first contention that is raised by the petitioners is that the offences punishable under Sections 468 and 471 are not attracted. It is true that, as pointed out by the learned counsel for the petitioners in Annexure-A4 complaint, there is a

specific averment made by the 2nd respondent to the effect that the document which is the subject matter of the case is a certified copy of 1934 Constitution, obtained from District Court, Ernakulam, where it was produced as a document in O.S.No.1 of 2008. The 2nd respondent does not have a case that the aforesaid document was produced in O.S.No.1 of 2008 by the petitioners herein. It is the contention of the petitioners that, to attract the offences punishable under Section 468 IPC, the person who allegedly committed forgery of a document must be the maker of the same. For understanding the aforesaid provision, Section 468 IPC is extracted hereunder:

> "468.**Forgery for purpose of cheating**. —Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

8. As per the aforesaid provision, an offence is attracted if forgery is committed for the purpose of cheating.

The expression forgery is defined under Section 463 IPC, which is extracted below:

> "463. Forgery.—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

9. As per the said provision, the crucial ingredient for committing forgery is making a false document. 'Making false document' is defined under Section 464 IPC, which reads as follows:

> "464 Making a false document. —A person is said to make a false document or false electronic record—
> First —Who dishonestly or fraudulently—
> (a) makes, signs, seals or executes a document or part of a document;
> (b) makes or transmits any electronic record or part of any electronic record;
> (c) affixes any electronic signature on any electronic record;

> (d) makes any mark denoting the execution of a document or the authenticity of the electronic signature; with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or
>
> Secondly —Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or
>
> Thirdly —Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration."

10. From the joint reading of the aforesaid provisions, it is evident that the offences under the said provisions are

attracted only if the accused himself makes a false document in the manner as described under Section 464 IPC. In **Sheila Sebastian's case** (*supra*), the Honourable Supreme Court specifically considered the aforesaid question. In paragraphs No.19 and 20, it was observed as follows:

> "19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463 IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.
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> 20. The key to unfold the present dispute lies in understanding Explanation 2 as given in Section 464 of

> IPC. As Collin J., puts it precisely in Dickins v. Gill, (1896) 2 QB 310, a case dealing with the possession and making of fictitious stamp wherein he stated that "to make", in itself involves conscious act on the part of the maker. Therefore, an offence of forgery cannot lie against a person who has not created it or signed it."

11. A further discussion of the same was made in paragraph No.25 of **Sheila Sebastian's case**, which reads as follows:

> "25. Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery. "

12. In the light of the principles laid down by the Honourable Supreme Court, it is evident that to attract the offence under Sections 463 and 464 IPC, the accused must be the maker of the said document. Since the offence under

Section 468 of IPC is another form of an offence under Section 464, the principles laid down by the Honourable Supreme Court apply to the said provision with equal force.

13. In this case, admittedly, the document produced and allegedly forged is a certified copy of a document. The 2nd respondent does not have a case that the petitioners have made alterations in the certified copy, but on the other hand, the specific allegation is that the contents of the certified copy of the Constitution include certain clauses which were allegedly altered. Thus, the alteration allegedly made, even according to the complainant, were in the copy of the Constitution of the Church, which was produced before the District Court, Ernakulam in O.S.No.1 of 2008, from where the petitioner obtained a certified copy. Thus, it is evident that the petitioners are not the makers of the aforesaid document, and therefore, the offence under Section 468 IPC is not attracted as against the petitioners.

14. As it is already found that the offence under Section 468 IPC is not attracted, the petitioners herein can be

implicated as accused persons only if it is shown that they have committed a crime punishable under Section 471 IPC, which provides for an offence for using a forged document as genuine document intentionally. The said provision reads as follows:

> "Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record shall be punished in the same manner as if he had forged such [document or electronic record]."

15. Thus, the question arises here is as to whether the production of the aforesaid document (Annexure A10) was with fraudulent or dishonest intention, with knowledge of its falsity. Before considering the aforesaid question, another question that arises is as to whether the aforesaid document contains any alterations which would attract the offence of forgery. The specific averments in Annexure-A4 complaint, relating to the nature of alterations allegedly made and amounts to forgery according to the 2nd respondent, are as follows:

> "(i) In Clause 1 of the Constitution, it is stated that Malankara Church is a division of the Orthodox Syrian

> Church and the primate of the Orthodox Syrian Church is the Partriarch of Antioch. It was alleged in Ann:A4 complaint that the term Antioch was added to take over the temporal administration of the Church.
>
> (ii) In Clause 3 of the Constitution, it is stated that the ancient and real name of the Malankara Church is the Malankara Orthodox Syrian Church although it is also wrongfully called 'The Jacobite Church', for the same reasons for which the Orthodox Syrian Church has been also called so. It is alleged that the addition of the term wrongly is the act of forgery;
>
> (iii) The name of the Church was wrongly stated as St.John's Besphage Syrian Orthodox Church instead of St.John's Besphage Jacobite Syrian Church;

16. While considering the question as to whether the same were illegal alterations and amounted to forgery, the crucial aspect to be noticed is that the validity of the 1934 Constitution, in the form as contained in Annexure-A10, was upheld by the Honourable Supreme Court in **K.S.Varghese** (*supra*). In paragraph No.214 of the aforesaid judgment, the relevant clauses of the 1934 Constitution are mentioned in a tabular form. Clause (1) of the 1934 Constitution referred to therein is precisely the same as mentioned in Annexure-A10.

After considering the said Constitution, it was categorically held in **K.S.Varghese's case** that Malankara Church is Episcopal in character to the extent it is so declared in the 1934 Constitution. It was also declared that the 1934 Constitution fully governs the affairs of the Parish churches, and the same shall prevail. This observation is made in paragraph No.228.1 of the said judgment. The same view is seen taken by the Honourable Supreme Court in Most Rev. P.M.A.Metropolitan (*supra*).

17. After the judgment in **K.S.Varghese** (*supra*), the faction to which the 2nd respondent belongs, submitted an application (Annexure A5) for clarification before the Honourable Supreme Court. One of the main reasons highlighted in the said petition is that the 1934 Constitution, which was relied upon by the Honourable Supreme Court, contained certain alterations which were illegally made, and one of the specific prayers sought for in the said petition is as follows:

"(e) Clarify that the illegal insertions/manipulations made in the 1934 Constitution which are not seen in the original manuscript and the first print of the 1934 pamphlet Constitution, are null and void."

18. In the said petition on pages Nos.26, 27 and 28, the alleged alterations, which are highlighted as a forgery in this case, are extracted explicitly in a tabular form.

| **Clause** | **Manuscript** | **Printed in the year 1934** | **Printed in the year 1951** | **Printed in the year 2018** |
|---|---|---|---|---|
| 1 | The Malankara Church is a part of the orthodox Syrian church and the primate of the orthodox Syrian church is patriarch | The Malankara Church is a part of the orthodox Syrian church and the primate of the orthodox Syrian church is patriarch | The Malankara Church is a part of the orthodox Syrian church and the primate of the orthodox Syrian church is patriarch of Antioch<br><br>Forged word-of Antioch | The Malankara Church is a part of the orthodox Syrian church and the primate of the orthodox Syrian Church is patriarch of Antioch<br><br>Forged word-of Antioch |
| 3. | Due to certain reasons, Orthodox Syrian Church is called another name Jacobite Church. Likewise due to a lot of reasons, the Malankara Church is also called jacobite Church and it's ancient name is Malankara Orthodox | Due to certain reasons, Orthodox Syrian Church is called another name Jacobite Church. Likewise due to a lot of reasons, the Malankara | Due to certain reasons, Orthodox Syrian Church is called wrongly in another name Jacobite Church. Likewise, due to a lot of reasons, the | Due to certain reasons, Orthodox Syrian Church is called wrongly in another name Jacobite Church. Likewise, due to a lot of reasons, the |

| | | | | |
|---|---|---|---|---|
| | Syrian Church. | Church is also called Jacobite Church and it's ancient name is Malankara Orthodox Syrian Church | Malankara Church is also called Jacobite Church and it's ancient name is Malankara Orthodox Syrian Church<br><br>Forged word wrongly | Malankara Church is also called Jacobite Church and it's ancient name is Malankara Orthodox Syrian Church<br><br>Forged word wrongly |

19. From the above, it is evident that the alterations which were alleged to have been illegally made by the petitioners herein were specifically highlighted in the said petition and the prayer to declare such alterations as null and void was sought for.

20. The Honourable Supreme Court considered the aforesaid petition, and it was dismissed as per Annexure-A6 with the following observations:

> "It is clearly an effort for violating the order passed by this Court and no such prayer(s) can be entertained, in view of the judgment dated 03.07.2017 passed by this Court in K.S.Varghese & Ors. v. St.Peter's Paul's Syrian Orth. & Ors.
>
> Consequently, these applications have been misconceived and devoid of merits and are hereby dismissed with costs of Rs.25,000/- (Rupees Twenty Five

> Thousand), to be deposited with the Supreme Court Employees Mutual Welfare fund, within a period of six weeks from today."

21. Thus, it is evident that the averments of the 2nd respondent/*de facto* complainant regarding the forgery committed in respect of Clause Nos.1 and 3 in the 1934 Constitution was specifically considered by the Honourable Supreme Court and rejected the contention of illegality in the aforesaid alleged alterations. The consequence of the aforesaid direction is that the Malankara Orthodox Syrian Church is to be governed by the 1934 Constitution, with all the Clauses as mentioned in Annexure-A10, which would take in, the terms alleged by the *de facto* complainant as illegal alterations. In other words, the validity of Annexure-A10 and all the contents of the same were accepted and approved by the Honourable Supreme Court with a specific finding that the same shall govern the Church. Even though illegal alterations were pointed out, the same was explicitly rejected by re-affirming the conclusions. Therefore, it is not open for any person to raise a

contention regarding the falsity in the aforesaid clauses, if at all the same can be treated as an alteration at all.

22. There is yet another aspect. When the Honourable Supreme Court approved the terms of the 1934 Constitution, as contained in Annexure-A10, nothing precludes the petitioners herein from relying upon the same. Under no circumstances such reliance placed by the petitioners can be treated as an instance of using a false document as genuine for attracting the offence under section 471 of the Indian Penal Code. In such circumstances, I am of the view that the allegations in Annexure-A4 regarding the forgery committed in respect of Clauses 1 and 3 of Annexure-A10 are unsustainable in law. Hence, the offences under Sections 468 and 471 IPC are not attracted in respect of the same.

23. Another instance of forgery referred to by the 2nd respondent/*de facto* complainant is concerning the description of the name of the 1st defendant in Annexure-A2 plaint. According to the 2nd respondent, the name of the Church was initially stated as “St.Johns Besphage Orthodox Syrian Church”

instead of “St.Johns Besphage Jacobite Syrian Church”. The case of the 2nd respondent/*de facto* complainant is that such mentioning of the name attracts the offence of forgery. However, I am of the view that mentioning the name of the defendant, in a plaint submitted by the plaintiff differently, would not attract the offence of forgery. As mentioned above, forgery is defined under Section 463 IPC, and one of the essential ingredients for attracting the same is making a false document. The making of a false document as an offence is described in Section 464 IPC. In the aforesaid provision, three instances are specifically mentioned, which constitute the offence of making a false document. The first instance is in respect of a person who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document to cause it to be believed that such document or part of the document was made, signed, sealed, executed, transmitted or affixed by or by the authority of a different person. Thus, it is evident that what is contemplated therein is an execution of a document with dishonest and fraudulent intention through

impersonation. To be precise, it refers to creating a document with the impression that, the same was created by another person or with the authority of another person. As far as the plaint submitted by the plaintiff is concerned, the averments made in the plaint, including the descriptions of the names in the cause title of the same, are made by him by taking up the responsibility for the same on himself. While making such averments, the plaintiff is not claiming that the descriptions and averments made therein were made by some other person or under the authority of some other person. In such circumstances, the said act of the plaintiff in making an averment, would not attract the offence of forgery, even if it is false.

24. In **Muhammed Ibrahim's case** (*supra*), the question whether recital contained in any sale deed executed by a person would attract the offence of forgery, was considered. After elaborate discussions, it was held that the contents of the sale deed would not amount to making a false document as an allegation of impersonation is absolutely

necessary for attracting the aforesaid offence. The relevant observation in the said judgment is in paragraph No.16, which reads as follows:

> "There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorized or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he *bona fide* believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of `false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed."

25. In **Hydru Haji v. State of Kerala [2011(1)KLT 63]**, this Court observed that, to be a false document for the

purpose of Section 464, the document should be made or executed by a person claiming to be somebody else or to be authorized by somebody else. In this case, the only allegation is that name of the 1st respondent was described differently. However, it is evident that the petitioners/plaintiffs therein did not make the same by claiming to be made by another person. Since the description in the cause title of a plaint, is made by the petitioners/plaintiffs therein by taking the full responsibility for the same upon themselves, the question of impersonation does not arise. In such circumstances, the aforesaid allegation would not constitute an offence of forgery.

26. Another allegation in Annexure-A4 complaint is regarding the lack of registration of the 1934 Constitution. First of all, lack of registration by itself is not a matter which would attract the offence of forgery. In this regard, it is also to be noted that the Honourable Supreme Court considered the question of lack of registration and its impact, in **K.S.Varghese case** (*supra*) and in paragraph No.218 of the same, it was observed as follows:

> "218. Reliance was placed upon Section 17(1)(b) of the Registration Act regarding effect of non-registration of the 1934 Constitution. In our opinion, the 1934 Constitution does not create, declare, assign, limit or extinguish, whether in present or future, any right, title or interest, whether vested or contingent, in the Malankara church properties. It provides a system of administration as such and not required to be registered, and moreover the question of effect of non-registration of the 1934 Constitution cannot be raised in view of the findings recorded in the 1959 and the 1995 judgments. The question could, and ought to have been raised but was not raised at the time of authoritative pronouncement made by this Court. Otherwise also, facts have not been pleaded nor any provision of the constitution pointed out that may attract the provisions of Section 17(1)(b) of the Registration Act. Thus, it is not open to question the validity of the 1934 Constitution on the ground that it cannot be looked into for want of its registration."

27. This Court also considered the said question in Annexure-A11 order passed in Cr.P.No.122 of 2018 in paragraph No.4 thereof, it is observed as follows:

> "4. It is seen from the impugned order that the petitioner placed reliance on Order VII Rule 14(2) CPC and Section 17(b) (e) and Section 49 of the Indian

> Registration Act to raise a contention that the 1934 Malankara Church Constitution should not be accepted as it is defective for non-registration under the provisions of the Registration Act. At the outset, I have to reject the contention for the reason that the Supreme Court repeatedly upheld the said Constitution, and this contention will not lie in the mouth of the petitioner."

28. Thus, it is evident that the question of lack of registration of the document in question is not a matter that can be considered at all.

29. Another offence is under Section 120B of IPC. According to the 2nd respondent, the accused persons have committed criminal conspiracy, altered the 1934 Constitution illegally and filed O.S.No.15 of 2016 before the Sub Court, Muvattupuzha. I have already found that the offence of forgery as contemplated under Sections 468 and 471 IPC are not attracted against the petitioners herein. Hence, the allegation of criminal conspiracy also does not arise. It is also to be noted in this regard that one of the reasons for alleging conspiracy is that the accused have filed a suit. Initiating litigation cannot be treated as an act of conspiracy, as section 120B is always in

respect of the commission of an offence or an illegal act. I have already found that no other offence is attracted. Similarly, filing a suit cannot be treated as an illegal act or doing a legal act by illegal means.

30. The remaining offence is under Section 12 of the Press and Registration of Books Act. The aforesaid provision reads as follows:

> "12. Penalty for printing contrary to rule in section 3.— Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding two thousand rupees, or by simple imprisonment for a term not exceeding six months, or by both."

31. The offence in the said provision is attracted if the book or paper is printed or published otherwise than in conformity with the rule contained in Section 3 of the Act. Section 3 reads as follows:

> "3. Particulars to be printed on books and papers.— Every book or paper printed within India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be

published) the name of the publisher, and the place of publication."

32. It is evident from the aforesaid provision that the offence under the said provisions is attracted only in respect of printing and publishing without complying with the stipulations contained in Section 3. In this case, the only allegation against the petitioners is that they had obtained a certified copy of the 1934 Constitution, which was already produced before a court of law and produced the same in support of their contention in a civil litigation filed at their instance. I am of the view that, since the printing or publication was not done by the petitioners herein, the offence under the aforesaid provisions are also not attracted.

33. There is yet another aspect regarding the offence punishable under Sections 468 and 471 IPC. It is the specific allegation of the 2nd respondent that the petitioners herein had produced a forged document as genuine in a court of law. Section 195 (1) of Cr.P.C. deals with a specific procedure in respect of the same, which reads as follows:

"(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860 ), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860 ), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abatement of, any offence specified in sub- clause (i) or sub- clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.”

34. As per Section 195 (1) (b) (ii), if the offence under Section 463 or punishable under Section 471 are alleged to have been committed in respect of documents produced or given in evidence in a proceeding in any court, no cognizance can be taken except on the complaint in writing of that court or by such officer of the court as that court may authorise or some other court to which that court is subordinate. In this case, the complaint is submitted by the 2nd respondent and not by the persons mentioned in the above provision. Since the offence is alleged to have been committed in respect of a document produced and given in evidence in a proceeding in a court, the complaint at the instance of the 2nd respondent herein is not maintainable as the only way to initiate prosecution was by complying the procedure contemplated under Section 195 (1) Cr.P.C. On this ground also, the proceedings pursuant to Annexure-A4 is unsustainable.

35. The learned Senior counsel appearing for the 2nd respondent vehemently contended that the question as to whether the petitioners have committed any offence of forgery

or not, is a matter to be investigated. I am of the view that the said contention is not at all sustainable, in the light of the materials in this case. This is because, even if the entire averments contained in Annexure-A4 complaint are accepted, it will not attract any of the offences alleged. I have already dealt with the reasons for arriving at the said conclusion in detail. It is true that, in **Parbathbhai Ahir's case** (*supra*), the Honourable Supreme Court observed that, while considering the application for quashing the FIR under Section 482, the High Court should not act like an investigating agency and shall not go into the minute details of the allegations. However, I am of the view that the principles laid down in the said judgment are not applicable in the facts of this case. While considering the contentions put forward by the petitioners, this Court is not conducting an investigation by going into the details of the case. On the other hand, this Court only considered whether the allegations contained in Annexure-A4 complaint make out a case for attracting the offences alleged.

36. In **Parbathbhai Ahir's case** (*supra*), the Honourable Supreme Court laid down the principles for invoking powers of this Court under Section 482 Cr. P.C, and it was observed that the inherent powers of the High Court are wide, and it has to be exercised; *(i) to prevent the abuse of the process of court and (ii) to secure the ends of justice*. In **Kapil Agarwal's case** (*supra*), the very same principles were reiterated by the Honourable Supreme Court. In **Mohammed Ibrahim's case** (*supra*), it was observed in paragraph No.8 as follows:

> "8. This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and, if so, will have to be tried as criminal offences, even if they also amount to civil disputes. [See: G.Sagar Suri v. State

> of U.P [2000 (2) SCC 636] and Indian Oil Corporation v. NEPC India Ltd. [2006 (6) SCC 736]. Let us examine the matter keeping the said principles in mind."

37. In this case, it is evident that the fundamental dispute relates to the management and administration of a Church. The Honourable Supreme Court has finally decided the questions/disputes relating to the same in **K.S.Varghese's case**. Even though repeated petitions were submitted in the aforesaid case, for clarifications, the Honourable Supreme Court ultimately observed in Annexure-A9 as follows:

> "Let all the concerned courts and authorities act in terms of the judgment. Let there be no multiplicity of the litigation on this aspect any more in the various courts. The decision rendered in respective suit is binding on all."

38. It is also discernible from the records that, several complaints containing very same allegations as contained in Annexure A4 are being submitted before various police stations by the persons belonging to the factions of the petitioners herein. It is also evident from the records that some of the criminal cases which were registered accordingly were dropped

in the light of the observations made by the Honourable Supreme Court, by the respective Investigating Officers. In such circumstances, submitting complaints after complaints, by reiterating the same allegations, even though the issues therein have been settled by the Honourable Supreme Court finally and authoritatively, amounts to unnecessary harassment. In **State of Haryana v. Bhajan Lal [1992 Supl.(1) SCC 335]**, the Honourable Supreme Court observed that where a criminal proceeding is manifestly instituted with *mala fide* and where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the powers of the court under Section 482 Cr.P.C. can be invoked. In this case, even though the complaint submitted may not be on account of a personal grudge, it is evident that the same arises from a factional feud within a community. Therefore, I am of the view that this is a fit case in which the decision of the Honourable Supreme Court in **Bhajan Lal's case** is applicable.

Accordingly, I find that the proceedings instituted based on Annexure-A4 complaint and the registration of Annexure-A1 FIR in Crime No.1194 of 2018 by Moovattupuzha Police Station are clear of abuse of process of the court. In the result, this Crl. M.C. is allowed. Annexure-A1 FIR and all further proceedings pursuant thereof, as against the petitioners/accused 1 and 2, are hereby quashed.

Sd/-

**ZIYAD RAHMAN A.A.**
**JUDGE**

DG/22.3.22

*APPENDIX OF CRL.MC 2588/2018*

*PETITIONER ANNEXURES*

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| *ANNEXURE A1* | *CERTIFIED COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.1194/2018 OF MUVATTUPUZHA POLICE STATION.* |
| *ANNEXURE A2* | *TRUE COPY OF THE PLAINT IN O.S NO. 15/2016 OF THE SUB COURT, MUVATTUPUZHA.* |
| *ANNEXURE A3* | *TRUE COPY OF THE RELEVANT PAGES OF 1934 CONSTITUTION OF THE MALANKARA ORTHODOX SYRIAN CHURCH PRODUCED AS DOCUMENT NO.2 IN O.S NO.15/2016 OF SUB COURT, MUVATTUPUZHA.* |
| *ANNEXURE A4* | *TRUE COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT, MUVATTUPUZHA AS CRIMINAL MISCELLANEOUS PETITION NO.475/2018.* |