

15 -ാം കേരള നിയമസഭ

2 -ാം സമ്മേളനം

നക്ഷത്രചിഹ്നമിട്ട ചോദ്യം നം. 146

28-07-2021 - ൽ മറുപടിയ്ക്ക്

ജനപ്രതിനിധികൾ ഉൾപ്പെട്ട ക്രിമിനൽ കേസുകൾ

ചോദ്യം		ഉത്തരം	
<p>ശ്രീ . മഞ്ഞളാംകുഴി അലി , ശ്രീ .പി. കെ. ബഷീർ , ശ്രീ. കെ. പി. എ. മജീദ്, ഡോ. എം. കെ . മുനീർ</p>		<p>Shri. Pinarayi Vijayan (മുഖ്യമന്ത്രി)</p>	
(എ)	<p>മന്ത്രിമാരുൾപ്പെടെയുള്ള ജനപ്രതിനിധികൾ പ്രതികളായ ക്രിമിനൽ കേസുകൾ പിൻവലിക്കാൻ സർക്കാർ നയപരമായ തീരുമാനം എടുത്തിട്ടുണ്ടോയെന്നറിയിക്കുമോ;</p>	(എ)	<p>ഇല്ല; ക്രിമിനൽ കേസുകൾ പിൻവലിക്കുന്നതിനായി സർക്കാരിൽ ലഭ്യമാകുന്ന അപേക്ഷകളിൽ ഓരോ കേസും പ്രത്യേകം പരിശോധിച്ച ശേഷം ക്രിമിനൽ നിയമസംഹിതയിലെ 321-ാം വകുപ്പു പ്രകാരം ഉചിതമെങ്കിൽ കോടതിയുടെ അനുമതി യോടെ പിൻവലിക്കുന്നതിൽ എതിർപ്പില്ലായെന്ന് ജില്ലാകളക്ടറെ അറിയിക്കുകയാണ് ചെയ്തു വരുന്നത്.</p>
(ബി)	<p>2015-ൽ നിയമസഭയിൽ നടന്ന കയ്യാങ്കളിയുമായി ബന്ധപ്പെട്ട ക്രിമിനൽ കേസുകൾ പിൻവലിക്കുന്നതിന് സുപ്രീം കോടതിയിൽ ഹർജി നൽകിയിട്ടുണ്ടോ;</p>	(ബി)	<p>മ്യൂസിയം പോലീസ് സ്റ്റേഷനിൽ 236/2015 ക്രൈം നമ്പരായി രജിസ്റ്റർ ചെയ്തതും തിരുവനന്തപുരം ചീഫ് ജുഡീഷ്യൽ മജിസ്ട്രേറ്റ് കോടതിയിൽ സി.സി.790/2016-ാം നമ്പരായി നിലവിലുള്ളതുമായ കേസ് ബഹു.വിചാരണ കോടതിയുടെ അനുമതിയോടെ ക്രിമിനൽ നിയമസംഹിതയിലെ 321-ാം വകുപ്പുപ്രകാരമുള്ള അധികാരം ഉപയോഗിച്ച് പിൻവലിക്കുന്നതിൽ സർക്കാരിന് എതിർപ്പില്ലായെന്ന് ജില്ലാകളക്ടറെ അറിയിച്ചിരുന്നു. എന്നാൽ ആയതിന് വിചാരണകോടതി അനുമതി നൽകാത്തതിനാൽ ബഹു.ഹൈക്കോടതിയെ സമീപിച്ചിരുന്നു. പ്രസ്തുത കേസ് തീർപ്പാക്കപ്പെട്ടുകൊണ്ട് ബഹു.ഹൈക്കോടതി പുറപ്പെടുവിച്ച വിധിന്യായത്തിൽ ക്രിമിനൽ നിയമ സംഹിതയിലെ 321-ാം വകുപ്പിന്റെ പ്രസക്തിയും സാംഗത്യവും അതിൽ സർക്കാരിനുള്ള അധികാരവും സംബന്ധിച്ച ചില നിയമപരമായ വിഷയങ്ങൾക്ക് വ്യക്തത വരുത്തുന്നതിനു വേണ്ടിയാണ് സർക്കാർ ബഹു.സുപ്രീംകോടതി മുന്പാകെ SLP ഫയൽ ചെയ്തിട്ടുള്ളത്.</p>
(സി)	<p>പ്രസ്തുത കേസുകൾ പിൻവലിക്കുന്നതിന് എന്തെല്ലാം കാരണങ്ങളാണ് ഹർജിയിൽ</p>	(സി)	<p>ഹർജിയുടെ പകർപ്പ് അനുബന്ധമായി ചേർത്തിരിക്കുന്നു.</p>

ചൂണ്ടിക്കാട്ടിയിരിക്കുന്നത്; വിശദാംശം
അറിയിക്കുമോ?

സെക്ഷൻ ഓഫീസർ

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

[ORDER XXI RULE 3(1) (a)]

SPECIAL LEAVE PETITION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CRIMINAL) No. 4009 OF 2021

[Against the impugned Order passed by the Hon'ble High Court of Kerala
at Ernakulam in CrI. Revision Petition No. 641 of 2020 dated 12/03/2021]

[WITH PRAYER FOR INTERIM RELIEF]

IN THE MATTER OF: -

State of Kerala

..... Petitioner

Versus

K.Ajith & others

..... Respondents

WITH

IA. No of 2021:

Application for exemption from certified copy of Order

PAPER BOOK

[FOR INDEX PLEASE SEE INSIDE]

ADVOCATE FOR THE PETITIONER: **G. PRAKASH**

FILED ON: **28.04.2021**

25/6

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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

SPECIAL LEAVE PETITION (Crl) NO. OF 2021

IN THE MATTER OF: -

State of Kerala Petitioner

Versus

K. Ajith & others Respondents

OFFICE REPORT ON LIMITATION

1. The Petition is/ are within time.
2. The Petition is barred by time and there is delay of _____ days in filing the same against the impugned judgment dated 12/03/2021 and application for condonation of _____ days delay has been filed.
3. There is delay of days in re-filing the petition and application for condonation of days delay in re-filing has been filed.

**BRANCH OFFICER
NEW DELHI**

DATED: 28.04.2021

PROFORMA FOR FIRST LISTING

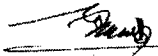
SECTION - XIA

The case pertains to (Please tick/check the correct box) :

- | | | |
|--------------------------|---------------------------|--------------------------------|
| <input type="checkbox"/> | Central Act: (Title) | IPC |
| <input type="checkbox"/> | Section | 427,447 |
| <input type="checkbox"/> | Central Rule (Title) | NA |
| <input type="checkbox"/> | Rule No.(s) | NA |
| <input type="checkbox"/> | State Act: (Title) | NA |
| <input type="checkbox"/> | Section | |
| <input type="checkbox"/> | State Rule (Title) | NA |
| <input type="checkbox"/> | Rule No.(s) | NA |
| <input type="checkbox"/> | Impugned Order (Date:) | 12.03.2021 |
| <input type="checkbox"/> | High Court (Name) | Kerala High Court at Ernakulam |
| <input type="checkbox"/> | Names of Judges | Mr. V.G Arun |
| <input type="checkbox"/> | Tribunal/Authority (Name) | : NA |
1. **Nature of matter:** Civil Criminal
2. (a) Petitioner/appellant No.1 State Of Kerala
(b) E-mail ID : NA
(c) Mobile phone Number : 9810122168
3. (a) Respondent K.AJITH
(b) e-mail ID : Not known
(c) Mobile phone number : Not known
4. (a) Main category classification
(b) Sub Classification
5. Not to be listed before : NA
6. (a) Similar disposed of matter with citation if any case details No similar matter disposed of

- (b) Similar pending matter with case details : No similar matter pending
7. **Criminal Matters:**
- (a) Whether accused/convict has surrendered : Yes : No
- (b) FIR No. :
- (c) Police Station :
- (d) Sentence Awarded : NA
- (e) Sentence Undergone : NA
8. **Land Acquisition Matters:**
- (a) Date of Section 4 notification : NA
- (b) Date of Section 6 notification : NA
- (c) Date of Section 17 notification : NA
9. **Tax Matters:** State the tax effect : NA
10. Special Category (first petitioner/appellant only) : NA
- Senior citizen > 65 years SC/ST Woman/child Dis Abled
- Legal Aid case In custody
11. Vehicle Number (in case of Motor Accident Claim matters) : NA

AOR for
Petitioner(s)/appellant(s)



(G. Prakash)
Advocate for the petitioner
Registration No.208
g.prakash.delhi@gmail.com
Mob:9810122168

Date: 01.05.21

SYNOPSIS AND LIST OF DATES

.C.C. No.73/2019 on the file of the Chief Judicial Magistrate Court, Thiruvananthapuram was registered on a complaint made by the Secretary, Legislative Assembly, Kerala in connection with an incident happened on the floor of the Legislative Assembly Session on 13/03/2015. Offence under section 447, 427 r/w. Section 34 IPC and Section 3(1) of Prevention of Damage to Public Property Act was registered against the MLA's who made a protest on the floor of the Assembly on 13/03/2015 against the then finance minister while introducing the budget on certain political reasons.

The question involved in this SLP is with regard to the interpretation of Section 321 of the CrI.P.C. which gives powers to the prosecutor to file an application for withdrawal of a case. This Hon'ble Court settled the proposition of law on this aspect in a number of decisions. What can be look into by the court whether the public prosecutor had filed the application for withdrawal in good faith after independently analysing the whole situation and whether the withdrawal of the cases will help the ends of justice.

The trial court dismiss the application after analysing the facts of this case which is not otherwise the duty of the court while considering an application under 321 of CrI.P.C.

The State of Kerala and the accsued persons preferred Criminal Revision Petition before the Hon'ble High Court of Kerala at Ernakualm. These revision petitions were dismissed by the High Court by the impugned judgment without appreciating the ratio laid down by this Hon'ble Court. Hence this Special Leave Petition considering the following question of law.

- I. When the alleged offences under Section 447 and 427 of IPC and Section 3(1) of the Prevention of Damage to Public Property Act

happened in connection with an incident on the floor of the Legislative Assembly during the budget session of the legislature while making a protest by opposition members of the Legislative Assembly against the budget presentation by the then finance minister due to the then prevailing political reason, is it proper to dismiss an application filed by the prosecutor under section 321 of Criminal Procedure Code. by the Court on the ground that the application submitted by the public prosecutor was not in good faith and not supported by any cogent reason?

- II. When the alleged incident had occurred while the assembly was in session and no crime could have been registered without previous sanction of the Hon'ble Speaker, the FIR registered by the Secretary Legislative Assembly without the consent of the Speaker is wrong and therefore the application filed under section 321 Cr.P.C. is liable to be allowed ?
- III. When the act of the accused persons being in relation to their function to protest as members of the legislative assembly, the MLA's who are accused in this FIR are entitled to get protection or not?
- IV. When there was no evidence to show that the application submitted by the public prosecutor was not in good faith and was on external influence, can the Court refuse permission under section 321 Cr.P.C. to withdraw the prosecution?
- V. Whether the application to withdraw the prosecution like the one will advance the public justice by ensuring the privilege of the legislative assembly ?
- VI. When the law with regard to an application under section 321 Cr.P.C. is settled time and again by this Hon'ble Court stating that the duty of the court is only to see that the application was

filed with proper application of mind by the prosecution and if it is satisfied the same then the court cannot dismiss the application?

- VII. Whether while dismissing the application filed by the prosecutor the learned Judge failed to appreciate the legal principles settled by this Hon'ble Court in various decisions of this point?
- VIII. When Article 105(3), 194(3) of the Constitution of India confers certain privileges and immunities to the members of the parliament and State Legislature, is it proper to the Secretary of Legislative Assembly to file cases against the MLA's with regard to an incident happened on the floor of the House during the protest made by the opposition members, that too without the consent of the Speaker of the Assembly?

LIST OF DATES AND EVENTS:

<u>Date</u>	<u>Events</u>
13/03/2015	<p>According to the complaint that on 13/03/2015 at 8.55 a.m. while on the budgetary assembly sessions accused MLA's belonging to the then opposition protested against the then finance minister in placing the budget and in that incident committed mischief by destroying public property inside the assembly.</p> <p>CBCID, EOW (1) registered Crime No.236/2015 of Museum Police Station under section 447, 427 r/w Section 34 IPC and Section 3(1) of Prevention of Damage to Public Property Act. The case is pending against the MLA's as C.C. 151/2018 on the file of Additional Chief Judicial</p>

Magistrate (Special Court for MP's & MLA's) Ernakulam

- 21/07/2018 An application under section 321 of CrI.P.C. was filed by the Assistant Public Prosecutor, Senior Grade, Ernakulam in C.C. No.151/2018 seeking sanction to withdraw the aforesaid case as against all the accused persons the application was filed with bonafide intention and also in the interest of justice. The copy of the application dated 21/07/2018 filed by the Assistant Public Prosecution, Senior Grade, Ernakulam in C.C. No.151/2018 before the Hon'ble Additional Chief Judicial Magistrate Court, Ernakulam is annexed to this petition as Annexure P1 (Page No.47-50.....)
- 22/09/2020 The case has been transferred to the court of Chief Judicial Magistrate, Thiruvananthapuram and has been numbered as C.C. 73/2019. The Court of Chief Judicial Magistrate, Thiruvananthapuram considered the application filed under section 321 CrI.P.C. and by order dated 22/09/2020 dismiss the application holding that the application is filed without good faith and on external influence. Copy of the order dated 22/09/2020 in CrI.M.P. No.2577/2019 in C.C. No.73/2019 passed by the Chief Judicial Magistrate , Thiruvananthapuram is annexed to this petition as Annexure P2 (Page No.51-58.....)
- 28/10/2020 Criminal Revision Petition No.641/2020 filed by the State of Kerala challenging the order dated 22/09/2020 of the Leanred Chief Judicial Magistrate, Thiruvananthapuram in CrI.M.P No.2577/2019 in C.C. No.73/2019. Copy of the Criminal Revision Petition No.641/2020 filed by the State

of Kerala before the High Court of Kerala on 28/10/2020 is annexed to this petition as Annexure P3 (Page No.59-71.....)

- 12/03/2021 The Hon'ble High Court of Kerala by the impugned order dated 12/03/2021 dismissed Criminal Revision Petition No.641/2020 filed by the State of Kerala.
- 28/04/2021 Special Leave petition has been filed.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 12TH DAY OF MARCH 2021 / 21ST PHALGUNA, 1942

Crl.Rev.Pet.No.641 OF 2020

AGAINST THE ORDER/JUDGMENT IN CRL.MP.NO.2577 OF 2019 IN CC
73/2019 OF CHIEF JUDICIAL MAGISTRATE ,TRIVANDRUM/SPECIAL COURT
FOR TRIAL OF CYBER CRIME

REVISION PETITIONER/S:

STATE OF KERALA
REPRESENTED BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADVS.
DIRECTOR GENERAL OF PROSECUTION
SRI.P.NARAYANAN, SENIOR GOVT. PLEADER
SRI.V.MANU, SENIOR GOVT. PLEADER
SRI.K.K.RAVINDRANATH, ADDL.ADVOCATE GENERAL

RESPONDENT/S:

- 1 K.AJITH
AGED 49 YEARS
S/O.KESAVAN, AGED 49 YEARS,
ANJANAM (SHANTHALAYAM), THEKKENADA, VAIKOM, VAIKOM
TALUK, KOTTAYAM DISTRICT-686141.
- 2 KUNJAMMADU MASTER, S/O.IBRAHIM, AGED 71 YEARS,
KURUNGOTTU VEEDU, NEAR MARUTHERI, MENJANEYAM
VILLAGE, KOYILANDI TALUK, KOZHIKODE DISTRICT-673
525.
- 3 E.P.JAYARAJAN, S/O.KRISHNAN NAMBIAR, HAVING
PERMANENT RESIDENCE AT JAISON HOUSE, AAROLI,
PAPPINISSERRY VILLAGE, KANNUR DISTRICT - 670566.
- 4 C.K.SADASIVAN, AGED 67 YEARS, S/O.KUMARAN,
CHUNGAPPURAKKAL HOUSE, KUPPAPURAM, KAINAKARU
VADAKKU VILLAGE, KUTTANADU TALUK, ALAPPUZHA-688011.

CRL.RP.641 & 662/2020

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- 5 V.SIVANKUTTY, S/O.VASUDEVAN PILLAI, MULLAKKAL HOUSE, TC-36/1241, 9, SUBHASH NAGAR, PERUNTHANNI, PETTAH VILLAGE, VALLAKADAVU P.O., THIRUVANANTHAPURAM DISTRICT-695008.
- 6 K.T.JALEEL, S/O.K.T.KUNJU MUHAMMED, HAVING PERMANENT RESIDENCE AT "GHAZAL HOUSE", MEENPARA, VALANCHERRY, KATTIPARUTHI VILLAGE, THIRUR TALUK, MALAPPURAM DISTRICT-676552.
- ADDL. 7 AJITH KUMAR T.,
S/O.THANKAPPAN NAIR, GOPALAKRISHNA MARKET ROAD, SREEKARYAM P.O., THIRUVANANTHAPURAM-695017.
- ADDL. 8 RAMESH CHENNITHALA, AGED 60 YARS,
S/O.LATE V.RAMAKRISHNAN NAIR, MEMBER, KERALA LEGISLATIVE ASSEMBLY, RESIDING AT CANTONMENT HOUSE, THIRUVANANTHAPURAM, PIN-695 033.

ADDITIONAL 7TH RESPONDENT IS IMPLEADED AS PER ORDER DATED 12.3.2021 IN CRL.M.APPL.3 OF 2021
ADDITIONAL 8TH RESPONDENT IS IMPLEADED AS PER ORDER DATED 12.3.2021 IN CRL.M.APPL.4 OF 2021.

BY ADV. R.V.SREEJITH
BY ADV. SRI.SUVIN.R.MENON
BY ADV. T.ASAFALI
BY ADV. SRI.P.K.SAJEEVAN
BY ADV. SMT.LALIZA.T.Y.
BY ADV. SRI.C.RAJENDRAN
BY ADV. SRI.S.BIJU (KIZHAKKANELA)

OTHER PRESENT:

SR.GP.SUMAN CHAKRAVARTHY FOR DGP

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23.11.2020, ALONG WITH Crl.Rev.Pet.662/2020, THE COURT ON 12.3.2021 PASSED THE FOLLOWING:

'C.R'

V.G.ARUN, J.

CRL.R.P.Nos.641 and 662 of 2020

Dated this the 12th day of March, 2021**O R D E R**

These criminal revision petitions are filed by the State of Kerala and the accused in C.C.No. 73 of 2019, pending on the files of the Chief Judicial Magistrate's Court, Thiruvananthapuram. The common grievance of the revision petitioners is against the order dismissing the application filed by the Public Prosecutor, seeking permission to withdraw from the prosecution against the accused.

2. The essential facts are as follows;

On 13.3.2015, at about 8.55 a.m., while the Finance Minister of the State was presenting the Budget for the financial year 2015-2016 in the Kerala Legislative Assembly Hall, the accused, who, at that time were opposition MLAs, disrupted the budget presentation, climbed over to the Honourable Speaker's dais, damaged articles like the Speaker's chair, computer, mike, emergency lamp etc. and thereby caused a loss of Rs.2,20,093/- to the Government. On receipt of

information regarding the incident from the Legislature Secretary, Crime No.236 of 2015 was registered at the Museum Police Station, Thiruvananthapuram for offences punishable under Sections 447, 427 read with 34 of IPC and Section 3(1) of the Prevention of Damage to Public Property Act. Investigation of the crime was later entrusted with the Deputy Superintendent of Police, E.O.Wing-I, Crime Branch CID, Thiruvananthapuram. On completion of investigation and submission of the final report, cognizance was taken for the aforementioned offences. Later, the Public Prosecutor sought permission to withdraw from the prosecution by filing Crl.M.P.No.2577 of 2019 under Section 321 Cr.P.C. The learned Chief Judicial Magistrate refused to accept the reasons highlighted in the petition like, immunity provided under Article 194(3) of the Constitution of India , illegality in having registered the crime without prior sanction from the Speaker, insufficiency of evidence, irreparable injury that will be caused to the Legislative Assembly by dragging its proceedings to the criminal court, thereby adversely affecting public interest and public order and most importantly, the decision to withdraw from the prosecution being the absolute prerogative of the Public Prosecutor and the very limited role of the court while considering the application. Further, the allegations were found to be serious in nature and that being participants in the lawmaking process, the accused were expected to obey the laws. According to the learned CJM, granting permission to withdraw from

the prosecution will give a wrong message to society.

3. Assailing the legality of the impugned order and justifying the request for withdrawal, Sri.K.K.Ravindranath, learned Additional Advocate General put forth elaborate and persuasive arguments, which were ably supported and supplemented by Sri.B.Raman Pillai, learned Senior Counsel appearing for the accused. Sri.T.Asaf Ali, learned counsel appearing for the Leader of the Opposition, who was heard by the trial court while considering the petition seeking withdrawal, refuted the grounds of challenge and argued in support of the findings in the impugned order. Advocate Sri.R.V.Sreejith, appearing for the additional 7th respondent in Crl. R.P. No.641 Of 2020, an interested third party, contended that the findings in the impugned order being well founded, warrants no interference.

4. Briefly put, the contentions urged on behalf of the petitioners are as under;

The 2015-2016 Budget Session of the Kerala Legislative Assembly was being conducted in a charged atmosphere, the opposition having raised serious allegations of corruption and nepotism against the Finance Minister. Within the house, the opposition members had been protesting against presentation of the budget by a tainted person, while the treasury members came out in support of the Finance Minister. This led to a melee and slogan

shouting between members of the treasury and opposition benches. The alleged incident occurred during this ruckus. The members of the ruling party were equally at fault and crimes have been registered against some ruling party members, at the instance of certain lady members of the opposition, on complaints of misbehaviour. The incident having occurred while the Assembly was in session, no crime could be registered without the Speaker's sanction. The assumption of the learned Magistrate that the information leading to registration of the crime would have been with the knowledge and consent of the Speaker, since it was given by the Secretary of the Assembly, is untenable. Articles 105(3) and 194(3) of the Constitution of India confer certain privileges and immunities to the members of Parliament and State Legislatures. The alleged acts of the accused being in relation to their function as members of the Legislative Assembly, no criminal proceedings can be initiated. At best, their action will only amount to breach of privilege or code of conduct for which only the Speaker is empowered to take action. The Public Prosecutor performs an executive function while submitting an application under Section 321 and the role of the court is only supervisory. Other than considering whether the request for withdrawal is made by the Public Prosecutor on his own, without any outside influence or for extraneous considerations, the court was not expected or entitled to re-appreciate the reasons and come to a different conclusion.

5. The following precedents were cited in support of the contentions; **State of Bihar v. Ram Naresh Pandey** [AIR 1957 SC 389], **Rajender Kumar Jain v. State through Spl. Police Establishment and Others** [1980 KHC 715], **Sheonandan Paswan v. State of Bihar and Others** [(1987) 1 SCC 288], **State of Kerala v. Varkala Radhakrishnan** [ILR 2009(1) Ker.721], **Appukuttan Pillai and Another v. State of Kerala** [1999(1) KLJ 337], **Razack and Others v. State of Kerala** [2001 Crl.LJ 275].

6. Following is the summary of the counter arguments advanced by the additional respondents;

The role of the Public Prosecutor and of the Government while seeking withdrawal from the prosecution are distinct and separate. Hence, the revision petition filed by the State of Kerala, instead of the Public Prosecutor, is not maintainable. Moreover, filing of the revision petition by the Government is indicative of the Public Prosecutor having acted under compulsion. The privilege/immunity under Articles 105 and 194 cannot be extended to persons who have desecrated the sanctum sanctorum of democracy. The privileges cannot be understood as the privilege to commit criminal acts and the court is not expected to pass orders on petitions seeking withdrawal from the prosecution mechanically. The order should be rendered only after taking into account all relevant aspects, the predominant consideration

being the advancement of public justice. The petition seeking withdrawal was made by the Assistant Public Prosecutor while the case was pending before the Additional Chief Judicial Magistrate's Court (Special Court for M.P's and M.L.A's) Ernakulam. The case was later transferred and the impugned order having been passed by the Chief judicial Magistrate, Thiruvananthapuram, only the Public Prosecutor at the CJM court who was in charge of the case, could have submitted the petition. To buttress the contentions, the following decisions were relied upon;

State of Punjab v Surjit Singh and others [AIR 1967 SC 1214]; ***Abdul Wahab K. v State of Kerala*** [(2018) 18 SCC 448]; ***Achuthanandan v. R.Balakrishna Pillai*** [1994 KHC 346]; ***Narasimha Rao v. State (SBI/SPE)*** [AIR 1998 SC 2120]; ***Dineshan K.V. and Another v State of Kerala and Others*** [2013 (4) KHC 206] ; ***Jiji Thomas v. State of Kerala*** [2015 KHC 67].

7. I find no merit in the challenge against maintainability, for reason of the Government having filed the revision petition. It is true that the petition seeking withdrawal should be the result of an independent exercise of mind by the Public Prosecutor, but, the scope of Section 321 cannot be further extended to hold that, challenge against an order passed on the petition should also be made by the same Prosecutor and not the Government. The contention goes

against the very scheme of the Code of Criminal Procedure. The State is bestowed with the duty of prosecuting the offenders and Public Prosecutors are appointed under Section 24 of Cr.P.C to aid the State in that process. Moreover, a reading of the petition under Section 321 reflects independent application of mind by the Public Prosecutor.

8. The challenge on the ground of a Prosecutor other than the Public Prosecutor in charge of the case, having sought withdrawal is specious, since the petition was submitted by the Assistant Public Prosecutor at the Additional Chief Judicial Magistrate's Court (Special Court for M.P's and M.L.A's) Ernakulam, who, at that point of time, was in charge of the case. The decision in **Surjit Singh's case** (supra) is to the effect that only the prosecutor who is actually conducting the prosecution is entitled to file the petition seeking withdrawal.

9. Having repelled the challenge against maintainability and incompetency, I proceed to decide the revision petitions on merits.

10. Section 321 of Cr.P.C, which empowers the Public Prosecutor to seek permission to withdraw from the prosecution, reads as follows;

"321. Withdrawal from prosecution.

The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal,-

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences:

PROVIDED that where such offence-

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution."

11. The section provides for premature termination of the prosecution, which is a deviation from normal procedure and has therefore engaged the attention of the Apex Court time and again. For the sake of brevity, only the relevant among the cited decisions are

discussed.

12. In **Ram Naresh Pande** (supra), the accused Mahesh Desai was a member of the Bihar State Legislature, who faced the allegation of having abetted a riot by his speeches and exhortations, which resulted in the death of one person. Pending trial for the offence under Section 302/109 of IPC, the Public Prosecutor sought permission to withdraw from the prosecution against Ram Mahesh Desai on the premise that the evidence available was inadequate to proceed with the prosecution and secure the accused's conviction. The trial court granted consent, which was set aside by the High Court in the appeal filed by Ram Naresh Pandey, the first informant. The intervention by the High Court was assailed before the Apex Court by the State of Bihar and the accused. Allowing the appeals, the Apex Court held that the function of the court while considering an application under Section 494 of the old Code (corresponding to Section 321 of the Code of 1973), may well be taken as a judicial function and therefore, while granting the consent, the court must exercise judicial discretion. That, in understanding and applying the Section two main features have to be kept in mind; (i) the initiative is that of the Public Prosecutor; and (ii) what the court has to do is only to give its consent and not to determine any matter judicially.

13. Later, in **M.N.Sankaranarayanan Nair v.**

P.V.Balakrishnan, [AIR 1972 SC 496], the position was clarified by observing that, the wide and general powers conferred on the Public Prosecutor to withdraw from the prosecution has to be exercised by him "in furtherance of, rather than as a hindrance to the object of the law and that the court, while considering the request to grant permission, should not do so as a necessary formality, by granting it for the mere asking".

14. In **Rajender Kumar Jain** (supra), the Apex Court culled out the following principles, laid down by the earlier decisions, at 14 of the judgment;

"14. Thus, from the precedents of this Court, we gather:

"1. Under the scheme of the Code, prosecution of an offender for a serious offence is primarily the responsibility of the executive.

2. The withdrawal from the prosecution is an executive function of the Public Prosecutor.

3. The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.

4. The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.

5. The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but on other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic and, we add, political purposes sans Tammary Hall enterprises.

6. *The Public Prosecutor is an officer of the court and responsible to the court.*

7. *The court performs a supervisory function in granting its consent to the withdrawal.*

8. *The court's duty is not to reappreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations. The court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution.*

15. Thereafter, the decision in ***Sheonandan Paswan*** (supra) was rendered. The basic facts therein being that, the prosecution against Dr.Jagannath Mishra, one time Chief Minister of the State of Bihar, was sought to be withdrawn by the Public Prosecutor. Despite objections raised by Sheonandan Paswan, a Member of the Legislative Assembly, the jurisdictional court granted permission. When the challenge against that order before the High Court failed, Sheonandan Paswan approached the Supreme Court and a bench of three judges dismissed the appeal (***Sheonandan Paswan v. State of Bihar and Others*** [(1983) 1 SCC 438]). Thereupon a review petition was filed and the matter was re-heard by a five Judge bench. After elaborate discussion on the contours of power of the Prosecutor and the Court in an application under Section 321, the majority view was expressed by Chief Justice Bhagwati in ***Sheonandan Paswan v. State of Bihar***

and Others [(1987)1 SCC 288] holding that the power conferred on the Prosecutor to withdraw from the prosecution must be a controlled or a guided power or else it will fall foul of Article 14 of the Constitution. Such power can be exercised only with the consent of the court so that the court can ensure that the power is not abused or misused or exercised in an arbitrary or fanciful manner. Once the charge sheet is filed and prosecution initiated, it is not left to the sweet will of the State or the Public Prosecutor to withdraw from the prosecution. It was held that the paramount consideration must always be in the interest of administration of justice, which is the touchstone on which the question of whether an application for withdrawal from the prosecution can be sustained, should be determined. That, the ultimate test to be applied is whether the requirement of public justice outweighs the legal justice of that case, justifying the grant of permission to withdraw from the prosecution in the larger interest of public justice.

16. In **Abdul Wahab** (supra) the trial court allowed the petition seeking withdrawal, despite the Public Prosecutor having merely followed the Government's direction. Challenge against the order was set at nought by the High Court, finding the petitioner to be a third party, who had no role in the prosecution. The Apex Court interfered with the orders, finding that the petitioner, who had brought the errors committed by the trial court to the notice of the High court, could not

have been treated as a stranger and that, the trial court had failed to pass the order within the parameters of Section 321, despite the Public Prosecutor having acted as a mere post office.

17. A learned Judge of this Court in **Appukuttan Pillai and another v. State of Kerala** [1999 (1) KLJ 337] has held that the permission to withdraw from the prosecution can be given on the court being satisfied that the Public Prosecutor has acted in good faith and has exercised discretion while filing the application. **Varkala Radhakrishnan** (supra) limited the role of the court while exercising the jurisdiction under Section 321 to be supervisory and not adjudicatory. In **Razak and Another v. State of Kerala** [2001 CrLJ 275] the court went one step further to hold that neither the complainant or charge witness has *locus standi* in the exercise of discretion by the Public Prosecutor. However, said finding can longer hold good in the light of **Abdul wahab**.

18. Going by the precedents and on a purposive interpretation of the provision, there can be no room for doubt that the absolute prerogative to request permission for withdrawing from the prosecution is vested with the Public Prosecutor. However, such discretion should be exercised free of extraneous considerations or influences and should be based on cogent and convincing reasons. Even though the court is not expected to conduct a judicial review of

the reasons which promoted the Public Prosecutor to make the application, the grant of permission is not automatic and cannot be the result of a mechanical exercise. Even if appealing grounds are made in the application, the court can refuse to grant permission on finding that the withdrawal will not aid in advancement of public justice, which is the paramount consideration.

19. Although the learned Additional Advocate General argued that withdrawal from the prosecution in the instant case will advance the interest of public justice by ensuring that the prestige of the Legislative Assembly is not lowered in the eyes of the citizens, I am unable to accept the contention. It is for the elected representatives to uphold the prestige of the House and to face the consequences for the violations, if any committed. In this regard, I find the following observation in ***Sheonandan Paswan*** (supra) to be apposite.

“Even if personal harassment or inconvenience may be caused by non withdrawal from the prosecution, such harassment or inconvenience must be considered as an inevitable cost to public life, which the repositories of public power should have no hesitation to pay, as justice must not only be done but must also appear to be done.”

20. The next contention is regarding the privilege and immunity provided under Articles 105(3) and 194(3) of the Constitution. Article 105 deals with the powers, privileges etc. of the Houses of Parliament and of the members and committees thereof. Similar powers,

privileges etc. are granted to the House of Legislators and to its members, as per Article 194, which is extracted hereunder;

"194. Powers, privileges, etc, of the House of Legislatures and of the members and committees thereof.-

(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 26 of the Constitution forty fourth Amendment Act, 1978

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature."

21. In parliamentary language, the term 'privilege' applies to certain rights and immunities enjoyed by each House of Parliament

and the State Legislatures, its committees, and the members individually. The object of parliamentary privilege is to safeguard the freedom, the authority and the dignity of parliament. Privileges are enjoyed by individual members, because the House cannot perform its functions without unimpeded use of the services of its members; and collectively for the protection of its members and the vindication of its own authority and dignity. Going by Articles 105 and 194 of the Constitution, the Members of Parliament and of State Legislatures have complete freedom of speech and absolute immunity against proceedings in any court in respect of anything said or any vote given by such member and in respect of publication of any report, paper, votes or proceedings by or under authority of either House of Parliament, or of the State Legislature, as the case may be. However, this freedom and external influence or interference does not envisage unrestrained licence of speech within the walls of the House, such right being circumscribed by the constitutional provisions and the rules and standing orders, if any, regulating the procedure.

22. Learned Additional Advocate General laid particular emphasis on the residual protection provided under Article 194(3) and referred to certain portions from Chapter XII, in the text book on ***Practice and Procedure of Parliament*** by ***Kaul and Shakhder*** (7th Edition), dealing with Powers, Privileges and Immunities of Houses, their Committees and Members, to drive home the point that, for his speech

and action inside the Assembly a member can only be subjected to the discipline of the House and no proceedings, either civil or criminal, can be instituted against him in any court in respect of the same.

23. To counter this Contention, Sri. Asaf Ali drew attention to the following excerpt from the same Chapter, under the sub-heading 'Proceedings in Parliament and the Criminal Law';

"A criminal act committed by a member within the House cannot be regarded as a part of the proceedings of the House for purposes of protection. Thus, in the Maharashtra Legislative Assembly, when a member shouted at the operator to connect his mike to the loudspeaker, threw a paperweight in the direction of the loudspeaker-operator and rushed towards the Speaker and grabbed the mike in front of the Speaker, he was not only expelled from the House but was subsequently convicted under different sections of the Indian Penal Code and sentenced to rigorous imprisonment for six months."

24. Here, the question is whether the acts allegedly committed by the accused, which, if proven, would be offences punishable under the Indian Penal Code, are to be reckoned as part of the proceedings of the House, for the purpose of their protection. The answer can only be in the negative, since privileges and immunities are provided to ensure smooth functioning of the House by guaranteeing absolute freedom to the members to speak and participate in its deliberations. Here the allegation is of the functioning of the Assembly Session having been disrupted by the members by trespassing into the Speakers Dias and

committing mischief. The aforementioned acts, if proven to be true, can, by no stretch of imagination, be deemed to be acts done in furtherance of the free functioning of the house.

25. In this regard it may be apposite to extract the following observations of the Honourable Supreme Court in **Lokayukta Justice Ripusudan Dayal (Retired) and Others v State of Madhya Pradesh and Others** [(2014) 4 SCC 473];

“51. The scope of the privileges enjoyed depends upon the need for privileges i.e. why they have been provided for. The basic premise for the privileges enjoyed by the Members is to allow them to perform their functions as Members and no hindrance is caused to the functioning of the House. The Committee of Privileges of the Tenth Lok Sabha, noted the main arguments that have been advanced in favour of codification, some of which are as follows:

“(i) Parliamentary privileges are intended to be enjoyed on behalf of the people, in their interests and not against the people opposed to their interests;

(iii) the concept of privileges for any class of people is anachronistic in a democratic society and, therefore, if any, these privileges should be the barest minimum—only those necessary for functional purposes—and invariably defined in clear and precise terms;

(iv) sovereignty of Parliament has increasingly become a myth and a fallacy for, sovereignty, if any, vests only in the people of India who exercise it at the time of

general elections to the Lok Sabha and to the State Assemblies;

(v) in a system wedded to freedom and democracy—rule of law, rights of the individual, independent judiciary and constitutional Government—it is only fair that the fundamental rights of the citizens enshrined in the Constitution should have primacy over any privileges or special rights of any class of people, including the elected legislators, and that all such claims should be subject to judicial scrutiny, for situations may arise where the rights of the people may have to be protected even against Parliament or against captive or capricious parliamentary majorities of the moment;

(vi) the Constitution specifically envisaged privileges of the Houses of Parliament and State Legislatures and their Members and committees being defined by law by the respective legislatures and as such the Constitution-makers definitely intended these privileges being subject to the fundamental rights, provisions of the Constitution and the jurisdiction of the courts;

(viii) in any case, there is no question of any fresh privileges being added inasmuch as (a) under the Constitution, even at present, parliamentary privileges in India continue in actual practice to be governed by the precedents of the House of Commons as they existed on the day our Constitution came into force; and (b) in the House of Commons itself, creation of new privileges is not allowed.”

The Committee also noted the main arguments against codification.

Argument (vii) is as under:

(vii) The basic law that all citizens should be treated equally before the law holds good in the case of Members of Parliament as well. They have the same rights and liberties as ordinary citizens except when they perform their duties in Parliament. The privileges, therefore, do not, in any way, exempt Members from their normal obligation to society which apply to them as much and, perhaps, more closely in that as they apply to others.

52. It is clear that the basic concept is that the privileges are those rights without which the House cannot perform its legislative functions. They do not exempt the Members from their obligations under any statute which continue to apply to them like any other law applicable to ordinary citizens. Thus, enquiry or investigation into an allegation of corruption against some officers of the Legislative Assembly cannot be said to interfere with the legislative functions of the Assembly. No one enjoys any privilege against criminal prosecution."

26. The other major contention urged is regarding the illegality in having registered the crime without obtaining sanction from the Speaker of the Legislative Assembly. Other than the protection under Article 194 discussed above, no provision, which mandates sanction or permission of the Speaker before registering a crime in relation to offences committed by members inside the House was brought to my notice. Even on a careful scrutiny of the Rules of Procedure and Conduct of Business in the Kerala Assembly made in pursuance of

Article 208(1) of the Constitution of India, I could not find any such provision. Interestingly, Clause 44 in the 'Code of Conduct for the Members of the Kerala Legislative Assembly' exhorts the members to keep the fundamental duties listed in Part IV-A of the Constitution uppermost in their minds. One among the fundamental duties, as postulated by Article 51A (I), is to safeguard public property and to abjure violence.

27. The other reasons like, inadequacy of evidence, competency of the witnesses, inacceptability of documentary evidence in the absence of certification under Section 65B of the Evidence Act etc. are best left to be urged by the accused while seeking discharge, if so advised. This view is supported by the findings in ***Sheonandan Paswan*** [(1987) 1 SCC 288] extracted hereunder;

"30. The second qualification which we must introduce relates to a situation where a charge-sheet has been filed but charge has not been framed in a warrant case instituted on police report. Section 239 of the Code of Criminal Procedure, 1973 provides:

If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

Now when a warrant case instituted on a police report comes before the court, the court is required to consider only the police report and the documents sent along with it and the court may make such examination, if any, of the accused as it thinks necessary and on the basis of such material if the court, after giving the prosecution and the accused an opportunity of being heard, considers the charge against the accused to be groundless, the court is bound to discharge the accused. What the court, therefore, does while exercising its function under Section 239 is to consider the police report and the document sent along with it as also any statement made by the accused if the court chooses to examine him. And if the court finds that there is no prima facie case against the accused the court discharges him. But that is precisely what the court is called upon to do when an application for withdrawal from the prosecution is made by the Public Prosecutor on the ground that there is insufficient or no evidence to support the prosecution. There also the court would have to consider the material placed before it on behalf of the prosecution for the purpose of deciding whether the ground urged by the Public Prosecutor for withdrawal of the prosecution is justified or not and this material would be the same as the material before the court while discharging its function under Section 239. If the court while considering an application for withdrawal on the ground of insufficiency or absence of evidence to support the prosecution has to scrutinise the material for the purpose of deciding whether there is in fact insufficient evidence or no evidence at all in support of the prosecution, the court might as well engage itself in this exercise while considering under Section 239 whether the accused shall be discharged or a charge shall be framed against him. It is an identical exercise which the court will be performing whether the court acts under Section 239 or under Section 321. If that be so, we do not think that in a

warrant case instituted on a police report the Public Prosecutor should be entitled to make an application for withdrawal from the prosecution on the ground that there is insufficient or no evidence in support of the prosecution. The court will have to consider the same issue under Section 239 and it will most certainly further or advance the cause of public justice if the court examines the issue under Section 239 and gives its reasons for discharging the accused after a judicial consideration of the material before it, rather than allow the prosecution to be withdrawn by the Public Prosecutor. When the prosecution is allowed to be withdrawn there is always an uneasy feeling in the public mind that the case has not been allowed to be agitated before the court and the court has not given a judicial verdict. But, if on the other hand, the court examines the material and discharges the accused under Section 239, it will always carry greater conviction with the people because instead of the prosecution being withdrawn and taken out of the ken of judicial scrutiny the judicial verdict based on assessment and evaluation of the material before the court will always inspire greater confidence. Since the guiding consideration in all these cases is the imperative of public justice and it is absolutely essential that justice must not only be done but also appear to be done, we would hold that in a warrant case instituted on a police report — which the present case against Dr Jagannath Mishra and others admittedly is — it should not be a legitimate ground for the Public Prosecutor to urge in support of the application for withdrawal that there is insufficient or no evidence in support of the prosecution. The court in such a case should be left to decide under Section 239 whether the accused should be discharged or a charge should be framed against him."

28. The aforementioned deliberations lead to the only possible conclusion of the petition under Section 321 having been rejected for

CRL.RP. 641 & 662/2020

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valid and sustainable reasons, though I find no justification for the presumption in the order that the petition was filed without good faith and on extraneous influence.

In the result the criminal revision petitions are dismissed.

The observations in this order are made in the context of the issues considered and are not meant to prejudice the accused in their defence before the trial court.

Sd/-

V.G.ARUN, JUDGE

vgs

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IN THE SUPREME COURT OF INDIA
 (S.C.R. Order XXI Rule 3(1)(a))
 CRIMINAL APPELLATE JURISDICTION
 (Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (Criminal) No. of 2021

(WITH PRAYER FOR INTERIM RELIEF)

STATUS OF PARTIES

IN THE HIGH COURT

IN THIS COURT

1	STATE OF KERALA, REPRESENTED BY THE SECRETARY, DEPARTMENT OF HOME, SECRETARIATE, THIRUVANANTHAPURAM	Revision Petitioner		Petitioner	
AND					
	K.AJITH AGED 49 YEARS S/O.KESAVAN, AGED 49 YEARS, ANJANAM (SHANTHALAYAM), THEKKENADA, VAIKOM, VAIKOM TALUK, KOTTAYAM DISTRICT- 686141	Respondent	1	Respondent Contesting	1
2	KUNJAMMADU MASTER, S/O.IBRAHIM, AGED 71 YEARS, KURUNGOTTU VEEDU NEAR MARUTHERI, MENJANEYAM VILLAGE, KOYILANDI TALUK, KOZHIKODE DISTRICT-673525	Respondent	2	Respondent Contesting	2
3	E.P.JAYARAJAN, S/O.KRISHNAN NAMBIAR, HAVING PERMANENT RESIDENCE AT JAISON HOUSE, AAROLI, PAPPINISSERRY VILLAGE, KANNUR DISTRICT - 670566	Respondent	3	Respondent Contesting	3
4	C.K.SADASIVAN, AGED 67 YEARS, S/O.KUMARAN, CHUNGAPPURAKKAL HOUSE, KUPPAPURAM, KAINAKARU VADAKKU VILLAGE,	Respondent	4	Respondent Contesting	4

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5	KUTTANADU TALUK, ALAPPUZHA-688011 V.SIVANKUTTY, S/O.VASUDEVAN PILLAI, MULLAKKAL HOUSE, TC-36/1241, 9, SUBHASH NAGAR, PERUNTHANNI, PETTAH VILLAGE, VALLAKADAVU P.O., THIRUVANANTHAPURAM DISTRICT-695008	Respondent	5	Respondent Contesting	5
6	K.T.JALEEL, S/O.K.T.KUNJU MUHAMMED, HAVING PERMANENT RESIDENCE AT "GHAZAL HOUSE", MEENPARA, VALANCHERRY, KATTIPARUTHI VILLAGE, THIRUR TALUK, MALAPPURAM DISTRICT-6765: 2	Respondent	6	Respondent Contesting	6
7	AJITH KUMAR T., S/O.THANKAPPAN NAIR, GOPALAKRISHNA MARKET ROAD, SREEKARYAM P.O., THIRUVANANTHAPURAM-695017	Additional Respondent	7	Respondent Contesting	7
8	RAMESH CHENNITHALA, AGED 60 YARS, S/O.LATE V.RAMAKRISHNAN NAIR, MEMBER, KERALA LEGISLATIVE ASSEMBLY, RESIDING AT CANTONMENT HOUSE, THIRUVANANTHAPURAM, PIN 695 033.	Additional Respondent	8	Respondent Contesting	8

TO

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUSTICES OF THE SUPREME COURT OF
INDIA

The humble petition of the Petitioner,
above named.

MOST RESPECTFULLY SHOWETH:

This Special Leave Petition has been filed against the common final order of the High Court of Kerala at Ernakulam dated 12/03/2021 in Crl.Revision Petition No.641 of 2020 whereby the Hon'ble High Court dismissed the Criminal Revision Petition filed by the State and others.

2. QUESTIONS OF LAW

The following questions of law arise for consideration by this Hon'ble Court:

- I. When the alleged offences under Section 447 and 427 of IPC and Section 3(1) of the Prevention of Damage to Public Property Act happened in connection with an incident on the floor of the Legislative Assembly during the budget session of the legislature while making a protest by opposition members of the Legislative Assembly against the budget presentation by the then finance minister due to the then prevailing political reason, is it proper to dismiss an application filed by the prosecutor under section 321 of Criminal Procedure Code. by the Court on the ground that the application submitted by the public prosecutor was not in good faith and not supported by any cogent reason?
- II. When the alleged incident had occurred while the assembly was in session and no crime could have been registered without previous sanction of the Hon'ble Speaker, the FIR registered by the Secretary Legislative Assembly without the consent of the Speaker is wrong and therefore the application filed under section 321 Cr.P.C. is liable to be allowed ?
- III. When the act of the accused persons being in relation to their function to protest as members of the legislative assembly, the

MLA's who are accused in this FIR are entitled to get protection or not?

- IV. When there was no evidence to show that the application submitted by the public prosecutor was not in good faith and was on external influence, can the Court refuse permission under section 321 Cr.P.C. to withdraw the prosecution?
- V. Whether the application to withdraw the prosecution like the one will advance the public justice by ensuring the privilege of the legislative assembly ?
- VI. When the law with regard to an application under section 321 Cr.P.C. is settled time and again by this Hon'ble Court stating that the duty of the court is only to see that the application was filed with proper application of mind by the prosecution and if it is satisfied the same then the court cannot dismiss the application?
- VII. Whether while dismissing the application filed by the prosecutor the learned Judge failed to appreciate the legal principles settled by this Hon'ble Court in various decisions of this point?
- VIII. When Article 105(3), 194(3) of the Constitution of India confers certain privileges and immunities to the members of the parliament and State Legislature, is it proper to the Secretary of Legislative Assembly to file cases against the MLA's with regard to an incident happened on the floor of the House during the protest made by the opposition members, that too without the consent of the Speaker of the Assembly?

3. **DECLARATION IN TERMS OF RULE 3 (2)**

The Petitioner states that no other Petitions seeking Leave to Appeal has been filed by him against the impugned order of the High Court

of Kerala at Ernakulam dated 12/03/2021 in CrI. Revision Petition No. 641 of 2020.

4. **DECLARATION IN TERMS OF RULE 5**

The Annexure P-1 to P3 produced along with the SLP(CrI) are true and correct copies of the pleadings/documents which formed part of the record of the case in the Court below against whose order the leave to appeal is sought for in this petition.

5. **FOUNDATIONS:**

Special Leave to appeal is sought for on the following among other grounds:

A Because High Court failed to appreciate the fact that the alleged offences under Section 447 and 427 of IPC and Section 3(1) of the Prevention of Damage to Public Property Act happened on the floor of the Legislative Assembly during the budget session of the legislature as a part of the protest by opposition members of legislative assembly against the budget presentation by the then finance minister due to the then prevailing political reason, In such circumstances it was not proper to dismiss an application filed by the prosecutor under section 321 of Cr.P.C. by the Court on the ground that the application submitted by the public prosecutor was not in good faith and not supported by any cogent reason.

B Because High Court failed to appreciate the fact that the alleged incident had occurred while the assembly was in session and no crime could have been registered without

previous sanction of the Hon'ble Speaker. The FIR registered by the Secretary Legislative Assembly without the consent of the Speaker is wrong and therefore the application filed under section 321 Cr.P.C. is liable to be allowed

- C Because the act of the accused persons being in relation to their function to protest as members of the legislative assembly the MLA's who are accused in this FIR had entitled to get protection under the Constitution.
- D Because there was no evidence to show that the application submitted by the public prosecutor was not in good faith and was on external influence and in such circumstances, Court ought not to have refused permission under section 321 Cr.P.C. to withdraw the prosecution
- E Because the application to withdraw the prosecution of a like these will advance the public justice by ensuring the privilege of the legislative assembly. This fact was also not properly appreciated by the High court of Kerala while dismissing the revision petition.
- F Because the law with regard to an application under section 321 Cr.P.C. is settled time and again by this Hon'ble Court wherein it has been held that the duty of the court is only to see that there was an adequate and proper application of mind by the prosecution and if that is aspect court should allow the application.
- G Because while dismissing the application filed by the prosecutor the learned Judge failed to appreciate the legal principles settled by this Hon'ble Court in various decisions on this point.

- H Because Article 105(3), 194(3) of the Constitution of India confers certain privileges and immunities to the members of the parliament and State Legislature and therefore it not proper to the Secretary of Legislative Assembly to file cases against the MLA's with regard to an incident happened on the floor of the House during the protest made by the opposition members, that too without the consent of the Speaker of the Assembly.
- I Because the High Court and the learned CJM failed to appreciate the fact that the application submitted by the public prosecutor was in good faith and has been supported with cogent reasons for the withdrawal of the application filed under Section 321 Cr.P.C. There is nothing either in the application or in the submission of the prosecutor indicating any external influence or obedience or directions from higher authorities or absence of proper exercise of discretion. As directed by the learned Single Judge, the State had produced the application filed by the public prosecutor under section 321 Cr.PC as an additional document on 28.10.2020. Based on the said petition, it was further argued that the perusal of the application would reveal that the public prosecutor has independently analysed the whole situation and facts and circumstances of the case and as per his prerogative after applying mind, decided to withdraw the prosecution against the accused. The State further argued that the incident had occurred while the assembly was in session and no crime could have been registered without the previous sanction of the Hon'ble Speaker. The assumption of the High Court and the

Learned Magistrate that the information leading to registration of the crime would have been with the knowledge and consent of the Hon'ble Speaker is not correct. The information was given by the Secretary of the Legislative Assembly, is wrong. Articles 105(3) and 194(3) of the Constitution of India confer certain privileges and immunities to the members of the Parliament and State Legislature. The act of the accused being in relation to their function as members of the Legislative Assembly, no criminal proceedings can be initiated. The decision relied on by the CJM and the High Court for dismissing application under section 321 of Cr.PC in *Narasimha Rao vs. State* reported as *AIR 1998 SC 2120*, is not applicable to the facts and circumstances of the case. The allegation in the present case has admittedly happened during the budget session of the Legislature as a part of the protest by opposition members of Legislative Assembly against the Budget presentation by the then Finance Minister due to the then Prevailing political reasons. Therefore, the judgment of the High Court is liable to be interfered by this Hon'ble Court.

- J Because the learned single judge discussed the judgments reported in *State of Bihar vs. Ram Naresh Pandey* reported as *AIR 1957 (3) SCC 389* *M.N. Sankaranarayanan Nair vs. P.V. Balakrishnan* reported as *AIR 1972 SC 496*, *Rajendra Kumar Jain vs. State through Special Police Establishment and others* *1980 KHC 715* and discussed in detail the judgment reported in *Sheonandan Paswan* (*supra*). Thereinafter, the judgment reported as *Abdul*

Vahab.K vs. State of Kerala reported as 2018 (18) SCC 448 was discussed and *Appuicuttan (supra) Varkala Radhakrishnan and another (supra)* were also discussed. After the above said discussion, the learned single Judge arrived at a conclusion that going by the precedents and on a purposive interpretation of the provision, there can be no room for doubt that the absolute prerogative to request permission for withdrawing from the prosecution is vested with the public prosecutor. However, such discretion should be exercised free of extraneous considerations or influences and should be based on cogent and convincing reasons. The learned single judge failed to consider that there is nothing on record to show in any manner that the application submitted by the learned public prosecutor was not in good faith and was on external influence. There is no answer for the said point in the judgment. Even though, the State argued that the withdrawal from the prosecution in the in instant case will advance the public justice by ensuring the prestige of the Legislative Assembly, the same was not considered in the right perspective by the learned single judge and the same was shut down with a mere observation that the learned single judge was unable to accept the said contention and it is for the elected representatives to uphold the prestige of the house and to face the consequences for the violation if any committed. The preposition of law followed by the High Court is wrong and liable to be dismissed.

- K Because the learned Single Judge failed to appreciate that while considering an application under section 321 Cr.PC

the Magistrate is not discharging an adjudicatory function, as an appellate authority on the decision arrived at by the public prosecutor. The laws in this regard is settled time and again by the Apex Court that the duty of the court is only to see that there was an independent and proper application of mind by the prosecutor was *given a go* by the learned Single Judge. The scheme of administration of criminal justice is the primary responsibility of the prosecuting agency and a legitimate application for withdrawal by the public prosecutor could not be overlooked by scrutinizing on merits by the judicial authority. There are no answer to these legal aspects in the judgment. It seems that the judgment of the learned Single Judge is clouded by the facts of the case.

- L Because the contention was with regard to privileges and immunities provided under section 105(3) and 194(3) of Constitution of India and after considering the argument of the both sides and Chapter 12 of text book Practice and Procedure of Parliament by Kaul and Shakhder and considering the question as to whether the acts allegedly committed by the accused, which, if proven, would be offences punishable under the Indian Penal Code, are to be reckoned as part of the proceedings of the house, for the purpose of their protection. Strangely with no further discussion the learned single judge held that the answer for the above can only be negative, since the privileges and immunities are provided to ensure smooth functioning of the house by guaranteeing absolute freedom of the members to speak and to participate in its

deliberations and the learned single judge arrived at a conclusion that acts committed by the accused could not be deemed to be acts done in furtherance of the free functioning of the house. The Learned single judge failed to consider the legal proposition that with regard to a crime committed in Parliament, the house in which it was committed might claim the right to decide whether to exercise its own jurisdiction or to hand the offender over to criminal courts. In taking this decision, it would no doubt be guided in the nature of the offense and the adequacy or inadequacy of the penalty, some what lacking in feasibility, which it could indict. However, there is no decision by the house in this case, and the collective protection available to the members of the house was also ignored by the learned Single Judge. The learned Single Judge failed to consider article 105(3) of the Constitution of India and there is absolutely no discussion with regard to the said privileges and immunities of the house, as a whole. The next contention with regard to the sanction or permission of the speaker before registration of the crime was negated by the learned single judge by holding that on a careful scrutiny of the rules of procedure and conduct of business made in pursuance of Article 208 (1) of the Constitution of India there was no such provision for the same. The finding to that effect is incorrect.

M Because the learned Single Judge failed to consider that inadequacy of the evidence, competency of witnesses, acceptability of the documentary evidence also relevant factors before the public prosecutor while submitting an

application under section 321 of Cr.P.C. The learned Single Judge erroneously held that this matters are to be best left to be urged by the accused while reeking discharge, if so advised. This is not the legal position. The above aspects should be considered by the public prosecutor and should be filing an application for discharge and it is not for the court to test veracity of the same.

- N Because the learned Single Judge having arrived at a finding that there is no justification on the presumption in the order impugned that the petition was filed without good faith and on extraneous influence, if that be so, the learned Single Judge ought to have remitted the matter back to the CJM Court for a afresh disposal. That was not done. Once the learned Single Judge finds that the petition was filed in good faith and not on extraneous consideration in normal course such a petition ought to have been allowed. A contrary view has been taken by the learned Single Judge after finding that the petition was in good faith and was not on extraneous influences such a course is unacceptable under law.
- O Because the purport of section 321 of Cr.P.C. has been misinterpreted by the learned Single Judge. Withdrawal from the prosecution is executive function of the public prosecutor. Public prosecutor may withdraw from the prosecution not merely on tile ground of paucity of evidence but on other relevant grounds as well in order to further broaden the ends public justice, public order and peace is the settled law. The broad ends of public justice

will certainly include appropriate social, economic and, political purposes. The functions of the court is only supervisory function in nature in the matter of granting consent of withdrawal under section 321 of Cr.PC. Duty of the Court is not to re-appreciate the grounds which led the public prosecutor to request withdrawal from the prosecution but to consider whether the public prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous consideration. The court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution. The initiative is that of the public prosecutor and what the court has to do is only to give its consent and not to determine any matter judicially. Paucity of evidence is also a ground by which a prosecutor may be withdraw from the prosecution. Further section 321 of Cr.PC does not impose any bar on the Public Prosecutor to receive this instruction from the Government before this application under section 321 is filed. When the prosecution has been given the exclusive power for withdrawal and if he in his discretion thinks that it would be expedient to proceed with the case the court cannot reconsider the matter afresh and come to its own conclusion, different from the one taken by the Public Prosecutor has done so with an improper or oblique motive. It is pertinent to note that in this particular case the learned Single Judge ought to have struck down the findings of the CJM seeing that petition was filed with good faith and not on extraneous influence. Then the learned Single Judge has

no other option but to allow the application under section 321 of Cr.P.C. Under Sub section (iii) of Section 321 itself indicates that cases involving misappropriation or destruction or of damage to any property belonging to Government will fall within the ambit of Section 321, enabling the public prosecutor to seek withdrawal from the Prosecution of any person in respect of offences involving destruction or damage to public property. In the case of *Razak and others vs. State of Kerala (2001 Cr.L.J. 275)* the Hon'ble Kerala High Court held that the learned Asst. Sessions Judge was in absolute error in declining the permission sought for by the Addl. Public Prosecutor on the ground that the injured has objection in allowing the petition (filed under section 321 Cr.P.C) and there is loss of property. In the decision rendered by the Apex Court in *Rejendra Kumar Jab case (1980 KHC 715)* and in *Sheonandan Paswan's case (1983) 1 SCC 438*, in crimes involving damage and destruction to public property, withdrawal from Prosecution was permitted by the Court.

6. **GROUND FOR INTERIM RELIEF:**

By the impugned order dated 12/03/2021 in Crl. Revision No. 641 of 2020 the Hon'ble High Court dismissed the Criminal Revision Petition filed by the State of Kerala challenging the dismissal of the application filed under Section 321 Cr.P.C. by the Magistrate. The offence alleged against the accused persons are under section 447, 427 r/w. section 34 IPC and section 3(1) of the Prevention of Damage to Public Property Act. The offence according to the

prosecution happen on the floor of the legislative assembly while the opposition was making a protest against the presentation of budget by the then Finance Minister. The case has been pending trial before the Special Court and there is no stay of the proceedings during the pendency of the Special Leave Petition, they will be put to irreparable loss and injury. The trial is concluded, the SLP will become infructuous. Therefore, stay of the impugned judgment during the pendency of the Special Leave Petition is sought for.

7. **MAIN PRAYER :**

In view of the facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Grant Special Leave to Appeal to the Petitioner against the order of the High Court of Kerala at Ernakulam dated 12/03/2021 in CrI. Revision Petition No. 641 of 2020 and;
- (b) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

8. **PRAYER FOR INTERIM RELIEF:**

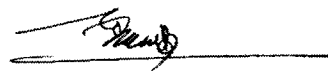
It is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) pass ad interim Ex-parte order staying the judgment of the High Court in Criminal Revision Petition No.641/2020 dated 12/03/2021 and thereby stay the further proceedings in C.C. No.73/2019 on the file of the Chief Judicial Magistrate Court, Thiruvananthapuram, Kerala and ;

(b) Pass such other Order or orders as this Hon'ble Court may deem fit and proper in the circumstances of this case.;

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:



(G. PRAKASH)

Advocate for the Petitioner

Drawn on :28.04..2021
Place : New Delhi
Dated : 01.05.2021

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (Crl) No. of 2021

In the matter of :

State of Kerala

..... Petitioner

Versus

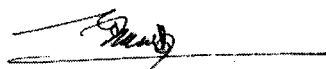
K.Ajith & others

..... Respondents

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the court/Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/Annexure attached to the Special Leave Petition are necessary to answer the questions of law raised in the petition or to make out grounds urged in the Special Leave petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the petitioner/person authorized by the petitioner whose Affidavit is filed in support of the S.L.P(Crl).

(G. PRAKASH)



ADVOCATE FOR THE PETITIONER

Place: New Delhi

Date: 01.05.21

DEPONENT

VERIFICATION

I, the above named deponent do hereby verify that the contents of above affidavit are true and correct and are based on the records of the case.

Verified at on this the day of April , 2021.

DEPONENT

Solemnly affirmed and signed by the deponent, who is personally known to me at my office at Ernakulam on this the Day of March 2021

Explanation.—A Judge or Magistrate shall not be deemed to be a party to, or personally interested in, any case by reason only that he is concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

480. Practising pleader not to sit as Magistrate in certain Courts.—No pleader who practises in the Court of any Magistrate shall sit as a Magistrate in that Court or in any Court within the local jurisdiction of that Court.

481. Public servant concerned in sale not to purchase or bid for property.—A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

482. Saving of inherent powers of High Court.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

483. Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates.—Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

484. Repeal and savings.—(1) The Code of Criminal Procedure, 1898 (5 of 1898), is hereby repealed.

(2) Notwithstanding such repeal—

(a) if, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), as in force immediately before such commencement (hereinafter referred to as the old Code), as if this Code had not come into force:

Provided that every inquiry under Chapter XVIII of the Old Code, which is pending at the commencement of this Code, shall be dealt with and disposed of in accordance with the provisions of this Code;

(b) all notifications published, proclamations issued, powers conferred, forms prescribed, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the Old Code and which are in force immediately before the commencement of this Code, shall be deemed, respectively, to have been published, issued, conferred, prescribed, defined, passed or made under the corresponding provisions of this Code;

(c) any sanction accorded or consent given under the Old Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Code and proceedings may be commenced under this Code in pursuance of such sanction of consent;

(d) the provisions of the Old Code shall continue to apply in relation to every prosecution against a Ruler within the meaning of article 363 of the Constitution.

(3) Where the period prescribed for an application or other proceeding under the Old Code had expired on or before the commencement of this Code, nothing in this Code shall be construed as enabling any such application to be made or proceeding to be commenced under this Code by reason only of the fact that a longer period therefor is prescribed by this Code or provisions are made in this Code for the extension of time.

**BEFORE THE HON'BLE ADDL. CHIEF JUDICIAL MAGISTRATE (SPECIAL
COURT FOR MP'S & MLA'S) ERNAKULAM**

CC: 151/18

Complainant : State represented by DySP, CBCID, EOW(1),

Thiruvananthapuram

Accused : K. Ajith & others

**PETITION FILED U/S 321 OF THE CRIMINAL PROCEDURE CODE BY THE
ASST. PUBLIC PROSECUTOR, ERNAKULAM**

I am the prosecutor in charge of the above case corresponding to Museum police station crime No.236/15 before the Hon'ble Chief Judicial Magistrate Court, Thiruvananthapuram as CC 790/16. The case is charge sheeted by the DySP, CBCID, EOW(1), Thiruvananthapuram U/s 447, 427, 34 IPC and Sec.3(1) of the Prevention of Damage to Public Property Act, 1984. Now the case is renumbered and pending trial before this Hon'ble Court.

The factual matrix of the case in nutshell is that on 13.3.2015 at 8.55 am while on the budgetary assembly session summoned, certain MLA's belonging to the then opposition invaded and stood on the Dias of the Hon'ble Speaker and committed mischief by destroying public property namely emergency lamp, computer monitor, the official chair of the speaker, standby mic and the electronic panel and caused culpable loss of Rs.220093/-(Rupees Two Lakhs Twenty Thousand and Ninety Three only). Now this application for withdrawal is filed by the Asst. Public Prosecutor in bonafides after applying my free and careful consideration of the materials placed before me by the investigating agency for the following among and other reasons:

1. The fact in issue herein is inseparable and closely associated in respect of the freedom of speech and voting in the budgetary session of the Kerala Legislative Assembly by its opposition members. Indeed the prosecution is about some incidences transpired in the Assembly while on the protest by the opposition during the budgetary session. Hence it is associated definitely with the Parliamentary Privilege. The Constitution gives a measure of privilege to legislators. Article 105(3) and Articles 194(3) of the Constitution allows these

privileges to be defined by law from time to time in case of members of Parliament and for MLAs respectively.

2. Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of Parliament and by members of each House individually, without which they could not discharge their functions efficiently and effectively. When any of these rights and immunities of the members individually and of the assembly in its collective capacity which are known by the general name of 'privileges' are disregarded or attacked by any individual or authority the offence is called a 'breach of privilege' and is punishable under the law of Parliament. The House is entitled with the right to punish those actions which are offences against its authority or dignity such as disobedience to its legitimate commands. Such actions, though called "breach of privilege" are more properly distinguished as "contempt's".
3. "Contempt's" are under the special jurisdictional ambiance of the Hon'ble Speaker of the house concerned.
4. Jurisdictional perimeters are important among the pillars of democracy in a polity. The functional balance is significant.
5. The police officers cannot register cases against members of the legislative assembly (MLAs) without the permission of the Hon'ble Speaker of the assembly if the alleged offence is transpired during the session of the house or in the vicinity. A police officer requires authorization to investigate a breach of the law even if occurred in the area of the legislative assembly. Police officers have to seek proper permission of "competent authority" even before they initiate investigation on allegation of crimes by legislators during session. More over here the event even according to the investigating agency has been ensued during the session of the house.
6. There are certain persisting legislative freedoms, which are very clear and necessary for the proper functioning of the democracy. The legislative privileges are deliberately extended to espouse the larger principles of the democracy. The legislative assembly, the sanctorum of democracy is functioning under the direct exemplary powers of the Hon'ble speaker and the same must not be pulled in to the criminal court, particularly here without the sanction from the Hon'ble Speaker. The said trial or proceedings etc. if not sparingly controlled legitimately may destroy or lower the dignity and privilege of the house among the citizenry. So the continuance of

prosecution may bring certain irreparable adverse effects to the public interest in the light of the present public order situation.

7. The occurrences according to the final report here in, was during the protest by the opposition against the presentation of the budget by the then Minister due to the then prevailing political reasons and hence the 'reus' component of the offence is a tough question casts heavy burden on the prosecution. The political contestation in democracy is legitimate and occurrences during its precipitation by several opposition members within the house, the intention and knowledge cannot be gathered from their collective act to win the protest.
8. The occurrences according to prosecution is during the protest by the opposition in the legislative assembly. The act was a political contestation by several members including opposition and ruling party. The booking of some members from the many as culprits stumps greater efforts of identification of persons as per their specific contribution. The 161 'statements of many witnesses cited are very vague regarding the proper identification of persons and their distinct and definite participation. The trial or proceeding in a criminal court must not be to wreak political vendetta. There is only a very remote chance for the prosecution to prove this case.
9. The more probable and the natural eye witnesses to the case in question are the MLA's who were well present in the assembly hall during the course of the entire alleged occurrences. But, even no statement of any of the said MLA's were recorded by the investigating officer after according due permission from the Hon'ble Speaker and not cared to cite them as witnesses to prosecution. This nature of investigation will be exposed during trial from the part of the defense as prejudices due to dishonest investigation, and may plead as the material suppression of the actual facts in which the prosecution will be in a stake.
10. The DVD's produced by the Asst. Engineer, PWD (Electronic wing) one Mr. Shyam (CW3) is produced to prove the vide recorded and kept in the Legislative Assembly during the session, seized vide mahazer dated 16/03/2015, 25/03/2015 etc.. made as material objects before court as per KPF 151(A). Admittedly the said data's were copied by CW3 from the server kept in the Electronic Control Room of the legislative assembly. The said video is an official record of the assembly under the Hon'ble Speaker, who is the categorical prime official of the Assembly. Then the copying from the server without the sanction of the Hon'ble Speaker is an act without proper authority. Here the said VCD is failed as a secondary data since it lacks

proper certification from the proper custodian or authority from the primary data stored U/s.65B of the Indian Evidence Act. The said DVD's may also raise a question regarding the 'best evidence rule'. The admissibility of the said materials in appreciation may hence under solid challenge.

11. The investigating officer had requested for the government property register kept at the Kerala Legislative Assembly and subsequently seized a stock register from CW3 Asst. Engineer. After preparing an Inventory the same was released on 'kacheet'. Now the said Register to prove about the Government property destroyed in question is not before the Court.
12. The prosecutorial extension U/s.242(2) and the judicial directions U/s.91 and S.311 under the scheme of Cr.P.C is restricted against the super privilege of the Legislative Assembly. Hence offering the evidences for curing the flaws noted above as point No.7, 8 & 9 are the matters only can be exercised subject to the decision and permission of the Hon'ble Speaker.
13. Here the properties are destroyed and caused a loss Rs.220093/- only to the government. The very sovereign government itself is consented to a withdrawal from prosecution in this case.
14. The Government of Kerala vide order No.L4/05/17 dated 09/02/2018 are also pleased to extend its consent for a withdrawal from prosecution in this case with the consent of this Hon'ble Court. The consent was communicated to me by the Deputy Director of prosecution, Thiruvananthapuram.

The larger and boarder ends of public justice warranted an early withdrawal from prosecution in this case with sanction from this Hon'ble Court. The judicial and non-judicial reasons narrated above illustrates and fair necessity of a withdrawal from prosecution from the part of the prosecutor in charge of the case for proper administration of justice and public interest. Hence it is humbly prayed that this Hon'ble Court may be pleased to accord sanction to withdraw the aforesaid case as against all the accused persons. Therefore this application may be allowed in the interest of justice.

Dated this the 21st day of July 2018

Sd/-
M.S. Aromalunni
Asst. Public Prosecutor
Sr. Grade
Ernakulam

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE
THIRUVANANTHAPURAM**

Present: R.JAYAKRISHNAN, CHIEF JUDICIAL MAGISTRATE

Tuesday, 22nd of September, 2020

Crl.MP 2577/2019

In

CC 73/2019

Petitioner : The Public Prosecutor

**Counter
Petitioners/
Accused** : 1 **Sri.K.Ajith (aged 49 years) S/o Kesavan, Anjanam (Shanthalayam), Thekkenaada, Vaikkom, Vaikkom Taluk, Kottayam district.**
2 **Sri.Kunjamadu Master (aged 71 years) S/o Sri.Ibrahim, Kurungottu veedu, Near Marutheri, Menjaneeyam village, Koyilandi taluk, Kozhikkode district.**
3 **Sri.E.P.Jayarajan (aged 70 years) S/o Sri.Krishnan Nambiar, Jaison house, Aaroli, Pappinissery village, Kannur district.**
4 **Sri.C.K.Sadasivan, (aged 67 years) S/o Sri.Kumaran, Chungapurakkal house, Kuppapuram, Kainakari Vadakku village, Kuttanadu taluk, Alappuzha district.**
5 **Sri.V.Sivankutty (aged 66 years) S/o Sri.Vasudevan Pillai, Mullakkal house, TC 36/1241, Subhash Nagar, Perunthanni, Pettah village, Thiruvananthapuram district.**
6 **Sri.K.T.Jaleel (aged 53 years), S/o Sri.Kunju Muhammed, Gazal house, Meenpara, Kattiparuthi village, Thirur taluk, Malappuram district.**
(By Adv. Sri.M.Rajagopalan Nair and Sri.K.Nagendran for A1 to A4 and A6, Adv.Sri.Murukkumpuzha R.Vijayakumaran Nair for A5)

Heard, perused the records and passed the following:-

ORDER

This is a petition filed u/s 321 of the Cr.PC by the Prosecutor to withdraw the prosecution case.

2. The chief averments in brief of the petition are as follows:-

The case is charge sheeted by the Dy. Superintendent of Police, CBCID, EOW (1) in Cr. No.236/2015 of Museum Police Station u/ss 447, 427 r/w 34 IPC and Sec. 3(1) of the Prevention of Damages to Public Property Act. The case is on the basis of the incident, that on 13/3/2015 at 8.55 am while on the budgetary assembly session accused belonging to the then opposition invaded and stood on the Dias of the Speaker and committed mischief by destroying public property namely emergency lamp, computer monitor, the official chair of the speaker, stand by mike, the electronic panel etc. and caused a loss of Rs.2,20,093/-. Now the Government of Kerala vide Order No. L4/5/2017 dtd. 9/2/2018, pleased to extend its consent for a withdrawal from prosecution in the case with the consent of the court. Hence the petition filed.

3. The specific allegation of the learned Prosecutor is that there is a privilege for the members of the Legislative Assembly as per A.105(2) and 194(3) of the Constitution. Hence The House is entitled with the right to punish those actions which are offences against the authority or dignity such as disobedience to its legitimate commands. Such actions though called "breach of privilege" are more properly distinguished as "contempt's". It is under the special jurisdictional ambiance of the Speaker of the House concerned. The police officers cannot register a case against the members of the Legislative Assembly without the permission of the Speaker of the Assembly, if the alleged offence is transpired during the session of the House or in the vicinity. Here the investigating officer did not get any permission from the Speaker. So, the continuance of prosecution may bring certain irreparable adverse effect to the public interest in the light of the present public order situation. The act was a political contestation by several members including opposition and ruling party. The 161 Statements of many

witnesses cited are very vague regarding the proper identification of persons and their distinct and definite participation. There is only a very remote chance for the prosecution to prove the case. The nature of investigation in this case will be exposed during trial from the parts of the defence as prejudices due to dishonest investigation and may plead as the material suppression of the actual facts in which the prosecution will be in a stake. As far as the material objects seized including the DVDs produced in this case in which the data were copied from the server kept in the electronic control room of the Legislative Assembly about the video of the incident without the prior permission of the Speaker. The admissibility of the said materials in appreciation may hence under solid challenge. The properties are destroyed and caused a loss of Rs.2,20,093/- to the Government. The Government itself is consented to withdraw from prosecution in this case. Hence in the interest of justice consent may be given to withdraw the prosecution.

4. Five persons including the leader of opposition appeared before the Court and filed their objection to withdraw from the prosecution in this case. Their contention is that the withdrawal of the prosecution case would be against the public justice and interest. The Public Prosecutor cannot close his eyes to the serious nature of allegation made in the charge sheet and cannot act as an agent of the government while exercising the power u/s 321 of Cr.PC to move an application seeking leave of this court for the withdrawal of the case. If consent is given by this court to withdraw the prosecution of the above case, certainly it will stifle the process of law and would cause a severe blow to the public justice. The grounds alleged by the Public Prosecutor for the withdrawal of prosecution is untenable and unjustifiable. The loss is not to the Government but loss to the public exchequer which is nothing but tax payers money. Hence they urged for the rejection of the application and prayed that no consent to withdraw the prosecution of the case may be granted.

5. Heard the learned DDP and counsel for all the parties.

6. The point that arises for consideration is whether the petition is allowable?

7. **The point:-** The learned Prosecutor filed the present petition of withdrawal from the prosecution, mainly on the ground that it is highly necessary for the proper administration of justice and public interest. The opposition leader and 4 others raised objection that since public interest is involved in the matter they have every right to object the petition filed by the learned Prosecutor. It is true that as per Section 321 of Cr.PC, it is a discretion of the Public Prosecutor to file a petition for the withdrawal from the prosecution with the permission of the court. It is true that the provision would show that it is a matter between the Court and learned Public Prosecutor. On going through various dictum of the Hon'ble Supreme Court and Hon'ble High Court it can be seen that it is a settled position that if public interest is involved in the matter third party has liberty to oppose the petition filed u/s 321 Cr.PC, if it defeats the public interest. *Sheo Nandan Pawan v. State of Bihar and Others*¹, *Achuthanandan v. Balakrishna Pillai*², *Nandakumar v. State of Kerala*³, *Jiji Thomson v. State of Kerala*⁴, *Abdul Wahab v. State of Kerala and Others*⁵ are the authorities in the matter. In all the above cases Hon'ble Supreme Court and High Court answered that third parties can oppose the petition, if public interest is involved in the matter. Here the learned Public Prosecutor admitted that the allegations is that the accused caused a loss of Rs. 2,20,093/- to the State. So, the contention of the third parties that they have every right to oppose the petition deserves merit. The counsel appeared for the accused submitted to allow him to plead additional matters which are not pleaded in the petition filed by the learned Prosecutor. The learned Prosecutor strongly opposed the same on the ground that it is against the provision. Sec.321 of Cr.PC is clear that the Public Prosecutor has vested with the discretion to take a decision in the

1 **1987 KHC 844 SC**

2 **1994 KHC 346 SC**

3 **2008 (2) KHC 543**

4 **2015 (5) KHC 67**

5 **2018 (4) KHC 715**

matter independently and nobody has any right to interfere in the matter. It would show that the accused has no voice in the matter. So, the contention raised by the counsel for the accused does not deserve any merit.

8. One of the allegations raised by the learned Prosecutor to withdraw from the prosecution is that since the members of the legislature have an immunity under Article 105(2) of the Constitution, no criminal case can be registered against them for an incident occurred inside the House during the course of business. Also alleged that since no sanction from the Speaker is obtained before the registration of the crime in this case, the case is not maintainable. As per Article 105(2) of the Constitution the right of the legislative members are limited to their speech and voting. No other immunity is available for the members of the legislature as per the Constitution. In *Narasimha Rao v. State (CBI/SPE) etc.*⁶ Hon'ble Apex Court held that *"A member of parliament shall not be answerable in a court of law for something that has a nexus to his speech or vote in Parliament. If a member of Parliament has by his speech or vote in parliament, committed an offence, he enjoys, by reason of Article 105(2), immunity from Prosecution therefore. Article 105(2) does not say that the member of Parliament who is not liable to civil or criminal proceedings in a court of law is liable to the same civil or criminal proceedings in Parliament. Parliament in India is not a Court of Record. It may not exercise judicial powers or entertain judicial proceedings. The members who are entitled to the immunity conferred by Article 105(2) are not liable to be tried in the Lok Sabha for the offences set out in the charges against them or any other charges, but the Lok Sabha may proceed against them for breach of privilege or contempt"*. Here the allegation is that a criminal offence has committed by the members of the Legislative Assembly during the session in the House. It has no connection with their speech and vote. The request to register a criminal case against the MLAs who destroyed the properties was given by the Secretary of the Legislative Assembly, who is the competent authority in charge of

6 AIR 1998 Supreme Court 2120

the Legislative Assembly. It can be assumed that the Secretary of the Assembly would have become the informant to the FIR only with the knowledge and consent of the Speaker. Hence there is no need for a prior permission from the speaker to register a criminal case against the members of the Legislative Assembly other than in connection with the speech and vote in the House. So the argument advanced by the learned Prosecutor that the case was registered without the permission of the Speaker does not deserve any merit.

9. From the petition filed by the learned Prosecutor it can be seen that an amount of Rs.2,20,093/- was loss to the Government. The allegation is that since the government itself is consented to withdraw from the prosecution in this case, permission can be granted to withdraw from the prosecution case. It is seen that though the Prosecutor simply stated that the loss is to the government, the actual loss is from the public exchequer which is nothing but tax payer's money. It is the duty of the government to protect the public properties and public loss. In **Dinesan K.V and Another v. State of Kerala and Others**⁷ Honourable High Court held that *"It is a matter of common knowledge as well as a reasonable presumption that the commission of any offence causing mischief or damages to the public property under the PDPP Act or by attacking public servants while acting in discharge of their public duty is against the public interest and public peace. Necessarily, it follows that the withdrawal of prosecution of such offences is also against public interest and public peace and consent for withdrawing prosecution of such offences cannot be granted"*. Here the offence alleged is U/ss 447,427, 34 IPC and Sec.3(1) of the Prevention of Damages to Public Property Act. The offence alleged against the accused is very serious in nature. Hon'ble Supreme Court and Hon'ble High Court have dealt with the cases of destruction of public properties very seriously. In **Re Destruction of Public & Private Properties v. State of Andhra Pradesh and Others**⁸ and in **Hemachandran and Others v. SI of Police**

7 2013 (4) KHC 206

8 2009(2) KHC 374 SC

and Another⁹ Hon'ble Supreme Court and Hon'ble High Court imposed some guide lines to deal with the cases. In Jiji Thomson v. State of Kerala¹⁰ Hon'ble High Court held that plea of sufficient evidence not there to prosecute the accused and that ultimate trial will be acquittal cannot be ground for withdrawal from the prosecution. So the withdrawal of prosecution under the guise of public interest, public policy or public justice is also impermissible.

10. I admit that as per Section 321 Cr.PC when a direction from the Government is got by the Prosecutor, the Prosecutor has every discretion to file a petition to withdraw from the prosecution with the consent of the court. But his decision must be independent and not obedience to directions from the higher authorities. The Public Prosecutor should apply his mind as a free agent uninfluenced by irrelevant and extraneous consideration. The court has a special duty in this regard as it is the ultimate repository of Legislative confidence in granting or withholding its consent to withdrawal from the prosecution. A criminal proceeding is not for vindication of a private grievance. But it is a proceeding initiated for the purpose of punishment to the offender in the society. Punishing the person who perpetrated the crime is an essential requirement for the maintenance of law and order and peace in the society. Here the accused are members of the legislature and the alleged incident happened in The House during session. So the allegation is very serious. More over it is contented that the incident in this case has been telecasted by the visual medias and print medias have published the incident. Privileges given to members of the state legislative to perform their duty effectively and fearlessly representing their constituencies. They are required to discharge certain duties. As they are the participants of the law making process, they are expected to obey the laws of the country and their duty is very high. The role of the Court is to see that whether the application is made in good faith, in the interest of justice, public policy and justice and not to thwart or stifle the process of law. Nothing is stated in the petition how the withdrawal from the prosecution of the

9 2011(4) KHC 689

10 2015 KHC 67

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case would promote public interest and public peace. If permission is granted to withdraw from the prosecution, it is a wrong message given to the society. I am inclined to presume that the application is filed without good faith and on external influence. So, I decline to give consent to withdraw from the prosecution against the accused.

In the result, the petition is dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 22nd of September, 2020)

**R.JAYAKRISHNAN
CHIEF JUDICIAL MAGISTRATE
THIRUVANANTHAPURAM**

**BEFORE THE HONOURABLE HIGH COURT OF KERALA AT
ERNAKULAM**

Criminal Revision Petition No: 641 of 2020

(Under Sections 397 and 401 of the Code of Criminal Procedure,
1973)

(Against the Order dated 22/09/2020 of the Learned Chief Judicial
Magistrate, Thiruvananthapuram in Criminal MP No. 2577 of 2019
in CC No: 73 of 2019)

(Crime No: 236 of 2015 of Museum Police Station)

Revision Petitioner/petitioner

State of Kerala represented by the State Public Prosecutor,
High Court of Kerala, Ernakulam.

Vs.

Respondents/Accused/Counter Petitioners

1. K.Ajith, S/o Kesavan, aged 49 years, Anjanam (Shanthalayam),
Thekkenaada, Vaikom, Vaikom Taluk, Kottayam District - 686141.
2. Kunjammadu Master, S/o Ibrahim, aged 71 years, Kurungottu
Veedu, Near Marutheri, Menjaneeyam Village, Koylandi Taluk,
Kozhikode District- 673 525.
3. E.P.Jayarajan, S/o Krishnan Nambiar, having permanent
residence at Jaison House, Aaroli, Pappinisserry Village, Kannur
District - 670566.
4. C.K.Sadasivan, aged 67 years, S/o Kumaran, Chungappurakkal
House, Kuppapuram, Kainakari Vadakku Village, Kuttanadu
Taluk, Alappuzha - 688011.
5. V.Sivankutty, S/o Vasudevan Pillai, Mullakkal House, TC-
36/1241, 9, Subhash Nagar, Perunthanni, Pettah Village,
Vallakadavu P.O, Thiruvananthapuram District - 695008.
6. K.T.Jaleel, S/o K.T. Kunju Muhammed, having permanent
residence at "Ghazal House", Meenpara, Valancherry, Kattiparuthi
Village, Thirur Taluk, Malappuram District-676552.

Address for service of notice on the Revision Petitioner is State
Public Prosecutor, Office of the Advocate General, Ernakulam.

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The Address for service of notice and process on the respondents are as shown above.

**MEMORANDUM OF CRIMINAL REVISION PETITION FILED
UNDER SECTIONS 397 AND 401 OF THE CODE OF CRIMINAL
PROCEDURE, 1973**

The petitioners submit as follows:

STATEMENT OF FACTS

1. The State, the complainant in in CC No. 73 of 2019 before the Court of the Chief Judicial Magistrate, Thiruvananthapuram is the revision petitioner. The counter petitioners in Criminal Miscellaneous Petition No: 2577 of 2019, who are the accused in the said CC No. 73 of 2019 (arising out of Crime No: 236 of 2015 of Museum Police Station), are the respondents herein.
2. Crime No; 236 of 2015 was registered on 14.03.2015 against the respondents herein for offences under Sections 447 and 427 read with Section 34 of the Indian Penal Code (hereinafter referred to as "the IPC" for short) and Section 3 (1) of the Prevention of Damage to Public Property Act (hereinafter referred to as "the PDPP Act" for short), in relation to incidents that happened at the Floor of the Kerala Legislative Assembly during the Budget Session on 13/03/2015. Later, the Deputy Superintendent of Police, Economic Offences Wing -I, Crime Branch CID, Thiruvananthapuram filed charge sheet in the case, which is now pending as CC No. 73 of 2019 before the Court of the Chief Judicial Magistrate, Thiruvananthapuram.
3. The Prosecutor in charge of the case filed petition in terms of Section 321 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr PC" for short). The case was sought to be withdrawn for the following reasons:
 - (i). The facts of the case were inseparably and closely associated with the freedom of speech and voting in the Legislative

Assembly; thus definitely associated with the Legislative Privilege under Articles 105 (3) and 194 (3) of the Constitution of India, deliberately extended to espouse the larger principles of democracy and which are necessary for its proper functioning.

(ii). The allegations in relation to the case admittedly happened during the Budget Session of the Legislature. There was no sanction from the Hon'ble Speaker for registering the case, which sanction was also required even for initiation of investigation. The proceedings of the Legislative Assembly, being brought to trial in a criminal court, that too without the sanction of the Speaker, will lower the dignity of the Legislature, irreparably and adversely affecting public interest in the light of the existing present public order situation.

(iii). As per the Final Report, the occurrences were as part of a protest by the Opposition Legislators against the Budget presentation by the then Finance Minister, due to the then prevailing political reasons. Such political contestations in democracy are legitimate and the "reus" component of the offence, the intention and knowledge, casting a heavy burden on the prosecution, cannot be gathered from the collective act of all to win the protest. The statements of witnesses collected during the investigation are very vague as regards the proper identification of persons and their distinct and definite participation. The Legislators, who were present in the House during the alleged incident, have neither been cited as witnesses nor their statements were recorded. Thus, chance for the prosecution to prove the case is bleak. Further, the above nature of the investigation would be exposed by the defence during the trial, as part of their endeavour to discredit the investigation, and the defence may even plead material suppression of actual facts, putting the prosecution in a stake.

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- (iv). The video evidence to prove the occurrence have been copied from the server kept in the Electronic Control Room of the Legislative Assembly, without either the sanction of the Honourable Speaker or without certification under Section 65 B of the Evidence Act from the custodian of the primary data, falling as a secondary data and raising a question regarding the best evidence rule. Any proceedings in terms of Section 242 (2) Cr PC will also be circumscribed by Parliamentary Privilege.
- (v). Though there are allegations regarding destruction of public property, the State itself have granted consent to withdraw the case.
- (vi). The larger and broader ends of justice warrant withdrawal of the prosecution. The same is necessitated for proper administration of justice and in public interest.
4. The Learned Chief Judicial Magistrate, on an erroneous appreciation of the facts of the case and law on the point, dismissed the petition praying for withdrawal of prosecution, as per Order dated 22.09.2020. Aggrieved by the said Order dated 22/09/2020 of the Learned Chief Judicial Magistrate, Thiruvananthapuram in Criminal MP No. 2577 of 2019 in CC No: 73 of 2019, this Criminal Revision Petition is filed on the following among other.

GROUND S

- (a) The impugned order is improper, if not illegal, and is liable to be set aside.
- (b) The impugned order has been passed on an erroneous appreciation of the facts of the case and law on the point.

- (c) The finding of the Learned Chief Judicial Magistrate that the withdrawal of the prosecution under the guise of public interest, public policy or public justice is impermissible, is wrong. The reasons stated for entering into such a finding are also equally wrong.
- (d) The finding of the Learned Chief Judicial Magistrate that nothing was stated in the petition as to how the withdrawal of the prosecution would be in public interest and would promote public peace, is wrong. The Learned Chief Judicial Magistrate erred in not properly advertent to the contents of the petition, particularly the specific pleadings in this regard.
- (e) The Learned Chief Judicial Magistrate erred in overlooking the trite and settled law that a Court, while considering an application in terms of Section 321 Cr PC, was only imparting a supervisory function and not an adjudicatory one. The consideration of the Learned Chief Judicial Magistrate ought to have been only as to whether the Learned Public Prosecutor had acted in good faith while taking recourse to the procedure under Section 321 Cr PC and as to whether such exercise of discretion by the Learned Public Prosecutor was proper.
- (f) The Honourable **Supreme Court in Sheo Nandan Paswan Vs. State of Bihar and others** reported in **AIR 1983 (1) SCC 438** has held that all that is necessary to satisfy Section 321 Cr.P.C. is to see that the Public Prosecutor acts in good faith and that the Magistrate is satisfied that the exercise of discretion by the Public Prosecutor is proper. The apex court has analyzed Sections 203, 227, 245, 257 and 258 of the Code to come to a conclusion that while Sections 203, 227, 245, 257 and 255 require the Magistrate to record his reasons for the order, Section 320 contemplates consent by the court only in a supervisory manner and not in an adjudicatory manner.

- (g) This Honourable Court in **State of Kerala Vs. Varkala Radhakrishnan and others** reported in 2009 (1) KHC 971 has held that if the application for the withdrawal is filed by the Public Prosecutor in good faith after careful consideration of the materials placed before him, it would be improper for the court to refuse the sanction sought for. It is absolutely within the province of the Public Prosecutor to act in good faith and exercise the discretion vested in him, to decide whether the prosecution is to be withdrawn or not. It was further held that while deciding an application under Section 321 Cr.P.C., the court is not expected to weigh the material or decide whether the prosecution will end in conviction or acquittal.
- (h) This Honourable Court in **Appukkuttan Pillai and another Vs. State of Kerala** reported in 1999(1) KLJ 337 has held that if the court is satisfied that the Public Prosecutor has acted in good faith and has exercised his discretion in filing the application for withdrawal after taking all the materials before the court, the court can grant permission to withdraw from the prosecution.
- (i) The Honourable **Supreme Court in V.S. Achuthanandan Vs. R. Balakrishna Pillai and others** reported in 1994 (4) SCC 299 has held that where an application for withdrawal of prosecution was filed by public prosecutor under S.321 of Criminal Procedure Code, the court should not consider grounds which were not urged by the public prosecutor or which did not form part of the record, because for the purpose of S. 321 it is the opinion of the public prosecutor alone is material and the ground on which he seeks permission of the Court for withdrawal of the prosecution was alone to be examined by court while granting permission for withdrawal of prosecution.

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- (j) The finding of the Learned Chief Judicial Magistrate that the application submitted by the Learned Public Prosecutor was not in good faith and on external influence, is wrong and not supported by any cogent reason, much less any reason. There is nothing in either the application or the oral submissions of the Learned Public Prosecutor indicating any external influence or obedience to directions from higher authorities or absence of proper exercise of discretion. On the contrary, the same reveal that there was bonafides on the part of the Learned Public Prosecutor, that the Learned Public Prosecutor acted as a free agent, and that there was an independent consideration of the relevant materials of the case by the Learned Public Prosecutor.
- (k) A perusal of the application filed under Section 321 Cr.P.C. by the learned Public Prosecutor would reveal that the Learned Public Prosecutor had independently analyzed the whole situation, had applied mind to the facts and circumstances of the case, and, as per his prerogative, decided to withdraw the prosecution against the accused. Thus it could be seen that there was an independent and proper application of mind by the learned Public Prosecutor before deciding to withdraw the prosecution.
- (l) The consideration of the learned Chief Judicial Magistrate to the effect that the allegation were serious since the accused were Legislators with a very high duty to obey the laws of the country, is a consideration extraneous to the nature of the jurisdiction conferred on the Court under Section 321 Cr PC, in so far as the Court, in terms of the said Section 321 Cr PC, was bound only to verify whether the Learned Public prosecutor had acted in good faith and whether the exercise of discretion by the Learned Public prosecutor was proper.

- (m) The findings of the Learned Chief Judicial Magistrate, while exercising the jurisdiction under Section 321 Cr PC, touched upon the merits of the case. Thus the Learned Chief Judicial Magistrate exceeded his jurisdiction in entering into such findings, particularly with regard to the Legislative Privilege and absence of sanction of the Honourable Speaker.
- (n) The Honourable **Supreme Court in Rajendra Kumar Jain Vs. State** reported in **1980 (3) SCC 435** has elaborately laid down the principles to be followed while considering an application under Section 321 Cr.P.C. This Honourable Court in **Razack and Others Vs. State of Kerala** reported in **2001 CRL. LJ. 275** has laid down the parameters for the withdrawal of prosecution. This Honourable Court in **Joy Joseph Vs. Gopinathan** reported in **1999(1) KLT SN 35** has detailed the matters to be considered while disposing of a petition under Section 321 for withdrawal of prosecution. The court below has failed to consider the above principles.
- (o) The Judgment of this Honourable Court in **Dineshan K.V. and another Vs. State of Kerala and another** reported in **2013(4) KHC 206** does not apply to the facts of this case. In that particular case, the offences alleged were grave in nature as the accused therein formed in to an unlawful assembly, committed rioting armed with deadly weapons and has caused disturbance to the public peace and has voluntarily caused hurt to Policemen and caused damage to a Police jeep. Moreover that incident occurred in an open public place, a march organized by the United Democratic Front in the public road. In the said decision, this Honourable High Court in Para 11 has noted that the sole reason stated by the Public Prosecutor for withdrawing from the prosecution is that *'the said incident occurred during a political agitation and I am of the*

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view that it is not necessary to continue the prosecution of the accused in the above matter in the interest of promoting peace and harmony'. Thus, the parameters laid down by the Apex Court with respect to withdrawal of prosecution under Section 321 Cr.P.C. were not satisfied in the above case. That was the reason for this Honourable Court to dismiss the application for withdrawal of prosecution. However in the case at hand, the Public Prosecutor has stated cogent reasons for withdrawing the prosecution. Moreover, the alleged incident occurred inside the Legislative Assembly. There was no rioting or damage to 'public property' and there is no allegation that the accused were armed with any weapons. As the place of alleged incident was within the Assembly Hall, it cannot be termed as an open or 'public place'. The properties alleged to have been damaged by the accused are not public property coming within the definition of Section 2(b) of the Prevention of Damage to Public Property Act 1984. Accordingly, the Judgment reported in 2013(4) KHC 206 would not apply to the facts of the case and cannot be relied upon to dismiss the application for withdrawal of prosecution.

- (p) It is most humbly submitted that the decision of this Honourable Court in **Dineshan K.V. & another Vs. State of Kerala and Others**, reported in **2013(4) KHC 206**, may not be good law and requires reconsideration as the said decision is against the provisions of the statute as well as the law declared by the Honourable Supreme Court in **SheonandanPaswan Vs. State of Bihar and others** reported in **1983(1) SCC 438**. This Honourable Court while considering Dineshan's case has held that the consent for withdrawal of prosecution of the accused who is alleged to have committed the offences under the Prevention of Damages to Public Properties Act cannot be granted on the reason that such offences were committed

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the power of the Public Prosecutor to withdraw from prosecuting a particular criminal case pending in any Court. All that it requires is that he can do so only with the consent of the court where the case is pending."

Further Para 124, the Honourable Supreme Court has observed thus:

"The Indian Penal Code or the Code of Criminal Procedure does not make any such distinction between Political offences and offences other than political ones. Even if it is accepted that political offences are not unknown to jurisprudence and other Acts do contemplate political offences, the fact remains that S.321, Cr.P.C. is not confined only to Political offences or social offences; but it applies to all kinds of offences and the application for withdrawal can be made by the Public Prosecutor on various grounds. The only safeguard that should be kept in mind by the Public Prosecutor is that it should not be for an improper or oblique or ulterior consideration, and that guiding consideration should be that of vindication of public justice.

Thus, it can be found out that the judgment of this Honourable Court in Dineshan's case is against the law declared by the Honourable Supreme Court and the same requires reconsideration. No particular offence can be exempted from the scope of Section 321 Cr.P.C.

(q) Going by the allegations in the First Information Report and the Final Report there is no specific overt acts alleged against the respondents to attract the offence under Sections 447 and 427 read with Section 34 of the IPC and Section 3(f) of the PDPP Act.

(r) The decision of the Apex Court in Naramasimha Rao v State (CBI/ SPE) (AIR 1998 SC 2120) is not applicable in the facts and circumstances of the case at hand. The allegations in relation to the case at hand admittedly happened during the Budget Session of the Legislature. The occurrences were as part of a protest by the Opposition Legislators against the budget presentation by the then Finance Minister, due to the then prevailing political reasons. The Learned Chief Judicial Magistrate overlooked the trite legal principle that it was the right of the Legislature to be the sole judge of the lawfulness of its own proceedings, and that the Courts could not go into the lawfulness of the proceedings of the Legislature.

(s) The Leaned Chief Judicial Magistrate overlooked the trite and settled law that the Honourable Speaker was the guardian of the privileges of the Legislature; that the Honourable Speaker was the interpreter of its rules and procedure; and that the Honourable Speaker was invested with the power to control and regulate the course of debate and to maintain order in the House. In so far as the powers to regulate the Procedure and Conduct of Business of the House vested with the Honourable Speaker, the initiation of investigation of a case without sanction of the Honourable Speaker, into a matter that was part of the Legislative Session, was illegal. The Learned Chief Judicial Magistrate egregiously erred in assuming that the Legislature Secretary would not have preferred the complaint without the sanction of the Honourable Speaker. Further, the assumption by the trial court that the Secretary of the Assembly would not have become the informant to the FIR without the knowledge and consent of the Speaker is also an irrelevant aspect while considering an application under section 321 CRPC.

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- (t) The telecasting of the alleged incident by the visual media and its publication in print media, is not a relevant aspect to be reckoned by the trial court while considering an application under section 321 CRPC.

For these and other reasons that may be submitted at the time of hearing, it is prayed that this Honourable Court may be pleased to allow this Criminal Revision Petition, set aside the impugned Order dated 22.09.2020 in G.M.P. No. 2577/2019 in C.C. 73/2019 on the files of the Chief Judicial Magistrate's Court Thiruvananthapuram and to allow CMP 2577/2019, to meet the ends of justice.

Dated this the 12th day of October, 2020.



State Public Prosecutor

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

I.A. NO. OF 2021

IN
SPECIAL LEAVE PETITION (CrI) NO. OF 2021

IN THE MATTER OF:

State of Kerala

..... Petitioner

Versus

K.Ajith & others

..... Respondent

**APPLICATION FOR EXEMPTION FROM FILING CERTIFIED
COPY OF THE IMPUGNED JUDGEMENT**

To

THE HON'BLE CHIEF JUSTICE OF INDIA,
AND HIS COMPANION JUDGES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE
APPLICATION OF THE
APPLICANT HEREIN

MOST RESPECTFULLY SHOWETH:-

1. This Special Leave Petition has been filed against the common final order of the High Court of Kerala at Ernakulam dated 12/03/2021 in CrI.Revision Petition No.641 of 2020 whereby the Hon'ble High Court dismissed the Criminal Revision Petition filed by the State and others.
2. The contents of the accompanying Special Leave Petition and List of Dates may kindly be read as part and parcel of the present Application and the same are not being repeated herein for the sake of brevity and to avoid prolixity. The Petitioner crave liberty to refer

to and rely upon the same as and when this Application is taken up for hearing.

3. That the present Application is being filed seeking exemption from filing dated 12/03/2021 in Crl. Revision Petition No. 641 of 2020 passed by the High Court of Kerala at Ernakulam; Hon'ble High Court dismissed the Criminal Revision Petition.
4. The impugned Order was passed during the period just before lockdown and consequently the Applicant/Petitioner could not obtain the certified copy of the impugned Order.
5. Due to the urgency involved in filing this petition, the Applicant / Petitioner is filing the present Special Leave Petition with a true copy of the Impugned order downloaded from the website of the Hon'ble High Court.
6. The Applicant/ Petitioner undertakes to produce the Certified Copy of the Impugned Order if this Hon'ble Court deems it necessary.

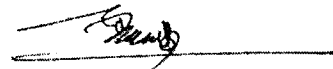
PRAYER

Whereof, in the light of the facts and circumstances of the present case, the applicant humbly pray that this Hon'ble Court may be pleased to:

- (a) Grant exemption from filing Certified copy of the Final Order dated 12/03/2021 in Crl. Revision Petition No. 641 of 2020 passed by the High Court of Kerala at Ernakulam;
- (b) pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and thereby render justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN
DUTY BOUND SHALL EVER PRAY

FILED BY:

A handwritten signature in black ink, appearing to read 'G. Prakash', is written over a horizontal line.

(G. PRAKASH)
ADVOCATE FOR THE PETITIONER

FILED ON: 01.05.2021

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN
DUTY BOUND SHALL EVER PRAY

FILED BY:

G. Prakash

(G. PRAKASH)
ADVOCATE FOR THE PETITIONER

FILED ON: 01.05.2021

Prakash

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