IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 16TH DAY OF JUNE 2025 / 26TH JYAISHTA, 1947

CRL.REV.PET NO. 1130 OF 2017

AGAINST THE COMMON ORDER DATED 25.01.2017 IN CRIMINAL M.P. NOS.627/2015, 1851/2016 AND 1757/2015 IN SC NO.1181 OF 2009 OF DISTRICT COURT & SESSIONS COURT, THIRUVANANTHAPURAM ARISING OUT OF CP NO.35 OF 2009 OF JUDICIAL MAGISTRATE OF FIRST CLASS - II, THIRUVANANTHAPURAM

REVISION PETITIONER/DEFACTO COMPLAINANT:

SUDHA
D/O.PRASANNA, AGED 36 YEARS,
PUTHUVALPUTHEN VEEDU, MUTTATHARA VILLAGE,
POONTHURA P.O, THIRUVANANTHAPURAM - 695 026

BY ADVS.
SRI.SAJITH KUMAR V.
SRI.JOSIE MATHEW
SMT.NEENA J KALYAN
SMT.AMMU M.

RESPONDENTS/STATE AND ACCUSED 1 TO 8:

1 **STATE OF KERALA**
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682031

2 **GIREESAN**
G.K GARDENS, KALLUMMOODU,
MUTTATHARA,THIRUVANANTHAPURAM - 695008

3 **GEETHA GIREESAN**

W/O. GIREESAN, G.K GARDENS, KALLUMMOODU,
MUTTATHARA, THIRUVANANTHAPURAM - 695008

4 CHITHRA
D/O. GIREESAN, G.K GARDENS, KALLUMMOODU,
MUTTATHARA, THIRUVANANTHAPURAM - 695008

5 SHAJI
SHAH ARTS, MUTTATHARA,
THIRUVANANTHAPURAM - 695008

6 NAZARUDEEN
SUB INSPECTOR, FORT POLICE STATION,
THIRUVANANTHAPURAM - 695 023

7 SHEEBA RANI
WOMAN POLICE CONSTABLE, FORT POLICE STATION,
FORT,THIRUVANANTHAPURAM - 695 023

8 SUBAIDABEEVI
WOMAN POLICE CONSTABLE,FORT POLICE STATION,
FORT, THIRUVANANTHAPURAM - 695 023

9 S.K SREELATHA
WOMAN POLICE CONSTABLE, FORT POLICE STATION,
FORT, THIRUVANANTHAPURAM - 695 023

BY ADVS.
SRI. E. C. BINEESH, SENIOR PUBLIC PROSECUTOR
SRI. A. S. SHAMMY RAJ, R6 TO R9

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 16.06.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R.”

ORDER

The petitioner is the complainant/victim in S. C. No.1181/2009 on the files of the Sessions Court, Thiruvananthapuram (for short, the trial court). The respondents Nos.2 to 9 are the accused therein. The offences alleged against them are under Sections 166, 211, 220, 323, 324, 330, 331, 341, 342, 348 and 354 read with Section 34 of the Indian Penal Code and Section 3(1)(ix)(x) and (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the SC/ST (PoA) Act).

2. The case arose from a private complaint filed by the petitioner before the Judicial First-Class Magistrate - II, Thiruvananthapuram, as CMP No.675/2007 against the respondent Nos.2 to 9 herein and one Mr. Rajeev. The accused Nos.1 and 2 in the complaint are husband and wife. Accused Nos.3 and 4 are their daughter and son-in-law, respectively, and the accused No.5 is their close companion.

Accused No.6 was the Sub Inspector and accused Nos.7 to 9 were the Women Police Constables at Fort Police Station, Thiruvananthapuram.

3. The allegations in the complaint, in brief, are as follows: The complainant belongs to the Hindu Thandan community, whereas the accused belongs to the forward communities. The complainant was a housemaid in the residence of accused Nos.1 to 4. While so, on 20.07.2006, when she went there to attend the job, she was told by accused Nos.1 to 4 that about nine sovereigns of gold were missing from their house. She was questioned by them with the suspicion that she had stolen the items. At that time, her marriage was fixed. She was threatened, stating that she should give back the gold items. Though she asserted her innocence, without heeding the same, she was abused, questioned and humiliated by calling her caste name. She was also intimidated that if the place of concealment of the stolen items was not disclosed, she would be handed over to the police. Even after attending to all the work of the day, she was not given food or water and was confined in the

house without being permitted to go back home. Then a false complaint was given to the police, following which the accused Nos.7, 8 and 9, the women police constables of Fort Police Station, Thiruvananthapuram, reached the house and started interrogating her. She reiterated her innocence, but they insisted that she should confess the guilt. Later, by 4 o'clock, she was taken to the Fort Police Station, where the accused No.6, the Sub Inspector, directed her to plead guilty. Then, accused Nos.7 to 9 were directed to deal with her properly. Thus, they took her to the inner room and cruelly manhandled her. They beat her with a cane and a stick. Her head was hit against the wall. When she cried aloud, her neck was pressed and stamped on the abdomen. Entreaties made by her mother, who was standing outside, were neglected. She was dragged across the floor and caned all over the body; the beating continued from 5 p.m. to 8 p.m. At that time, the accused No.1 came there, informed that the ornaments were available in their house itself and that they had no complaints. Then her parents and brothers were called to the police station, and after obtaining a

signed statement that they had no complaint, she was let off. She was unable even to sit erect when she left the police station. Accused Nos.7 to 9 told her that if the incident was disclosed to anyone, she would not be allowed to live peacefully. On 21.07.2006, she went to the General Hospital and was admitted and treated there.

4. The learned Magistrate conducted an enquiry under Section 202 of Cr.P.C. The sworn statements of the complainant/petitioner and six witnesses were recorded. After considering the statement on oath of the petitioner and of the witnesses, the learned Magistrate formed an opinion that there was sufficient ground for proceeding. Accordingly, he issued process to the accused Nos.1 to 9. All accused except accused No.4 appeared. Since the offences alleged against the accused were triable by the Court of Sessions, the case as against the accused Nos.1 to 3 and 5 to 9 was committed to the trial court as per the order in C.P No. 35/2009 dated 28/08/2009. The case against the accused No. 4 was split up and refiled as C.P. No.101/2009. The trial court took the case on file as S.C. No.1181/2009 against

accused Nos.1 to 3 and 5 to 9 in the original complaint. Their status was rearranged as accused Nos.1 to 8. The status of the accused is referred to hereunder in that order.

5. The respondents Nos.2 to 9 (Accused Nos.1 to 8) appeared before the trial court. The accused Nos.1 to 4 preferred Crl M.P. No.1851/2016, the accused No.5 preferred Crl. M.P. No.627/2015 and accused Nos.6 to 8 preferred Crl.M.P. No.1757/2015 for discharge under Section 227 of Cr.P.C. All the petitions were allowed, and all the accused were discharged under Section 227 of Cr.P.C. as per the common order dated 25.01.2017. The trial court found that there are no *prima facie* materials to proceed against the accused Nos.1 to 4 for the offences alleged against them. So far as the accused Nos.5 to 8 are concerned, though the trial court found that there were materials on record to show that accused Nos.6 to 8 badly beat and manhandled the victim at the police station and that they did the said act on the instruction of the accused No.5, it was held that the said act was done by them in discharge of their official duty or purporting to be in discharge of their official duty and they

being the public servants are entitled to the protection under Section 197(2) of Cr.P.C. This revision petition has been filed challenging the common order.

6. I have heard Sri. V. Sajith Kumar, the learned counsel for the petitioner, Sri. A. S. Shammy Raj, the learned counsel for the respondent Nos.6 to 9 and Sri. E. C. Bineesh, the learned Senior Public Prosecutor.

7. The learned counsel for the petitioner submitted that a close reading of the complaint and the perusal of the records would reveal that there is sufficient ground for proceeding against the accused and hence the trial court went wrong in discharging the accused. The learned counsel further submitted that though the trial court found that there is *prima facie* evidence to conclude that the petitioner was tortured at the police station by accused Nos.6 to 8 at the instruction of the accused No.5, it went wrong in holding that they were entitled to the protection under Section 197(2) of Cr.P.C. The counsel further submitted that the protection available under Section 197(2) of Cr.P.C. is limited to the discharge of the official duty and not for committing any

physical torture. Reliance was placed on ***Devinder Singh and others v. State of Punjab through CBI*** [(2016) 12 SCC 87] *and* ***K. Kalimuthu v. State by DSP*** [(2005) 4 SCC 512].

8. On the other hand, the learned counsel for the respondent Nos.6 to 9 submitted that once any act or omission is found to have been committed by a public servant in the discharge of his duty, he is protected under Section 197(2) of Cr.P.C., even if his act exceeds his duty. Reliance was placed on ***Unnikrishnan v. State of Kerala and others*** [2014 (1) KHC 575]. The learned Public Prosecutor submitted that since the act done by the accused Nos.5 to 8 falls outside the ambit of their official duty, they are not entitled to the protection under Section 197(2) of Cr.P.C.

9. It is not in dispute that the petitioner was a housemaid in the residence of the accused Nos.1 to 4. It is also not in dispute that on 19.7.2006, nine sovereigns of gold ornaments kept in the shelf in the house of the accused Nos.1 to 4 were found missing and a crime was registered at

the Fort Police Station on 20.7.2006 showing the petitioner as a suspect under Section 381 of the IPC on the complaint given by the accused No.4. It is also admitted that the accused No.1 took the petitioner with her mother to the police station. According to the petitioner, at the police station, she was brutally tortured by the accused Nos.5 to 8 and forced to confess guilt. It is evident from the records that on the following date the petitioner was admitted at the General Hospital Thiruvananthapuram and on 22.7.2006, she gave statement to the Assistant Commissioner of Police regarding the incident based on which Fort Police registered crime as Crime No.519/06 against the accused Nos. 6 to 8 incorporating offences under Sections 324 and 326 of IPC. However, it was referred as false after the investigation. Later, on 16.11.2006, she made a complaint to the Chief Minister in this regard. The trial court, after evaluating the FIS given by the petitioner to the Assistant Commissioner of Police in Crime No.519/06, complaint given to the Chief Minister and the averments in the present complaint found that there was no consistent version so far as the allegation

that she was insulted by the accused calling her caste name. It was further found that there is no positive evidence that the accused belongs to the community other than the SC/ST to attract the offences under the SC/ST(PoA) Act. The trial court also found that there was no allegation in the complaint that the accused Nos.1 to 4 had assaulted or caused bodily harm to the petitioner, or they abetted police officers who wrongfully restrained her or caused her bodily harm. With these findings, it was concluded that there was no *prima facie* material to attract the offences alleged against accused Nos.1 to 4. I see no reason to interfere with the said factual finding in this revision petition. It is settled that reappreciation of evidence is not permissible in a revision.

10. As stated already, the case of the petitioner is that during interrogation at the police station, she was brutally manhandled and beaten by the accused Nos.6 to 8 at the instruction of accused No.5 with a cane and a stick. She has a specific case that her head was hit against the wall, and when she cried aloud, her neck was pressed and

stamped on the abdomen. It was alleged that she was dragged across the floor and caned all over the body, and the beating continued from 5 p.m to 8 p.m. It was further alleged that accused Nos.6 to 8 threatened her that if she disclosed the incident to anybody, she would not be allowed to live peacefully. These allegations have been made by her in the complaint given to the police, in the private complaint filed before the trial court and in the complaint given to the Chief Minister. It has also come out from the records that the petitioner was hospitalised on 21.07.2006. The medical records reveal that there were injuries on her body. The trial court found in the impugned order that it is quite evident that the petitioner was brutally tortured, beaten and manhandled in the police station by the accused Nos.6 to 8 at the instruction of the accused No.5, but accused Nos.6 to 8 being the public servants employed in the discharge of their official functions, sanction under Section 197(2) of Cr.P.C. is necessary.

11. The protection given under Section 197 of Cr.P.C is to protect responsible public servants against the

institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. Section 197(1) and (2) of Cr.P.C read as under:

> "197. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction --
>
> (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government; (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of

the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

Explanation. - For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code.

(2) No court shall take cognizance of any offence alleged to have been committed by any member of the armed forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government."

12. A reading of Section 197 of the Cr.P.C would indicate that there is a bar for a Court to take cognizance of such offences which are mentioned in the said provision,

except with the previous sanction of the appropriate Government when the allegations are made against, *inter alia*, a public servant. A Constitution Bench of the Supreme Court had occasion to consider the scope of Section 197 of Cr.P.C in ***Matajog Dobey v. H. C. Bhari*** (AIR 1956 SC 44). After holding that Section 197 of Cr. P.C. was not violative of the fundamental rights conferred on a citizen under Article 14 of the Constitution of India, the Supreme Court observed:

> "Public servants have to be protected from harassment in the discharge of official duties while ordinary citizens not so engaged do not require this safeguard. It was argued that S.197, Criminal Procedure Code vested an absolutely arbitrary power in the Government to grant or withhold sanction at their sweet will and pleasure, and the legislature did not lay down or even indicate any guiding principles to control the exercise of the discretion. There is no question of any discrimination between one person and another in the matter of taking proceedings against a public servant for an act done or purporting to be done by the public servant in the discharge of his official duties. No one can take such proceedings without such sanction."

On the test to be adopted for finding out whether Section 197 of the Cr. P.C. was attracted or not and to ascertain the

scope and meaning of that section, it was observed:

> "Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in S.197 of the Code; 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty'. But the difference is only in language and not in substance. The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under S.197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation."

After referring to the earlier decisions of the Federal Court, the Privy Council and that of the Supreme Court itself, the Bench summed up the position thus:

> "The result of the foregoing discussion is this: There

must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

13. In ***P. K. Pradhan v. State of Sikkim represented by the Central Bureau of Investigation*** [(2001) 6 SCC 704], the Supreme Court considered the scope of the expression "while acting or purporting to act in the discharge of his official duty" found in Section 197(1) of Cr.P.C and laid down thus:

"5. The legislative mandate engrafted in sub-section (1) of S.197 debarring a Court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the Court itself. It is a prohibition imposed by the Statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in S.197 of the Code: "any offence alleged to have been committed by him while acting or purporting to act in the

> discharge of his official duty". The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under S.197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a Court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation".

14. In ***Kalimuthu*** (supra), the Supreme Court has observed that official duty implies that an act or omission must have been done by the public servant within the scope and range of his official duty for protection. It does not extend to criminal activities, but where there is a reasonable connection in the act or omission during official duty, it must be held to be official. It was also observed that the question whether the sanction is necessary or not may have to be

determined from stage to stage.

15. In ***Urmila Devi v. Yudhvir Singh*** [(2013) 15 SCC 624], the meaning of "Official duty" as well as its scope was considered. It was held that it is only when there is a direct and reasonable nexus between the nature of the duties cast upon the public servant and the act constituting an offence that the protection under Section 197 of Cr.P.C would be available and not otherwise. It was further held that when there was "abuse of power" and when the conduct of the accused public servant was not in discharge of his official duties, sanction under Section 197 is not required.

16. In ***Devinder Singh*** (supra), after referring to all the decisions on the point, the Supreme Court summarised the principles to be followed while considering the requirement of the sanction under Section 197 of Cr.P.C. in paragraph 39. It reads thus:

> "39. The principles emerging from the aforesaid decisions are summarised hereunder:
>
> 39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly

and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.

39.5. In case sanction is necessary, it has to be decided by competent bauthority and sanction has to be issued

on the basis of sound objective assessment. The court is not to be a sanctioning authority.

39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of court at a later stage, finding to that effect is permissible and such a plea can be taken first time before the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed.

39.7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.

39.9. In some cases it may not be possible to decide the question effectively and finally without giving

> opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial."

17. The issue of 'police excess' during the investigation and the requirement of sanction for prosecution in that regard was the subject matter of a recent decision of the Supreme Court in ***G.C. Manjunath v. Seetaram and Others*** [2025 SCC OnLine SC 718]. It was held that the protection under Section 197 of Cr.P.C does not extend to acts that are manifestly beyond the scope of official duty or wholly unconnected thereto. Acts beref of any reasonable nexus to official functions fall outside the ambit of this safeguard and do not attract the bar imposed under Section 197 of the Cr.P.C. Conversely, where there exists even a reasonable link between the act complained of and the official duties of the public servant, the protective umbrella of Section 197 of the Cr.P.C is attracted.

18. Thus, the law is well settled that as per Section 197 of Cr.P.C., there is a bar for any Court to take cognizance of any offence (except those offences mentioned

in the Explanation to sub-section (1) of Section 197) against a public servant unless sanction is obtained from the appropriate authority if the offence, alleged to have been committed, was in discharge of the official duty. However, the said bar is not absolute. The protection of Section 197 is available only when the alleged act done by the public servant is reasonably and intrinsically connected with the discharge of, or purported discharge of, his official duty. The protection would not extend to acts that are manifestly beyond the scope of his official duty or wholly unconnected thereto. In other words, to get the protection, the act must fall within the scope and range of the official duties of the public servant concerned. However, if the public servant exceeded the scope of his authority or acted improperly while discharging his duty, but there is a reasonable connection between the act and the performance of the official duty, it will not deprive him of protection under Section 197 Cr.P.C. There cannot be any universal rule to determine whether there is a reasonable connection

between the act done and the official duty. It depends upon the facts and circumstances of each case.

19. Custodial torture flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Article 21 of the Constitution of India guarantees the right to life and personal liberty to every individual. This fundamental right includes protection from torture, inhuman or degrading treatment, and arbitrary detention. There is a built-in guarantee against torture or assault by the state or its functionaries. Chapter V of Cr. P.C (Chapter V of BNSS) deals with the powers of arrest of persons and the safeguards required to be followed by the police to protect the interests of the arrested person. Article 22 of the Constitution outlines the fundamental rights of arrested persons. The police authorities have the responsibility to adhere to legal procedures, refrain from violence and ensure the safety of detainees while in custody. Any violation of these norms could lead to a breach of the individual's right to life and a violation of human rights. When the cops who are meant to protect and uphold the law

become its transgressors, it is a curious case of the fence itself eating the crops. The Supreme Court has, in many cases, expressed concern at the atrocities perpetrated by the protectors of law. In ***State of M.P. v. Shyamsunder Trivedi and Others*** [(1995) 4 SCC 262], the Supreme Court discussed the issue of custodial torture and its ramifications on human rights. The court stressed the need to ensure accountability for authorities in cases of torture or violence committed while in custody and emphasised the importance of protecting the rights of the accused. The Supreme Court in ***D.K. Basu v. State of West Bengal*** [(1997) 1 SCC 416] upheld the rights of the individual being arrested and condemned unauthorised arrest or detention. It also issued various guidelines to prevent custodial death. In ***Arnesh Kumar v. State of Bihar and Another*** [(2014) 8 SCC 273] while issuing guidelines to prevent unnecessary arrest and detentions by police officers and Magistrates, the Supreme Court emphasised that the custodial death is considered as one of the severe offences in a civilised society that adheres to the principles of the rule of law. The act of custodial

torture inflicted by a police officer without justification on an arrestee cannot be shielded under the protective mantle of Section 197 of Cr.P.C. It can never be said that a police officer acts or purports to act in discharge of his official duty when he inflicts custodial torture on an arrestee. Nor can it be said that inflicting unjustified custodial torture is reasonably and intrinsically connected with the discharge of, or purported discharge of, the official duty of the police officer concerned to avail the protection of Section 197 of Cr.P.C.

20. As stated already, there are specific averments in the complaint that the accused Nos. 6 to 8 at the instruction of the accused No.5 took the petitioner to the inner room of the police station, brutally tortured her physically and mentally and cruelly beat her with a cane and a stick from 5 p.m. to 8 p.m. Her head was hit against the wall. When she cried aloud, her neck was pressed and stamped on the abdomen. She was dragged across the floor. It has also come out from the records that she was hospitalised on 21.07.2006 and treated as an inpatient till

03.08.2006. The medical records reveal that there were injuries on her body. These acts of the accused Nos.5 to 8 could have no reasonable connection with their official duties, and the pretended or fanciful claim that they committed these acts in the course of performance of their official duties cannot be entertained. Their official duties did not authorise them to assault or abuse the petitioner in custody, when there is nothing on record to show that there was any obstruction or resistance from her. There may be circumstances which may justify the use of force by the police while discharging their official duty. But that is not the case here. The custodial assault as alleged by the petitioner in detail in her complaint and sworn statement, can never be justified under the shelter of performance of official duty. In ***P.P.Unnikrishnan v. Puttiyottil Alikutty*** [(2000) 8 SCC 131], the Supreme Court refused to grant the benefit of Section 197 to police officers accused of inflicting custodial torture. It reasoned that inflicting custodial torture and unlawful detentions were an abuse or a transgression of official duty, as these acts were beyond the scope of official

duty and authority. Recently in ***Gurmeet Kaur v. Devender Gupta*** (2024 SCC OnLine SC 3761), it was held that Section 197 of Cr.P.C would not apply to a case where a public servant is accused of any offence which is *de hors* or not connected to the discharge of his official duty.

21. The courts must not lose sight of the fact that custodial torture is perhaps one of the worst kinds of crime in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnish the image of any civilised nation and encourage the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve; otherwise, the common man may lose faith in the judiciary itself [***Shyamsunder Trivedi*** (supra)].

22. For the reasons stated above, I hold that the discharge of accused Nos. 5 to 8 on the ground that the prosecution against them is bad for want of sanction under Section 197(1) of Cr.P.C. cannot be justified. Therefore, the impugned order to the extent it allows Crl. M.P. No.627/2015 and Crl. M.P. No.1757/2015 and discharging accused Nos. 5 to 8 is hereby set aside. The trial court is directed to frame charge against accused Nos. 5 to 8 for those offences attracted against them and proceed with the trial in accordance with the law. If the trial court finds that the offence presumably committed by them is not exclusively triable by the Court of Sessions, it shall follow the procedure contemplated under Section 228 (1)(a) of Cr.P.C.

The Criminal Revision Petition is allowed in part as above.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

BR