



2024:KER:59326

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR. JUSTICE A. BADHARUDEEN  
TUESDAY, THE 6<sup>TH</sup> DAY OF AUGUST 2024 / 15TH SRAVANA, 1946

CRL.MC NO. 5519 OF 2023  
CC NO.128 OF 2018 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,  
SASTHAMCOTTA

PETITIONERS/ACCUSED:

- 1 FR.JOSEPH KUZHINJALIL,  
AGED 78 YEARS  
S/O.AUGUSTY, RASHTRA DEEPIKA PUBLICATIONS,  
KOTTAYAM, PIN - 686001
- 2 FR.BOBY ALEX  
AGED 51 YEARS  
MANAMPLACKAL HOUSE, FORMER CHIEF EDITOR, RASHTRA  
DEEPIKA PUBLICATIONS, KOTTAYAM, NOW ACTING AS THE  
VICAR GENERAL OF DIOCESE OF KANJIRAPPALLY,  
KANJIRAPPALLY P.O., KOTTAYAM DISTRICT, PIN -  
686507

BY ADVS.  
JOMY GEORGE  
R.PADMARAJ  
M.J.BENNY  
CHITRA N.DAS  
RISHAB S.  
RONA ANN SIBY

RESPONDENT/COMPLAINANT/STATE:

- 1 VISALAKSHI,  
GREEN VILLA, EDAYKADU, PORUVAZHI P.O., KOLLAM  
DISTRICT, PIN - 690520
- 2 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM, PIN - 682031

R1 BY ADV.M.R.SARIN  
R2 BY PUBLIC PROSECUTOR SRI.M.P.PRASANTH

OTHER PRESENT:

ADV.SRI.FIROZ K.M.,AMICUS CURIAE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD  
ON 6.8.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



**CR**

**ORDER**

Dated this the 6<sup>th</sup> day of August, 2024

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C' hereinafter), by the petitioners, who are accused Nos.1 and 2 in C.C.No.128/2018 on the files of the Judicial First Class Magistrate Court, Sasthamcotta. They seek quashment of the above proceedings.

2. Heard Adv.Sri.Jomy George, the learned counsel for the petitioners, Adv.Sri.M.R.Sarin, the learned counsel appearing for the 1<sup>st</sup> respondent/original complainant, Sri.M.P.Prasanth, the learned Public Prosecutor and also Adv.Sri.Firoz K.M., who is appointed as Amicus Curiae, to assist the Court, to decide the question of law involved in this matter.

3. Perused the judgments placed by the learned counsel for the petitioners as well as the learned Amicus Curiae, in detail, in a paper booklet form, along with the complaint, the order taking cognizance and the relevant materials.



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4. The prosecution case buds from a private complaint, (a copy of which is produced as Annexure A1), filed by the de facto complainant before the Judicial First Class Magistrate Court, Sasthamcotta, alleging commission of offences punishable under Sections 499, 500, 501 and 120B r/w Section 34 of the Indian Penal Code (for short, 'the IPC' hereinafter). The allegation in the complaint is that, the accused herein published a news item with heading in 'Rashtra Deepika Evening Daily', viz., "കോൺഗ്രസ് വനിതാനേതാവിന്റെ നിക്ഷേപ തട്ടിപ്പ് - ഭർത്താവ് ഒളിവിൽ " and it was published that the complainant constructed house after misappropriating fund of the Residence Co-operative Society, Kunnathur. It was alleged further that the complainant misappropriated a total sum of Rs.3 Crores from the Co-operative Society.

5. The learned Magistrate proceeded with the complaint and recorded sworn statement of the complainant as PW1 and on perusal of the sworn statement along with the materials, the learned Magistrate took cognizance for the offence punishable under Section 501 r/w Section 34 of the IPC.

6. While challenging the order of cognizance taken by the learned Magistrate and other proceedings, the learned



counsel for the petitioners raised a specific contention on the premise that the Magistrate Court took cognizance for the offences under Sections 499, 500, 501 and 120B r/w Section 34 of the IPC, that in order to take cognizance for an offence under Section 120B of the IPC, other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding, cognizance is bad in law, since cognizance for the said offence is barred under Section 196(2) of the Cr.P.C., if initiation of the criminal proceedings is without the consent in writing from the State Government or the District Magistrate. It is fervently argued that no consent obtained in this matter as stipulated in Section 196(2) of the Cr.P.C. and therefore, the entire proceedings are non est and accordingly, the prayer for quashment is liable to succeed.

7. Dispelling this argument, the learned counsel for the de facto complainant read out the order of cognizance and submitted that, this challenge does not arise in the present case, since the Magistrate Court did not take cognizance for the offence



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under Section 120B of the IPC and the offence, for which cognizance taken, is confined to one under Section 501 r/w Section 34 of the IPC and therefore, the prayer for quashment is liable to fail.

8. Adv.Sri.Firoz K.M., who is appointed as Amicus Curiae, has argued at length, with reference to the earlier provisions in the Cr.P.C., 1898, in comparison with the new provisions dealing with the heading, '*Prosecution for offences against the State and for criminal conspiracy to commit such offence*' along with the report of the Law Commission.

9. Insofar as the bar under Section 196(2) of the Cr.P.C. is concerned, it is vehemently argued by the learned counsel for the petitioners, relying on the decision of the High Court of Madras in **M.Gnanam v. T.R.Masilamani**, reported in MANU/TN/0587/1992, where the Madras High Court considered a case where Section 196(2) of the Cr.P.C. is having application. While dealing with the question, the Madras High Court dealt the issue in paragraph Nos.10, 12, 13 and 14 and finally in paragraph No.18, it has been held as under:

**18.** *None of the decisions, as cited supra, does state in so express and explicit a fashion that*



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*Sub-section (2) is of independent existence, without having any fetters. However, a perusal of those decisions would indicate, by implication, that the said, Sub-section had been construed to be having independent existence. If any reason is to be supplied for the construction of the said Sub-section, to be having any independent existence, that is available in the form of the supplanting of the word "any" placed before the word "criminal conspiracy", which is not found traceable in the corresponding old Section 196-A of the old Code. Further the scope and ambit of the said three Sub-sections referable to the old Ss. 196, 196-A and 196-B (of the old Code) are altogether different and distinct. It is thus crystal clear that Sub-section (2) of the present Section 196 has to be construed to be having an independent existence by itself, without any fetter operating from any quarter whatever and if so construed, the prosecution launched in the instant case for conspiracy to commit offences under Ss. 500 to 502 of the Indian Penal Code and Section 12 of the Act, which are not punishable with Rigorous Imprisonment for a term of two years or upwards is to be thrown lock, stock and barrel, inasmuch as the said prosecution had been launched without getting the prior consent of the State Government or the District Magistrate, as the case may be.*



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10. Referring judgment in **M.Gnanam's** case (supra), the learned Amicus Curiae has taken the attention of this Court to the old Code, 1898 and submitted that, in the old Code, Section 196 and 196-A are the provisions which dealt with the issue now dealt in Section 196 and 196(2) of the Cr.P.C. He has placed recommendation of the Law Commission of India, Forty-First Report, Vol.1, where the Law Commission reported that, *'the object of this section which provides an exception to the general rule that a criminal prosecution can be initiated at the instance of any person is to prevent unauthorised persons from intruding in matters of State by instituting prosecutions and to secure that such prosecutions shall only be instituted under the authority of Government. We do not find any good reason for excluding only section 127 of the Penal Code from the purview of this section. Further, it seems to us that, in addition to the State Government, the Central Government also should have the authority to initiate prosecutions by ordering a complaint. It is conceivable that in some circumstances the Central Government might be more concerned with prosecuting the offender than State Government. We note that until 1937 this authority was vested*



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*in the Governor-General in Council, the Local Government or some officer empowered by the Governor-General in Council.'*

11. The learned Amicus Curiae has also taken attention of this Court in paragraph Nos.109 to 114 of the Law Commission Report and the same read as under:

*109. The latter part of section 196 is unnecessarily complicated. The complaint necessary for initiating proceedings may be made "by order of, or under authority from, the State Government or some officer empowered by the State Government in behalf." We recommend that this should be simplified to complaint made by order of the Central Government or of the State Government. A simple provision of this type would avoid time-consuming controversies that are frequently raised in courts as to whether the officer has been duly empowered by the State Government, whether the authority to lodge the particular complaint has duly emanated from that officer or from the Government and so on.*

*110. Finally, we propose that any criminal conspiracy to commit any of the offences covered by section 196 should also be covered by that section, instead of by clause (1) of section 196A as at present.*

*111 Section 196 may accordingly be revised to read :-*

*"196. No court shall take cognizance of-*





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*(a) any offence punishable under Chapter VI, section 153A, section 295A or section 505 of the Indian Penal Code, or*

*(b) any criminal conspiracy to commit such offence, or*

*(c) any such abetment as is described in section 108A of the Indian Penal Code, except upon complaint made by order of the Central Government or of the State Government."*

*112. Section 196A was inserted in the Criminal Procedure Code by the Criminal Law Amendment Act, 1913, which made criminal conspiracy as such an offence by inserting sections 120A and 120B (Chapter V-A) in the Indian Penal Code. It was apparently felt that, in the case of petty conspiracies made punishable for the first time by sub-section (2) of section 120B, private complaints should not be freely allowed and prosecutions should be instituted only when necessary in the public interest. The section classifies such criminal conspiracies in two groups and makes a fine distinction as to the manner of initiating proceedings. There seems to be no point in this refinement. Section 196A.*

*It has been authoritatively held by the Supreme Court that when the object of the conspiracy is to commit a cognizable offence, such as cheating and dishonestly inducing delivery of property, and other non-cognizable offences such as forgery were*



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*also committed as steps for effecting this object, the consent of the State Government or District Magistrate is not required under clause (2) of section 196A. In view of this decision, we do not consider that any clarification is necessary in the section.*

*113. Section 196A may accordingly be simplified and revised as follows:-*

*"196A. No Court shall take cognizance of any criminal conspiracy punishable under section 120B of the Indian Penal Code, other than a criminal conspiracy to commit a cognizable offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings."*

*Provided that where the criminal conspiracy is one to which the provisions of section 194, section 195 or section 196 apply, no such consent shall be necessary."*

*114. Section 196B provides that in the case of any offence in respect of which the provision of section 196 or section 196A apply, a District Magistrate or Chief Presidency Magistrate may, "Notwithstanding anything contained in those sections or in any other part of this Code" order a preliminary investigation by a police officer not being below the rank of inspector. The object of such an investigation can only be to enable the competent authority to decide*



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*whether it should order a complaint under section 196 or give consent to the initiation of proceedings under section 196A. We, therefore, recommend that the section should be amended vesting the power to order investigation in that authority and making it clear that such investigation will take place before the complaint is ordered or the consent is given. The words "notwithstanding anything contained in those sections or in any other part of this Code" are clearly unnecessary and should be omitted. The section may be revised to read :-*

*"196B. The Central Government or the State Government before ordering complaint to be made under section 196, and the State Government or the District Magistrate before giving consent under section 196A, may order a preliminary investigation by a police officer not below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155."*

12. He has placed a three bench decision in **Union of India and Another v. National Federation of the Blind and Others** reported in [2013 KHC 4816] with reference to paragraph No.43, where it has been held as under:

43. *It is settled law that while interpreting any provision of a statute the plain meaning has to be given effect and if language*



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*therein is simple and unambiguous, there is no need to traverse beyond the same. Likewise, if the language of the relevant section gives a simple meaning and message, it should be interpreted in such a way and there is no need to give any weightage to headings of those paragraphs. This aspect has been clarified in Prakash Nath Khanna and Another v. Commissioner of Income Tax and Another, 2004 (9) SCC 686. Paragraph 13 of the said judgment is relevant which reads as under:*

*"13. It is a well-settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See - Lenigh Valley Coal Co. v. Yensavage. The view was reiterated in Union of India v. Filip Tiago De Gama*



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*of Vedem Vasco De Gama and Padma  
Sundara Rao v. State of T.N.)."*

13. Similarly, another five bench decision of the Apex Court in **Sarah Mathew and Others v. Institute of Cardio Vascular Diseases and Others** reported in [2013 (4) **KHC 806**] with reference to paragraph No.38, where it has been held as under:

*38. So far 'heading' of the chapter is concerned, it is well settled that 'heading' or 'title' prefixed to sections or group of sections have a limited role to play in the construction of Statutes. They may be taken as very broad and general indicators or the nature of the subject matter dealt with thereunder but they do not control the meaning of the sections if the meaning is otherwise ascertainable by reading the section in proper perspective along with other provisions. In M/s. Frick India Ltd. v. Union of India and Others, 1990 KHC 723: 1990 (1) SCC 400 : AIR 1990 SC 689: 1990 (27) ECC 8: 1990 (48) ELT 627, this Court has observed as under:*

*"It is well settled that the headings prefixed to sections or entries cannot control the plain words of the provisions; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and*



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*unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision.”*

14. Apart from the above decisions, the learned Amicus Curiae also read out the decision in **Vijayakumar Vitthalrao Sarvade v. State of Maharashtra and Others** reported in [**2016 KHC 4179**], where the Bombay High Court held in paragraph Nos.10 and 11 as under:

*10. In this case, indisputably offence alleged is between private parties. As such the provisions of S. 196(1) of Code of Criminal Procedure, which deal with offence against Government, for which the consent of respective Central or State Government is required, are not applicable to the instant case.*

*11. The present case then falls under S.196(2) of Code of Criminal Procedure. As per this section, only when criminal conspiracy is to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a period of two years or upwards, the consent of State Government, or the*



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*District Magistrate is not required, otherwise such consent is necessary. In the instant case, criminal conspiracy on the part of respondent No.2 is alleged for evicting the petitioner from the shop premises. As per prosecution case, the main object of unlawful assembly or criminal conspiracy was to restrain the petitioner from entering in the premises and then to evict him therefrom. Therefore, it is apparent that the criminal conspiracy is alleged to be hatched for commission of offences which are not only cognizable in nature, but for which punishment prescribed is more than two years. If in prosecution of the said object, other cognizable offences or offences punishable with imprisonment for period of less than two years are committed, that cannot be treated as main object of criminal conspiracy. The Apex Court in the case of Bhanwar Singh and another vs. State of Rajasthan, AIR 1968 SC 709, has clearly held that when main object is to commit offence which is cognizable and while committing said offence if any non cognizable offence is also committed, then under such circumstances, trial without sanction or consent is not illegal.*

15. Similarly, the learned Amicus Curiae has placed decision of the Patna High Court in **The Indian Express Ltd. and Ors. v. The State of Bihar and Ors.** reported in **[MANU/BH/1754/2018]**, with reference to paragraph No.25,



where it has been held as under:

*25. The heading of the Section is illustrative, which indicates application of the provision only in context to certain offences committed against the State and not in the case of other offences committed against individuals. The heading 'Prosecution for offences against the State and for criminal conspiracy to commit such offence', the expression 'such offence' qualifies offences against the State enumerated in Chapter VI of I.P.C. and under Section 153A, Section 295A and Section 505(1) of I.P.C. If such offences against the State is committed by anyone in conspiracy with others in such situation the sub-section (2) of Section 196 comes into play otherwise not. So, in the present case, there is no requirement for obtaining sanction from the State Government or from the District Magistrate for taking cognizance in the matter.*

16. That apart, decisions in **Aroon Purie v. State and Ors.** reported in [MANU/DE/0646/2021] (High Court of Delhi), **The Mathrubhumi Printing and Publishing Company Limited and Ors. v. Santiago Martin and Ors.** reported in [MANU/SI/0070/2022] (High Court of Sikkim), **Bakhshish Singh Brar v. Smt.Gurmej Kaur and Another** reported in [1987 KHC 1122] (Apex Court), **Rahul**





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**Kanwal and Ors. v. State and Ors.** reported in **[MANU/DE/0625/2004] (High Court of Delhi)**, **Bhanwar Singh and Another v. State of Rajasthan** reported in **[1968 KHC 591] (Apex Court)**, **Shiv Nandan Dixit v. State of U.P.** reported in **[2003 KHC 1857] (Apex Court)**, **Sarma T.V. v. R.Meeriah and Others** reported in **[1980 KHC 1305] (Andhra Pradesh High Court)** and **Rajdeep Sardesai v. State of Andhra Pradesh and Ors.** reported in **[MANU/SC/0629/2015] (Apex Court)** are the other decisions placed by the learned Amicus Curiae, for reference. A latest decision of the Apex Court in **National Investigation Agency New Delhi v. Owais Amin @ Cherry** reported in **[2024 KHC OnLine 6308]** also has been placed by the learned Amicus Curiae, for reference.

17. Going by the decisions placed by the learned counsel for the petitioners as well as the learned Amicus Curiae, the law emerges is that, the heading of Section 196 of the Cr.P.C. is illustrative, which indicates application of the provision only in context to certain offences committed against the State and not in the case of other offences committed against individuals. The



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heading 'Prosecution for offences against the State and for criminal conspiracy to commit such offence', the expression 'such offence' qualifies offences against the State enumerated in Chapter VI of I.P.C. and under Section 153A, Section 295A and Section 505(1) of I.P.C. If such offences against the State is committed by anyone in conspiracy with others in such situation the sub-section (2) of Section 196 comes into play otherwise not.

18. Coming to the facts of this case, even though, bar under Section 196(2) of the Cr.P.C. has been raised on the premise of taking cognizance for the offence under Section 120B of the IPC also, here, as rightly pointed by the learned counsel for the de facto complainant and the learned Amicuse Curiae, the learned Magistrate took cognizance for the offence punishable under Section 501 r/w Section 34 of the IPC and therefore, Section 196(2) of the Cr.P.C. has no application in the present case.

19. It is true that a decision of the Apex Court in **Ram Nath Madhoprasad v. State of M.P.** reported in [**1953 KHC 382**], has been placed by the learned counsel for the petitioners, where it was held that, when the evidence as to



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conspiracy under Section 120B of the IPC having been rejected, the same evidence could not be used in finding a common intention proved under Section 34 of the IPC and is submitted that, when the complaint comprehensively alleges commission of offence under Section 120B of the IPC, taking cognizance for the other offences, for which, bar under Section 196(2) of the Cr.P.C. has no application also is without sanction of law, it appears that the same is not a healthy argument and the same is dispelled.

20. The second point argued by the learned counsel for the petitioners is that, in this matter, the 1<sup>st</sup> accused is the Managing Director of M/s.Rashtra Deepika Ltd. and the 2<sup>nd</sup> accused is the Chief Editor of M/s.Rashtra Deepika Ltd. According to the learned counsel for the petitioners, a Managing Director is not primarily responsible for publishing a news item and therefore, he could not be prosecuted for alleging publication of defamatory materials, if any, and he has placed decision of this Court, where therein considered in a similar case, vide C.C.No.658/2008 on the files of the Judicial First Class Magistrate Court-I, Varkala, wherein, after referring the earlier decision of the Apex Court in **C.H.Mohammed Koya v.**



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**T.K.S.M.A.Muthukoya** reported in [1978 KLT 699], **Achuthanandan V.S.** v. **V.G.Kamalamma** reported in [2008 (2) KHC 562] and the decision of the Apex Court in **Mathew v. Abraham** reported in [2002 (3) KLT 282] and **Chellappan Pillai v. Karanjia** reported in [1962 (2) Crl.L.J 142], in paragraph No.7, this Court held as under:

*7. But the question whether the proceedings is an abuse of process of the court as against the petitioner is a question which is to be seriously considered. The complaint itself establish that the Press Conference made by the first accused was telecasted live by ACV channel and it was retelecasted. Therefore even according to first respondent, the publication in the news item of Deshabhimani Daily on the next day was after it was telecasted live and retelecasted by ACV channel. If the grievance of the first respondent is that by publication of the news item, reputation of the first respondent is badly affected, it is mainly affected by the first publication i.e. by live telecast and its retelecast. If that be so, without proceeding against the persons responsible for the live telecast and its retelecast, prosecution against the second accused, who is only the publisher of the newspaper, when that publication was only on the next day, is clearly an abuse of process of the court. If the grievance of the first respondent with*



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*regard to the publication that the defamatory statement adversely affected his reputation is true, first respondent should have first proceeded against the news channel or its officials who are responsible for the live telecast and its retelecast. So also the fact that eventhough it is the Chief Editor or the Editor who in the ordinary course responsible for selecting the news item, first respondent is not prosecuting the Editor or Chief Editor. It shows that prosecution as against the second accused is out of malice and not bona fide. In such circumstances, it is not in the interest of justice to continue the prosecution as against the petitioner.*

21. Applying the ratio, it could be held that, it is the Chief Editor or the Editor, who, in the ordinary course, is responsible for selecting the news item and the Managing Director has no direct role in selecting the news items. Therefore, criminal prosecution, alleging defamation against the Managing Director, would not succeed, prima facie.

22. In view of the above discussion, this Criminal Miscellaneous Case stands allowed in part. Accordingly, all further proceedings as against the 1<sup>st</sup> accused/1<sup>st</sup> petitioner herein in C.C.No.128/2018 on the files of the Judicial First Class



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Magistrate Court, Sasthamcotta, stand quashed, while allowing to proceed against the 2<sup>nd</sup> accused/2<sup>nd</sup> petitioner herein, as per law.

Before parting, I appreciate Adv.Sri.Firoz K.M., the learned Amicus Curiae, for the effort he has bestowed to assist the Court in answering the legal questions involved, with utmost sincerity.

Registry is directed to forward a copy of this order to the trial court, for information and further steps.

Sd/-  
**A.BADHARUDEEN**  
**JUDGE**

Bb



APPENDIX OF CRL.MC 5519/2023

PETITIONERS' ANNEXURES

ANNEXURE- A1                    THE CERTIFIED COPY OF THE COMPLAINT  
FILED BY THE 1ST RESPONDENT AS  
CC.128/2018 ON THE FILE OF JUDICIAL  
FIRST CLASS MAGISTRATE COURT,  
SASTHAMKOTTA

ANNEXURE -A2                    THE TRUE COPY OF NEWS ITEM PUBLISHED IN  
THE RASHTRA DEEPIKA EVENING DAILY  
NEWSPAPER ON 24.11.2017

RESPONDENTS' ANNEXURES    : NIL