

Mohandas Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/724936

Court : Kerala

Decided On : Jun-05-2006

Reported in : 2006(3)KLT173

Judge : K. Padmanabhan Nair, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 7, 13, 13(1), 13(2), 17 and 17(1); Building Tax Act; [Prevention of Corruption Act, 1947](#) - Sections 5, 5A, 5A(A), 5(A)(1), 5(1) and 5(4); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2, 8(1), 41, 41(1), 42, 43, 43(1), 43(2), 154, 154(1), 470 and 482; Indian Penal Code (IPC) - Sections 161, 165 and 165A; Code of Criminal Procedure (CrPC) Act, 1898 - Sections 4(1)

Appeal No. : Crl. M.C. No. 771 of 2006

Appellant : Mohandas

Respondent : State of Kerala

Advocate for Def. : K. Harilal, Public Prosecutor

Advocate for Pet/Ap. : P. Vijaya Bhanu and; P. Maya, Advs.

Disposition : Case dismissed

Judgement :

ORDER

K. Padmanabhan Nair, J.

1. The sole accused in Crime No. 128 of 2006 of Guruvayoor Police Station registered under Section 7 of the Prevention of Corruption Act which was reregistered as V.C. 1 of 2006 of Vigilance and Anti Corruption Bureau is the petitioner in this CrI.M.C. This CrI.M.C is filed to quash Annexure III, F.I.R in Crime No. 128 of 2006 of Guruvayoor Police Station and all further proceedings.

2. The following are the averments in the Criminal Mis.Case. On 20.12.2005, the District Collector, Thrissur had passed an order holding that building tax of 6117 buildings at Chavakkad Taluk was not assessed in accordance with the provisions of the Building Tax Act. 9 squads were appointed for assessing the tax of those buildings. The petitioner was the leader of the Squad No. 3. He, along with other officials of the Squad visited a lodge by name Gayathri situated on the western gate of Guruvayoor temple on 8.3.2006 in an autorikshaw. One Satyan was the owner of that building. He was not in station. His mother Janaki Amma was managing the affairs of the lodge. In the course of inspection a wordy duel occurred between the petitioner and one Shaji who was the driver of the autorickshaw which was engaged by the aforesaid Janaki. When the wordy altercation grew the police intervened and took the petitioner herein to the police station. Thereafter Janaki, to avoid penal consequences and to save herself and others involved, went to the police station and lodged an F.I. Statement raising false and untenable allegations against the petitioner. Based on that F.I. Statement the S.I of police, Guruvayoor registered crime No. 128 of 2006 against the petitioner under Section 7 of the [Prevention of Corruption Act, 1988](#). In the F.I. Statement it was alleged that the petitioner dishonestly and with the intention of making wrongful gain, demanded Rs. 5000/- as bribe for exempting Gayathri lodge from payment of building tax and thereby committed an offence punishable under Section 7 of the PC Act. It was averred that F.I.R was registered in contravention of specific legal bar engrafted in Section 17 of the PC Act and hence the FIR and all further proceedings in pursuant to the same are liable to be quashed under Section 482 Cr.P.C. Hence the CrI.M.C to quash the FIR registered in Crime No. 128 of 2006 of Guruvayoor police station and further proceedings.

3. The learned Public Prosecutor, on instructions submitted that the averments in the CrI .M.C itself will show that the F.I.R happened to be registered under unavoidable circumstances. It is submitted that even though Crime No. 128 of 2006 was initially registered by the Guruvayoor Police when the petitioner was caught red handed by the public and handed over to the police the case was re-registered as V.C 1/2006/TCR/Under Section 13(1)(d) read with 13(2) of PC Act as per the direction of the Enquiry Commissioner and Special Judge, Thrissur. Necessary sanction was accorded by the Director of Vigilance also to re-register the case.

4. The learned Public Prosecutor on instructions has contended that at about 11.20 a.m. on 3.3.2006, the S.I. of Police, Guruvayoor Police Station received a telephonic message to the effect that a lady and man sitting in an autorickshaw were quarrelling each other near the KSRTC Bus Stand situated near the western gate of Guruvayoor temple. The S.I. of Police was also informed over telephone that a lot of people had gathered around the autorickshaw and there was a possibility of some untoward incident taking place. The S.I along with police party reached the spot. A lot of people gathered around the autorickshaw and shouted that corrupt officer sitting in the autorickshaw shall be arrested and shall not be allowed to go free. The S.I. of Police went near the autorickshaw and made enquiries. The lady was the owner of the Gayathri Lodge and the other person sitting in the autorickshaw was the petitioner, a Deputy Tahsildar attached to the Thrissur Tax Assessment Department. The S.I. of Police was told that the petitioner demanded an amount of Rs. 5000/- as bribe. He also told that the petitioner warned her that in case she fails to pay the amount she may have to pay 5 to 10 lakh rupees as penalty. The reporters and camera men of the local TV channels and scribes of various newspapers were also present there. The local people told the S.I. of Police that the petitioner was caught redhanded when he demanded for a bribe of Rs. 5000/- and he was being handed over to the police and the police shall take appropriate action. In the meanwhile a flash news appeared in the local TV channels to the effect that a corrupt Deputy Tahsildar was caught red handed by the local people and handed over to the police. If the S.I. allowed the petitioner to go away on the ground that he has no authority to deal with that case, it would have created bad reputation to the police department

as well as the administrator. It would have given room for a complaint that a person who was caught red handed by the local people during the commission of a cognizable offence was allowed to go free by the police. Further the situation was very tense. So the S.I. of Police had no other option but to take the petitioner to the police station. It was also averred that petitioner had consumed liquor at the time of the incident. After taking the petitioner to the police station, the S.I. of Police came back to the place wherein the incident took place and verified the correctness of the statements made by the lady. When he went back to the police station, the lady accompanied by a large number of local people were there. The reporters and photographers of the TV channels as well as scribes of the newspapers were also assembled in front of the police station. The lady gave the F.I. Statement and the same was recorded. The local people insisted that the police shall not let off a man who was caught red handed while committing a criminal offence. So the S.I. contacted his superior officers and with their knowledge and consent registered Crime No. 128 of 2006 under Section 7 of the Prevention of Corruption Act and thereafter arrested the petitioner in accordance with law. It is further averred that the petitioner was subjected to medical examination. He was produced before the Enquiry Commissioner and Special Judge on 4.3.2006. The Enquiry Commissioner and Special Judge remanded the accused to judicial custody. The S.I. of Police had filed a detailed report before the Special Judge explaining the circumstances under which he was compelled to register the case and arrest the petitioner.

5. The Enquiry Commissioner Special Judge after remanding the petitioner to judicial custody wrote a letter to the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau, Thrissur along with a copy of the F.I.R registered in Crime No. 128 of 2006 of Guruvayoor Police Station and directed the Dy.S.P. to re-register the case and investigate the same. On receipt of that letter the Deputy Superintendent of Police wrote a letter to the Director of Vigilance and Anti Corruption Bureau, Thiruvananthapuram to accord necessary sanction to re-register the case. The Director accorded sanction to re-register Crime No. 128 of 2006 of Guruvayoor Police Station. Dy.S.P. was also directed to take steps to get the CD file of Crime No. 128 of 2006 transferred to the Vigilance and Anti Corruption Bureau. On receipt of the communication, the Dy.S.P. Thrissur

registered the case as VC 1/2006 of Vigilance Police VACB, Thrissur under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C. Act. The F.I.R was forwarded to the Special Judge and Enquiry Commissioner. The S.I of Police had only recorded the F.I. Statement registered the F.I.R and arrested the petitioner. The entire investigation of the case is conducted by the Dy.S.P of Police, VACB, Thrissur Unit. He inspected the place and prepared a scene mahazar. He questioned the witnesses including the first informant. He seized certain documents and 50 currency notes of hundred rupee denomination and produced the same before the Special Judge and Enquiry Commissioner. At that stage the petitioner has filed this Crl.M.C for quashing the F.I.R. registered by the S.I. of Police, Guruvayoor and all further proceedings.

6. Sri Vijaya Bhanu, the learned Counsel appearing for the petitioner has strenuously argued that the F.I.R. registered in Crime No. 128 of 2006 by the S.I of Police, Guruvayoor is hit by the specific bar under Section 17 of the Act 1988 and the same is liable to be quashed. He relied on the decisions reported in State of Uttar Pradesh v. Bhagwant Kishore Joshi : 1964 CriLJ140 and State of Haryana and Ors. v. Bhajanlal and Ors. : 1992 CriLJ527 and argued that the provisions contained in Section 17(1) P.C. Act 1988 corresponding to Section 5(A) of the P.C. Act, 1947 are mandatory and violation of that mandatory provisions alone is a sufficient ground to quash the complaint and all further proceedings. He has also relied on a decision reported in Easwaramoorthy v. State 2002(2) KLT SN 18 Case No. 19 to argue that when the case is investigated by an officer who has no authority to conduct the same the entire proceedings are liable to be quashed.

7. Sri Harilal, the learned Public Prosecutor appearing for the State has argued that there is absolutely no need to quash the F.I.R. registered by the S.I. of Police and the further proceedings. It is argued that when a person appears before the S.H.O. and the gives information regarding the commission of a cognizable offence, the S.H.O. has no other option but to record the same and register a case as provided under Section 154 Cr.P.C. It is argued that what is prohibited under Section 17(1) of the PC Act 1988 is only the investigation of the case and not registration of the F.I.R. and as such the F.I.R. registered by the Guruvayoor Police is not liable to be quashed. It is argued that the facts of this case will show

that S.I. had registered the case and arrested the petitioner due to the extraordinary circumstances which existed at that point of time. It is argued that the S.I. of Police has not conducted any investigation of the case and the entire investigation is conducted by the designated officer under the PC Act. It is argued that even assuming that: there was any irregularity in registering the F.I.R. that defect was rectified by reregistering the case. It is argued that the Special Judge before whom the petitioner was produced directed the competent officer to re-register the case and remanded the petitioner to judicial custody. It is argued that the competent officer reregistered the case strictly in accordance with the Rules. It is argued that the special circumstances explained by the S.I. of Police will show that the arrest of the petitioner was absolutely essential and unavoidable. It is argued that it is a fit case in which the doctrine of defacto authority has to be applied as held in *M. Maheshan v. State of Karnataka* 1999 (1) CrI.L.J. 247. It is also argued that the petitioner has no case that any prejudice is caused to him on account of the arrest.

8. It is not a case wherein the S.I. of police received information regarding the commission of the offence under the provisions of the Prevention of Corruption Act. In paragraph 5 of the CrI.Misc. Case itself, it is admitted that a wordy altercation took place between the petitioner and one Shaji, the driver of the autorickshaw engaged by the defacto complainant and it attracted the attention of the local people. It is admitted that several people gathered on the spot and on getting information police came to the spot and took the petitioner to the police station on account of the tense situation prevailed at that place. It is further admitted that subsequently the defacto complainant Janaki also came to the police station and gave the F.I. Statement and based on that statement the S.I of Police had registered Crime No. 128 of 2006.

9. On 3.3.2006 at about 11.20 a.m. the S.I. of Police, Guruvayoor received intimation that a lady and a man sitting in an autorickshaw parked near the KSRTC bus stand on the western gate of the Guruvayoor temple were quarrelling with each other and a lot of local people had gathered around the autorikshaw. He was also informed that unless the police intervenes immediately, untoward incidents are likely to take place. The reason for quarrelling was not stated. A law and order

situation existed in that area. So the S.I. of police along with the police party went there. The S.I. of police questioned the lady sitting in the autorickshaw. She told him that the reason for the quarrel was the demand of Rs. 5000/- by the petitioner as bribe. The mob gathered around the autorikshaw were restless. Moreover, news reporters and cameramen of local TV channels and scribes of various newspapers also came to the place. A flash news was shown in the local TV channel to the effect that an officer who demanded bribe was caught red handed by the local people and handed over to the police. It is admitted by the petitioner that at that point of time the S.I. of Police did not arrest him or register a case. In order to avoid a law and order situation and other untoward incidents, the petitioner was taken to the police station. Thereafter the S.I of Police again came back to the place wherein the incident took place and verified the correctness of the statement made by the lady. It was revealed that the statement made by the lady was prima facie correct. S.I. of Police went back to the police station. At that time the defacto complainant along with the local people, scribes of newspapers, news reporters and photographers of the TV Channels were present in front of the police station. In the presence of the local people the defacto complainant repeated the statement. The materials on record shows that a demand was made by the angry mob that the police shall not allow an accused who was caught red handed by the people while he was committing a cognizable offence go free. So, the S.I. of Police recorded the F.I Statement and registered the F.I.R. He arrested the accused and produced him before the Special Judge. The petitioner had consumed alcohol, so he was produced before the Doctor for medical examination. But the S.I. of Police has not conducted any investigation. The question arising for consideration is whether the action of registering the F.I.R and arresting the accused by a non designated officer vitiates the whole investigation conducted by the competent officer and whether the same is liable to be quashed.

10. Section 17 of the PC Act 1988 reads as follows:

Persons authorised to investigate-Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974) no police officer below the rank,-

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under Sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973(2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate of the First Class, as the case may be, or make any arrest therefor without a warrant.

PROVIDED that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the First Class, as the case may be, or make arrest therefor without a warrant:

PROVIDED FURTHER that an offence referred to in clause(a) of Sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

The provisions of Section 5(A) of the PC Act 1947 and Section 17(1) of the 1988 Act are similar. In Bhagwant Kishore Josky's case (supra) a three Judge Bench of the Apex Court considered the meaning of the word 'investigation' and also the object of enacting Section 5(4) of the PC Act 1947. It was held that though ordinarily investigation is undertaken on information received by a police officer on receipt of information it is not a condition precedent for starting the investigation. It is further held that the provisions contained in Section 5(A) are mandatory and statutory safeguards must be strictly complied with. It was further held that the question to be considered is not whether in investigating the offence police have disregard to the statutory provisions but whether the accused was prejudiced by that disregard. It was held as follows.

If a Police Officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the merely of the police echleons since human dignity is a dear value of the constitution.

The matter came up for consideration before the Apex Court in State of Haryana and Ors. v. Ch. Bhajanlal and Ors. : 1992 CriLJ527 . That was also a case under the provisions of P.C. Act registered and investigated by a non designated officer as provided under Section 5(A) of 1947 Act. The Apex Court considered the various decisions on this point including the one reported in B.K. Joshy's case(supra). It was held that when a person appears before the officer in charge of a police station and gives information disclosing the commission of a cognizable offence the police officer has no other option but to register a case on the basis of the mandatory provisions contained in 8.154(1) Cr.P.C. After elaborately considering the various authorities on the point, it was held as follows:

It is therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substances thereof in the prescribed form, that is to say, to register a case on the basis of such information.

It was further held that registration of case is one thing and investigation is another thing. The Apex Court held that though the FIR was registered by a non designated officer the same is not liable to be quashed and the same is valid.

11. Section 2(h) Cr.P.C defines the word 'investigation'. It reads as follows:

2(h) investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;

In Bhajanlal's case it was held that commencement of the investigation is subject to two conditions. First is that the police officer should have reason to suspect commission of cognizable offence. He had to specify to himself the existence of sufficient grounds for entering into such a conclusion. It was further held that the investigation of a cognizable offence is exclusively reserved for the police officers whose powers in that field are unfettered. The Apex Court also considered the provisions of Section 5(1), 5(A)(1) and Proviso 2 of 1947 Act. It was further held that if the person who conducted investigation was not clothed with valid legal authority to take up investigation and proceed with the same within the meaning of Section 5(A)(1) of the PC Act 1947 the investigation conducted by such an officer is liable to be quashed. The Apex Court considered the validity of the investigation conducted by the non designated officer. It was held as follows:

In this connection it is worthy to note that the strict compliance with Section 5A(A) becomes absolutely necessary because Section 5A(A) expressly prohibits police officers below certain ranks, from investigating into the offences under Section 161, 165 and 165A IPC and under Section 5 of the Corruption Act without orders of Magistrates specified therein or without authorisation of the State Government in that behalf and from effecting arrests for these offences without a warrant.

It was further held as follows:

The sum and substance of the above deliberation results to a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code.

XXX XXX XXXBut if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons.

Regarding the effect of the violation of the provisions, Section 5A(1) of the 1947 Act, it was held as follows:

A conjoint reading of the main provision, Section 5A(1) and the two provisos thereto, shows that the investigation by the designated police officers is the rule and the investigation by an officer of a lower rank is an exception.

It has been ruled by this Court in several decisions that Section 5A of the Act is mandatory and not directory and the investigation conducted in violation thereof bears the stamp of illegality but that illegality committed in the course of an investigation does not affect the competence and the jurisdiction of the Court for trial and where the cognizance of the case has in fact been taken and the case is proceeded to termination the validity of the proceedings with the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby.

XXX XXX XXXHowever, in Rishbud's case and Muni Lal's case, it has been ruled that if any breach of the said mandatory provision relating to investigation is brought to the notice of the Court at an early stage of the trial, the Court will have to consider the nature and extent of the violation and pass appropriate orders as may be called for to rectify the illegality and cure the defects in the investigation.

12. In *State of Rajasthan v. Shambhoogiri* (2004) 8 SCC 169 the apex court followed the principles laid down in the decisions referred to above. It was held that the only authority specified under Section 5(A)(1)(a) to (d) are competent to conduct investigation. It was further held that a trial conducted in pursuance of an F.I.R. registered by a non designated officer is not vitiated because of the fact that the investigation was conducted by a person not authorised by Section 5(A) of the Act. In *Shamboogiri's* case (*supra*), the allegations of bribe was levelled against the person working-under Sub Divisional Magistrate. The Sub Divisional Magistrate with whom the officer was working, entrusted certain currency notes with PW1 to be handed over to the accused. PW1 handed over those currency notes to the accused and thereafter the Sub Divisional Magistrate recovered the currency note entrusted by him with PW1. He prepared a memo and sent the same to the S.P. along with a complaint. It was held that the Sub Divisional

Magistrate did not conduct any investigation and the investigation of the crime was started only after the complaint was given by the Sub Divisional Magistrate to the Superintendent of Police and hence the same is not liable to be quashed. In this case also the entire investigation was conducted by designated officer under PC Act, 1988. The principles laid down in Easwaramoorthy's case (supra) has no application to the facts of this case. So no part of the investigation is liable to be quashed in exercise of the powers under Section 482 Cr.P.C.

13. That leads me to the next question as to what is the effect of the arrest made by the S.I. of Police after registering Crime No. 128 of 2006 of Guruvayoor Police Station. It is very pertinent to note that there is no specific challenge raised in the Crl. Misc case against the arrest. The petitioner has no case that the arrest was illegal and liable to be quashed. He has no case that any prejudice was caused to him due to the arrest.

14. It is trite law that merely because a police officer has the right to arrest, it is not necessary to arrest every person who is accused of having committed a non bailable and cognizable offence. In State of Gujarat v. Lalsingh Kishansingh Singh 1981 SCC Crl. 330 it was held that the expression Police officer in Section 4(1) of Cr.P.C in 1898 does not necessarily mean any and every police officer and an offence will still be a cognizable offence within this definition even if the power to arrest without warrant, for that offence is given by the statute to police officers of a particular rank or class only. It is also held that it is not necessary to arrest a person accused of having committed a non bailable cognizable offence merely because the police officer is having power to arrest him.

15. Section 2(c) of Crl.P.C. defines cognizable offence. Section 2(c) reads as follows:

'Cognizable offence' means an offence for which, and 'cognizable case' means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant

Section 41(1)(a) of Crl. P. Code confers power on a police officer to arrest a person without a warrant. It provides that the police officer may without an order

from the Magistrate and without a warrant arrest a person who has been concerned in any cognizable offence. Section 43 of Cr.P.C. provides that any private person may arrest or cause to be arrested any person who in his presence commits a non bailable and cognizable offence.

Section 43 of the Cr.P.C reads as follows:

Arrest by private person and procedure on such arrest- (1) Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of Section 41, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of Section 42; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

A reading of Section 7 and 13 of the PC Act 1988 will show that the offences alleged to have been committed by the petitioner are non bailable and cognizable. So going by the provisions contained in Section 43 of Cr.P.C. a private person can arrest the petitioner.

16. Section 17 of PC Act 1988 deals with the person authorised to investigate and arrest the cases registered under that Act. The provisions of Section 17 of the Act debars a non designated police officer only from arresting an accused who commits an offence punishable under Section 7 or 13 of the 1988 Act. It does not say anything about the right of a private person to arrest or cause to be arrested any person who in his presence commits the offences under Section 7 or 13 of the

1988 Act. Section 17 of the P.C. Act does not debar a private person from exercising the powers conferred on him under Section 43 of the Crl. Procedure Code. In this connection it is to be noted that Section 43(2) of the Crl. Procedure Code provides that a police officer shall take a person arrested by a private person and hand over him to the police station and re-arrest him.

17. The S.I. of Police had stated the circumstances under which he was forced to register a case and arrest the accused. It is true that he has no authority to arrest the petitioner. But in this case the private persons detained the petitioner during the course of commission of a non bailable and cognizable offence in their presence and caused him to be arrested by the S.I. of Police as provided under Section 43 of the Crl. Procedure Code. Sri Harilal, the learned Public Prosecutor has argued that such an act of the S.I. is to be protected by extending the principles of 'Doctrine of Defacto Authority'. The learned Public Prosecutor has relied on the decision reported in *Nallammal v. State* 1999 CrLJ 1591. It is also argued that the mere fact that the petitioner was arrested by a non designated police officer, the same cannot be quashed unless prejudice or miscarriage of justice is established by the accused.

18. In this case the only ground raised by the petitioner for quashing the F.I.R. and also the arrest of the petitioner is that those acts were done in violation of mandatory provisions of Section 17 of 1988 Act. No prejudice or miscarriage of justice is pleaded. No materials are produced to establish the existence of prejudice or miscarriage of justice.

19. The next question arising for consideration is whether the doctrine of defacto authority can be extended to the facts of this case.

20. The principle was applied by a Full Bench of this Court in a decision reported in *P.S. Menon v. State of Kerala* ILR 1969 Kerala 391 (corresponding to : AIR1970 Ker165). In that case a Full Bench of this Court considered the application of the principles regarding the administrative action. This Court held as follows:

In these circumstances, what is called the defacto doctrine, we consider, must apply. This doctrine was engrafted as a matter of policy and necessity to protect

the interest of the public and individuals involved in the official acts of persons exercising the duty of an officer without actually being one in strict point of law. But although these officers are not officers de jure they are by virtue of the particular circumstances, officers, in fact, whose acts, public policy requires should be considered valid. (See American Jurisprudence, Volume 43, Section 470 under the heading De Facto Officers).

A Three Bench of the Apex Court reported in *Gokaralu Rangaraju v. State of Andhra Pradesh* 1981 SCC Cri. 652 had considered the application of doctrine of defacto authority of the administrative as well as judicial authorities. It was held as follows: This doctrine was engrafted as a matter of policy and necessity to protect the interest of the public and individuals involved in the official acts of persons exercising the duty of an officer without actually being one in strict point of law. But although these officers are not officers de jure they are by virtue of the particular circumstances, officers, in fact, whose acts, public policy requires should be considered valid.

The principle laid down in Menon's case was approved in Gokaraju's case. It was held that the action taken by an authority who has no such authority in fact can be saved by applying the principle of defacto doctrine under certain circumstances. That principle was followed by a learned Single Judge of Karnataka High Court in N. Mahesan's case (supra). In Mahesan's case, it was held that the registration of the case against the accused and the investigation although incompetent in law, can and is saved in public interest on the doctrine of defacto Authority. In view of the principles laid down by Bhajan Lal's case (Supra) and Shamboogiri's case (supra) it is not possible to agree with the view taken by the learned Single Judge in Mahesan's case that investigation conducted by a non designated officer can be saved by applying the principle of defacto doctrine. But position is different in this case. Though Section 17 of the 1988 Act imposes a bar on a non-designated police officer from arresting a person accused of an offence punishable under Section 7 and 13 of the PC Act, the petitioner was caused to be arrested by private persons in exercise the powers conferred on them under Section 43(1) of the Cr. Procedure Code.

21. Since the power of a private person to cause a person who commits a cognizable offence is not affected by Section 17 of the Act the action of the S.I of Police, Guruvayoor arresting the petitioner while the private person caused the arrest or the petitioner by the S.I of Police is to be saved by applying the doctrine of defacto authority. But I make it clear that it is open to the petitioner to plead and prove prejudice or miscarriage of justice at the time of trial. If any prejudice or miscarriage of justice is pleaded, the learned Special Judge shall consider the effect of the same and take appropriate decision. But I do not find any reason to quash the arrest also in this case. So, the Crl.M.C. is only to be dismissed.

In the result, the Crl.M.C. is dismissed.

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