IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 23RD DAY OF JUNE 2021 / 2ND ASHADHA, 1943

CRL.REV.PET NO. 519 OF 2013

AGAINST THE JUDGMENT IN CRL.APPEAL NO. 147/2009 OF ADDITIONAL DISTRICT AND SESSIONS COURT (ADHOC)-II, KOLLAM.

AGAINST THE JUDGMENT IN C.C.NO.181/1996 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KOTTARAKARA

REVISION PETITIONER/APPELLANT/ACCUSED 1:

D.RAJAGOPAL,
THE THEN S.I OF POLICE,
EZHUKONE POLICE STATION.

BY ADVS.
SRI.K.GOPALAKRISHNA KURUP (SR.)
SMT.SREEDEVI KYLASANATH
SRI.ACHUTH KYLAS
SRI.R.MAHESH MENON
SRI.DEAGO JOHN K
SHRI.AMAL DEV C.V.

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:

1 **AYYAPPAN,**
S/O. CHELLAPPAN, MUKALUVILA VEEDU, KOLANNOOR WARDS,
EZHUKONE VILLAGE - 691003.

2 **STATE OF KERALA,**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

BY PUBLIC PROSECUIOR SRI.E.C.BINEESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14.08.2019, ALONG WITH CRIMINAL REVISION PETITION NO.520/2013, THE COURT ON 23.06.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 23RD DAY OF JUNE 2021 / 2ND ASHADHA, 1943

CRL.REV.PET NO. 520 OF 2013

AGAINST THE JUDGMENT IN CRL.APPEAL NO.149/2009 OF ADDITIONAL DISTRICT AND SESSIONS COURT (ADHOC)-II, KOLLAM

AGAINST THE JUDGMENT IN C.C.NO.181/1996 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KOTTARAKARA

REVISION PETITIONERS/APPELLANTS/ACCUSED NOS 3 TO 5:

1 MANIRAJAN,
CONSTABLE NO.4690 OF EZHUKONE POLICE STATION.

2 BABY
CONSTABLE NO.3817 OF EZHUKONE POLICE STATION.

3 SHARAFUDEEN
POLICE CONSTABLE, EZHUKONE POLICE STATION.

BY ADVS.
SRI.K.GOPALAKRISHNA KURUP (SR.)
SMT.DEEPTHI S.MENON
SMT.ANUROOPA JAYADEVAN
SRI.D.FEROZE
SRI.S.RAJEEV
SRI.K.DHEERENDRAKRISHNAN
SRI.V.VINAY

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:

1 AYYAPPAN,
S/O CHELLAPPAN, MUKALUVILA VEEDU, KOLANNOOR WARDS,
EZHUKONE VILLAGE-691 003.

2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682 031.

BY ADVS.
SRI.K.S.MADHUSOODANAN
SRI.K.S.MIZVER
SRI.P.K.RAKESH KUMAR
SRI.THOMAS CHAZHUKKARAN
SRI.M.M.VINOD KUMAR

BY PUBLIC PROSECUIOR SRI.E.C.BINEESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14.08.2019, ALONG WITH CRIMINAL REVISION PETITION NO.519/2013, THE COURT ON 23.06.2021 DELIVERED THE FOLLOWING:

" CR"

MARY JOSEPH, J.

- -

Crl.R.P Nos. 519 & 520 of 2013

- -

Dated this the 23rd day of June, 2021

O R D E R

Challenge is raised by accused Nos.1 and 3 to 5 in these revisions against concurrent findings of guilt and passing of orders of conviction and sentence against them by Court of Judicial First Class Magistrate-I, Kottarakkara (for short 'the trial court') and Additional District and Sessions Judge (Adhoc)-II, Kollam (for short 'the appellate court') in CC No.181/1996 and Crl.Appeal Nos.147 and 149 of 2009, respectively for offences punishable under Sections 323 and 324 read with Section 34 of the Indian Penal Code (for short 'IPC')

2. By virtue of the judgment under challenge, the accused were found guilty for the offence under Section 324 read with Section 34 IPC and convicted and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.2,500/- each and in default to undergo simple imprisonment for six months each and also found guilty for the offence under Section 323

read with Section 34 IPC and convicted and sentenced to pay a fine of Rs.1,000/- each and in default of payment of fine to undergo simple imprisonment for three months each. On realisation of the fine amount, Rs.10,000/- out of that was directed to be paid to the complainant as compensation under Section 357(1) of the Code of Criminal Procedure, 1973 (for short "Cr.P.C").

3. The accused are policemen of Ezhukone Police Station and the main contentions projected by them in these revisions are that though they were public servants, cognizance was taken by the trial court and they were prosecuted without getting the sanction from the State Government as contemplated under Section 197 Cr.P.C. and therefore, the process of taking cognizance and conduct of trial are vitiated.

4. According to Sri.Gopalakrishna Kurup, the learned Senior Counsel and Sri.S.Rajeev, who were engaged respectively by accused Nos.1, 3 & 4 and 5, though the trial court as well as the appellate court were addressed on those, had taken a view that sanction as contemplated under Section 197 Cr.P.C is unwarranted in the case on hand, since the acts alleged to have been committed by the accused have nothing to do with or not

related in any manner to the discharge of their official duties.

5. According to the learned counsel, the courts below are highly erred in taking such a view and are also unjustified in arriving at a finding of guilt against the accused in the case on hand. According to them, the complainant was taken into custody in connection with a case registered against him for having assaulted a policeman while discharging his official duties and therefore, the courts below have gone wrong in holding that sanction contemplated under Section 197 Cr.P.C is not required.

6. According to them, the complainant was arrested in Crime No.33/1996 by the A.S.I of Police, Ezhukone Police Station at about 8.15 p.m on 08.02.1996 and was produced before the Magistrate on the following day. According to them, the injuries found on the body of the complainant were not inflicted by them, but were there at the time of his arrest itself.

7. Ext.D4 is the application seeking remand of the accused in judicial custody in Crime No.33/1996 at the time of his production firstly before the Magistrate. On finding the accused unable to speak, on account of the injuries sustained on his tongue, the Magistrate directed him to avail some treatment. The Magistrate also enlarged him on bail for that reason.

Accordingly, he attended Taluk Head Quarters Hospital, Kottarakkara wherefrom Ext.P3 was prepared and issued.

8. It is disclosed on a reading of Ext.D4 that, at the time of the alleged arrest of the complainant in the case on hand as accused in Crime No.33/1996, body note was not prepared. It is not described in Ext.D4 that at the time of arrest, the complainant in the case on hand had some allergic problems in his mouth or made any complaints of such difficulties. At the time the complainant was produced before the Magistrate, injuries were found on his tongue and other parts of body and due to his inability to speak to the Magistrate, he was granted bail and directed to avail treatment.

9. The complainant had gone to Taluk Head Quarters Hospital, Kottarakkara directly from the Court and was admitted there for treatment. The doctor who attended the complainant at the hospital had prepared Ext.P3 wound certificate, describing all injuries found on his body and also the cause of the injuries as narrated by him. He had undergone inpatient treatment at the hospital as evidenced from the discharge certificate and discharge card marked in evidence respectively as Exts.P4 and P5 and on getting discharged therefrom, a private complaint was

lodged before the Judicial First Class Magistrate Court-I, Kottarakara alleging that policemen of Ezhukone Police Station, five in numbers assaulted him and inflicted injuries on his body after forcibly taking him from his home to the Police Station, in a police jeep.

10. As per the allegations of the complainant, he was taken into custody from his house by some of the accused in the presence of his wife, on the premise that a petition containing allegations against him was obtained at the police station.

11. As stated earlier, the complainant's specific case in the private complaint lodged was that accused, five in numbers had brutally assaulted him and inflicted injuries all over his body at the police station. The wound certificate got marked in evidence by the complainant as Ext.P3 would also strengthen his allegation that the injuries were inflicted by the accused.

The injuries are of the following nature:

"1. Abrasion and nail mark on the neck and lower jaw at different parts.

2. Bleeding abrasion on the front of right leg.

3. Circular burn marks on the tongue on the lateral side and towards the lower part on either side near

the lip 1 c.m in diameter each.

4. Tenderness on different parts of the body."

12. Ext.P3 was prepared by the Assistant Surgeon of Taluk Head Quarters Hospital, Kottarakkara on 09.02.1996 and he was examined before the trial court as PW7. PW7 has stated that the complainant Ayyappan was attended and examined by him on 09.02.1996 at 4.35 p.m. with some injuries on his body and taking note of those, Ext.P3 was issued. According to him, the alleged cause of injury narrated by the complainant to him was noted in Ext.P3 as follows:

"പോലീസുകാർ ലോക്കപ്പിൽ വച്ച് ചവിട്ടുകയും മർദ്ദിക്കുകയും കത്തിച്ച

സിഗരറ്റ് കൊണ്ട് നാക്കിൽ പൊള്ളിക്കുകയും ചെയ്തതിൽ വച്ച് ",

13. The allegations of the complainant that he was assaulted and inflicted with the injuries at the lock up of Ezhukone Police Station on 08.02.1996 is further strengthened by the narrations in Ext.D4. In Ext.D4, the arrest was recorded as made at 8.15 p.m on 08.02.1996, but injuries, either on tongue or body of the complainant were not recorded. The defence have not even a claim that after taken to the police station, the complainant was released by them.

14. Therefore, the factum remains was that the complainant was in the custody of the police on 08.02.1996, till his production before the Magistrate at 3.50 p.m on 09.02.1996 and therefore the only probability for him to receive the injuries reported in Ext.P3 was from the police station itself. As per the allegations of the complainant also, he was assaulted at the lock up of the police station by five policemen named in the private complaint filed by him and had also spoken strictly in tune with, while being examined as PW1.

15. The manner in which each of the accused assaulted was categorically spoken by the complainant while being examined as PW1 in the case on hand. The factum that he was taken from his house to the police station forcibly at 5.45 p.m on 08.02.1996 was also spoken by his wife while tendering evidence as PW2. According to her, she procured the company of one Mr.Ayyappan, a neighbour as well as friend of her husband and went to the Police Station to get her husband released therefrom, but were unfortunate to leave the place out of intimidation and threat extended by the accused, despite the fact that hues and cries of her husband were heard from inside. Her husband was released on bail by the Magistrate only in the

evening of 09.02.1996 with injuries on his body and burn injuries on his tongue. He was taken to Taluk Head Quarters Hospital, Kottarakkara and there the cause of injuries was managed to be spoken by her husband as assault at the lock up by the policemen of Ezhukone Police Station.

16. Though PW3 deviated somewhat during cross examination from his stand in the chief examination strictly supporting the case of the complainant, a scrutiny of the evidence as a whole convinces this Court that corroboration is maintained in material particulars. Complainant though attempted to strengthen his case by examining PW4, the venture was defeated, when that witness opted to say against the statement recorded from him under Section 161 Cr.P.C. The examination of PW4 thus turned a futile exercise by the complainant.

17. The complainant had examined three medical witnesses as PW5 to PW7. The doctor who had attended and examined him firstly at Government Hospital, Kottarakkara, was examined in the case on hand as PW6 and the wound certificate issued by him was marked as Ext.P3. The discharge certificate and discharge card issued by him were also marked through PW6 as

Exts.P4 and P5. The doctor who had treated him at Lakshmi Medical Trust Hospital, Ezhukone was also examined as PW5. The medical evidence tendered by the above witnesses also lend clear support to the case of the complainant.

18. The attested copy of the judgment in C.C No.183/1998, a case registered on the files of Judicial First Class Magistrate Court-II, Kottarakkara on the strength of the chargesheet laid from Ezhukone Police Station in Crime No.33/1996 is Ext.P1 marked in evidence through the complainant while being examined as PW1. Attested copy of the chargesheet in Crime No.33/1996 of Ezhukone Police Station and the photocopy of it were produced by the complainant as well as the accused and got marked in evidence respectively as Exts.P2 and D2. The complainant in the case on hand was found chargesheeted by Ezhukone police for offences punishable under Sections 341 and 332 of the Indian Penal Code. It is disclosed from Ext.P1 that charge was also framed against him by Judicial First Class Magistrate Court -II, Kottarakkara for the very same offences and he faced trial for those. The said court upon evaluation of the evidence of the prosecution and the defence made the following observation in Ext.P1:

> "12. xxxx. Thus the oral evidence of DW2 coupled with Ext.D2(a) wound certificate would show that the accused has been manhandled by the police officials while he was in custody immediately before he was produced before court. In the light of the oral evidence of DW2 and D2(a) wound certificate, the defence contention that this is a case foisted against the accused as a counter-blast to the allegations in C.C No.181/96 cannot be brushed aside."

19. On the basis the court also reached the conclusion that the prosecution failed to establish the guilt of the accused to the tilt and thus acquitted the accused who is the complainant in the case on hand.

20. The above judgment passed in C.C.No.183/1998 on 07.04.2000 was not assailed by the prosecution. Thus contention of the complainant herein that C.C.No.183/1998 was only a case foisted against him to counterblast the allegations in C.C.No.181/1996 was accepted by the court and not being assailed it has attained finality also.

21. In the context, the question to be dealt with is whether sanction contemplated under Section 197 Cr.P.C is required to prosecute the accused being police officers and therefore public servants. **Sankaran Moitra vs. Sadhna Das and Another** [(2006) 4 SCC 584] was relied on by the learned counsel to

fortify his view that the accused who are policemen and being public servants, sanction of the State Government as contemplated under Section 197 Cr.P.C was required to take cognizance of the offences alleged against them. In that context, the relevant portion of the judgment where the Apex Court had dealt with the requirement of sanction being worth consideration is extracted hereunder:

> "25. The High Court has stated that killing of a person by use of excessive force could never be performance of duty. It may be correct so far as it goes. But the question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty, Section 197(1) of the Code cannot be bypassed by reasoning that killing a man could never be done in an official capacity and consequently Section 197(1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So,

the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197(1) of the Code of Criminal Procedure. We are therefore satisfied that the High Court was in error in holding that sanction under Section 197(1) was not needed in this case. We hold that such sanction was necessary and for want of sanction the prosecution must be quashed at this stage. It is not for us now to answer the submission of learned counsel for the complainant that this is an eminently fit case for grant of such sanction. "

22. The factual matrix in which the finding as above was rendered being relevant, a narration of it as given in Paragraph 23 of the said judgment is also extracted hereunder:

"23. Coming to the facts of this case, the question is whether the appellant was acting in his official capacity while the alleged offence was committed or was performing a duty in his capacity as a police officer which led to the offence complained of. That it was the day of election to the State Assembly, that the appellant was in uniform; that the appellant travelled in an official jeep to the spot, near a polling booth and the offence was committed while he was on the spot, may not by themselves attract Section 197 (1) of the Code. But, as can be seen from the facts disclosed in the counter-affidavit filed on behalf of the State based on the entries in the General Diary of the Phoolbagan Police Station, it emerges that on the election day information was received in the Police Station at 1400 hours of some disturbance at a polling booth, that it took a violent turn and

clashes between the supporters of two political parties were imminent. It was then that the appellant reached the site of the incident in his official vehicle. It is seen that a case had been registered on the basis of the incidents that took place and a report in this behalf had also been sent to the superiors by the Station House Officer. It is also seen and it is supported by the witnesses examined by the Chief Judicial Magistrate while taking cognizance of the offence that the appellant on reaching the spot had a discussion with the Officer-in-charge who was stationed at the spot and thereafter a lathi-charge took place or there was an attack on the husband of the complainant and he met with his death. Obviously, it was part of the duty of the appellant to prevent any breach of law and maintain order on the polling day or to prevent the blocking of voters or prevent what has come to be known as booth capturing. It therefore emerges that the act was done while the officer was performing his duty. That the incident took place near a polling booth on an election day has also to be taken note of. The complainant no doubt has a case that it was a case of the deceased being picked and chosen for ill-treatment and he was beaten up by a police constable at the instance of the appellant and the Officer-in-charge of the Phoolbagan Police Station and at their behest. If that complaint were true it will certainly make the action, an offence, leading to further consequences. It is also true as pointed out by the learned counsel for the complainant that the entries in the General Diary remain to be proved. But still, it would be an offence committed during the course of the performance of his duty by the appellant and it would attract Section 197 of the Code. Going by the principle, stated by the Constitution Bench in Matajog Dobey, it has to be held that a sanction

> under Section 197 (1) of the Code of the Criminal Procedure is necessary in this case."

23. Sanction contemplated under Section 197 Cr.P.C is meant to afford protection to a public servant while acting or purporting to act in the discharge of his official duty. Therefore, a public servant concerned while acting or purporting to act in the discharge of his official duty is entitled to protection envisaged under Section 197 Cr.P.C., if something untoward happened in the course.

24. In **Om Prakash and Others V. State of Jharkhand through the Secretary, Department of Home, Ranchi I and another** [**(2012) 12 SCC 72]** the court held:

> " The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it. The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. If the above

> tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood." (Emphasis supplied)

25. Therefore, the act allegedly committed by the public servant must have some reasonable nexus with the discharge of his official duty and must not merely a cloak for doing an objectionable act. The objectionable act alleged by the complainant in the case on hand is that he was taken from his home to Ezhukone Police Station by two policemen under the guise of receipt of a petition against him and was brutally manhandled by the SHO and his associates at the lock up. The reason for doing so, according to the complainant was demand for wages made by him to one Mr.Veerasenan, for the work done for him, who is none other than a relative of the 3rd accused. According to him, the said Veerasenan colluded to wreck vengeance against him and got it materialised through accused No.3.

26. As described in Ext.D3, the FIR in Crime No.33/1996 Sri.Manirajan, a Police Constable (Q.4690) of A.R Camp, Kollam, accused No.3 in the case on hand, has furnished information that he was wrongfully restrained and was prevented from discharging his official duties by Mr. Ayyappan, the complainant in the case on hand, and Crime No.33/1996 was registered on it's basis. As disclosed from Ext.D4, the remand application in Crime No.33/1996, the complainant was arrested at 8.15 p.m on 08.02.1996. According to the accused in the case on hand, injuries found on the body of the complainant might have been caused in the incident that was allegedly occurred at 6.15 p.m on 08.02.1996 and formed the basis for the registration of Crime No.33/1996 and the injuries found on the tongue of the complainant was nothing but allergy the latter already had in his mouth. Even going by the case of the accused, the complainant was brought arrested to the police station at 8.15 p.m on 08.02.1996 and was produced before the Magistrate at 3.50 p.m on 09.02.1996. Evenif that version is accepted, it is clear that the complainant was available at the police station in the night of 08.02.1996, till his production before the Magistrate at 3.50 p.m on 09.02.1996. As per the remarks made by the Magistrate in

Ext.D4, complainant had made complaints of torture by policemen while in custody. Application was filed seeking bail and sureties were furnished and therefore, bail was granted on the day itself. The complainant has gone to THQ Hospital, Kottarakkara straight away therefrom and the personal injuries found on him were recorded in Ext.P3 from that hospital.

27. The prosecution in C.C.No.183/1998 has a case that the accused therein (the complainant herein) was brought arrested to the police station at 8.15 p.m on 08.02.1996 with injuries on his body. Since, the complainant was taken in custody from his house and detained at Ezhukone Police Station throughout the night on that day till production before the Magistrate on the day following, prudent policemen would get the injuries, if any found on his body recorded then and there through a Medical Practitioner with a view to exonerate themselves from the probable allegation of custodial torture. It is pertinent to note that materials of the nature are not available to the court to justify the contention of the accused that the injuries were sustained by the complainant in the alleged incident of assault of Sri.Manirajan. Therefore, it is convincingly established that the injuries found on the body of the complainant and recorded in

Ext.P3 were inflicted while he was in the custody of the policemen at Ezhukone Police Station as spoken by the complainant.

28. Each of the injuries sustained by the complainant on his tongue were of dimension of 1 c.m. The said injuries were noted down by PW7 in Ext.P3 as caused by a burned cigarette. Though an attempt was made to divulge through PW7 that injury having circumference of 1 c.m is unlikely to occur with a cigarette, the attempt turned futile on explanation being furnished by PW7 in categoric terms that the injuries of that dimension are possible on a forcible pressing of a burning cigarette on the surface of the tongue.

29. What could be drawn from the above discussion was that the injuries found on the body of the complainant were caused by the Sub Inspector and four other policemen of Ezhukone Police Station available at the police station at the relevant time as claimed by PW1 and stood arrayed as accused 1 to 5.

30. The allegation of the complainant in the case on hand was that he was procured by two policemen from his house to Ezhukone police station on the premise that a petition was filed

by someone against him and he was manhandled by the Policemen there.

31. On the contrary, the specific stand of the accused was that he was arrested following his interference with the lawful discharge of official duty by a Policeman namely Manirajan who is accused No.3. On completion of investigation and laying of the final report, cognizance was taken by the court for the offences for which the complainant as accused was chargesheeted. On the basis of the plea raised by the complainant that he is not guilty, trial was held and he was acquitted. It is pertinent to note that the acquittal was not for failure of the prosecution to establish the guilt against the accused beyond reasonable doubt, but on a revelation of the court from an appreciation of the evidence on record that the case was purely a false and fabricated one. Therefore, there is every reason to hold that the complainant was procured by the policemen into their custody on 08.02.1996 without any cogent and reasonable cause. It is made clear from the evidence on record that the complainant was there at the Police Station for about 18 hours after being taken thereto. Medical evidence available also made it clear that he was inflicted with several injuries on his body. Therefore, the barbarous acts

on the complainant was uncalled for by the context and to any stretch of imagination cannot be a justifiable one. When the prosecution case that the complainant was arrested and brought to the Police Station pursuant to the incident occurred at 8.15 p.m on 08.02.1996, which formed basis for registration of Crime No.33/1996 fails, credence needs only to be given to the versions of PW1 and PW2.

32. From the above narrations, it is indicated that the complainant was brought to the Police Station by the accused not for any legal pursuit or in exercise by the policemen of any of their lawful authority. For the mere reason that the Policemen arrived there in a Departmental vehicle during hours of their official duty, and took the complainant alongwith them to the Police Station, it cannot be said that, they were discharging their official duties. There must be some legal basis while depriving the personal liberty of a person, since it being the mandate of our Constitution under Article 21 that a person's life or liberty shall not only be curtailed or abridged without the support of a procedure established by law. Sanction contemplated under Section 197 Cr.P.C is not meant to protect a public servant dealing with the life or personal liberty of a man out of purview

of law or procedure established by law. Therefore, a Policeman has to act within the limits of the legal domain recognized by the Code of Criminal Procedure or any other enactments. Sanction as a protective measure is incorporated in Cr.P.C to save a public servant acting *bonafidely* without exceeding the jurisdictional limits and also duly exercising the authority recognized by law. What is intended by the incorporation of Section 197 in Cr.P.C is an assurance to a public servant that for whatever things *bonafide* done by him in the lawful exercise of the authority conferred on him, protection would be afforded to him.

33. Therefore, they cannot take the advantage of Section 197 Cr.P.C after committing mischievous acts under the guise of lawful discharge of official duties as in the case on hand. The fact that the incident was occurred within the Police Station and during the course of discharge of official duty by the Policemen will not legalise it, if it turns out as an exercise of excess power by them for illegal gain. Exercise of power by a public servant in the course of lawful discharge of his official duty, though in excess, will be given protection under Section 197 Cr.P.C.

34. Viewed in the above perspective, the accused in the case on hand can only be taken to have exercised their authority

for committing some illegal acts, under the guise of exercise of lawful discharge of their official duties and therefore are not liable to be afforded with the protection envisaged under Section 197 Cr.P.C. Sanction contemplated under the above provision is not intended to safeguard illegal acts. Therefore, this Court has no hesitation to hold that sanction is absolutely unwarranted in the context for taking cognizance of the offence against the accused and prosecuting them.

35. In the case on hand, burn injuries were reported on the tongue of the complainant in Ext.P3 by PW7 and as evidenced from Exts.P4 and P5 discharge certificate and discharge summary respectively, those necessitated an extensive treatment for more than a month. PW7 has stated that the injuries found on the tongue could be caused with a burned cigarette as claimed by the complainant. Apart from that the other injuries reported by PW7 in Ext.P3 also tally with the version given by the complainant on its cause in the private complaint lodged by him.

36. The further allegation of the defence was that the incident alleged by the complainant was found by the courts below as established based on the versions of PW1 and PW2,

who are interested witnesses and without the support of any independent version to corroborate. According to them, the complainant was allegedly taken by the accused to the police station from an area where other residential houses are also available in his neighbourhood but he failed to cite and examine any of the inhabitants of the locality to support his case. According to them, independent version having not been brought on record by the complainant in evidence, the trial court is highly unjustified in arriving at a finding of guilt of the accused purely based on interested versions of PWs1 and 2, and the appellate court in confirming the same.

37. True that an independent version is not forthcoming to support the case of the complainant. Even going by the version of PW1, only a single house is situated in the neighbourhood and none of the inmates had occasion to see him transported to the Police Station in the jeep. The admitted case of the accused being that the complainant was brought to the police station on 08.02.1996, the complainant cannot be found fault with in not citing any of the inmates of the sole residence in the locality as a witness and examining him. The admitted case of the accused being that the complainant was at the Police Station in their

custody throughout the night on 08.02.1996, till his production before the Magistrate at 3.50 p.m. on 09.02.1996, want of independent evidence cannot be taken to have much material adverse impact on the complainant's venture to establish the incident of his transportation to the Police Station. The second part of the incident according to the complainant was his sufferance of torture at the hands of the policemen and sustainment of injuries. Those allegedly being occurred inside the police station during night hours, it is unlikely to be witnessed by any outsiders.

38. Complainant as PW1 has categorically deposed that after reaching the police station the first accused kicked him on his abdomen with his booted leg and on falling down, accused 2 to 5 fisted and kicked him on several parts of his body with their booted legs, saying that he would not be let to walk further. The 3rd accused then blowed his hands on his cheek, which caused oozing of blood out of his ears. He became unconscious then and regained consciousness only in the morning of 09.02.1996. Being unable to rise up, accused 2, 4 and 5 caused him to do so forcibly. First accused then pressed his hands on the complainant's neck and caused his tongue to protrude out. Third

accused then held his tongue and inflicted burn injuries on it with a burning cigarette, challenging him, how he would make complaints against them before the Magistrate. According to the complainant he was manhandled by them in front of his wife who came there along with his friend and neighbour, Mr.Ayyappan and they were driven out from the premises of the police station by intimidating that their life would be endangered. At about 1 p.m, the 3rd accused poured some water on his body and since he was unable to clean it, together with accused No.4, he wiped off the water from his body with a cloth. At about 4 p.m he was produced before Judicial First Class Magistrate Court - I, Kottarakara and was granted bail. He was directed to avail treatment for the injuries found on his body. He was taken to THQ Hospital, Kottrakara and also to other hospitals for treatment.

39. The wife of the complainant was not an ocular witness of the torture that had taken place at Ezhukone Police Station. Therefore, she is not supposed to speak about the way in which the injuries were inflicted on him. She had witnessed the arrival of the policemen at their house at 5.45 p.m on 08.02.1996 and transportation of her husband to the police station in the police

jeep. She also went to the Police Station accompanied by one Mr.Ayyappan, a neighbour and friend of her husband and there, she had also occasion to hear the hues and cries of her husband from inside the police station. She did not raise her voice against and constrained to leave the premises on being intimidated by the police. During examination, she has spoken to the above extent and her version indisputably have corroboration with that of PW1.

40. Medical evidence let in by the complainant by examining PW5 to PW7 and marking Exts.P3 to P5, also lend clear support to his version. The medical witnesses deposed that the injuries found on the body of PW1 could be caused as alleged by him. In the above context, the courts below cannot be found fault with in finding accused 1 and 3 to 5 guilty of the offences alleged, even without the support of any independent evidence. The trial against accused No.2 was abated on his death during the pendency of the case.

41. This Court had discussions already about the context in which injuries were inflicted by the accused on the complainant and was convinced that the injuries inflicted were of barbarous nature and unwarranted by the circumstances that exist at the

relevant time, for discharging the official duty by them as Policemen. The context being so, sanction as contemplated under Section 197 Cr.P.C cannot be a precondition for taking cognizance off the offences against the accused and for prosecuting them. The trial court undoubtedly is justified in holding so and this Court finds no reason to interfere with that finding.

42. The argument secondly advanced was that accused No.3 was not identified properly and the trial is vitiated and the prosecution case is defeated for the reason. According to Sri.Gopalakrishna Kurup, the learned Senior Counsel, the name of accused No.3 is Manirajan and during examination PW2 has mentioned his name as Manilal. Therefore, identification of accused No.3 lost it's sanctity and therefore, improper. According to him identification of accused being a crucial matter that impacts the finding of guilt of the accused, it being improper in the case on hand, the findings of guilt of Accused No.3 by the courts below deserve reversal.

43.It is true that there was no pointed identification of the accused by the complainant during trial. But PW1 has spoken categorically during examination that originally when he was

transported to the police station and was subjected to torture, he has no acquaintance with any of the accused, but lateron while being at the police station for hours, he had occasion to hear other Policemen calling each of them and thereby got acquainted of their names and identity. From Ext.D4, this Court is convinced that PW1 was present at the police station for more than 18 hours. The said duration is more than sufficient for PW1 to get acquainted of all accused with reference to their names and roles in manhandling him. While tendering evidence PW1 had also spoken about the contributions each accused made while torturing him.

44. Moreover, accused No.3 being the defacto complainant in C.C.No.183/1998, and the complainant herein having been faced trial in it, there is no question of identity of the accused to be mistaken by him. Examination of the accused under Section 313 (1) (b) Cr.P.C also lend support to the fact that identity was not disputed by the accused at anytime during trial. In the above circumstances the argument advanced on impropriety of identification of accused No.3 is only to be thrown out as untenable.

45. Yet another argument advanced was that specific overt act of 5th accused in the incident being not established, finding him as guilty and passing orders of conviction and sentence against him deserve reversal. This is a case where common intention as envisaged under Section 34 IPC is alleged and not common object under Section 149 IPC. True that unlike in the case of common object, overt act on the part of each and every accused need not be established by the prosecution, for convicting the accused with the aid of Section 34 IPC, lest, sharing of common intention alone and that can be achieved even by establishing the presence of the accused in the company of the main culprits during the transaction. Presence of all accused was spoken by PW1 and evidence to the contrary has not been let in by the accused. Therefore, undoubtedly they shared their common intention to torture the complainant. The offences attracted in the prosecution are those punishable under Sections 323 and 324 read with Section 34 IPC. Common intention shared by the accused in the case on hand was to wreck vengeance against the accused for demand made by him for wages from a relative of accused No.3 by causing physical hurt to him. PW1 has spoken about the motive behind the

offensive act by the accused in definite terms. The manner in which Accused No.5 acted to facilitate the commission of the offensive act was also categorically spoken by him and the indication possibly drawn was that he shared the common intention with the other accused to torture the complainant. Therefore this Court finds no reason to accept the argument advanced to the contrary by Sri.S. Rajeev. Para 13 of the judgment of the Apex Court in **Devi Lal and Another v. The State of Rajasthan** [1971 (3) SCC 471] which draws a distinction on common object and common intention is apposite extraction hereunder :

> "13. The distinction between Sections 34 and 149 of the Indian Penal Code was not clearly noticed by the Sessions Court and the High Court did not deal with this point at all. Under Section 34, when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. The words "in furtherance of the common intention of all" are a most essential part of Section 34 of the Indian Penal Code. It is common intention to commit the crime actually committed. This common intention is anterior in time to the commission of the crime. Common intention means a pre-arranged plan. On the other hand, Section 149 of the Indian Penal Code speaks of an offence being

> committed by any member of an unlawful assembly in prosecution of the common object of that assembly. The distinction between "common intention" under Section 34 and "common object" under Section 149 is of vital importance. The Sessions Court fell into the error of convicting the appellants under Section 302, read with Section 34 of the Indian Penal Code by holding that "if a number of persons assault another with a stick mercilessly their intention can only be to murder that man or at least they should know that they are likely to cause death of the person concerned". This aspect of their being likely to cause death would be relevant under Section 149 and not under Section 34 of the Indian Penal Code for the obvious reason that under Section 34 it has to be established that there was the common intention before the participation by the accused."

46. The complainant has stated categorically that accused No.5 pushed him against the compound wall and facilitated others to do the offensive part alleged against them. As revealed from the evidence accused No.5 was in the company of others and by pushing the victim against the compound wall and thereby joining in manhandling the complainant, he cannot be spared of from conviction for the offences under Sections 323 and 324 read with Section 34 IPC. The allegation made by the complainant in the private complaint and tendered as evidence

during examination are satisfactory to impress the Court that all the accused had acted in furtherance of their common intention and therefore are guilty of the offences alleged against them.

47. In the light of the foregoing discussions, this Court has no hesitation to hold that the trial court and the appellate court are not in error and are perfectly justified in finding accused Nos.1 and 3 to 5 guilty for the offences under Sections 323 and 324 read with Section 34 IPC, convicting them and imposing punishments on them for those by the impugned judgment.

In the result, both revisions fail and are dismissed.

Sd/-
MARY JOSEPH, JUDGE

ttb/NAB/MJL/JJ