INDEX

Sl. No.	Item	Page No.
1.	Prosecution Case	11
2.	Investigation, Inquiry and Trial	22
3.	The points for consideration	35
4.	Whether the Prosecution proved that PW1 was subjected to rape and related incidents	43
5.	Points 1 to 19	43
6.	The oral Testimony of PW1	45
7.	The oral Testimonies of PW4,PW5,PW41 and PW166	56
8.	Oral Testimonies of PW7,PW9,PW6 and PW2	60
9.	Oral Testimonies of PW42 and PW69	63
10.	Oral Testimonies of PW45 and PW47	65
11.	The medical and scientific evidence	76
12.	Evidence regarding securing of MO12 Tempo Traveller	100
13.	The incidents after the commission of rape and the copying of visuals to memory card on 18.02.2017	128
14.	Arrest of the accused persons	169
15.	Test Identification parade of Accused persons	175
16.	Conspiracy between accused Nos.1 to 6	181
17.	Destruction of SIM card of Accused No.2	213
18.	Harbouring of accused Nos.1,3 and 4 by accused No.7	220
19.	Recording of FIS and registration of Crime No. 297/17 of Nedumbassery Police Station on the strength of Ext.P1- FIS	229
20.	Criminal conspiracy between accused Nos. 1 and 8	253
21.	Motive alleged by the Prosecution	264
22.	Facts connected with the alleged conspiracy between accused No.1 and 8	349
	a. Presence of accused No.1 in the shooting location of 'Sound Thoma' at Alappuzha	349
	b. Criminal conspiracy at hotel Abad Plaza	387
	c. Conspiracy at the parking ground of Joys Palace, Thrissur	424
	d. Receipt of Rs.30,000/- by A1 from Nadirsha at the shooting location at Thodupuzha	461
	e. Meeting at CIFT junction, Thoppumpady	485

	f. Meeting at Kinattingal Tennis Academy	523
	g. Meeting at Santhigiri college, Thodupuzha	570
23.	Relevancy of Ext. P122 letter	581
24.	Relevancy of Ext. P457 letter	696
25.	Reach of MO87 mobile phone inside the jail	741
26.	Call between A1 and PW176 with PW181	827
27.	Confession of A1 to PW165	864
28.	Visit of A1 and A4 to Laksyah	984
29.	Fabrication of records of Anwar Hospital, Aluva	1055
30.	Subsequent conducts of A8 after 17.02.2017	1098
31.	Arrest of Accused No.8	1112
32.	Delay in executing the act after conspiracy hatched in the year 2013	1123
33.	Recording of the the visual of MO8 gold ring	1130
34.	Attempt at Goa	1133
35.	The evidence of PW222, its admissibility and relevance	1141
36.	Meeting of A1 and A8 at the residence of A8 on 26.12.2016	1147
37.	The incidents at the residence of A8 on 15.11.2017 and the proof of voice clips	1193
38.	The alleged bringing of visuals to the house of A8 on 15.11.2017 by A15 and related matters	1283
39.	Alleged inspection of visuals on 15.11.2017 at the house of A8	1308
40.	Matters regarding the visuals of verbatim found in the mobile phone of PW 182	1320
41.	Presence of A8 on 15.11.2017 at his house Padmasarovaram, Kottarakadavu	1352
42.	Message between PW 222, PW132 and PW182	1353
43.	Meeting between PW222 and A8 on 16.04.2017	1385
44.	Matters in connection with the opening of account by A8 in Federal Bank, Panampilly Nagar Branch	1394
45.	Creation of fake Whatsapp group of A8	1397
46.	Whether Prosecution proved that A8 destructed document for not producing as evidence	1399
47.	Impact of non investigation of the involvement of lady	1427

DISTRICT AND SESSIONS COURT

48.	Change in Hash value of Exts.P262 memory card	1442
49.	Investigation regarding the phone used for capturing visuals	1523
50.	Charge against A9	1541
51.	Fiat Justitia Ruat Caelum	1547
52.	Findings	1547
53.	Sentence or Order	1556




DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

IN THE COURT OF SESSION, ERNAKULAM DIVISION

Present :-

Smt.Honey M.Varghese, District & Sessions Judge

Friday, the 12th day of December, 2025/21st Agrahayana, 1947

SESSIONS CASE No.118 of 2018

(Crime No. 297/17 of Nedumbassery Police Station)

(C.P.No.16/2017 and C.P.No.34/2022 of the Judicial First Class Magistrate Court, Angamaly)

Complainant

State of Kerala, represented by Deputy Superintendent of Police, Crime Branch, Alappuzha, Special Investigation Team, Cr.297/2017-Nedumbassery Police Station.

By Special Public Prosecutor Sri. V. Ajakumar.
Addl.Special Public Prosecutor Sri.K.B.Sunil Kumar

Defacto Complainant

'X'

By Advs. T.B. Mini & Reshma Gireesh

Accused

1. Sunil N.S. @ Pulsar Suni, aged 37 years, S/o Surendran, Neduvelikkudy House, Elambakkappilly kara, Nettancity Bhagam, Vengoor West, Ernakulam.
2. Martin Antony, aged 32 years, S/o Antony, Puthussery House, Thirumudikkunnu Kara, Koratty East P.O., Koratty, Thrissur.
3. Manikandan B., aged 38years, S/o Babu, Manappattiparambil House, H.No.95, AKG Nagar, Masjid Road, Thammanam, Poonithura Village, Ernakulam.



4. Vijeesh V.P., aged 38 years, S/o Ramakrishnan, Mangalassery House, Chundagapoyyil Ponnayam P.O., Kathiroor, Thalassery, Kannur.

5. Saleem H. @ Vadival Salim, aged 32 years, S/o Hassan, Palikkaparambil House, V.I. Padi, Kunnumpuram, AIMS Ponekkara, Edappally North, Ernakulam, Pin – 682024.

6. Pradeep, aged 31 years, S/o Usha Sreekandan, Pazhayanilathil House, Chathankiri, Peringara Village, Thiruvalla, Pathanamthitta.
(Pradeep P.S., Kollamparambil House, Edappally P.O., Kalamassery, Ernakulam – 682024)

7. Charly Thomas, aged 48 years, S/o Thomas, Poopali House, Kiliyanthara, 32 Mile, Vellamana Village, Iritti Taluk, Kannur.

8. P. Gopalakrishnan @ Dileep, aged 56 years, S/o Padmanabhapillai, Padmasarovaram House, Kottarakkadavu Road, Aluva, Ernakulam.

9. Sanilkumar @ Mesthiri Sanil, aged 50 years, S/o K.N. Pillai, Snehabhavan House, Vettippuram, Milappara Village, Kozhencherry Taluk, Pathanamthitta.

10. Vishnu, aged 36 years, S/o.Aravindan, Kunnathu House, Chembumukku, Kakkanad, Thrikkakara North Village, Ernakulam.

(Approver as per Order dated 16.02.2021 in CMP No.147/21 and examined as PW176)

11. Pradeesh Chacko, aged 44/2017, S/o.Chackochan, Cheruparambil House, Chunangamveli P.O., Aluva, Ernakulam.

(Discharged as per order dated 05.12.2018 in Crl. R.P. 828/18 of Hon'ble High Court of Kerala)

DISTRICT AND SESSIONS COURT ERNAKULAM

12. Raju Joseph, S/o.N.T.Joseph, aged 44/2017, Panthaplackal House, Thoppil Lane, Broadway, Ernakulam.

(Discharged as per order dated 05.12.2018 in Crl. R.P. 829/18 of Hon'ble High Court of Kerala)

13. Vipinlal B.L., S/o.Balakrishnan, Pazhayil House, Thrickodithanam Village, Changanassery Taluk, Kottayam.

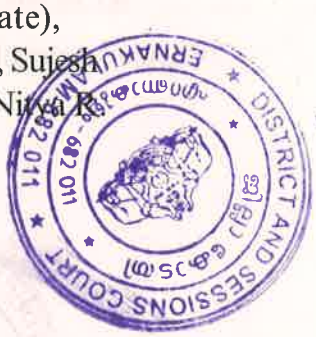
(Tendered pardon as per order dated 28.09.2017 in CMP No. 2686/17 of CJM, Ernakulam and examined as PW 121)

14. Aneesh P.K, S/o.Krishnan, aged 30/2017, Pulikkaparambil House, Manjanakkad Bhagom, Njarakkal.

(Tendered pardon as per order dated 25.10.2017 in CMP 3155/17 of CJM, Ernakulam and examined as PW 165)

15. Sarath G Nair, aged 50 years, S/o V.S Gopalakrishanan, Surya, Aluva East Village, Aluva Taluk, Ernakulam District.

A1 by Advs. V.V.Pratheeksh Kurup and Dev Nandan A
A2 by Advs.Nisha.K.Peter and Alex Joseph
A3 by Advs.M.A.Vinod, T R S Kumar
A4 by Advs.A.Muhammad,T R S Kumar,TP.Abdul Hameed
A5 & A6 by Advs.K.V.Sabu, Akhil K.Sabu, Nikhil K. Sabu, Arunraj.S., Laya Theresa Antony & Hanna Rahman.
A7 by Advs.K.A.Philip and Phijo Pradeesh Philip, Remya T.S
A8 & A15 by Advs. B. Raman Pillai (Senior Advocate), Philip T. Varghese, Thomas T. Varghese, Sujesh Menon V.B, Achu Shuba Abraham and Nitya R.
A9 by Adv. Sasidharan.K.K.



Offences : Under Section 120(A), 120(B), 109, 342, 366, 354, 354(B), 357, 376(D), 506(i), 201, 204, 212 r/w S.34 of IPC and S.66(E) and 67(A) of the Information Technology Act.

Plea of the Accused : Not guilty.

Findings : A1 to A6 are guilty and A7, A8, A9 and A15 are not guilty

Sentence/Order : A1 to A6 are sentenced to undergo Rigorous Imprisonment for a term of 20 years and also to pay a fine of Rs. 50,000/- each for the offence punishable u/s. 376(D) of IPC and in default of payment of fine to undergo RI for a period of one year for the offence u/s. 376(D) of IPC.

A1 to A6 are sentenced to under go Rigorous Imprisonment for a term of 20 years and also to pay a fine of Rs. 50,000/- each and in default of payment of fine to under go Rigorous Imprisonment for a period of one year for the offence punishable u/s. 120(B) r/w sec. 342, 354, 355(b), 357, 376(D) of IPC and section 66(E) and 67(A) of IT Act.

In the view of the sentence awarded above, no separate sentence is imposed on A2 to A6 for the offence punishable u/s. 109, r/w. Sec. 342, 354, 354(b), 357, 366 and 376(D) of IPC.

A1 to A6 are sentenced to undergo SI for a term of one year for the offence punishable u/s. 342 of IPC.



In view of the sentence awarded for the offence u/s. 376(D) of IPC, no separate sentence is imposed against A1 , and A3 to A6 for the offence punishable u/s. 354 of IPC.

In view of the sentence imposed u/s. 376 (D) of IPC, no separate sentence is imposed on A1 for the offence punishable u/s. 354 (B) of IPC.

A1 to A6 are sentenced to imprisonment for a period of one year for the offence u/s. 357 of IPC.

A1 to A6 are sentenced to undergo Rigorous Imprisonment for a period of 10 years and shall also be liable to pay a fine of Rs. 25,000/- and in default of payment of fine to undergo RI for a period of 6 months for the offence u/s. 366 of IPC.

A1 is sentenced to undergo imprisonment for a period of 3 years and with a fine of Rs. 1 lakh and in default of payment of fine to undergo Imprisonment for a period of 6 months for the offence punishable u/s. 66E of IT Act, 2000.

A1 is sentenced to undergo Rigorous Imprisonment for 5 years and also to pay a fine of Rs. 1 lakh and in default of payment of fine, to undergo RI for a period of 6 months for the offence punishable u/s. 67 A of IT Act,2000.

A2 is sentenced to undergo Rigorous Imprisonment for a 3 years and also to pay a fine of Rs. 25,000/- and in default of payment of fine to undergo RI for a period of 6 months for the offence punishable u/s. 201 of IPC.

The substantive sentence of imprisonment awarded shall run concurrently.

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

If the fine is realised, Rs. 5 lakhs shall be paid to PW1 u/s.357(1) of CrPC. The accused are entitled for set off u/s. 428 of CR.P.C.

Sl. No.	Name of the Police Station and the Crime No of the offence	Description of the Accused		
		Name	Father's Name	Religion
1.	Cr. No. 297/17 of Nedumbassery Police Station	Sunil N.S. @ Pulsar Suni	Surendran	Hindu
2.		Martin Antony	Antony	Christian
3.		Manikandan.B	Babu	Hindu
4.		Vijeesh V.P.	Ramakrishnan	Hindu
5.		Saleem H @ Vadival Salim	Hassan	Islam
6.		Pradeep	Usha Sreekandan	Hindu
7.		Charly Thomas	Thomas	Christian
8.		P Gopalakrishnan @ Dileep	Padmanabha Pillai	Hindu
9.		Sanilkumar @ Mesthiri Sanil	K.N.Pillai	Hindu
10.		Vishnu	Aravindnan	Hindu
11.		Pradeesh Chacko	Chackochan	Christian
12.		Raju Joseph	N.T.Joseph	Christian
13.		Vipinlal.B.L	Balakrishnan	Hindu
14.		Aneesh.P.K	Krishnan	Hindu
15.		Sarath G Nair	V.S.Gopalakrishnan	Hindu

DISTRICT AND SESSIONS COURT ERNAKULAM

	Residence	Age	Occupation	Date of		
				Occurrence	Complaint	Apprehension
A1.	Neduvelikkudy (H), Elambakkappilly Kara, Nettancity Bhagam, Vengoor West, Ernakulam	37	Driver	17.02.2017	18.04.2017 22.11.2017 27.07.2022	23.02.2017
A2.	Puthussery (H), Thirumudikkunnu Kara, Koratty East P.O., Koratty, Thrissur.	32	Driver	17.02.2017		18.02.2017
A3.	Manappattiparambil House, H.No.95, AKG Nagar, Masjid Road, Thammanam, Poonithura Village, Ernakulam.	38	Driver	17.02.2017		21.02.2017
A4.	Mangalassery(H) Chundagapoyyil Ponnayam P.O., Kathiroor, Thalassery, Kannur.	38	Driver	17.02.2017		23.02.2017



A5.	Palikkaparambil House, Kunnumpuram, AIMS Ponekkara, Edappally North, Ernakulam.	32	Driver	17.02.2017		19.02.2017
A6.	Pazhayanilathil House, Chathankiri, Peringara Village, Thiruvalla, Pathanamthitta.	31	Driver	17.02.2017		19.02.2017
A7.	Poopali House, Kiliyanthara, 32 Mile, Vellamana Village, Iritti Taluk, Kannur.	48	Elecrician	17.02.2017		27.02.2017
A8.	Padmasarovaram House, Kottarakkadavu Road, Aluva, Ernakulam.	56	Actor	17.02.2017		10.07.2017

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

A9.	Snehabhavan House, Vettippuram, Milappara Village, Kozhencherry Taluk, Pathanamthitta.	50	Driver	17.02.2017		23.06.2017 & 04.12.2019
A15	Surya, Aluva East Village, Aluva Taluk, Ernakulam District.	50	Business	17.02.2017		16.05.2022

	Release on bail	Commitment	Commencement of trial	Close of trial	Sentence or order	Service of copy of Judgment
A1.	20.09.2024	07.01.2018 29.09.2022	06.01.2020	25.11.2025	12.12.2025	12.12.2025
A2	10.03.2022					
A3	16.11.2021					
A4	06.04.2022					
A5	06.03.2019					
A6	17.06.2020					
A7	08.03.2017					
A8	03.10.2017					
A9	08.12.2025					
A15	16.05.2022					

This Sessions Case coming on for hearing on 25.11.2025 in the presence of the above advocates for both sides and having stood over for consideration on 12.12.2025 and the court on this day delivered the following:-

JUDGMENT

This case is based on the final report filed by the Inspector of Police, Perumbavoor and Investigating Officer of Crime No.297/2017 of Nedumbassery police station for offences punishable U/Ss.120(B), 109, 342, 354, 354(B), 357, 366, 376(D), 506(i) r/w Section 34 of IPC, Sections 201, 204 212 of IPC and Sections 66(E) and 67(A) of the Information Technology (Amendment) Act, 2008.

2. The case relates to the abduction and alleged commission of rape of a Malayalam cine actress. Considering the mandate u/s.228A of the Indian Penal Code and the guidelines of **Hon'ble Supreme Court in Nipun Saxena & Another vs Union of India & Others**, the victim is referred to as 'X' throughout the court proceedings. The victim will be addressed as 'X' hereinafter. Altogether fifteen persons are arraigned as accused at different stages of investigation. Among the fifteen, three of them were granted

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

pardon and examined as witnesses and two of them were discharged. Altogether, ten accused faced the trial. The details of the accused including the rank will be detailed while discussing the prosecution case.

3. **Prosecution case:-**

The synopsis of the prosecution case are as follows. Accused no.8 is a well known Malayalam cine actor. He was of the impression that 'X' informed about his alleged illegitimate relationship with PW176 to PW34, his first wife and also sent messages to that effect. The marital relationship of accused no.8 with PW34 was broken as a result of the above acts of 'X'. Accused No.8 also believed that 'X' spread the allegations of his illegitimate relationship to defame him. Further, during the rehearsal camp of the Association of Malayalam Movie Artists (AMMA) held in the month of April, 2013 at Hotel Abad Plaza, Ernakulam, 'X' humiliated PW179, to whom accused no.8 married later. Accused no.8 is in enmical terms with 'X' as a result of the above incidents. Accused no.8 made several attempts to destroy the career of 'X'. Infuriated with the above incidents, accused no.8 hatched criminal conspiracy with accused no.1, who was working as driver at film locations to capture the nude visuals and sexual acts with 'X' so as to

defame her and also cause her harassment and trauma. Accused no.1 had been invited to room No.410 of Hotel Abad Plaza on a day falls between 28.03.2013 and 02.04.2013 during the rehearsal camp of AMMA. Accused no.8 directed accused no.1 to record the nude visuals and her sexual activities with various persons and accused no.1 in-turn agreed for that. Accused no.8 agreed to pay one and half crores of rupees as ransom for this. In furtherance of the conspiracy between accused no.1 and 8, both of them on 01.11.2015 met at the parking ground of Hotel Joys Palace, Thrissur. Accused no.8 paid Rs.10,000/- to the accused no.1. Accused no.8 also agreed to pay Rs.1,00,000/- to him. The said amount of Rs.1,00,000/- was paid on 02.11.2015 and accused no.1 deposited the said amount to the account of his mother on the same day. Again, on 21.09.2016 accused no.1 received Rs.30,000/- from PW181 at Thodupuzha.

4. Thereafter, on 08.11.2016, as part of the conspiracy hatched between accused nos.1 and 8, they met together at the shooting location of movie 'Georgettan's Pooram' at CIFT junction, Thoppumpady. Accused nos.1 and 8 entered into caravan bearing registration number TN-10-AE-4118 and again hatched conspiracy for the execution of the acts and also

DISTRICT AND SESSIONS COURT

appraised accused no.1 for the urgency in recording the visuals as 'X' was about to leave the film industry on account of her marriage. Again, on 13.11.2016 at the shooting location in Kinattingal Tennis Club, Thrissur and on 14.11.2016 at the shooting location in Santhigiri College, Thodupuzha, both accused nos.1 and 8 hatched criminal conspiracy so as to execute the acts. As conspired between accused nos.1 and 8, on 4th and 5th January, 2017 accused no.1 attempted to execute the acts during the shooting of film 'Honey Bee 2' in Goa. 'X' was the heroin in the said movie, but accused no.1 could not execute the acts. Since the object could not be achieved, on 11.02.2017 accused nos.1 to 6 hatched criminal conspiracy at the residence of PW12 Nelson on getting information about the arrival of 'X' to Ernakulam for the shooting of promo song of the film 'Honey Bee 2'. Accused no.1 made alterations to a Tempo Traveller bearing registration No.KL-60A-9338 so as to commit rape on 'X'.

5. On 17.02.2017, accused nos.1 and 2 entered into criminal conspiracy at the compound of Lal Media Studio at Palarivattom and also conspired together with accused nos.3 to 6 for the execution of the acts agreed between accused nos.1 and 8. After the conspiracy, on 17.02.2017 at



about 4.30 p.m, accused no.2 proceeded to Thrissur in Mahindra XUV bearing registration No. KL-39-F-5744 to bring 'X' to Ernakulam. Accused nos.1, 3 and 4 as part of the criminal conspiracy proceeded in the Tempo Traveller bearing registration no. KL-60-A-9338 and waited at the service road passes in front of Adlux convention Centre, Karukutty for the arrival of "X". As agreed in the conspiracy, accused nos.5 and 6 waited near to Apollo company, Kalamassery. Accused no.2 proceeded from the residence of 'X' along with her at about 7.45 p.m in the Mahindra XUV KL-39-F-5744. They proceeded to Ernakulam through NH-47. As part of the conspiracy, accused no.2, while driving the XUV informed accused no.1 from time to time about their location using mobile no.9846130322. When the Mahindra XUV passed Adlux Convention Centre, accused nos.1, 3 and 4 noticed it and followed the XUV in their Tempo Traveller. When the vehicles reached at Kottayi near Athani Junction at about 9.15 p.m, accused no.1 who drove the Tempo Traveller intentionally dashed it on the back side of the XUV to create a fake accident as agreed between them. Immediately accused no.2 got out from the XUV and pretended to be engaged in an altercation with other accused persons, who were in the Tempo Traveller.

DISTRICT AND SESSIONS COURT

While so, accused nos.3 and 4 forcefully entered into the XUV, wherein 'X' was sitting in its middle row seat. Both accused no.3 and 4 sat on the left and right sides of 'X' respectively without her consent. They forcefully hold her both hands, closed her mouth to avoid raising voice and confined her wrongfully and accordingly, she was abducted.

6. As directed by accused nos.3 and 4, accused no.2 put the central lock of the vehicle. With the abducted 'X' and accused nos.2, 3 and 4 proceeded to Ernakulam in the XUV. Accused no.1 chased them in the Tempo Traveller. When both the vehicles stopped near bus stop near to Appollo company, Kalamassery, accused no.4 got out of the XUV. Third accused changed his position to the right side of 'X' and accused no.6 entered to the XUV from there, he sat on her left side and they continued her wrongful confinement and abduction and the XUV proceeded to Palarivattom through Edappally Bypass and accused nos.1, 4 and 5 chased them in the Tempo Traveller. When the vehicles reached near to flyover, accused no.6 got out from the XUV and accused no.5 entered and continued the confinement of 'X'.

7. When the vehicle reached near 'Design Wood Interior' situates on the side of the road proceeds from Palarivattom to Vennala, accused no.2 vacated the driver seat of XUV and accused no.1 mounted and occupied that seat. The XUV proceeded through Vennala Road and came back to 'Design Wood' carrying accused nos.1, 3 and 5 in that vehicle in addition to 'X'. When the vehicle came back to Design Wood, carrying accused no.1 occupied the seat along with 'X' and sat on her left side. Accused no.5 occupied the driver seat and they proceeded to Kakkanad through seaport - airport road and during the course accused no.5 got out from the XUV and entered in the van. Accused no.1 informed 'X' that he has a quotation to capture her naked video and directed for her co-operation for the same. Accused no.1 intimidated 'X' that if she is not co-operating, he would record the visuals after injecting psychotropic substances. 'X' was in a helpless situation on account of fear. Accused no.1 forcefully laid 'X' on his lap, disrobed her, touched and pressed on her private parts and recorded her nude visuals on his mobile phone. Accused no.1 took his genitals out, compelled and threatened 'X' to do oral sex. She was threatened and hence performed oral sex against her will and consent. As the result of oral sex,



ejaculation caused and semen fell on her body, face, lips and dress. Accused no.1 forced 'X' so as to penetrate his genitals into the mouth of 'X'. 'X' performed oral sex as she had no other way. All the accused persons thereby committed gang rape on her.

8. Accused no.1 captured the visuals of this sexual activities on his mobile phone. Accused no.1 recorded the visuals in a manner disclosing the identity of 'X' clearly. Accused no.1 specifically captured the visuals of the wedding ring of 'X' so as to identify her. All these acts were done as the result of the criminal conspiracy hatched between accused nos.1 and 8. Accused no.8 directed accused no.1 to capture the nude visuals of 'X' as he has been maintaining enmity and vengeance against her. Accused no.1 in order to execute the object hatched criminal conspiracy with accused nos.2 to 6 and accordingly, all the accused persons conjointly participated in the above acts.

9. Accused no.1 informed 'X' that the person who entrusted the quotation with him will contact her over phone. Thereafter accused nos.1 and 3 got out from the XUV, accused no.2 mounted the XUV and occupied the driver seat and he proceeded to the residence of PW5 and dropped 'X'

there and accused no.2 tried to escape from there immediately. However, he was taken back to the residence of PW5. Accused no.2 in the meantime caused disappearance of evidence by destroying the SIM card. Accused no.2 was apprehended by the police officials reached at the residence of PW5.

10. Further, on 14.02.2017 accused no.8, who was engaged in the shooting of the movie Ramaleela had suspended the shooting claiming that he was unwell. Accused no.8 thereafter fabricated false records showing his admission at Anwar Memorial Hospital, Aluva so as to appear that he has no connection with the incident whatsoever took place on 17.02.2017.

11. Accused nos.2 to 6 in execution of the conspiracy hatched with accused no.1 wrongfully confined 'X' and abducted her. Accused nos.2 to 6 facilitated accused no.1 for the commission of rape. They outraged the modesty of 'X'. Accused nos.1 to 6 abducted 'X' with the intention that she will be forced to illicit intercourse. Thereafter, accused no.1 captured the nude visuals of 'X' on his mobile phone and showed it to PW17 without the consent of 'X'.

12. Accused no.1 who captured the nude visuals of 'X' on 18.02.2017 transmitted it to a memory card at the residence of PW17 at Ambalapuzha.

Accused nos.1, 3, 4, 5 and 6 absconded immediately after the commission of the offence. Accused nos.1, 3 and 4 proceeded to Coimbatore and during the course of their journey, they went to the residence of PW20, a lawyer for engaging him as their counsel and accused no.1 entrusted his belongings including the memory card with PW20. On getting information about the incident through media, PW20 handed over the items received from accused no.1 to the Judicial First Class Magistrate Court, Aluva along with a memo. PW202 obtained the items including the memory card from the court and he forwarded the memory card so received to the Forensic Science Laboratory. On examination of the memory card in the lab, it is revealed that the memory card contains the nude visuals of 'X'.

13. Further, on 19.02.2017 accused nos.1, 3 and 4 reached at the residence of accused no.7, showed the nude visuals to him and the accused no.7 with the specific knowledge that accused nos.1, 3 and 4 committed the above offences, harboured them. On 22.02.2017 accused nos.1 and 4 went to the shop of PW179. They made enquiries about accused no.8 and collected visiting card from there.

14. Accused nos.1 and 4 were arrested on 23.02.2017. Accused no.1 was remanded to District Jail, Ernakulam. He hatched criminal conspiracy with PW121 Vipinlal and PW176 Vishnu who were the inmates of the said jail to extract money from accused no.8. As part of the conspiracy, they illegally obtained a mobile phone to the jail and on 28.03.2017 accused no.1 contacted PW181 Nadirsha, who is the close friend of accused no.8. On 10.04.2017 also, accused no.1 attempted to contact accused no.8 by contacting PW176 Vishnu and PW181 Nadirsha using the mobile phone obtained in the jail.

15. Accused no.1 thereafter wrote a letter addressing accused no.8 seeking the ransom agreed between them. The letter was written by PW121 as instructed by accused no.1. The details of the commission of the offences are mentioned in the said letter. The said letter was entrusted with PW121 and he handed over it to PW176 when he attended the Judicial First Class Magistrate Court, Maradu. PW176 went to the family house of accused no.8, met his brother PW182 and collected the phone number of PW191 Appunni, who is the close associate and driver of accused no.8. PW176 contacted PW191 several times so as to reach to accused no.8. As directed

by accused no.8, PW191 agreed to meet PW176 at Eloor taxi stand on 14.04.2017 and they met as agreed. PW176 informed about the letter. PW191 in-turn attempted to secure the letter from PW176, but in vein. PW191 informed this fact to accused no.8 through the phone of his sister.

16. As part of the conspiracy, on 18.04.2017 accused no.1 while attending the court proceeding in Judicial First Class Magistrate Court, Cherthala asked PW176 to contact PW191 so as to reach to accused no.8. Since there was no positive response from accused no.8 as directed by accused no.1, PW176 sent the letter to accused no.8 through the Whatsapp of PW191. PW176 sent the letter using the Whatsapp of his wife Ruby, PW66 keeping the original letter with him. Accused no.1 tried to contact PW191 on 21.04.2017 by calling from telephone No.0484 2428132 to the mobile phone of PW191, No.9961020306 so as to inform his demand for the ransom agreed by accused no.8. As part of the conspiracy, accused no.9 facilitated accused no.1 to keep the mobile phone secretly and also for charging it. Accused no.1 along with PW121 and PW176 made attempt to extract the ransom amount from accused no.8.

17. It is alleged that on 17.02.2017 accused no.1 captured the nude visuals of 'X' while committing rape on her and accused no.15 received the visuals in a Tablet on 15.11.2017. Accused no.15 handed over this to accused no.8. Accused no.8 with accused no.15 and with his relatives and associates watched the visuals at his residence in the presence of PW222. Accused no.8 and accused no.15 with an intention to cause disappearance of evidence refused to hand over the Tablet to the investigating officer. He also opened bank locker to keep the visuals. Further, accused no.8 after verifying the visuals of the sexual acts recorded, prepared the verbatim statements of conversations and stored it in the mobile phone of his brother PW182. Thereafter, accused no.8 deleted the said verbatim document from the mobile phone as part of causing disappearance of the evidence and thus accused committed the offences alleged against them.

18. **Investigation, Inquiry and Trial:-**

'X' was examined before this court as PW1. Accused no.2 dropped PW1 at the residence of PW5 Lal after the commission of the offence. PW1 narrated the matters to PW5 and his family members including his wife, daughter and daughter-in-law. On getting information about this, PW5

contacted police and also PW69 Anto Joseph, a film Director. PW69 in-turn contacted local MLA PW42 Mr. P.T. Thomas. PW69 and PW42 reached at the residence of PW5. PW1 narrated the matters to them and also the local police officers who reached there. PW197 Radhamani, C.I of Infopark police station reached there as directed by the superior police officials and recorded Ext.P1 F.I. Statement of PW1. Thereafter, she contacted PW202 Dy.S.P., Aluva, the first investigating officer, at about 7 a.m on 18.02.2017 and informed about the recording of Ext.P1 F.I. Statement and further told him that she had been directed to hand over the F.I. Statement to him as the place of occurrence falls within the jurisdiction of Nedumbassery police station. PW202 in turn informed her that he will reach in Thrikkakara police station at 8.30 a.m. PW202 collected Ext.P1 F.I. Statement from PW197. PW202 in-turn entrusted Ext.P1 with the senior civil police officer Mr. Anil Kumar to hand it over to Nedumbassery police station. PW194 Hari G.S, then S.I of Police, Nedumbassery registered Ext.P1(a) FIR regarding the incident as Crime No.297/2017 of Nedumbassery police station.

19. PW196 C.I of Police, Aluva was holding the charge of C.I of Police, Nedumbassery. The investigation was entrusted with him as per order No.276/TD/SDA/2007 dated 18.02.2017 and he commenced the initial investigation. A Special Investigation Team was constituted on that day itself by the State Police Chief vide order No.D3/26920/PHQ dated 18.02.2017. The then I.G. of Police Mr Dinendra Kashyap IPS, I.G. of Police Mr P. Vijayan IPS, Deputy Commissioner of Police Mr. Yathish Chandra IPS, Mr A.V. George, Superintendent of Police, Ernakulam (Rural), Mr Babu Kumar Dy. Superintendent of Police, Aluva and Radhamani, C.I of Infopark police station were the members of the Special Investigation Team. The supervision was entrusted with the then Additional Director General of Police Smt. B. Sandhya IPS. Thereafter, Superintendent of Police, Ernakulam (Rural) issued order no.57/CAMP/2017/ER dated 18.02.2017 and entrusted the investigation with PW202, then Dy.Superintendent of Police, Aluva. PW202 took over the investigation from PW196 Mr. Vishal Johnson. PW202 conducted the investigation, arrested the accused, interrogated the witnesses, collected material objects and obtained FSL reports. After completing the investigation, on 18.04.2017,

DISTRICT AND SESSIONS COURT ERNAKULAM

PW202 filed final report before the Judicial First Class Magistrate Court, Angamaly for offences u/s.342, 366, 376(D), 506(1), 120B and 212 r/w S.34 IPC and S.66(E) and 67(A) of Information Technology Act. Altogether seven accused were arraigned in the said final report. One hundred and sixty four witnesses were cited in the final report.

20. In the final report filed on dated 18.04.2017 it is stated that the mobile phone used for capturing the nude visuals of PW1 could not be traced out and further investigation is required to be conducted for its recovery. Thereafter, while conducting further investigation, PW202 on 21.04.2017 recorded the further statement of PW6. He gave statement regarding the involvement of accused no.8 in the crime. PW202 directed the A.S.I of Police Mr Joy to investigate the statement made by PW6. On 01.05.2017 PW202 received Ext.P101 petition from the Director General of Police which was submitted by accused no.8. As part of investigation, on 02.05.2017 PW202 recorded the statement of PW176. He seized Ext.P122 letter from PW176 on 04.05.2017. On 06.05.2017 he obtained permission from the Judicial First Class Magistrate Court, Angamaly for interrogating accused no.1 at jail. He questioned accused no.1 about Ext.P122. He also

questioned PW121. On 16.05.2017, PW202 arrived at a conclusion on the basis of the available materials collected in the investigation that further investigation is required to know the veracity of those informations and he submitted report to the head of the Special Investigation Team to that effect. On 18.05.2017 he filed Ext.P452 report to the court informing that further investigation is going on.

21. After filing Ext.P452 report PW202 handed over the further investigation to PW261, the then C.I of Police, Perumbavoor as per the order of Superintendent of Police, Ernakulam (Rural). PW202 conducted the investigation till 18.05.2017 and thereafter, he handed over the case diary file to PW261. PW261 took over further investigation on 19.05.2017 as per order No.D1(A)/28868/2017/E dated 18.05.2017. He questioned the witnesses, examined various CDRs, gadgets and added accused no.8 to 14 in the array of accused. Vipinlal and Aneesh P.K who cited as accused nos.10 and 14 respectively were granted pardon and examined as PW121 and PW176. PW261 on 22.11.2017 filed Ext.P798 report re-arranging the rank of accused. Then accused no.11 was ranked as accused no.8. Then accused nos.8 and 9 were arraigned as accused nos.9 and 10 respectively. Then

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

accused nos.12 and 13 were arraigned as accused nos.11 and 12. Among the twelve accused, accused no.10 was granted pardon by the trial court and examined as PW176. Accused no.15 was added in the second supplementary final report. Since he was ranked as A15 this reference is followed so as to avoid confusion. Accused no.8 was arrested on 10.07.2017 at 6 p.m on the strength of Ext.P708 arrest memo. Accused no.9 was arrested on 23.06.2017. Accused no.10 Vishnu was arrested on 24.06.2017. Accused no.11 Adv. Pradeesh Chacko was arrested on 20.07.2017. Accused no.12 Adv. Raju Joseph was arrested on 02.08.2017. Thereafter, accused nos.11 and 12 were discharged by the Hon'ble High Court of Kerala vide order in Crl.Rev. Petitions 828/2018 and 829/2018 dated 05.12.2018. The Special Investigation Team was expanded by including several members. The Special Investigation Team completed the investigation and PW261 on 22.11.2017 filed supplementary final report before the Judicial First Class Magistrate Court, Angamaly. He also filed Ext.P798 report rearranging the rank of accused persons. As I pointed out hereinbefore, a supplementary final report was filed on 22.11.2017 arraigning accused nos.1 to 12. In the said supplementary final report also the investigating officer mentioned that

further investigation is going on regarding the mobile phone allegedly used to capture the nude visuals of PW1.

22. The Judicial First Class Magistrate Court, Angamaly took the case on file as C.P.No.16/2017 after completing the necessary formalities. The learned Magistrate committed the case against twelve accused persons to the Court of Sessions, Ernakulam. The Court of Sessions, Ernakulam on getting the file assigned Sessions Case No.118/2018.

23. When the case was pending before the Court of Session, Ernakulam for completing the legal formalities, PW1 filed Crl.M.P.No.786/2018 before this court praying to transfer the case to a court presided over by a Woman Judge and also to conduct the trial in camera. This court allowed the petition in part vide order dated 18.06.2018 and proceeded with the incamera trial. At the very same time, this court dismissed the plea to transfer the case to a court presided over by a Woman Judge. PW1 filed OP(Crl).No.344/2018 before the Hon'ble High Court of Kerala challenging the order in Crl.MP 786/18 and the Hon'ble High Court vide order dated 25.02.2019 allowed the request of PW1 to conduct the trial of this case in a court presided over by a Woman Judge. Accordingly this

court made over the case to the Court of Special Judge (SPE/CBI)-III, Ernakulam on 16.03.2019. The Special Court (SPE/CBI)-III, Ernakulam received the file on 16.03.2019 and seized of the matter. Thereafter, the Hon'ble Supreme Court stayed the further proceedings as per the order in IA(D)No.58927/19 in Crl.Appeal No.1794/2019 and the stay was vacated on 29.11.2019. The Special Court considered the matter on 30.11.2019.

24. After hearing the prosecution and defence, the Special Court framed charge against the accused persons, read over and explained to them on 06.01.2020. They pleaded not guilty. Their plea was recorded. Thereafter, on 07.01.2020 the Special Court issued summons to the witnesses and the examination was commenced on 30.01.2020. The examination of the witnesses were proceeded till 13.03.2020. The examination of PW41 was over by that time. Thereafter, since nationwide lockdown was declared owing to the outbreak of COVID-19 pandemic, the trial was stalled. Immediately after the relaxations of lockdown conditions, the case was taken-up on 21.05.2020.

25. The cross examination of PW1 and other witnesses by accused no.8 was deferred as per the order of the Hon'ble Supreme Court till the

receipt of FSL report after examining the cloned copy of memory card containing the visuals involved in this case. In the meantime, the said report from Central Forensic Science Laboratory, Chandigarh was received. Thereafter, the examination of PW1 was resumed on 22.06.2020.

26. The witnesses whose cross examination was deferred by at the instance of accused no.8 were recalled and examined. Even in the midst of COVID-19 restrictions, the trial proceeded till 14.10.2020. Examination of PW80 was over by that time. In the meantime the learned Special Public Prosecutor filed Crl.M.P.No.1521/2020 stating that they approached the Hon'ble High Court for transferring the case from the Special Court. The prosecution as well as PW1 approached the Hon'ble High Court by filing transfer petitions Tr.P(Crl.) 49/2020 and 50/2020, for transferring the case from the Special Court. The Hon'ble High Court passed interim stay and accordingly, the trial was again stopped. The Hon'ble High Court dismissed the transfer petitions vide order dated 20.11.2020. On 23.11.2020 then Special Public Prosecutor submitted that he had given resignation before the competent authority. On 08.01.2021 Adv. V.N. Anilkumar has been appointed as Special Public Prosecutor vide G.O No.15/2021/HOME dated

03.01.2021 and he filed memo of appearance. The trial was rescheduled to proceed from 21.01.2021. The trial proceeded till 29.12.2021. Adv. K.B Sunilkumar was appointed as Additional Special Public Prosecutor to assist the Special Public Prosecutor. In the supplementary final report PW261 cited three hundred and fifty five witnesses. Thereafter, the prosecution filed additional witness list and total number of witnesses were three hundred and sixty one. During the course of trial, prosecution filed petition to add some more witnesses also. When the trial is scheduled for the examination of CW355, the investigating officer after exhausting the other prosecution witnesses, on 29.12.2021 prosecution submitted that they have commenced further investigation u/s.173(8) of Cr.P.C on getting vital informations regarding the commission of crime involved in this case on the strength of revelation of one Mr Balachandrakumar, who was later examined as PW222. The case was adjourned to 30.12.2021 for the examination of the Investigating Officer PW261. On 30.12.2021 the learned Additional Special Public Prosecutor submitted that the Special Public Prosecutor Mr. V.N Anilkumar resigned and sought time for alternate arrangement. In the meantime, summons was issued to additional witnesses cited in the

additional witness list filed by prosecution and the examination was conducted till 07.02.2022. The examination of PW207 was over by that time. Since further investigation was going on, the Special Court could not proceed with the trial.

27. Report is filed before the court stating that the Special Investigation Team on getting copy of petition filed by PW222 commenced the second further investigation from 29.12.2021. The Special Investigation Team proceeded with the investigation. The Hon'ble High Court fixed time limit for completing the further investigation. The time was extended several times at the instance of prosecution and ultimately, the time was fixed till 22.07.2022. As part of investigation, accused no.15 was added. PW261 filed second supplementary final report before the trial court citing four hundred and eighty one witnesses. The trial court thereafter returned the final report for filing it before the committal court so as to comply with the procedural formalities. The case against accused no.15 was committed to this court vide order in C.P.No.34/2022 dated 29.09.2022. In the meantime, on 27.07.2022 Adv. V. Ajakumar was appointed as Special Public Prosecutor and he filed memo along with Government Order No.144/2122/HOME dated 18.07.2022.

DISTRICT AND SESSIONS COURT
ERNAKULAM

While so, the woman judge who presided over the Special Court was appointed as District and Sessions Judge and posted in the District and Sessions Court, Ernakulam. Since the Presiding Officer of the Special Court was appointed as the Presiding Officer of the District and Sessions Court, the Hon'ble High Court vide O.M. No. D7 A(1)-26856/2018/D11-1 dated 02.08.2022 directed the Sessions Judge, Ernakulam to withdraw the case from the Special Court. The Sessions Judge, Ernakulam issued O.M.No.C1-41/2022 dated 02.08.2022 in compliance with the direction of Hon'ble High Court and the case was withdrawn from the Special Court. The case records were received back to the Sessions Court, Ernakulam on 05.08.2022.

28. The prosecution filed petition stating that they have filed transfer petition before the Hon'ble High Court and sought time for the commencement of trial. After the committal of the case of accused no.15 to this court, S.C.No.1000 of 2022 was assigned. That case was clubbed with S.C.No.118/2018. Since additional offences are added against accused no.8, additional charge is framed against him after complying with the formalities. Charge u/s.201 IPC is also framed against accused no.15. Both of them pleaded not guilty and the plea was recorded. The transfer petitions filed

before the Hon'ble High Court were dismissed. PW1 filed petition before Hon'ble Supreme Court seeking special leave for challenging the order of Hon'ble High Court dismissing the transfer petition. The Hon'ble Supreme Court declined special leave. Thereafter, this court commenced the examination of witnesses on 10.11.2022. The prosecution filed petition to recall the witnesses, who were already examined and those witnesses were also examined. The examination of the Investigating Officer was completed on 13.09.2024.

29. From the four hundred and eighty one witnesses cited by the prosecution, PW1 to PW261 are examined. Ext.P1 to P835, Exts.C1 to C68 and D1 to D221 were marked and MO1 to MO142 were identified. On closing the prosecution evidence, examination of the accused was conducted u/s.313 of Cr.P.C. They denied involvement in the incident. Some of them also filed statement in writing explaining the incriminating evidence and circumstances against them. On hearing u/s.232 Cr.P.C., there was no ground to acquit the accused at that stage and thereafter, they were called upon to enter on their defence and adduce evidence if any in support thereof. DWs.1 to 3 were examined as defence witnesses. Thus the total evidence in

this case consist of the testimony of PW1 to PW261 and DW1 to DW3, Exts.P1 to P835 and Exts.D1 to D221, Exts.C1 to C68 and material objects MO1 to MO142.

30. After closing the evidence in the case, the learned Special Public Prosecutor summed up the prosecution case and the learned counsel for the accused advanced arguments in reply. Thereafter, with the leave of the court, the learned Special Public Prosecutor and defence lawyers made their further submissions also. The learned Special Public Prosecutor filed notes of argument. Accused 1,2,3,4 were also filed notes of argument.

31. **The points for consideration:-**

01. Has the prosecution proved that on 17.02.2017 accused nos.1 and 2 hatched criminal conspiracy after getting information about the arrival of PW1 and also during the course of journey of PW1 from Thrissur to Ernakulam?

02. Has the prosecution proved that on 17.02.2017 accused no.2 proceeded to Thrissur in MO9 XUV to bring PW1 to Ernakulam?

03. Has the prosecution proved that on 17.02.2017 at about 9.15 p.m MO12 Tempo Traveller dashed against MO9 XUV at Kottayi near Athani Junction to create a fake accident?

04. Has the prosecution proved that accused nos.1, 3 and 4 proceeded in MO12 Tempo Traveller and waited at the service road lies in front of Adlux convention Centre, Karukutty waiting the arrival of MO9?

05. Has the prosecution proved that accused nos.1 to 6 entered into conspiracy to abduct PW1 to commit rape on her?

06. Has the prosecution proved that accused persons wrongfully confined PW1 in a moving car on 17.02.2017 in between 7.45 p.m to 10.45 pm.?

07. Has the prosecution proved that accused nos.1 and 3 to 6 outraged the modesty of PW1?

08. Has the prosecution proved that accused nos.2 to 6 abetted accused no.1 to disrobe PW1?

09. Has the prosecution proved that the accused 1 to 6 applied criminal force to confine PW1 wrongfully in a moving car?

10. Has the prosecution proved that the accused persons abducted PW1 with an intention to force her to illicit intercourse?

DISTRICT AND SESSIONS COURT

11. Has the prosecution proved that on 17.02.2017 accused persons as the result of conspiracy hatched between them formed a group and aided accused no.1 and thereby accused no.1 subjected PW1 to rape and all of them committed gang rape on PW1?

12. Has the prosecution proved that accused nos.1 to 6 conspired together and as the result of conspiracy, accused no.1 captured the visuals of sexual intercourse with PW1?

13. Has the prosecution proved that on 18.02.2017, accused nos.1, 3 and 4 reached at the residence of PW17 and accused no.1 intentionally showed him the nude visuals of PW1 recorded by accused no.1 on his mobile phone violating the privacy of PW1 without her consent?

14. Has the prosecution proved that on 18.02.2017 at about 7.45 a.m, accused nos.1, 3 and 4 reached at the residence of PW17 and accused no.1 transmitted the nude visuals of PW1 recorded by accused no.1 on his mobile phone to a memory card?

15. Has the prosecution proved that accused nos.1, 3 and 4 proceeded in MO12 Tempo Traveller and waited at the service road lies in

front of Adlux Convention Centre, Karukutty waiting the arrival of MO9?

16. Has the prosecution proved the entry of accused nos.1 to 6 in MO9 XUV used to bring PW1 from Thrissur to Ernakulam?

17. Has the prosecution proved that accused no.1 retained MO12 with him and made alteration enabling him to assault PW1 inside the said vehicle?

18. Has the prosecution proved the involvement of MO9 and MO12 in the commission of offense against PW1 ?

19. Whether the prosecution proved that alleged conspiracy on 11.02.2017 at the residence of PW12 Nelson?

20. Has the prosecution proved that accused no.2 on 17.02.2017 destroyed his SIM card used in his mobile phone to communicate with accused no.1 with an intention to screen the offenders from legal punishment and also to cause disappearance of evidence?

21. Has the prosecution proved that accused no.7 harboured accused nos.1, 3 and 4 with the knowledge that they are involved in the

commission of offence by providing shelter to them at his rental house in Coimbatore?

22. Whether the prosecution proved recording of F.I statement and registration of Crime No.297/2017 of Nedumbassery police station on the strength of Ext.P1 FIS?

23. Whether the prosecution proved that accused nos.1 and 8 hatched criminal conspiracy for capturing the nude visuals of PW1 so as to wreak vengeance against PW1 for disturbing the marital relationship of accused no. 8 with PW34?

24. Whether the prosecution proved the motive which drove accused no.8 to hatch conspiracy with accused no.1?

25. Whether the prosecution proved that Ext.P122 letter is described as part of the attempts on the side of accused no.1 to collect the consideration for the execution of plan agreed between accused nos.1 and 8 in the criminal conspiracy hatched between them?

26. Whether the prosecution proved that accused no.1 scribed Ext.P457?



27. Whether the prosecution proved the assertions regarding the reach of mobile phone to District Jail, Kakkanad?

28. Has the prosecution proved that accused no.8 and PW181 not promptly reported the calls from accused no.1 and PW176?

29. Has the prosecution proved that accused no.1 on 06.03.2017 confessed to PW165 regarding the conspiracy between accused nos.1 and 8 and sought the assistance of PW165 to reach to accused No.8?

30. Has the prosecution proved that PW165 on 07.03.2017 and 09.03.2017 made calls to Laksyah as instructed by accused no.1?

31. Whether the prosecution proved that on 22.02.2017 accused nos 1 & 4 visited Laksyah and the alleged visit fortifies the criminal conspiracy between accused nos 1 and 8 ?

32. Has the prosecution proved that accused no.8 fabricated records of Anwar Hospital, Aluva to create evidence to appear that he has no connection with the incident happened on 17.02.2017?



33. Whether the prosecution proved that accused no.1 attempted to commit the offence against PW1 during the shooting of the movie 'Honey Bee 2' held at Goa on 04.01.2017 and 05.01.2017?

34. Has the prosecution proved that accused nos.1 and 8 met at the house of accused no.8 on 26.12.2016 and accused no.1 left the house with money?

35. Has the prosecution proved the meeting of PW222 and accused no.8 on 16.04.2017 inside the caravan parked at the shooting location of movies at Trivandrum and the conversation referring the presence of accused no.1 at the house of accused no.8 on 26.12.2016?

36. Whether the prosecution proved the recording voice clips by PW222 on 15.11.2017?

37. Has the prosecution proved that on 15.11.2017 accused no.15 brought the visuals involved in this case to the house of accused no.8 on a tablet computer and accused no.8 and his associates inspected the contents of the said visuals?

38. Has the prosecution proved that the transcript found in the phone of PW182 was prepared after watching the visuals on 15.11.2017?

39. Has the prosecution proved that accused no.15 collected the visuals of attack on PW1 and entrusted the tablet computer containing visuals to accused no.8 on 15.11.2017 and failed to hand over to the investigating officer with an intention to cause disappearance of evidence so as to screen the offender?

40. Whether the prosecution proved that accused no.8 failed to hand over the tablet received from accused no.15 with an intention to cause disappearance of evidence?

41. Whether the prosecution proved that accused no.8 destructed the document to prevent its production as evidence in court?

42. Has the prosecution ruled out the involvement of a lady as conspirator in the commission of offence as revealed by accused no.1 to PW1 during the commission of offence?

43. Whether the change in hash value of Ext.P262 memory card affected its evidentiary value?

DISTRICT AND SESSIONS COURT
ERNAKULAM

44. Has the prosecution proved the charge levelled against accused no.9 that he abetted and conspired with accused no.1 for extracting money from accused no.8?

45. What, if any, are the offences committed by the accused?

46. What is the sentence or order to be passed?

Whether the prosecution proved that PW1 was subjected to rape and related incidents.

32. Since the evidence to be considered and analysed are interconnected, point nos.1 to 19 can be considered together.

33. **Point Nos.1 to 19:-**

In order to prove the alleged commission of rape on PW1, the incidents subsequent to the commission of rape on PW1 including her arrival at the residence of PW5, disclosure of the alleged commission of rape to PW5 and his family members and persons arrived there and the engagement of vehicle on 17.02.2017 to bring PW1 from Thrissur to Ernakulam, prosecution examined X (victim) as PW1, PW2 Mr. Naveen, husband of the victim, PW3 Mr. Pramod Kumar, PW4 Ms Monica,

daughter of PW5 Mr Lal, Film Director, PW5 Mr Lal, PW6 Mr. Jayadevan, brother of the victim, PW7 Ms Remya Nambessan, friend of PW1, PW8 Mr. Sujith driver of PW5, PW9 Mr. Rahul Nambeesan, brother of PW7, PW166 Mrs. Nancy, wife of PW5, PW41 Mrs. Blessy, daughter-in-law of PW5, PW42 Mr. P.T. Thomas, local MLA, PW69 Mr. Anto Joseph, Film Director, PW45 Mr. Manoj Karanthoor, Production Controller of 'Honey Bee 2' movie, PW47 Mr. Anoop V, Executive Producer of 'Honey Bee 2' movie, PW195 ACP, Thrikkakara, PW197 Ms Radhamani, who recorded the F.I Statement are examined. PW110 Dr. Milan Raju examined PW1 at Medical College Hospital, Kalamassery immediately after the commission of the offence. PW14 and PW17 are examined by prosecution to prove the alleged recording of visuals of rape on the mobile phone of accused no.1 and its transmission to Ext.P262 memory card. PW20 is examined to prove the production of Ext.P262 before the Judicial First Class Magistrate Court, Aluva along with a memo. PW202 collected it from that court and forwarded it for FSL examination. PW192 Dr. Sunil Kumar examined Ext.P262 in the State Forensic Science Laboratory and prepared Ext.P263 report. Apart from

DISTRICT AND SESSIONS COURT ERNAKULAM

the evidence of the above witnesses, the evidence of other witnesses examined by the prosecution will be discussed in appropriate places.

34. The fact that accused no.2 proceeded to the residence of PW1 at Thrissur to bring her to Ernakulam in MO9 XUV on 17.02.2017 at about 4.30 p.m remains undisputed. Similarly, the fact that PW1 commenced her journey from her residence to Ernakulam on 17.02.2017 in MO9 driven by accused no.2 is also remains unchallenged. In this backdrop the evidence of the witnesses mentioned hereinbefore can be analysed.

35. <u>The oral testimony of PW1</u>:- Since the oral testimony is a lengthy one, the important aspects alone be narrated here for the sake of convenience of reference. PW1 is a Malayalam cine actress. She married to PW2 on 22.01.2018. Apart from Malayalam films, she acted in Tamil, Kannada and Telugu movies also. She acted in 'Honey Bee 2' movie directed by CW63 Mr Jeen Paul Lal before her marriage. CW63 is the son of PW5. The shooting of 'Honey Bee 2' movie was conducted in Fort Kochi, Aroor and Goa. The shooting of last portions of the said film was done at Goa. The dubbing and shooting of promo song was to be

SESSIONS COURT

completed. The shooting in Goa was done on 4th and 5th of January, 2017. It was agreed to shoot the promo song on getting information about the date of shooting. PW47 who is the Executive Producer informed PW1 that the shooting of promo song can be done on 19.02.2017 and asked her to come over to Kochi for that. It was informed some days prior to 19.02.2017. She decided to attend the promo song and also to visit the residence of PW7 Remya Nambessan, her friend. On 17.02.2017 she informed PW47 for arranging a vehicle to come down to Ernakulam. On 17.02.2017 at about 7 p.m the driver of MO9 vehicle contacted her mother to get the route to her residence and on reaching the vehicle she seated on the second row of seat. She departed her residence at about 7.45 p.m. The driver was not familiar to her. He asked her about the destination and asked whether she intents to go to Lal Media. She replied that she wants to go to Panampilly Nagar., Kochi. The driver again asked her whether anybody is waiting there. On her reply that nobody is waiting, driver proposed a slow driving to which she agreed positively. She appraised of the driver about the route till reaching Toll Plaza. After crossing Toll Plaza the driver was driving the vehicle using single hand and engaged in



sending messages from his mobile phone. The vehicle was moving very slowly. She asked about it and told him that she wants to reach at the residence of PW7 by 9 O'clock. When the vehicle reached after Nedumbassery Airport junction another vehicle collided on its back side. The persons in the offending vehicle showed signal to stop the vehicle. They overtook the XUV and stopped it. The XUV was also stopped in front of that vehicle and the driver got out of it and approached the other vehicle. It was a Van. There was some altercations between the driver of XUV and the two persons travelled in the van. She was under the impression that they were quarreling in connection with the accident. She did not pay attention to it. Within a short time, accused no.2, the driver of XUV got into it. Accused nos.3 and 4 who were travelling in the van also entered in the vehicle and they seated on her either side. The van collided with the XUV followed it. When she questioned about their entry, accused no.4 closed her mouth forcefully and also hold her right hand. He forcefully captured her mobile phone and put it in a box. Accused no.3, who was on her left side hold her left hand forcefully. The 2nd accused asked them not to create any issues. Accused no.4 directed

accused no.2 to put the central lock and also to lock the window and he readily obeyed all their directions. The vehicle proceeded towards Ernakulam. PW1 enquired them about what they are doing. Her voice was feeble. She informed and disclosed her identity to them and also informed that she was proceeding for shooting. Accused no.3 released her hand and stated that he saw her in film only and had the desire to see her directly and never intended to be in the manner at present. Accused no.4 was still holding her right hand forcefully. He abused accused no.2. She was under the impression that the issues are connected to the accident. She also informed them that the driver was sending messages while driving the vehicle. She asked the name of driver and he told it as Martin. Accused no.4 continued to hold her right hand forcefully and he was giving the locations of their vehicle to somebody. As it was paining she asked to release her hand. They assured that she will be dropped safely at Lal Media. They also informed that they want to get the driver of XUV. The vehicle stopped near to the bus stop Kalamassery and accused no.4 got out of the vehicle and accused no.6 get-in through the left side and accused no.3 moved to the right side of PW1. The vehicle proceeded to

DISTRICT AND SESSIONS COURT

Ernakulam side. Accused no.3 was giving locations of the vehicle. She requested for her phone, but that was not heeded to. She asked the name of the person entered the vehicle from Kalamassery and he told his name as Pradeep. She requested them to not assault her. Accused no.3 told his name as Arif. They assured her that she will be dropped at the residence of PW5 safely. The vehicle proceeded to left direction at Edappally signal and reached near to Oberon Mall. The vehicle was stopped on the left side on reaching Palarivattom signal and accused no.6 got-out of the vehicle and accused no.5 got-in and seated on her left side. Accused no.4 also entered in the vehicle and sat in the passenger seat near to the driver seat. She again requested them to drop her at Lal Media. They agreed to drop her within fifteen minutes. Accused no.5 revealed his name as Arun. Instead of taking left deviation from the Palarivattom signal, the vehicle proceeded towards straight and on her query they told that they can proceed to Lal Media through another way. They took a left turn and the vehicle stopped near to a grill gate. MO12 van also reached there and stopped. To her enquiry that when she will be dropping at Lal Media, they replied that they wanted the driver of XUV. One person took

accused no.2 out of XUV. Another person who covered his face with a towel, replaced accused no.2 and sat on the driver seat of XUV. He took the vehicle in a rash manner. PW1 saw the face of the driver through the mirror. She could identify him. She enquired him as to his presence at the shooting site in Goa. He was the driver who took her from Airport while shooting was conducted in Goa. When she informed him about this fact, he removed the towel understanding that she identified him. He also asked her that she who identified him, could get idea about the person who sent him. She could not identify the person who sent him and asked about the person who sent him. The XUV proceeded further. MO12 Van was seen there. The vehicle proceeded through several by-lanes and reached Kakkanad - Thrissur Road. Accused no.5 occupied the driver seat. Accused no.1 shifted to the passenger seat wherein PW1 was sitting. The vehicle proceeded further. Accused no.1 informed her that he had a quotation to capture her naked video. She objected to it and expressed her unwillingness to him. Accused no.1 was not ready to accept it. He also informed her that if she co-operates, it will be finished within two or three minutes. If she is unwilling, she will be taken to DD Retreat Flat

DISTRICT AND SESSIONS COURT

and a group of people is waiting there. Injection will be applied and she will be subjected to rape. She again asked about the person who entrusted with the quotation. Accused no.1 informed her that it was at the instance of a lady. He also informed her that she herself knows about her enemies and warned her not to ask anything more. When accused no.5 expressed his protest, accused no.1 threatened him. She remembered accused no.1 that he was the driver at Goa and asked his name and to which he replied 'Anil'. She requested him not to make any annoyance to her as her marriage is about to take place. She also informed about the demise of her father and her inability to bear the trauma. Accused no.1 telling her about the necessity to take her nude visuals. She offered to pay the amount, if money is the problem. Accused no.1 directed accused no.5 to purchase water. She was wrongfully confined throughout. Accused no.5 was directed to take camera. PW1 expressed her unwillingness in capturing visuals. She was pleading and craved to avoid the situation. Accused no.5 brought a mobile from the Van and handed over to accused no.1. Accused no.1 directed accused no.5 to shift to MO12 Van and directed Accused no.3 to drive the MO9 XUV. Accused no.1 forcefully

caught hold on the hands of PW1. She again pleaded and requested him to avoid the capturing of video. Accused no.1 forcefully laid her to his lap. She attempted to wake-up. Accused no.1 overpowered her and again laid on his lap. The vehicle was moving. Accused no.1 started to capture the visuals on his mobile. PW1 disturbed it. Accused no.1 informed her that if she expressed her disinclination on her face, the process will continue till the visuals are okay. He also asked the driver to proceed to DD flat so as to threaten her. The Van was travelling along with the XUV. She could notice a portion of its registration number as 'A9338'. She was forcefully put on the lap of accused no.1 at that time. She was wearing a loose pants and top. Accused no.1 disrobed her by folding the top upwards till her neck. He removed her bra and squeezed her breast. He captured the visuals. She resisted. Accused no.1 intimidated her that she will be shifted to MO12. He paused the video during conversation. He captured the visuals of the upper portion of her body and portion of her abdomen. He put his hands forcefully to her private parts through her pants. She again pleaded accused no.1 to avoid the situation. It was the first day of her menstrual period. Accused no.1 captured the video

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

exposing the visuals of her sanitary napkin. She requested him to throw her out from the vehicle and she assured further that she will not disclose the incidents to anybody. Accused no.1 was not ready to accept her request. Accused no.1 placed PW1 in the seat in sitting position. He took his genitals out and compelled her to perform oral sex. As she was unwilling, accused no.1 put her face close to his genitals by pressing on her head. His genitals was placed in the mouth of PW1 and threatened her to perform oral sex. He was also stroking his genitals. All these things repeated till ejaculation. Accused no.1 spread over the semen on her face, lips, hands and dress. She had vomiting tendency and spat over the vehicle. The vehicle reached and stopped at Padamugal. Accused no.1 demanded for her phone number. Her phone was ringing. They gave her phone. Her mother was calling. The call disconnected before she attended it. She redialed and informed her mother that an accident was happened. Accused no.1 again asked for her phone number. PW1 asked about the purpose. Accused no.1 informed her that the person who entrusted with the quotation will contact her next day after 10 a.m. She replied that had those persons been powerful enough to perform the

quotation, they would be competent to collect the number also. Accused no.1 intimidated her to dial the mobile number and handed over his phone. She dialed her mobile number in the mobile phone of accused no.1. MO12 reached near to the XUV. Accused no.2 occupied the driver seat of XUV. Accused no.3 got out from XUV and tendered apology to her. Accused no.1 was there in the XUV on her left side. He enquired about her destination. She told him that she wants to reach at the residence of PW166 Nancy. She asked accused no.2 about his involvement in the incident. He pretended ignorance. He had been directed to proceed to the residence of PW5. She contacted PW41 Blessy over phone, enquired about the availability of PW5 at his residence. She informed PW41 about her arrival to their residence. She reached there. PW5 and PW166 were sitting in the sit-out. She got out of the vehicle and rushed to PW5. She was crying. PW5 asked about the reason. She was not in a position to say anything. She was taken inside the house. She was in a difficult situation. She narrated the entire incident to PW5 in the presence of his family members. It was very difficult for them to accept and believe her disclosures. They became upset. PW5 passified her.

DISTRICT AND SESSIONS COURT ERNAKULAM

PW166 took her to the bedroom. PW42 local MLA and PW69 another film Director reached there. Police Officers also reached at the residence of PW5. She disclosed the incidents to all of them. All of them consoled her and she could regain courage. She was taken to a private room. She narrated the incidents to PW197 and she reduced it into writing and obtained her signature therein. The witness identified the statement so recorded as Ext.P1 F.I Statement. Her statement was recorded at about 3 a.m on 18.02.2017 by PW197 and she handed over her dresses worn at the time of the incident to PW197. She was taken for medical examination. PW110 Dr.Milan Raju examined her. The doctor collected Saliva, Swab and Pubic hair. She identified MO1 as the top and MO2 as the pants and MO3 series as her underwears worn at the time of the incident. Her Section 164 statement was recorded on 18.02.2017 evening. She returned back to the residence of PW5 after medical examination. Her mother, brother and sister-in-law were reached there. All of them proceeded to the residence of PW7 at Panampilly Nagar. One of her earrings was lost in the XUV during the course of the incident. The available one was handed over to the police on 19.02.2017 and that is identified as MO4.

She also showed the places of commission of offence to the police on 19.02.2017. She pointed out the places from Nedumbassery Airport junction till Padamugal. On 25.02.2017 she identified accused nos.2, 3, 5 and 6 in the test identification parade conducted at Aluva Sub Jail. She also identified accused nos.1 and 4 on that day evening at Police Club, Aluva. She identified the accused persons in the court also. She also identified the MO5 as the pant and MO6 as the shirt worn by accused no.1 at the time of commission of the offence and also identified MO7 as his chappal.

36. **Oral testimonies of PW4, PW5, PW41 and PW166:** PW5 deposed that on 17.02.2017 at about 11 p.m 'X' contacted him over the phone of his daughter-in-law Blessy PW41. She enquired about his availability at the residence. She has been directed to come to his residence. He informed this matter to his wife PW166. He also informed her that 'X' was in a perplexed condition. MO9 XUV reached at his residence within a short time. 'X' rushed to him and hugged him. She cried. PW166 was also available there. PW1 informed them that while she was on the way to Ernakulam from Thrissur, somebody caused

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

accident and captured her nude visuals. She was in a broken condition. PW5 directed his wife to take her inside and hear her issues and accordingly, PW166 took her inside. According to PW5, he felt that something wrong was happened and he was not in a position to manage it. He contacted PW69 Anto Joseph. He did not attend the phone. He contacted Mr. Renji Panicker and he told that he is not in station. PW5 informed Mr. Renji Panicker about the non availability of PW69. In the meantime PW166 approached PW5 and narrated about the incidents in detail. Since the then DGP Mr. Lokanath Behera was known to him in connection with the shooting of a film, he contacted him and several police officials arrived at his residence and collected information from PW1. He and his wife accompanied PW1 for medical examination. By the time they came back, PW6, PW7, PW9 and mother of PW1 reached his house. All of them proceeded to the residence of PW7. MO9 belongs to his daughter-in-law PW41. He deposed that PW1 comeover to Ernakulam for the shooting of promo song. He came to understand that fact at a later stage. He also deposed that he enquired about the driver of MO9 with his driver PW8. Accused No.2 was not available at his

residence. He was seen walking through the road. PW8 brought him back to the residence of PW5. Accused No.2 informed them that the other accused persons assaulted him. He identified accused No.2. He also deposed that accused no.1 was the driver during the shooting of 'Honey Bee 2' in Goa. When PW1 narrated the incidents to PW166, PW4 and PW41 were also there. PW1 is known to him for a long time.

37. PW166, wife of PW5 deposed in tune with PW5 regarding the arrival of PW1 to their residence. According to PW166, on 17.02.2017 at about 11 p.m PW1 reached at their residence. PW1 called to the phone of PW41. PW41 handed over the phone to PW5 and he attended the call. PW5 told her that PW1 is in a perplexed condition. PW1 reached there within a short time. PW1 came out of MO9, hugged PW5 and cried intensively. She came inside the house. They enquired about the incident. PW1 was not in a position to give the details as she was crying. They gave her water. She took a sip, but vomited. Thereafter she narrated about the incidents. She also gave details of the journey from Thrissur and well enumerated the details of the entry of the accused into the XUV till she reaches at their residence. PW1 appraised her about the capturing of her

DISTRICT AND SESSIONS COURT ERNAKULAM

nude visuals. PW1 was in a broken condition. She also stated about the commission of rape on her. PW5 was standing in the veranda. MO9 the XUV belongs to PW41, her daughter-in-law. She realised that a most shameful incident was occurred. PW5 contacted the Director General of Police. PW1 gave details about the persons who attacked her. Police officials also reached there. She deposed about the arrival of PW42, local MLA and PW69 Anto Joseph. She also stated that PW197 recorded the statement of PW1 at about 3 a.m. She along with PW5 accompanied PW1 for medical examination to Medical College Hospital, Kalamassery. They came back by about 7 a.m. On their return PW7 and PW9 were available at her residence. She further deposed that PW1 was in a shattered and broken condition.

38. PW4 Monica Lal, daughter of PW5 supported the testimony of PW5 and PW166 in material particulars regarding the arrival of PW1 at their residence. She also described about the narrations of PW1 to them and related matters. According to her, mother and brother of PW1 reached at her residence and they proceeded with PW7 to her residence.

39. PW41 daughter-in-law of PW5 deposed that MO9 XUV belongs to her and it was being used for the production purpose of the film 'Honey Bee 2'. On 17.02.2017 MO9 was sent for bringing PW1 to Ernakulam. She also deposed about the phone call received on her phone. She stated that the name of PW1 was saved in her phone and she handed over the phone to PW5 and he attended the phone.

40. **Oral testimonies of PW7, PW9, PW6 and PW2:-** PW7 Remya Nambessan is the friend of PW1. PW7 deposed that she is residing in a flat at Panampilly Nagar along with her family members. They are thick friends. PW1 informed her that she has to attend a promo shooting in Ernakulam on 19.02.2017 and she expressed her desire to stay with her at her residence on 17.02.2017. Since PW7 had to attend a shooting in the morning session, PW1 had been directed to arrive by evening. PW1 informed her about the departure from her residence. PW1 reached the highway by 8.15 p.m. At about 10.30 p.m., mother of PW1 contacted her brother PW9 and enquired whether PW1 reached there. Mother of PW1 tried to contact PW7 and as he was not available she contacted PW9. They tried to contact PW1 over phone. Though the

DISTRICT AND SESSIONS COURT

phone rang, she did not attend the call. They were tensed. Mother of PW1 again contacted PW9 and informed that PW1 met with an accident. They had been asked to go to the residence of PW5. PW9 along with his friend went to the residence of PW5. PW9 came across with the incident from PW5 and informed her. She also proceeded to the residence of PW5. When she reached there, PW1 was narrating the incidents to women police officers. Thereafter PW1 was taken for medical examination. PW1 hugged her. She was in an emotionally scattered condition. PW1 told her in broken words that she was abducted and sexually abused. After a while, mother, brother and sister-in-law of PW1 reached there. When PW1 returned after medical examination, all of them proceeded to her flat. PW1 was not in a condition to speak about the incident. She has been advised to take rest. PW1 became normal after a gap. She narrated the entire incidents and stayed with her for about five to six days.

41. PW9 brother of PW7 also deposed in tune with PW7. According to him, PW1 was not in a position to narrate the incidents to him as she was emotionally broken. PW166 informed him about the incidents and he in-turn divulged it to PW7. He also contacted PW5



brother of PW1 and reached there. PW1 was taken for medical examination. On her return all of them went to their residence.

42. PW6 is the brother of PW1. According to him, on 17.02.2017 at about 3 a.m., he was at his in-laws house and at that time received phone call from PW7. PW7 informed him that PW1 met with an accident. She also informed him that some miscreants criminally entered into the vehicle of PW1, abducted her and captured her nude visuals. He had been asked to reach immediately at the residence of PW5. He informed to his mother about the same and he along with his wife and mother reached at the residence of PW5 at about 4.30 - 5 a.m. PW1 was taken for medical examination. PW7, PW9 and family members of PW5 were available there. They narrated them about the incidents. PW1 returned at about 7 a.m. on her arrival, all of them proceeded to the residence of PW7. He is an attestor to Ext.P2 mahazar prepared for the seizure of MO4 stud from MO9 vehicle.

43. PW2 is the husband of PW1. He is a native of Bangalore. His marriage with PW1 was solemnized on 22.01.2018 and she is known to him since 2011. According to him, on 17.02.2017 at about 11.30 p.m he

DISTRICT AND SESSIONS COURT

received information from PW1 that she was abducted and sexually abused. He consoled her. He came to Kochi and reached there on 18.02.2017 around 12 noon. PW1 was in total shock. She was weeping. At the time when PW1 contacted him on 17.02.2017, she was unable to speak about the incident. On 18.02.2017 by noon PW1 narrated the incident in detail.

44. **Oral testimonies of PW42 and PW69:-**

PW42 was the then member of the Legislative Assembly representing Thrikkakara Assembly constituency and the house of PW5 is in that constituency. On 17.02.2017, at about 11 p.m., he received a call from PW69. PW69 informed him that 'X' was assaulted and she is at the residence of PW5. PW69 informed him further that he was about to proceed to the residence of PW5. PW42 expressed his willingness to accompany him. Both of them reached at the residence of PW5 in between 11.30 p.m and 12 a.m. A police jeep reached there just before they reached at the residence of PW5. Both of them went inside the residence of PW5. PW1 was sitting in a sofa inside the house. She was crying. They enquired her about the incident. She narrated the entire



incident. She narrated the details starting from the accident at Kottayi junction till her arrival at the residence of PW5. She told them that the driver who picked her from the Airport in Goa and also drove her vehicle during the shooting of the film 'Honey Bee 2' in Goa assaulted her sexually and recorded the visuals of sexual abuse. On hearing the narrations PW42 could identify the locations. They came out to the veranda. Accused no.2 was seen sitting there. Police officials including the Asst. Commissioner of Thrikkakara were available there. He felt some suspicion about accused no.2. PW42 directed the police to check the phone of accused no.2. He became perplexed. The police verified his mobile phone. SIM was not available in that phone. They asked about it. He provided the phone number of accused no.1. PW69 Anto Joseph dialed to that number. The phone was engaged. Thereafter, they again dialed and PW69 talked to him. The police also talked to him over phone. PW42 contacted higher police officials. Deputy Commissioner of Police also reached there. PW1 was in a shattered condition. PW197 reached there and recorded the statement of PW1.

DISTRICT AND SESSIONS COURT
ERNAKULAM

45. PW69 also deposed in tune with PW42. According to him, one Mr Renji Panicker contacted him and informed that PW5 tried to contact him. He also directed him to call back PW5. Mr. Renji Panicker informed him further that 'X' is there at the residence of PW5. He contacted back PW5. PW5 stated him about the issues. He contacted police officials and political leaders including PW42. PW42 accompanied him. Both of them reached at the residence of PW5. PW1 was in a broken condition. 'X' narrated about the incidents to them. Accused no.2 was seen sitting in the veranda. He was not familiar to him. PW1 informed them that one Mr.Sunil assaulted her. They approached accused no.2 and enquired about accused no.1. They got the phone number of accused no.1. He contacted accused no.1 from his mobile phone. Accused no.1 disconnected the phone. Accused no.1 thereafter contacted him. He later came to know about the identity of accused no.1. He stated about the presence of police officials including the Deputy Commissioner of Police.

46. **Oral testimonies of PW45 and PW47:-**

DISTRICT AND SESSIONS COURT ERNAKULAM

PW45 was the Manager cum Production Controller of 'Honey Bee 2' movie. CW63 Jean Paul Lal was the Director of the said movie. He is an attestor to Ext.P4 mahazar. According to him, in the afternoon of 17.02.2017, he sent MO9 XUV to Thrissur for bringing PW1 to Ernakulam. According to him, PW47 Executive Producer of the film directed him to send MO9. When PW47 asked him to arrange MO9 he was in Lal Media. PW47 along with Vishal approached him and asked to arrange MO9 at 4 p.m. It was for shooting promo song. He was the person who managed all those affairs. Accused nos.1 and 2 were available there at Lal Media. Accused no.1 came there for collecting the salary of his previous engagement. Accused no.1 worked there as a substitute driver. Accused no.1 went to Goa in connection with the shooting of 'Honey Bee 2'. Accused no.2 was appointed as driver on the recommendation of accused no.1. Accused no.2 Martin was directed to proceed to Thrissur for bringing PW1. Accused no.2 informed his lack of experience as an excuse, he asked PW45 to depute accused no.1. On asking, accused no.1 expressed his unwillingness. He again directed accused no.2 to proceed to Thrissur and he was provided with the mobile

DISTRICT AND SESSIONS COURT ERNAKULAM

number of the mother of PW1 to get the location. This fact was known to accused no.1. In MO9 XUV accused no.2 proceeded to Thrissur. On that day, at about 12 a.m., PW47 informed him about the incident. He proceeded to the residence of PW5. He came to know about the incidents. Police took accused no.2 to police station. 'X' narrated the incidents to police.

47. PW47 was the Executive Producer of the movie 'Honey Bee 2'. According to him, 'X' was the lead actress. The last schedule of the film was shot at Goa on 04.01.2017. Post production works such as dubbing, recording, promo song recording, graphics etc. were remaining. He directed PW45 production controller to arrange MO9 XUV for bringing PW1 to Ernakulam to record promo song. PW1 on 16.02.2017 contacted him for arranging vehicle. Thereafter, on 17.02.2017 by noon PW1 contacted him and asked to send the vehicle after 3.45 p.m. He informed this to PW45 at Lal Media. PW45 arranged the vehicle accordingly. By 8 O'clock he sent message to PW1 to know about the destination. By 8.30 p.m PW1 replied that she was on the way. Thereafter, at about 11.15 p.m PW41 contacted him over phone and asked him and her husband to reach

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

there urgently. They reached there. Accused no.2 was sitting in the sit-out. PW41 took her husband inside the house and narrated the incidents. CW63 husband of PW41 disclosed about the incidents to PW47. Police reached there at about 11.30 p.m. PW42 and PW69 also reached there. PW1 informed that she was abused by the driver who drove the vehicle in Goa. They could identify accused no.1. As part of the shooting in Goa one vehicle along with a single driver was arranged to PW1. Accused no.1 was that driver. He also stated about the recording of F.I Statement of PW1 by PW197 and her medical examination also.

48. As pointed out, the evidence mentioned hereinbefore includes the evidence of victim as well as the evidence regarding the incidents prior to the alleged commission of offence and incidents immediately after the alleged commission of offence. While analysing the evidence of PW1 victim it is seen that she had given detailed narrations regarding the incidents which commenced from her journey from Thrissur to Ernakulam. She categorically stated that accused no.2 was engaged in sending messages while driving MO9 vehicle. They reached at Kottayi. After Airport junction MO12 Van dashed on the back side of MO9. The

DISTRICT AND SESSIONS COURT ERNAKULAM

evidence regarding the inspection of vehicle by the Motor Vehicle Inspectors can be dealt with later. She also deposed meticulously about her abduction by the accused nos.1 to 6 throughout the journey and their entry to MO9 from various points till her arrival at the residence of PW5. PW1 identified all the accused nos.1 to 6 in the test identification parade and also before the Investigating Officer. She identified them in the court also. She had narrated in detail about the sexual assault on her by accused no.1 and the aid and assistance of the other accused persons. She emphatically deposed about the capturing of her nude visuals by accused no.1 in mobile phone. The one and only evidence regarding the alleged sexual acts is the evidence of PW1. The accused persons cross examined PW1 at length. It is pertinent to note that nobody challenged or disputed the incident of rape specifically.

49. Except some minor contradictions and omissions regarding the commission of alleged abduction, wrongful confinement and rape were pointed out from the defence side. No material contradictions and omissions were brought out in this regard. The prosecution allegation is that PW1 gave Ext.P1 immediately after the incident to PW197. The



defence challenged the time of recording Ext.P1 F.I Statement and contended that F.I Statement was recorded at the residence of PW7 and not at the residence of PW5 as claimed by the prosecution. They also contended that Ext.P1(a) was registered on 18.02.2017 at 12.30 p.m and the delay shows that Ext.P1 was not recorded at the residence of PW5. This point is to be discussed separately. It is pertinent to note that PW1 had given detailed narrations about the incidents in Ext.P1 and also in Ext.P177, Section 164 statement recorded on 18.02.2017 at about 5 p.m. The learned counsel for accused no.8 brought out in cross examination that PW1 had given elaborate narrations in Ext.P177. According to them, it was on account of the discussions held at the residence of PW7. But PW1 stated specifically that she was under trauma immediately after the incidents. She could regain confidence at the time of giving Ext.P177 and that led to the detailed and elaborate narrations.

50. It is to be noted that PW4, PW5, PW41, PW42, PW69, PW166 and PW197, who are the persons available at the residence of PW5 deposed that PW1 was in a broken condition. PW5, PW166, PW42 and PW69 specifically mentioned about the mental condition of PW1.

DISTRICT AND SESSIONS COURT ERNAKULAM

PW2 and PW7 also deposed about the mental condition of PW1 immediately after the incidents. All of them uniformly deposed that she was crying and in a broken condition. The learned defence lawyers tried to contradict this by putting questions suggesting that she is a bold and courageous lady. It is quite clear that even if a lady is bold and courageous, whenever she undergoes a trauma like that stated by PW1, it would be quite impossible to maintain boldness and courage and she will fall down definitely. PW1 was on her way to Ernakulam. The accident at Kottayi was unexpected. It is seen from the evidence that MO12 Van dashed on the back side of MO9 XUV. Accused no.2 who was driving MO9 got out of the vehicle and there was an altercation between the driver and passengers in MO12 Van. Immediately thereafter, accused no.2 along with accused nos.3 and 4 rushed inside MO9. PW1 deposed that entry of accused nos.3 and 4 in XUV was in connection with the accident. Accused nos.3 and 4 sat on the right and left sides of PW1, hold on her hands, wrongfully confined her and even forcefully closed her mouth also. She was under pressure, threat and wrongful confinement till she reached at the residence of PW5. While in the XUV accused no.1



sexually abused her and subjected her to oral sex against her will. She deposed that accused no.1 spread over semen on her lips, face and body. She spontaneously spat over the car. PW4, PW41 and PW166 deposed before the court that she had showed vomiting tendency. Analysing the factual situation as stated above, there is no reason whatever to disbelieve the testimony of the witnesses that PW1 was in a shocking condition immediately at the time when she reached the house of PW5.

51. On an analysis of cross examination of the accused persons, it is seen that the incidents which were narrated by PW1 regarding the alleged commission of abduction, wrongful confinement and rape are not seen challenged except for the identity or some contradictions regarding her plan to arrive Ernakulam. Accused no.1 challenged PW1 regarding the identity of pants worn at the time of commission of the offences. PW1 stated that the pants was with zib. Actually, MO6 is without zib. But PW1 categorically deposed about the difference. She also stated that she noticed 'Puma' brand logo in MO6. MO6 contains the same logo. It cannot be expected that a victim should notice all features of her dress and of the offender meticulously. In this case PW1 identified MO6

DISTRICT AND SESSIONS COURT ERNAKULAM

properly before the investigating officer and also before the court. Moreover, PW192 who prepared Ext.P263(b) report also identified MO6. The dress materials worn by accused no.1 were forwarded to the State Forensic Science Laboratory with a query to examine whether the cloths seen worn by the male are one and same as the items 5 and 6 mentioned in forwarding note dated 28.02.2017.

52. In Ext.P263(b) the photo of MO6 is separately shown. That photo perfectly matches with MO6. So the minor contradictions in the evidence that MO6 was with zib is not helpful to discard the trustworthiness of PW1. Immediately after arriving at the residence of PW5, PW1 disclosed the identity of accused no.1 as the driver in Goa. Moreover, PW1 stated that she could identify him when he entered in MO9 Van though his face was masked below the nose. On realsing that she identified him, accused no.1 removed the towel telling that she could identify him. The oral testimony of PW1 regarding the incident is corroborated by the oral testimonies of other witnesses mentioned hereinbefore. So, on an over all analysis, nothing is there to disbelieve or

discredit the testimony of PW1 regarding the incidents held in MO9 XUV during her journey therein on 17.02.2017.

53. The learned counsel for the accused cross examined PW1 on the line that she did not even make any attempt to escape from MO9 and the clutches of accused inspite of the halt at different traffic signals and the vehicle was passing through busy road. It is also suggested that she could have raised alarm and accordingly escaped from MO9 XUV. PW1 stated that eversince the accident, accused persons abducted and wrongfully confined her. It is also stated that on their entry, accused nos.3 and 4 directed accused no.2 to lock the vehicle using central lock facility. So, she was not in a position to unlock the vehicle. It is also stated that her phone was also kept away from her. She could not make any calls. She also clarified that though the vehicle stopped at different places, two of the accused seated on her either side holding her hand, and closing her mouth forcefully. There is no sound reason to discard the explanation of PW1 for not raising alarm during her journey in MO9.

54. Further, the settled principle of law is that in cases involving sexual assault/rape, it is generally difficult to find any corroborative

DISTRICT & SESSIONS COURT ERNAKULAM-682 011

witnesses except the victim herself and therefore, the evidence of the victim has to be given weightage. The sole testimony of the victim is enough if it inspires confidence.

55. In **Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat AIR, 1983 S.C 753** it is held that **"corroboration is not the sine-quo-non for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the women who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion, to do so is to justify the charge of male chauvinism in a male dominated society".** Same was the finding of the Hon'ble Supreme Court in **Vijay and Another v. State of Madhya Pradesh** reported in **(2010) 8 SCC 191**. In view of the settled law I have to examine whether the evidence adduced by the prosecution particularly the testimony of the victim is trustworthy, credible and can be relied upon. From the perusal of the record it transpires that the victim has deposed on same lines and there are no material contradictions in her testimony. So, on an analysis



of the evidence on record, as I pointed out in this case, immediately after the incident PW1 reached at the residence of PW5 and disclosed the incidents to the persons available therein. They also deposed in tune with PW1 regarding the incidents. Apart from that Ext.P262 visuals recorded in the memory card, the evidentiary value and reliability are evaluated separately, is supporting the evidence of PW1. So, on the basis of the above discussions and conclusions, I hold that the testimony of PW1 is quite reliable on to prove the incidents held on 17.02.2017 during her journey from Thrissur to Ernakulam in MO9 XUV.

56. **The medical and scientific evidence regarding the incidents held on 17.02.2017 in MO9 vehicle:-**

PW108 is the Chief Medical Officer attached to the District Hospital, Thrissur during February, 2017. On 27.02.2017 PW108 collected the blood samples of PW1 as per the request of the investigating officer. She prepared Ext.P110 as part of collection of blood sample. PW110 is the doctor who examined PW1 immediately after the incident. She was working as Senior Resident in Obstetrics and Gynecology (OBG), Government Medical College, Kalamassery, Ernakulam. She issued



Ext.P113 certificate after examining PW1. PW1 was accompanied by PW166. The alleged history of sexual assault in a car (XUV) on Kakkanad route is mentioned in Ext.P113. It is recorded that, on way from Thrissur to Kochi 9.30 p.m (around) by unknown person (previous driver in Goa). Car was hit from behind and stopped by two other people who got into the XUV. The car was perambulated around Kochi several times, they forced to take naked video of PW1. The victim gives the history of oral sex. No history of vaginal intercourse was stated. This summary of narration of PW1 is mentioned in Ext.P113. The examination was commenced approximately by 5 a.m. The injuries noticed were also found a place in Ext.P113. It includes mild contusion on the left arm, 1 c.m abrasion on the right forearm lower part and one injury on the right second toe. PW1 was also on the first day of her menstrual cycle. PW110 collected the samples of oral mucous, swab, saliva, mouthwash, vaginal swab, nail clippings and pubic hair. All the samples were packed, sealed and labelled. PW110 handed over the samples along with the certificate to police. She issued requisition for chemical examination of the samples. She was cross examined from the

defence side. It is brought out that Ext.P113 does not contain any reason for the unwillingness of PW1 for the vaginal examination. It is also suggested to the witness that Ext.P113 is not in the prescribed format, but she denied it.

57. PW112 was the Chief Medical Officer at District Hospital, Aluva during 2017. He examined accused no.1 on 24.02.2017 and issued Ext.P115 certificate. It is stated in Ext.P115 that there is nothing to suggest that accused no.1 is incapable of performing sexual acts. He also noticed nail marks above right axila 5 cm in length, a nail mark below right eye, mild contusion below right eye and no skin colour change. At the very same time, PW112 stated that the injuries are less than one day old. Apart from this PW112 collected blood, scalp hair and body hair and nail clippings of accused no.1 for DNA profiling. He packed, tied, labelled and sealed the samples so collected. The samples were handed over to the investigating officer. He also prepared request for the chemical analysis of the samples collected.

58. PW113 was the Junior Consultant, Ophthalmology and he collected scalp hair samples of accused no.1.



59. PW154 was the Assistant Director, Regional Forensic Science Laboratory, Cochin and she was working as Scientific Officer in District Crime Record Bureau, Cochin City. On 18.02.2017, she inspected the vehicle bearing Reg.No.KL-39-F-5744 (MO9) involved in Cr.No.297/17 of Nedumbassery police station in the presence of investigating officer. She collected:-

(1) White stain like matter collected from the floor mat in the middle cabin of the car.

(2) Hair like fibres collected from the middle cabin of the car.

(3) Black hair like fibres collected from the driver's cabin.

(4) Nail like matter collected from the driver's cabin.

(5) Cello tape pressings of white foreign paint collected from the outer portion of the car.

(6) White hair like fibre collected from the front cabin of the car.

60. All the items were handed over to the investigating officer and he sealed it. The items were forwarded to the Forensic Science Laboratory, Thiruvananthapuram for detailed chemical examination. She prepared Ext.P161 report regarding the inspection. Further, on

19.2.2017, PW154 also inspected vehicle bearing No.KL-60-A-9338 (MO12) involved in Cr.No.297/2017 of Nedumbassery police station. On examinations he collected the following items:-

(1) White control paint from the vehicle.

(2) Hairs collected from the driver's cabin.

(3) Hairs collected from the saffron colour lungi found at the back of cabin floor of the vehicle.

61. The items collected were packed, labelled and handed over to PW202. These items were also forwarded to the Forensic Science Laboratory, Thiruvananthapuram for detail examination. Ext.P162 is the report prepared by PW154. She was cross examined by accused no.8 and questioned the non collection of hand kerchief and ear-ring at the time of Ext.P161.

62. PW183 was working as Asst. Director DNA in State Forensic Science Laboratory. On 07.03.2017 she received a parcel in DNA Division as internal forwarding from Asst. Director (Biology) of the State Forensic Science Laboratory. The seals of the packets were found tallied with the impression of specimen seal. She had given the details of

the items received in the laboratory. The items includes which are numbered as:-

1(a) Vaginal swab of 'X'

(b) Nail clippings of 'X'.

(d) Buccal swab of 'X'.

(e) Sample of saliva of 'X'.

(f) Mouth wash of 'X'.

4. Sample blood of Sunil.

5. Nail clippings of Sunil.

8. One black coloured round neck half sleeve top with white coloured printed designs.

11. One underwear with white, black and greenish blue coloured stripe designs.

12(a). A piece of cotton gauze with dirty brown stains collected by Scientific Officer, Kochi City, from the floormat in the middle cabin of the car KL-39- F- 5744.

12(c). Three short black hairs collected by Scientific Officer Kochi City.

12(d). Four small pieces of nail clippings collected by Scientific Officer Kochi City.

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

12(e). Returned unopened and unexamined as it contains paint samples.

15. One blue coloured small towel with deep blue white and orange coloured designs.

63. The details of examination are as follows:-

DNA was extracted from the items mentioned below:-

1. Sample blood of Sunil in item No.4
2. Vaginal swab of 'X' in item No.1(a)
3. Buccal swab of 'X' in item No. 1(d)
4. Saliva sample of 'X' in item No.1(e).
5. Mouth wash of 'X' in item No.1(f)
6. Nail clippings in items Nos.1(b) and item No.5
7. Seminal stains in item No.8
8. Stain from underwear in item No.11
9. Stain from car in item No.12(a)
10. Hair from car in item no.12(c)

PW183 had stated about the methods used for the extraction of DNA.

64. The results of examination are:-

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

(1) Seminal stains in item No.8 (MO1) belongs to accused no.1 Sunil to whom the blood sample in item No.4 belongs.

(2) The epithelial cells in item No.8 (MO1) belong to 'X' to whom sample saliva in item no.1(e) belongs.

(3) The vaginal cells in item No.1(a) belong to 'X' to whom saliva sample in item No.1(e) belongs.

(4) The buccal swab in item No. 1(d) and mouthwash in item No.1(f) contains only tissues belonging to 'X' to whom the sample saliva in item No.1(e) belongs.

5. Hair from car in item No.12(c) contains only tissues belonging to accused person Sunil to whom blood sample in item No.4 belongs.

6. Stain from car in item no.12(a) contains only tissues belonging to 'X' to whom the saliva sample in item no.1(e) belongs.

7. Nail clippings in item no.1(b) contains only cells and tissues belonging to 'X' to whom the saliva sample 1(e) belongs.

8. Nail clippings in item No.5 contains only cells and tissues belonging to the accused person Sunil to whom the blood sample in item no.4 belongs.

9. Stain in item no.11 contains only cells and tissues belonging to 'X' to whom the saliva sample 1(e) belongs.

10. DNA could not be extracted from items 12(d) and 15.

65. PW183 prepared Ext.P222 report. Seminal stains in item No.6 belongs to accused person Sunil, since it contains sufficient amount of spermatozoa for DNA profiling. Epithelial cells in item No.8 belongs to 'X' . DNA profile obtained from the Epithelial cells in item No.8 was found matching with that of sample saliva in item no.1(e). So, the Epithelial cells in items no.8 belongs to 'X'. DNA profile obtained from the seminal stains in item no.8 (MO1) was found matching with that of the sample blood in item no.4. Hence spermatozoa in item no.8 (MO1) belongs to Sunil. DNA profile obtained from the stains in item no.11 panties in MO3 series underwear with white, black and greenish blue coloured stripe designs was found matching with that of the sample saliva in item no.1(e). Hence stains in item no.11 belongs to 'X' to whom sample saliva in item no.11(e) belongs. DNA profile obtained from the stain in item no.12(a) (piece of cotton gauze with dirty brown stains collected from the floormat in the middle cabin of MO9) was found matching with that of the saliva sample in item no.1(e). Hence stain in item no.12(a) belongs to 'X'. DNA profile obtained from the root of the hair in item no.12(c) was found matching with that of the sample blood in



item no.4. Hence hair in item no.12(c) belongs to accused no.1 Sunil. Spermatozoa present in item Nos.1(a),11 and 15 was insufficient for getting a good DNA profile. She identified item nos.8, 11 and 15 examined by her as MO1, MO3 and MO10 respectively.

66. The learned counsel for accused no.8 cross examined PW183. She was challenged about her statement that one cell is sufficient to detect spermatozoa in biological examination, but for detecting spermatozoa in DNA profiling more cells are required. She was challenged by suggesting that her statement was as instructed by prosecution. This witness denied it stating that it is a scientific fact. The learned counsel proved Ext.D51 through her. She was also challenged regarding her conclusion that spermatozoa in item no.1(a) and 11 are insufficient for DNA profiling.

67. PW188 is the Director (Biology), Forensic Science Laboratory, Trivandrum. She sated about the receipt of parcels for examination on the strength of forwarding notes and covering letters from the court. The covering letters are marked as Ext.P247 series. The parcel consisted of three sealed packets. It contains item no.1, item no.2 and

item no.3. The details of the items are mentioned by this witness. She also identified Ext.P248 series forwarding note with respect to fourteen sealed packets. These items consist of item nos.4 to 12. Items 4 and 5 were forwarded to DNA Division in a sealed packet. She had narrated the details of the items received. She identified MO1 and MO2 as the items examined by her. She also proved Ext.P249 series forwarding notes along with covering letter. It consists of six sealed packets. Item nos.13 and 14 were not opened in the Biology Division. She identified MO10 as item no.15 included in this forwarding note. MO5 and MO6 are also identified by the witness as the items examined by her. On the strength of Ext.P250 series forwarding note, items 19 and 20 hair samples from the scalp of accused no.1 are received. Seals were found tallied with the sample seals provided with. Items 8, 9, 10, 11 and 15 to 18, items 1(a), 1(c), 1(d) and 1(f) were taken for the examination of seminal spermatozoa. Item no.8 - a black coloured T-Shirt with white printed designs brand name Max-M/12 (MO1). Item No.9 - a black coloured 'Tavisha' brand garment (harem pants) with cream coloured printed designs (MO2). Item no.10 - a red coloured 'SHERRY' brand brassiere with black coloured



straps (MO3 series). Item no.11 - a 'Teen-Waves' elastic type underwear with blue, white and black coloured printed designs (MO3 series). Item no.15 - a towel with blue, light blue, white and yellowish coloured printed designs kept in an unsealed polythene cover (MO10). Item no.16 - five black coloured rubber mat with cream coloured borders. Item no.17 - A black coloured 'Sport Lifestyle' brand pants with elastic in the waist (MO6). Item No.18 - a "Mr-X I AM A JEANS MITH" branded full sleeve shirt made with white and black coloured cloth (MO5). Item No.1(a) is the vaginal swab.

68. Human Spermatozoa are detected in item no.1(a). Items 8, 11 & 15 contain human Spermatozoa and semen. Items 8, 9, 10, 11 and 15 to 18 were taken for the examination of blood. Item no:11 contains human blood. Items 8, 9, 10, 11 and 15 to 18 were taken for the examination of Saliva and not detected. The hairs in item no.12(c) are human scalp hairs. But it is not possible to opine whether it is similar or not with sample scalp hairs in Items 6 and 19(a) to (e). Item no.12(f) is an animal hair. Item no.12(b) are human scalp hairs which are not similar to the sample scalp hairs in items 6 and 19(a) to (e). She issued Ext.P251

report describing the details of items, description of the articles and details of examinations. The report also mentions about the details of examination for the detection of human spermatozoa. This witness also mentioned about the details of the examination for blood.

69. The counsel for accused no.1 suggested that in the microscopic examination it is not possible to say the age of spermatozoa and to whom it belongs and she emphatically answered that spermatozoa could be detected even if the items are aged more than five years and dried subject to conditions. She was cross examined by the learned counsel for accused no.8 regarding the procedure for internal transfer of parcels in Forensic Science Laboratory. She was also questioned regarding the non mentioning of dates showing the receipt of parcels in the Divisions and also the date on which the samples were forwarded to DNA Division.

70. This is the scientific evidence tendered before the court in support of the prosecution case that PW1 was subjected to rape in MO9 XUV. It is pertinent to note that except the counsel for accused no.8, there was no serious cross examination for the other accused. The counsel for accused no.1 put one or two questions to some of the witnesses. The

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

learned counsel for accused no.8 challenged the procedures for internal transfer of MOs for forensic and DNA examination. As far as the collection of the items are concerned, except PW110 and PW154, the evidence of others remain unchallenged. Further, PW110 was challenged regarding the non examination of vagina of PW1. The definite case of the prosecution is that she was not subjected to any vaginal intercourse, though some anomalies regarding the non mentioning of this reason in Ext.P110 is brought out. In view of the definite case of the prosecution that PW1 was subjected to oral sex, non examination of vagina has no much relevance.

71. The evidence regarding Ext.D24 requisition prepared by PW110 is reserved for consideration along with the recording of Ext.P1 and registration of Ext.P1(a) arise. PW110 deposed that though PW1 was not willing for per vaginal examination, she examined her vagina, but not conducted the finger test as she was menstruating and suffering from pain. It is also brought out that it was the first day of her menstrual cycle.

72. Coming to the evidence of PW183 and PW188, it is seen that semen and spermatozoa were detected in the items examined in the

lab. As I pointed out, Ext.P222 contains the report in detail. It is mentioned specifically that DNA profile obtained from the seminal stains in item no.8, ie., the top worn by PW1 at the time of the alleged commission of rape identified as MO1 belongs to accused no.1. It is mentioned specifically that spermatozoa in MO1 belongs to accused no.1. The prosecution case is that accused no.1 subjected PW1 for oral sex and made her to cause ejaculation. PW1 deposed that the semen were spread over her dress and body parts. She also deposed that, semen was spread over the mat of MO9 also. Similarly, DNA profile obtained from the stains in the underwear worn by PW1 at the time of occurrence was found matching with that of the samples of PW1. DNA profile obtained from the floor mat of MO9 also found matching with the sample of PW1. The DNA profile obtained from the root of the hair collected by PW154 from MO9 was found matching with that of the sample blood of accused no.1. Though spermatozoa was also detected in the vaginal swab of 'X', item no.8, item no.11 underwear and item no.15 blue coloured small towel, it was insufficient for getting a good DNA profile.



73. The scientific evidence available on record shows the presence of PW1 and accused no.1 in MO9. It also supports and corroborates the prosecution version that PW1 was subjected to oral sex and made her to have ejaculation by accused no.1. The learned counsel for accused no.1 advanced argument contending that the collection and sampling was not proper and there was chance for false DNA profiling. He also submitted that DNA evidence could be manipulated. He further contended that the issues surrounding the collection as well as the analysis of evidence leading to subsequent contamination. He also argued that if the collection is not proper, there is chance to take DNA mixtures and in such samples, the DNA of two or more contributors can be present. He also highlighted the circumstances for DNA contamination including using equipment, that has not been cleaned and decontaminated. He also submitted that DNA transfer occurs when investigators inadvertently noticed DNA from themselves or other sources, or touching the evidence, as often through direct contact respiratory droplets or contaminated towels. According to him, PW1 herself admitted that immediately after the incident she proceeded to the residence of PW5 and on seeing him, she

hugged him. The learned counsel contended that the finding based on MO1 top cannot be relied on as it is contaminated. It is worthwhile to note that the learned counsel for accused no.1 raised such contentions during hearing he has not put these questions during the examination of witnesses. However, the submission being regarding the reliability of scientific evidence, we can evaluate the impact and effect of his submissions.

74. The first and foremost point to be considered is that the witnesses, who collected the samples and examined them in the lab categorically deposed that the samples were collected properly, packed, sealed and labelled. The items were reached in the Forensic Science Laboratory in a tamper proof condition. Nothing is there to suggest that contamination was occurred in the samples as pointed out by the learned counsel for accused no.1. Though PW1 and PW5 hugged each other on their meeting at the residence of PW5, there is no chance to have the presence of human spermatozoa and semen in item nos.8, 11 and 15. Item no.8 is a T-shirt and item no.11 is the panties of PW1 worn at the time of occurrence. Above all, item no.15 kerchief was seized from MO9 by



PW154. Further, DNA profile obtained from the root of hair marked as item no.12(c) is also collected from MO9. The DNA profile of this hair matches with the blood sample of accused no.1. Accused no.1 has no case that PW5 used MO9 vehicle during the relevant time of occurrence. The situation being so, the contention of the learned defence counsel that there is chance for contamination and hence, the DNA examination and the result thereof cannot be relied on lacks its credentials.

The Hon'ble Supreme Court in Mukesh & Another Vs. State for NCT of Delhi and others AIR 2017 SC 2161(Popularly known as the Nirbhaya case) held the evidentiary value of DNA profiling. It is held that

> **"Deoxyribonucleic acid, or DNA, consists of long ribbon-like molecules, the chromosomes, 46 of which lie tightly coiled in nearly every cell of the body. These chromosomes - 23 provided from the mother and 23 from the father at conception, form the genetic blueprint of the body. Different sections of DNA have different identifiable and discrete characteristics. When a criminal leaves a stain of blood or semen at the scene of the crime it may prove possible to extract from that crime stain sufficient sections of DNA to enable a comparison to be made**

with the same sections extracted from a sample of blood provided by the suspect.

"The process of DNA profiling starts with DNA being extracted from the crime stain and also from a sample taken from the suspect".

"DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police investigative practices."

Modern DNA testing can provide powerful new evidence unlike anything known before. Since its first use in criminal investigations in the mid- 1980s, there have been several major advances in DNA technology. It is now often possible to determine whether a biological tissue matches a suspect with near certainty. While of course many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA testing for matching tissues when such evidence is at issue.

DNA technology as a part of Forensic Science and scientific discipline not only provides guidance to investigation but also supplies the Court accrued information about the tending features of identification of criminals. The recent advancement in modern biological research has regularized Forensic Science resulting in radical help in the administration

DISTRICT AND SESSIONS COURT

of justice. In our country also like several other developed and developing countries, DNA evidence is being increasingly relied upon by courts. After the amendment in the Criminal Procedure Code by the insertion of Section 53A by Act 25 of 2005, DNA profiling has now become a part of the statutory scheme. Section 53A relates to the examination of a person accused of rape by a medical practitioner.

Similarly, under Section 164A inserted by Act 25 of 2005, for medical examination of the victim of rape, the description of material taken from the person of the woman for DNA profiling is must.

The Hon'ble Supreme Court had the occasion to consider the various aspects of DNA profiling and DNA reports, K.T. Thomas, J. in Kamti Devi (Smt.) and another v. Poshi Ram[87], observed:

"We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancements with deoxyribonucleic acid (DNA) as well as ribonucleic acid (RNA) tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate...."

In Pantangi Balarama Venkata Ganesh v. State of Andhra Pradesh(88), a two-Judge Bench had explained as to what is DNA in the following manner:

"Submission of Mr Sachar that the report of DNA should not be relied upon, cannot be accepted. What is DNA? It means:

"Deoxyribonucleic acid, which is found in the chromosomes of the cells of living beings is the blueprint of an individual. DNA decides the characteristics of the person such as the colour of the skin, type of hair. nails and so on. Using this genetic fingerprinting, identification of an individual is done like in the traditional method of identifying fingerprints of offenders. The identification is hundred per cent precise, experts opine." There cannot be any doubt whatsoever that there is a need of quality control. Precautions are required to be taken to ensure preparation of high molecular weight DNA, complete digestion of the samples with appropriate enzymes, and perfect transfer and hybridization of the blot to obtain distinct bands with appropriate control.

Indisputably, the evidence of the experts is admissible in evidence in terms of Section 45 of the Evidence Act, 1872. In cross-examination, PW 46 had stated as under:

"If the DNA fingerprint of a person matches with that of a sample, it means that the sample has come from that person only. The probability of two persons except identical twins having the same DNA fingerprint is around 1 in 30 billion world population.""



In Santosh Kumar Singh v. State Through CBI[89], which was a case of a young girl who was raped and murdered, the DNA reports were relied upon by the High Court which were approved by this Court and it was held thus:

"We feel that the trial court was not justified in rejecting the DNA report, as nothing adverse could be pointed out against the two experts who had submitted it. We must, therefore, accept the DNA report as being scientifically accurate and an exact science as held by this Court in Kamti Devi v. Poshi Ram (supra). In arriving at its conclusions the trial court was also influenced by the fact that the semen swabs and slides and the blood samples of the appellant had not been kept in proper custody and had been tampered with, as already indicated above. We are of the opinion that the trial court was in error on this score. We, accordingly, endorse the conclusions of the High Court on Circumstance."

PW183 and 188 have clearly testified in their cross-examination that all the experiments conducted by them confirmed to the guidelines and methodology documented in the Working Procedure Manuals of the laboratory which have been validated and recommended for use in the laboratory. They further added that once a DNA profile is generated, its accuracy is 100%. It is to be noted that the counsel for accused no.1 did not raise any substantial ground to challenge the DNA

report during the cross-examination of PW183 and PW188. In such circumstances, there is no reason to declare the DNA report as inaccurate, especially when it clearly links the accused person with the incident.

75. It is well settled that the sole evidence of the victim in a sexual assault can be accepted and acted upon even in the absence of corroboration, provided her evidence inspire the confidence of the court. PW1 meticulously elaborated the humiliations suffered by her on her way to the residence of PW7, her friend, from her residence at Thrissur in MO9 vehicle, which was arranged by PW45 and being driven by accused no.2 at the first instance. She had spoken about a fake accident created by the hit of MO9 on the back of MO12. She had further deposed about the entry of accused nos.3 and 4 in MO9 and their sitting on her either side and their use of force on questioning their entry. She further spoke about the entry and exit of accused nos.3 to 6 different times and from different points. She also stated about the entry of accused no.1 in MO9 covering his face with a towel and occupation of its driving seat directing accused no.2 to go out and about his recognition. After running the vehicle for sometime accused no.5 was caused to drive the vehicle and accused no.1

seated on her side and demanded for recording her nude visuals and the visuals of the sexual activities with her by stating that it was on the basis of a quotation by somebody and threatened her with gang rape by taking to a retreat centre and administering drugs. He forcibly disrobed her despite stiff resistance and recorded her visuals and thereafter, she was forced for oral sex and recorded its visuals. On reaching another point, accused no.2 get-in and dropped her at the residence of PW5 as requested by her. Despite a thorough and lengthy cross examination separately by the learned counsels for accused nos.1 to 6, nothing is brought-out to shake her reliability regarding the each and every incidents from the beginning of her journey from Thrissur in MO9 driven by accused no.2 and her dropping at the residence of PW5 and the entry and exit of accused nos.1, and 3 to 6 at different points and in that circumstance I conclude that her testimony relating to the humiliations she suffered from different accused and the mental, physical and sexual assault by accused no.1 during the course of her journey in MO9 is capable to be accepted and acted upon. The scientific evidence also substantiate the sexual acts of accused no.1 on her. The above discussions and the conclusions

arrived at therefrom would lead to the irresistible conclusion that on her journey in MO9 from Thrissur to Ernakulam, accused nos.3 and 4 physically and mentally abused PW1 and accused no.1 threatened her and insulted her mentally and physically and also sexually assaulted her and accused nos.1 to 6 aided and assisted every one for the commission of the above acts, and I hold accordingly.

76. **Evidence regarding securing of MO12 Tempo Traveller bearing registration No.KL-60A-9338 by accused no.1:-**

The prosecution allegation is that accused no.1 secured MO12 on 14.02.2017 with the help of accused no.5 from PW29 in connection with the catering service for a film shooting at Munnar. It is further alleged that accused no.1 had been directed by PW33 to return the utensils hired for the shooting to the catering service from Kaduthuruthy and also to return the vehicle to PW29. PW33 left the company of accused no.1 at Aluva. Accused no.1 was alone in MO12. Accused no.1 intentionally retained MO12 without returning it to PW29. It is also alleged that accused no.1 effected modifications and alterations inside MO12 so as to suit for the sexual abusal of PW1. He removed steel bars from the portion

separating the driver's cabin from the back portion. Thereafter, accused nos.1, 3 and 4 travelled in MO12 from Ernakulam to Karukutty in the evening of 17.02.2017, laid wait in front of Adlux Convention Centre for the vehicle in which PW1 was travelling to Ernakulam. The intention of the accused was to use MO12 to chase MO9 for creating a fake accident enabling the abduction of PW1. It is further alleges that, accused no.1 later changed his plan to execute the commission of the offence inside MO9. Prosecution alleged that on 16.02.2017 PW1 informed PW47, the Executive Producer of 'Honey Bee 2' about her plan to travel to Ernakulam on 17.02.2017 to attend the promo shooting. Accused no.1 somehow came to know about this on the night of 16.02.2017. The retention of MO12 and the inside modification shows that on 16.02.2017 itself accused no.1 had clear knowledge about the arrival of PW1 to Ernakulam. Accused nos.1 and 2 later confirmed about the travel of PW1 in MO9 in the afternoon of 17.02.2017. Therefore it can be taken that accused no.1 intentionally retained MO12 with him.

77. The oral testimonies of PW28, PW29, PW30, PW31, PW32 and PW33 is relied on to show the securing of MO12 and retaining

its possession with accused no.1 as against the agreement to return it to the owner.

78. PW28 stated that he owns two travellers and one pickup van. His vehicles are used for cinema shooting purpose. According to him, PW31 was his driver. The brother of PW31 obtained MO12 from CW88. CW88 arranged the vehicle as instructed by CW93 Mr. Saneesh for cinema production. On 13.02.2017 PW33 contacted him for vehicles. As vehicle was not available with him, he contacted Mr Rajesh and accordingly, MO12 was arranged. Since driver was not available, the driver of PW33 arranged a driver. MO12 was entrusted with that driver on 14.02.2017. PW31 informed him that accused no.5 collected the vehicle. On 15.02.2017 he received a telephone call from a mobile number ending '6363' asking about the papers of the vehicle. On 17.02.2017, at about 3 p.m. he received another call from the very same number informing that the shooting was over. They asked him about the return of MO12. He directed them to return it at Chalakkudy. The person who made the phone call informed him that he will return the vehicle by night. He also informed that the vehicle was available near the petrol pump at



Thammanam. However, the vehicle was not returned even after the agreed time. In that circumstance, PW29 dialed to the number from which PW1 was contacted for the vehicle paper. Once the phone rang. The phone was thereafter switched off. He informed PW33 about the non receipt of MO12. He directed PW31 to go and enquire about the vehicle. He went to Thammanam. The vehicle was seen parked near to petrol pump. Since the key was not available, they could not take back the vehicle. In the meantime, they heard the news of the involvement of the vehicle in connection with the abduction and sexual abusal of PW1.

79. PW29 deposed that he is the owner of Mechery Travels. He arranged travellers for customers. On 13.02.2017 PW31 contacted him for a traveller in connection with a cinema. He arranged it and informed his security personnel to handover the vehicle. On fourteenth, No.KL-60A-9338 Tempo Traveller was taken for the cinema purpose. On 18.02.2017 PW31 again contacted him and informed about the vehicle. Later CW88 informed him about the involvement of MO12 in this case. He stated that MO12 is registered in the name of PW30 Aneesh, who is

his driver. He identified MO12. He also deposed about the alterations made in MO12 and also regarding the damage sustained to MO12.

80. The learned counsel for accused nos.5, 6 and 8 brought out in cross examination that the evidence regarding the removal of steel bars separating the driver's cabin and storage place was not reported to police when he was questioned and he disclosed these matters for the first time before the court.

81. PW30 stated that he is the driver of PW29 and registered owner of MO12. He produced the registration certificate and related documents before PW202 on 23.02.2017. Ext.P20 series are the said documents. He also stated that MO12 originally belongs to PW29 and the registration was made in his name. His testimony remains unchallenged.

82. PW31 is also working as a driver. He is a member of Cine Drivers Union. MO12 was handed over to accused no.5 as directed by PW33. Accused no.5 took MO12 on 14.02.2017 at about 9 a.m from Mechery Travels, Chalakkudy. Accused no.5 proceeded with MO12 to

DISTRICT AND SESSIONS COURT
ജില്ലാ കോടതി
എറണാകുളം-682 011
ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

Ernakulam on 17.02.2017. It is informed that MO12 will be returned by evening. The vehicle was not returned as agreed. He contacted PW33 and PW33 in-turn gave the phone number of accused no.1 Sunil. He contacted Mr Sunil and he agreed to return MO12 soon. The vehicle was not returned. When he contacted accused no.1 again, his phone was switched off. He informed this to PW28. He contacted accused no.5 on the next day. Accused no.5 informed that the vehicle is parked near to ARC Parcel Service, Thammanam. He proceeded to Thammanam. Key was not available. He noticed the damage to MO12. He informed this matter to PW33. PW33 informed him that the vehicle is involved in some troubles. He identified accused no.5.

83. PW32 was working as security personnel in Mechery Travels. According to him, he was managing the vehicles there. MO12 belongs to PW29. On 13.02.2017 PW29 directed him to hand over MO12 to the brother of CW88. He entrusted the key to him. Accused no.5 was also present there. Accused no.5 took the vehicle in a negligent manner, and he was instructed not to drive the vehicle in such a manner. Mr

Renjith informed him that the driver will drive the vehicle properly. He identified MO12 and accused no.5 in the court.

84. PW33 was working as production assistant in cinema. He is engaged in the supply of food. The shooting of film 'Kadam Katha' was at Munnar on February 15 and 16 of 2017. A Tempo Traveller was required to take utensils for catering in the cinema set. He contacted PW28, but his vehicles were not available. However, he agreed to arrange a vehicle. He also requested PW33 to arrange a driver. Accused no.1 was known to him. Accused no.1 was available in the shooting set of the movie 'Poomaram'. He was available there for 3-4 days. Accused no.1 provided his mobile number to PW33 for contacting in case he requires driver. Later, PW33 contacted him. Accused no.1 arranged accused no.5. PW33 gave Rs.200/- to accused no.5 for bringing MO12 from Chalakkudy. He informed this fact to PW31. Thereafter, accused no.1 reached with MO12 Tempo Traveller. He along with one Mr Vincent proceeded in MO12 to Kaduthuruthy for collecting utensils. They went to Munnar. During the night of 16.02.2017 they came back. PW33 got down at Aluva Bypass and proceeded to his native place instructing

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

accused no.1 to entrust the utensils and return MO12. On 17.02.2017 by evening PW28 and PW31 contacted him and informed that the vehicle was not returned. He contacted accused no.1. He agreed to return the vehicle. Again PW31 contacted him at about 10 p.m and informed that the vehicle is not returned. Next day morning also PW28 contacted him and informed that the vehicle is not returned. Later, he came to know about the involvement of MO12 in this crime. He identified accused nos.1 and 5 and MO12.

85. All the witnesses were cross examined by the learned counsel for the accused. It is also brought out that accused no.5 took the vehicle from Chalakkudy. It is true that though PW29 is claimed to be its owner, PW30 appears to be the registered owner and that is clear from Ext.P20 series. PW29 claimed that the vehicle was purchased in the name of PW30 for business purposes. The ownership of MO12 is irrelevant as far as the fact of this case is concerned. Similarly, the witnesses deposed regarding the entrustment of vehicle with accused no.5. PW33 who supplied food in the shooting location has stated that they proceeded to Munnar in MO12 and accused no.1 drove the vehicle. They returned

back on 16.02.2017 and reached Aluva by midnight 12. PW33 further stated that he proceeded to his native place Sulthan Bathery entrusting MO12 with accused no.1. The learned counsel for accused no.1, who cross examined PW33, has not elicited anything to discredit his version that he got out from MO12 after entrusting it with accused no.1. Moreover, the learned counsel for accused no.1 put a suggestion to PW33 on the line that they jumped into the conclusion that accused no.1 involved in the crime only because of its entrustment with him on 16.02.2017. It is brought out that accused no.1 himself informed PW28 and PW33 that he parked MO12 at Thammanam and will be returned by evening.

86. Apart from the above evidence, Ext.P29 seizure mahazar prepared at the instance of PW154 on 19.02.2017 at about 12.30 p.m and also Ext.P162 report would show that MO12 was parked on the side of Pulleppady Road passes in front of ARC Parcel Service and Home Appliances. In addition to that Ext.P53(a) and Ext.P55 CCTV footages would show the availability of MO12 on 17.02.2017 at about 5.30 p.m near to Vettuvelil Fuels, Thammanam and Elavoor junction, Karukutty.

87. PW10 and PW11 are the persons who were conducting street vending shop in Ruby Lane, Thammanam. According to them, on 18.02.2017 MO12 was seen near to their shop. Police was also there at that time. Similarly, PW11 also stated that on 17.02.2017 at about 11 p.m, accused nos.1 and 3 to 6 were seen passing near to their shop. They came there in a Tempo Traveller. This witness identified MO12 Tempo Traveller. Based on the evidence available on record discussed hereinbefore, it can safely be concluded that MO12 vehicle was with accused no.1 on 16.02.2017 and 17.02.2017.

88. The prosecution alleged and argued that accused no.1 effected alterations to MO12 by removing the steel bars separating the driver's cabin and storage cabin so as to facilitate the rape on PW1 inside the storage cabin. PW105, the then Motor Vehicles Inspector attached to Aluva Sub Regional Transport Office inspected both MO9 and MO12. He prepared Ext.P103 inspection report with respect to MO12. He noticed the damages to MO12. According to him, four steel bars were seen removed from MO12, and another two steel bars were twisted. The learned Prosecutor put a question regarding the covering of back portion

of MO12 and it was objected by the defence counsel stating that Ext.P103 is silent about that aspect. PW105 is the person who inspected MO12 and prepared Ext.P103. Being so, he is competent to give the details of the inspection of MO12 noticed at the time of his inspection and therefore, the objection has no merits. PW105 deposed that the driver portion is separated from the back portion by installing grills. Back portion is covered using doors. It is true that in Ext.P103 is silent about the alleged removal of steel bars of MO12 separating the driver's cabin from the remaining portion. At the very same time, in column no.7 of Ext.P103 the damage of MO12 is recorded as **"left hand side front fender scratched, left hand side front bumper scratched"**. In Ext.P29 mahazar dated 19.02.2017 prepared by PW202 it is reported that steel bars are seen fixed vertically behind the driver's cabin. But the middle portion is kept vacant. Though it is not specifically mentioned about the removal of the steel bars and the alleged damage by separating the cabins, it is mentioned that the middle portion is kept vacant. Witnesses as part of identification inspected MO12 and it is seen that at present the bars are removed as claimed by the prosecution. At the very same time, no evidence is available regarding the

DISTRICT AND SESSIONS COURT ERNAKULAM 682 011

time and person who effected the removal. But, the evidence of PW33 is that he got out from MO12 at Aluva on 16.02.2017 at about 12 a.m. entrusting the vehicle with accused no.1, which cannot be discarded. PW33 directed accused no.1 to return the utensils at Kaduthuruthy. So it can be seen that the vehicle was in the possession and control of accused no.1 thereafter. Though PW33 and PW105 were examined in detail, no reliable material is brought to prove that the alterations noticed in MO12 were effected after its entrustment with accused no.5 and thereafter to accused no.1. After 16.02.2017, 12 midnight MO12 was entrusted with accused no.1. The prosecution claimed that accused no.1 effected alterations thereafter for the commission of the offences against PW1 on getting the information about her plan to come over to Ernakulam. In the absence of any evidence regarding the condition of MO12 before coming to the exclusive possession of accused no.1, this court is not justified in concluding that the alteration was effected after 16.02.2017.

89. Yet another case of the prosecution in this regard is that PW1 informed PW47 about her plan to come over to Ernakulam on 16.02.2017 and thereafter, she again contacted him on 17.02.2017

afternoon for arranging vehicle. The prosecution alleged that on getting information about this, accused no.1 retained MO12 with him and effected the alleged alterations. It is further alleged that shooting of the movie 'Honey Bee 2' was in Goa during the first week of January 2017. It was agreed for the dubbing as well as shooting of promo song at Ernakulam on a later date and it was decided to shoot the promo song on 19.02.2017. PW1 deposed that she had been informed by PW47, the Executive Producer of the movie 'Honey Bee 2' to reach Ernakulam for the shooting scheduled on 19.02.2017. It was informed a few days before 17.02.2017. She decided to participate in the promo song. She also decided to stay with PW7, her friend. She informed PW47 for arranging a vehicle on 17.02.2017. MO9 XUV was arranged and the vehicle reached at her residence on 17.02.2017 at about 7 p.m.

90. PW47 deposed that on 16.02.2017 during night PW1 contacted him and asked to arrange a vehicle on 17.02.2017. PW1 again contacted him on 17.02.2017 by noon and instructed him to send the vehicle after 3.45 p.m. According to PW47, he in-turn passed this information to PW45, when both of them were at Lal Studio. Pointing

out this evidence, the prosecution argued that on 16.02.2017, PW1 decided to go to Ernakulam on 17.02.2017. **"Accused no.1 somehow received this information on the night of 16.02.2017 and thereupon he retained MO12 in his custody on 17.02.2017 and effected the alteration to MO12. According to them, accused no.1 was well aware on the night of 16.02.2017 that PW1 would be travelling to Ernakulam the next day".**

91. As I stated earlier, PW1 informed PW47 about her plan and requested for the arrangement of vehicle on 16.02.2017. PW1 in her chief examination stated that PW47 informed her about the schedules of shooting of promo song on 19.02.2017, a few days ago. During her cross examination from the side of accused, PW1 stated that she contacted Mr. Anoop before noon on 17.02.2017 for arranging vehicle. Except this statement, nothing is mentioned by PW1 in evidence that she contacted PW47 on 16.02.2017.

92. The prosecution relied on the oral testimony of PW47 to prove that PW1 contacted him on 16.02.2017 for arranging vehicle on 17.02.2017. The relevant portion of the evidence of PW47 is that **"16-**



16-ാംതീയതി രാത്രി വിളിച്ച് 17-ന് വരാൻ പറഞ്ഞു. 17- ന് ഉച്ചക്ക് വിളിച്ചാണ് $3^3/_4$ ന് ശേഷം വണ്ടി വിട്ടാൽ മതി എന്ന് പറഞ്ഞത്. ഞാനത് Lal studio യിൽ വെച്ചാണ് മനോജിനോട് പറഞ്ഞത്. ... Promo song നേരത്തെ തീരുമാനിച്ചിട്ടുള്ളതാണ്." PW47 further stated that he informed this fact to PW45 production controller to arrange the vehicle. The relevant portion of evidence of PW45 is that "MO9 XUV 17-ാം തിയ്യതി ഉച്ചയ്ക്ക് ശേഷം Executive Producer Anoop പറഞ്ഞപ്രകാരം തൃശ്ശൂരിലേക്ക് അയച്ചു. ... ഞാൻ supervise ചെയ്യുന്നതിന് 17-ാം തിയ്യതി studio-യിൽ വന്നതായിരുന്നു. Executive Producer Anoop-ഉം, വിശാലും വന്ന് വണ്ടി 'X'-ന് വേണ്ടി തൃശ്ശൂർ വീട്ടിലേക്ക് 4.00 മണിക്ക് ശേഷം വിടണം എന്ന് പറഞ്ഞു. Promo song-ഉം പരിപാടികളും ചെയ്യുന്നതിന് വേണ്ടിയാണ് വണ്ടി വിടാൻ പറഞ്ഞത്. Production controller എന്ന നിലയിൽ ഈ കാര്യങ്ങളെല്ലാം manage ചെയ്തിരുന്നത് ഞാനാണ്. അവിടെ driver Martin-ഉം, Pulsar Sunil-ഉം ഉണ്ടായിരുന്നു. Sunil മുമ്പ് work ചെയ്തതിന്റെ cash വാങ്ങാൻ വേണ്ടി വന്നിരുന്നതാണ്."

93. During his cross-examination at the instance of accused nos.8 and 15, he deposed that Purchasing Manager Mr Vishal contacted him at about 4 p.m on 17.02.2017 and asked to arrange the vehicle. He clarified further that 'X' contacted PW47. PW47 in-turn informed this to Vishal. Vishal informed this to PW45. Nothing is stated by this witness regarding the alleged contact of PW1 to PW47 on 16.02.2017. Mr Vishal was not even cited as a witness also. The evidence of PW47 during cross-examination regarding the contact of PW1 on 16.02.2017 is that **"'X' വണ്ടി അയക്കാൻ പറഞ്ഞു എന്നത് 17-ാം തീയതി ഉച്ച കഴിഞ്ഞാണ് ഞാൻ വിശാലിനോട് ആദ്യമായി പറഞ്ഞത്. 'X' ഉച്ചക്ക് മുമ്പ് message അയച്ചു എന്നാണ് ഓർമ്മ. ഉക്ഷണം കഴിച്ചിട്ടാണ് ഞാൻ വിശാലിനോട് പറഞ്ഞത്."** So it can be seen that even if it is considered that PW1 contacted PW47 on 16.02.2017, that was not disclosed to anybody on that day. PW47 himself stated that he disclosed it to Mr Vishal only on 17.02.2017 afternoon. Further, it is to be noted that no such message is seen sent as per the available records including Ext.P95 and CDR of PW1. Even PW1 does not stated that she contacted PW47 on 16.02.2017. What she stated is

that she contacted PW47 a few days ago on getting information that promo song is scheduled on 19.02.2017. Further, it is to be noted that as per the prosecution case, on 16.02.2017 accused no.1 was engaged in the shooting location at Munnar along with PW33. They reached Aluva by 12 a.m on 17.02.2017. If this be the situation, there is no occasion to get information regarding the journey of PW1 to Ernakulam on 17.02.2017 to accused no.1 on 16.02.2017 so as to retain MO12 with him. Moreover, PW33 entrusted MO12 along with utensils for returning it to the owner. This particular entrustment was for a specific purpose. Further, the evidence of PW45 would show that on 17.02.2017 afternoon accused nos.1 and 2 were in the studio when he arranged the vehicle for PW1. As I pointed out hereinbefore, the prosecution submitted that accused no.1 somehow came to know on 16.02.2017 about the journey of PW1 to Ernakulam on 16.02.2017 and accordingly, retained MO12 with him. It is further argued that this fact was exclusively within the knowledge of accused no.1 and in view of the settled legal position u/s.106 of the Indian Evidence Act, 1872, the burden shifts to the accused to provide reasonable explanations for negativing his knowledge of such facts. In order to

substantiate this assertion, the learned Prosecutor relied on the decision of the Hon'ble Supreme Court in **Anees v. The State Govt. of NCT, MANU/SC/03739/2024, Navas @ Mulanavas vs State Of Kerala reported in 2024 KLT Vol.II page 39 and Parvathy vs State Of Kerala, 2024 (1) KLT 349**. The learned Prosecutor submitted that Section 106 of the Indian Evidence Act is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult for the prosecution to establish facts, which are especially within the knowledge of the accused and which he can prove without difficulty or inconvenience. It is also argued that once prosecution successfully discharged the burden cast upon it, the burden shift upon accused to offer a cogent and plausible explanation as to how offence come to be committed and failure on that score constitutes a vital link in the chain.

94. With due respect let me differ from the contentions raised by the learned Prosecutor. The above decisions dealt with the law u/s.106 of the Indian Evidence Act. The discussions hereinbefore would show that prosecution failed to prove that on 16.02.2017 the first accused had the knowledge regarding the journey of PW1 to Ernakulam on 17.02.2017

and in connection with that she contacted PW47 on 16.02.2017. Only if the prosecution proved that this fact is known to accused no.1, the argument adduced hereinbefore would sustain. Even otherwise, the law u/s.106 of the Indian Evidence Act deals with different contexts. It is not a case that accused no.1 had special knowledge about it. It is also to be noted that the CDR of PW1 produced will not show that she contacted PW47 as asserted by the prosecution on 16.02.2017. From the above discussions it can be concluded that accused no.1 obtained the possession of MO12 vehicle with him as part of shooting held at Munnar. The vehicle was with him on 17.02.2017 also. He made use of this vehicle for the commission of the offence. Based on the above discussions and the conclusion arrived at therefrom, I find that the prosecution failed to prove that on 16.02.2017 accused no.1 had clear knowledge about the journey of PW1 to Ernakulam on 17.02.2017 and he retained possession and effected alterations in MO12 with that knowledge for the commission of the offence.

95. The prosecution case is that on 17.02.2017 PW1 contacted PW47 for arranging a vehicle. He in-turn communicated this to PW45.

PW45 arranged MO9. At the time of arranging the vehicle for PW1, accused nos.1 and 2 were available in the studio. The evidence of PW45 in this regard is that "Production controller എന്ന നിലയിൽ ഈ കാര്യങ്ങളെല്ലാം manage ചെയ്യിരുന്നത് ഞാനാണ്. അവിടെ driver Martin-ഉം, Pulsar Sunil-ഉം ഉണ്ടായിരുന്നു. Sunil മുമ്പ് work ചെയ്തതിന്റെ cash വാങ്ങാൻ വേണ്ടി വന്നിരുന്നതാണ്. അവരെ രണ്ടാളേയും എനിക്ക് കണ്ടാൽ അറിയാം. Sunil-നെ driver പോയ സമയത്ത് പകരക്കാരനായി സംഭവത്തിന് ഒരു മാസം മുമ്പ് വെച്ചതായിരുന്നു. .... Accountant Jose-ഉം, എന്റെ assistant Nazeer-ഉം ചേർന്നാണ് വെച്ചത്. സുനിൽ ഇതിന് മുമ്പും വണ്ടി ഓടിക്കാൻ Goa-ക്ക് പോയിരുന്നു. Goa-യിൽ Honey Bee II-ന്റെ shooting-നാണ് പോയിരുന്നത്. Sunil പോയ സമയത്ത് അയാൾ പറഞ്ഞിട്ടാണ് Martin-നെ driver ആയി വെച്ചത്. Martin-നോട് തൃശ്ശൂർ പോയി കുട്ടി കൊണ്ട് വരാൻ പറഞ്ഞു. അവന് പരിചയകുറവുണ്ട് ; സുനിലിനോട് പോകാൻ പറയാൻ പറഞ്ഞു. സുനിലിനോട് പറഞ്ഞതിൽ കഴിയില്ല എന്ന് പറഞ്ഞു. അപ്പോൾ Martin-നോട് പോകാൻ പറഞ്ഞു. Toll-ൽ എത്തിയിട്ട് വിളിച്ചാൽ മതി എന്ന് പറഞ്ഞ് 'X'-ന്റെ അമ്മയുടെ

number ഞാൻ കൊടുത്തു. .... Martin-നോടാണ് പറഞ്ഞത്. .... Martin-ഓട് പറയുന്നത് Sunil കേട്ടിരുന്നു. അപ്രകാരമാണ് തൃശ്ശൂർക്ക് പോയത്".

96. The prosecution case is that on the instruction of PW45, accused no.2 proceeded to Thrissur in MO9. Accused no.1 left Lal Media and started to contact accused nos.2 to 6 using his mobile number 9447676363. It is asserted that around 5.30 p.m, accused no.1, 3 and 4 assembled at Thammanam and proceeded to Karukutty in MO12 vehicle. Ext.P201 is the CDR of accused no.1. On 17.02.2017 at 17:07:20 hours his location was at Ernakulam-Palarivattom-6. At 17:13:12 hours he was at Ernakulam-Thammanam-Pallippady. At 17:16:55 hours to 17:32:28 hours he was at Ernakulam-Thammanam-8. At 17:37:29 hours to 17:40:09 hours he was at Ernakulam-Thammanam-6. At 17:45:17 hours he proceeded towards Thrissur direction and crossed tower locations including Pongam-2 in Thrissur at 18:52:45 hours. He remained there in Karukutty and Pongam locations till 21:01:50 hours and thereafter, travelled back from Karukutty. Ext.P230 and Ext.P231 series are the CDR and decoded tower location of the mobile phone used by accused no.3 and Ext.P205 is the CDR of the mobile phone of accused no.4.

Further Ext.P53(a) CCTV footages collected from Vettuvelil Fuels would show the presence of accused nos.1, 3 and 4 persons along with MO12 in Thammanam.

97. The prosecution examined PW84 to prove Ext.P53 CCTV footages. The evidence of PW84 is that he was working as Manager of Vettuvelil Fuels during 2017. One vehicle filled fuel from his petrol pump. He produced the CCTV footage of the visuals to the investigating officer. He copied the visuals to a CD along with Section 65B certificate. Section 65B certificate is marked as Ext.P53 and the CD is marked as Ext.P53(a). He identified the visuals in the CD. The visuals would show that a Tempo Traveller with registration No.KL-60A-9338 filled fuel from his petrol pump. The visuals was of from 17:37:01 till 17:39:59 hours on 17.02.2017. He stated that CCTV and DVR were under his control. Nobody challenged this evidence. Therefore, I conclude that MO12 vehicle along with accused nos.1, 3 and 4 was at Thammanam on 17.02.2017 and proceeded from there to Karukutty.

98. As I pointed out, they laid wait near to Adlux convention Centre, Karukutty. The evidence of PW3 is relied on by the prosecution

to prove this aspect. PW3 is running a hotel opposite to Adlux convention Centre, Karukutty. According to him, on 17.02.2017 at about 8 p.m three persons came to his hotel. He identified them as accused nos.1, 3 and 4 before the police and also before the court. According to him, usually local people and persons who are maintaining acquaintance with him visit his hotel. Since the persons reached there on 17.02.2017 are strangers, he noticed their presence. According to him, he could identify accused nos.1 and 4. But the name of third person as informed by police is known to him. The name of the third person is Manikandan. When he was cross examined by learned counsel for accused no.1, he stated that since he heard about the news of this case from T.V channel, he paid special attention regarding the time of their visit. He admitted during further cross-examination that on 17.02.2017 there was no special reason for paying attention for the presence of these persons in his hotel. At the very same time, he stated that these persons spent considerable time in his hotel. The fact that since they are strangers, he noticed their presence is an omission. Similarly, he also admitted that when he was summoned by the police to police club, he came to understand about the incidents.

99. It is true that PW3 could not withstand the cross-examination regarding the facts which he claimed to give special attention for noticing the presence of accused nos.1, 3 and 4 in his hotel. No such statement was made to the investigating officer when he was interrogated. However, at the very same time, as I pointed out, the tower locations and CDR mentioned hereinbefore would show the presence of accused nos.1, 3 and 4 in Karukutty on 17.02.2017 at the relevant point of time and nothing is there to disbelieve the said evidence. As I mentioned, at about 9 O'clock, MO9 reached at Karukutty and both MO9 and MO12 proceeded from there to Ernakulam and MO12 was chasing MO9.

100. The evidence of PW86, PW156 and PW169 are available to show the moving of vehicles through Elavoor on 17.02.2017 at about 9 p.m. PW86 deposed that he was running 'Signals Security Systems' at Karukutty. CCTV was installed there. He is having experience in the installation and operation of CCTV. He installed CCTV in 'Dreams Stones & Tiles' at Elavoor junction. This situates 2 kms. south from Adlux convention Centre, Karukutty. He produced the CCTV visuals of 17.02.2017 to the investigating officer. He copied the visuals from DVR

to pendrive. He copied it to a DVD system. Ext.P55 is the DVD and Ext.P55(a) is the certificate issued for that u/s.65B of the Indian Evidence Act. The visuals would show that in between 20:59:03 hours till 20:59:05 hours MO9 and MO12 travelled towards Ernakulam direction through Thrissur - Ernakulam road. Except learned counsel for accused no.8 nobody cross examined him. Though accused no.8 challenged him with some technical aspects, nothing has been brought out to discredit his evidence. Therefore, along with the tower locations and CDR his evidence also can be relied on to conclude that MO9 and MO12 proceeded from Adlux convention Centre, Karukutty to Ernakulam at about 9 p.m on 17.02.2017.

101. PW156 was running a hotel by name 'Kamadhenu' at Chittethukara. He deposed that on 17.02.2017 in between 10 p.m and 10.30 p.m one person came to his hotel for buying water and returned after purchasing water. He came back to the shop again after five minutes and purchased cigarette. On 22.02.2017 he handed over the visuals of CCTV footage in his shop to the investigating officer. He copied the visuals to a pendrive. The pendrive is marked as Ext.P52. The mahazar is

marked as Ext.P52(b) and Section 65B certificate issued by him is proved as Ext.P52(c). He identified accused no.5 as the person who came to his hotel in the test identification parade conducted on 25.02.2017. His hotel situates on the side of Seaport-Airport Road. He identified the visuals before the court also. He also identified accused no.5 in the visuals. The first arrival of accused no.5 to his hotel was at 10:19:47 p.m. The second arrival was at 10:22:16 p.m. Suggestions were put to him by the learned counsel for accused no.5 denying the presence of accused no.5 in his hotel. However, the witness reiterated his versions during cross-examination. The learned counsel for accused no.8 challenged him stating that the visuals of the camera installed to get the outside visuals was not taken. According to this witness, those visuals were not clear due to paucity of light. He also stated that the cameras installed for collecting the outside visuals were not working. It is true that nothing is stated to the investigating officer in this regard. The learned counsel for accused no.8 also suggested that the vehicle was parked in front of that hotel for a considerable time and his explanation that those cameras were not functioning only to aid the prosecution to avoid those visuals. He stoutly

denied that suggestion. The suggestions put to this witness during cross-examination are incapable to discard the genuineness and reliability of the visuals handed over by him to police. The visuals in Ext.P52 pendrive would show the presence of accused no.5 in the hotel of PW156 situates at Chittethukara in between 10:19:47 p.m and 10:22:16 p.m.

102. Similarly, the evidence of PW169 would also show the presence of MO9 and MO12 at Vennala - Puthiya Road on 17.02.2017 at about 10 p.m. PW169 deposed that he is residing at Vennala, Puthiya Road. His house situates almost one and half kilometres away from the Palarivattom Bypass Junction. A godown with four shutters is there in front of his house. He is storing plywood in the godown. There is a grill gate separating the road and godown. On 17.02.2017 at about 10 p.m he came out of his residence to lock the gate. Two vehicles were seen parking there. Three or four persons were also present there. He enquired about their presence. They replied that the vehicle is having some complaint. One Tempo Traveller and XUV model vehicle were parked there. He identified the vehicles at Traffic police station, Aluva. He also identified MO9 and MO12 before the court. There was presence of light to identify

the vehicles. During cross examination he stated that he has not noticed the presence of ladies in the vehicle. But, at the very same time, he corrected that he does not know about this fact. It is true that the details stated before the court are not stated to the investigating officer in detail at the time of recording his statement u/s.161 of Cr.P.C. His evidence discarding the omissions coupled with the evidence available in the CDR and tower location details can be taken into account for to support the availability of MO9 and MO12 near to the grill gate as deposed to by PW1.

103. Ext.P88 series and Ext.P96 series are the CDR and decoded tower location of the mobile phone in the name of mother of accused no.6. The prosecution claims that both accused nos.5 and 6 used this phone. The mobile phone allegedly used by both accused nos.5 and 6 is in the name of mother accused no.6. Mother of accused no.6 is examined as PW203. Ext.P88 series CDR and location details would show that the location of mobile number 9061986297 was at CEPZ at 10:54 p.m, which is near to Kamadhenu Hotel, the visuals available in Ext.P52. It is to be noted that this mobile phone was seized from

accused no.5 on 19.02.2017 at the time of his arrest on the strength of Ext.P288. The tower locations and the evidence mentioned above would show that accused nos.1, 3 and 4 proceeded to Karukutty with MO12 and laid wait therein. When MO9 reached at Karukutty, MO12 chased MO9. Both the vehicles proceeded to Ernakulam through the road stated by PW1 till she reached at the residence of PW5. Moreover, the tower locations and CDR would also show the travelling path of those accused and the above vehicles. As I pointed out, the fact that accused no.2 proceeded to Thrissur for bringing PW1 along with MO9 stands undisputed. It is also stands undisputed that accused no.2 dropped PW1 at the residence of PW5 in MO9. The above discussions would show the use of MO9 and MO12 in the commission of offence against PW1.

104. **The incidents after the commission of rape and the copying of visuals to memory card on 18.02.2017:-**

The prosecution allegation is that after dropping PW1 at the residence of PW5, accused no.2 remained there for a shortwhile. He thereafter left the place. He had been brought back by PW8, the driver of

PW5. In the meantime, apart from the family members of PW5, police officials, local MLA, PW42 and PW69 Anto Joseph reached there. All of them asked accused no.2 about the incident and got information about the involvement of accused no.1. Police obtained the phone number of accused no.1 from accused no.2. PW69 contacted him. In the meantime accused nos.1, 3, 4, 5 and 6 proceeded to the residence of PW12 at Thammanam wherein they were all residing on rental basis. Thereafter accused nos.5 and 6 proceeded to Kalamassery on the scooter bearing registration no.KL-07-BF-2538 owned by PW13. Accused nos.1, 3 and 4 proceeded to Alappuzha side in a Tata ACE vehicle bearing registration no.KL-35E-8223 owned by PW12. They reached at the residence of PW17 Manu at about 7.45 a.m on 18.02.2017. Accused no.1 showed the visuals of sexual assault of PW1 to PW17. Accused no.1 kept his Nokia mobile phone for charging at the residence of PW17. Accused nos.1, 3 and 4 along with PW17 proceeded to the seashore situates on the western side of his residence. Accused no.1 copied the visuals of sexual assault from his mobile phone to a memory card. On getting information that the incident was reported in news channels, all of them left the residence of

PW17 in the Tata ACE vehicle. They abandoned the vehicle on the road side. In the meantime accused no.3 raised money by pledging gold ornament. They proceeded to Ernakulam direction in the car of PW16. Whileso, accused no.3 purchased mobile phone from the shop of PW21. Thereafter they approached PW20 lawyer for engaging him for defending the case. They reached at the rental residence of accused no.7 in Coimbatore on 19.02.2017. Accused no.1 showed the visuals of sexual assault to accused no.7. Accused no.7 harboured them. Thereafter, he arranged the motor bike of PW22 to accused nos.1 and 4 and accused no.3 left their company. Accused nos.1 and 4 came back to Kerala on the motorbike of PW116. Thereafter, accused no.1 and 4 on 22.02.2017 visited the shop of PW179. Further they also visited the residence of PW179. On that day, they came to the office of Adv. Pradeesh Chacko. On 23.02.2017 morning again they visited the rental residence of PW12. Accused no.1 took his dresses worn at the time of commission of offence along with mobile phone in a bag. They again reached at the office of Adv. Pradeesh Chacko and entrusted the bag with him. He also handed over the mobile phone used for capturing the sexual assault to Adv.

Pradeesh Chacko. Adv. Pradeesh Chacko harboured them. He caused disappearance of evidence by intentionally not producing the phone with memory card to the investigating officer. Adv. Pradeesh Chacko in turn entrusted the mobile phone along with memory card to his colleague Adv. Raju Joseph. He also caused disappearance of evidence by not producing the phone and memory card to the police. Accused no.5 and 6 also after the commission of the offence moved to Tamil Nadu.

105. The evidence regarding the presence of accused no.2 at the residence of PW5 was discussed earlier. The family members of PW5, PW42, PW69 and PW8 deposed about the presence of accused no.2 at the residence of PW5. Both PW42 and PW69 deposed regarding the collection of the mobile number of accused no.1 from accused no.2. PW69 deposed that he asked him to provide the phone number of accused no.1. Accused no.2 replied that his phone was took away by other accused persons. PW69 obtained the number of accused no.1 from accused no.2 and PW47. PW69 stated that he contacted accused no.1 in the number obtained from accused no.2. Accused no.1 attended the phone. He asked him about his identity. Accused no.1 in turn asked about the identity of

PW69 and disconnected the phone. He again contacted accused no.1. He disconnected the phone. Accused no.1 contacted PW69 and enquired about his identity. PW69 informed him that he is Anto Joseph. This evidence is corroborated by the evidence of other persons who are available there including the evidence of PW42 local MLA.

106. Moreover, Ext.P76 series and 77 series are the customer application form, ID proof and CDR of PW69. Ext.P207 is the CDR of another number of PW69. PW69 in his evidence admitted about this fact. It is seen that on 18.02.2017 at 00:00:42 hours PW69 contacted accused no.1 in his mobile number 9447676363. On 18.02.2017 at 00:03:27 hours accused no.1 contacted PW69. This can be seen from the digital evidence. So, the prosecution proved that immediately after the incident, on getting information from accused no.2 about accused no.1, PW69 contacted him when he was at the residence of PW5.

107. The prosecution asserted that immediately after the commission of the offence accused nos.1 and 3 to 6 reached at their rental residence at Thammanam. To prove this fact, PW12 and PW13 were examined. The evidence of PW12 is that he is residing at Thammanam

DIST. & SESSIONS COURT ERNAKULAM-682 011

Ruby Lane in a rented house. The rent deed was executed in his name. Accused nos.4 and 6 were residing with him. Accused no.1 used to come there for visiting them. Sunil is known to him for the last thirteen years. Since he is not in a position to bear the rent, others were also permitted to stay and share with him and accordingly accused nos.4 and 6 staying with him. Accused nos.3 and 5 also used to come there to visit accused nos.4 and 6. He identified the accused nos.1 and 3 to 6 before the court. Tata ACE vehicle bearing registration no.KL-35E-8223 belongs to him. He entrusted this vehicle with one of his friends. The vehicle was parked in front of his rental residence. On 18.02.2017 the said vehicle was seen missing. His friend reported the matter to police. He further informed that the said vehicle was seen drove by accused no.1 through Ponnurunni Bridge. He contacted accused no.1. But the phone was not attended. He reported this aspect to Palarivattom police station. The Circle Inspector of Central police station contacted him and enquired about his acquaintance with one Mr. Prajeesh. Both of them were taken to the office of Dy.SP, Aluva. He identified the rental agreement. He produced MO13 purse which belongs to accused no.4 to the investigating officer

along with MO14 mobile phone. Both MO13 and MO14 were available in his room. He identified the personal belongings of accused no.4 such as MO15 photo, MO16 PAN card, MO17 Aadhar card, MO18 pledging receipt, MO19 visiting card, MO20 "FED card" and MO21 slip containing the mobile number and the number of SIM card. Though accused no.1 cross examined this witness, not even a suggestion is put challenging his visit of the house taken by him on rent. The learned counsel for accused no.4 suggested that nothing is taken from his residence and accused no.4 has not resided in the tenanted house of PW12 and he stoutly refuted that suggestion. The counsel for accused nos.5 and 6 suggested to PW12 that accused nos.3, 4, 5 and 6 never resided with him. The testimony of PW12 along with the suggestion to him in cross examination to which he responded properly would undoubtedly prove the stay of accused nos. 4 and 6 with him. It is also proved that accused nos.1, 3 and 5 used to visit accused nos.4 and 6 in the tenanted house of PW12.

108. PW13 deposed that accused nos.1, 3, 4, 5 and 6 reached at the residence of PW12 immediately after the commission of the offence.

According to him, he resided along with PW12 from 2016 to 2018. Accused nos.1, 4, 5 and 6 are known to him since 2016. His further version was that on 17.02.2017 he reached the house at about 8.15 p.m. Nobody was available there. At about 9.30 p.m he went to bed. By 12 a.m accused no.1 contacted to his mobile phone and asked to keep the door opened. He informed him that the doors are not closed. At about 12.30 a.m Sunil reached there. He enquired Sunil about his destination. Sunil was taking dress. One person was standing outside. After a while accused no.6 reached there. He demanded the key of his vehicle and obtained it. Sunil was also present there. After some time, Sunil directed him to ask accused no.6 to contact him. Thereafter, accused nos.5 and 6 also reached there on a motorbike. He enquired about his vehicle. They replied that since his scooter was having mechanical trouble, they kept it in front of a workshop. Again Sunil contacted him and enquired about accused no.6. He gave the phone to accused no.6. Both accused nos.5 and 6 went out with the mobile phone. Accused no.6 thereafter returned the mobile phone to him. Pradeep again obtained his mobile phone for contacting accused no.1. He replied that Sunil switched

off his mobile phone. At about 2 a.m, C.I of Central police station contacted him and enquired about the location. He gave the details of his location. Police reached there. They asked him about his acquaintance with accused no.1. He identified accused no.1, 4, 5 and 6 in the court. He also detailed about his acquaintance with the accused persons. During cross examination at the instance of accused no.1 some omissions are brought out. Similarly, learned counsel for accused nos.4, 5 and 6 also during his cross-examination put some suggestions to the effect that he is giving evidence as influenced by police, which was emphatically denied by him. Nothing is elicited from this witness to brush aside his evidence. PW10 and PW11 who were running a street food stall also deposed about the presence of accused nos.1, 3, 4, 5 and 6 in the said locality on 17.02.2017. They also stated that accused are known to them as they took food from their shop. PW10 and PW11 identified the accused in the test identification parade and also before the court. On the basis of the evidence of PW12 and PW13 discussed above along with the evidence of PW10 and PW11 it can be seen that accused nos.1 and 3 to 6 reached at the residence of PW12 immediately after the commission of the offence.

109. The prosecution has asserted that accused nos.1, 3 and 4 proceeded to Alappuzha in a Tata ACE owned by PW12 and reached at the residence of PW14 Manitha and PW17 at Ambalappuzha on 18.02.2017 at about 7.45 a.m. PW14 deposed that PW17 is her brother and he is a driver. According to her, on 18.02.2017 at about 7.30 a.m accused no.1 came to her residence enquiring about her brother. She was standing outside. She informed accused no.1 that her brother was sleeping. She thereafter informed her brother about the arrival of accused no.1. Accused no.1 proceeded to the house. Her brother went along with accused no.1 to the seashore. Both of them returned back. Her husband enquired accused no.1 about the purpose of visit. He replied that he came there in connection with shooting. He kept powerbank and phone on her table. Her brother asked for a safety-pin. She enquired about the purpose. Her brother informed her that it was for accused no.1. They again went to the seashore. While she was watching television, news about the attack on PW1 was telecasting. Photo of accused no.1 was also telecasting. She immediately contacted her brother over phone and informed about the news item and asked him to depart from the

company of accused no.1 immediately. Her brother returned back. One Mr Anwar also reached at her residence. All of them watched the news item. Anwar took away the mobile phone and powerbank kept by accused no.1 in their residence. Accused no.1 is known to her in her capacity as the friend of her brother. She identified accused no.1 before the court. Accused no.1 alone has cross examined this witness. She was cross examined about her failure to report his arrival at her residence to which she responded that she was shocked on hearing the news.

110. PW17 the brother of PW14 deposed that on 18.02.2017, while he was sleeping PW14 informed him at about 7.45 a.m about the arrival of accused no.1. He enquired accused no.1 about his mission and replied that it is in connection with the shooting of a film. As requested by accused no.1, they proceeded to the seashore. One ACE vehicle was seen there along with two persons. He enquired about them. Accused no.1 informed him that they are his colleagues. Their names were disclosed as Vijeesh and Manikandan. Accused no.1 switched on his mobile phone and showed the video of sexual assault on PW1. He narrated the details of the video. He enquired about the video and Sunil

replied that he captured it. Sunil was wearing the very same pants worn at the time of capturing the visuals. He stated that the phone was like a 'Samsung' make phone. Accused nos.3 and 4 requested for water and he took them and accused no.1 entered his house for taking water. Sunil removed a memory card from another phone with him. That phone was kept in his house for charging. They collected a safety-pin from his sister. They again proceeded to seashore. They forgot to take the safety-pin. Thereafter, they used midrib (ഈർക്കിൽ) and inserted the memory card in the phone containing the video of sexual assault. Accused no.1 copied the visuals to a memory card. Accused no.1 demanded money from him. Thereafter, accused no.1 contacted their common friend one Mr Anwar (CW106) using the phone of PW17. The sister of PW17 informed him about the involvement of accused no.1 in the alleged commission of offence and that his photo was telecasting in television channels. He informed this fact to Sunil. They left his residence. Thereafter, Anwar came to his house and obtained the mobile phone and powerbank. Sunil is known to him since 2014. He identified accused nos.1, 3 and 4 before the court. He also identified MO6 as the pants worn by Sunil. He also

identified MO3 as the underwear, which was seen in the video. He identified MO22 and MO23 as the mobile phone and powerbank left at his residence by accused no.1. According to him, he could identify the memory card in which accused no.1 copied the visuals. According to him, a phone with blue coloured cover on the back portion contains the visuals. It is brought out in cross-examination that he was ignorant as to the method of copying the visuals from mobile phone to memory card. He further stated during cross-examination that Sunil inserted memory card in the phone and put it over a stone. It is shown 'loading' on the screen of mobile phone. He does not know what was loaded. A suggestion was put to him that he did not witness the visuals. He denied it. Counsel for accused no.3 cross examined him and elicited that no identification features are stated to police about accused no.3. Accused no.4 was also cross examined this witness on the line that his identification features are not sated to police. The learned counsel for accused no.8 brought out that the phone was black in colour with blue cover. This phone contains the visuals. In his Section 164 Cr.P.C Statement he stated that it was a 'Samsung' make phone. Similarly, it is

also brought out through this witness that he watched the visuals as two clips. He deposed further that there are similarities between the visuals identified by him and the visuals shown to him by accused no.1 on 18.02.2017. It is to be noted that though some suggestions were put to this witness regarding his knowledge in copying the visuals from mobile phone to memory card, the fact deposed to by him that the visuals were copied to memory card remains unchallenged. He specifically stated that accused no.1 showed the visuals of sexual attack to him in a mobile phone and thereafter, he captured those visuals to a memory card. The visuals were identified by this witness before the court also.

111. PW14 deposed that she contacted PW17 on his mobile phone and informed about the involvement of accused no.1 in the alleged offence. Further, it is also stated that accused no.1 contacted CW106 Anwar using the mobile phone of PW17. The prosecution claimed that CW106 reached at the residence of PW17 and collected MO22 and MO23 powerbank and mobile phone of accused no.1 kept at his residence. The prosecution further alleges that CW106 handed over these items to the police. The defence challenged the case so asserted by the prosecution

including the arrival of accused no.1 at the residence of PW17 and the alleged copying of visuals to the memory card. It is true that the location details of PW14 and PW17, their call details and the details of call from PW17 to CW106 and also the presence of PW17 in the seashore are evidence supporting the arrival of accused no.1 at the residence of PW14 and PW17 and inspite of that those documents were not produced. However, non production of those evidence alone will not weaken the prosecution case in view of Exts.P262 and P263 coupled with the evidence of PW192, which shows the attempt of transmitting the visuals to memory card. Ext.P263 is the report of Forensic Science Laboratory examining Ext.P262 memory card. The questioned memory card is marked as 'Q3' in Ext.P263. It is reported in Ext.P263 that video clippings recorded on 17.02.2017 and recreated in the questioned memory card marked 'Q3' on 18.02.2017 from 9:18 hrs to 9:20 hrs. This fact is deposed to by PW192 expert also. Both PW14 and PW17 deposed that accused no.1 reached at their residence at about 7.45 a.m. They proceeded to the seashore and returned to the residence. They again proceeded to the seashore, watched the visuals and copied it to a memory card. Considering the nature of

events, the time mentioned in Ext.P263 can be taken as the time when accused no.1 along with accused nos.3 and 4 spent in the seashore near to the residence of PW17. There is no material to discard the oral testimony of PW17 that accused no.1 showed the visuals contained in the mobile phone to him and thereafter accused no.1 transmitted those visuals to a memory card. On the other hand, the evidence of PW192 strengthening his version. It is also deposed by PW17 that accused no.1 along with accused nos.3 and 4 left him with the memory card on getting information about the news in the television channels.

112. The learned counsel for accused no.8 submitted that non examination of CW106 is crucial as he handed over MO22 and MO23 allegedly used by accused no.1 and left at the residence of PW17. The explanation of the prosecution that CW106 was abroad at the time of trial is not appears to be as a valid explanation. Even if the witness is abroad, he could have been examined through video conferencing facility. As I pointed out hereinbefore, the evidence of CW106 would have helped to prove the call received from accused no.1 and also the collection of MO22 and MO23 from the residence of PW17. However, in view of the scientific

evidence regarding the copying of visuals to Ext.P262, the non examination of CW106 cannot be considered as a crucial omission affecting the reliability of the prosecution case.

113. Ext.P416 is the search list prepared in connection with the search at the residence of PW17 on 28.02.2017 at 12.30 p.m. They seized one memory card, one SIM card and a Card Reader. Ext.P417 is the property list by which these items are produced before the court. Ext.P418 is the forwarding note prepared for forwarding these items to Forensic Science Laboratory. Among the items seized, the SIM card and memory card were sent for forensic examination. The Card Reader is not sent for examination. The Vodafone SIM card is marked as Ext.P268 and the memory card contains personal photos and videos of Manu PW17. It is true that the CDR of this SIM card is not produced. But the FSL examination reveals that it contains deleted SMS. Those SMS are not retrieved. Ext.P374 is the seizure mahazar dated 22.02.2017 in connection with the production of MO22 and MO23 by CW106 to the investigating officer.

114. The prosecution alleges that on leaving PW17, accused nos.1, 3 and 4 proceeded to Thiruvalla direction. The prosecution contended that on the way accused no.3 pledged gold at Popular Finance, Neerettupuram Branch. Thereafter, they left ACE in the road side. PW23 was the then Branch Manager of Popular Finance, Neerettupuram Branch. According to him, on 18.02.2017 one Mr Manikandan reached at his bank at about 10 a.m and pledged gold ornament. He has driving license as ID proof. They verified the purity of gold. He pledged gold weighing 19.800 grams and obtained Rs.37,500/-. He produced the pledge form and it is marked as Ext.P17. Ext.P17(a) is the voucher kept in the office. The name of the customer is shown as Manikandan B, House No:95, AKG Nagar, Thammanam, Masjid Road - 682032. The ID of customer is marked as Ext.P17(b). He produced all these documents before the police. He identified accused no.3 as the person who pledged the gold ornament in his bank. It is brought out in cross-examination that no identification features of accused no.3 was stated to the police. It is to be noted that genuineness of Exts.P17, P17(a) and the ID proof which is marked as Ext.P17(b) remained unchallenged. Though the

identification features are not stated to the police, PW23 identified accused no.3 before the court. Even otherwise the documents produced by this witness include copy of the driving license of accused no.3, furnished by him as proof of his identity. Similarly, the pledge form also contains his name. Nothing is there to disbelieve those documents. So, it can be concluded that accused no.3 went to Popular Finance, Neerettupurram on 18.02.2017 for pledging gold ornament.

115. PW15 is examined to show that ACE vehicle was seen abandoned at Thiruvalla-Pandalam route. PW15 deposed that he is a driver by profession. As directed by police, on 22.02.2017 he proceeded to take the ACE. He was accompanied by the Sub Inspector of Police, Puthenvelikkara. The key was entrusted with him. He drove ACE vehicle bearing registration no.KL-35E-8223 and brought it to Aluva Dy.S.P Office. He identified the ACE. Accused no.4 cross examined him with a single question that the vehicle was seen near to a workshop. This witness was recalled for identifying the vehicle. At that time, accused no.3 cross examined him regarding the changes effected in the vehicle. It can

be concluded relying on the evidence of PW15 that the ACE was taken from Thiruvalla - Pandalam route as asserted by the prosecution.

116. The prosecution alleges that on 18.02.2017, accused nos.1, 3 and 4 proceeded to Coimbatore by hiring the taxi of PW16. PW16 deposed that he was a taxi driver. He was driving Toyoto Etios car bearing registration no.KL-29-E-110. He is attached with the taxi stand near to KSRTC Bus Station, Haripad. On 18.02.2017 at about 4 p.m two persons hired his taxi for going to Nedumbassery Airport. Both of them got inside his vehicle. They informed that one more person will join with them. After proceeding 100 metres, another person also got inside the vehicle. This witness identified accused nos.1 and 4 before the court. They proceeded further and stopped at Kalpakavady Restaurant for food. Two persons went there and came back with parcels. Usually, he proceeds to Nedumbassery by turning right from Edappally Signal Junction. But accused no.1 directed him to proceed straight. They demanded his mobile phone. He informed that there is no charge in his phone. They replied that there is no charge in their phones also. They asked him to stop in front of a mobile shop. Accused no.3 proceeded to the shop and

purchased a new mobile phone. Again they proceeded from Edappally to Aluva. One of them was seen engaged in speaking over mobile phone. They informed that their Airport journey is cancelled and directed him to proceed to Fort Kochi. He deposed about the details of their journey. At last they reached at Kalamassery and by that time a scooterist overtook his car. One of them directed him to call him by blowing the horn. The person travelled on scooter stopped his vehicle. He also stopped his car. Sunil travelled in the scooter. Others asked him to chase the scooter. They proceeded further. Sunil again entered in the car. Sunil handed over a piece of paper and key to the rider of the scooter. Sunil informed him that traveller is parked in Thammanam. Sunil told further that the paper handed over to him contains the details of the journey of the traveller. He had been directed to proceed to Karukutty. When they reached at Angamaly, Sunil contacted one person over phone and asked **"വക്കീലെ വഴി എങ്ങോട്ടാണ് തിരിയണ്ടത്".** They proceeded through a byroad and reached infront of a house. Two persons were standing in front of the house. Sunil proceeded to that house. The other two were standing outside the house. Thereafter, the man who was standing

DISTT. & SESSIONS COURT ERNAKULAM-682 011

outside the house approached the other two persons and took them to the house. They spent almost 10 minutes there. They asked him to go to Airport. He dropped them in the service road near to Airport. Sunil paid Rs.4,500/- to him. He watched T.V. news about the incident after two days and accordingly, identified the accused persons travelled in his car on 20.02.2017. He claimed that since the accused nos.1, 3 and 4 spent considerable time in his vehicle he could identify them. However, before the court he identified accused nos.1 and 4 only and he could not identify accused no.3. It is brought out in his cross-examination that there was no special circumstance for noticing the identity of the passengers in his car. Some omissions are also brought out through this witness. Accused no.3 did not cross examine this witness. Accused no.4 cross examined the witness by pointing out that no identification features are stated to the police and also the omission regarding the identification on seeing the news item in T.V. The learned counsel for accused no.8 also brought out some omissions.

117. PW21 deposed that he is engaged in mobile phone service and distribution. He was running a mobile shop at Eloor - Puthiya Road

junction during 2017 by name 'Smart Cell Communications'. He started the shop by 17.02.2017. On the next day, at about 6.30 p.m a person came to his shop in a car and purchased a 'Ziox company Star Matrix' model phone. The person who came to the shop went back and showed the phone to a person sitting inside the car. He paid Rs.1,600/-. Since the shop was started only on the previous day, bill book was not available. He obtained a format of bill from the computer. The name of the person is given as Manikandan and it is recorded in the mobile phone. According to him, since it was the first sale, he could identify the person when police showed him the photograph of the purchaser and identified accused no.3 as the purchaser. Ext.P13 series are the bills issued from his shop. MO65 phone is also identified by him. Accused no.1 did not cross examine this witness. It is brought out in cross-examination by learned counsel for accused no.3 that except the name Manikandan, nothing is recorded in the bills. It is also brought out that no seal is affixed in the bill. It is also brought out that the fact that since the said purchase was the first purchase, he noticed the identity of the third accused is an omission. There was no cross examination for the other accused. Though

the bills are not in the format, he identified MO65 phone and the description in Ext.P13 series tallies with the MO65 produced before the court.

118. PW19 deposed that he is a taxi driver. Accused nos.1 and 5 are known to him. 5-6 years back he worked as collection agent in a pay and park business. Accused no.5 was his colleague. Accused no.1 used to visit accused no.5 at his workplace. He has also worked as bus conductor and accused nos.1 and 5 also worked as driver and conductor in private buses. Accordingly, he developed acquaintance with accused no.6 also. After a gap, he met Sunil and informed that he is unemployed. Sunil arranged a job for him. Sunil approached him and asked about the availability of any vehicle with him for giving in rent in connection with cinema shooting. Accordingly, one Qualis vehicle was entrusted with him. He approached Sunil at his rental residence at Thammanam for collecting the charges for Qualis. He heard about their involvement in the actress attack case. On 18.02.2017 during night one taxi car honked the horn while he was riding on his bike. On hearing the horn he noticed the car. Accused nos.1, 3 and 4 were seen inside the car. The driver of the car was

not known to him. He stopped the vehicle near to the signal at Kalamassery. Sunil got out from the car and travelled along with him. They proceeded forward. He enquired Sunil about the incident. He asked for the rent of Qualis. Sunil revealed that he captured the video of oral sex. Sunil asked him to stop the vehicle. He went inside the car. He handed over a small piece of paper showing the details of money with respect to Qualis. Sunil asked him to contact one Mr Sanal for getting money. He also entrusted one key with him and had been directed to inform Mr Sanal about the handing over the key of the travellor with him. The travellor is parked at Thammanam. He contacted Sanal and he asked to keep the key with him. On getting information about this his uncle warned him. Thereafter, on 10.03.2017 he handed over the key and slip to Dy.S.P, Aluva. He identified the keys as MO24 series and slip as MO25. The learned counsel for accused no.1 brought out in cross-examination that he knows the difference between scooter and bike. It is also brought out that he did not state the fact that he travelled on a scooter to the police. Similarly, the version regarding the alleged confession made by accused no.1 relating to oral sex is also brought out as

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

an omission. The other defence counsels also brought out some minor omissions through this witness during cross-examination. It is also brought out that there was no taxi permit for his Qualis. It is true that somany omissions are brought out from the defence side. At the very same time, PW16 deposed before the court about the meeting of accused no.1 with PW19. Similarly, PW16 further deposed that Sunil handed over keys and a slip to PW19. Since both PW16 and PW19 deposed in same tune with regard to their meeting of accused no.1 and the entrustment of keys and slips with him, the omissions brought out from the defence side has no relevance at all. On a total evaluation of the testimonies of PW16 and PW19 it can be concluded that accused nos.1, 3 and 4 on the way met PW19 and thereafter, accused no.1 handed over MO24 and MO25 to PW19. It is to be noted that it is not possible to account for the possession of MO24 series key with PW19 otherwise.

119. Another evidence in this regard is the evidence of PW20. PW20 is a lawyer by profession. His evidence is with regard to the arrival of accused no.1 at his house. As I mentioned hereinbefore, PW16 taxi driver deposed that while travelling in his car accused no.1 contacted a

person over phone and enquired the way to his residence by addressing his as advocate. The prosecution case is that accused nos.1, 3 and 4 went to the residence of PW20 and engaged him for defending them in this case and they executed vakalat in his favour. The learned counsel for accused nos.1, 3 and 4 objected the examination of this witness stating that he being a lawyer is not bound to disclose the communications made to him u/s.126 of the Indian Evidence Act.

"126. Professional communications.

No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

PROVIDED that nothing in this section shall protect from disclosure -

(1) any such communication made in furtherance of any [illegal] purpose; observed by barrister, [pleader], attorney or vakil, in the course (2) any fact observed of his employment as such, showing that any crime or fraud has

been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, (pleader), attorney or vakil was or was not directed to such fact by or on behalf or his client.

Explanation. - The obligation stated in this section continues after the employment has ceased.

120. The proviso (2) makes it clear that any fact observed by any barrister, pleader, attorney or vakil in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment is not entitled for the protection u/s.126 of the Indian Evidence Act. In this case it is claimed that accused nos.1, 3 and 4 engaged PW20 as their lawyer. Thereafter they entrusted some items with him. At that time no suspicious circumstance was in existence. PW20 in unequivocal terms deposed that he become suspicious about the items entrusted with him on noticing the involvement of accused no.1 in this case. Thereupon he produced the items before the court. The items produced before the court include Ext.P262 memory card. It is to be noted that the prosecution allegation is that accused no.1 committed rape on PW1, captured the visuals on his mobile phone and

thereafter, copied it to a memory card. Inspite of a thorough and lengthy cross examination of PW20 from the defence side, nothing has been brought out to discredit his testimony that at the time when he took over the case, he had no occasion to notice the involvement of the first accused and also the availability of memory card in the items entrusted with him. It was not known to PW20 that memory card is included in the items entrusted with him. He felt suspicious about the items and that prompted him to produce it before the court. Therefore, he is eligible to get the protection of second proviso to Section 126 of the Indian Evidence Act.

121. The deposition of PW20 is as follows. He is a lawyer by profession. He commenced his practice from 26.07.1992. His office situates at Aluva. On 18.02.2017 at about 9 p.m accused no.1 reached at his residence accompanied by accused nos. 3 and 4. His wife Smt. Bobby is also a lawyer. Both of them were standing in the sit-out. They have acquaintance with Sunil in connection with some other cases. Sunil came inside their house. Sunil approached him for professional engagement. He undertook the engagement. Sunil executed vakalat in his favour. His wife CW114 made arrangements for executing the vakalat. Accused nos.3

and 4 also executed vakalat in their favour. Sunil paid him Rs.12,000/- as advocate fee. Sunil entrusted him with a plastic cover and Sunil informed him that it contains his ID proof and similar items. It is also informed that it contains a purse along with the passport of accused no.4. CW114 asked whether it contains anything connected with the case and they denied it and left their residence. He kept the items in his table. On 19.02.2017 morning he noticed the telecasting of news item in connection with this case along with the photograph of accused no.1. He understood about the seriousness of this case. He was engaged in connection with the marriage of his brother's child. They came back by 9.30 p.m. On 20.02.2017 he started his official engagements. He again watched television by 8 a.m to see whether any news item is there in connection with this case. He had noticed live telecasting of the news item. He could understand that the police could not arrest accused no.1. He proceeded to his office along with the vakalat executed by accused no.1 and the cover handed over to him. He verified the items in the cover as the case relates to capturing of visuals. He noticed a purse and passport along with a mobile phone. When accused no.1 entrusted the cover to him,

nothing is mentioned about the mobile phone. He felt suspicious regarding the chance for using the mobile phone in the cover for capturing the visuals. He and his wife decided to produce the items before the court. He prepared memo through his clerk. He made submission before the Judicial First Class Magistrate-II, Aluva. He narrated the incidents before the court. He purchased a brown colour cover and placed the items inside that cover. He stapled it. He produced the items before the court. Thereafter the Magistrate directed the Junior Superintendent of that court to prepare inventory in the presence of PW20 and Dy.S.P., Aluva. The inventory was prepared. Thereafter, Dy.S.P Aluva prepared mahazar. The memo prepared by his clerk is marked as Ext.P8, Ext.P9 is the vakalat of accused no.1 and Ext.P10 is the inventory. He identified the items produced by him before the court. MO26 is the passport of Vijeesh. MO27 is the mobile phone included in the items. MO28 to MO64 series are also marked through him. He identified accused nos.1, 3 and 4 before the court. Ext.P12 is marked as the vakalat dated 25.02.2017 executed by accused no.4 in his favour. In his cross examination at the instance of accused no.8 it is brought out that on 18.02.2017 accused no.1 contacted

CW114 three or four times. It is also brought out that he attended the T.V Channel discussions in connection with this case on 20.02.2017. Further, on 22.02.2017 from 2 p.m onwards he directed accused no.1 to surrender before the police and that was broadcasted as live session. It is put to him that police threatened him and accordingly, he gave such direction. His cross examination from the defence side was centered around his professional ethics.

122. It is to be noted that, the items produced by this witness in court and Ext.P10 inventory would show that majority of the items belong to the first accused. It includes the PAN card and Visa card of accused no.1. Further, the items include the photographs of accused no.1. PW107 is the then Junior Superintendent of Judicial First Class Magistrate Court, Angamaly. She deposed that on 20.02.2017 PW20 produced few items before the court and she prepared Ext.P10 inventory in the presence of PW20 and PW202. She identified MO26 to MO64 also. In addition to that, another memory card is also identified by this witness. That memory card is noted as item no.X as Sandisk 8 GB Micro SD Memory Card. This memory card is also handed over to PW202. PW202

prepared mahazar for the seizure of all these items. Thereafter, the investigating officer produced the said memory card along with forwarding note to forward it to FSL for FSL examination.

123. PW202 investigating officer deposed that on 20.02.2017 he seized MO26 to MO64 series and Ext.P262 memory card from JFCM Court in the presence of PW20 and PW107 and Ext.P361 is the seizure mahazar. He identified Ext.P10 and also Ext.P262. The items were produced before the court on the strength of Ext.P362 series. He forwarded Ext.P262 and mobile phone to FSL on the strength of Ext.P363 forwarding note. Ext.P263 is the FSL report prepared by PW192. Q2 is the Micromax mobile phone mentioned in Ext.P263 and Q3 is the memory card. The details of the examination including the datas in the Micromax mobile phone is mentioned in Ext.P263. It is stated that Q3 is a memory card in Q2. Most of the retrieved pictures/video files are obscene in nature. Q3 is Ext.P262. The details of the video recorded on 17.02.2017 between 22:30:55 hours to 22:48:40 hours are shown in Ext.P263. It is stated that the video recordings are obscene in nature. The soft copies of the video recordings are enclosed in

Ext.P263(a) pendrive. Ext.P263(b) is another FSL report dated 07.04.2017. Q3 was again analysed. It is held that the man exposed in the obscene video records is found to wear the dress materials mentioned in item nos.17 and 18. The woman exposed in the obscene video recordings is found to wear the dress materials mentioned in item nos.8 to 11. Item nos.17 and 18, and 8 to 11 are the dresses of both PW1 and accused no.1 worn at the time of the commission of the offence. PW192, the scientific expert identified those items before the court also.

124. It is seen that the visuals in Ext.P262 are the visuals of the rape committed on PW1 by accused no.1 in MO9. The persons in the visuals are identified as PW1 and accused no.1. Similarly, MO1, MO2 and MO3 series, the dresses worn by PW1 at the time of the commission of the offences are identified. MO5 and MO6 dresses of accused no.1 are also identified. So, it can be concluded that the items handed over by accused no.1 to PW20 includes Ext.P262 and that is the memory card to which accused no.1 transmitted the visuals from the mobile phone used for capturing the visuals in the presence of PW17. The prosecution alleges further that accused nos.1, 3 and 4 then proceeded to Coimbatore. They

went to the residence of accused no.7, who is a friend of accused no.4. To prove that accused nos.1, 3 and 4 reached the house of accused no.7, PW22 and PW24 were examined. The prosecution alleges that accused no.3 left accused nos.1 and 4 from there. PW24 was residing along with accused no.7 at that time. MO66 is the motorbike belongs to him. Exts.P14 and P15 series registration certificate, insurance and tax disc are proved through PW24. Accused no.7 is known to him for the last 10-12 years. According to him, on 19.02.2017 at about 4.30 a.m accused no.4 along with two persons reached to their rented house. He later came to know that the persons accompanied accused no.4 were accused no.1 Sunil and accused no.3 Manikandan. He identified accused nos.1, 3, 4 and 7. He opened the door. Accused no.4 Vijeesh is known to him. According to him, Vijeesh occasionally visited accused no.7 in connection with electrical works. Charley was sleeping at that time. Accused no.4 informed him on enquiry that they came to purchase tools. On the next day morning, he went to his native place. He returned next day. Vijeesh opened the door. All others were sleeping. It is a small room. Due to the inadequacy of space in the room he slept at the residence of his owner. He

went for his job on the next day. He came back by evening. MO66 bike was not available there. He enquired about it to accused no.7. Key was available in the room. Charley expressed doubt that the persons came there might have taken the bike. According to him, the lock is in a loosen condition. So, the bike can be moved without key. Hence, he did not inform this matter to police. Thereafter, accused no.7 on Wednesday evening informed him about the involvement of the persons reached at their house in this case. On 26.02.2017 police reached his residence along with accused nos.1, 3 and 4. He identified them. Police conducted search at the residence. Ext.P18 is the seizure mahazar. He identified the items seized on the strength of Ext.P18. Though some omissions are elicited during cross-examination, his statement regarding the presence of accused nos.1, 3 and 4 at his residence remains unchallenged. The evidence of PW24 in relation to the charge against accused no.7 is reserved for consideration.

125. PW22 deposed that MO66 bike was owned by him and its registration is in his name. The sale letter is marked as Ext.P16. According to him, he sold the vehicle to dealer Mr. Dilli Babu. He identified the

vehicle. He is examined to corroborate the evidence of PW24 that he purchased MO66 from one Mr. Praveen. MO66 is seized from near to Shiva temple, Ernakulam.

126. It is alleged by prosecution that MO66 was used by accused nos.1 and 4 to come back to Ernakulam before their arrest from the court premises. They reached here using MO66. It is also alleged that accused nos.5 and 6 proceeded to Coimbatore. Both of them were arrested on 19.02.2017. They were seen at Karpagam. Accused no.3 was arrested on 21.02.2017. The details can be discussed at the time of considering the matters in connection with the arrest of the accused.

127. The prosecution alleged that accused nos.1 and 4 went to the office of Adv. Pradeesh Chacko and entrusted the mobile phone with memory card to him on 22.02.2017. He in-turn entrusted it to his colleague Adv. Raju Joseph. Police conducted search at the residence and office of Adv. Pradeesh Chacko on the strength of the confession of accused no.1. Exts.P337 and P444 are the search list prepared in connection with the search. Similarly, Ext.P723 is the seizure mahazar prepared in connection with the seizure of Ext.P81 from Adv. Raju

Joseph. PW160 seized it from the ceiling of the office of the Adv. Pradeesh Chacko on 17.07.2017. Though Adv. Pradeesh Chacko and Adv. Raju Joseph were arraigned as accused nos.11 and 12, they were discharged by the Hon'ble High Court at a later stage. The charge levelled against them was that they caused disappearance of evidence by not producing the mobile phone used for capturing the visuals. Further discussion regarding the charge against them is not required in view of their discharge. But, at the very same time, the seizure and the items seized from them would prove the presence of accused nos.1 and 4 at their office.

128. So, on an analysis of the evidence stated above, it can be concluded that the accused nos.1, 3 and 4 immediately after dropping PW1 at the residence of PW5 proceeded to the residence of PW12 Nelson and from there they proceeded to the residence of PW17 and went to Thiruvalla and proceeded further to Coimbatore. Accused no.3 left their company and accused nos.1 and 4 returned back to Ernakulam. Accused nos.5 and 6 who proceeded to Coimbatore were arrested on 19.02.2017. Accused no.3 left the company of accused nos.1 and 4 from the residence

of accused no.7 and he was arrested on 21.02.2017. The learned counsel for accused no.4 argued that the evidence of PW20 cannot be accepted. According to him, since the accused entrusted him with professional engagement and handed over the materials, he is not expected to give evidence against the clients. According to the learned counsel it amounts to self incrimination. I have already considered the objection regarding the evidence of PW20. Assume that even if the evidence of PW20 violates any professional ethics that cannot be thrown away on that ground. It is the settled proposition of law that the evidence can be relied on despite the source of evidence is illegal. The evidence of PW20 and PW107 coupled with Exts.P263 and P263(b) would prove that accused no.1 entrusted Ext.P262 to PW20 after transmitting the visuals in the presence of PW17 at Ambalappuzha.

129. The prosecution adduced evidence on the line that accused nos.1 and 4 after returning from Tamil Nadu roamed at various places. Ext.P681 scene mahazar dated 27.02.2017, Ext.P682 scene mahazar dated 27.02.2017, Ext.P683 scene mahazar dated 27.02.2017 prepared by PW261 are produced before the court. Further, Ext.P404 prepared by PW202 on

26.02.2017 show that accused no.1 and 4 hided in Mannuthy during the night of 20.02.2017. As I pointed out, the prosecution allegation is that on 20.02.2017 accused nos.1 and 4 left the rental residence of accused no.7. Thereafter accused no.3 left accused nos.1 and 4 and they proceeded to Kerala and at last, they were arrested on 23.02.2017. The above mentioned documents would show the places where they hided after committing the offences against PW1.

130. The defence side contended that the prosecution simply prepared some mahazars after suppressing the best evidence to create an impression that the accused persons absconded. According to them, the prosecution suppressed the CDR containing the location of accused no.1. CW343 Manoj Kumar is the Asst. Sub Inspector of Police attached with SBCID, Digital Analysis Wing, Kozhikode. The point to be proved through this witness is shown in the witness memorandum as to prove the reports prepared after analysing the mobile phone numbers of accused persons and witnesses. However, he was given up by the prosecution for the reasons known to them alone. The defence argued that the report is available in the records, which would show no calls after 17.02.2017. The

defence argued that the evidence tendered by the witnesses before this court including PW20 the lawyer engaged by accused no.1 would show that he contacted several persons during his journey from Harippad to Coimbatore. PW16 taxi driver deposed that when they reached near to Angamaly, accused no.1 contacted his lawyer over phone. The prosecution after having alleged that accused no.3 purchased a new mobile phone during the journey was not having a case that he or the fellow passengers used a new SIM. If this be the situation, the prosecution ought to have been produced the CDR along with location details to prove the location of the accused nos.1, 3 and 4. Ext.P242 series CDR of mobile number of accused no.1, 8489181741 would show that on 18.02.2017 from 18:55:20 hours to 21:47:56 hours he used his mobile number. The last two calls from this number were to 9388820237 on 18.02.2017 at 21:41:39 hours and 21:47:56 hours. These two calls were to PW20 for engaging him as his lawyer. The prosecution could have been produced the location details easily and that is not produced. The argument of the defence was that the prosecution suppressed the CDR with oblique motive. Considering the nature of the evidence tendered by

the witnesses mentioned hereinbefore, this court is not justified in discarding that evidence solely on account of the non production of the CDR and location details especially when accused no.3 in his Section 313 Cr.P.C examination stated about their residence in the rental house of accused no.7.

131. **Arrest of the accused persons:-** The first among the accused who underwent arrest is accused no.2. The facts leading to the arrest of accused no.2 are already discussed. It is not at all disputed that accused no.2 dropped PW1 at the residence of PW5 in MO9 XUV and thereafter he attempted to leave the residence of PW5. PW5 enquired about the driver. PW8 the driver of PW5 took back accused no.2 to the residence of PW5 from the public road. Thereafter, he was available there throughout.

132. PW42 and PW69 along with the police officials, who reached the house of PW5 deposed about the presence of accused no.2 at the residence of PW5. PW202, the first investigating officer Dy.S.P., Aluva deposed that accused no.2 was kept in custody at Thrikkkara police station as he was taken by ACP, Thrikkakara from the residence of PW5.

On 18.02.2017 at about 6 p.m his arrest was recorded. Ext.P347 series are the arrest memo, inspection memo and custody memo prepared in connection with the arrest of accused no.2 on the strength of Ext.P159 properties which were available with accused no.2 at the time of arrest. A Mobile phone was also seized from him. Thereafter, he was produced before the court on 19.02.2017. On 19.02.2017 accused no.5 and accused no.6 were seen at Coimbatore by the Sub Inspector of Police, Kalady. Both of them were taken to the office of PW202. Accused no.5 was arrested on 19.02.2017 at 9 p.m and accused no.6 was arrested at 10.30 p.m. The arrest documents of accused no.5 are marked as Ext.P352 series. Similarly, personal belongings including mobile phones and SIM cards were seized from accused no.5. The seizure mahazar is marked as Ext.P288. The mobile phone and SIM card seized from him are marked as MO126 and MO127. Ext.P354 series train tickets were also seized from them. The train tickets dated 18.02.2017 was from Aluva to Coimbatore. Ext.P356 series are the arrest records with respect to accused no.6. His personal belongings were seized on the strength of Ext.P289. Similarly, on 21.02.2017 accused no.3 was identified by PW198 at Palakkad. He was

arrested on 21.02.2017 at 8 p.m. It is stated that they followed tower location details of accused no.3. Accused no.3 contacted PW69 Anto Joseph. Based on this tower location they could realise that accused no.3 was in Coimbatore. PW198 took him to Kerala. Thereafter, PW202 effected his arrest legally. The arrest records are marked as Ext.P365 series. His personal belongings were seized on the strength of Ext.P366. One bus ticket from Pookadam to Palakkad is also seized from him. Similarly, Ext.P17(c) dated 18.02.2017 receipt obtained for pledging gold ornament in Popular Finance, Neerettupuram is also seized from accused no.3 at the time of his arrest. His dresses were also seized on the strength of Ext.P368. Ext.P369 report is filed furnishing the full name and address of accused no.3. Further, on 23.02.2017 accused no.1 and 4 were seen near to Additional Chief Judicial Magistrate Court, Ernakulam and PW160 identified them and took them to the office of PW202. PW202 recorded the arrest of both accused nos.1 and 4. Ext.P384 series are the arrest records of accused no.1. The dresses worn by accused no.1 was seized on the strength of Ext.P385. The arrest records of accused no.4 are marked as Ext.P387 series. His personal belongings were also seized on

the strength of Ext.P388. Further, PW151 the police personnel assigned with court duty produced a red bag, dresses, chappals, jacket, helmet left by accused nos.1 and 4 in the court premises before PW202. Those were taken into custody on the strength of Ext.P390. These items include MO6 pants of accused no.1. Accused nos.1 and 4 were sent for medical examination. The doctor collected the items for DNA testing and blood group testing. Those items were taken on the strength of Ext.P291 mahazar. Ext.P292 is the mahazar for the same purpose with respect to accused no.4. Those items were forwarded to FSL for examination on the strength of Ext.P248 forwarding note. MO66 used by accused no.1 and accused no.4 to travel from Coimbatore to Ernakulam was seen near to Ernakulam Shiva Temple and that was seized on the strength of Ext.P56. Accused nos.1 and 4 were subjected to potency test. Exts.P115 and P116 are the potency certificates of accused no.1 and accused no.4 respectively. Nothing is there to show that they are incompetent to perform sexual activities.

133. On 27.02.2017 accused no.7 was arrested by 1 a.m from Panangad. Ext.P408 series are the arrest memo, inspection memo and

custody memo prepared in connection therewith. His personal belongings were seized on the strength of Ext.P409. The SIM card seized from accused no.7 is marked as Ext.P267 and his mobile phone is marked as MO142. Ext.P411 is the report filed before the court furnishing the name and address of accused no.7. It is to be noted that accused nos.1 to 7 were arrested by PW202. The learned counsel for accused no.1 made a specific assertion to PW202 that both accused nos.1 and 4 came to the court for their surrender and at that time they were forcefully taken into custody from the court room. PW202 emphatically denied it, and stated that PW160 C.I of Central police station identified them and took them before him. The evidence of PW160 in this regard is that on 23.02.2017 they got secret information that accused nos.1 and 4 will be surrendered in the court. They were watching the District Court premises. They received reliable information that accused nos.1 and 4 reached in the court premises on a motorbike having Tamil Nadu registration. He along with his party reached near to Additional Chief Judicial Magistrate Court, Ernakulam and by the time accused no.1 and 4 were about to enter the court hall, both of them were taken to custody forcefully with the

assistance of other police personnel at 1.15 p.m on 23.02.2017 and produced them before PW202. Suggestion was made in his cross examination at the instance of accused no1 and 4 that both of them were taken forcefully from the court hall and he stoutly denied it. A complaint was filed against PW160 on such an allegation and that was dismissed. Except the above suggestion there was no cross examination challenging the arrest of accused no.1. The learned counsel for accused no.2 did not challenge his arrest. In the cross examination counsel for accused no.3 attempted to elicit as to whether any identifying features were furnished to PW198 for identifying accused no.3 to which PW202 pleaded short of memory. It is brought out that no independent witnesses are cited in the arrest memo of accused no.3. Similarly, learned counsel for accused no.4 put question pointing out the mistake crept in the name of accused no.4 in the remand report, though it was correctly stated as Vijeesh V.P in the arrest memo. PW202, who replied that it is only a spelling mistake has later filed a report furnishing the correct address and name. The learned counsel for accused nos.5 and 6 also disputed the arrest contending that Mr Doraiswamy, the owner of the building from where accused no.5 and

6 arrested are not cited as witness. According to them, accused nos.5 and 6 were not taken from the building of Doraiswamy, and hence he is not cited as a witness. This contention lacks relevance in the light of train tickets seized from accused nos.5 and 6 showing their journey from Aluva to Coimbatore. Ext.P354 series tickets were of 18.02.2017. The learned counsel for accused no.7 suggested that he was arrested when he arrived Ernakulam for his surrender. On an analysis of the evidence of PW202 the correctness of which was tested by cross examination at length would lead to the irresistible conclusion that he effected the arrest of accused no.1 to 7 strictly following the legal formalities. The documents available on record would also substantiate and strengthen such a conclusion.

134. **Test identification parade of accused persons:-**

Accused nos.1 and 4 were identified by PW1 on 25.02.2017 immediately after their arrest. PW1 deposed about the identification so made. Even otherwise, PW1 stated that accused no.1 was known to her in his capacity as the driver accompanied her in Goa. Ext.P113 medical certificate issued by PW110 contains the identity of accused no.1 as driver in Goa. PW1 also stated about the identify of accused no.1 in her F.I

Statement. PW1 identified both accused nos.1 and 4 before the court also. PW172, the Judicial First Class Magistrate, Aluva conducted test identification parade on 25.02.2017 at 3 p.m in Sub Jail, Aluva. PW172 deposed that test identification parade of accused nos.2, 3, 5 and 6 were conducted complying with the legal formalities. PW1, PW10, PW11, PW156 and PW97 attended the test identification parade. PW172 had given the details of the procedure adopted by him for conducting the test identification parade. He had already given direction to the Superintendent, Sub Jail, Aluva to select persons who are having similarities in appearance with suspects. On 25.02.2017 at 2.30 p.m., the proceedings were commenced. Four suspects and 25 other identical persons were arranged. PW172 selected 17 persons. All of them were in identical dresses. The witness had no occasion to see the suspects and non suspects before the test identification parade. The suspects and non suspects were shown to the witness independently. The order has been changed for each witnesses. PW1 identified accused nos.2, 3, 5 and 6. PW11 identified accused no.6. PW10 identified accused nos.5 and 6. PW156 identified accused no.5. Ext.P196 series are the memorandum

along with appendix and charts prepared for the test identification parade. The report of test identification parade is marked as Ext.P197. It is to be noted that accused nos.1, 2, 4 and 7 did not cross examine this witness. Accused nos.3, 5 and 6 cross examined PW172 suggesting that the procedures for conducting test identification parade were not complied, which was denied emphatically by him. Practically, the evidence remained unchallenged at the instance of accused nos.1 to 7 as there was no effective cross examination. Though PW172 was not subjected to cross examination, some of the learned defence counsel challenged the legality of the test identification parade and the identification effected consequentially at the final hearing. The learned counsel for accused no.4 argued relying on the decision of the Hon'ble Supreme Court in **Raju vs State of Maharashtra** reported in **1998 S.C 275** and **Balbir vs Vazir** reported in **2014 (12) SCC 670** argued that identification by the witnesses before the court cannot be relied on especially when the miscreants are not familiar to them.

135. As pointed out earlier, PW1, PW10, PW11 and PW156 are the persons who identified the accused persons apart from PW97. PW1 identified accused nos.2, 3, 5 and 6. It is to be noted that all these persons

were in MO9 with PW1 for a considerable time at different times during the course of the transaction which led to her sexual abuse. Moreover, at the first instance itself she had occasion to come across with the names of some of those persons. As far as PW10 and PW11 are concerned, they claimed that they were running a street vending shop near to the residential house of accused nos.1, 4, 5 and 6. PW10 identified accused nos.5 and 6 . PW11 identified accused no.6. Both PW10 and PW11 submitted that these two persons are familiar to them as they occasionally visited their shops. Similarly, as far as the identification by PW156 is concerned, he produced the CCTV footages showing the visit of accused no.5 at his hotel for the purchase of water and cigarette on 17.02.2017 at about 10 hr. during night. He also stated that accused no.5 reached at his hotel on two occasions. This being the situation, the identification made by PW156 is also reliable.

136. The learned counsel for accused no.4 put forward a contention that the prosecution failed to prove that there was sufficient light to identify the accused persons. PW1 categorically stated before the court regarding the source of light. She stated that the light from street

lights as well as when the doors were opened the lights of MO9 were also available there and she could identify the miscreants. It is true that this fact was not stated to the police. But the vehicle was moving through Thrissur - Ernakulam road wherein sufficient light is available. Similarly, it is an undisputed fact that MO9 stopped at signals and the doors were opened several times in connection with the entry of different accused and hence the version of PW1 that light was available in MO9 to identify the accused need not be discarded.

137. On an appreciation of the evidence of PW172, it is seen that he had followed the legal formalities for identification parade. It is seen that witnesses were kept separated from the accused before the parade to prevent any influence or suggestions. The accused persons were mixed with similar looking individuals to ensure a fair identification parade. The test identification parade was conducted in a controlled environment at a distinct location. The witnesses were called in one by one to identify the accused. The witnesses were not having contact with each other during this process. PW172 prepared a memorandum of the test identification parade detailing the procedure followed, the identities of the witnesses

and the results of the identification. He also documented the process and ensured that proper procedures are followed. The decisions relied on from defence side is not applicable in this case as the facts are not identical, and test identification parade was not conducted in those cases. In the case on hand the test identification parade was conducted properly.

138. In **Santokh Singh vs Izhar Hussain and Another AIR 1973 SC 2190** it has been observed that identification can only be used as corroborative of the statement in court. Similarly, in **Visveswaran vs State Rep. By S.D.M AIR 2003 SC 2471** it is held that the identification of the accused either in test identification parade or in court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a times, crimes are committed under cover of darkness when none is able to identify the accused. It is well established proposition of law that even if there is no previous test identification parade, the court may appreciate the dock identification as being above is more conclusive.

139. In this case the witnesses apart from identifying the accused who had made themselves available in the test identification parade has also identified all of them in court. On a careful scrutiny of the evidence

on record, I am of the convinced opinion that identification of accused deserves acceptance. Therefore, I hold that test identification parade is not dented and deserve to be accepted and approved.

140. **Conspiracy between accused nos.1 to 6:-**

The specific and definite case of the prosecution is that accused no.8 and accused no.1 entered into a conspiracy to shoot the nude visuals of PW1. Accused no.1 attempted to capture the nude visuals as agreed between himself and accused no.8, but failed. It is also alleged that during the first week of January, 2017, the shooting of the movie 'Honey Bee 2' was held at Goa. He attempted to execute the plan, but could not be materialised. Thereafter, they got information that PW1 would come to Ernakulam in connection with the shooting of promotional song of the said film. Accused no.1 along with accused nos.2, 3 and 4, on 11.02.2017 arrived at the rental residence of PW12 at Thammanam and hatched criminal conspiracy for the execution of the plan. Thereafter, on 16.02.2017, accused no.1 came to know about the arrival of PW1 to Ernakulam and retained MO12 with him. Thereafter, on 17.02.2017 at



about 4 p.m. PW45 arranged accused no.2 for bringing PW1 to Ernakulam. Accused no.1 was also present at Lal Media when accused no.2 was arranged for bringing PW1. Accused nos.1 and 2 hatched conspiracy to materialise the decision to catch the nude visuals of PW1. Accused no.2 proceeded to Thrissur in MO9. Accused no.1 thereafter contacted accused nos.3 to 6 and hatched conspiracy for the execution of the crime. Accused nos.1, 3 and 4 proceeded to Karukutty in MO12 and accused nos.5 and 6 were directed to wait at Kalamassery. All out of accused nos.1 to 6 thereafter entered MO9 at different times while proceeding to Ernakulam. Accused no.1 committed rape on PW1 and captured the visuals. MO12 chased MO9 throughout during the commission of the offence. Finally, accused no.1 get down and accused no.2 drove MO9 and dropped PW1 at the residence of PW5. The commission of offence against PW1 and subsequent events were already discussed hereinbefore. The conspiracy between accused nos.1 and 8 and the failure to capture the visuals at Goa are reserved for consideration while dealing with the conspiracy between accused nos.1 and 8.

141. As far as the conspiracy allegedly held on 11.02.2017 at the residence of PW12, except a bare allegation, no evidence is adduced before this court atleast to show the assembly of accused nos.1, 2, 3 and 4 at Thammanam as claimed by the prosecution. PW12 had taken a rental residence on the strength of Ext.P6 rent deed from one Mr Stephen. PW12 deposed about the arrival of these persons at his rental residence. According to him, accused nos.4 and 6 shared the rental residence with him. It is also submitted that accused nos.1, 3 and 5 used to visit accused nos.4 and 6 and all of them are familiar to him. He produced the belongings of accused no.4 before the investigating officer. He has not stated anything about the arrival of accused no.2 at his residence. PW12 deposed that he went to the rental residence on 06.02.2017 and returned on 07.02.2017. Thereafter, he arrived there on 19.02.2017. A specific question was put to him about the witnessing of accused persons during the month of February at his rental residence and he pleaded short of memory. PW12 has not stated anything about the presence of any of the accused persons at his residence on 11.02.2017. PW13 is another resident of that house is also examined and he also has not stated anything about

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

the presence of any of the accused persons therein on 11.02.2017. Above all, the evidence of PW45 and PW47 would show that the date of the shooting of promo song was not decided at that time.

142. As pointed out earlier, the prosecution attempted to prove that PW1 contacted PW47 on 16.02.2017 and informed her plan to arrive at Ernakulam on 17.02.2017. The prosecution claimed that PW1 sent a message to PW45 to that effect. But Ext.P95 CDR of PW1 does not show such a message. It is to be noted that the evidence of PW47 is that he disclosed the request of 'X' for arranging vehicle to Mr. Vishal for the first time on 17.02.2017. All these facts coupled with the absence of any evidence atleast to show the presence of accused nos.1 to 4 at the residence of PW12 on 11.02.2017 is leading to the conclusion that the prosecution has failed to prove that they hatched criminal conspiracy on 11.02.2017 for the execution of the plan relating to PW1.

143. Another case of prosecution is that on 17.02.2017 when PW45 directed accused no.2 for bringing PW1 to Ernakulam, accused no.1 was available with him. According to the prosecution that accused no.1 was asked by PW45 to pick-up PW1 and he was reluctant. When PW45 asked

accused no.2 for her pick-up, he put forward inexperience and he informed lack of knowledge regarding the route to the residence of PW1 as an excuse. PW45 in-turn provided him the phone number of the mother of PW1 to enquire about the route and thereupon accused no.2 proceeded to Thrissur and accused no.1 also left the studio. Accused no.1 thereafter contacted other accused persons throughout and arranged with accused no.2 to give the details of the journey. Accused no.2 throughout the course of driving from the residence of PW1 from Thrissur after her pick-up informed accused no.1 about their locations. The evidence of PW1 would show that he was also engaged in sending messages while driving. PW1 deposed about this fact specifically. She also stated that she enquired about it and the reason for the slow driving. She asked accused no.2 to go fast as she wants to reach at the residence of Ms Remya Nambessan at the earliest. There is no reason to disbelieve this version.

144. I have already discussed about the location details of the accused nos.1 to 6. The CDR and the relevant documents are also produced along with Section 65B certificate. The mobile number

9846130322 was in use of accused no.2 at the relevant point of time. The CDR would show that accused no.2 contacted accused no.1 throughout. Similarly, accused no.1 contacted accused nos.3, 4, 5 and 6 using his mobile number 9447676363. Ext.P201 and 201(a) would prove this. The presence of accused nos.1, 3 and 4 at about 5.30 p.m at Thammanam is also discussed. Ext.P201 CDR and Ext.P53(a) CCTV footages collected from Vettuvelil Fuels, Ext.P239 and 231 CDR and location details of accused no.3 along with Ext.P205 CDR of accused no.4 would prove this. The evidence of PW3 would prove the presence of accused nos.1, 3 and 4 at his hotel at Karukutty. Similarly, the CDRs and location details would confirm it. This court has already discussed about the entry and exit of each accused among accused nos.1 to 6 to and from MO9. Similarly, the presence of each accused among accused nos.1 to 6 during the particular time of occurrence in MO9 and MO12 were also discussed in detail. The route of journey of MO9 and MO12 was also discussed hereinbefore. Ext.P201 is the CDR of mobile number 9447676363 of accused no.1. Accused no.1 during his examination u/s.313(1)(b) of Cr.P.C admitted that the said phone number was in his use during the relevant point of

time. Ext.P236 series and Ext.P237 are the CDR of mobile number 9846130322 used by accused no.2 Martin along with location details. Ext.P230 series and Ext.P231 and 231(a) are the records in connection with mobile number 9037107812 of accused no.3 Manikandan. Ext.P205 is the CDR of mobile number 9443164109 of accused no.4 Vijeesh. Ext.P88 series and P96 series are the documents in connection with mobile number 9061986297 seized from accused no.5 at the time of his arrest and subscribed by mother of accused no.6 PW203 Smt. Usha. Ext.P201 would show the location of accused no.1 on 17.02.2017 at 15:21 hours, 16:21 hours and 16:22 hours at Alinchuvadu where the dubbing studio situates. At 17:37 hours his location was at Thammanam. He departed from Thammanam at 17:40 hours, travelled through Kalamassery, Aluva and reached at Karukutty, Pongam at 18:52 hours. He remained there till 20:58 hours. At 21:01 hours the location of accused no.1 was at Karukutty. He travelled from Karukutty to Ernakulam. Location details of the mobile phone of accused no.1 would show that on that day he travelled through Athani - Kottayi - Thottakattukara - Companypady - Ambattukavu - Muttam - Kalamassery - Pathadipalam - Anchumana -

DIST. & SESSIONS COURT ERNAKULAM-682 011

Ernakulam Medical Centre - Vennala - Ernakulam Special Economic Zone - Ernakulam Thrikkkara and at 22:54 hours he was at Padamugal. Accused no.1 was seen contacted with accused nos.2, 4 and 5 throughout. On that day accused no.1 contacted accused no.2 at 15:21 hours. The evidence on record would show that both accused nos.1 and 2 were at Lal Media on that day before accused no.2 proceeded to Thrissur for bringing PW1. It has also come in evidence that accused no.2 was a temporary driver arranged by accused no.6. Accused no.1 came to the studio for collecting his remuneration for the previous engagement. Accused no.1 left the studio after the second accused went for Thrissur. The call patterns of accused no.1 would show that at 16:21 hours he contacted accused no.4. At 16:22 hours he contacted accused no.2. At 16:34 hours accused no.1 contacted accused no.4 and again he contacted accused no.4 at 16:44 hours. At 17:07 hours accused no.1 contacted accused no.3. He again contacted accused no.3 at 17:16 hours. At 17:24 hours accused no.1 contacted accused no.2. Again at 17:37 hours accused no.1 contacted accused no.2. At 17:40 hours there was a call between accused nos.1 and 2. At 17:58 hours accused no.1 contacted accused no.5. Again

accused no.1 contacted accused no.2 at 18:03 hours. Between 18:13 hours and 19:23 hours accused nos.1 and 2 contacted on six occasions. At 19:28 hours accused no.1 contacted accused no.5. At 19:29 hours and 19:35 hours accused no.1 contacted accused no.2. At 19:37 hours accused no.1 contacted accused no.5. Accused no.2 reached at the residence of PW1 at about 7 p.m. He also contacted the mother of PW1 in three times to get the details of the route. While waiting at the residence of PW1, phone calls were made between accused nos.1 and 2. From 19:55 hours accused no.1 contacted accused no.5 and again he contacted accused no.5 at 20:09 hours. There were calls between accused no.1 and 2 at 20:21 hours, 20:47 hours, 20:54 hours and 20:57 hours. The calls between accused nos.1 and 4 were at 20:34 hours and 20:38 hours. The calls between accused nos.1 and 5 were at 20:11 hours, 20:39 hours and 20:49 hours. The location details can also be seen from these documents and the locations are perfectly tallying with the journey details narrated by PW1. The evidence on record would further show that at 9.14 p.m accused no.1 sent a message to accused no.2 ie., immediately before the accident at Kottayi. The said message was, "phonil allenkil signal". This

message was retrieved from the Q3 SIM card of accused no.1 (9447676363) seized from the office of Adv. Pradeesh Chacko. Ext.P269 FSL report and the contents in Ext.P269(a) pendrive would prove this. This would clearly indicate that there was agreement between accused nos.1 and 2 to share the details of journey. Further, in between 21:01 hours and 21:14 hours there were calls between accused nos.2 and 1, and accused nos.5 and 1.

145. The definite case of the prosecution is that the accident at Kottayi at about 9.15 p.m was created with the oblique motive of securing the entry of accused nos.3 and 4 into MO9 after the show of altercations between accused nos.2 and the persons in MO12. Throughout this time also there were calls from accused nos.1 to 3 and accused nos.4 and 5. Both accused nos.3 and 4 were seen moving from Thottakkattukara. Accused no.5 was seen at Premier junction. Accused no.5 was available at Premier junction till 21:34 hours. All the accused were travelling and making calls to each other during the journey of PW1 in MO9 driven by accused no.2. Call details between accused nos.1 to 6 are available in the above mentioned CDRs.

146. At about 22:55 hours when MO9 reached at Padamugal PW1 had attended calls from her mother. The first call from PW1 to her mother was at 22:56 hours. She also made call to PW41 Blessy at 23:00 hours. This fact was spoken to by PW1, PW5 and PW41. PW166 Nancy also stated about this call from PW1 to her daughter-in-law Blessy. PW41 Blessy handed over her mobile phone to PW5 and PW1 informed PW5 about her arrival to his residence. All the witnesses available at the residence of PW5 along with PW1 deposed this fact categorically before this court. Moreover, she also contacted PW7 and received calls from PW9 Rahul. She also contacted PW2 her fiance. The evidence discussed above would show the communications between accused nos.1 to 6 after accused no.2 departed the studio for bringing PW1 to Ernakulam and PW1 reaches at the residence of PW5 after her sexual assault by force. Ext.P3 mahazar and Ext.P102 to 102(g) site plans would corroborate tower locations of accused nos.1 to 6. Ext.P3 was prepared as pointed out by PW1 regarding the locations of her travel on 17.02.2017 in MO9 wherein she was sexually assaulted with force during the commission of the offence. Ext.P3 was prepared on 19.02.2017 at 4 p.m by PW202 as

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

pointed out by PW1. It contains the details of the journey of PW1 from Kottayi where the collision between MO9 and MO12 was happened. The details of the allegations are seen mentioned in Ext.P3.

147. Accused no.1 admitted the use of mobile phone no. 9447676363 in his Section 313 CrPC examination. This SIM is originally issued to PW140 Manish Thomas. Ext.P142(a) is the customer application form of this SIM. PW140 Manish Thomas deposed that during 2017 he was running an event management group. He was earlier engaged in the production of shirt with brand name "Mr:X". Accused no.1 is known to him from 2016 and he was his driver. He had given the details of his relationship with accused no.1. He entrusted a 'Lancer' car with accused no.1 in connection with the works of his event management group. He also entrusted accused no.1 with a phone with SIM. 9447676363 was the mobile number. He identified Ext.P142. Copy of his DL is appended with Ext.P142 customer application form. Marking of this document through PW140 was objected on the ground that no Section 65B certificate was produced. Therefore, Ext.P142(a) original customer application form is proved before this court through PW205. PW140 deposed that though this

number was being used by accused no.1, there was some dispute between them regarding the car entrusted with him. He also stated that on 18.02.2017 he received message from accused no.1 demanding the amount spent by him for the repair of the car. He also identified accused no.1 before the court. PW140 also identified MO5 shirt worn by accused no.1 at the time of the commission of the offence. He deposed that when he stopped the production of shirts, he had given the available stock to his friends including accused no.1. Even otherwise, as I pointed out, accused no.1 himself admitted the use of this mobile number and further discussions in this regard is not required. This particular SIM is marked as MO110. MO110 was recovered by PW199 from the office of Adv. Pradeesh Chacko on the strength of the confession of accused no.1.

148. The prosecution case is that on 22.02.2017 accused nos.1 and 4 reached the office of Adv. Pradeesh Chacko and entrusted their belongings with the advocates there. This SIM card was handed over by Adv. Raju Joseph on 24.02.2017 and seized on the strength of Ext.P141 mahazar. PW199 deposed that during 2017 February, he was working as Inspector of Police, North Paravur police station. He was a member of the Special

Investigation Team constituted for the investigation of this case. On the strength of the confession of accused no.1 he recovered MO110 SIM from the office of Adv. Pradeesh Chacko. According to him, Adv. Raju Joseph handed over the bag to him. The recovery was effected on 24.02.2017. MO93 is the bag. MO94 to MO113 series are the items which were found inside the bag. Ext.P141 is the mahazar prepared by PW199 on 24.02.2017 at about 11.30 a.m. Ext.P141 contains the extract of the relevant portion of confession of accused no.1. **"bag Ernakulam-ത്തെ പ്രതീഷ് ചാക്കോ വക്കീലിന്റെ അമൂല്യ street-ലെ office-ൽ Adv:Raju Joseph-നെ ഏൽപ്പിച്ചിട്ടുണ്ട്".** They conducted search for the seizure of the bag on the strength of this confession. It is seen from Ext.P141 mahazar that on 24.02.2017 Adv. Raju Joseph handed over the bag to PW199. It is true that the extract of confession is not marked separately, but it forms part of Ext.P141. Above all, accused no.1 did not cross examine PW199 or rather challenged the legality of the search and seizure. MO5 shirt was also seized in that search.

149. The evidence of PW69 along with Ext.P76 series and P77 series CDR would also prove the use of the mobile no.9447676363 by accused no.1. Ext.P243 the register of 'La Alegro', Goa would show the mobile

number of accused no.1 furnished therein as 9447676363. Another number used by accused no.1 was 9961304777 issued in the name of accused no.1 on the strength of Ext.P91 series. Ext.P203(a) would show that mobile number 9387874777 was issued in the name of accused no.1 on 03.08.2016. Ext.P202 and 202(a) are the CDR of that number for the period from 20.09.2016 to 21.09.2016. The prosecution claims that SIM bearing no. 9961304777 and 9388874777 were inserted in the phone used to record nude visuals of PW1. The phone allegedly used to record the visuals is not traced out sofar. The details of the investigation for tracing out the said phone can be discussed later. Another mobile number claimed to be used by accused no.1 was 9562263445. Ext.P83 scrics would show that thc said SIM was issued in the name of one Mr Deepak on 22.12.2016. Mr. Deepak was not examined before this court to account for its custody of accused no.1.

150. The prosecution alleges that this particular SIM was used in MO22 mobile phone along with mobile number 9447676363. MO22 was handed over by CW106 to the investigating officer. The prosecution alleges that MO22 was left at the residence of PW17 by accused no.1 when

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

he left the place. Ext.P90 series are the CDR of this number. Accused no.1 used this number to contact accused no.2 on 17.02.2017 at 20:16 hours and 20:21 hours. He also contacted accused no.5 with that number on 12.02.2017 and 13.02.2017. That SIM marked as MO107 was seized from the office of Adv. Pradeesh Chacko on 24.02.2017. It is true that CW106 Anwar who handed over MO22 to the investigating officer was not examined before the court and his CDR or location details were not traced out. However it is in evidence by the examination of PW14 and PW17 that CW106 collected MO22 from the residence of PW17 and there is no reason at all to discard that evidence.

151. Another mobile number in the use of accused no.1 was 8489181741 issued in the name of one Mr Murugan on the strength of Ext.P241 series. That SIM was seen inserted in MO65 mobile phone purchased by accused no.3 from the shop of PW21 during their journey from Harippad to Nedumbassery in the car of PW16. This SIM card was seized from the residence of accused no.7 on 26.02.2017. MO65 was seized from the office of Adv. Pradeesh Chacko on 24.02.2017. PW21 identified this mobile phone as purchased from his shop and his evidence was

discussed in detail. The prosecution case is that accused nos.1 and 4 went to the office of Adv. Pradeesh Chacko on 22.02.2017 and 23.02.2017 and entrusted their belonging there. The mobile phone was purchased from the shop of PW21 on 18.02.2017 during their way to Coimbatore. Availability of MO65 in the office of Adv. Pradeesh Chacko fortifies and substantiate the prosecution case that accused nos.1 and 4 visited that office.

152. The next aspect requires consideration in respect of the mobile number used by accused no.2 Martin at the relevant point of time. Ext.P234 series are the customer application form along with ID of this number. It is seen issued to accused no.2 on 18.05.2012 and there is no dispute to that aspect. The CDR of this number from 10.02.2017 to 25.02.2017 is Ext.P236 series proved through PW186 along with Section 65B certificate. MO114 is the mobile phone seized from accused no.2 on the strength of Ext.P159 mahazar at the time of his arrest on 18.02.2017 by PW202. Ext.P159 is the mahazar prepared by PW202 on 18.02.2017 in respect of the mobile phone found in the inside pocket of the jeans worn by accused no.2 at the time of his arrest. The descriptions of the mobile phone are mentioned in the mahazar along with the IMEI number. This

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

mobile phone was forwarded for FSL examination on the strength of Ext.P349 forwarding note. Ext.P603 is the FSL report issued after examining MO114. Q1 is the mobile phone examined in the lab. In Ext.P159 the IMEI number is recorded as 358290037105793. The very same IMEI number is extracted in Ext.P263. Ext.P236 would show that mobile number 9846130322 was seen active in this particular mobile phone on 17.02.2017 at 22:20 hours. The location was at Chittethukara. The datas retrieved from Q1 mobile phone mentioned in Ext.P263 is included in Ext.P263(a) pendrive. It is seen that the mobile number of mother of PW1 9744045102 is seen saved in MO114 mobile phone as her mother's number. As pointed out above, accused no.2 unchallenged the fact of his use of this particular mobile phone during the relevant point of time. As far as the mobile number of accused no.3 is concerned Ext.P29 series customer application form would show that mobile number 9037107812 was issued to him on 01.09.2016. The voter ID card was given as ID proof. Ext.P230 series CDR for the period from 01.01.2017 to 04.01.2017 and 10.02.2017 to 25.02.2017 are proved before this court. Section 65B certificate is marked as Ext.P230(a) series. Accused no.3 did not dispute those aspects.

report would show that the data extracted from Q1 is included in the DVD marked as Ext.P265(b). The location details would also show the journey of accused no.4 on 17.02.2017 from Thammanam till Padamugal. Both accused no.1 and 4 were contacted during the course of journey using this number. Another mobile number 9360799223 issued in the name of Kannadasan was also seen used in MO69 mobile phone.

154. The prosecution alleges that mobile number 9061986297 was used by both accused nos.5 and 6. As pointed out earlier, this was seized from accused no.5 at the time of his arrest. But the customer application would show that the SIM was issued in the name of PW203, who is none other than the mother of accused no.6. MO126 mobile phone was also seized from accused no.5 at the time of his arrest on 19.02.2017 on the strength of Ext.P288. Ext.P269(b) would show that this contact is saved as of 'Pradeep bus' by accused no.1 in MO110. Ext.P88 series are the CDR details. The location details discussed hereinbefore would show that on 17.02.2017 from 21:15 hours to 21:34 hours location of accused nos.5 and 6 was at Premier Junction. The location details would further show that both accused nos.5 and 6 were travelling from Premier Junction till

Ext.P264 is the SIM card. Ext.P264 was taken from the custody of accused no.3 at the time of his arrest on 21.02.2017. Ext.P366 is the mahazar prepared by PW202 in connection with its seizure. Further, Ext.P264 is seen inserted in MO129 mobile phone. This mobile phone was seized from accused no.3 at the time of his arrest. Ext.P230 series CDR would show the use of this SIM card in MO128 and MO129 mobile phones. This particular mobile number was seen saved by accused no.1 in his SIM 9447676363 on the strength of Ext.P269(b) pendrive.

153. 9443164109 was the mobile number used by accused no.4 during the relevant point of time. This particular mobile number was originally issued in the name of one Mr. Kannadasan in May 2016. Ext.P206 series are the customer application form. That number was seen saved as of 'Vijeesh bro' by accused no.1 on the strength of Ext.P269(b). Ext.P267 phone seized from accused no.7 at the time of his arrest would show that the said number was saved as 'Vijeesh T.N'. This SIM card was seen used in MO69. This mobile phone along with SIM card were seized by PW202 from the residence of accused no.7 on 26.02.2017. The CDR would confirm the IMEI number of the mobile phone. Ext.P269 FSL

Padamugal when accused no.2 dropped PW1 at the residence of PW5. The location details would tally with Ext.P52 visuals obtained from Hotel Kamadhenu. The FSL examination of MO126 would tally with the IMEI number mentioned in Ext.P88 series CDR of this particular SIM.

155. Though prosecution alleged that both accused nos.5 and 6 used this phone, it is seen obtained in the name of PW203, the mother of accused no.6. Ext.P269(b) would show that accused no.1 saved this contact as 'Pradeep bus'. But, as found hereinbefore, MO126 was seized from accused no.5. However, this particular SIM is not seized along with MO126. But the FSL examination and CDR would show that this SIM was used in MO126. Since phone is seized from accused no.5, prosecution urged that this was being used by both accused nos.5 and 6. Though no evidence is available regarding the joint use, the location details and particulars would show that accused nos.5 and 6 joined with accused nos.1 to 4 and entered into MO9. PW1 deposed that accused no.6 entered into MO9 from Premier Junction and accused no.5 entered into MO9 from Palarivattom Signal and at that time accused no.6 exited therefrom. Even if that SIM is used by accused nos.5 and 6 jointly or individually, its location details tally

with the journey of PW1 on 17.02.2017 during the time of occurrence. It is in evidence that both accused nos.5 and 6 were also available either in MO9 or MO12 from Premier Junction till Padamugal at the relevant point of time. The evidence discussed above in relation to the location of accused nos.5 and 6 would also corroborate the evidence of PW1 regarding their presence in MO9 at different times.

156. The learned counsel for accused no.2 has contended that accused no.2 was assaulted and attacked by other accused among accused no.1 to 6. Relying on the evidence of PW1 the learned counsel argued that after the accident, accused nos.3 and 4 threatened and intimidated accused no.2 and his driving thereafter was on their intimidation. The counsel further submitted that when accused nos.3 and 4 were in MO9, they informed PW1 that they need its driver only. He also relied on the testimony of PW1 that accused nos.1 and 2 got information about her journey to Ernakulam from PW45 on 17.02.2017 at 4 p.m. According to him, even if this be the situation, there is no chance for a conspiracy involving accused no.2. Relying on the evidence of PW8 that he did not see accused nos.1 and 2 together at Lal Media on 17.02.2017, the learned

counsel argued that there is no evidence to show that both accused nos.1 and 2 were present at Lal Media on 17.02.2017. Moreover, his further submission was that accused no.2 is not a member of Cine Drivers Union and non members of the said Union are called upon to drive the vehicles only in the absence or nonavailability of the drivers of the said Union. The learned counsel for accused no.2 relying on this argued that the engagement of accused no.2 was not a planned one. PW8, PW45 and PW47 deposed about the engagement of accused no.2 in the shooting of 'Honey Bee 2'. PW45 deposed that accused no.2 was arranged by accused no.1 as a temporary driver. This would show that accused no.2 was engaged in the absence of a non member of Cine Drivers Union. Moreover, the presence of accused nos.1 and 2 were also testified by PW45. This aspect remains unchallenged during his cross-examination. Further, as pointed out above, Ext.P263 FSL report in connection with the examination of mobile phone of Martin would show that the mobile number of the mother of PW1 is saved in his mobile phone. PW45 deposed that when accused no.2 expressed doubt about the route, he furnished the mobile number of the mother of PW1 for clarification. This

evidence is fortified with the evidence retrieved in the FSL examination. The position being so, the assertions and submissions advanced by the learned counsel for accused no.2 assumes no significance. It can be seen that the accident at Kottayi itself was a fake accident created enabling the entry of miscreants to MO9 in the light of evidence regarding the contact between accused nos.1 and 2 for sharing the journey details of PW1.

157. It is also argued by the learned counsel for accused no.2 that PW1 never in her evidence stated that accused no.2 conveyed the location of MO9 to anybody else. That argument has no merits in the light of concrete and specific assertions of PW1 in her evidence. PW1 repeatedly deposed that accused no.2 was seen driving vehicle with one hand and at the very same time he was engaged in sending messages using his mobile phone. Moreover, the call details between accused nos.1 and 2 would show that they were contacting each other throughout the journey. Further, a message retrieved from the SIM card of accused no.1 mentioned hereinbefore just before the accident involving MO9 would specifically show that accused no.2 was giving messages about the journey to accused no.1.

158. The counsel further argued that the description of the accident at Kottayi and disclosure of PW1 to accused no.2 as her destination as the residence of PW7 at Panampilly Nagar and the assertion that PW1 was dropped at Lal Media would show that accused no.2 has no connection with accused nos.1 and 3 to 6. PW1 categorically deposed that she was about to go to the residence of PW7 and on account of the unexpected sexual assault she decided for her escape from the clutches of the miscreants and accordingly, asked them to drop her at the residence of PW5. The said position along with the communication exchanged between accused nos.1 and 2 is negativing the submission that accused no.2 has no connection with the other accused. According to the learned counsel, accused no.2 disclosed his real name to PW42 when he intervened and to PW1 also. The learned counsel submitted that had there been any conspiracy with others, his actual name would have been suppressed. The above positions highlighted by the learned counsel for accused no.2 in no way helpful to conclused that he has no connivance with others. It is to be noted that PW45 arranged accused no.2 for bringing PW1 from Thrissur and informed her about the same. Moreover, accused no.2 is known to

ERNAKULAM-682 011

PW8 Sujith, the driver of PW5. In that situation, no purpose would have been served by hiding his real name or identity. The submission of the learned counsel that accused no.2 asked accused nos.3 and 4 not to create any troubles when they entered MO9 cannot be acted upon in view of the communications between accused nos.1 and 2 during the course of journey from Ernakulam to Thrissur and also from Thrissur to Ernakulam. The learned counsel also assailed the finding in Ext.P263 urging that the phone used by accused no.2 (MO114) is a low-end mobile phone without any advanced features. The text messages and call details will be stored only in SIM card. So, the SMS stated to have retrieved from the phone memory of MO114 cannot be acted upon. According to the counsel, it is difficult to trace-out a message of the type relied on by the prosecution that 'I am Martin' from the mobile phone with the number 9447881706 stated to have in the use of the second accused. The learned counsel also argued that no other messages were retrieved from this phone. According to him, though it is alleged that accused nos.1 and 2 contacted for thirty four times, ie., twenty one calls and thirteen messages, any of those messages were retrieved and therefore the assertion, the

message 'I am Martin' was retrieved from the phone in the use of the second accused cannot be accepted and relied upon. PW192 disputed the correctness of that submission and further clarified that messages can be stored in phone memory also. It is to be noted that the SIM used by accused no.2 at the relevant point of time is not recovered. It is alleged that the second accused destroyed the phone immediately after the commission of the offence. The position being so, the non retrieval of all the messages between accused nos.1 and 2 is not a ground to disbelieve the prosecution case that the message 'I am Martin' was retrieved fro the phone being used by accused no.2 assumes no significance. The learned counsel relying on the evidence of PW5 submitted that accused no.2 was assaulted by other accused persons. It is to be noted that it was the version of accused no.2 when he was interrogated by PW166 about his non reaction during the course of the incident. It is brought out from the evidence of PW42 and PW69 that accused no.2 was pretending that he was assaulted by others. The arguments advanced by the learned counsel to show that accused no.2 is innocent cannot be accepted in the light of

ERNAKULAM-682 011

his conduct during the course of incident proved through the evidence of PW1 corroborated by the call data details and location details.

159. It is settled position of law that to constitute conspiracy all of the participants in the commission of the offence need not be shared with the entire details of the conspiracy and the existence of a conspiracy can be inferred from the conduct of the different accused prior to and subsequent to the conspiracy. The position that accused no.3 remained in MO9 even after its stopping at Kalamassery facilitating the entry of accused no.6 and exit of accused no.6 and his sitting to the right side of PW1 to accommodate accused no.6 on her left side and the stopping of MO9 near Palarivattom signal and the entry of accused nos.4 and 5 and exit of accused no.6 and thereafter, its stopping in front of a grilled gate and the exist of accused no.2 and entry of a person covered his face with a towel, who was later identified to be as accused no.1 and also its stopping to facilitate his access to the seat on the side of PW1 putting accused no.5 on the driver seat and the stopping thereafter to purchase water and the stopping to facilitate the entry of accused no.5 to MO12 would cut at the root of the submission of the counsel for accused no.3 pointing out his

response on knowing the identity of PW1 will not stand even for a moment. If his response was honest, he should have atleast attempted to get down from MO9 before the entry of accused no.1 therein. On the other hand, by remaining in MO9, he aided and provided necessary support to accused no.1 for the physical, mental and sexual assault of PW1. Therefore, the theory propounded by the counsel for accused no.3 to show that he had no role in the conspiracy and he was innocent is liable to be rejected and I do so.

160. Accused nos.1 and 2 were available in Lal Studio, Ernakulam when PW45 directed accused no.2 to pick up PW1 from her residence at Thrissur in MO9 and drop her at the residence of PW5 in Ernakulam. On the proceeding of accused no.2 in MO9, as per the above direction, accused no.1 also left Lal Studio and contacted accused nos.3 to 6 and arranged for the presence of accused nos.3, 4 and 5 at Karukutty, a point in the route from Thrissur to Ernakulam with MO12, which was entrusted with him for returning the vessels taken for shooting at Munnar and and retained with him and accused nos.1 and 6 waited at Kalamassery. After starting from Thrissur with PW1 on board, accused no.2 was sending

messages from his mobile phone and it is brought out that he sent the messages to accused no.1 regarding his location. While MO9 was on the way to Ernakulam driven by accused no.2 with PW1 on board MO12 chased it and created an accident by hitting on its backside near the the Nedumbassery Airport and caused to stop both vehicles. Immediately, accused no.2 got down from MO9 and there was an altercation between him and the persons in MO12. After few minutes, accused no.2 get into the driver seat of MO9 and accused nos.3 and 4 get into it and sat on either side. Accused no.2 did not object or resist their entry. On questioning their entry, accused no.3 caught hold on the left hand of PW1 and accused no.4 cover-up her mouth and caught hold on her right hand and he directed accused no.2 to lock the central lock and window lock of MO9. Accused no.2 stopped MO9 at Kalamassery junction facilitating entry of accused no.6 and the exit of accused no.4 to provide seat on the left side of PW1 to accused no.6. Accused no.3 moved to her right side. Thereafter, on stopping MO9 near Palarivattom signal, accused no.6 got down and accused nos.4 and 5 get into it and accused no.5 shared the seat of PW1 by sitting on her left side and accused no.4 occupied the front seat

on the side of the driver seat. After proceeding from there, MO9 took a turn deviating from the normal route and gave false explanation to PW1 on asking about the deviation and in the meantime stopped in front of a grilled gate and a MO12 also reached there. Somebody took accused no.2 from MO9 and a person covering his face with a towel accessed to its driving seat and while the vehicle was moving, PW1 could identify the person on the driver seat as accused no.1 and told him that she recognized him. After plying through several by-lanes, MO9 reached Kakkanad - Thrissur Road and at that time accused no.5 occupied the driver seat and accused no.1 shared seat with PW1 and told her about his plan to take her nude visuals and the visuals of his sexual activities with her and requested for her co-operation. He threatened her with gang rape by taking to a retreat centre on the expression of her unwillingness. After plying for some time, accused no.1 directed accused no.5 to purchase water. Thereafter, while plying with accused no.5 on the driving seat, accused no.1 directed him to shift to MO12 and asked accused no.3 to drive MO9. While MO9 was plying with accused no.3 in the driver seat accused no.1 unrob PW1 despite stiff resistance, engaged in sexual activities amounting

to sexual assault and took the visuals on his mobile phone. Thereafter, MO12 which was chasing MO9, come close to it and accused no.3 get down and accused no.2 accessed MO9 and occupied the driver seat. Accused no.1 remained on the left side of PW1 and as requested by her, accused no.2 took MO9 to the residence of PW5 and dropped her there. The evidence of PW1 regarding the entry and exit of accused nos.1 to 6 at different points and time is corroborated and substantiated by electronic evidence including their location details, the reliability of which was found to be acceptable. Relying on the discussions and conclusions dilated above, I have found that accused nos.1 to 6 abducted and assaulted PW1 physically, mentally and sexually. The said finding along with the acts and roles of everyone among accused nos.1 to 6 discussed and enumerated above would prove that their acts against PW1 in execution of a conspiracy hatched among them to insult, annoy and assault her physically, mentally and sexually and every one of them aided each other in implementing their decision. I find that the prosecution has succeeded in establishing conspiracy between accused nos.1 to 6 to insult, annoy and assault her physically, mentally and sexually.

161. The well established principle of law regarding criminal conspiracy is that, the existence of conspiracy can be inferred from the conduct of various accused prior to and subsequent to the conspiracy. The above mentioned circumstances clearly prove that accused nos.1 to 6 conspired together on 17.02.2017 and thereafter, they abducted PW1 in MO9, accused no.1 subjected her to rape, captured her visuals and other accused persons facilitated accused no.1 for this.

162. The discussions hereinbefore held would show that PW1 was subjected to rape by accused no.1 and accused nos.2 to 6 facilitated and aided them for the commission of rape on PW1. It is also proved that accused nos.1 to 6 hatched criminal conspiracy and as the result of this criminal conspiracy, they wrongfully confined and abducted PW1 and subjected her to rape and committed the offences alleged against them during the course of the said transaction. The points 1 to 19 are decided in favour of the prosecution.

163. **Point No.20:-**

Destruction of SIM Card of accused no.2:-

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

The prosecution allegation is that accused no.2 with an intention to cause disappearance of the evidence, destroyed the SIM card used in his mobile phone used while driving MO9 with PW1 on board by putting it in the closet in the bathroom of the driver's quarters at the residence of PW5 and thereby caused the destruction of evidence. As we discussed hereinbefore, the fact that accused no.2 picked PW1 in MO9 from her residence at Thrissur and dropped PW1 at the residence of PW5 on 17.02.2017 at about 10.30 p.m remains unchallenged. The prosecution alleges that immediately after dropping PW1, accused no.2 attempted to escape from there. However, PW5 enquired to PW8, his driver about the driver, who brought PW1 and at that time, accused no.2 was seen moving out from the residence of PW5. PW8 brought him back and he was constrained to remain at the residence of PW5. The evidence of PW1, PW5 and his family and PW8 discussed earlier and duly appreciated would lead to the conclusion that accused no.2 who brought PW1 to the residence of PW5 remained there till the arrival of police.

164. PW8 deposed that he was working as the driver of PW5 for the last six years. There is a room provided for him at the residence of PW5.

On the date of occurrence at about 11 p.m a car reached in front of the residence of PW5 and PW1 was seen alighting out of the car. On seeing PW8, she again got into the car. He opened the gate. MO9 proceeded to the courtyard and PW5 was standing in the courtyard. PW1 got out from the XUV and hugged PW5. He enquired about accused no.2 as PW1 was crying and on asking accused no.2 the reason, he pretended ignorance. Accused no.2 informed that he wants to go to toilet. In the meantime PW5 enquired about the driver. He was gone there to bring accused no.2. At that time accused no.2 was seen walking through the road situates in front of the residence of PW5. He brought back accused no.2 to the residence of PW5. He identified accused no.2 and stated that accused no.2 is known to him since the commencement of the shooting of 'Honey Bee 2'. In the meantime, police reached there and interrogated accused no.2. PW8 identified MO9 also. He also stated that police prepared mahazar of outhouse and bathroom and he is an attestor there. Police also seized MO9 on the strength of Ext.P4. He also stated that there is a European closet in the toilet. Except few omissions brought out at the instance of accused no.2, the sequence of events stated by PW8 remained unchallenged. Not

even a suggestion was put to this witness denying the presence of accused no.2 at the residence of PW5 and his statement that accused no.2 asked about the toilet.

165. In addition to the evidence of PW8, the evidence of PW195 is also very relevant. PW195 was the Assistant Commissioner of Police, Thrikkakara at that time. According to him, on 17.02.2017 at about 11.15 p.m., the Director General of Police contacted him over phone and directed to go to the residence of PW5. He proceeded accordingly along with police personnel. Lal was available there. PW1 was there in the house. He enquired PW1 about the incident and she narrated the same. In the meantime, one policeman informed him about the arrival of PW42. PW42 along with PW69 came there. He informed the matter to the City Police Commissioner and Deputy Commissioner of Police over phone. PW42 and PW69 entered inside the house of PW5. PW69 noticed the presence of accused no.2. Thereafter, PW195 enquired accused no.2 about the incident. He asked for the phone of accused no.2 and he replied that his phone is not in a working condition. He asked to verify the phone. Thereupon accused no.2 told him that there is no SIM inside the phone.



At that time accused no.2 was in a perplexed condition. He provided the phone number of accused no.1 to PW195. He directed the police personnel to take accused no.2 to Thrikkkara police station and keep him in surveillance. Though this witness was cross examined at the instance of accused no.2, except the suggestion that accused no.2 was not the driver of MO9 XUV while PW1 was subjected to the misdeeds, nothing is seen asked to this witness to challenge the evidence tendered by him.

166. PW202 deposed that on 18.02.2017 he arrested accused no.2 at Thrikkkara police station on the strength of Ext.P347 series arrest records. He seized the belongings available with accused no.2 at that time. MO114 is the mobile phone seized by him. It is to be noted that no SIM was in MO114 when it was seized from accused no.2 during his arrest. This seizure was not challenged by accused no.2 during the cross-examination of PW202. The one and only suggestion put to this witness at the instance of accused no.2 was that he was not available in MO9 at the time of the alleged sexual assault of PW1 and never misbehaved to her and that suggestion was denied by PW202.

167. It is not in dispute that when MO114 was seized, no SIM was available therein. I have already discussed the details of MO114 along with its CDR hereinbefore. There is no dispute to the position that the mobile number used by accused no.2 was 9846130322. Ext.P234 series fortifies that position. Ext.P159 contains the IMEI number of MO114 and that tallies with Ext.P263 FSL report. Further, the CDR also proves the IMEI number. The last usage of this mobile number was seen at 22:20 hours on 17.02.2017 as per Ext.P236. It is to be noted that accused no.2 dropped PW1 at the residence of PW5 at about 11 p.m on 17.02.2017. The evidence of PW195 and PW202 show that MO114 does not contain SIM at the time of taking him to the police station. What happened to the SIM, which was used at 22:20 hours on 17.02.2017 is a crucial question.

168. Immediately after dropping PW1 at the residence of PW5, the second accused attempted to leave the place. Having failed in that attempt, he got the location of bathroom in the residence of PW5 from PW8 and went inside. After coming out from the bathroom he was in the precincts of the residence of PW5 till police arrived there and asking about his phone, for which he expressed that SIM is not available in his

phone. Accused no.2 who spoke using MO114 with SIM No.9846030322 immediately after reaching the residence of PW5 with PW1 at 22.20 hours on 17.02.2017 alone was capable of accounting for the non availability of SIM at 11.15 p.m on that day and his inability or failure to account for the same would lead to the irresistible conclusion that he destructed the same with oblique motive understanding the possibility for booking in conviction with the misbehaviour and sexual assault of PW1. Both PW5 and PW8 categorically deposed that he attempted to leave the residence of PW5 immediately after dropping PW1. Accused no.2 was taken into custody from the residence of PW5 in the night of 17.02.2017 and at that time SIM was in the phone. It was not there when it was seized on the strength of Ext.P159 mahazar after his arrest at 6 p.m on 18.02.2017. What happened to the SIM card he used several times during the course of the journey from Thrissur is not stated by accused no.2. Evidence is available on records to conclude that accused no.2 contacted accused no.1 after he proceeded to Thrissur in MO9 and also while driving the vehicle from Thrissur to Ernakulam with PW1 on board. It is also proved that several messages were transmitted between accused nos.1 and 2 during the

course of journey. PW1 was sexually assaulted in MO9 and at that time accused no.2 was not in that vehicle. Accused no.2 was quite aware that he will be implicated along with accused no.1 in connection with the sexual assault of PW1 and his calls and messages from his phone would become concrete evidence against him for what happened to her and having fully conscious of the consequences in case of reaching SIM card in the hands of police, he caused its destruction and thereby caused the disappearance of evidence available in the SIM card relating to the conspiracy to sexually assault PW1 and the arrangement for its accomplishment, and I find so. Point no.20 is decided in favour of the prosecution.

169. **Point no.21:-**

Harbouring of accused nos.1, 3 and 4 by accused no.7:-

The prosecution allegation is that on 19.02.2017 morning accused nos.1, 3 and 4 reached at the rental residence of accused no.7 situates at Coimbatore. Accused no.1 showed the nude visuals of PW1 captured by him on his mobile phone claimed to be recorded as per the quotation of

accused no.8. Accused no.7 with the clear knowledge that accused nos.1, 3 and 4 committed grave offences, harboured them. He further arranged TN 04-R-1496 number motor bike to accused nos.1 and 4 for escaping and thus committed the offences alleged against him.

170. The evidence in connection with the arrival of accused nos.1, 3 and 4 at the residence of accused no.7 at Coimbatore was already discussed. The evidence in this regard is the oral testimony of PW24 and also the seizure effected by PW202 from this place. Further, prosecution relied on Ext.P76 series, the alleged confession of accused no.7. PW162 recorded Ext.P176 confession of accused no.7. It is seen from Ext.P176 that on 16.09.2017 accused no.7 was brought before PW162 with the requisition that accused no.7 was ready to become an accomplice. He had given the necessary precautions to him. He appeared along with his lawyer. PW162 had given time for reflection. Accused no.7 again appeared on 18.09.2017 as directed. It is seen from the questionnaire put to him that he appeared voluntarily. He stated that during a Sunday in February he was sleeping at his residence. He got up on hearing news from television. Vijeesh was seen watching television. Vijeesh is known to

ERNAKULAM-682 011

him as he assisted him in his electrical works. He stated that PW24 who is his roommate opened the door for them. Vijeesh is known to PW24 also as he resided with accused no.7 in a previous occasion also. Vijeesh informed him that PW24 opened the door. PW24 left to his native place. He stated that Tamil channels are available therein. He enquired about the time of their arrival. He again slept. Next day morning, he got up and engaged in his daily work. At that time two persons were seen present in the room. Those persons were not known to him. He had no prior acquaintance. All the three including Vijeesh were sleeping when he returned back in the evening. Vijeesh informed him that others are his friends. Accused no.4 introduced the other as the driver of accused no.8. A mobile phone was available with accused no.4 Vijeesh. Both accused nos.1 and 4 were engaged in conversation. Somany photos were available in the mobile phone. He enquired about the persons and they replied that all of them are junior artists. It is a Samsung make mobile phone with touch facility. Colour of the phone is white. A nude video of PW1 was shown to him. He enquired about the lady who was seen in the video and they replied that it is PW1. He asked them how it was happened to be

with them. They informed that they abducted PW1 and sought his assistance. He sought the assistance of accused no.7 for screening them from arrest. He asked them to leave the place immediately. He also asked accused no.4 why he brought them to his residence. They assured that they will leave next day morning. He stated that accused no.4 is known to him for the last twelve years. He specifically stated that he did not watch the entire video on showing it to him. A specific question was put to him that he had permitted the accused nos.1, 3 and 4 to reside along with him even after getting information about their involvement in the commission of an offence against PW1 and he replied in the negative and further stated that he asked them to leave him. They remained there till morning. He also stated about the moving of MO66 motorbike from there. They requested to arrange Rs.25,000/- and he expressed his inability. He stated that on Monday morning he had seen the photo of accused no.1 in television and he got frightened. He had no idea about the steps which were to be taken. He specifically stated that on Monday morning when he watched the photo of accused no.1 in television channel and then only he could realise the seriousness and gravity of the issues. A

specific question was put to him as whether on 18.02.2017 and 19.02.2017 he watched the photo of accused no.1 in news channels, he answered it in the negative and according to him, Malayalam news channels are not available there.

171. It is to be noted that later accused no.7 had withdrawn his permission to become accomplice. He claimed that he never agreed to become accomplice. Accordingly, he was directed to face trial. Even if Ext.P176 series is taken into consideration, that will not lead in evidence to suggest that accused no.7 permitted accused nos.1, 3 and 4 to reside with him after getting information regarding their involvement in the commission of this offence. Though he stated that he watched the visuals, he came to know about the incident only on Monday morning. The one and only evidence available before this court is the oral testimony of PW24 apart from the seizure conducted at the residence of accused no.7. The seizure effected at his residence is already discussed hereinbefore, which would show the presence of accused nos.1, 3 and 4 at his residence. Moreover, accused no.3 admitted in his examination u/s.313(1)(b) of Cr.P.C about his residence at the rental house of accused no.7.

172. The evidence of PW24 in this regard is very crucial. According to PW24, accused no.7 is known to him for the last 10-12 years. He stated that he opened the door. According to him, Vijeesh occasionally visited accused no.7 in connection with electrical works. He also stated that accused no.7 was sleeping when the accused arrived therein. He enquired with accused no.4 regarding the purpose of visit and he replied that it is for purchasing tools. He left to his native place and returned the next day. At that time accused nos.1, 3 and 4 were sleeping. On that day evening his MO66 bike was found missing from his residence. He enquired about the key. Since the lock of the bike is in a loosened condition it can be used without key. He deposed specifically that accused no.7 told him that accused nos.1, 3 and 4 involved in this case and he got information about their involvement on Monday morning. Accused no.7 went to his native place. He also deposed about the search conducted by PW202 on 26.02.2017 in the presence of accused nos.1 and 4. He is an attestor to Ext.P18 mahazar. He identified the seized material objects also. This evidence is also in tune with the evidence contained in Ext.P176 series that accused no.7 came to know about the involvement of accused nos.1, 3 and



4 only after they left his house. It is true that in Ext.P176 series it is stated that accused nos.1, 3 and 4 informed him about their involvement in this case. But at the very same time it is to be considered that he then and there asked them to leave the house. He stated specifically that he had no idea about the further steps which were to be taken in this regard.

173. Section 212 of the Indian Penal Code deals with harbouring an offender. It says that **"Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment".** So, the first and foremost ingredient required to attract the offence u/s.212 IPC is that the person has to have clear knowledge or reason to believe that the persons are offenders. In addition to that the person screening them with a clear intention to screen them from legal punishment. Though accused nos.1, 3 and 4 resided with accused no.7, evidence is lacking to show that he provided them with shelter with an intention to screen them from legal punishment and also with the knowledge about their involvement in the commission of offence. Above all, as I pointed out, he retracted from the confession also. Even if

Ext.P176 series is taken as his confession, nothing is there to drag him to the charges levelled against him that he harboured accused nos.1, 3 and 4.

174. Another paradoxical aspect is to be considered is that the definite case of prosecution in the final report filed on 18.04.2017 is that both accused nos.1 and 4 went to the office of Adv. Pradeesh Chacko on 22.02.2017 and 23.02.2017. It is mentioned in the first final report that accused no.1 on 23.02.2017 reached at the office of Adv. Pradeesh Chacko and entrusted him with the mobile phone used for recording the visuals of PW1 with a condition of its return as and when demanded. Adv. Pradeesh Chacko arranged shelter to accused nos.1 and 4 in the upstairs of his office. Adv. Pradeesh Chacko failed to produce this mobile phone to the investigating officer. There is specific assertion that accused no.1 handed over the mobile phone used to record the visuals involved in this case. Still the prosecution did not arraign Adv. Pradeesh Chacko as an accused in the first final report. In the first final report only accused nos.1 to 7 were arraigned.

175. It is true that in the supplementary final report filed on 22.11.2017 Adv. Pradeesh Chacko and Adv. Raju Joseph were arraigned

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

as accused. Both of them were discharged later by the order of the Hon'ble High Court in Crl. Rev. Petition No.828/2018 dated 05.12.2018. This order is not challenged by the prosecution and attained finality. No explanation is forthcoming from the prosecution that as to why Adv. Pradeesh Chacko who was allegedly arranged shelter to accused nos.1 and 4 before their arrest was not arraigned as accused in the final report filed on 17.04.2017 inspite of the arraignment of accused no.7 alleging that he harboured accused nos.1, 3 and 4. The allegations levelled against accused no.7 are seen less serious than the allegations levelled against Adv. Pradeesh Chacko. Further, it is to be noted that Ext.P176 series were recorded only on 18.09.2017, after the filing of first final report. At the time of first final report the only evidence in this regard was the evidence of PW24.

176. As mentioned hereinbefore, the evidence of PW24 available before this court shows that he himself opened the door and at that time accused no.7 was sleeping. He deposed specifically that accused no.7 informed him that he came to know about the involvement of accused nos.1, 3 and 4 in the commission of offence only after their departure

from their residence. On an analysis of the above evidence I conclude that accused nos.1, 3 and 4 resided at the rental residence of accused no.7 and no evidence is available on record to show that accused no.7 arranged shelter to them with the knowledge about their involvement in the commission of offence against PW1. Based on that conclusion, I hold that prosecution failed to prove that accused no.7 harboured accused nos.1, 3 and 4. Point no.21 is decided against the prosecution.

177. **Point no.22:-**

Recording of F.I Statement and registration of crime no.297/2017 of Nedumbassery police station on the strength of Ext.P1 FIS:-

The prosecution case is that on 18.02.2017 at about 3 a.m PW197, the then Circle Inspector of Police, Infopark police station reached at the residence of PW5 as directed by the then City Police Commissioner, Ernakulam. When she reached there, the Commissioner was available at the residence of PW5. She had been informed that 'X' was subjected to sexual assault and directed to record her statement. Ext.P1 F.I Statement was recorded accordingly on 18.02.2017 at 3 a.m. Thereafter, PW197

DISTRICT AND SESSIONS COURT
ജില്ലാ കോടതി
എറണാകുളം-682 011
ERNAKULAM-682 011

collected MO1 to MO3 series from PW1 at the residence of PW5. She had been directed by the City Police Commissioner to contact Dy.S.P., Aluva to hand over the F.I. Statement. She contacted Dy.S.P., Aluva (PW202). PW202 informed her that he will reach at Thrikkakara police station by 8.45 and directed to keep the F.I. Statement with her till then. Accordingly PW197 went back to her station by 8.45 a.m she reached at Thrikkakara police station and she handed over Ext.P1 to P202 who arrived there along with covering letter and he endorsed the receipt in the original of covering letter and returned it to her. She also handed over MO1 to MO3 series to PW202. Thereafter she had been directed by PW202 to appear in connection with the preparation of mahazar in respect of MO1 to MO3 series. She reached at the office of PW202 at 4.30 p.m. Ext.P158 was prepared accordingly. PW202 stated that on 18.02.2017 at about 5 a.m Rural S.P contacted him over phone and informed about the incident and he had been directed to follow up the investigation. On that day, at about 7 a.m PW197 contacted him and informed about Ext.P1. It is also stated that since the incident was happened within the jurisdiction of Nedumbassery police station, she had

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

been directed to hand it over to PW202. PW202 informed PW197 that he will reach Thrikkakara police station by 8.30 a.m and reached there accordingly. PW197 handed over Ext.P1F.I. Statement in a cover. The cover was a closed one. She also handed over a covering letter and its original was returned to PW197. He entrusted this cover with the Senior C.P.O Mr Anilkumar attached to his office and he gave that cover to Nedumbassery police station.

178. The prosecution case is that PW194 on the strength of Ext.P1 F.I. Statement received at Nedumbassery police station in a sealed cover, registered crime no.297 of 2017 of Nedumbassery police station for the offences punishable u/s.342, 366, 376, 120B r/w S.34 IPC and S.66(E) and 67(A) of Information Technology Act. Ext.P1(a) is the FIR. He sent the FIR forthwith to the jurisdictional court. Ext.P1(a) was registered at 12.45 p.m. The learned Special Public Prosecutor relying on the events mentioned hereinbefore argued that Ext.P1 was recorded immediately after the commission of offence, by PW197 at Lal's residence. Thereafter PW202 collected it from her at 8.45 a.m. Ext.P1 was registered at Nedumbassery police station through senior civil police officer Mr Anil

DISTRICT & SESSIONS COURT ERNAKULAM-682 011

Kumar attached with the office of PW202 at 12 p.m. PW194 the then Sub Inspector registered Ext.P1(a). Exts.P1 and P1(a) reached at JFCM, Angamaly at 2.40 p.m. According to him, there is no delay in either recording the F.I. Statement or registering the FIR. He also submitted that the FIR was registered at 12.45 p.m and the time taken after recording Ext.P1 was the time for its transmission to Nedumbassery police station.

179. Relying on this time gap the defence counsel contended that Ext.P1 is not a statement recorded as claimed by the prosecution and had Ext.P1 been recorded at 3 a.m, as claimed the FIR ought to have been registered immediately thereafter, especially considering the seriousness of the crime and also the presence of even higher police officials at the residence of PW5. They further contended that Ext.P1 was recorded after due deliberations at the residence of PW7 Remya Nambessan. The defence also argued that the prosecution case is that PW1 left the residence of PW5 after her medical examination and proceeded to the residence of PW7. Somany persons from the film field reached there. PW1 made discussions and deliberations with them and also with police

DISTRICT AND SESSIONS COURT ERNAKULAM

officials visited her and the details given in Ext.P1 as a result of the discussions and deliberations so made. The learned Special Public Prosecutor argued that the persons who are named in Ext.P1 or shown as accused in Ext.P1(a) FIR never raised a contention that they were implicated falsely. He also argued that even if such a contention is there the evidence of PW5 and other witnesses present at his residence are sufficient enough to negative that contention.

180. Let us consider the rival contentions. As pointed out earlier, the case of the prosecution is that PW197 recorded F.I. Statement of PW1 at the residence of PW5 on 18.02.2017 at 3 a.m. Ext.P1(a) would show that the F.I. Statement reached at Nedumbassery police station at 12 noon on 18.02.2017 and FIR was registered at 12.45 p.m. Ext.P1(a) FIR is on the line that Ext.P1 was recorded by PW197 and on 18.02.2017 at about 12.45 p.m she produced it in Nedumbassery police station and accordingly, PW194 registered Ext.P1(a) FIR. This is very specifically recorded in the FIR. Though it is recorded in Ext.P1(a) report that PW197 produced Ext.P1 in Nedumbassery police station, the prosecution case is that PW197 handed over Ext.P1 to PW202 DySP, Aluva on

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

18.02.2017 at 8.30 a.m based on the arrangement between them and PW202 in turn entrusted it with one Anilkumar, Sr. civil police officer attached with his office. Mr. Anilkumar produced it in Nedumbassery police station. The interesting aspect is that Anilkumar, the person to whom the F.I. Statement is allegedly entrusted, is not even cited as a witness and no explanation has been offered for the same. PW202 specifically stated that he entrusted the F.I. Statement with Mr. Anilkumar immediately after receiving it from PW197. The journey time between Thrikkakara police station or the office of PW202 and Nedumbassery police station is less than one hour. If this be the situation, the F.I. Statement should have been reached in the Nedumbassery police station atleast before 10 O' clock. The prosecution has no case that any other duties were assigned with Sr. civil police officer Mr. Anilkumar in the meantime. Considering the seriousness of the offences involved in this case, Mr. Anilkumar is bound to produce the F.I. Statement in the police station concerned without any delay and no explanation is forthcoming from the prosecution for that much of delay as pointed out above. Another important aspect is that though it is claimed by both PW197 and

DISTRICT AND SESSIONS COURT ★ ERNAKULAM-682 011

PW202 that F.I. Statement along with MO1 to MO3 series were handed over to PW202 by PW197 on 18.02.2017 at 8.30 a.m records are not produced to substantiate that claim. PW197 and PW202 deposed that when PW197 handed over Ext.P1 to PW202 he endorsed the receipt in the covering letter. That covering letter is not put in evidence. Though PW202 during his examination deposed that the carbon copy of that covering letter is available in the case diary, the same is also not produced and no explanation has been offered for the same. The evidence of PW194 is that Ext.P1(a) would show that the first information statement was received in Nedumbassery police station on 18.02.2017 at 12 noon. However, Exts.C5 and C6 remand report show a different version regarding the handing over of Ext.P1 to Nedumbassery police station. Ext.C5 is the remand report of accused no.3 dated 22.02.2017 signed by PW202. It is mentioned therein specifically that since the incident took place within the jurisdiction of Nedumbassery police station, PW197 on 18.02.2017 at 12 p.m entrusted Ext.P1 with PW194. PW194 in-turn registered Ext.P1(a) FIR. The relevant version in Ext.C5 reads as follows.

"വനിത C.I Radhamani രേഖപ്പെടുത്തിയ ആവലാതിക്കാരിയുടെ മൊഴി പ്രകാരം

ഈ കേസിന്റെ സംഭവ സ്ഥലം എറണാകുളം റൂറൽ പോലീസ് ജില്ല Nedumbassery police station പരിധിയിലാണ് എന്ന് ബോദ്ധ്യപ്പെട്ടതിന്റെ അടിസ്ഥാനത്തിൽ വനിത C.I Radhamani ആവലാതിക്കാരിയുടെ മൊഴി തുടർ നടപടികൾക്കായി ഉച്ചക്ക് 12 മണിക്ക് Nedumbassery Sub Inspector ശ്രീ. ജി. എസ്. ഹരിയെ ഏൽപ്പിച്ചിട്ടുള്ളതും ആയതിന്റെ അടിസ്ഥാനത്തിൽ ടി സബ് ഇൻസ്പെക്ടർ 12.45 മണിക്ക് ക്രൈം 297/2017 u/s.120B, 342, 366, 376, 506(1) and 34 IPC and S.66(E) and 67(A) of Information Technology Act ആയി register ചെയ്തിട്ടുള്ളതാണ്". This would show that PW197 handed over F.I. Statement directly to PW194 at Nedumbassery police station.

181. Ext.C6 is the remand report of accused no.2 Martin. In the said remand report a different version is stated. It is recorded in Ext.C6 that Ext.P1 was sent to Nedumbassery police station and accordingly, Ext.P1(a) was registered. Ext.C6 was prepared on 19.02.2017. It is to be noted that in both Exts.C5 and C6 case advanced by the prosecution that PW197 entrusted Ext.P1 to PW202 and he in-turn sent it to Nedumbassery police station through his senior civil police officer is absent. Further, as pointed out above Ext.P1(a) report itself shows that

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

PW197 on 18.02.2017 produced it before PW194 at Nedumbassery police station. Another aspect to be considered is that PW197 and PW202 claimed that while handing over Ext.P1, PW197 also handed over MO1 to MO3 series to PW202. PW202 contended that he kept the dresses with him till 4.30 p.m on that day. Thereafter he seized those dresses on the strength of Ext.P158. Relying on Ext.P158 the learned counsel for accused nos.8 and 15 argued that both PW197 and PW202 are speaking falsehood so as to suit the present case of the prosecution that they met on 18.02.2017 at 8.30 a.m at Thrikkkara police station.

182. Ext.P158 mahazar was prepared on 18.02.2017 at 4.30 p.m at the office of PW202. It is the mahazar prepared for the seizure of MO1 to MO3 series. On a perusal of Ext.P158 it is seen that PW197 produced those items before PW202 on 18.02.2017 at 4.30 p.m and PW202 seized it on the strength of Ext.P158. This is against the prosecution case that dresses for PW1 were entrusted by PW197 to PW202 on 18.02.2017 at 8.30 a.m. During their examination in court both PW197 and PW202 tried to explain the wordings in Ext.P158 that though the dresses were collected by PW202 at 8.30 a.m its official seizure was only at 4.30 p.m.

Since the dresses were handed over by PW197, her presence was also secured at the time of preparing Ext.P158. Ext.P158 is appear to be silent regarding the alleged handing over of dresses at 8.30 a.m at Thrikkakara police station. A plain reading of statement in Ext.P158 is that **"Lal-ന്റെ വീട്ടിൽവെച്ച് ആവലാതിക്കാരി സംഭവസമയത്ത് ധരിച്ചിരുന്ന വസ്ത്രങ്ങൾ ആണെന്നു പറഞ്ഞ് Kochi City Infopark C.I ശ്രീമതി രാധാമണിയെ ഏൽപ്പിച്ചിരുന്ന വസ്ത്രങ്ങൾ, ടി C.I. Aluva Dy.S.P ഓഫീസിൽ ഹാജരാക്കിതന്നത് പരിശോധിച്ചു ബന്ധവസ്സിൽ എടുക്കുന്നതിനായി Aluva Dy.SP K.G. Babukumar 18.02.2017 തീയതി വൈകി 4.30 മണിക്ക് സാക്ഷികളുടെ സാന്നിധ്യത്തിൽ തയ്യാറാക്കുന്ന seizure mahazar".**

183. The above statement would show that PW197 produced the dresses at the office of PW202 on 18.02.2017 only at 4.30 p.m. This mahazar also stands against the case advanced by prosecution that the dresses were handed over to PW202 by 8.30 a.m on 18.02.2017. In her chief examination, PW197 deposed regarding the recording of Ext.P1 as 3 a.m on 18.02.2017 and also regarding the events leading to her arrival to the residence of PW5. PW197 stated that Ext.P1 was recorded by one

Woman CPO Smt. Basheera attached to Thrikkakara police station. Admittedly, nothing is there in Ext.P1 to show that the handwriting is of Smt. Basheera. Further, Smt. Basheera is not examined as a witness. PW197 deposed about the handing over of Ext.P1 to PW202 as directed by the Commissioner of Police, Ernakulam. She stated further that she received receipt on the covering letter for handing over Ext.P1. On that day PW202 in the afternoon of 18.02.2017 contacted PW197 and asked her to come to his office for witnessing the preparation of Ext.P158. She was cross examined at length in this regard. She stated specifically that Ext.P1 was not handed over or sent to Nedumbassery police station by her. But it is brought out that she had given statement before the investigating officer that **"ഞാൻ രേഖപ്പെടുത്തിയ മൊഴി മേലധികാരികളുടെ നിർദ്ദേശാനുസരണം Nedumbassery പോലീസ് സ്റ്റേഷനിലേക്ക് അയച്ചു കൊടുത്തു എന്ന് പറഞ്ഞിട്ടുണ്ട്".** She admitted this statement also. As I pointed out, Ext.C6 remand report prepared in connection with the production of accused no.2 before court contains the very same version. She explained that this statement was given under the impression that Ext.P1 was sent to Nedumbassery police station by PW202. Similarly, the

fact that the evidence tendered by PW197 regarding the instruction from Commissioner for entrusting Ext.P1 to PW202, their meeting at Thrikkakara police station on 18.02.2017 at 8.30 a.m and the entrustment of Ext.P1 to PW202 with a covering letter are not stated at the time of interrogation. All these aspects are material omissions.

184. It is also brought out that nothing has been stated about the handing over of MO1 to MO3 to the investigating officer at the time of her interrogation. To a specific question that MO1 to MO3 series were seen handed over to Dy.S.P on 18.02.2017 at 4.30 p.m., her reply is that she has nothing to explain. Another suggestion was put to her that she is giving evidence against the contents of Ext.P158. Though PW197 denied it, as I pointed out, the evidence of PW197 is against the recitals in Ext.P158. Similarly, the story regarding the call from Dy.S.P for securing her presence at the time of the preparation of Ext.P158 mahazar is also an omission.

185. As far as the evidence of PW202 in this aspect is concerned, he deposed that no documents are produced before the court to show that he met PW197 on 18.02.2017 before 4.30 p.m. He admitted the averments

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

stated in Exts.C5 and C6 remand reports. Though he gave an explanation that it was a general averment, that cannot be taken into account. He admitted that the journey time between Aluva Dy.SP Office and Nedumbassery police station is only half an hour. The journey time between Thrikkakara police station and Aluva Dy.SP office is 45 minutes. Had the FIS been entrusted as claimed by PW202 to Anilkumar at 9.30 a.m this would have been reached at Nedumbassery much before 12 noon. A specific suggestion is put to PW202 that he is giving false explanation so as to support and corroborate the testimony of PW197. Though PW202 denied the suggestion so made, the document produced before the court are contradictory to this version. Similarly, the handing over of Ext.P1 to Sr. civil police officer Anilkumar is also not stated to the investigating officer at the time of his interrogation.

186. As pointed out earlier the journey time between Aluva and Nedumbassery is only half an hour. Things being so, the First Information Statement should have been reached Nedumbassery Police Station atleast by 10.30 a.m. The F.I Statement reached there at Nedumbassery police station only at 12 noon and that also stands against

the prosecution version. PW202 stated that F.I Statement was in a sealed cover and he did not open it. It is very hard to believe that PW202, a senior police officer did not verify the F.I Statement involved in a serious and grave crime on knowing of which local MLA and senior most police officers reached the place where it was recorded. It is true that no Station House Officer was in Nedumbassery police station at that time. The Nedumbassery police station falls within the jurisdiction of PW202. PW202 is competent to register FIR. Instead of registering the FIR immediately after receiving the F.I Statement, PW202 claimed that he entrusted it with a senior civil police officer and then gave it to a Grade S.I., who was in charge of the police station. This version also seems to be doubtful. It is pertinent to be noted that, the entire police force including State Police Chief is involved in the recording of F.I Statement and related matters. Considering all these aspects, the explanation of PW202 for not registering FIR in the morning itself is undigestible.

187. The learned counsel for accused no.8 argued that no F.I Statement was available in the morning of 18.02.2017 and that is the reason why the case was not registered at that time and according to him,

Ext.P1 is ante-timed. The evidence available before this court including the oral testimony of PW1, PW5 and other witnesses who were present at the residence of PW5 show the arrival of PW197 and her meeting with PW1. All of them deposed categorically that two lady police officers were seen engaged in recording the statement of PW1. Therefore the defence contention that F.I Statement was not recorded as claimed by the prosecution appears to be untenable. At the very same time, it seems that prosecution failed to register FIR immediately after Ext.P1 and in order to cover-up the gap put forward a false story that PW202 entrusted the FIS handed over to him by PW197 on 18.02.2017 at 8.30 a.m with the Nedumbassery police station.

188. The prosecution explains that since the crime was committed within the jurisdiction of several police stations, they waited for direction regarding the police station where the crime is to be registered. It is brought out in evidence that PW195 Asst. Commissioner of Thrikkakara was available at residence of PW5. Similarly, a part of the crime is committed within the jurisdiction of PW197 also. In that circumstance it was quite unnecessary to wait for such a direction. However, considering

the fact that a crime can be registered at any of the police stations within the jurisdiction the offence is committed, there is nothing wrong in the registration of crime in Nedumbassery police station. The learned counsel for accused no.8 also argued that immediately after recording Ext.P1, PW197 met PW202 at the residence of PW5. So, the case advanced by prosecution that PW197 contacted PW202 over phone as directed by Commissioner of Police, Ernakulam seeking the instructions for handing over Ext.P1 is false. It is to be noted that the fact that PW195 reached at residence of PW5 is not in dispute. PW195 gave statement before the investigating officer that PW202 along with the Rural S.P reached at the residence of PW5 before sending PW1 for medical examination. PW202 also admitted that he recorded the statement of PW195. He admitted that PW195 stated that **"Rural SP-യും, ആലുവ Dy S P-യും അവിടെ വന്ന് വനിത CI രാധാമണിയെ 'X'-നെ medical പരിശോധനക്ക് അയക്കുന്നതിന് വേണ്ടി ചുമതലപ്പെടുത്തി എന്ന് PW195 മൊഴി നൽകിയിട്ടുണ്ട്"**. PW195 also denied this before the court so as to suit with the case advanced by the prosecution at the evidence stage. It is also brought out that nothing is mentioned in the case diary regarding the meeting of PW197 at



Thrikkakara police station and also regarding the handing over of Ext.P1 to PW202 by PW197. As far a criminal case is concerned, recording of F.I Statement and its handing over to the investigating officer are vital aspects. This should have been found a place in the case diary. Similar is the case of handing over of MO1 to MO3 series. So I am of the considered view that the case advanced by the prosecution that PW197 handed over Ext.P1 to PW202 at Thrikkakara police station on 18.02.2017 at 8.30 a.m seems to be a cloudy one. At the very same time as I pointed out, there is evidence that Ext.P1 was recorded by PW197 at the residence of PW5. It is true that satisfactory explanation was not even offered to explain the delay in the registration of FIR. The defence arguement that no F.I Statement was available at the time noted therein and the time gap was on account of the preparation of F.I Statement after deliberations and discussions has no merit in view of the conclusion arrived at above that PW197 recorded Ext.P1 statement of PW1 at the residence of PW5 at the time and date stated therein.

189. PW1 was brought at the residence of PW5 by accused no.2. The involvement of accused nos.1 and 2 were realised immediately after

the incident. PW5, PW42, PW69 and PW195 deposed about the transactions took place at the residence of PW5 including the interrogation of accused no.2 and the revelation of the name of accused no.1 Sunil by accused no.2. It is also proved that there were phone calls while PW1 was travelling from Thrissur to Ernakulam in MO9. PW69 contacted accused no.1 as his number was collected from accused no.2. Moreover, PW1 deposed specifically regarding the identity of accused nos.1 and 2 when she was at the residence of PW5. She informed the identity of accused no.1 as the driver at Goa. Ext.P113 medical certificate shows the identity of assailant as previous driver in Goa. Ext.P1(a) FIR contains the names of accused nos.1 and 2 only. If this be the situation, the delay highlighted by the defence is immaterial considering the evidence tendered by PW1 regarding the chronology of events narrated by her in Ext.P1.

190. Relying Ext.D24 the learned defence counsel argued that the time of registration of crime is also doubtful. Ext.D24 is marked through PW110 doctor who examined PW1 at the Medical College Hospital, Kalamassery. Ext.D24 is the requisition prepared by the doctor for

chemical examination. PW110 deposed that **"Ext:P113 was prepared by me at the time of examination. It was prepared around 6.45 a.m. I have prepared requisition for chemical examination at the same time."** The requisition is marked as Ext.D24. During re-examination the learned Special Prosecutor tried to clarify this by putting a question on the line that Ext.D24 was issued in the afternoon session. PW110 denied that suggestion and asserted that it was issued in the morning. He adds that **"at which time the seal was made is not known to me"**. The interesting aspect is that Ext.D24 contains crime no.297/2017 of Nedumbassery police station. As per the prosecution contention Ext.P1(a) was registered at 12.45 p.m on 18.02.2017. The evidence of PW110 is that he prepared Ext.D24 in the morning on 18.02.2017. In order to clarify this aspect the learned Special Public Prosecutor had advanced a wonderful argument that since information is received at Nedumbassery police station about the crime, they might have been reserved a number for FIR in the morning itself and that was given to the doctor and accordingly, the number so given is seen in Ext.D24. The registration of FIR cannot be taken in par with the registration of motor vehicles in RTO Office after

booking fancy numbers. The registration of FIR is being done chronologically then and there on getting information enabling the registration of FIR. Therefore the explanation offered by the Public Prosecutor has no merit at all. At the very same time, though for the mere reason that Ext.D24 contains the crime number, this court cannot arrive at a finding that FIR was registered before 6.45 a.m on 18.02.2017. The evidence of PW110 regarding the time of preparation of Ext.D24 might be as the result of oversight that she prepared it along with Ext.P113. It is a usual practice that the doctors will collect materials for chemical examination at the time of examination and will hand it over at a later point of time to the investigating officer with requisition for chemical examination. That being the usual practice of medical officers, I am of the view that Ext.D24 might have been prepared on 18.02.2017 after the registration of Ext.P1(a) and that will be the reason for appearing crime number in Ext.D24.

191. The learned counsel for accused no.8 relying on the decisions reported in **Thulia Kali vs The State o nf Tamil Nadu, AIR 1973 Supreme Court 501, Mehraj Singh vs State of U.P and others, 1994 SCC (5) 188,**

Dilawar Singh vs State of Delhi 2007 (12) SCC 641, Kailash Gour & Ors vs State Of Assam AIR 2012 Supreme Court 786 vehemently argued that the delay in registering the FIR is fatal to the prosecution case and above all the false explanation put forward to suppress the delay is more fatal to the prosecution case.

192. The principles enunciated in the decisions pointed out by the learned counsel is duly evaluated. In **Mehraj Singh vs State of U.P** it is held that **"FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story".** It is also held that **"if infirmities are noticed, the**

FIR has lost its value and authenticity". Similarly, in **Dilawar Singh vs State of Delhi** it is held that **"In criminal trial one of the cardinal principles for the court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the court at the earliest instance. That is why if there is delay in either coming before the police or before the court, the courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution"**. In this decision, the decision of the Hon'ble Supreme Court in **Thulia Kali vs The State of Tamil Nadu** mentioned supra is relied on. Similarly, in **Kailash Gour & Ors vs State of Assam** it is held that **"If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is**

explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case."

193. Similarly, the learned counsels also relied on the decision of the Hon'ble High Court in **Rafeeq vs The Sub Inspector Of Police, 2020 (3) KHC 715,** wherein crime number is seen recorded in the arrest memo prepared before registering the case. It is to be noted that all the decisions relied on by the learned counsels deal with the impact of delay in registering the FIR and its impact in criminal trial. As I pointed out, the definite contention taken up by the defence is that Ext.P1 is an antetimed document. According to them, had Ext.P1 been recorded as claimed by the prosecution, FIR ought to have been registered immediately thereafter. The registration of Ext.P1(a) at 12.45 a.m. would show that Ext.P1 was not registered at 3 a.m. It is also submitted that the explanation rendered by prosecution regarding the delay in the registration of Ext.P1 is a false explanation.

194. I have already considered regarding the explanation offered by the prosecution regarding the delay in registering Ext.P1(a) after recording Ext.P1 on 18.02.2017 at 3 a.m. But, at the very same time it is to

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

be noted that, as I pointed out hereinbefore, the witnesses available at the residence of PW5 and PW1 stated about Ext.P1 and categorically deposed that Ext.P1 was recorded at 3 a.m on 18.02.2017. The Identity of accused is also evident from Ext.P113 medical certificate. Accused no.2 was taken from the scene where Ext.P1 was prepared. The situation being so the delay in registering Ext.P1(a) does not impress the court regarding its veracity, I hold that Ext.P1 was recorded at the residence of PW5 at the time and date mentioned therein as per the statement of PW1.

195. On an over all consideration of the discussions made hereinbefore, lead to the irresistible conclusion that prosecution proved that on 17.02.2017 PW1 was taken from Thrissur to Ernakulam in MO9 XUV by accused no.2 and during the course of the journey, a false accident was created by colliding MO12 Tempo Travellor on MO9 XUV. Thereafter, PW1 was abducted and wrongfully confined by the accused persons. The accused persons outraged her modesty. Accused no.1 subjected her to rape and other accused persons as the result of conspiracy hatched between them assisted and aided accused no.1 for this. Accused no.1 also captured the nude visuals of PW1 during the course of

commission of rape and later, on 18.02.2017 he transmitted it to Ext.P262 memory card. It is also proved that the visuals were shown to others without the consent of PW1. The point numbers 1 to 15 are decided in favour of the prosecution.

196. **Point Nos.23 to 32:-**

Criminal conspiracy between accused nos.1 and 8:- On 18.04.2017 PW202 filed final report against accused nos.1 to 7. In that final report PW202 stated specifically that accused no.1 used 'Redmi' make mobile phone for capturing the nude visuals of PW1 and that was entrusted with Adv. Pradeesh Chacko on 23.02.2017. Though notice was served to Adv. Pradeesh Chacko, he filed petition before the Hon'ble High Court against police harassment. Adv. Pradeesh Chacko appeared before PW202 as directed by the Hon'ble High Court. Search was conducted at his residence and office, but the said mobile phone could not be searched out. Hence in the said final report it is stated that further investigation is to be conducted for tracing out the mobile phone and supplementary final report will be filed against Adv. Pradeesh Chacko. Thereafter, on 18.05.2017 PW202 filed Ext.P452 report before the Judicial First Class

Magistrate Court, Angamaly stating that accused no.1 entrusted the mobile phone with Adv. Pradeesh Chacko and it could not be traced out and in that circumstances further investigation is being conducted so as to trace out the said mobile phone and also to find out as to the involvement of more accused in the criminal conspiracy involved in this case.

197. PW202 while in box deposed that on 17.04.2017 he filed final report against accused nos.1 to 7 on the basis of the evidence collected so far. The fact of further investigation is stated in the said final report. While conducting further investigation on 21.04.2017 he recorded the further statement of PW6. According to him, there is some reference in the statement of PW6 regarding the involvement of accused no.8. He directed the Asst. Sub Inspector of Police Mr. Joy to investigate that aspect and to find out the locations of the film shooting held in the year 2015, 2016 and 2017. On 01.05.2017 he received copy of Ext.P101 petition filed by accused no.8 before the Director General of Police with a direction to examine and report. As part of examination, on 02.05.217 he recorded the statement of PW176. On 04.05.2017 he seized Ext.P22 letter from PW176 on the strength of Ext.P449 mahazar. On 06.05.2017 he

obtained permission from Judicial First Class Magistrate, Angamaly to interrogate accused no.1 at jail. He questioned accused no.1 with reference to Ext.P122 letter. He also interrogated PW121. On 11.05.2017 he interrogated accused no.4 with respect to Ext.P122 letter. On 12.05.2017 he filed Ext.P451 report before court for correcting the order of accused mentioned in the final report. On 16.05.2017 he could realise that further investigation is required as far as the information received so far. He filed report to the Head of the Special Investigation Team, IG of Police (Crimes). PW1, accused no.8 and PW181 were abroad and he could not clarify the information received so far. On 18.05.2017 he filed Ext.P452 report before the court intimating the fact of conducting further investigation. He received information that accused no.1 contacted PW181 and PW191 from jail and also that the accused visited 'Laksyah' the shop of PW179 Kavya Madhavan before they surrender before the court, he felt that all those matters are to be investigated and accordingly, Ext.P452 report is filed before the court. He continued the investigation till 18.05.2017. In view of his deputation to Kochi Refinery, he handed

over the investigation to PW261 as per the order of Rural S.P. He also handed over the case diary to PW261.

198. PW261 on the strength of Ext.P688 order, took over the investigation on 19.05.2017. He received the case diary and related documents from PW202. He filed Ext.P687 report before the court. Ext.P687 report dated 19.05.2017 is filed before the Judicial First Class Magistrate Court, Angamaly informing that on the strength of Ext.P688 he is authorised to conduct the further investigation and accordingly, he took over the investigation on 19.05.2017. PW261 and the team proceeded with the investigation. After completing the investigation PW261 filed final report on 22.11.2017 before the jurisdictional court. As I pointed out, in addition to the accused already arraigned in the final report dated 18.04.2017, accused nos.8 to 12 were added as additional accused persons. Apart from accused nos.8 to 12, two more persons were added as accused, but they became approvers during the investigation stage itself. Among accused nos.8 to 12, accused nos.11 and 12 were discharged by the Hon'ble High Court. Again accused no.10 became approver and examined as PW176.

199. The prosecution allegation is that prior to the conspiracy hatched between accused nos.1 to 6 stated in the final report dated 18.04.2017, due to the prior enmity of accused no.8 to PW1, he hatched criminal conspiracy with accused no.1 so as to lash out his revenge against PW1. Accused no.8 is a famous actor cum producer of Malayalam film industry. He married PW34, who was also a leading actress in the Malayalam film industry. During the subsistence of marriage between accused no.8 and PW34, accused no.8 was maintaining illegitimate relationship with PW179 Kavya Madhavan, another leading actress of Malayalam film industry. Accused no.8 was under the impression that PW1 told to PW34 about this relationship. PW1 also forwarded telephone messages to PW34 fortifying the illegitimate relationship of accused no.8 and PW179. PW1 further disclosed these matters to several persons so as to defame accused no.8. Due to this reason, accused no.8 was maintaining enmity and revenge towards PW1 and that led to the conspiracy with accused no.1, which resulted in her sexual assault etc. in MO9.

200. During April 2013, rehearsal camp of stage programme organised by the Association of Malayalam Movie Artists was held at Hotel Abad Plaza. Almost all the actors and actresses participated in the rehearsal camp. During this rehearsal camp PW179 levelled complaint against PW1 that she is engaged in publishing derogatory comments against her. PW52, a close friend of accused no.8 warned PW1 in this regard. Accused no.8 also intimidated and threatened PW1. Thereafter, accused no.8 involved in several attempts using his influence in the film field for destroying the career of PW1. As a result of this enmity, accused no.8 hatched criminal conspiracy with accused no.1 for video-graphing the nude visuals of sexual intercourse of PW1 to use it against her so as to tarnish her mentally and physically.

201. Accused no.1 was working as driver in film shooting locations. As part of the criminal conspiracy hatched between accused nos.8 and 1, on a day falls between 28.03.2013 and 02.04.2013 accused no.1 had been invited to room no.410 of Hotel Abad Plaza and hatched criminal conspiracy with accused no.1 for recording and video-graphing the nude visuals and also the visuals of sexual intercourse with several

persons by PW1. They decided to execute the plan somehow. Accused no.8 agreed to pay Rs.1.5 crores as consideration for this. On 05.06.2013, accused no.1 was convicted in one case and he absconded. On 06.05.2014 he involved in another case. On 20.07.2015 he surrendered before the Judicial First Class Magistrate Court, Kolencherry. He underwent imprisonment from 20.07.2015 till 15.09.2015. Father of PW1 died on 24.09.2015. Till his death he was accompanying PW1 in the shooting locations. Though the conspiracy was hatched between accused nos.1 and 8 during 2013 as mentioned before, he could not execute it for the above reasons. Accused no.8 tried to expel PW1 from the film industry and also expressed his displeasure to the persons who co-operated with her. Accused no.8 succeeded in his attempts and accordingly, he showed his enmity to PW1. Again, on 01.11.2015 accused nos.1 and 8 met at the parking area of Hotel Joys Palace, Thrissur for discussing about the commission of offence as conspired between them. Accused no.8 paid Rs.10,000/- to accused no.1 then and there. He also promised to pay Rs.1 lakh more and that amount was paid on 02.11.2015. Accused no.1 on that day itself deposited the said amount in the account of his mother.

Further, as directed by accused no.8, on 21.09.2016 accused no.1 reached at Thodupuzha and collected Rs.30,000/-.

202. Further, on 08.11.2016 while accused no.8 was engaged in the shooting near CIFT Junction, Thoppumpady, accused no.1 reached there and accused nos.1 and 8 hatched criminal conspiracy inside the caravan bearing registration no.TN-10 AE 4118. On 13.11.2016 accused nos.8 and 1 again hatched criminal conspiracy at Kinattingal Tennis Club, Thrissur, a location arranged for the shooting of film 'Georgettan's Pooram'. Both of them hatched criminal conspiracy in the indoor stadium of Kinattingal Tennis Club. On 14.11.2016 accused nos.1 and 8 again met at Santhigiri College, Thodupuzha during the course of shooting. Accused no.8 enlightened accused no.1 that PW1 would leave the industry soon as her marriage is fixed. Accused no.8 convinced accused no.1 about the urgency for the execution of the capturing of visuals. Further, as part of the conspiracy entered between accused nos.1 and 8, when the shooting of film 'Honey Bee 2' was held in Goa on 4th and 5th of January 2017, accused no.1 attempted to execute the conspiracy. But he could not materialise it. Accused no.1 got information that PW1 would come to Ernakulam in

connection with the shooting of promotional song and accordingly, on 11.02.2017 accused no.1 hatched criminal conspiracy with accused nos.2, 3 and 4 for its execution. Thereafter, on 17.02.2017 while PW1 was travelling in MO9 XUV, accused nos.1 to 6 executed the commission of offence as the result of conspiracy hatched between accused nos.1 and 8. Accused no.1 was confident regarding the influence of accused no.8 that he will protect him. He was also under the impression that PW1 would not reveal the incident to anybody.

203. On 22.02.2017 accused nos.1 and 4 reached at Laksyah, an online shop of PW179. Accused no.4 entered there and made enquired about accused no.8, PW179 and her father Madhavan. He collected the visiting card of Laksyah. Thereafter, they reached at the residence of PW179 at Vennala and enquired about PW179 and her father. Accused nos.1 and 4 were arrested on 23.02.2017. Police obtained custody of accused nos.1 and 4. Both of them were housed at Police Club, Aluva. PW165 Aneesh P.K, civil police officer is entrusted with the security and surveillance duty of accused no.1. On 06.03.2017 PW165 for assisting accused no.1 handed over his mobile phone to him. Accused no.1

recorded his voice message in the said phone. PW165 heard the voice message. As directed by accused no.1, PW165 attempted to handover the said message to accused no.8. PW165 attempted to contact accused no.8 for assisting accused no.1. PW165 later destroyed the memory card used for recording the voice message. On 10.03.2017, PW176 brought a mobile phone and entrusted it with PW121 Vipinlal so as to make it available for accused no.1. Accused no.1 using this mobile phone, on 28.03.2017 contacted PW181 Nadirsha, a close friend and associate of accused no.8 and made enquiry about accused no.8. Accused no.1 contacted PW181 for getting consideration for the execution of the conspiracy as agreed between accused nos.8 and 1. Further, on 10.04.2017 accused no.1 using the said mobile phone contacted PW181 and PW176 on several occasions so as to reach to accused no.8. On getting information about this from PW181 accused no.8 unusually contacted and engaged in conversation with several persons for a quite long time. Accused no.1 contacted PW181 in the presence of PW121 Vipinlal and PW135 Jinson.

204. On 12.04.2017 as requested by accused no.1 PW121 wrote a letter while they were in the cell at District Jail, Kakkanad so as to help

accused no.1. Accused no.1 demanded financial assistance from accused no.8 and he narrated the facts and accordingly, PW121 authored Ext.P122 letter. Ext.P122 letter contains the incidents involved in this case. PW121 handed over the said letter to PW176 when he went to the Judicial First Class Magistrate Court, Maradu for attending a case. PW176 directly proceeded to the residence of accused no.8 and met PW182, the brother of accused no.8. He collected the phone number of driver-cum-manager of accused no.8 from PW182 to contact him. PW176 contacted PW191 Appunni, the driver-cum-manager of accused no.8. They agreed to meet on 14.04.2017 at about noon at Eloor Taxi Stand. Though PW191 tried to collect the letter from PW176 during the course of their meeting, he could not succeed. PW191 informed this to accused no.8 over phone. Thereafter, on 18.04.2017 accused no.1 and PW176 met in the premises of Judicial First Class Magistrate Court, Cherthala. As directed by accused no.1, PW176 contacted PW191 on several occasions. Since accused no.8 was not responding to accused no.1, as directed by accused no.1, PW176 forwarded the copy of the letter to PW191 through the Whatsapp of the wife of PW176. The original of the letter was kept

with PW176. On 21.04.2017 accused no.1 contacted PW191 through the telephone installed at District Jail, Ernakulam and accordingly, tried to contact accused no.8. Though accused no.8 got clear information regarding the attempts made by accused no.1 to contact him, he did not respond. Accused no.8 submitted Ext.P101 letter to the Director General of Police against accused no.1 on 22.04.2017 on realising that his name is not mentioned in the final report dated 18.04.2017. The said attempt of accused no.8 was to brand himself innocent. Accused no.8 also forged documents to show that he was admitted in hospital on 17.02.2017 so as to appear that he has no connection or involvement in this incident. Even after the incident, accused no.8 made unpleasant remarks against PW1 so as to defame her. On the basis of the materials collected, PW261 filed supplementary final report before the jurisdictional court on 22.11.2017 alleging the above additional facts revealed in the further investigation conducted after the final report dated 18.04.2017.

205. **Motive alleged by the prosecution :-**

The motive alleged by the prosecution is that accused no.8 was maintaining vindictiveness towards PW1 on the impression that she

informed his first wife about his illegitimate relationship with PW179. PW1 also sent message to PW34 revealing the illegitimate relationship of accused no.8 with PW179 and that resulted in the termination of their marital relationship. Accused no.8 was also under the impression that PW1 engaged in spreading news to defame him and hence he became enmical to PW1. Further, during the rehearsal camp of Association of Malayalam Movie Artists held at Hotel Abad Plaza, Ernakulam in the month of April, 2013 PW1 abused PW179 by stating filthy matters. PW52 cautioned PW1. Accused no.8 also threatened PW1 and made several attempts to destroy her career.

206. The fact that accused no.8 and PW34 were husband and wife and their marital relationship was terminated on a mutual petition before the Family Court, Ernakulam remains unchallenged. The fact that accused no.8 in the year 2016 married PW179 also remains unchallenged. The learned Special Public Prosecutor submitted that as part of the motive, the prosecution proved that accused no.8 is a well known and influential figure in the Malayalam film industry and he married PW34 and thereafter abstained from the film industry. PW34 was a leading

actress before her marriage. Accused no.8 developed extra marital relationship with PW179 and that was known to PW1 and PW36. This fact was not known to PW34 till 12.02.2012 as PW34 remained as a housewife without regular contacts with the members in the film industry. On 12.02.2012, PW34 happened to see some messages in the phone of accused no.8 and that led to the enquiries leading to the shocking reality that accused no.8 was maintaining illegitimate relationship with PW179. PW34 contacted several persons including PW1 to know the veracity of the news about the illegal relationship of accused no.8. PW1 was constrained to disclose the matters to PW34 and thereupon PW34 on 17.04.2013 left the matrimonial home. Accused no.8 later filed a petition for divorce before the Family Court, Ernakulam after having failed in his attempt to restore the relationship with PW34. Accused no.8 came to understand that PW1 disclosed about his illegitimate relationship with PW179 to PW34. PW1 had been requested by accused no.8 to inform PW34 that what she disclosed to PW34 about his relationship with PW179 are not true. PW1 was not ready to concede the request of accused no.8. By that time, the illegitimate relationship of accused no.8

with PW179 and its impact in his marital relationship with PW34 became a gossip in the Malayalam film industry. This was a topic of discussions in the rehearsal camp of 'Mazhavillazhakil Amma' held during March–April, 2013 at Hotel Abad Plaza, Ernakulam. PW179 also heard about it and she became very angry, furious and burst into tears. Accused no.8 became enmical to PW1 and shouted against her. He uttered that PW1 will be burned alive. PW52, a close associate of accused no.8 intervened and scolded PW1 for disclosing such matters during the rehearsal camp. This made accused no.8 to reach at a mental stage of wreaking vengeance against PW1 and also to spoil her career as an actress.

207. There is no dispute regarding the status of PW1 and accused no.8 in the film industry. The prosecution relied on PW742 series bail applications filed by accused no.8 before the Hon'ble High Court and also the oral testimony of PW1 to prove the status of accused no.8 in the film industry. It is a fact that accused no.8 is a well known actor and having high status in the film industry. He has also admitted that he is also engaged in the field of production, distribution and exhibition of Malayalam movies. The prosecution alleges that on account of the

illegitimate relationship of accused no.8 with PW179, PW34 left the matrimonial home on 17.04.2013. The prosecution further alleges that PW34 was a very talented artist, acted as heroin in about twenty Malayalam films before her marriage with accused no.8. According to them, even the career of accused no.8 was reached at height since PW34 acted with him as his heroin. The prosecution produced Exts.P21 to P24(a) to prove the facts relating to the marital relationship between accused no.8 and PW34.

208. The oral testimony of PW34 and documentary evidence relied on by the prosecution in this regard are to be considered. The oral testimony of PW34 is that she commenced her career in the film industry during December, 1995. She secured many film awards. Her marriage with accused no.8 was solemnized on 20.10.1998. Their marital relationship was dissolved on 31.01.2015. Their marriage was dissolved on the strength of Ext.P22 decree passed in O.P.No.1447/2014 of Family Court, Ernakulam dated 31.01.2015. Ext.P21 is the copy of the joint petition filed by both PW34 and accused no.8 before the Family Court, Ernakulam. On 05.06.2014 accused no.8 filed O.P.No.1081/2014 before



the Family Court, Ernakulam for a decree of divorce. The certified copy of the petition is marked as Ext.P23. Ext.P23 was withdrawn and later Ext.P21 was filed. Ext.P24 is the order permitting to withdraw Ext.P23 petition. According to PW34, she was residing with accused no.8 since from the date of her marriage. On 12.02.2012 she had seen some private messages between accused no.8 and PW179 in the old mobile phone of accused no.8. She contacted accused no.8, but could not reach him. She also contacted PW179. But PW179 evaded her queries. She contacted with the mother of PW179. Mother of PW179 also expressed her concerns in this regard. Mother of PW179 was also disturbed about this relationship. Mother of PW179 also informed PW34 that this fact is known to PW1 and PW36. PW34 contacted PW36, but she failed to give a convincing reply. She shared this fact with her friends PW35 Geethu Mohandas and CW15 Samyuktha Varma. PW1 is also one of her close friends. PW34 expressed her desire to contact PW1 personally. On 14.02.2012 PW34 proceeded to the residence of PW1 along with PW35 and CW15. She enquired with PW1 about the relationship between accused no.8 and PW179. She became emotional. PW1 had been directed

by her father to disclose the matters properly. PW1 disclosed some matters to her. The matters disclosed by PW1 strengthened the doubt regarding the illegitimate relationship between accused no.8 and PW179. They spent for a considerable time at the residence of PW1. They left to the residence of CW15 by evening. She contacted the mother of PW179. Mother of PW179 informed her that PW179 had given assurance that she will not continue with that relationship. She returned back to her matrimonial home on the next day.

209. She asked her brother and siblings of accused no.8 to come over to the residence of accused no.8. She disclosed the entire matters to them. Accused no.8 reached there after two days. She made enquiries with him. Accused no.8 told her that he is not able to recollect the messages. He also told her that PW1 is an immature girl and whatever she said need not be taken into account. The illegitimate relationship between accused no.8 and PW179 led to the dissolution of their marriage. Accused no.8 thereafter married PW179. She also deposed that accused no.8 was under the impression that PW1 informed her about his illegitimate relationship with PW179 for the first time. Accused no.8 was

maintaining vengeance towards PW1 in this regard. When PW34 was in the box, accused no.8 put a question to her that she had taken the initiative to file mutual petition. PW34 replied that she does not remember. A further suggestion was made that had Ext.P23 petition been tried, the allegations therein would have been proved and to avoid the same she filed the mutual petition at her initiative. Another suggestion to PW34 was that her Advocate and well-wishers approached accused no.8 for filing mutual petition. Her reply thereto was that she is not able to recollect. It is brought out in evidence that on 17.04.2013 she left the matrimonial home leaving her 'thali' chain and wedding ring there. She informed her mother-in-law that she was going for a journey. She proceeded to Mumbai and resided there along with PW35.

210. The learned counsel for accused no.8 during her cross-examination brought out somany omissions and contradictions. It is brought out in cross-examination that the date of seeing the message on the phone of accused no.8 is not stated to the police. Similarly, on seeing the message PW34 claimed to have contacted both accused no.8 and PW179. This fact is not stated to the police. According to PW34, PW179

failed to give convincing replies for her queries. This is also not seen stated to the police. PW34 deposed that she contacted PW250, mother of Kavya Madhavan and she stated her that PW1 and PW36 were aware of the relationship between PW179 and accused no.8. Her statement u/s.161 Cr.P.C is absent regarding the alleged contact to PW250. PW34 never stated to the police that she contacted either PW179 Kavya Madhavan or her mother. The fact that she contacted PW36 Reemi Tomy as PW250 disclosed about her involvement is also not stated to the police. PW34 deposed that she contacted PW35 Geethu Mohandas and CW15 Samyuktha Varma on 13.02.2012 and this also not stated in her statement u/s.161 Cr.P.C.

211. PW34 has not stated to the police that she proceeded to the residence of PW1 on 14.02.2012. The statement u/s.161 Cr.P.C of PW34 was recorded on 21.06.2017 and 05.09.2017. It is brought out in cross-examination that nothing is stated to the investigating officer on 21.06.2017 that on seeing the messages between PW179 and accused no.8, PW34 communicated this with PW35 and CW15 Samyuktha Varma. Similarly, it was not seen stated to the investigating officer on 21.06.2017

that PW34 proceeded to the residence of PW1 either with PW35 and CW15 or alone. PW34 claimed that she became emotional while engaged in conversation with PW1 at her residence. She further stated that father of PW1 directed PW1 to disclose whatever facts she knows. This is also not stated to the investigating officer on 21.06.2017. PW34 deposed that she contacted PW250 when they were at the residence of CW15 Samyuktha Varma. As I pointed out, not even a reference is made out to the investigating officer that PW34 contacted the mother of PW179 on any of these days. It is elicited in cross-examination that in between the first statement and the second statement, she contacted PW1 and PW35.

212. PW35 is another witness examined to corroborate the evidence of PW34. PW35 is also a film director-cum-actress. According to her, PW1, PW34 and CW15 are her friends. PW179 was also her friend, but she is not maintaining friendship with her now. According to PW35, on 13.02.2012 PW34 contacted her over phone. PW34 was crying. She enquired about the relationship between accused no.8 and PW179. PW34 informed her that she had seen the messages exchanged between accused no.8 and PW179. PW34 told her father that she contacted the

mother of PW179 after seeing the messages and she expressed her grief and concern about the same. She also informed PW34 that PW1 and PW36 are aware of the entire matters. On getting such information, PW34 informed PW35 that she wants to meet PW1 personally. They decided to go to meet PW1. They proceeded to the residence of CW15. PW34 contacted CW15 over phone. Mother of CW15 passified PW34. They proceeded to the residence of PW1 on 14.02.2012. Parents of PW1 were available there. PW34 was crying. She was in profound grief. PW35 and CW15 conveyed the matters to PW1. PW34 asked PW1 about the issues. On seeing this, father of PW1 directed her to disclose everything firmly as PW34 was crying. PW1 disclosed the matters. Then they could realise the strong bond and intimacy between accused no.8 and PW179. She does not recollect the details of the information furnished by PW1. They went back to the residence of CW15. PW34 was contacting accused no.8, PW179 and PW250. All of them blatently denied the allegations. This was informed by PW34 to PW35. They stayed at the residence of CW15. As in the case of PW34, somany omissions and contradictions are brought out through PW35 also. Ext.D4 portion of statement to the investigating

officer is elicited through this witness. Ext.D4 would show that PW179 has requested her to be her close friend. PW35 denied such a statement. According to her, she dropped the friendship with PW179 after 2009. The statement that on 13.02.2012, PW34 contacted PW35 over phone and PW34 was crying is not stated to the police. It is also brought out that on 13.02.2012, PW34 informed her that she had seen the messages between accused no.8 and PW179 is also not stated to the investigating officer. Similarly, the fact that PW34 contacted the mother of PW179 after seeing the messages is also not seen stated to the police. It was not stated to the investigating officer that on 13.02.2012 PW34 contacted her either through phone or otherwise. The intervention on the side of father of PW1 is also not seen stated to the police. Her statement while in the box that when they stayed at the residence of CW15, PW34 contacted accused no.8, PW179 and PW250 is also not seen stated to the police.

213. PW36 Reemi Tomy a popular singer was also examined to prove the illegal relationship between accused no.8 and PW179. According to her, PW1, PW179 and accused no.8 are her friends. PW34 is known to her. She used to perform stage shows with PW1, PW179 and

accused no.8. During 2010-2011, all of them went to USA in connection with stage show. Their family members also accompanied them. Separate rooms were allotted for each one. She stated that PW34 contacted her to enquire about the relationship between PW179 and accused no.8 and she was quite unaware of anything about the same.

214. PW250, Mother of PW179 was examined before this court. The prosecution put questions to her about the mobile phone number 9645674686, allegedly used by PW179 till 2017 October. Nothing is stated by this witness regarding the phone call claimed to be made by PW34 either on 12.02.2012 or on 14.02.2012.

215. Next available evidence in this regard is the oral testimony of PW1. According to PW1, since she was emotionally and mentally tired after the incident, she could not recollect the entire incidents. She proceeded to Scotland on 12.04.2017 as insisted by others for getting out of the trauma. She came back on 01.06.2017. Her statement u/s.161 Cr.P.C. was recorded on 03.06.2017 by PW261. She disclosed the fact that accused no.8 is her one and only enemy. She was suspicious even at the time of occurrence about the involvement of accused no.8. She was





afraid to express it. She shared the suspicion with her brother and mother. According to PW1, accused no.8 was under the impression that her involvement led to the dissolution of his marriage with PW34. Accused no.8 was under the further impression that PW1 disclosed about the illegitimate relationship between himself and PW179 to PW34. According to PW1, the relationship between accused no.8 and PW179 was known to everyone in the film industry. She also heard about their relationship since her entry in the film field. She did six or seven movies with him. She also performed stage programmes with accused no.8. During 2010 all of them performed in an American show with the caption "Dileep Show". That was for thirty days. PW1, PW36, PW179, PW181 and accused no.8 attended the show. PW179 used to visit the rooms of PW1 and PW36 Reemi Tomy. As PW1 and PW36 were aware about the relationship between accused no.8 and PW179, they used to leave the room whenever accused no.8 and PW179 come to their room. During the show, one day accused no.8 and PW179 came to their room. Accused no.8 and PW179 went to the bathroom together and closed the door. After a while PW179 joined with them and accused no.8 returned back.

On 14.02.2012, PW34, PW35 and CW15 visited at her residence in Thrissur. This was informed by PW35 over phone. Since 14.02.2012 is Valentines day, she could recollect the date. PW35 and CW15 informed her that PW34 had seen the messages exchanged between accused no.8 and PW179 and she was unhappy. PW34 contacted PW179 to enquire about the messages immediately after she noticed it. PW179 did not concede it. Then PW34 contacted PW250, mother of PW179. PW250 conceded about the relationship with PW179. She informed PW34 that PW1 and PW36 are aware about the relationship. This fact was disclosed to PW1 by PW35 and CW15. PW34 and parents of PW1 were present there. PW1 became emotional. PW34 asked PW1 to disclose the entire matters. PW1 pretended ignorance. But the father of PW1 insisted her to disclose on seeing the emotions of PW34. PW1 herself disclosed the matters to PW34. PW1 also informed about these incidents to accused no.8 and PW179 by sending message immediately.

216. During 2012, PW1, PW181, PW40 along with accused no.8 went for a European show by name "Dileep Show". PW1 was not interested to attend the show because of the incidents in connection with

DISTRICT AND SESSIONS COURT ERNAKULAM

the arrival of PW34. But she attended as it was committed earlier. While they were travelling in a bus during the show accused no.8 approached and asked her why did she disclosed about his relationship with PW179 to PW34 and she replied thereto that because of the arrival of PW34 at her residence with evidence, she was compelled to disclose everything. Moreover, PW250 mother of PW179 also admitted the relation between accused no.8 and PW179 when PW34 contacted. PW1 had been directed by accused no.8 to change her version. He also asked her to perform a movie together so as to show PW34 that they are really friends. Further accused no.8 threatened her that anybody stand against him in the film field not reached anywhere in the industry. He also instructed her to contact him after reaching India. She was accompanied with her mother.

217. During 2013 the rehearsal camp of Association of Malayalam Movie Artists was held at Abad Plaza Hotel, Ernakulam. She and somany artists including accused no.8, PW179 and PW40 attended the rehearsal camp. PW40 enquired her that why did she disclose the relationship of accused no.8 with PW179 to PW34. She narrated about the incidents to PW40. PW52 Siddque also enquired with her about the issue. He also

informed that accused no.8 is unhappy with this. PW52 also warned her for abstaining from this. PW51 Bhama also informed her that accused no.8 is enraged to her. Thereafter, she was excluded from the movies committed by her. She realised that it was at the instance of accused no.8. That troubled her. People avoided her as they afraid of accused no.8. This also annoyed her. People started to say that she ruined the marital relationship between accused no.8 and PW34. She was very particular to act atleast in a Malayalam movie before her marriage. She committed one Malayalam movie **"ഇവിടെ"** of Mr Syama Prasad. They sent the script to her. She agreed to act in the movie. Thereafter, a producer contacted her and asked that she had lot of enmies. The producer received phone calls asking why she was preferred in that movie. Script writer Mr Benny P Nayarambalam contacted her and asked her to settle the issues with accused no.8. She did not concede to that request. According to her, she was not ready to contact accused no.8 to avoid her branding as a person without any morale. She contacted PW38, General Secretary of Association of Malayalam Movie Artists and told him that accused no.8 is spoiling her opportunities. Though he assured to enquire

DISTRICT AND SESSIONS COURT ERNAKULAM

the matter, no further actions were taken. During 2015 she had given an interview to Deccan Chronicle and stated her adversity. She stated in the interview that one superstar of Malayalam film industry is spoiling her career. According to her, it was accused no.8 about whom she mentioned in the said interview. Her father died in the year 2015. Mother of PW2 also died in the year 2016. Hence her marriage was postponed. During this time, she committed 'Honey Bee 2' movie.

218. PW1 was cross examined at length in this regard. She was challenged about the alleged intimidation at the instance of accused no.8 during 2012 by putting a specific question as to whether anybody heard or witnessed the incident. She came to know during April 2017 itself about the letter of accused no.1 to accused no.8 (Ext.P122). PW1 stated during cross examination that she could witness an interview of accused no.8 to telecast in Manorama online. Moreover, one security personnel attached with the movie location disclosed to her mother that accused no.1 was seen accompanying with accused no.8 in film locations. PW1 claimed during cross examination that accused no.8 spread the news that PW1 spoiled his marital life. She also claimed that accused no.8 told this

directly to her. But this fact is not seen stated to the investigating officer. According to her, her mother knows all these matters. All the issues were shared with her mother whenever it happens. It is also brought out through this witness about her interviews before and after the interview in 'Deccan Chronicle'. All these interviews were in the year 2013, 2014 and 2016. Questions were put to the witness about her interview in the year 2018 and 2019. Relying on the interviews, question put to the witness that she decided to stay away from film because of the absence of good movies. Questions are also put to show that she had ample opportunity in Malayalam films and other language films and her reply thereto was that she lost main stream movies. It is also put to PW1 that the producers of movies 'Honey Bee 2' and 'Adam John' are the close friends of accused no.8 to which she pleaded short of memory.

219. PW250, Mother of PW179 is examined before this court. Except the question regarding the phone number claimed to be used by PW179, no questions were put to PW250 about the so called contact of PW34 with her and her admission and disclosure of the illegitimate relationship between accused no.8 and PW179 to PW34.



220. PW179 Kavya Madhavan is examined before the court and her evidence in this regard is as follows. She is the present wife of accused no.8. Her first marriage was in the year 2009. She stayed for a short period in Kuwait. She came back to India and residing with her parents at Vennala. PW34 is known to her and she was maintaining a normal relationship with her. She was declared as hostile. She went to U.S along with accused no.8 for U.S show. PW1, PW36, PW181, Kalabhavan Mani, Kalabhavan Shajon, Dharmajan, Salim Kumar, Subi etc. were participated in the show. PW1 was her best friend till her marriage with accused no.8. It was suggested to her by the prosecution that her relationship with accused no.8 was the reason for the dissolution of his marriage with PW34 and she denied that suggestion. Another question is put to her regarding the intervention of PW1 in that relationship and that is also denied. According to her, when she went for U.S show, she was accompanied with her parents. She stated that one day, she came to the room of PW1 and PW36 for sleeping together. She further stated that they were residing in interconnected rooms. She denied the suggestion that accused no.8 visited her frequently during the show. She stated that

since accused no.8 was the captain, he was managing the entire affairs of the show. Accused no.8 came to the room on the last day so as to give instructions for the journey arranged on the next day. She denied the question that she along with accused no.8 went to the bathroom. A specific question is put to her that she was maintaining relationship than friendship with accused no.8 and PW1 and PW36 were aware about this relationship. According to her, she is maintaining relationship with PW36. A question is put to her that the relationship of PW34 and accused no.8 became strained in the year 2012. But she replied that she does not know the time. She further denied the allegation that messages were exchanged between accused no.8 and herself. All the suggestions put to her in connection with the visit of PW1 by PW34 and her friends were denied.

221. She also denied the suggestion that herself and accused no.8 are in enmical terms with PW1. Exts.P217 to P217(m) were marked through this witness. She denied the entire prosecution story. It is also put to this witness that during December 2012 when she visited her brother in Australia, messages were exchanged with accused no.8. It is

also put to her that those messages would expose the illegitimate relationship between herself and accused no.8 and that also is denied by her. Several questions were put to her to show that 9645674686 was the mobile number of her till February 2017. The suggestion regarding the incidents allegedly happened at Hotel Abad Plaza, Ernakulam during 2013 is also denied by her. She also denied that disputes were happened during the rehearsal camp with herself and PW1.

222. The audio clips retrieved from Q25A mobile phone of accused no.8 referred in FSL Report No.DD 442/2017 is put to her. The learned counsel for accused no.8 objected to it on the ground that the accused has no notice about the above conversations put to the witness. According to him, since the files are voluminous, accused no.8 is not in a position to come across with the files which are to be relied on by the prosecution. The learned Special Public Prosecutor submitted that the FSL report along with annexures were given to the accused and hence they cannot plead ignorance about the contents. It is seen that though the file is voluminous, copies were served to the accused. It is equally true that the copies were served one month before the examination of the witness after

several requests. Though the files are voluminous, accused are expected to verify the contents. Since the copies are provided to the accused sufficiently early, they are not expected to challenge the admissibility on the ground that the files are voluminous and the prosecution did not mention specifically about the files which are to be relied on by them. In the above circumstances the objection in this regard is overruled. The audio clips were played before this court. But the witness deposed that she is not in a position to identify it specifically. She deposed throughout that she does not remember whether the mobile number 9645674686 was used by her. Relying on the data retrieved from the mobile phone of accused no.8 somany questions were put to PW179 to show that the said mobile number belongs to her, but she did not gave an answer and her definite stand was that she is not in a position to recollect it. It is put to this witness that there were seven hundred and thirteen contacts between herself and accused no.8 during the period from 01.09.2016 till 22.04.2017 and her explanation was that their marriage was fixed at that time. Another question was put to her suggesting that she changed her mobile number on 22.02.2012 after PW34 seen the messages exchanged between

her and accused no.8. PW179 replied that she changes the number frequently and whenever the number used by her became known to public at large. Calls and messages of the year 2015 and 2016 between PW179 and accused no.8 were put to her. Similarly, questions were put to her referring the messages through Skype for the period from 18.12.2012 till 03.01.2013. Similarly, some of the messages exchanged between accused no.8 and PW179 are also put to her. The messages retrieved from the mobile phone of accused no.8 are relied on. PW179 pleaded short of memory with regard to all those messages. The above evidence adduced by the prosecution to prove the motive of accused no.8 to conspire with accused no.1 to spoil PW1.

223. The learned Special Public Prosecutor argued before the court and also made assertions in the argument note based on the above evidence. Relying on the phone messages and other voice clips retrieved from the mobile phone of accused no.8 prosecution asserts that he is maintaining illicit relationship with PW179. It is seen that PW179 and accused no.8 were maintaining thick relationship during the currency of his marriage with PW34. Some of the messages would show that they were

calling to each other. The point to be considered is whether accused no.8 is in enmical terms with PW1 due to her intervention in his personal affairs. As already pointed out, the prosecution case regarding motive is set up on the plea. PW1 revealed to PW34 about the illegal relationship between accused no.8 and PW179 and she published it among several persons in the film field and that resulted in the fall out of his marriage with PW34 and ultimately to a divorce. Revelation of the relationship between accused no.8 and PW1 was on the visit of PW34 at her house on seeing the messages between accused no.8 and PW179 in the old mobile phone of the former on 12.02.2012.

224. PW1, PW34 and PW35 were categorically stated about the incidents which claimed to be took place on 12.02.2012, 13.02.2012 and 14.02.2012. It is to be noted that the specific averments regarding the dates on which PW34 allegedly seen the messages and related events were stated before the court for the first time. All these witnesses stated nothing to the investigating officer when their statements were recorded as part of the investigation. The statement of PW1 was seen recorded on 03.06.2017. This is the first statement recorded by PW261 as part of further



investigation. PW1 had given the details of the motive in this statement. She claimed that PW34 saw the messages during 2012. She also stated that on 14.02.2012, PW34, PW36 and CW15 visited her residence to enquire about it. But the aspect to be noted is that though the statement is claimed to be recorded on 03.06.2017, this was reached before the court along with the supplementary final report on 22.11.2017. In this context, the statement of PW34 and PW35 to the police assumes some relevance. PW34 is the person who saw the messages and made enquiries about it. The date when she saw the socalled messages are not seen stated to the investigating officer by PW34. Her first statement was recorded on 21.06.2017. Her second statement was recorded on 05.09.2017. In the first statement, on 21.06.2017, she claimed that during 2012 she came to know directly about the messages exchanged between PW179 and accused no.8. Though PW34 stated to the investigating officer that she had direct knowledge about the messages, it is not stated that she had seen the messages in the mobile phone of accused no.8.

225. Coming to the second statement, she added that one day she saw the messages between PW179 and accused no.8 in the mobile phone

of the latter. While in the box she deposed that on 12.02.2012 she saw the messages in the old mobile phone of accused no.8. This particular date is stated before the court for the first time. She also stated to the investigating officer that after seeing the messages she shared this with PW1, PW35 and CW15. PW1 clearly disclosed the matters whichever known to her. All these matters are fortifying the matters came to the knowledge of PW34 about the relationship between accused no.8 and PW179. She thereafter enquired this with accused no.8 and issues were developed between them. This caused vengeance in accused no.8 against PW1. PW34 also stated that they proceeded to the residence of PW1. But before the court what PW34 and PW35 deposed is that after seeing the messages PW34 immediately contacted PW179 which was denied by her. Thereafter on contacting PW179 she admitted the relationship. She also informed that PW1 and PW36 are the persons having the best knowledge about this. Then she informed these matters to PW35 and CW15 on 13.02.2012. She also decided to meet PW1 personally. On 12.02.2012 she also contacted PW36 Reemi Tomy, but she gave evasive answers. She along with PW35 and CW15 went to the residence of PW1 on 14.02.2012.

226. Though there are material omissions regarding the date and the way she contacted PW1, PW34 deposed that her marital relationship with accused no.8 was broken down because of his relationship with PW179. She deposed that accused no.8 was under the impression that PW1 informed her about this. As far as the date of seeing the messages and related events, the omissions assume relevance. As I pointed out, the statement of PW34 and PW35 do not disclose the entire details, whereas the statement of PW1 discloses the details including the date of visit of PW34 at her residence. Though the statement is seen recorded on 03.06.2017, as I pointed out, it reached before the court on 22.11.2017. PW34 who saw the messages and proceeded with the statement deposed before the court for the first time about the relevant dates. Moreover, the first statement of PW34 was seen recorded on 21.06.2017. The investigating officer has had opportunity to know about the date when the statement of PW1 was recorded on 03.06.2017. The second statement of PW34 recorded on 05.09.2017 also does not contain any such information. Nothing is elicited through the person who is most competent to give those details. If this being the situation, though the

statement of PW1 is claimed to be recorded on 03.06.2017, its production before the court on 22.11.2017 assumes significance.

227. The learned Special Public Prosecutor submitted that PW179 intentionally suppressed the phone number used by her. It is to be noted that she was not suppressing the phone number, but only stated her inability to recollect the number. PW250 is examined to prove this aspect. She also stated that this phone was not used by PW179. Ext.P542 is produced before this court to prove the aspect that phone number belongs to PW179. Customer application form is not produced before the court. PW110, Nodal Officer of Vodafone Idea Limited deposed that they preserved the application details of phone only for a period of three years from the date of deactivation. The said mobile connection got disconnected during 3rd October 2018. So, they were not in a position to produce the customer application form. But they had given a reply that they are not able to produce it along with the details of the customers who used the said connection. This certificate was issued on 18.05.2022. The investigating officer ought to have been collected the customer application form during the course of the further investigation culminated in the filing

of supplementary final report on 22.11.2017. That was not done. Ext.P542 reply issued by PW100 cannot be taken into account as it is hit by Section 162 of Cr.P.C. Even otherwise, as pointed out, the witness never specifically denied the use of the said mobile number. But the messages and communications retrieved as per FSL Report No.DD 442/2017 would show that this phone number was used by PW179.

228. Ext.P782 is the interview of accused no.8 telecasted during April 2017. Ext.P38 is the interview of PW1 published in Deccan Chronicle. It is alleged by PW1 that accused no.8 is spoiling her opportunities in the film field. In Ext.P38 a news item without mentioning the name of any person, it is claimed as one of the superstars in Malayalam film industry. It is stated that a popular actor was having a hand in ousting her from many projects. PW1 claimed that she stood by a woman who was going through an unhappy marriage. It is reported that PW1 was absent from Malayalam films for the past one year. It is further reported that it was a popular actor in the Mollywood who played a crucial role in kicking out the actress from the projects in which she was supposed to be cast as the lead as part of his personal vengeance. In the

interview it is stated by PW1 that, **"It was not just a gossip, but fact. Once a lady, who is my friend, came to me and sought my help, as she was facing a trouble in her family life. I knew, as a woman, I might also have to go through that kind of situation in future. So I agreed to help her and thus stood behind her. That normally created issues in my life too. In fact I did what my conscience told me."** During Ext.P782 interview, a question was put to accused no.8 by the interviewer about this Ext.P38 interview. Accused no.8 replied that since his name is not mentioned, he is not expected to react about it. At the very same time, he stated that he decided to stay away from PW1 as he felt some bad impression about her. As I pointed out, this interview was given during 2017. This interview refers about the family issue and the arrival of a lady at her residence. Though the period and other details are absent in this interview, inference can be drawn in the light of the evidence available on record that the reference is with respect to the arrival of PW34 and her matrimonial issues. Similarly, Ext.P782 would show that the relationship between accused no.8 and PW1 is not a cordial one. Though the prosecution let evidence regarding the facts which allegedly took place in U.S during 2010

pointing towards the alleged relationship between accused no.8 and PW179, this court need not engage much attention to those aspects as it has no relevancy as far as the crucial matters to be decided is concerned.

229. The prosecution alleges that the matrimonial disharmony of PW34 and accused no.8 started since the relationship between accused no.8 and PW179 was made known to PW34 during February 2012 and the same was confirmed by PW1. They claimed further that accused no.8 believed that PW1 has disclosed about his illegitimate relationship with PW179 to PW34. It is also asserted that unaware that PW34 had already seen the messages, accused no.8 mistakenly believed that PW1 had disclosed their affairs to PW34. The submission that accused no.8 was unaware that PW34 had seen the messages is against the evidence tendered by the prosecution itself. The case of prosecution is that immediately after seeing the messages, PW34 contacted accused no.8, but he was not available. PW34 then contacted PW179, but she gave evasive answers. Thereafter PW34 contacted the mother of PW179. The mother of PW179 disclosed about the involvement of PW1 and PW35. It is to be noted that the prosecution alleges that accused no.8 and PW179 was

maintaining illegitimate relationship. Had this been the situation, PW179 would have been contacted accused no.8 after getting enquiries from PW34 about this. Moreover, the evidence adduced by PW34 and PW35 would show that this fact was shared to PW35 and CW15 on 13.02.2012. On 14.02.2012 they met PW1. Both PW34 and PW35 deposed that PW34 contacted accused no.8, PW250 mother of PW179 and others then and there from the residence of PW1 itself. PW34 deposed further that she made enquiries with accused no.8 about it. Further, the contention of the prosecution is that PW1 sent messages to both accused no.8 and PW179 immediately after her disclosure to PW34. Similarly, PW34 deposed that she contacted PW36 as disclosed by PW250 about their knowledge regarding the illegitimate relationship. PW36 is claimed to be maintaining thick relationship with accused no.8 and PW179. If this be the situation, the chances for informing the enquiry by PW34 cannot also be ruled out. Moreover, the contention that accused no.8 was unaware that PW34 seen the messages appears to be untenable.

230. The messages allegedly seen by PW34 in the mobile phone of accused no.8 are not produced before the court. It is true that the

investigation with respect to that fact was conducted in the year 2017, after a gap of more than five years. So the prosecution cannot be blamed for the non production of the messages. At the very same time, it is to be noted that PW34 who claimed to be seen the messages had not mentioned anything about its contents. Similarly, PW1 and PW35 to whom PW34 shared news about the messages and the related issues are also not stated anything about the messages. Except the fact that the messages were of private nature, nothing is available before this court to show the contents of messages which were allegedly seen by PW34 on 12.02.2012. At the very same time, the messages and calls made between accused no.8 and PW179 during December 2012 are produced in court as it is retrieved in the FSL examination.

231. PW36 deposed that PW34 contacted her to know about the friendship between accused no.8 and PW179. She also deposed that there were some allegations regarding the acting of PW179 and accused no.8 in a Malayalam movie released at that time. But, at the very same time, the court has to consider the evidence tendered by PW34, PW1 and PW35 that those messages are of private in nature, considering the evidence of

PW34 that those messages created issues in her family life with accused no.8.

232. Another case of the prosecution is that during a bus journey in London in May–June, 2012, accused no.8 confronted PW1 questioning why she revealed his relationship with PW179 to PW34 and her friends. PW1 explained to accused no.8 that PW34 came to her residence with evidence and that compelled her to make the disclosure. Accused no.8 attempted to restore the family life with PW34 and accordingly, requested PW1 to inform PW34 that what PW1 disclosed was incorrect. Accused no.8 further offered roles to PW1 in films and asked her to contact him. In addition to that accused no.8 intimidated PW1 by stating that those who stood against him never survived in the Malayalam film industry. But, PW1 was not ready to submit to his directions. This aggravated the enmity of accused no.8 towards PW1.

233. Let us evaluate the evidence adduced by the prosecution to prove that enmity accused no.8 towards PW1 was aggravated on account of her refusal to submit to his direction. Admittedly, both accused no.8 and PW1 went to Europe in the year 2012 in connection with a show. The

relevant portion of evidence of PW1 is that **"2012 ൽ ഞാനും accused no.8 ഉം PW181 നാദിർഷയും ഉൾപ്പെടെയുള്ളവർ Europe ൽ Dileep show ക്ക് പോയിരുന്നു. അവിടെ വെച്ച് ഒരു ദിവസം bus ൽ പോകുമ്പോൾ accused no.8 എന്റെ അടുത്ത് വന്നിരുന്ന് PW34 വന്ന് PW179-നെ കുറിച്ച് ചോദിച്ചപ്പോൾ എന്തിനാണ് എല്ലാം പറഞ്ഞത് എന്ന് എന്നോട് ചോദിച്ചു. തെളിവ് കൊണ്ടാണ് വന്നത്; കൂടാതെ PW250-യും അത് സമ്മതിച്ചു; ഞാൻ എങ്ങിനെ മാറ്റി പറയാനാണ് എന്ന് ചോദിച്ചു. കഴിഞ്ഞത് കഴിഞ്ഞു. നാട്ടിൽ ചെന്ന് വിളിക്കാം; നമുക്ക് ഒന്നിച്ച് movie ചെയ്യണം, PW34-ന് നമ്മൾ യഥാർത്ഥ friends ആണെന്ന് കാണിച്ച് കൊടുക്കണം എന്ന് പറഞ്ഞു. ഞാൻ ഒന്നും പറഞ്ഞില്ല. എനിക്കെതിരായി നിന്നവരാരും മലയാള സിനിമയിൽ എവിടേയും എത്തിയിട്ടില്ല എന്നും accused no.8 എന്നോട് പറഞ്ഞു. Accused no.8 ഭീഷണിസ്വരത്തിലാണ് Malayala cinema യിൽ എനിക്കെതിരെ നിന്നവർ എവിടേയും എത്തിയിട്ടില്ല എന്ന് എന്നോട് പറഞ്ഞത്".**

234. This aspect is cross examined by the learned counsel for accused nos.8 and 15. A question is put to her that '2012 Dileep Europe Show' was held from May 25 to June 30. But she replied that she does not remember. There were seven shows in U.K. PW1, PW36, PW181,

Subi, Shajon, Dharmajan were performed in the show. A rehearsal camp was also conducted as part of that show. She claimed that rehearsal was for 4-5 days. The learned counsel put a question that the rehearsal was for more than ten days at Saj Earth Hotel, Nedumbassery. She admitted that it was conducted at Saj Earth Hotel, Nedumbassery. PW1 was not able to recollect whether the rehearsal was for more than ten days. At the very same time, she admitted that she herself and accused no.8 were the main performers in that show. They performed dance programmes and skit. Accused no.8 was the head of that show. A question was put to her by the learned defence counsel that they pleasantly performed the show including the rehearsal. PW1 replied that accused no.8 was not talking to her at the time of rehearsal. But PW1 deposed that there was conversation between accused no.8 and herself during the time of show and also when they travelled in flight. PW36 Reemi Tomy and PW181 Nadirsha enquired with her about the reason for the issues between herself and accused no.8. But this fact is not stated to the police. She categorically stated that this fact was known to her mother (CW2). She admitted that when they proceeded for the show, accused no.8 engaged in conversation



DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

with her and intimidated her. Her mother was available in the bus. Other team members were also available in the bus.

235. In order to prove the aspect regarding the alleged threat on the side of accused no.8 against PW1 and also the request of accused no.8 to PW1 for reconciliation, prosecution is relying on the solitary evidence of PW1. PW36 and PW181 admittedly accompanied them in the said show. Nothing is put to both PW36 and PW181 about the said incident by prosecution. The prosecution claimed that this was happened while the team was travelling in a bus. All team members were available in the bus. Prosecution has no case that nobody other than PW1 and accused no.8 had occasion to come across with this incident. PW1 further admitted that she was accompanied with her mother. Her mother was also available in this bus. Her mother is cited as CW2, but given up by the prosecution. PW1 categorically deposed that she used to share all the matters with her mother. This fact is also known to her mother. Nothing is seen stated by her mother regarding this aspect to the investigating officer. It is highly improbable that accused no.8 during the show sat along with her and threatened her in the presence of other members and

nobody noticed it. Moreover, even after that also, she performed with accused no.8 as leading performer. Though in the court PW1 stated that PW36 and PW181 enquired about their issues, they also stated nothing in this regard. When PW181 Nadirsha is examined before the court, the prosecution put several questions relating to the show performed in U.S in the year 2010. But nothing is put to him regarding the 2012 show and the issues which were allegedly happened inside the bus. Questions were seen put to this witness regarding the period when they committed the show. PW181 stated that they committed this show just two months prior to the show. Another question was put to this witness that PW1 was reluctant to attend the show and he denied the suggestion that he compelled her. Another question was put to this witness by the learned Special Public Prosecutor that after 14.02.2012 the relationship between PW1 and accused no.8 was strained and accused no.8 was in enmical terms with PW1. He denied it. Both PW1 and accused no.8 performed in the show together. Both PW1 and accused no.8 were engaged in conversation when they proceeded for the show. A specific suggestion was put to this witness that accused no.8 sat with PW1 in the bus in one occasion only. He

denied it. Another suggestion was put to this witness that they avoided "X" without giving opportunities in all the shows. According to PW181, "X" was the main actress. He also stated that PW1 was happy during the show. During cross examination of this witness at the instance of accused no.8, he stated that accused no.8 decided to participate PW1 in the 2012 European show. Both PW1 and accused no.8 attended the rehearsal. All of them behaved cordially like a family. PW1 was the dance heroin in that show. She was also the lead player of skit. Further there was a programme arranging the songs of films acted by both PW1 and accused no.8. PW1 and accused no.8 were the leading performers in that programme also. He stated that nothing is asked by the investigating officer to him about the 2012 European show. They proceeded to different countries in Europe. They travelled using flight as well as bus. All of them were in a pleasant mood. PW1 was accompanied with her mother.

236. This is the available evidence before this court regarding 2012 show. As I pointed out, nobody other than PW1, PW36 and PW181 attended the show is examined as witness in this court. Even the mother

of PW1 with whom PW1 shared the incident was given-up by the prosecution. Let me analysie the available evidence. PW1 and accused no.8 were the leading performers in the show. There was rehearsal programme at Saj Earth Hotel, Nedumbassery before they proceeded for the 2012 European show. Both PW1 and accused no.8 attended the rehearsal. It is also brought out that they performed the show without any complaint. The case of prosecution is that since PW1 disclosed the affairs of accused no.8 with PW179 on 14.02.2012, there was no conversation between PW1 and accused no.8. PW1 stated that no conversation was with them during the rehearsal camp. At the very same time, she stated that there was conversation between them during the show. It is very difficult to believe that there was no conversation between two leading performers during the rehearsal camp of a programme. It is not disputed that both PW1 and accused no.8 attended almost all the programmes along with other artists. There is a special programme wherein the songs of films acted by both PW1 and accused no.8 as the leading actors were also performed. If this be the situation, there should be communication and conversation between them atleast



regarding the performance of the programme and its rehearsal. PW1 on the other hand submitted that they abstained from conversation during the rehearsal camp. It is quite unbelievable. Though she claimed that she participated in the show considering her prior commitment, at the very same time, it is brought out that accused no.8 was the leader of the show and he made all the arrangements. If this be the situation, PW1 cannot perform in the show without any communication with accused no.8. It is equally unbelievable that during the journey for performance accused no.8 sat with PW1 and requested her to say to PW34 that what she disclosed was incorrect. PW1 herself admitted that other team members and her mother were available. Had accused no.8 been threatened her as contended, that would have been definitely noticed by any of the co-actors. She should have been disclosed it to somebody then and there. It is improbable that though she shared it with her mother, they remained silent and continued to perform in the remaining shows. PW1 is a leading actress and she could have been disclosed it then and there, especially when there were issues existing as she disclosed the illicit relationship of accused no.8 and PW179 to PW34. This was not done by PW1. The

attending circumstances also would probabilise that nothing unusual was happened during that show and they performed all the shows pleasantly as agreed in different countries of European continent.

237. In this context the averments in Ext.P23 petition filed by accused no.8 before the Family Court, Ernakulam assumes some relevance. Accused no.8 on 05.06.2014 filed O.P.No.1081/2014 before the Family Court, Ernakulam against PW34 seeking divorce. The said O.P was later dismissed as not pressed. Both accused no.8 and PW34 filed O.P.No.1447/2014 before the Family Court, Ernakulam u/s.13B of the Hindu Marriage Act, 1955 for dissolution of marriage by mutual consent. Ext.P23 is produced by the prosecution before the court and marked it through PW34. The learned Special Public Prosecutor submitted that they produced Ext.P23 to show that accused no.8 intentionally withheld the involvement of PW1 in his family life. The learned Special Public Prosecutor further submitted that since the criminal conspiracy between accused no.8 and accused no.1 was hatched during 2013 itself, he purposefully withheld the involvement of PW1 in Ext.P23 so as to disappear evidence. The learned Special Public Prosecutor submitted that

DISTRICT ... ERNAKULAM-682

in the mutual petition it is agreed that the allegations in Ext.P23 are withdrawn and hence those cannot be considered. It is against the contention of the prosecution themselves. They themselves produced it to prove a certified set of facts and hence they are not expected to advance a contention that the averments cannot be looked into as those were withdrawn. The contention in the mutual petition regarding the averments in Ext.P23 are for the sake of dissolution of marriage between accused no.8 and PW34. When a document is produced by the prosecution and proved before this court, the court has to consider the averments in toto. It is true that in Ext.P21 it is mentioned specifically that the first petitioner therein, PW34 takes strong exception to the allegations made in the O.P.No.1081/2014 and maintains that the allegations and averments therein to be wholly false. This court is relying on the averments not for arriving at a finding regarding the personal matters between accused no.8 and PW34, but for considering the allegations of the prosecution regarding the motive and enmity of accused no.8 to PW1 which culminated in her sexual assault in MO9 while it was

running. In Ext.P23 somany allegations are raised regarding the nature of the marital relationship between accused no.8 and PW34.

238. The contention advanced by prosecution that accused no.8 suppressed the real fact of divorce in Ext.P23 appears to be incorrect. In paragraph 6 it is averred that there is disputes between accused no.8 and PW34 in connection with his relationship with his co-actress. It is alleged in paragraph 7 that PW34 began to develop a new circle of friends. In paragraph no.13 it is mentioned that on 15.02.2013 PW34 told petitioner's brother Anoop that the petitioner (A8) is a womanizer and he has illicit relationship with different ladies. The petitioner understood later that PW34 had made such allegations about him to others also. On knowing about this accused no.8 tried to discuss the matter with PW34 on 25.02.2013. PW34 then told accused no.8 that she does not want him in her life that she wants to live her life to the fullest and she would leave the petitioner if he is prepared for financial settlement with her. It is further averred that accused no.8 had an opportunity to do stage shows in Australia in April 2013. Accused no.8 expected to take PW34 and their daughter along with him to Australia. However PW34 backed out of the



DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

trip saying that she had already made travel plans with her friends. Hence, accused no.8 and his daughter went to Australia on 15.04.2013 and they returned on 05.05.2013. PW34 refused to accompany them. On 17.04.2013 when accused no.8 and daughter were in Australia PW34 left the matrimonial home.

239. On a perusal of the averments in Ext.P23, it is seen that the incidents averred in the petition are in chronological order. In the order the incidents which took place in the year 2011 and also regarding the dance performance at Guruvayoor temple held on 24.10.2012 are mentioned. The averment that on 15.02.2013 PW34 told the brother of accused no.8 that accused no.8 is a womanizer and he has illicit relationship with different ladies assume relevance. As I pointed out hereinbefore, though PW34 and PW35 deposed before the court that on 12.02.2012 PW34 had occasion to come across with the messages in the phone of accused no.8 and they proceeded to the residence of PW1 on 14.02.2012, nothing is mentioned in this regard to the investigating officer. It is a material omission amounting to contradiction. This omission assumes relevance in the light of specific datas mentioned in Ext.P23. The

definite case of PW34 is that after meeting PW1 on 14.02.2012 she stayed at the residence of CW15 Samyuktha Varma. PW34 deposed before the court specifically that on 15.02.2012 she returned to the matrimonial home at Aluva. On that day she asked her brother and siblings of accused no.8 to come to their Aluva residence. According to PW34, this was on 15.02.2012. But in Ext.P23 it is mentioned that on 15.02.2013 PW34 informed the brother of accused no.8 about his illegitimate relationship.

240. As pointed out, Ext.P23 was filed on 05.06.2014, almost three years before the commission of the offence against PW1. We cannot assume that accused no.8 intentionally mentioned the date as 15.02.2013 in Ext.P23 so as to suppress the real facts. The learned Special Public Prosecutor urged that accused no.8 hatched criminal conspiracy with accused no.1 in the year 2013 itself and hence he suppressed the real reason for the divorce. A specific question is put to the learned Special Public Prosecutor about the date mentioned in this aspect. The learned Special Public Prosecutor submitted that, that cannot be taken into account as the averments are withdrawn. This contention cannot be accepted for the reasons mentioned hereinbefore. In this context, the

SESSIONS COURT

omissions on the side of PW34 and PW35 about the year of their visit to the residence of PW1 cannot be taken as a simple omission. Though PW1 in her statement mentioned the date of visit, that statement reached at the court only on 22.11.2017. The best person to speak about the incidents is PW34, but she did not mention anything about the date in her both statements recorded by the investigating officer. Moreover, the contention of the learned Special Public Prosecutor that the criminal conspiracy has been hatched between accused no.1 and accused no.8 in the beginning of 2013 is also to be considered in the light of the fact that PW34 left the matrimonial home only on 17.04.2013. The details regarding this conspiracy alleged by prosecution can be discussed at a later stage. So, the averments in Ext.P23 generate doubts in the case of the prosecution regarding the year when PW34 visited PW1. The averment in Ext.P23 that PW34 informed the brother of accused no.8 on 15.02.2013 that he is a womanizer cannot be treated as a mere coincidence. The statement of PW34 herself is that on 15.02.2012 she informed this matter to the siblings of accused no.8 and her brother. The prosecution has no case that the date mentioned in Ext.P23 is incorrect. Moreover, in Ext.P23 it is averred

that on 25.02.2013 accused no.8 discussed the matter with PW34. PW34 expressed her desire to leave the marital tie-up. Thereafter, she left the matrimonial home on 17.04.2013. Moreover, when PW34 was in the box, specific questions were put to her regarding the issues alleged in Ext.P23 and she admitted about the incidents including the period. It is true that PW34 deposed that after February 2012 their relationship became strained and there was no communication between them.

241. On an analysis of the evidence, it appears that prosecution tried to specify the date of the meeting of PW34 and PW1 as 2012 so as to claim that accused no.8 had enmity to PW1 from 2012 onwards. In order to fortify this, they raised the her incident which was allegedly happened during European show 2012. Except the oral testimony of PW1, no evidence is available to substantiate the said incident. This would probabilise the averments in Ext.P23 regarding the visit. PW1 deposed before the court that **"accused no.8-ന്റെ ദാമ്പത്യം തകരാൻ ഞാനാണ് കാരണം എന്ന് മറ്റുള്ളവരോട് പറയുകയും, എനിക്കെതിരെ ഭീഷണി സ്വരത്തിൽ പലരോടും സംസാരിക്കുകയും. അവൾ എന്റെ കുടുംബം തകർത്തവളാണ് എന്ന്**



ദിലീപ് പലരോടും പറഞ്ഞിട്ടുണ്ട്." But, during cross-examination she stated that she has no direct knowledge about this. On the basis of the above discussions, I conclude that the prosecution failed to prove the incidents which allegedly took place during the journey as part of 2012 Dileep Show, that accused no.8 intimidated PW1 and requested to change her version to PW34 and appraise PW34 that what she disclosed to her was incorrect.

242. Another case advanced by the prosecution to show that accused no.8 is in enmical terms with PW1 is that during the rehearsal camp of Association of Malayalam Movie Artists programme held at Hotel Abad Plaza, Ernakulam during March-April 2013, PW1 humiliated PW179 and PW52 and consequentially he warned PW1. It is also alleged that accused no.8 openly made comment that he would set ablaze PW1. Let us discuss the evidence in this regard. The prosecution alleged that accused no.8 harboured a deep grudge against PW1 believing that she had informed his illegitimate relationship to PW34. Whileso, there was a rehearsal camp for the show 'Mazhavillazhakil Amma' by Association of Malayalam Movie Artists held during March 28 to April 2, 2013 at Hotel

Abad Plaza. By that time the illegitimate relationship of accused no.8 with PW179 and the consequent cracks in the marital relationship of accused no.8 were developed as a gossip among the members of the Association of Malayalam Movie Artists. The illegitimate relationship between accused no.8 and PW179 was a topic of discussions by other actors in the rehearsal camp and the same reached at PW179. PW179 was made to cry and the same was unbearable for accused no.8. This led to outrobe of honour of accused no.8 against PW1 as he believed that PW1 who is the root cause for this situation. Accused no.8 became very angry and had even shouted that he will burn PW1 alive. PW52 Siddque, a close associate of accused no.8 intervened to calm down accused no.8 and scolded PW1 for divulging such things to others in the rehearsal camp. Accused no.8 reached at a mental stage to take revenge on PW1 and to spoil her career as an actress. This contention is mentioned specifically in page nos.59 and 60 of the argument notes submitted by the prosecution. According to them, the oral evidence of PW1, PW179, PW38 and PW127 would prove these aspects.

243. On the side of prosecution, PW1, PW38, PW40, PW46, PW51, PW52, PW127, PW179, PW213, PW56 and PW57 were examined to prove these aspects. The fact that the rehearsal camp of Association of Malayalam Movie Artists was conducted at Hotel Abad Plaza, Ernakulam from 25.03.2013 till 02.04.2013 is an admitted fact. It is also undisputed that almost all the actors in the Malayalam film industry participated in the rehearsal camp. Thereafter programmes were conducted on 05.04.2013 and 07.04.2013 in Sharja and Cochin respectively. PW127 Renjith was the Director of that show. The evidence of PW127 is that he is a film producer. He used to arrange stage programmes with film actors. He directed three big programmes during the years 2010, 2014 and 2015. He was also associated with 'Mazhavillazhakil Amma' programme of Association of Malayalam Movie Artists in the year 2013. According to him, PW46 Mukesh, PW52 Siddque, PW179 Kavya Madhavan, PW1, PW51 Bhama, PW40 Bindu Panicker, PW38 Edavela Babu and accused no.8 were participated in that programme. He also stated about the arrangements made in the hotel for the artists. Similarly, PW56 and PW57 were also examined to prove the

documents showing the booking of halls and rooms in Hotel Abad Plaza, Ernakulam for the above show. This court need not dwell much regarding those aspects as the rehearsal camp at Hotel Abad Plaza, Ernakulam during 2013 is not disputed.

244. The oral evidence of the relevant witnesses in this regard can be analysed. PW1 deposed that during 2013 the rehearsal camp of Association of Malayalam Movie Artists was held at Hotel Abad Plaza, Ernakulam. Accused no.8, PW179 and herself attended the camp. Accused no.8 did not speak to her. During the midst of the rehearsal camp PW40 Smt. Bindu Panicker and Smt. Kalpana enquired with her about her disclosure to PW34 regarding the illegitimate relationship of PW179 and accused no.8. She informed them about the real matters. PW52 Sidhique also intervened and enquired with PW1 that why did she inform the affair of PW179 to PW34. He also informed her that accused no.8 is endangered enmity in this regard. He also cautioned her for not repeating such things. PW40 Smt. Bindu Panicker informed her that accused no.8 is maintaining displeasure against her. PW1 was cross examined in this regard. She admitted that she was accompanied with her

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

mother. Some omissions were brought out through this witness during cross-examination. She claimed that PW51 Bhama also informed her that accused no.8 told her that he would set PW1 ablaze alive. On analysing the above evidence it is to be noted that PW1 deposed before the court that accused no.8 was not engaged in any conversation with her during the rehearsal camp. PW40, PW51 and PW52 intervened with regard to the alleged disclosure of illegitimate relationship of accused no.8 and PW179 by PW1 to PW34.

245. Let us examine the evidence of PW40, PW51 and PW52. PW40 admittedly participated in the rehearsal camp. She stated about the participation of others. A specific question was put to this witness by prosecution that whether PW1 and PW179 were in good terms during the rehearsal camp. She stated that all were maintaining good relationship. According to this witness, she never asked anything about the relationship between PW1 and PW179. PW179 did not state anything to her regarding the relationship between accused no.8 and PW34. Accused no.8 also asked nothing to her. The learned Special Public Prosecutor sought permission to put leading questions and accordingly, leading questions

were put to this witness. Exts.P27 to P27(f) contradictions were brought out through this witness. Another suggestion was put to her that she is giving evidence as directed by accused no.8, and she straight away denied it. It is also put to her that she had been offered a role in a film at the instance of accused no.8. PW40 replied that the producers casted her in movies.

246. PW51 Bhama is also a Malayalam cine actress. According to her, PW1, PW7 and PW179 are known to her. She also attended the rehearsal camp of Association of Malayalam Movie Artists conducted at Hotel Abad Plaza, Ernakulam. Almost all the actors in the Malayalam film industry attended the rehearsal camp. PW1, PW7, PW179, accused no.8, PW38 and PW52 also attended the rehearsal camp. Exts.P36 and P36(a) contradictions are brought out through this witness. A question is put to this witness that she is biased to accused no.8, and she denied it. It is to be noted that the case of prosecution is that during the rehearsal camp accused no.8 told PW51 that PW1 visited PW51 at her residence during 2016-2017. PW1 enquired with PW51 at that time about the comments made by accused no.8 in the rehearsal camp. It is claimed that

DISTRICT AND SESSIONS COURT ERNAKULAM 682 011

PW51 told PW1 that accused no.8 told her that he would set ablaze her alive. The statement of this witness u/s.161 of Cr.P.C was recorded on 20.10.2017. As I pointed out, prosecution claimed that PW51 disclosed this fact to PW1 when she visited her at her residence in 2016. The fact of alleged visit of PW1 at the residence of PW51 during 2016 is not stated to the police. PW51 admitted before the court that during 2015–2016 PW1 visited her three or four times. As discussed hereinbefore, PW51 emphatically denied the fact of disclosing the claim of accused no.8 that he would set ablaze PW1 either in 2016 or on any other date. Except a mere suggestion that she is giving evidence as per the direction of accused no.8, nothing is put to this witness to show that she is a partisan witness.

247. In this context, let us consider the evidence of PW1 in this regard. As I pointed out, as part of further investigation PW261 recorded the further statement of PW1 u/s.161 Cr.P.C on 03.06.2017. She had given an elaborate statement. Thereafter her second statement as part of further investigation was recorded on 21.08.2017. Nothing is mentioned to the investigating officer while giving these statements about the socalled disclosure made to her by PW51. This fact is seen stated to the

investigating officer in her last statement dated 14.10.2017. According to PW1, she visited the residence of PW51 during 2016. During the course of conversation she enquired about the comments made by accused no.8 to PW51. It is claimed that PW51 informed her that accused no.8 stated something about PW1 during the rehearsal camp held in the year 2013. It is stated that PW51 informed PW1 that accused no.8 told her that PW1 spoiled her family and he will set ablaze her alive. The important aspect to be noted is that, as I pointed out, though PW1 had ample opportunities to mention about the incidents to the investigating officer, this particular fact was not seen stated to the investigating officer till 14.10.2017. PW51 never admitted that accused no.8 made this comment to her against PW1. What prompted PW1 to ask with PW51 about the incident allegedly took place during 2013 is also not seen explained by the prosecution. No special circumstances were in existence to get clarification from PW51 about the incidents allegedly took place in the year 2013. It is brought out that PW1 and PW51 are friends and they used to visit each other at their residence before 2016 also. So, it can be seen that this a planted evidence created on an afterthought. Had this situation been in existence,

definitely, that would have been stated to the investigating officer in the detailed statement on 03.06.2017 itself.

248. The other witness examined on the side of prosecution to prove this aspect is PW52 Sidhique. He is also a leading film actor. PW1, PW51, PW179 and accused no.8 are known to him. He is the office bearer of Association of Malayalam Movie Artists for the last fifteen years. He also attended the rehearsal camp held at Hotel Abad Plaza, Ernakulam during 2013. PW1, PW7, PW179 and accused no.8 were also attended the rehearsal camp. He was one of the organizers in his capacity as executive committee member. According to him, PW179 never stated anything to him during the rehearsal camp. PW179 did not make any complaint that PW1 made derogatory comments against her. The learned Special Public Prosecutor sought permission to put leading questions and accordingly, leading questions were put to this witness. He stated that though talked to the Circle Inspector of Police, he had not given any statement to him or any other police officer. Exts.P37, P37(a) and P37(b) are brought out through this witness. He specifically denied the issues suggested by the prosecution in the rehearsal camp at Hotel Abad Plaza,

Ernakulam. A suggestion is put to this witness that he is giving false evidence to help accused no.8 and he emphatically denied it. The prosecution brought out that he is maintaining good relationship with accused no.8. He categorically stated that accused no.8 is his friend. He also stated that PW1 is also his close friend. He deposed that he went to the police club at about 12 a.m in the night when accused no.8 was interrogated by the police and he remained there till his release and both of them returned together. It is also brought out that during a conclave conducted by Manorama News in Ernakulam, he defended accused no.8 when this case was discussed in that conclave. It is brought out that he is maintaining good relationship with accused no.8 since 1992. He volunteers before the court that a news item was transmitting through media stating that he had given statement against accused no.8. He was asked about this by press-persons and he denied it. Based on his evidence, the learned Special Public Prosecutor submitted that PW52 is a partisan witness. It is true that PW52 admitted specifically that he is maintaining close relationship with accused no.8. He himself stated that he had gone to police club when accused no.8 was interrogated by police,

waited there and returned back with him after the interrogation. If this be the situation, it is difficult to believe that a person who is maintaining this kind of relationship had given statement to the investigating officer blaming accused no.8.

249. PW35 deposed before the court that PW1 stated that during Association of Malayalam Movie Artists show the participants criticised and troubled her. Admittedly, PW35 was not a participant. This is only a hearsay evidence as PW35 has no direct knowledge about it. As far as the evidence discussed hereinbefore, except the testimony of PW1, nobody supported the prosecution case that accused no.8 had animosity towards her and threatened to oust from the film field and set her to fire. Though the prosecution contended that PW40, PW51 and PW52 are partisan witnesses, except PW52, PW40 and PW51 deposed that they are maintaining good relationship with PW1 also. Moreover, it is brought out that PW51 and PW1 are thick friends. This being the situation, there is no reason to disbelieve the testimonies of PW40, PW51 and PW52 against the prosecution case regarding the animosity of accused no.8 towards PW1.

250. In addition to the above evidence prosecution relied on the oral testimony of PW213 to prove this aspect. PW213 deposed before the court that she attended the rehearsal camp held during 2013 at Hotel Abad Plaza, Ernakulam. She is a make-up artist by profession. She went there to makeup Remya Nambessan. While engaged in the makeup of PW7, PW1 rushed to the room and she was crying. On asking about the reason PW1 told them that PW52 Sidhique warned her alleging that she made some comments against PW179 and accused no.8. They passified her. It is brought out during her cross-examination that she is a close friend of PW1. She categorically admitted about her relationship with PW1. According to her, since 2010 she is maintaining close relationship with PW1. Almost all days they used to exchange messages. PW1 supported her during her thick and thin. On suggesting that no makeup artists were attended the rehearsal camp, she denied it. She also stated during cross-examination that the facts mentioned to them by PW1 during rehearsal camp might have been heard by PW7 Remya Nambessan also. She also added that this might have been witnessed by Remya. This witness was interrogated by the investigation team on 25.02.2022 as part

of second further investigation. This witness was cited in the supplementary report filed on 22.07.2022. It is to be noted that she had given statement regarding the incidents which were taken place before the alleged commission of offence on 17.02.2017. It is brought out that she is maintaining thick relationship with PW1. It is further brought out that both this witness and PW1 are sharing everything on daily basis. She had stated that on 17.02.2017 she herself, PW1 and PW7 decided to gather at the residence of PW7. The prosecution case is that on 17.02.2017 PW1 was on the way to the residence of PW7. This witness came to know about the incidents on the next day by 8 p.m as informed by PW36 Reemi Tomy. It is hard to believe that a witness, who admittedly maintaining thick relationship with PW1 failed to mention to anybody or to the investigating officer about the vital facts involved in this case till she was interrogated on 25.02.2022. Moreover, it is also brought out that she used to post comments in social media and also her views about this case. She also admitted that during November 2021, a police officer contacted her and asked to adduce evidence about voice clips. She was away at shooting place. Police contacted her on several occasions. Since she was

engaged, she could not able to appear before the police. She stated that even before 25.02.2022 she conversed with PW252 Soofi, who recorded her statement on that day. She failed to mention about this fact at that time also. It is also brought out that on 11.01.2022 she made a facebook post that she should disclose matters about this case on that day also. She further posted that she made mention to the investigating officer some matters about this case. She admitted that the facts which were deposed before the court were not stated to the police on 11.01.2022. Admittedly, only the statement of this witness recorded on 25.02.2022 is produced before the court. The statements of PW213, particularly in her cross examination discussed hereinbefore shakes the credibility of the evidence tendered by her and also the recording of her statement dated 25.02.2022 on that day. The interesting aspect is that no further investigation was going on during 2021 November. Why did the police contact her in 2021 November is a fact to be considered along with the matters centered around the second further investigation based on the revelations of PW222.

251. Another aspect to be considered is that the version of PW213 is that she attended the rehearsal camp so as to makeup PW7 Remya Nambessan. The attendance of PW7 Remya Nambessan in the rehearsal camp is spoken out by almost all the witnesses. This fact is not seen disputed or challenged. PW7 Remya Nambessan is another close friend of PW1. As I pointed out on 17.02.2017 PW1 was on her way to the residence of PW7. Immediately after the incident, PW1 contacted PW7 and her brother PW9 Rahul. Mother of PW1 also contacted PW7 and PW9. Both PW7 and PW9 went to the residence of PW5 Lal. They were the persons contacted PW1 directly immediately after the incident. Both PW1 and PW7 admitted about the intensity of their relationship. The interesting aspect is that PW7 did not speak anything about the rehearsal camp held at Hotel Abad Plaza, Ernakulam during 2013 or the incidents which were allegedly happened during the course of rehearsal. She was not interrogated by the investigating officer also. She is one of the most loyal witness supporting PW1 and the prosecution. PW213 categorically deposed that she went there to makeup PW7. While she was engaged in the makeup of PW7, PW1 rushed to the room and spoken about her bitter

experience. PW213 deposed that PW7 witnessed these incidents and also heard the disclosure of PW1.

252. It is to be noted that the evidence elicited through PW213 was regarding the incidents which were allegedly happened before 17.02.2017. The second supplementary investigation was to enquire about the revelations made by PW222 by Balachandrakumar. The investigation after the revelation by PW222 was not with respect to the incidents which were already investigated before 22.11.2017. Disregarding that position the investigating officer recorded the statement of PW213. PW213 had ample opportunities to disclose the matters known to her to the investigating officer in 2017 itself. Why she was not interrogated in 2017 is not explained by the prosecution. Similarly, why did they interrogated her during 2022 is also not seen explained. It is further to be noted that even after the interrogation of PW213 on 25.02.2022, the investigating officer failed to interrogate PW7 Remya Nambessan about the matters disclosed by PW213. PW7 is the best person to speak about the engagement of PW213 as her makeup artist, especially when there is a contention taken up by defence that no makeup artists were engaged as it was a rehearsal



programme. Why prosecution failed to produce the best evidence through PW7 is not explained and that shakes the credibility of the evidence tendered by PW213 on the basis of a statement given after a gap of five years from the date of alleged incident. The learned Special Public Prosecutor submitted that if PW7 is interrogated in 2022 the defence will challenge the evidence claiming delay and hence the interrogation is avoided. This submission is astonishing especially considering the introduction of PW213 at a belated stage to speak up about the incident held in 2017.

253. Moreover, PW1 herself has no case that she went to the room of Remya Nambessan and also regarding the presence of PW213 in the rehearsal camp. PW1 never stated that she disclosed about her bitter experience in the rehearsal camp to PW7 and PW213. Similarly, nobody examined before this court stated about the presence of PW213 in the rehearsal camp. As pointed out, the evidence of PW213 is the one and only evidence available to corroborate the testimony of PW1 to prove the prosecution allegation regarding the incidents claimed to be happened during the rehearsal camp held at Hotel Abad Plaza, Ernakulam in 2013.

But the evidence of PW213 lacks credibility to act upon for the reasons mentioned hereinbefore.

254. The case of prosecution is that the incidents in Hotel Abad Plaza, Ernakulam during the rehearsal camp aggravated enmity and anger of accused no.8 towards PW1. The prosecution asserted that in the rehearsal camp all the artists were discussing about the alleged disclosure of PW1 to PW34 about the illegal relation of accused no.8 and PW 179. The rehearsal camp was held during 2013. The alleged disclosure of PW1 was claimed to be in 2012. The rehearsal camp was held after a lapse of one year. PW1 herself deposed specifically before the court that she came to the industry in 2003. She was heard about the illegitimate relationship between PW179 and accused no.8 since 2003. She also stated that their relationship was known to almost all in the film industry. If that be so, the special circumstance if any to again discuss about the well discussed gossip earlier, in the rehearsal camp held in Hotel Abad Plaza, Ernakulam in the year 2013 is not stated by any of the witnesses. As discussed earlier, the period when PW1 made disclosure to PW34 is doubtful. Though prosecution claimed that it was in the year 2012, Ext.P23 would lead to an

inference that it was in the year 2013. Moreover, as discussed hereinbefore, no evidence is available on record regarding the alleged intimidation and request to PW1 during the European show by accused no.8. Taking note of all these situations, the stand of the prosecution that the disclosure made by PW1 to PW34 was a matter of discussion among the artists in the rehearsal camp held in March 2013 is devoid of merits. That also probabilises the averment in Ext.P23 that PW34 informed the brother of PW8 about the illegitimate relationship of accused no.8 and PW179 on 15.02.2013, after her meeting with PW1 at her residence.

255. Similarly, it is pertinent to be noted that the prosecution case is that during 2012 accused no.8 requested PW1 to tell PW34 that what she stated about him and PW 179 are incorrect and he also promised her to provide opportunities in movies. It is further alleged that accused no.8 intimidated her. It is alleged by prosecution that accused no.8 was waiting for the phone calls from PW1. But PW1 did not make any calls as requested by accused no.8. In addition to that the incidents happened during the European show the prosecution specifically argued that the incidents in Hotel Abad Plaza, Ernakulam led accused no.8 to believe that

PW1 was behind the issues and it aggravated his anger towards her and decided to take revenge on her. As part of this, the first attempt of accused no.8 was to spoil the career of PW1 by denying opportunities using his influence in the film industry. So, the prosecution asserted specifically that accused no.8 has decided to take revenge on PW1 after the incidents in Hotel Abad Plaza, Ernakulam. The contention regarding the time when accused no.8 decided to take revenge on PW1 assumes relevance.

256. Another assertion of the prosecution to show that accused no.8 is in enmical towards PW1 is that he caused to loss the opportunities of PW1 in the movies and he tried to oust her from film field. The evidence of PW1 in this regard is that she was ousted from the Malayalam movies committed by her. She came to understand that accused no.8 was behind this. She was worried in this regard. According to PW1, people were abstained from contacting her as they were afraid of accused no.8 and that had troubled her more. She was very particular to act atleast in a Malayalam movie before her marriage. One Benny P Nayarambalam, a script writer in Malayalam movies contacted her in 2014 and asked her to



contact accused no.8 and also to settle the issues with him. She also gave Ext.P38 interview in the year 2015 itself. That interview was published on 17.12.2015. During evidence PW1 also deposed that she acted in Malayalam movie **"ഇവിടെ"** before her marriage. Mr Syama Prasad was the Director. Thereafter one Mr Krishnan who was the Producer contacted her over phone and asked why somany enemies to her. He also informed that he received phone calls asking why do they prefer PW1 in that movie so as to create enmies. She replied him that if they want to exclude her, that should be told directly and thereupon the producer told her that Mr Syama Prasad decided to cast her. Though Mr Benny P Nayarambalam asked her to contact accused no.8, she did not contact him. However without any explanation the said Krishnan cited as a charge witness was not examined. Soalso, though Benny P Nayarambalam who is in station the prosecution has not cared to cite him as a witness after his interrogation. According to PW1, she was not interested to create an impression that she is a lady without any principles. He informed PW38 Edavela Babu, the then Secretary of Association of Malayalam Movie Artists that accused no.8 spoiled her opportunities in

the film. PW38 assured that he will enquire about it, but no further actions were taken. Ext.P38 interview was aimed against accused no.8. The superstar mentioned in Ext.P38 interview was accused no.8. PW1 was cross examined in this regard. Questions were put to her relying on various interviews of PW1. A definite question is put to her that during the first two years of her entry to the film field she received remarkable movies and thereafter, she got only second heroin roles and hence she decided to withdraw from the Malayalam film industry. She replied thereto that after 2004 she has not acted as second heroin and the questions might be related to those situations. It is also put to her that there was no gap in her career in Malayalam film industry and her reply thereto was that she acted in Malayalam films in every year and added that though she acted in Malayalam movies in every year, she lost main stream cinemas. Referring the statistics regarding the release of films acted by PW1 in Malayalam and other languages, the defence side put somany questions. It is brought out that she acted in 10-12 Tamil movies in between 2005 and 2010. It is also brought out from the statistics of her movies with other leading actors in the Malayalam film industry that she

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

acted in thirteen Malayalam movies from 2013 to 2017. Questions regarding the details of the movies including the names of movies and actors are also put to her. Ext.D7 contradiction is also brought through her would show that she stayed away from acting after the death of her father. It is also put to her about the thick relationship between PW5 and accused no.8. It is also suggested to her that the producers of 'Honey Bee' and 'Adam John' acted by her are the close friends of accused no.8 and answer thereto was that she does not remember the names of those persons. A specific question is put to this witness that she acted in Malayalam and Kannada movies in every year from 2013 to 2017 and she admitted it. But PW1 deposed that she was expelled from committing movies. She also admitted that she was a busy actress during 2012 – 2017 and acted in minimum two Malayalam movies per year during this period.

257. It is pertinent to be noted that the defence during cross-examination brought out that PW1 acted in Malayalam and Kannada movies during the period she claimed to be ousted from the Malayalam film industry. The definite stand of PW1 is that she was expelled from main stream movies and committed movies. But no evidence other than

the oral testimony of PW1 is available before this court to substantiate that claim. On the other hand, as pointed out earlier PW1 herself admitted about the movies in which she acted during this particular period. Though the prosecution relied on the oral testimony of PW34 to prove that accused no.8 was maintaining enmity to PW1 and he expelled her from movies, she deposed further that she has no direct knowledge about the enimity of accused no.8 towards PW1 and never made any enquiry about this and she is having only that information furnished by PW1. According to her she does not know the reality of those allegations. In that circumstance the evidence of PW34 cannot be taken into account to corroborate the evidence of PW1.

258. The next piece of evidence relied on by the prosecution to prove this aspect is Ext.P38 interview. I have already discussed about the contents of in Ext.P38 interview. Ext.P38 interview is proved through PW53 who was the then Manager of 'Deccan Chronicle'. According to him, Ext.P38 interview was published in their supplement 'Kerala Chronicle' on 17.12.2015. One Mr. Aravind K.S. was the interviewer/ anchor. He produced the interview before the investigating officer. It is

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

brought out in the cross examination of PW53 that he has no direct knowledge about the interview. He is only the custodian of that interview. He has no connection with the recording and editing of Ext.P38 interview. Ext.P38 is not proved properly. At the very same time, PW1 mentioned categorically that the superstar referred to in the interview is accused no.8. As pointed out in that interview it is stated that a lady visited her at her residence as that lady was facing a trouble in her family life. It is mentioned in Ext.P38 that PW1 lost many projects as an aftermath of her decision to stood with the lady approached her. At the very same time, it is to be noted that in the said interview, she claimed to be stated that **"I did not feel I had a gap in Malayalam. For the past five years, I am doing two movies per year, as I am least interested in increasing the number of films. Even this year, I acted in two films. I have become selective and now I am doing the films of the makers who agree with my demands".** It is also mentioned in Ext.P38 interview that **"it was a popular actor in the Mollywood who played a crucial role in kicking out the actress from the projects in which she was supposed to be cast as the lead, as part of personal vengeance".**

259. The interview of accused no.8 to Manorama Online marked as Ext.P782 telecast during 2017 assumes some relevance in this context. It is retrieved from the mobile phone of accused no.8 marked as Q25A in FSL Report No.DD 442/2017. Questions were put to accused no.8 regarding this interview during questioning u/s.313(1)(b) of CrPC. According to him, he has not responded to Ext.P38 interview as his name is not mentioned in the interview. The prosecution relied on one reply in his interview that he decided to stay away from the relationship with PW1. It is true that in that interview accused no.8 stated that he is not maintaining cordial relationship with PW1.

260. In order to substantiate the evidence of PW1 that she was ousted from the Malayalam film industry by accused no.8, prosecution examined PW44 Jeevan Nassar. According to him, he is a film producer and distributor. He produced five Malayalam movies. He commenced his career in the year 1998 as film distributor. He was a mimicry artist before that. Accused no.8 is known to him since 1990. When he was running the Mimics troupe, accused no.8 visited him. Accused no.8 and Mr. Lal Jose directed the videocassette of his troupe. He produced a Malayalam movie



by name 'Polytechnic' in the year 2014. According to him, this movie was released in the year 2014. When the shooting of movie 'Chandrettan Evidaya' starred by accused no.8 was at Kakkanad, he went to the shooting location to meet him. There were family issues for accused no.8 at that time. They engaged in conversation with respect to those issues. PW1 acted in his movie Polytechnic. Referring that, accused no.8 asked him why they are producing movies with persons who are creating troubles in families. He pacified him stating that, that matter was over. Then, accused no.8 informed him that he supported PW1 in the industry. Somany persons are against him. She has to face the consequences. They engaged in conversation in a caravan. Thereafter, he met accused no.8 in the location of movie 'Ramaleela'. He was thoroughly cross-examined from the defence side. According to him, he informed accused no.8 and Nadirshah about the message received from police to reach the Police Club at Aluva. But they did not respond. It is also brought out that, all his movies were flop in the box office. It is also brought out in his cross examination that, he does not remember the month when he visited accused no.8 at Kakkanad and he has no purpose for visiting accused

no.8 at that location. However he explained that both of them were friends and his visit of accused no.8 was on account of the issues he was facing. During 2015 he came to know about the family issues of accused no.8. He visited accused no.8 at Kakkanad after 12 p.m in the noon. He never decided to visit that location. He spent there for almost 15 minutes. It is also brought out that one Mr. Ismail informed him about the shooting. He does not know when the shooting of that movie commenced. A definite suggestion is put to him that shooting of that movie was not done in Kakkanad during day time. Another specific question is put to him regarding the year when he visited accused no.8 at the Kakkanad location. He replied that he does not remember the year. He also stated that he was not aware of the year of shooting when he was interrogated by the police. Another suggestion was put to this witness that the shooting was not in the year 2014 and there upon he changes his version that he does not remember whether the shooting was in the year 2014 or 2015. According to him, he met accused no.8 and nothing else is known to him. It is also brought out that he was in financial stringency. Accused no.8 did not extend any help to him. It is interesting to note his claim that he had

financially assisted accused no.8 after his release from jail. It is also brought out that he tried to get the date of accused no.8 and he did not concede his request sofar. On an analysis of this evidence, it is seen that though he stated that he visited accused no.8 during 2014 at the shooting location of Malayalam movie 'Chandrettan Evidaya' in Kakkanad, he does not know any other details. Though he stated to the investigating officer that the shooting was in the year 2014, when he was in the box he changed his version and deposed that he does not know whether the shooting was in the year 2014 or 2015. The definite case of the defence is that there was no such shooting as spoken to by him in 2015.

261. The claim of PW44 is that he visited accused no.8 at noon in the location at Kakkanad. The case of defence is that the shooting of the movie at Kakkanad was during night, there was no shooting during day time. It is also brought out that he claimed that he visited the location for nothing. He himself admitted that he had no knowledge about the shooting at Kakkanad. He received information about the shooting from another person. He never intended to visit the shooting location. If that be so, it is difficult to accept that a person visited an actor in the shooting

location for nothing without any previous engagement or arrangement. Moreover, nobody including PW1 made reference to PW44 stating that he had knowledge that accused no.8 ousted PW1 from film industry. Even if the entire version of PW44 is taken as true, it can be seen that accused no.8 allegedly made comments to this witness about a past project. The evidence tendered by PW44 lacks credibility and confidence especially in the light of his claim that he met accused no.8 at the shooting location of the 'Chandrettan Evidaya' at noon in day time which is deadly against the statement of DW1 who is the most competent witness to speak about its shooting time at a specified location.

262. At this juncture, the evidence of DW1 assumes relevance. DW1 is the Director of movie 'Chandrettan Evidaya'. According to him, this movie was released on 01.05.2015. Accused no.8 starred in that movie. The shooting of the movie was at N.G.O. Quarters, Kakkanad during evening and night. He gave evidence specifically that the particular scenes were shooted in night. Nothing else was shot at Kakkanad. During cross-examination by the prosecution, it is brought out that he himself and his mother are maintaining good relationship with accused no.8. It is



also brought out in cross-examination that he has not received any summons. He appeared as witness as asked by accused no.8. They discussed about the matters to be stated before the court and those matters are deposed to in chief examination. Several questions were put to him challenging his memory. This witness specifically stated that he could recollect the scenes and matters regarding shooting of the films directed by him. It is true that no records are produced to show that the shooting of the above named film was in 2015. Though he is maintaining good relationship with accused no.8, his statement that the said film was released on 01.05.2015 remains undisputed. The case of PW44 is that he visited accused no.8 during noon in the year 2014. The evidence of DW1 would show that no such shooting was at Kakkanad during noon. Both of them had given contradictory versions. So, the court has to consider the veracity of evidence adduced by both witnesses. As far as PW44 is concerned, he has no reason to go at the location. He claimed that he visited the location and also met accused no.8 in the caravan for nothing. It is brought out that he is not connected to accused no.8 so as to go at the location and meet him in the caravan during the midst of shooting. It

is also brought out that accused no.8 did not extend financial support to him when he was in need. DW1 being the Director of the movie is competent to give details of the shooting of that movie. DW1 categorically stated that the shooting at Kakkanad was during night. As pointed out, during cross examination by prosecution it is brought out that he had discussion with accused no.8 about the matters to be stated before the court. This was clarified in the re-examination. The learned Special Public Prosecutor objected the clarification stating that there is no ambiguity. The learned defence counsel stated that there is weakness in the answer. According to the defence, though he stated that he discussed with accused no.8, nothing is stated about the subject of discussion and that is to be clarified. It is true that DW1 has not received any summons. He is brought at the instance of accused no.8. In that circumstance definitely, there would have been discussions between them. What was the topic of discussion is to be clarified. DW1 clarified that accused no.8 asked him about the details of the shooting at Kakkanad and he gave the details and thereupon accused no.8 asked him to depose those matters before the court. It is natural that when a person cite another as a witness,

he has to appraise him about the purpose for citing him as witness. In the above circumstance I find that no sound ground to reject or believe his version that the shooting of the film 'Chandrettan Evidaya' at Kakkanad was in night and no portion of the shooting was done at noon or day time and I conclude so.

263. The statement of PW44 was seen recorded on 17.11.2017, just five days before filing the supplementary final report. As I pointed out, nobody referred PW44 as the person having knowledge about the role of accused no.8 in the ouster of PW1 from the film field. Even the investigating officer failed to convince why he interrogated PW44. Based on the above discussion and the conclusion arrived at therefrom I find that he is a planted witness. It is also to be considered that the persons referred to by PW1 as the persons who are aware that accused no.8 ousted her from the film field and also accused no.8 is maintaining enmity to PW1 are not examined before the court.

264. On an analysis of the above evidence, especially Ext.P782, I am of the view that accused no.8 is not maintaining cordial relationship with PW1. Similarly, Ext.P38 interview would show that PW1 was under

the impression that accused no.8 is the person who is ousting her from the film field. At the very same time, PW1 deposed that an impression of such a nature was formed also from the information furnished by Mr. Krishnan and Mr Benny P Narayambalam and in spite of that for the reasons best known to the prosecution, those persons were not examined as witnesses. Though PW1 is under the impression that accused no.8 ousted her from the film field, on an analysis of her oral evidence and considering her version in Ext.P38 interview, it is seen that she acted atleast in two Malayalam movies per year from 2012 onwards. She also acted in Tamil and Kannada movies. She also claimed in Ext.P38 interview that she has no gap in the Malayalam film industry.

265. The above discussions led this court to a conclusion that the relationship between accused no.8 and PW1 was not a cordial one. At the very same time, prosecution failed to adduce evidence regarding the specific events allegedly happened during the European show held in 2012 and during the rehearsal camp of Association of Malayalam Movie Artists held in Hotel Abad Plaza, Ernakulam during 2013, which are

canvassed to strengthen the case that accused no.8 was maintaining hatred, ill-will and plan to destroy the career of PW1.

266. It is also to be concluded based on the evidence on record that though PW1 claimed that accused no.8 denied her opportunities in the Malayalam film world and also ousted her from the industry, except her oral testimony, no other convincing evidence is adduced to substantiate that claim. It is true that in Ext.P38 interview PW1 advanced a case of such a nature. She also deposed about the visit of a lady at her residence in connection with her family disputes. At the very same time, the evidence of PW1 during cross-examination would show that she acted in atleast two or three Malayalam movies during the relevant period. What PW1 stated is that she could not act in mainstream movies. Though Ext.P38 interview is not properly proved, she herself claimed that there was no gap in her career.

267. PW44, who was examined to corroborate the evidence of PW1 regarding the conduct and approach of accused no.8, his evidence is found to be unreliable on the conclusion that he is a planted witness and his evidence is insufficient to indulge confidence in the mind of the court.

268. On an appreciation and evaluation of the evidence discussed above and the conclusion arrived at therefrom, I find that except the testimony of PW1, nothing is there to show that accused no.8 ousted her from the Malayalam film industry. The prosecution had given much reliance to Ext.P38 interview to prove this aspect. Ext.P38 interview of PW1, which is not proved legally, cannot be relied upon to substantiate the prosecution case that accused no.8 is behind the denial of roles to PW1 in the Malayalam movie world. In spite of the allegation that accused no.8 denied her opportunities and worked for her ouster from the field, she herself claimed that she acted in atleast two or three movies during this period and also stated that there was no gap in her career. Moreover, though she claimed that opportunities were denied to her, PW1 was not in a position to specify any of such incidents. The persons claimed to have direct knowledge about the highhanded acts of accused no.8 to destroy the career and cause her ouster were not examined for the reasons best known to the prosecution alone. The solitary evidence of PW1, which did not get any corroboration alone is not sufficient to conclude that accused no.8 was after her to destroy her. Therefore, I

hold that the evidence on record is incapable to inspire the confidence of the court to find that accused no.8 denied opportunities to PW1 and also ousted her from Malayalam film industry.

269. **Facts connected with the alleged conspiracy between accused no.1 and 8:-**

Presence of accused no.1 in the shooting location of 'Sound Thoma' at Alappuzha:- The prosecution alleges that accused no.8 was inimical to PW1 and in order to wreak vengeance against her, accused no. 8 hatched criminal conspiracy with accused no.1 for her physical and mental harassment, her sexual assault and recording her nude visuals and as the result of that conspiracy, accused no.1 committed those offences against her. In the supplementary final report dated 22.11.2017 the investigating officer had given the details regarding the conspiracy. According to the prosecution, after the incidents took place in the Hotel Abad Plaza, Ernakulam, discussed earlier accused no.8 had taken several steps to oust PW1 from the film field. Thereafter, on a day falls between 28.03.2013 and 02.04.2013 during the rehearsal camp of Association of Malayalam Movie Artists, accused no.1 had been called to room no.410 of Hotel

Abad Plaza, Ernakulam by accused no.8 by evening and engaged in criminal conspiracy for capturing the visuals of sexual intercourse of PW1 with several persons and also to capture her nude visuals. They conspired together to execute it somehow and offered Rs.1.5 Crores as consideration to accused no.1 for this.

270. This court considering the materials, charge has been framed in this regard. It is also alleged that before the meeting and criminal conspiracy at Hotel Abad Plaza, Ernakulam, both accused nos.1 and 8 met several times and hatched criminal conspiracy from 01.11.2015 onwards. It is alleged that on 01.11.2015 both of them met at the parking ground of Hotel Joys Palace, Thrissur. Accused no.8 had given Rs.10,000/- to accused no.1 and also agreed to give Rs.1 lakh more to him. On 02.11.2015 the said Rs.1 lakh was handed over to accused no.1. Accused no.1 deposited the amount on the same day to the account of his mother Sobhana Surendran (PW129). Further, on 21.09.2016, as directed by accused no.8, accused no.1 received Rs.30,000/- during the shooting of the Malayalam movie 'Kattappanayile Rithwik Roshan' at Thodupuzha. Further, on 08.11.2016 in continuation of the conspiracy, both accused



DISTRICT AND SESSIONS COURT ERNAKULAM

nos.1 and 8 met together in a caravan bearing registration no.TN-10 AE 4118 parked in the shooting location at CIFT Junction, Thoppumpady. They again hatched conspiracy for the execution of the planned crime without any further delay as PW1 was about to leave the film industry on account of her marriage. Thereafter, on 13.11.2016 accused nos.1 and 8 again met and conspired together at the shooting location at Kinattingal Tennis Club, Puzhakkal, Thrissur. They also hatched conspiracy on 14.11.2016 at the shooting location in Santhigiri College, Thodupuzha.

271. As per the charge based on the supplementary final report dated 22.11.2017, the first conspiracy was at Hotel Abad Plaza, Ernakulam on a day between 28.03.2013 and 02.04.2013 at room no.410. The last conspiracy was on 14.11.2016 at Santhigiri College, Thodupuzha. It is urged by the prosecution that the incidents occurred during the rehearsal camp of Association of Malayalam Movie Artists, led accused no.8 to believe that PW1 was behind the discussions held during the rehearsal camp in connection with his illegal relationship with PW179 and it aggravated his anger towards PW1 and he has decided to take revenge on her. His first attempt was to spoil her career by denying opportunities

to her using his influence in the Malayalam film industry. The prosecution now alleges that during the course of further investigation, they conducted investigation about the film 'Sound Thoma' as it is referred to in Ext.P122 letter allegedly written by accused no.1. According to the prosecution, PW182, the brother of accused no.8 produced the film 'Sound Thoma'. The shooting was taken place at Alappuzha between January and March 2013. Accused no.8, PW46 Mukesh, Saikumar, Suraj Venjarammood and Namita Pramod were the leading actors in that movie. According to the prosecution, accused no.1 was present in that shooting location. Accused no.8 resided in room no.207 of Arcadia Regency, Alappuzha from 21.01.2013 to 04.02.2013. PW46 Mukesh resided in room no.312 of the very same hotel from 19.01.2013 to 02.02.2013. The case of the prosecution is that accused no.1 was working as the driver of PW46 at that time and he was available in that shooting location in that capacity. During the shooting of the film 'Sound Thoma' at Alappuzha, some goondas intervened and attempted to create problems in the shooting location and accused no.1 settled the disputes with local goondas. Thereafter, accused no.8 developed

acquaintance with accused no.1 and they had ample opportunities to interact with each other. This acquaintance developed to the criminal conspiracy between accused nos.1 and 8 allegedly commenced at room no.410 of Hotel Abad Plaza, Ernakulam. Their meeting at the shooting location of the film 'Sound Thoma' in Alappuzha assumes much significance.

272. The evidence can be considered in the above said background. The prosecution alleged that by the reference in Ext.P122 letter addressed to accused no.8 lead to the facts which were transpired at the location of the movie 'Sound Thoma'. They claimed that a thorough investigation was conducted to ascertain whether there is any substance or significance in the reference and incidents referred to in Ext.P122 letter. The matters regarding the preparation of Ext.P122 letter have to be discussed separately while analyzing the evidence of PW121 Vipinlal and PW176 Vishnu Aravind. As far as the availability of accused no.1 in the location of 'Sound Thoma', prosecution relies the oral testimonies of PW37 Dixon Poduthas, PW46 Mukesh, PW48 Purushothaman, PW121 Vipinlal, PW129 Shobana, PW168 Sherly Joseph, PW182 Anoop, PW191

Appunni, PW198 Jayakrishnan and PW261 Baiju Poulose. The prosecution asserted that during the shooting, PW46 and accused no.8 resided in Arcadia Regency, Alappuzha. Exts.P184 to 184(f) are relied on by them.

273. The case of the prosecution is that accused no.1 was available in the shooting location of 'Sound Thoma' in his capacity as the driver of PW46 Mukesh. On a question put to PW46 that whether he had a driver during the period 2012 and 2013 and if yes, who was that, he replied that he had driver, but he was not able to say about the periods specifically. He also stated that accused no.1 was his driver for 6-7 months. According to him, he used his own car for the 'to and fro' journey to the shooting location. The car of the company will be used during shooting and there was no need for having personal driver. Accused no.1 accompanied him in two or three shooting locations. Since accused no.1 had no engagement during shooting, he obtained permission from PW46 to leave the shooting location for driving bus in Ernakulam. He also deposed about a specific incident happened during September 2013 when accused no.1 drove his vehicle. Thereafter, the service of accused no.1 was not availed for by him.



He also stated that he acted in the movie 'Sound Thoma' and its shooting was at Alappuzha. PW48 Purushothaman was his hairdresser. He also stated about the actors in that movie. According to him, he is maintaining close relationship with accused no.8. A specific question is put to this witness by the learned Special Public Prosecutor that whether accused no.1 was his driver during the shooting of 'Sound Thoma' in Alappuzha. He replied that he does not recollect it. During his cross-examination from the side of accused no.1, he claimed that accused no.1 behaved well to him and his family members. In his further cross-examination by the learned counsel for accused no.8, he stated that he is not in a position to say about the drivers who worked with him from time to time.

274. Coming to the evidence of PW48 Purushothaman, he deposed that he worked as makeup-man, touch-up and hairdresser in the film industry. He was the personal hairdresser of PW46 Mukesh. He started his engagement with Sri Mukesh from 2008 onwards. His further version was that accused no.1 joined with PW46 when the shooting of movie "916" was conducted at Kozhikode and that accused no.1 worked with him for one year. He met accused no.1 even after PW46 terminated him.

He was the hairdresser of PW46 during the shooting of 'Sound Thoma'. The shooting was at Ernakulam and Alappuzha. Some of the artists stayed in hotel and some others in their own houses. PW46 resided in hotel occasionally and accused no.1 was his driver during the relevant period. Sometimes accused no.1 stayed with him (PW48). He identified accused nos.1 and 8. During cross-examination he stated that he was not a makeup-man and he was working as a make-up assistant and he is not able to recollect the names of the drivers worked with PW46 Mukesh from time to time. Statement u/s.164 Cr.P.C. of this witness was recorded. The learned counsel had elicited some contradictions through this witness.

275. The evidence of PW37 Dixon Poduthas is as follows. He is working as cinema production controller from 2002. His duty is to arrange the facilities for movies. PW182 is the proprietor of Priyanjali Films. He produced the movie 'Sound Thoma' in the year 2013. PW37 was the production controller of that movie. Accused no.8, Saikumar, PW46, Suraj Vennjarammoodu and Namita Pramod were the actors in that movie. The shooting was at Ernakulam, Alappuzha, Cherthala, Thaikattussery, Kakkanad and Edakochi. The lodging facility for crew



was arranged in Arcadia, Padippura, Golden Sand and Angel King. PW48 was the touch-up boy of PW46. PW191 was the driver of accused number 8. The artists used to take rest in the caravan. He heard after knowing the about this case that accused no.1 was the driver of PW46 Mukesh. His further version was that security facility is available at the shooting locations where the leading actors like accused no.8, Mammootty and Mohanlal are acting. The duty of the security personnel is to avoid disturbance for the shooting as well as the artists. Light boys, art assistants, makeup team, Assistant Directors and camera team are permitted to enter the cinema set. Food will be supplied considering the status of the persons. Nobody can meet the artists in the shooting location without their prior permission. Accused no.1 is not known to him. He heard about accused no.1 through news after knowing about the sexual harassment of PW1. According to him, accused no.8 went to his house on majority of the days of shooting.

276. PW129 Sobhana is the mother of accused no.1. According to her, accused no.1 is a driver by profession. Her son was the driver of PW46 Mukesh. This engagement was almost eight years before. He

continued with that engagement for 6-7 years. Her son brought vehicles to her house. Her son goes to shooting locations and during that time he will not come to the house daily. This is the evidence tendered in chief examination regarding the work of accused no.1. She was cross examined by the learned counsel for accused no.8. A suggestion was made to her that she had given evidence about matters those are unconnected with the matters stated before the investigating officer. According to her, she was called to Kodanad police station and does not know what is recorded in her statement. Statement of accused no.1 as the driver of film actors and that he worked as the driver for Mr. Mukesh for 6-7 years are the matters which are not stated to the investigating officer.

277. PW168 was working as the Operation Manager of Hotel Arcadia, Alappuzha. She produced Guest Requisition Chart, Room Occupancy Chart, IT Forms, Bill details, Bills etc. showing the room booking of Priyanjali Films from 19.01.2013 till 05.03.2013 to the investigating officer on 28.07.2017. Ext.P184 is the letter signed by PW168. Ext.P184(a) series are the Guest Requisition Card issued in the name of accused no.8 and Cameraman Shaji. Production Executive of

Priyanjali Films made the bookings. It is seen that Shaji resided in the hotel from 19.01.2013 till 05.03.2013. Ext.P184(a) would further show that accused no.8 resided in the hotel from 21.01.2013 till 04.02.2013. Ext.P184(b) is the Room Occupancy Chart. This would show that room no.312 was occupied by PW46 Mukesh from 09.01.2013 till 02.02.2013. This would also show that room no.207 was occupied by accused no.8 from 21.01.2013 till 04.02.2013. Ext.P184(c) series are I.T forms issued in the name of PW182. Ext.P184(d) series bills are issued in the name of M/s.Priyanjali. The witness deposed that guests will vacate the rooms as and when their schedules are over and the issuance of bills was in the name of persons who vacate the room last. Ext.P184(e) would show that accused no.8 occupied room no.207 from 21.01.2013 till 04.02.2013. The witness stated that key of the rooms allotted to film actors will be handed over to the persons who booked the room. The rooms were booked for the shooting of the movie 'Sound Thoma'. She had seen actress Namita Pramod alone. According to her, the male actors used to leave the room early in the morning and come back only late after the shooting. They will be accompanied by a group of people. The persons who accompanied

them will collect the key. She has not seen any of the actors of this movie. On the strength of the bills, she stated that PW46 and accused no.8 resided in that hotel. All those documents are maintained properly. She issued Ext.P184(f) Section 65B certificate for this. The documents were seized by the investigating officer in the presence of witnesses. During cross-examination she deposed that she signed Ext.P184 to Ext.P184(f) when those documents are produced before the court. Hotel Arcadia was one of the biggest hotel in Alappuzha with four star facility. Whenever shootings are conducted in Alappuzha, actors used to reside in that hotel. She is not in a position to recollect the details of the visitors and guests. According to this witness, it is for the first time she put signature in these types of documents. She put signatures in the documents at Kalamassery police station. Ext.P184(f) Section 65B certificate was prepared by Kalamassery police. She also put signature in that document at Kalamassery police station. Except the room tariff and luxury tax, no other service charges are paid as per Ext.P184(f). She stated that the film personnel used to take food from locations and hotel service will not be availed of. She has no direct knowledge about the stay of accused no.8



and PW46 in the hotel. She stated about their say on the basis of the documents. She does not know any other details about their stay in the hotel. During re-examination this witness stated that she has no control over the computer system of Hotel Arcadia. She put her signature in Ext.P184 in her capacity as Operation Manager and also the matters were related to rooms. The learned Special Public Prosecutor questioned her regarding the say of accused no.8 and PW46, and her reply was that she has no direct knowledge about the same. The learned Special Public Prosecutor sought permission of the court to put leading questions and permission was granted. Her statement to the investigating officer that accused no.8 and PW46 resided in the hotel is put to this witness. She admitted it and clarified that it was on the basis of documents. The fact that what she stated was on the basis of document is not stated to the police is elicited. She also stated that the check-in and check-out time mentioned in Exts.P184(a), (b) & (c) may not be correct. The learned Special Public Prosecutor put a suggestion to this witness that she is giving evidence for helping accused no.8. The witness replied that she does not know who is accused no.8. Another question is put to this witness

that whether the drivers of actors are provided with rooms and her reply thereto was in the negative and further stated that the drivers used to leave the hotel after parking vehicles. Another specific question is put to her regarding the parking of the cars of accused no.8 and PW46, and she pleaded ignorance about the same pointing out want of opportunity to notice it.

278. The prosecution relied on the evidence of PW121 also to show that there was acquaintance between accused nos.1 and 8 pointing out that as accused no.1 settled some disputes with local goondas during the shooting of 'Sound Thoma'. PW121 Vipinlal deposed that while writing Ext.P122 letter accused no.1 informed him that he has not disclosed to anyone the matters starting from the movie 'Sound Thoma' till the movie 'Georgettan's Pooram'. Then he enquired about those matters which were kept in secret. Accused no.1 told him that some local goondas intervened in the location of 'Sound Thoma' for squeezing money and on his intervention the matter is settled. Accused no.8 developed his association with accused no.1 for the purpose of quotation since then. The prosecution argued that the evidence of PW121 is corroborated by the



oral evidence of the witnesses mentioned hereinbefore. The prosecution further argued that none of the witnesses has a case that accused no.1 was never present in the shooting location of 'Sound Thoma'. It is to be noted that the argument advanced by the learned Special Public Prosecutor that any of the witnesses has a case that accused no.1 was never present in the shooting location of 'Sound Thoma' is against the actual position. The defence raised a definite case denying the presence of accused no.1 in the shooting location. They put definite suggestions to those witnesses in that regard.

279. PW37 is one of the witnesses relied on by the prosecution to corroborate the version of PW121. PW37 explicitly deposed before the court that he heard about accused no.1 only after the reporting of this case. It is to be noted that not even a suggestion is put to this witness regarding the incident deposed to by PW121. Moreover, this witness had stated in cross-examination about the uproars and agitations in cinema location for the entry of third parties. He reiterated in cross-examination that he heard about the first accused for the first time in news after reporting this case. He has also gone to the extent of stating that he had

seen his photo in news paper, but accused no.1 is not familiar to him. According to him, accused no.8 went to his residence in majority of the shooting days. The learned Special Public Prosecutor even in his re-examination not attempted for any clarification either about the presence of accused no.1 in shooting location or about the intervention of goondas as spoken to by PW121. As far as the evidence of PW46 Mukesh is concerned, it is to be noted that the contention of the prosecution is that accused no.1 was his driver of PW46 and he admitted this fact. At the very same time, he stated specifically that the engagement of accused no.1 with him was for 6-7 months. He does not remember whether accused no.1 was his driver during the shooting of the movie 'Sound Thoma' or not. He further stated that during the time of shooting the vehicle of the production company was being used and the service of driver was not availed of. As in the case of PW37 no clarification regarding the interference of goondas as spoken to by PW121 is sought for from PW46 by the prosecution.

280. Coming to the evidence of PW48 claimed to be the makeup-man of PW46, he stated before the court that the shooting of the movie

SESSIONS COURT DISTRICT AND ERNAKULAM

'Sound Thoma' was in Ernakulam and Alappuzha. Some of the artists used to go to their residence and some others stay in hotel. As far as PW46 Mukesh is considered, he went to his residence some days and stayed in hotel in other days. According to this witness, accused no.1 was the driver of Mukesh during that time. He also stated that he stayed in a hotel at that time and accused no.1 shared that room with him. During his cross-examination it is brought out that except the association of accused no.1 with PW46 Mukesh he has no knowledge about the drivers, who ever worked with PW46. Similarly, he is not in a position to recollect the shooting period of other movies acted by PW46. It is also brought out that except accused no.1, no other driver engaged by PW46 shared room with him during shooting. It is to be noted that even if the entire chief examination is accepted as such, nothing is there to show that accused no.1 was available in the shooting location of the movie and the utmost that can be concluded is that accused no.1 was the driver of PW46 during the shooting of the movie 'Sound Thoma' and he shared room with PW48. PW48 failed to give any explanation as to why did he remember the details of accused no.1 in his capacity as driver of PW46. As I pointed

out, he has no knowledge about the other drivers worked with Mukesh. No special reason is assigned to recollect and remember the engagement of accused no.1 alone with PW46. In the case of PW48 also, the prosecution has failed to elicit anything about the intervention of local goondas as asserted by PW121. Above all, in Ext.P195 the statement of PW48 recorded by PW172 u/s.164 of Cr.P.C, there is not even a whisper is regarding the shooting of the movie 'Sound Thoma'. He had made only some general statements about the sharing of room with accused no.1. The learned counsel for accused no.8 argued that the prosecution intentionally suppressed the evidence tendered by him about accused no.1 in his 164 statement and with the specific intention to support accused no.1. It is true that in his Section 164 statement, PW48 stated that accused no.1 visited him in his room after PW46 terminated his service. PW48 also forcefully thrown out accused no.1 from his room. It is also stated that accused no.1 used to consume alcohol. PW48 had not seen deposed the above matters in his chief examination in this court. When this was put to him by the learned counsel for accused no.8, he admitted this in the cross-examination. He also admitted regarding the disclosure

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

of accused no.1 about the abduction committed before his engagement with PW46. All these facts are not seen stated to the investigating officer. The contention raised by the learned counsel assumes some force. At the very same time, considering the matters to be agitated, I find it not necessary to probe into that contention. As I pointed out, specific suggestion is put to PW48 by the counsel for accused no.1 denying his engagement with PW46 during the period as pointed out by him. His evidence will support the prosecution at the most for proving that accused no.1 was the driver of PW46. Nothing is there to show that accused no.1 accompanied PW46 to Hotel Arcadia. The witnesses relied on by the prosecution did not state anything about those matters to prove the interference of goondas to disturb the shooting and the involvement of accused no.1 to disperse them from the shooting cite. Even, the learned Special Public Prosecutor has not put any question in this regard to any of them though all those witnesses are loyal to the prosecution.

281. As far as the evidence of PW121 is concerned, he claimed that accused no.1 told him about the disturbance of goondas in the location and PW121 has no direct knowledge about that incident. It is a hearsay

evidence as far as PW121 is concerned. Similarly, it is brought out that the evidence tendered by PW129 Sobhana regarding the engagement of accused no.1 with PW46 are omissions. She has not stated anything to police regarding his engagement. It is to be noted that during chief examination, these matters elicited through PW129 by putting leading questions. The question put to this witness by the learned Special Public Prosecutor is that **"മകൻ Ernakulam-ത്ത് bus ഓടിക്കുമായിരുന്നു. ഇന്നേക്ക് 8-9 വർഷം മുമ്പ് മുതൽ Ernakulam-ത്ത് bus ഓടിക്കാൻ തുടങ്ങി. കാറുകൾ ഓടിക്കുമായിരുന്നു. വീട്ടിൽ കൊണ്ട് വരാറുണ്ട്. സിനിമനടന്മാരുടേയും നടികളുടേയും വണ്ടികൾ ഓടിക്കാറുണ്ടോ? ഉണ്ട്. മുകേഷിന്റെ വാഹനം കുറെ നാൾ ഓടിച്ചിരുന്നു. Bus ഓടിച്ച് കഴിഞ്ഞ് മുകേഷിന്റെ car ഓടിക്കാൻ പോയിരുന്നു. അത് 8 വർഷം മുമ്പായിരുന്നു. അത് 2013-ലാണെന്ന് പറഞ്ഞാൽ ശരിയാണോ? ഓർമ്മയില്ല. മുകേഷിന്റെ കൂടെ സുനിൽ 6-7 വർഷം driver ആയി ജോലി ചെയ്തു. മുകേഷിന്റെ വണ്ടി വീട്ടിൽ കൊണ്ടുവരുമായിരുന്നോ?. കൊണ്ട് വരുമായിരുന്നു. Witness adds ആരുടേതാണെന്ന് അറിയില്ല."** This is the manner in which questions were put to PW129. She is not able to recollect the period of engagement of her son with Mukesh. The one and only fact stated by this witness is the



engagement of accused no.1 with PW46 Mukesh. No other relevant matter is stated by this witness.

282. In this background the evidence of PW261, investigating officer about the involvement of goondas as deposed to by PW121 before the court is to be evaluated. PW261 deposed that during the shooting of the movie 'Sound Thoma' there were some issues with local people at Kuttanad. Police intervened and the issues were settled. He stated that he has no knowledge about the intervention of accused no.1 and hence, nobody is arraigned as witness to prove this incident. PW261 claimed that police intervened and settled the issue. This is a different stand from the case put forward by the prosecution through PW121. The said issue was in 2013. The investigation of this case was started in 2017, after a gap of four years. PW261 failed to conduct any investigation about the intervention of police though he could have gathered information as part of the investigation.

283. Another step taken from the side of prosecution to prove the disturbance to shooting was by producing Ext.P803 series office file of Priyanjali Films. Ext.P803 series were seized on the strength of Ext.P802

search list dated 13.01.2022 from Grand Production's office. This search was conducted during the second further investigation. The learned defence counsel relying on Ext.C62 search request dated 11.01.2022 submitted that the search mentioned in Ext.C62 was for the recovery of the visuals of the assault of PW1, as they received information that it reached the hands of accused no.8. They also submitted that on 12.09.2017 itself PW198 Jayakrishnan searched the very same office and nothing was found out. Highlighting these situations the learned defence counsel argued that though the search was for tracing out the assault visuals, they seized Exts.P803 series and P804 series to create evidence for supporting the story of PW121. It is also argued that the prosecution was well aware of the falsity of the evidence of PW121 and the search in the office of Priyanjali studio was to fabricate evidence to overcome that position. In Ext.C62 search request filed before the court for the issuance of search warrant, PW261 stated the purpose as **"ഒന്നാം പ്രതി X നെ ലൈംഗീകമായി പീഡിപ്പിക്കുന്ന ദൃശ്യങ്ങൾ 8-)o പ്രതി ഗോപാലകൃഷ്ണൻ @ ദിലീപിന്റെ കൈവശം എത്തിയിട്ടുണ്ട് എന്ന വിശ്വാസയോഗ്യമായ വിവരം ലഭിച്ചതിന്റെ അടിസ്ഥാനത്തിൽ ടി സ്ഥാപനവും വീടും ശോധന നടത്തി മുതലുകൾ**



ബന്തവസ്സിലെടുക്കുന്നതിലേക്ക് പ്രത്യേക അന്വേഷണസംഘത്തിന് (SIT) ശോധന വാറണ്ട് അനുവദിച്ചു തരുവാൻ അപേക്ഷ". The place to be searched is shown as office of Grand Productions. The fact that PW198 on 12.09.2017 searched the very same premises remains undisputed. It is also not in dispute that nothing was found therein. This fact was known to PW261 also in his capacity as the investigating officer heading the Special Investigation Team.

284. Another interesting aspect is that Ext.P803 series and P804 series were available in the office of Grand Productions when PW198 searched in the office of Grand Productions on 12.09.2017. What prompted them to seize Ext.P803 series and P804 series on 13.01.2022 after leaving those items then and there on conducting the search on 12.09.2017 is not explained. It is equally important that what is the reason for the seizure of Exts.P803 series and P804 series in the search conducted on 13.01.2022, especially when the purpose of search is stated as otherwise. This fortifies the contention of the learned defence counsel that the prosecution somehow attempted to collect evidence so as to create corroboration for the evidence of PW121.

285. The evidence adduced by prosecution based on Ext.P804 series vouchers can be evaluated. Ext.P804 series contains the expense details for the production of 'Sound Thoma'. Relying on voucher no.57 dated 25.01.2013 prosecution attempted to prove that Rs.650/- was given to one Mr. Sunilkumar 'Gunda' at Mukesh's House. The prosecution has given much importance to the name 'Sunilkumar' and also the word 'Gunda'. By giving much importance to these two terms, prosecution tried to prove that this amount was paid to accused no.1 as consideration for settling the goonda issues at the location of 'Sound Thoma'. On a perusal of voucher no.57 it is seen that Rs.650/- was given to junior artists. The name is recorded as 'Sunilkumar'. The purpose for the payment is stated as Junior Artist 'Gunda' at Mukesh's House. In the chief examination of PW261 he identified Exts.P804 series. He deposed about voucher no.57. This fact was challenged by the learned defence counsel at the time of cross-examination by drawing attention of PW261 to several other vouchers contained in Ext.P804 series. Question is put to him about the availability of Exts.P803 series and P804 series when PW198 conducted search at the office of Grand Productions. A specific

DISTRICT AND SESSIONS COURT

question is put to him that the very same condition was prevalent during the search on 13.01.2022 and he replied that, that search was after five years. He also stated that PW198 has not stated anything about the availability of these documents during the search made in the year 2017. It is the duty of the prosecution to explain the reason for the non seizure of these documents in the search in the year 2017. The prosecution has no case that these documents were made available or traced out only after the search in the year 2017. Since the documents were of the year 2013, these documents should have been available there in the office even in 2017. It is also admitted by PW261 that voucher no.57 has been selected from a bunch of vouchers. He admitted that he selected this voucher for the sole reason that it contains the name 'Sunilkumar'. The learned defence counsel had drawn his attention to voucher nos.56 and 59 dated 25.01.2013. Voucher no.56 is for junior artist Bineesh goonda set up-1 for Kainakari Veed- 1500. Voucher No: 59 is for Junior Artist goondas 4 nos. plus children – 3000. Yet another question is put to him that the stunt scene of this film was at Kainakary House and his reply thereupon was that he did not enquire about it. Somany vouchers were brought to

the notice of PW261. He admitted that he did not conduct any investigation about these vouchers. This shows the shameless attempt on the part of PW261 to show that name Sunilkumar appears in voucher no.57 being of accused no.1 Sunilkumar. He deposed that he could understand the presence of accused no.1 in the location and that was without disclosing the ground for his understanding.

286. On a perusal of the vouchers contained in Ext.P804 series it is seen that payments were made to one Mr. Bineesh for goonda set up-1 at Kainakari Veedu. Similarly, Rs.3,000/- is seen paid to one Mr. Appu for Junior Artists goondas 4 nos plus children. Voucher no.61 is for the payment of Rs.2,000/- to one Mr. Manoj, to children - 7 numbers for music class set-up at Kainakary location. This file contains somany vouchers showing payments to several junior artists acted in various roles. No explanation is forthcoming from PW261 about that position. He simply stated that he has not conducted any investigation with respect to the payment on account of those vouchers. He himself admitted that prosecution had given importance to voucher no.57 for the sole reason that it contains the name Sunilkumar and accused no.1 is also



Sunilkumar. These vouchers will not support the prosecution to prove the involvement of accused no.1 in settling the goonda intervention in the location.

287. The next witness examined on the side of prosecution to prove this aspect is PW168 Operation Manager of Hotel Arcadia. The attempt of prosecution is to prove that accused no.8 and Mukesh stayed in Hotel Arcadia in connection with the shooting of the movie 'Sound Thoma'. Accused no.1 in his capacity as driver of PW46 Mukesh was also available in Hotel Arcadia. Relying on the records showing the room booking for the shooting, prosecution urged that accused nos.8 and 1 had ample opportunities to interact with each other while staying in that Hotel. It is also submitted that this commenced the association between accused nos.1 and 8. It is to be noted that accused no.8 strongly disputed the statement regarding stay at Hotel Arcadia and asserted that he attended the shooting by residing in his house and he never occupied the room booked for him in Hotel Arcadia. Except the oral testimony of PW182 and PW191, no independent evidence is adduced to substantiate this contention. But, at the very same time, evidence of PW46 and PW48

would show that artists used to stay in the hotel on some days and on other days, they resided at their residence. The prosecution had given reliance to Exts.P184 to P184(f) documents to prove this position. The prosecution urged that the contention taken-up by accused no.8 that he never stayed at the Hotel Arcadia amounts to a plea of alibi and he has to prove the same as the prosecution has produced prima facie evidence as to his stay there and his presence in the shooting location. It is to be noted that the fact that accused no.8 acted in the said movie and also the fact regarding locations remains undisputed. As pointed out earlier, relying on the documents from Hotel Arcadia, prosecution urged that accused no.8 resided at Hotel Arcadia and thus both accused nos.8 and 1 had occasion to meet together and also to develop acquaintance.

288. The evidence of PW168 and also the admissibility of the documents are to be appreciated. PW168 deposed that on 28.07.2017 she produced these documents before the investigating officer on the strength of Ext.P184 letter. Ext.P184 is marked subject to objection that it is hit by section 162 Cr.P.C. The learned Special Public Prosecutor replied that it is a reply issued to the notice u/s.91 of Cr.P.C. and hence the bar u/s.162

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

Cr.P.C is not applicable. Before deciding the probative value of this evidence, let us consider another aspect. Admittedly, Exts.P184 to P184(e) are computer printouts. Ext.P184(f) is the Section 65B certificate issued with respect to these documents by PW168. The definite contention of the learned counsel for accused no.8 is that PW168 is incompetent to issue Section 65B certificate for the documents mentioned therein as the computer system was not under her control. PW168 was working as Operations Manager. She had given details about the booking and also the contents of documents. She stated that Ext.P184 to P184(e) documents are maintained properly and truly. All these documents are stored in their computer as part of their business. She stated further that she issued Ext.P184(f) certificate stating that she dealt with the computer system. Those documents were produced to the Circle Inspector of Police, Kalamassery and he seized it on the strength of mahazar. In cross examination, she stated that the print out of Ext.P184 to P184(f) are taken at the time when those were produced before the court. It is also stated that the accounts department had obtained the printouts. Accounts Manager one Mr. Salas was dealing with the accounts section. Since those

documents are taken from Hotel Arcadia, she put signatures. Seals were affixed in those documents at the hotel. They brought it to the police station. PW168 put signatures in the documents at the police station. She admitted that Ext.P184(f) was prepared by Kalamassery police and she subscribed signature in the police station. She admitted her signature in Ext.P184. She also admitted that she had gone through Ext.P184(f). Nothing is stated in Ext.P184(f) that the computer system was under her control and she was dealing with the system. It is also admitted that nothing is mentioned that the system is under whose control. At the very same time she denied a suggestion put by the learned defence counsel that Exts.P184 to P184(e) are prepared as per the direction of police. The learned Special Public Prosecutor tried to clarify the aspects regarding Ext.P184(f) in re-examination. A question was put to her specifically that she subscribed signature in Ext.P184(f) in her capacity as the person who was in control of computer system but her reply was that she had no control over it. According to her, these information can be downloaded through accounts wing of Hotel Arcadia at any time. She put signature in her capacity as Operation Manager and it is the duty of the Operation

Manager to manage the check-in and check-out of rooms. She also stated that these documents contain the matters related to rooms. Accounts department persons were also accompanied her when she went to Kalamassery police station. A suggestion was put to this witness that she is giving evidence to invalidate the documents produced by her and she denied it. Thereafter, the learned Special Public Prosecutor sought permission of this court to put leading questions. Even in the cross-examination by the learned Special Public Prosecutor, she reiterated that she has no control over the computer system. Another suggestion is put to her that she is giving evidence to help accused no.8. But she replied that she does not know who is accused no.8. Nothing is brought out through this witness to show that she has any connection with accused no.8. Somany questions were put to her about her control over computer system, but she stated specifically that the documents were handed over to her by the accounts wing.

289. Ext.P184(f) is shown as certificate u/s.65B of the Indian Evidence Act 1872. "**Certified that the above printout is the true copy of the entries in the Computer during the period over which the computer**

(server) was used regularly to store the process information for the purpose of any activities and was regularly carried on over that period by the person having lawful control over the use of the computer (server) and such entries are contained in the computer (server) of the Arcadia Regency and made in the useful course of business and through out the material part of said period the computer (server) was operated properly and printout represented the relevant data correctly as maintained by the Arcadia Regency and the relevant data contained in the electronic record is reproduced correctly from such information fed in the computer (server) in the ordinary course of said activities, that such computer (server) is still in the custody of the Arcadia Regency and all the safe guards provided in Sec. 65 B of Evidence Act 1872 (as amended) have been taken vouching for the integrity and occurrence of the print out to be best of my knowledge and belief."

290. On a perusal of Ext.P184(f), though it contains the signature of PW168, nothing is stated in that certificate to show that PW168 was controlling the computer system of Hotel Arcadia. What is stated in Ext.P184(f) is that computer (server) is still in the custody of the Arcadia



Regency and all the safeguards provided in Section 65B of the Indian Evidence Act 1872 have been taken vouching for the integrity and occurrence of the printout to be best of my knowledge and belief. PW168 was working as Operational Manager. It is stated by her that the printouts were taken by the accounts wing. Though she stated in chief examination that she dealt with the computer system as part of business, nothing is there to suggest that the system was under her control. On the other hand, her own evidence is available to show that the system was under the control of the accounts wing. As pointed out earlier, except a suggestion, no material is available to show that she is loyal to accused. In this context, Ext.P184(f) cannot be treated as a valid certificate under Section 65B of the Indian Evidence Act.

291. Coming to the objection raised by the learned counsel for accused no.8 u/s. 162 of Cr.P.C., the prosecution replied that documents are produced in response to notice u/s.91 Cr.P.C. No such notice is produced before the court. In Ext.P184, it is stated that "we hereby furnishing the details for query as per notice u/s. 91 Cr.P.C. dated 27.07.2017". It is further stated that "we had already informed the above

details to the Circle Inspector of Police, Perumbavoor on 14.06.2017 by mail. The Circle Inspector of Police, Perumbavoor is none other than PW261, the investigating officer of this case. Had these matters been informed on 14.06.2017, the purpose of issuing notice u/s.91 of Cr.P.C on 27.07.2017 is not seen proved or explained. That mail dated 14.06.2017 is also not produced before the court. Moreover, even after getting information about these particulars through mail on 14.06.2017, they were again directed for the production of documents before the Circle Inspector of Police, Kalamassery and no explanation is offered for such a course. The documents were seized by the Circle Inspector of Police after it is produced before him. No witnesses are examined to prove this seizure. This cannot be treated as a valid seizure. The prosecution should have gone to Hotel Arcadia and effected seizure of those documents instead of issuing notice u/s.91 of Cr.P.C. As I pointed out, in Ext.P184, it is mentioned specifically that Arcadia Regency is furnishing the details for the query made in the notice. If this be the situation, the bar u/s.162 of Cr.P.C will apply squarely. The learned counsel for accused relying on the decision of Hon'ble High Court in **Rajeevan v. The Superintendent of**

Police, 2011 (1) KHC 738 argued that these documents are inadmissible as hit by Section 162 of Cr.P.C. This is a settled proposition of law. In **Kali Ram vs State of Himachal Pradesh, AIR 1973 Supreme Court 2773**, a three-judge bench in the Hon'ble Supreme Court held that, any document obtained by the investigating officer in the form of a reply from any witness like Executive Officer to prove a particular fact, then it will be a material collected u/s.161 of the Criminal Procedure Code and that is hit by Section 162 of the Criminal Procedure Code and that can be used only for the purpose of corroboration or contradiction and it cannot be used as a substantive evidence as it is inadmissible in evidence. The dictum is squarely applicable to the documents produced through PW168 as those are produced as reply to the queries paused by the investigating officer. Even if the entire documents are admitted and taken into consideration, at the most, the presence or stay of accused no.8 and PW46 in Hotel Arcadia as part of shooting can be seen.

292. The learned counsel for defence contended that Ext.P184(f) was created by the police at a later stage. According to him, nothing is mentioned in Ext.P366 mahazar about Ext.P184(f). This contention

cannot be accepted in the light of specific admission by PW168 that she subscribed signature in Ext.P184(f) at Kalamassery police station. The case of the prosecution is that accused no.1 and PW48 stayed at Angel King Tourist Home. PW198 on the strength of Ext.P334 seizure mahazar seized Ext.P335 register of Angel King Tourist Home. CW26 is the witness cited to prove the seizure. He is no more. Nobody was examined to prove these documents. Even if these documents are relied on, PW48 has not stated anything as to his stay in Angel King Tourist Home. The records would not suggest the stay of either PW48 or accused no.1 in Angel King Tourist Home. Ext.P184(b) would also not show the stay of PW48 in Hotel Arcadia. Even if the evidence of PW48 is believed that accused no.1 shared room with him, no record or oral evidence is available to show the presence of accused no.1 in the shooting location. PW48 has no case that accused no.1 was available in the shooting location. On the other hand, PW48 stated that when PW46 Mukesh is engaged in shooting, Sunil has no other duties and he used to go for other jobs. He comes to the room in between, that too occasionally. This also negatives the presence of accused no.1 in the shooting location. Above



all, except PW121, the witnesses relied on by prosecution did not mention anything that there was occasion for accused no.1 to meet and interact with accused no.8. As I discussed hereinbefore, the evidence of PW121 is purely hearsay and not corroborated by any of the witnesses who were claimed by the prosecution as the persons available in the shooting location. Even the prosecution has no consistent case about the so-called disputes or interference of goondas. It is seen that different incidents were put to PW182 about the issues claimed to be happened in the shooting location and he denied all of them. The evidence of PW261 investigating officer also lacks credibility in this regard.

293. The other piece of evidence relied on by prosecution to prove this aspect is the admission on the side of accused no.1 during examination u/s.313 Cr.P.C that he stayed at Hotel Arcadia, Alappuzha. No records are available to prove the stay of accused no.1 in Hotel Arcadia. A question is put to PW168 that whether drivers are provided with accommodation in Hotel Arcadia and she emphatically denied it. As far as the admission by an accused during the questioning u/s. 313 of Cr.P.C, the settled proposition is that it cannot be used against co-

accused. The primary purpose of Section 313 Cr.P.C is to provide an opportunity to the accused to explain incriminating circumstances and present their version of events. The co-accused has no opportunity to cross-examine the accused who had given admissions in Section 313 Cr.P.C examination. This lack of cross-examination is the key reason why the statement of one accused cannot be used against the co-accused. The answers u/s.313 Cr.P.C examination are considered as a means to allow the accused to present their defence and explain their side of story. The Hon'ble High Court of Kerala held in **Assistant Commissioner of Customs vs. Edwin Andrew Minihan and another** that even if it is assumed that there is any admission in the statement u/s.313 Cr.P.C, the same cannot be relied upon as the sole material to convict the accused. Legally, a statement given u/s.313 of Cr.P.C is not given under oath and hence cannot replace evidence. If the evidence of the prosecution leaves out an essential ingredient of the offence, that gap cannot be filled up by the statement u/s.313 Cr.P.C. The court can use the aforesaid statement to the extent it corroborates the case of the prosecution. A conviction per se cannot be based upon the statement u/s.313 Cr.P.C, as it cannot be

regarded as substantive evidence. The Hon'ble Supreme Court in **Vijendrajith Ayodhya Prasad Goel vs. State of Bombay(AIR 1953 SC 247)** and **Ashok Kumar Vs. State of Haryana [(2010) 12 SCC 350]** considered the importance of admission made by the accused during questioning u/s.313 (1)(b) and held that at the most the statement can be taken only as an aid to lend assurance to the prosecution evidence. The Hon'ble Supreme Court and High Court have considered the admissibility of the admission made by an accused in his own Section 313 Cr.P.C examination. Here, in this case, the prosecution is relying on the so-called admission of accused no.1 against accused no.8 also. The so-called admission made by accused no.1 regarding his stay at Arcadia Hotel cannot be relied on for the reasons held hereinbefore. On an analysis of entire facts, evidence and law I hold that the prosecution failed to prove the presence of accused no.1 in the shooting location of 'Sound Thoma' at Alappuzha and much less to prove the interaction or acquaintance between accused nos.1 and 8.

294. <u>Criminal conspiracy at Hotel Abad Plaza</u>

In order to wreak vengeance against PW1 and also to manage her as per the whims and fancies of accused no.8, on a day falls between 28.03.2013 and 02.04.2013, accused no.8 called accused no.1 to room no.410 of Hotel Abad Plaza, Ernakulam by evening and hatched conspiracy to capture the nude visuals and also the visuals of sexual intercourse of several other persons with PW1. Accused no.8 agreed to pay Rs.1.5 Crores as consideration for the implementation and execution of the above said act. This is the case of prosecution regarding the conspiracy allegedly entered between accused nos.1 and 8 at Hotel Abad Plaza. The learned Public Prosecutor submitted that as part of further investigation accused no.1 was interrogated in the light of Ext.P122 letter. This interrogation revealed that the conspiracy to record visuals of assault on PW1 was hatched in room no.410 of Hotel Abad Plaza between accused nos.8 and 1 during the rehearsal camp of 'Mazhavillazhakil Amma'. Further investigation was conducted to determine whether accused no.8 harboured any animosity towards PW1, whether any incidents at Hotel Abad Plaza further intensified the resentment of accused no.8 towards her, ultimately leading him to hatch criminal



conspiracy and whether accused nos.8 and 1 were present at Hotel Abad Plaza particularly in room no.410 during the rehearsal camp.

295. At the time the information about the conspiracy was received from one of the conspirators, ie. accused no.1, both accused no.8 and PW1 were abroad and not available for interrogation. Thereafter, PW1 returned and appeared before the Special Investigation Team on 03.06.2017. PW1 narrated enmity of accused no.8 towards her. Only from the disclosure of accused no.1 it is realised that the quotation was given at Hotel Abad Plaza. The learned counsel for accused no.8 raised several contentions that it is a fabricated case developed by the Special Investigation Team so as to drag accused no.8 to this case. It is also submitted that nobody except PW120 deposed anything about the presence of accused no.1 in Hotel Abad Plaza. He further contended that PW120 is a planted witness. It is also argued that only on 01.11.2017 PW120 is referred to by the investigating officer. No reference is mentioned about PW120 in any of the records prior to 01.11.2017 though it is claimed by prosecution that his statement was recorded much before that. It is also argued that the prosecution has no consistent case about

the period involved in this criminal conspiracy. Once the prosecution claimed that the conspiracy was on a day falls between 26.03.2013 and 07.04.2013, later they changed the period as from 28.03.2013 to 02.04.2013. Similar is the case regarding time also. According to his counsel, the alleged confession on the side of accused no.8 is also a fabricated one. Though witnesses were cited to prove the collection of documents by the investigating officer, those witnesses stated that the investigation team had taken all those documents much before the date of collection mentioned in this case. It is also argued that though accused no.8 attended the rehearsal camp, he did not stay in room no.410 of Hotel Abad Plaza as he was coming from his house in Aluva.

296. The evidence relating to the above allegations and contentions can be considered in the above backdrop. It is to be noted that this court had already considered the incidents particularly, threat of PW1 by accused no.8 allegedly happened in Hotel Abad Plaza during the rehearsal camp, mainly on the ground that she was behind the breakdown of his marriage with PW34. On an appreciation and evaluation of the evidence on record it is found that evidence is lacking to prove that incidents. The

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

contention of the prosecution is that those incidents aggravated the enmity of accused no.8 towards PW1 and he called accused no.1 to room no.410 of Hotel Abad Plaza and hatched conspiracy to insult her by capturing her nude videos and sexual intercourse of several persons with her. Though this court held that there is lack of evidence regarding the incidents allegedly happened during the rehearsal camp, the conspiracy allegedly took place at room no.410 has to be dealt with separately. It is to be noted that, no specific date is pointed out by the prosecution or any of the witnesses as when this conspiracy was hatched. It is to be noted further that as pointed out by learned defence counsel, the period mentioned in various records referring about this conspiracy seems to be different. But, at the very same time, it is asserted by the prosecution that accused no.8 called accused no.1 to room no.410 on a day during the rehearsal camp. The fact that rehearsal camp was conducted at Hotel Abad Plaza remains unchallenged and admitted. Since the assertion of prosecution is that the conspiracy was during the rehearsal camp, the discrepancies appearing in various records regarding the period and time need not be given much importance. The cardinal point to be decided is,

whether accused nos.1 and 8 met together at room No.410 of Hotel Abad Plaza and hatched criminal conspiracy for the commission of offence on PW1.

297. The fact that PW1, PW7, PW36, PW38, PW40, PW46, PW51, PW52, PW127 and PW179 attended the rehearsal camp is not in dispute. I have already discussed the evidence of the above persons who are cited to prove the incidents between PW1, PW179 and accused no.8. Except PW1, nobody stated about those incidents. The evidence of these witnesses regarding the presence of accused nos.1 and 8 in Hotel Abad Plaza and particularly in room no.410 is to be evaluated. As far as PW1, PW40 and PW51 are concerned, nothing is deposed about the presence of accused no.1 in Hotel Abad Plaza.

298. Coming to the evidence of PW38, it is to be noted that this witness turned hostile and the learned Public Prosecutor put leading questions to him. This witness was the office bearer of Association of Malayalam Movie Artists during 2013. He also attended the rehearsal camp at Hotel Abad Plaza. He was one of the organizers of the camp as well as the show. He had given details about the arrangements made in

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

Hotel Abad Plaza for the rehearsal camp. No question is put to him by the prosecution regarding the presence of accused no.1 in Hotel Abad Plaza. He deposed that he does not remember the number of the room allotted to accused no.8. The learned counsel for accused no.8 cross examined him. During his cross-examination at the instance of accused no.8, it is stated that there was security arrangement in Hotel Abad Plaza during the rehearsal camp. Tags were provided to the participants. If any person comes without tag, his entry was after verification and permission. He was available there throughout the rehearsal camp. He also stated that the sound for skit was recorded in the sound recording studio situated outside the rehearsal camp. Though rooms were allotted to the participants, several participants went to their home. The statement so given in cross examination are not attempted to be clarified by the prosecution.

299. Next is the evidence of PW46 Mukesh, another participant in the rehearsal camp. He was also one of the office bearers of Association of Malayalam Movie Artists during the period of the rehearsal camp. A question is put to him in his chief examination that, whether accused no.1

was his driver during 2012 to 2013 and his reply thereto was that though Sunil was his driver, he is not in a position to say about the periods specifically. He stated that he participated in the rehearsal camp at Hotel Abad Plaza. He also stated that he does not remember about the driver who was with him at the time of rehearsal camp. He further stated that he stayed at his house in Maradu during the rehearsal camp. He was cross examined by the learned counsel for accused no.8. The evidence regarding the arrangements for the rehearsal camp is brought out through him by accused no.8. He stated that by 7.30 p.m he went to his residence during the rehearsal camp. It is also deposed that the participants in and around Ernakulam also returned home. According to him, the persons who were having name tag alone were permitted to enter in the rehearsal camp. This was followed strictly. Nobody without tag was permitted to enter. He also stated that drivers have no access to the rehearsal camp. During re-examination, a question is put to this witness that whether any board was placed there showing that drivers are not permitted to enter and also the persons who are with tag alone are permitted to enter and he pleaded short of memory regarding those aspects. Not even a suggestion is put to

DISTRICT AND SESSIONS COURT ERNAKULAM

this witness in his re-examination about the entry of accused no.1 to Hotel Abad Plaza during the rehearsal camp and about the engagements of accused no.1 with him as driver during the rehearsal camp.

300. PW52 Sidhique also attended the rehearsal camp. He is a hostile witness and the learned Special Public Prosecutor put leading questions to him with permission. He was also one of the office bearers of Association of Malayalam Movie Artists during 2013. He was cross-examined by the learned counsel for accused no.8. He stated that nobody except the participants are allowed to enter in the rehearsal camp. The learned Special Public Prosecutor put questions to him as part of further cross examination with permission and one of the questions put was that the persons recommended by artists can enter into the rehearsal camp, which was answered in the negative and further submitted that nobody is permitted. Another question put to him is that artists can go out of the camp and meet persons as per their requirement and the response thereto was also in the negative with the further clarification that if anybody enter the camp, they cannot come out after a particular time. No questions or

suggestion are put to him also from the prosecution side about the entry or presence of accused no.1 in Hotel Abad Plaza.

301. PW127 was the organizer of the Association of Malayalam Movie Artists program of the year 2013. He had given the details of shows. According to him, VIP pass will be given to film personnel. He also stated that the persons who are associated with the participants will also give VIP pass. This was managed by Mazhavil Manorama, the sponsor of the show. The venue where the show was performed was a closed place. Metal sheets were placed to close the venue. He stated about the participants. According to him, the rehearsal camp was at Hotel Abad Plaza. Rooms were booked for the artists. The rent was paid by Mazhavil Manorama. Rooms were booked in the names of individuals. He was the coordinator of the show. He arranged the programmes, decided about the participants, and also about the technicians. Some of the participants came by their own vehicle. Some of the participants came with drivers. He stated that actor Mammootty came in a car drove by him. Sri Mukesh came with a driver. A question is put to this witness, whether accommodation is arranged for the drivers and he stated that no such

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

arrangements were provided with. Since the area was congested, no parking was permitted there. Another question is put to the witness that the drivers of the participants were in the hotel and he emphatically denied any such practice. It is also to put to this witness that whenever the participants have any needs, their drivers were permitted to enter for giving assistance and this was also denied by stating that there was no such practice. There was strict direction for not permitting anybody to enter the show. Nobody was permitted to enter even on the basis of request of participants. He specifically denied the suggestion put in this regard. The learned Special Public Prosecutor sought permission to put leading questions and this was objected by the learned counsel for accused no.8. It is submitted by learned counsel for accused no.8 that the witness has not deviated from his prior statement. It is also submitted that this witness is not cited to prove the aspects elicited by the learned Special Public Prosecutor in the chief examination. The witness has not stated anything against the prosecution case. The learned Special Public Prosecutor submitted that the questions asked were within his knowledge. When the witness speaks deliberately against the prosecution case, that

version cannot be accepted and hence permission is sought for. To resolve the dispute the statement of PW127 recorded u/s.161 of Cr.P.C is perused and it is seen that the matters put to this witness during chief examination were not stated or seen put to this witness as part of interrogation. The witness memorandum also does not contain the point stated by the Prosecutor. Considering the position that the prosecution themselves sought permission to put leading questions to a witness cited and examined by them and also to disown him, permission is granted to put leading questions. PW127 was cross-examined by the learned Special Public Prosecutor. He admitted the presence of accused no.8 and PW46 and other participants in Hotel Abad Plaza from 28.03.2013 to 07.04.2013. They went to Sharjah on 03.04.2013 and came back on 06.04.2013. To the question put to him about the engagement of accused no.1 with PW46, he stated that he does not know anything. His answer to another question put to this witness that on a day falls between 28.03.2013 and 02.04.2013, accused no.8 called accused no.1 to room No.410 and met together was that he does not know anything. It is also put to him that on 07.04.2013 also, accused no.1 was available near to Abad Plaza and he



denied it. He also stated about their arrival from airport to Hotel Abad Plaza. Another question was put to him that on 7th, accused no.1 met accused no.8 in Hotel Abad Plaza and his answer thereto was that he has not witnessed any such meeting. He also stated about the entrustment of Ext.P101 to the then Director General of Police as directed by accused no.8.

302. As far as the evidence of PW127 is concerned, as I pointed out, the learned Special Public Prosecutor sought permission of this court to put leading questions. This was objected to by the learned counsel for accused. This court found that there is merit in the objection. At the very same time, the learned Special Public Prosecutor was permitted to put leading questions as he asserted that he is giving evidence against the prosecution case. It is very interesting to note that the witness has not even deviated any single point than he stated before the investigating officer at the time of interrogation. Even after putting leading questions with permission the learned Special Public Prosecutor could not elicit any contradiction or omission amounting to contradiction through this witness. In the witness memorandum PW127 is cited as CW194. The

point to be proved through him is stated as **"2013-ൽ സ്റ്റേജ് പ്രോഗ്രാമായ 'മഴവില്ലഴകിൽ അമ്മ' എന്ന പരിപാടിയുടെ പ്രൊഡക്ഷൻ കൺട്രോളർ ആയിരുന്നു എന്നും പരിപാടിയുടെ റിഹേഴ്സൽ നടന്നത് എറണാകുളത്തുള്ള അബാദ് പ്ലാസ്സ ഹോട്ടലിലായിരുന്നു എന്നും ആ പരിപാടിയിൽ പങ്കെടുത്ത 8-)o പ്രതി ഉൾപ്പെടെയുള്ളവർക്ക് ഹോട്ടലിൽ മുറികൾ അലോട്ട് ചെയ്തത് സാക്ഷിയായിരുന്നു എന്നും 8-)o പ്രതി കൊടുത്ത് ഏൽപ്പിച്ച കത്ത് 8-)o പ്രതിയുടെ നിർദ്ദേശപ്രകാരം ഡി.ജി.പി-ക്ക് നൽകിയിരുന്നെന്നും മറ്റും മൊഴി പറഞ്ഞ ഭാഗവും."** All these aspects were categorically deposed to by PW127 before this court. The learned Special Public Prosecutor still sought permission to put leading questions claiming that the witness is adducing evidence against the prosecution case. We can rely on the witness memorandum to see what is the evidence to be adduced by a particular witness. The purpose of serving the documents including the witness memorandum narrating the point to be proved through a witness is for achieving fair trial. The accused has every right to know about the evidence to be adduced by a particular witness in advance. Here as mentioned, PW127 is cited to prove the matters stated above and he

deposed in tune with those matters. That being the settled law, the stand of the learned Special Public Prosecutor seeking permission to put leading questions to PW127 claiming that he adduced evidence against the prosecution case seems to be baseless and it is against the concept of fair trial.

303. Next is the evidence of PW56 and 57, the persons who handed over documents to the investigating officer with respect to the booking of rooms in Hotel Abad Plaza. The bookings were made by Malayala Manorama. PW56 produced the details showing the persons who booked the rooms. They also produced Section 65B certificate with respect to these documents. It is brought out that they were not the persons controlling the computer system from which these documents were taken out. PW57 specifically stated that the Data Process Department is vested with the custody and control of server. PW56 also stated that the Data Process Department is the custodian of Ext.P40 series and P41 series. He retrieved the documents making request to the Data Department. On an analysis of the above evidence, except the suggestions put to PW127, nothing is elicited or put to any of the witnesses mentioned above

regarding the entry or presence of accused no.1 in Hotel Abad Plaza during the rehearsal camp. Moreover, all these witnesses categorically deposed about the restricted entry to the hotel during rehearsal. They also stated that the entry of drivers were also not permitted. These witnesses further stated that the persons who are residing nearby did not occupy the rooms though rooms are booked and allotted for the participants. As far as the evidence of PW56 and PW57 regarding the production of documents, this court need not give much weightage to the proof of Section 65B certificate considering the fact that the rehearsal camp in Hotel Abad Plaza and the booking and allotment of rooms are not disputed or challenged. The one and only dispute of the learned counsel for accused no.8 is that all the participants did not make use of the accommodation. It is argued specifically that accused no.8 did not stay in room no.410. Considering the nature of allegations involved in this case it is not the stay of accused no.8 in room no.410 of Hotel Abad Plaza is matters and the relevant question is whether accused nos.1 and 8 met in room no.410 of Hotel Abad Plaza and hatched criminal conspiracy against PW1. It is also to be noted that the learned defence counsel



objected the marking of Ext.P41 series stating that no reference is therein about PW56 to show that those documents were produced by him, whereas it is shown that these documents were produced by civil police officer one Mr. Vinod. Ext.P41(a) is the relevant mahazar dated 08.07.2017. It is mentioned in the mahazar that "the computer bill showing the stay of accused no.8 in Abad Plaza from 26.03.2013 to 07.04.2013 is entrusted with Senior CPO 10054 Mr. Vinod by Rooms Divisional Manager Mr. Anoopkumar. The documents entrusted with senior civil police officer Mr. Vinod is produced in the Police Club, Aluva and that was seized by PW261 on 08.07.2017 at 3 p.m in the presence of witnesses. Further, in the last portion of Ext.P41(a) it is recorded that SCPO 10054 produced the documents and he is present. PW56 is cited as a witness to this mahazar. On a perusal of the mahazar, nothing is there to show that PW56 produced the documents before the investigating officer. Nothing is stated regarding the details of alleged entrustment of documents by PW56 to CPO Mr. Vinod. Mr. Vinod above named was not examined. Why the seizure was effected in this manner is not explained by the prosecution. Even then, considering the undisputed fact

regarding the booking and allotment of rooms I am not giving much importance to this objection.

304. Another piece of evidence relied on by the prosecution is the disclosure statement allegedly made by accused no.8 during custody and the discovery of facts with respect to room no.410 of Hotel Abad Plaza. Ext.P42 is the said mahazar in connection therewith and PW56 is one of the attestors named therein. He deposed that on 12.07.2017, police reached in room no.410 and prepared mahazar. He is a signatory to that mahazar. A question was put to this witness by the learned Special Public Prosecutor that who has shown the room and his answer was that accused no.8 along with police came there and asked to open the room and the room was opened accordingly. Again, another question was put to him as to who had shown the room. He stated that accused no.8, police and he were present there. Nothing is stated by this witness on the line that accused no.8 had shown room no.410 to the police. This aspect was challenged in cross examination. He stated that on 12.07.2017 at about 7 O'clock police came to the hotel. Media personnel and TV channel personnel were also available there. Police spent almost half an hour in

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

the hotel. They have prior information about the arrival of police. It is informed them that the police was coming for examining the rooms. Mr. Vinod and Baiju, police personnel, informed him about the arrival of police. He had been asked to open the room. He proceeded to the room and the room was already in an opened condition.

305. The averments in Ext.P42 mahazar is to be considered. Ext.P42 was prepared on 12.07.2017 at 7.20 p.m. Ext.P42(a) is the relevant portion of the extract of confession of accused no.8. It reads as follows. **"എന്നെ കൂട്ടികൊണ്ടുപോയാൽ Abad Plaza Hotel- ലെ മുറി ഞാൻ കാണിച്ചുതരാം".** Accused no.8 was arrested on 10.07.2017 and produced before the jurisdictional Magistrate on 11.07.2017. He was remanded to judicial custody on that day. The investigating officer obtained custody of accused no.8 on 12.07.2017. The prosecution case is that during this custody accused no.8 made the confession leading to the discovery of facts including the places where he hatched conspiracy with accused no.1. Room No.410 of Hotel Abad Plaza is one among such places. As mentioned hereinbefore in the argument note filed by the prosecution, it is stated in page no.314 that the interrogation of accused no.1 in the light of

Ext.P122 reveal that the conspiracy to record the visuals of sexual assault on PW1 was hatched in room no.410 of Hotel Abad Plaza between accused nos.8 and 1 during the 'Mazhavillazhakil Amma' rehearsal camp. This is mentioned in page no.314 paragraph 20. It is further stated that the information about the conspiracy was received from one of the conspirators, accused no.1. When the attention of learned Special Public Prosecutor was invited to that aspect, he stated that information received from accused no.1 was about Hotel Abad Plaza and not about room no.410. It is to be noted that accused no.1 was interrogated on 23.05.2017 by the investigating officer as part of the further investigation. No material is produced before the court to substantiate the deviated stand of the learned Special Public Prosecutor that accused no.1 mentioned about Hotel Abad Plaza only. Above all, Ext.P710 is the remand report of accused no.8 filed before the court on 11.07.2017 on his production. In page no.7 paragraph 2 of Ext.P710, it is stated that accused nos.1 and 8 hatched conspiracy in room no.410 of Hotel Abad Plaza on a day falls between 26.03.2013 and 07.04.2013. It is further stated that the hotel bills and the evidence of witnesses would show that accused no.8 stayed in

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

room no.410 during the relevant period. The investigation conducted so far also reveal the presence of accused no.1 in that place.

306. As pointed out, the socalled disclosure statement from accused no.8 was allegedly made during his custody from 12.04.2017 till 15.04.2017. This fact is already seen mentioned in Ext.P710 remand report prepared on 11.07.2017. If that be the position, the socalled disclosure claimed to be made on 12.07.2017 appears to be untenable. The conspiracy allegedly hatched at room no.410 was already known to the investigating officer atleast on 11.07.2017. So, the alleged confession on the side of accused no.8 and the preparation of Ext.P42 mahazar lacks credibility. Further, as pointed out, PW56 stated that channel people and other media personnel were present throughout the preparation of Ext.P42 mahazar. The room was already opened when the investigating team reached there along with accused no.8. It is also deposed to by PW56 that accused no.8 was appealing to the media to not report incorrect matters. In this context, Ext.D11 also assumes relevance. PW56 deposed before the court that he had produced documents allegedly seized on the strength of Ext.P41(a) mahazar. As pointed out, in Ext.P41(a),

nothing is there to show that PW56 produced the documents before the investigating officer, whereas it is shown that one civil police officer Mr. Vinod produced it before the court. It is stated in Ext.P41(a) that PW56 entrusted these documents with Mr. Vinod. Mr. Vinod is shown as the person who produced the documents before the investigating officer. The details of entrustment by PW56 to Mr Vinod is not mentioned in Ext.P41(a). During cross examination of PW56, a question was put to him that the documents were produced before the police two months prior to Ext.P41(a). He who pleaded short of memory has at the very same time stated that the documents were probably produced during July. He does not remember to whom he handed over these documents. He further stated that no mahazar or inventory was prepared at the time when he produced those documents. Ext.D11 is the relevant portion of the statement of this witness before the investigating officer u/s.161 of Cr.P.C. As per Ext.D11 it is seen that he had produced the documents to the police without certification two months back. He did not deny this statement. What he stated is that he has nothing to explain. This also stands in the way of the assertion of the learned Special Public Prosecutor

DISTRICT AND SESSIONS COURT
ERNAKULAM - 682 011

that the disclosure of accused no.1 was only with respect to Hotel Abad Plaza. Even if it is taken into account, that disclosure should have been recorded as it discloses about the place of conspiracy in the first instance. But, at the very same time, prosecution failed to prove as to how room no.410 found a place in Ext.P710 even before the socalled confession on the part of accused no.8, allegedly made on 12.07.2017. Moreover, why the investigating officer collected the documents seized on the strength of Ext.P42(a) mahazar from PW56 before the production mentioned in Ext.P42(a) is not explained. The prosecution also failed to mention as to what happened to those documents and why did not they produce it before this court. This would also show that they collected the documents after the interrogation of accused no.1 on 23.05.2017 and suppressed collection of it from the court. In Ext.C22 report filed in response to the bail application filed by accused no.8, the investigating officer on 15.07.2017 stated that on the strength of the information collected as part of further investigation and also on the basis of the statement of accused no.1 during the interrogation at District Jail Kakkanad as part of further investigation, he stated about the conspiracy between accused no.8 and

accused no.1 held at Room No.410 for capturing the visuals of PW1 and also regarding the consideration. This also negatives the contention of the prosecution that the conspiracy hatched in room no.410 of Hotel Abad Plaza is confessed by accused no.8 and that led to the discovery and consequential preparation of Ext.P42.

307. Next is the evidence of PW120. PW120 is claimed to be the friend of accused no.1. According to him, he is a native of Kozhikode. Accused no.1 is known to him. During 2009 accused no.1 along with one Mr Pradeeshkumar was running a Call Driver taxi agency. He worked there as driver. Thereafter, he had engagement with an advocate. He maintained his relationship with Sunilkumar. Mr Sunilkumar visited him occasionally while he was residing in a hotel near to High Court during his engagement with the advocate. He does not remember the year of his stay in the hotel. According to him, it might be in 2013. Accused no.1 once visited him in the hotel. He was the driver of PW46 Mr. Mukesh at that time. Accused no.1 contacted him over phone and enquired about his availability. He stated that he was in hotel. Accused no.1 came to the hotel. He informed PW120 that a programme is scheduled to conduct in

DISTRICT AND SESSIONS COURT ERNAKULAM

DISTRICT COURT
ERNAKULAM-682 011

Island. Accused no.1 also promised to arrange VIP ticket on free of cost. He agreed for that. Thereafter, both of them proceeded to Hotel Abad Plaza. PW120 had been directed to wait there. Accused no.1 went inside through reception. He waited there for a long time. Thereafter, he contacted accused no.1 over phone. Accused no.1 informed him that he will take time and asked him to go back. Accused no.1 further informed him that rehearsal of the programme scheduled in Island was being held in Hotel Abad Plaza and accordingly, he went back. The programme was scheduled during 2013 March. Some of his friends from his native place came there to watch the programme. They came four days after he had gone to Hotel Abad Plaza. They went to Island for the show. He called accused no.1. He had been asked to come to the front of the stage. One of his friends attempted to cross the barricade and he who sustained injury in that attempt was taken to hospital. It is brought out in evidence some discrepancies regarding his socalled engagement as driver with accused no.1. A suggestion is put to him that accused no.1 and Mr Pradeesh conducted the joint business during 2006 and 2007. He could not recollect the period. The defence contended that there was no ticket

for this show. It is true that there is difference between ticket and pass. But as far as a layman is concerned, we cannot expect that he should know the exact date. The fact that Sunil went inside Hotel Abad Plaza through the reception is not stated to the police. Similarly, the fact that his friends came after four days of his visit to Hotel Abad Plaza is also not stated to the police. He also admitted that he has no direct knowledge about the engagement of accused no.1 with PW46 Mukesh. A suggestion is put to the witness that he is speaking falsehood and he straight away denied it. Ext.P145 was recorded on 06.11.2017. During his Section 164 statement he stated before the Magistrate that during 2013, accused no.1 contacted him and accordingly, he went to Hotel Abad Plaza. They reached in front of Hotel Abad Plaza. Accused no.1 went inside the hotel. He contacted him as accused no.1 was not returned after pretty time. He had been asked to come back.

308. It is true that the defence cross examined PW120 and brought out that as stated before the police, he did not mention in his Section 164 Cr.P.C statement that he went to Hotel Abad Plaza during March 2013. The month is not mentioned in his evidence. But he stated that the

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

rehearsal camp was going on in Hotel Abad Plaza. The learned defence counsel argued that he is not a planted witness. He further submitted that though his statement u/s.161 of Cr.P.C is dated 29.07.2017, the statement was produced before the court only with the supplementary final report on 22.11.2017. According to him, till 01.11.2017 no reference is made about the evidence of PW120 in any of the records including remand reports and bail objection reports. It is true that his statement u/s.161 of Cr.P.C recorded on 29.07.2017 has reached the court only on 22.11.2017, after a gap of four months. Till the request of the investigating officer before the Chief Judicial Magistrate on 01.11.2017 for recording his Section 164 Cr.P.C statement, no reference is made about the evidence tendered by PW120. As far as the prosecution is concerned, the evidence of PW120 is crucial. As pointed out earlier, PW120 is the one and only witness who deposed about the presence of accused no.1 in Hotel Abad Plaza.

309. Despite the above contention, let me consider the evidence of PW120. PW120 deposed that he along with accused no.1 came near to Hotel Abad Plaza. He stood outside the hotel. Accused no.1 promised

him to arrange free ticket for the show scheduled at Wellington Island. He waited there for a long time. Accused no.1 did not come back. He contacted him. Accused no.1 asked him to go back as he will take time to come back. Except this oral testimony, no other material is available to corroborate this version. Even in the absence of corroboration, what the evidence of PW120 would show is that accused no.1 went inside Hotel Abad Plaza. It is to be noted that the rehearsal camp was going on there. The prosecution case is that accused no.1 was working as the driver of PW46 Mukesh at that time. The learned Special Public Prosecutor put suggestions to the witnesses who attended the rehearsal camp that the participants availed of the service of their drivers in case of any personal need. If this is taken into account, even if the evidence of PW120 is believed, the only consequence is that this court cannot rule out the possibility of the alleged entry of accused no.1 to Hotel Abad Plaza in connection with his engagement with PW46 as driver. The entry of accused no.1 to Hotel Abad Plaza alone is insufficient to arrive at a conclusion that accused no.1 went to room no.410, met accused no.8 and hatched criminal conspiracy between them. Almost all the Malayalam

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

movie actors attended the rehearsal camp. The participants who are made witnesses herein has deposed that the schedule of the rehearsal camp was a busy one. It is also deposed by the participants and organizers that the dubbing of the skit and other similar programmes were taken place at outside studio. They also stated that the participants including accused no.8 went to studio for dubbing. If this is taken into account, even if the evidence of PW120 that one day during 2013 March accused no.1 was seen went inside Hotel Abad Plaza by evening is incapable to prove that accused no.8 was available there at that time. The learned Special Public Prosecutor argued that the prosecution cannot adduce direct evidence to prove criminal conspiracy. According to him, court has to consider the inferences from the circumstances and facts proved before the court. As pointed out, relying on the evidence of PW120, this court can at the most taken that accused no.1 went inside Hotel Abad Plaza. Even going through the evidence adduced by the prosecution, accused no.1 was the driver of PW46 Mukesh at that time. So the entry stated by PW120 cannot be considered as the entry for the sole reason, for hatching conspiracy with accused no.8. Moreover, the evidence tendered by the

witnesses regarding the restricted entry to the participants and also regarding no entry for drivers also remain unchallenged. The participants being leading film artists, restriction for the entry of third parties may not be ruled out.

310. Another point canvassed by the prosecution is based on Ext.P284 FSL report. The contention of the prosecution is that accused no.1 posted the photo of pass for the show in the Wellington Island in his facebook. This was analysed before the State Forensic Science Lab as it is produced directly by the investigating officer in the lab. Ext.P284 is the report furnished by PW192 Dr. Sunil, Asst. Director (Documents), State Forensic Science Laboratory, Trivandrum. It is to be noted that this was not forwarded from the court. The investigating officer directly obtained the report from the Laboratory. Except the signature of PW192, nothing is there to show that the report was prepared in the State Forensic Science Laboratory. Even if this report is accepted, discarding all the above infirmities, what is seen is that on April 08, 2013 accused no.1 posted the photos of pass as well as the ongoing show. The contention of the prosecution is that he was the driver of PW46 Mukesh. PW46 is one of the

DISTRICT AND SESSIONS COURT

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

participants. So, there were chances for accused no.1 to get a pass considering his association with PW46. Therefore the pass to accused no.1 for the show cannot be considered as an evidence to prove that accused nos.1 and 8 met in room no.410 and hatched criminal conspiracy therein. The evidence of PW120 is that accused no.1 told him that he will arrange ticket for him and they together proceeded to Hotel Abad Plaza during the rehearsal camp. The evidence of PW120 is that accused no.1 went inside Hotel Abad Plaza after his assurance for arranging ticket. The attempt of accused no.1 might have been for getting the ticket also. It is also to be noted that the case of prosecution is that during the rehearsal camp, there were issues between PW1, PW179 and accused no.8. This accelerated his enmity to PW1. He decided to wreak vengeance against PW1. Accused no.8 was attending the rehearsal camp. The case of the prosecution is that accused no.1 as informed by accused no.8 came to Hotel Abad Plaza. No phone records are produced showing contact between accused nos.1 and 8. The prosecution urged that this was cunningly avoided by the accused persons. If this be the situation, how could accused no.8 contact accused no.1 immediately after the socalled

incidents and secured his presence in Hotel Abad Plaza is not explained and proved by prosecution. It is already found that there is lack of evidence regarding the meeting of accused nos.1 and 8 at the location of the movie 'Sound Thoma' and the incidents allegedly happened therein. Even the prosecution has no case that during the shooting of 'Sound Thoma', both accused nos.1 and 8 exchanged conversations. No material is available before the court to show that in between the shooting of 'Sound Thoma' and rehearsal camp at Abad Plaza, both accused nos.1 and 8 met together. If this be the situation, how could accused no.8 secure the presence of accused no.1 immediately after the incidents allegedly happened during the rehearsal camp should have been established with concrete evidence. The entry of accused no.1 in the rehearsal camp as deposed to by PW120 is to be analyzed in the above backgrounds.

311. The evidence of the investigating officer in this aspect is to be analysed. PW261 deposed that he examined Ext.P40 series and P41 series on 24.05.2017 as per case diary. He also stated that he collected these documents by authorizing his subordinates during May last or June. According to him, he authorized senior civil police officer Mr. Vinod for

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

collecting these documents. A question is put to him by the learned defence counsel that whether any witnesses are available to show that he verified the documents on 24.05.2017 at Abad Plaza. PW261 stated that though the witnesses did not mention anything about the date of verification, they stated about the verification. Except this statement of witnesses, nothing is available to substantiate the verification of documents. Ext.D11 was put to the notice of PW261. He claimed that Ext.D11 statement was with respect to the verification of documents on 24.05.2017 at Abad Plaza. He also stated that the details of room no.410 allotted to accused no.8 were also included in the documents collected unofficially. The learned defense counsel put a definite suggestion that they collected the details of the room allotted in favour of accused no.8 on verification of documents and suppressing this aspect, the prosecution claimed that they proceeded to Abad Plaza on 24.05.2017 after interrogating accused no.1 on 23.05.2017. PW261 clarified that he verified the documents after the interrogation of accused no.1 on 23.05.2017. The learned counsel for accused no.8 had put forward a case that the investigating officer after verifying the records from Abad Plaza

manipulated the case against accused no.8 on the basis of the details of the room allotted to him. PW261 denied it categorically. At the very same time, the evidence of PW261 is that prior to the seizure of these documents officially, immediately after the interrogation of accused no.1 on 23.05.2017, they went to Abad Plaza and verified the documents. He also stated that he collected the details of room no.410 allotted in favor of accused no.8 in connection with the rehearsal camp held therein. If this be the situation, it can be concluded without any doubt that the prosecution has clear knowledge about room no.410. Similarly, as pointed out, the case of the prosecution is that they got information about the alleged criminal conspiracy hatched in room no.410 after the interrogation of accused no.1 on 23.05.2017. So, the so-called disclosure statement mentioned in Ext.P42 mahazar lost its significance and admissibility. The investigating officer had clear knowledge about the criminal conspiracy allegedly hatched at room no.410 after the interrogation of accused no.1. That disclosure statement or anything in that regard is not produced before this court. Instead of producing any such materials, the

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

investigating officer prepared Ext.P42 mahazar in the presence of Press so as to show and appear it was disclosed by accused no.8.

312. Further, PW56 reposed before the court that he had been directed by the police officials to keep open the room before the arrival of the investigation team with accused no.8 in Abad Plaza. This also negatives the alleged disclosure and preparation of Ext.P42 on the strength of the disclosure statement made by accused no.8. The learned defence counsel also cross-examined PW261 regarding the discrepancies which appear in different documents about the time and the date of alleged conspiracy hatched in room no.410 of Abad Plaza and also regarding the arrival of accused no.1 to Abad Plaza. PW261 admitted this fact in court and claimed that all these might be a clerical mistake. This aspect was already considered while dealing with the evidence of PW120 Sujith. As I pointed out, the one and only evidence available before this court is the oral testimony of PW120. He was interrogated on 29.09.2017, that is, after the preparation of Ext.P42. Similarly, it is claimed that PW120 is invited to Abad Plaza by accused no.1. PW261 did not mention anything leading to the tracing out of PW120. PW120 has not stated

about the time when he went to Abad Plaza along with accused no.1. PW261 admitted that what PW120 stated is as 2013 March and nothing more. PW261 also admitted that in Ext.P710 remand report and final report, the time of conspiracy is stated as in between 19 hours and 21 hours, whereas in Ext.C22 it is stated as one hour in the morning. It is also brought out that nobody from Abad Plaza is interrogated to prove the alleged meeting. A suggestion is put to this witness that the time of conspiracy stated in Ext. P710 was later excluded from Ext.C22 filed after four days of filing of Ext.P710. According to the defence, the investigating team realized that no criminal conspiracy can be taken place during the time mentioned in Ext.P710. PW261 clarified that it is only a clerical mistake. It is also brought out that the rooms were booked by Malayala Manorama TV. Nobody from Malayala Manorama TV was interrogated about this. It is also to be noted that though the statement of PW120 produced before the court contains the date of recording as 29.07.2017, it contains the signature of PW261 with date as 19.07.2017. The learned counsel for accused no.8 argued that his statement was neither recorded on 19.07.2017 nor on 29.07.2017. According to him, reference about this

DISTRICT AND SESSIONS COURT

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

witness was came first on 01.11.2017 when the request of the investigating officer for recording his Section 164 statement was filed before the Chief Judicial Magistrate. PW261 explained that the date mentioned as 19.07.2017 in statement u/s.161 of Cr.P.C is a clerical mistake. But, at the very same time, he has not given any explanation regarding the non-reaching of the statement in court till 22.11.2017. It is also brought out from PW261 that the case of PW120 is that he worked along with accused no.1 and CW165 Pradeesh. PW261 deposed that though he interrogated CW165, nothing is asked about PW120. The definite case of accused no.8 is that PW120 is a witness fabricated by the investigating officer at a belated stage. The statement u/s.161 of Cr.P.C of CW165 Pradeesh was recorded on 19.02.2017. He stated that both himself and accused no.1 worked together as call drivers. PW120 claimed that he worked in a firm run jointly by accused no.1 and CW165 Pradeesh Kumar. Had this been the situation, the investigating officer ought to have been interrogated CW165 after the introduction of PW120 atleast to prove the relationship between accused no.1 and PW120. This is not done. On an anxious consideration of the evidence of PW120 evaluated above I conclude that

it would show at the most regarding the entry of accused no.1 to Hotel Abad Plaza and it is insufficient not even to suggest that he proceeded to room no.410, met accused no.8 and hatched criminal conspiracy. Accordingly, the allegation of criminal conspiracy between accused no.1 and accused no.8 at room no.410 in Hotel Abad Plaza for the physical, mental and sexual assault of PW1 is found against the prosecution.

313. **Conspiracy between accused nos.1 and 8 in the meeting held at the parking ground of Hotel Joys Palace, Thrissur:-**

The prosecution case is that after the conspiracy allegedly hatched between accused nos.1 and 8 at Hotel Abad Plaza, Ernakulam, their plan could not be materialized as accused no.1 absconded as a result of his conviction and involvement in criminal cases. He surrendered before the Judicial First Class Magistrate Court, Kolencherry on 20.07.2015 and was in judicial custody till 15.09.2015. The father of PW1 expired on 24.09.2015, who accompanied PW1 throughout the shooting locations and PW1 was not available conveniently for the execution of the conspiracy hatched between accused nos.1 and 8. Accused no.1 was waiting for a convenient and suitable time for its execution. On

DISTRICT AND SESSIONS COURT

01.11.2015, accused nos.1 and 8 met together at the parking ground of Hotel Joys Palace, Thrissur. Accused no.8 advanced Rs.10,000/- to accused no.1 and also agreed to pay Rs.1 lakh more. On 02.11.2015, accused no.8 had given Rs.1 lakh to accused no.1. Accused no.1 on that day itself deposited Rs.1 lakh in the account of his mother. The learned Special Public Prosecutor advanced argument and asserted that during the initial interrogation based on Ext.P122 letter, accused no.1 disclosed that he and accused no.8 met at Joys Palace parking ground one year before the assault on PW1. The Special Public Prosecutor further asserted that accused no.1 also stated that he entered his motorcycle number and phone number in the register maintained by the gatekeeper. He also disclosed that he entered in a BMW car bearing registration no.KL-07-DQ 5445 where accused no.8 was seated, received an amount of Rs.10,000/- and contacted PW191 four times over phone on that day. It is argued that the investigation based on the disclosure of accused no.1 along with his further interrogation confirmed that on 01.11.2015 at Joys Palace parking ground, he met accused no.8 inside his BMW car bearing registration no.KL-07-DQ 5445. Accused no.8 paid Rs.10,000/- to

accused no.1. The next day accused no.8 paid Rs.1 lakh to accused no.1. Even though the place and time of this transaction were not disclosed by accused no.1, during the second phase of further investigation, a cash withdrawal of Rs.1 lakh made on 31.10.2015 as per Ext.P477 cheque from the account of Grand Productions owned by accused no.8, as evidenced by Ext.P476 series is revealed. It is also confirmed by evidence that Rs.1 lakh was deposited on 02.11.2015 into the account of PW129, mother of accused no.1. Relying on Ext.P713(a) the learned Special Public Prosecutor asserted that accused no.8 has shown the place where the car was parked at Joys Palace parking ground and Ext.P713 was prepared. Though no material object was recovered, discovery of new fact which was not known to the investigating officer till that time was made through the disclosure statement of accused no.8. The learned Special Public Prosecutor further urged that Section 27 discovery is applicable to discovery of a new fact yet not known to the investigating officer even if no material object is discovered. He also relied on the evidence of PW220 and PW101, bank officials and also the evidence of PW129 to prove the withdrawal and deposit of the amount mentioned hereinbefore.

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

314. In addition to the above assertions, the learned Special Public Prosecutor disputed the contentions advanced by the learned counsel for accused no.8 challenging the evidence relied on by the prosecution to prove the alleged meeting of accused nos.1 and 8 at Hotel Joys Palace. The learned Special Public Prosecutor also relied on the alleged admissions claimed to be made by accused no.1 during his examination u/s.313(1)(b) of Cr.P.C. According to him, the admissions made by accused no.1 considerably reduced the burden of the prosecution in proving the above facts. It is also contended that all the accused are equal before law and the VIP status of a celebrity accused has no special weight under Indian law. All these assertions are stated in page nos.339 to 346 of argument note furnished by the learned Special Public Prosecutor.

315. The learned counsel for accused no.8 contended that except Ext.P713(a), alleged confession made by accused no.8, no evidence is adduced by the prosecution to prove the socalled meeting at the parking ground of Hotel Joys Palace. According to them, accused no.8 is a popular cine artist. It is very difficult to believe that a popular artist like accused no.8 selected the parking ground of a well known hotel to wait in

his car to meet accused no.1 and handed over money to him. It is further contended that nobody from Hotel Joys Palace was examined to prove this aspect. According to the learned counsel, it is brought out in evidence that registers showing the entry of vehicles were available and inspite of that nothing is produced to substantiate the contention of the prosecution that both the motorbike and BMW car of accused no.8 entered the parking ground of Hotel Joys Palace, parked there and he paid money to accused no.1 and accordingly, both of them renewed the criminal conspiracy hatched earlier. It is also argued that the nature of the allegations and the means used to substantiate the same itself would show the falsity of the prosecution case.

316. The evidence adduced by the prosecution to prove the alleged conspiracy at Hotel Joys Palace are the oral testimony of PW129, mother of accused no.1, PW220 bank official along with Ext.P100 R.C. particulars of BMW car, Ext.P122 letter, Ext.P710 remand report, Ext.P713 mahazar along with Ext.P713(a) disclosure statement, Ext.P476 series documents pertaining to current account number of Grand Productions, Ext.P477 cheque and Ext.P98 series statement of accounts

pertaining to the account of PW129. Apart from the documents mentioned in the argument note of prosecution, Exts.P322, 322(a) to (c), Ext.P323, Ext.P323(a) and (b), Ext.P324, Ext.P325 documents are also relied on by the prosecution. Exts.P187 and P612 are the statements of PW129 recorded u/s.164 of Cr.P.C. Similarly, the evidence of PW73 Mr. Rasheed along with his statement u/s.164 marked as Ext.P120 is also available before the court. Further, the evidence of PW191 and PW182 are also to be looked into along with the evidence of PW196, PW201 and PW261, the investigating officer.

317. The evidence relied on by the prosecution be considered in the light of the contentions advanced by both sides. The prosecution had given much reliance to Ext.P713 mahazar prepared consequent to Ext.P713(a) disclosure statement allegedly given by accused no.8. It is undisputed that no witnesses were cited or examined to prove the presence of accused nos.1 and 8 and also the entry of either motorbike or BMW car to the parking ground of Hotel Joys Palace, Thrissur. Similarly, no CCTV footages are also produced.

318. Let us examine Ext.P713 mahazar. Ext.P713 was prepared on 13.03.2017 at 11.15 a.m in the presence of witnesses by PW261. The relevant portion of extract of confession stated in Ext.P713 is:- **"എന്നെ കൂട്ടികൊണ്ട് പോയാൽ തൃശ്ശൂർ JOY's Palace Hotel-ലെ parking area-യും car park ചെയ്ത സ്ഥലവും കാണിച്ച് തരാം".** This is marked as Ext.P713(a). As I extracted hereinbefore, the learned Special Public Prosecutor argued and stated in the argument note, page no.339, specifically that based on Ext.P122 letter, the investigating officer conducted investigation. Accused no.1 disclosed that he and accused no.8 met at the parking ground of Hotel Joys Palace, Thrissur one year before the assault on PW1. He also confessed about the entry into BMW car bearing registration no.KL-07-DQ 5445. It is further stated in the argument note that the investigation based on his disclosure along with further interrogation of accused no.1 confirmed that on 01.11.2015 at the parking ground of Hotel Joys Palace, accused no.1 met accused no.8 inside his BMW car and the latter paid Rs.10,000/- to accused no.1. The interrogation of accused no.1 was on 23.05.2017. There is no dispute to the position that no such confession is available or produced before the court by prosecution. Not even a single

DISTRICT AND SESSIONS COURT ERNAKULAM

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

piece of paper is produced to substantiate the assertion that accused no.1 made confession. The learned Special Public Prosecutor submitted that since accused no.1 was in judicial custody, the investigating officer who interrogated him with the permission of the court was not expected to record his confession as he was not in police custody. The learned Special Public Prosecutor had further gone to the extent that since the investigating officer could not record the confession of accused no.1 and effected the recovery, they proceeded to the scene of occurrence along with accused no.8 on the strength of Ext.P713(a) confession and prepared Ext.P713 on 13.07.2017. This court is really astonished on hearing this assertion, which is against the basic principle of law enunciated u/s.27 of the Indian Evidence Act. Section 27 of the Indian Evidence Act specifically dealt with discovery of fact in consequence of information received from a person accused of any offence in the custody of a police officer. So much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. This Section states about the discovery of a fact. Discovery means the

fact which was not known to the investigating officer till the disclosure of the accused person.

319. Here, the case of the prosecution itself cut at the root of Ext.P713(a) and Ext.P713. The learned Special Public Prosecutor submitted that Ext.P713(a) amounts to discovery of new fact which was not known to the investigating officer till discovery was made by him through Ext.P713(a) disclosure statement of accused no.8. The learned Special Public Prosecutor himself stated that accused no.1 had made confession to the investigating officer about the criminal conspiracy hatched at Joys Palace by sitting inside the BMW car bearing registration no.KL-07-DQ 5445 belongs to accused no.8. If this be the situation, that fact was known to the investigating officer at the time of the alleged confession of accused no.1. The learned Special Public Prosecutor also stated that the investigating officer conducted investigation about the confession of accused no.1 and confirmed about the meeting. If this be the situation, why should they proceeded to Hotel Joys Palace along with accused no.8 and prepared Ext.P713 is not seen explained.

DISTRICT AND SESSIONS COURT ERNAKULAM

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

320. Another aspect to be noted is that in Ext.P713 it is stated that accused no.8 was arrested on 10.07.2017 and interrogated. The prosecution stated in Ext.P713 that Ext.P713(a) was given on 10.07.2017. Ext.P710 is the remand report of accused no.8 dated 11.07.2017. Nothing is mentioned in Ext.P710 about the alleged disclosure of accused no.8 about the meeting at Hotel Joys Palace, Thrissur. On the other hand, in page no.12 of Ext.P710 it is stated that about one year prior to the crime involved in this case, accused no.1 contacted PW191, the driver of accused no.8 over phone and asked for permission to meet accused no.8. As instructed, accused no.1 came to Hotel Joys Palace, Thrissur in his motorbike. He entered his name along with phone number in the register kept in the gate of Hotel Joys Palace. He also put his signature in that register. The car of accused no.8 was parked inside the hotel. accused no.8 was sitting in the right side seat of BMW car. Accused no.1 also entered in this car and sat with him. Accused no.1 demanded Rs.10,000/- as advance and accordingly, accused no.8 gave him ten notes of Rs.1,000/-. Further accused no.1, on that day itself contacted PW191, the driver of accused no.8 four times. It is mentioned specifically that this

fact was confessed by accused no.1. Nothing is mentioned in Ext.P710 about the confession made by accused no.8 as stated in Ext.P713 mahazar. This also looses the evidentiary value of Ext.P713(a).

321. Another aspect to be noted is that Ext.P343(a) is the notice issued by PW261 on 30.06.2017 authorising PW201 Muhammed Rias to conduct investigation at Kinattingal Tennis Club, Thrissur, Merlin International Hotel, Thrissur and Santhigiri College, Thodupuzha and record the statements of relevant witnesses and seize documents and material objects in connection with Nedumbassery police station Crime No.297/2017. It is to be noted that PW201 was not authorised vide Ext.P343(a) to conduct investigation at Hotel Joys Palace, Thrissur. The evidence of PW201 is as follows. During 2017 he was working as Circle Inspector of Police, Angamaly. He was a member of the Special Investigation Team. He had given the details of the investigation conducted by him. He collected the CCTV visuals of the journey details of MO9 from Toll Plaza, Paliyekkara. He also conducted search at the place where accused nos.5 and 6 hided themselves and that was on 01.03.2017. Further, on 03.07.2017 he seized MO84 phone produced by

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

PW59 on the strength of Ext.P340 mahazar. He also recorded the statements of PW59 and PW60. He prepared Ext.P341 mahazar at Kinattingal Tennis Club, Thrissur. He recorded the statement of the witnesses attached to Kinattingal Tennis Club. He also conducted investigation at Merlin International Hotel, Thrissur and prepared Ext.P342 and 343 mahazars. During cross examination, he stated that PW261 had given directions to him about the investigation. According to him, PW261 gave Ext.P343(a) authorization to him for the first time on 30.06.2017. He admitted that there was no direction in Ext.P343(a) to conduct investigation at Hotel Joys Palace, Thrissur. The learned defence counsel urged that the alleged meeting at Joys Palace was fabricated by the investigating officer at at a later stage after verifying the bank accounts of PW129 and that is why the so-called conspiracy now alleged by the prosecution is absent in Ext.P710. Non authorisation of PW201 to conduct investigation at Hotel Joys Palace, inspite of the authorisation to conduct investigation at all other places at Thrissur allegedly involved in this case is highlighted to strengthen the argument that the alleged

meeting of accused nos.1 and 8 at Hotel Joys Palace was fabricated after verifying the bank accounts of PW129.

322. PW261 admitted that PW201 was authorized to conduct investigation at Thrissur. A question was put to him by defence, whether written direction was given to PW201 to conduct investigation in the required places. According to PW261, he had given both oral and written directions to PW201. PW261 stated that on 11.07.2017, PW201 filed a report after the investigation on the strength of Ext.P343(a). No such report is produced before the court. Another question is put to him that no material is available to show that PW201 conducted investigation at Joys Palace. The investigating officer PW261 tried to give evidence based on a particular word **"മറ്റും"** "etc." appear in his statement u/s.161 of Cr.P.C that PW201 stated therein about the investigation conducted at Joys Palace. The statement of PW201 were recorded on 11.03.2017 and 21.11.2017 by PW202 and PW261 respectively. In the statement recorded by PW261, PW201 stated that as directed by the investigating officer he conducted investigation at Kinattingal Tennis Club, Thrissur, Merlin International Hotel, Thrissur and Santhigiri College, Thodupuzha,

recorded the statement of witnesses and effected seizure etc. and filed report before the investigating officer. Nothing is mentioned about any investigation at Hotel Joys Palace, Thrissur. He had given the details of the places where he conducted investigation. The term "മറ്റും" is seen stated as a usage. The investigating officer stated that this particular term includes the places other than the places mentioned by PW201 where he conducted investigation. The said explanation of P261 is not acceptable and such an explanation was given with ulterior motive and appears far from truth. CCTV footage was not seen collected from Hotel Joys Palace, Thrissur and no convincing explanation is offered for the same.

323. The case of the prosecution is that on the strength of Ext.P122 letter, accused no.1 was interrogated and he made disclosure about his meeting with accused no.8 on 23.05.2017. The disclosure was after a gap of almost one year and eight months. No attempts were made by the investigating officer to collect the CCTV footage from the hotel where the meeting was taken place. No investigation is also done about the availability of such footage. Similarly, it is the case of the prosecution that accused no.1 made disclosure that he entered his name along with mobile

number in the register kept at the gate of Hotel Joys Palace. That register is also not produced before the court. No investigation is also seen conducted with respect to the availability of that register. No witnesses were interrogated about its availability or otherwise. The investigating officer stated without any seriousness that though he conducted investigation, the record was not available. The defence had taken a contention that there is no practice of getting the name and signature of persons entering the hotel in a register kept at the gate as claimed by the prosecution. They further argued that PW261 is making falsehood to support the matters allegedly stated by accused no.1 against accused no.8.

324. It is to be noted that the one and only witness cited from Hotel Joys Palace is CW208. He was not examined. He is an attestor to Ext.P713 mahazar. His statement u/s.161 Cr.P.C was recorded by PW261 on 13.07.2017. He was working in Hotel Joys Palace as security officer three years prior to 13.07.2017. The learned defence counsel put a definite question to PW261 that though he interrogated CW208 on 13.07.2017, nothing is put to him about the availability of register kept at the gate. The learned counsel for defence submitted that no questions were put as

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

any such register is absent. The investigating officer replied that he came to know earlier that there was no such register. But the interesting aspect is that PW261 has not deposed as to what kind of investigation is conducted. On the suggestion of the defence counsel that he is giving falsehood, he made it clear that he did not conduct any investigation about the register. It is to be noted that, as I pointed out, PW261 further stated that he authorized PW201 to conduct investigation about these matters and he filed report before the court after investigation. As mentioned hereinbefore, no such report is available before this court. Above all, no authorization is given to PW201 for conducting investigation at Hotel Joys Palace on the strength of Ext.P343(a). I have already stated about the attempt of PW261 to convince the court relying on one specific claim in the statement u/s.161 of Cr.P.C of PW201 that he conducted investigation at Hotel Joys Palace. Why the report filed by PW201 regarding the investigation conducted about the register at Hotel Joys Palace is not produced remains unexplained.

325. Exts.P713 and P713(a) can be analysed in the light of the decision of the Hon'ble Supreme Court in **Ramanand @ Nandlal Bharti vs The State of Uttar Pradesh.** It is held by Hon'ble Supreme Court that:

> **If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and**



volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

326. The Hon'ble High Court of Kerala in the decision in **Nazeer vs. State of Kerala** reported in **2025 KHC 1746**, relying on the decision of Hon'ble Supreme Court in **Ramanand @ Nandlal Bharti vs The State of Uttar Pradesh** held that the pre conditions held by the Hon'ble Supreme Court in the decision mentioned supra must be satisfied for a recovery to be admissible u/s.27 of the Indian Evidence Act. It seems that those pre-conditions have not been followed in the recovery referred to in Ext.P713. Though two witnesses were shown in Ext.P713 mahazar, nobody was

examined atleast to prove its preparation. Similarly, prosecution has no case that the alleged disclosure was in the presence of the named witnesses and complied with the procedures prescribed by the Hon'ble Supreme Court while preparing the above mahazar.

327. Prosecution relied on the evidence of PW129 Sobhana along with a bank official to prove that accused no.8 paid Rs.1 lakh to accused no.1 and he in-turn deposited that amount in the account of his mother on 02.11.2015. The case of the prosecution is that on 01.11.2015, accused no.8 paid Rs.10,000/- to accused no.1 at Hotel Joys Palace and agreed to pay Rs.1 lakh more to him and the further amount agreed to be paid was paid on 02.11.2015. Except the allegation regarding payment, details such as mode of payment, place of payment, time of payment are not stated by the prosecution. The prosecution alleges that those details were exclusively within the knowledge of accused no.8 and are not traced out. As pointed out, earlier the meeting at Hotel Joys Palace was claimed to be disclosed by accused no.1 and that was on 01.11.2015. It was also pointed out earlier that the alleged confession of accused no.1 is though mentioned in Ext.P713, nothing is stated therein about the payment of

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

Rs.1 lakh on 02.11.2015. The definite contention of the defence is that the investigating officer verified the account of PW129. On verification of the account statement he came across with a deposit of Rs.1 lakh on 02.11.2015 and on the basis, fabricated the allegation about the payment of Rs.1 lakh on 02.11.2015 and the meeting of accused nos.1 and 8 and payment of Rs.10,000/- on 01.11.2015.

328. PW129, the mother of accused no.1 deposed that she is maintaining account with a bank in Perumbavoor. She does not know the name of the bank. She opened the account eight years back in connection with Kudumbasree. She used to deposit money in that account as and when she obtained money in chitti transactions. Rs.50,000/- is the highest amount she received as on today. Ext.P98 series statement of accounts, account opening form, withdrawal slip, pay-in-slips, cheque leaf and section 65B certificate proved through PW101 are shown to the witness. Receipt dated 02.11.2015 attached in Ext.P98 series is shown to her. She denied her signature as well as handwriting therein. According to her, she does not know anything about that receipt. Rs.1 lakh in figures is written in that receipt. She does not know about the purpose of the

receipt. She also stated that she does not know as to who used it. She has no knowledge about the amount stated in the receipt. Credit slip dated 05.05.2016 attached in Ext.P98 series was shown to the witness. She stated that she deposited Rs.49,000/- in her account on the strength of that credit slip and that amount was obtained from chitti. Similarly, loose cheque leaf dated 27.06.2016 is also shown to the witness. She stated that she had withdrawn Rs.50,000/- using this slip. She also admitted about the withdrawal slip dated 02.08.2016. She admitted the signature appearing on the back side of cheque as well as withdrawal slip as of her. The witness was cross-examined with respect to this particular aspect. During cross examination, she admitted that she is holding account in Mudakkuzha Service Co-operative Bank in addition to the account in Union Bank, Perumbavoor. She stated that on 25.07.2017, PW261 recorded her statement. Ext.D30 is marked through this witness. Ext.D30 is the statement of the witness to the investigating officer that there was no bank transactions exceeding Rs.10,000/- for the last three months. This statement was given to the investigating officer on 25.02.2017. Similarly, source of her deposits in bank are challenged and omissions are brought



out through her. It is also brought out that she has not stated anything about the account and transaction details while giving Section 164 Cr.P.C statement before the Magistrate. Ext.P187 is the statement of PW129 recorded u/s.164 Cr.P.C by PW171. Ext.P187 was recorded on 19.07.2017. She stated that before recording Ext.P187, she was interrogated by the police on 15.07.2017. Nothing is stated to the Magistrate by PW129 about the matters in connection with the deposit of Rs.1 lakh in her account on 02.11.2015. Ext.P612 is her another Section 164 Cr.P.C statement recorded on 24.01.2022 as part of second further investigation. She had not stated anything about the bank transactions at that time also.

329. Next is the testimony of PW101 bank official, who produced Ext.P98 series. The bank account details are from 08.01.2015 to 17.07.2017 with respect to the account of PW129. It includes the pay-in-slips dated 05.05.2016 for Rs.49,000/- and 02.11.2015 for Rs.1 lakh and the deposit of Rs.1 lakh was by cash. During cross examination, it is brought out that her statement was recorded by police on two occasions. One by PW196 Vishal Johnson and another by PW261 Baiju Poulose. The details of deposits and withdrawals are brought out in cross examination.

She stated that pay-in-slips will not give the details of person who deposited the amount. Based on the evidence of PW129 and PW101 along with Ext.P98 series, prosecution urged that accused no.8 paid Rs.1 lakh to accused no.1 on 02.11.2015 and accused no.1 deposited that amount on that day itself to the account of PW129. They relied on the pay-in-slip dated 02.11.2015 included in Ext.P98 series. It is to be noted that the handwriting and other particulars of Ext.P98 series are not proved in this court. PW129 denied the handwriting in the pay-in-slip. It is to be noted that this particular pay-in-slip does not contain any signature of the depositor. PW129 admitted her handwriting in pay-in-slip dated 05.05.2016 and that also does not contain any signature.

330. The evidence of PW196 who seized Ext.P98 series is to be analysed. PW196 was working as Circle Inspector of Police Aluva. He conducted the initial investigation of this case. Thereafter, he was authorized by PW261 to conduct investigation in his capacity as the member of the Special Investigation Team. According to him, on 17.07.2017 as directed by PW261, he collected Ext.P98 series on the strength of Ext.P322 mahazar. Though PW101 deposed that her

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

statement was recorded by PW196, he denied it and according to him, he has not recorded the statement of PW101 and PW129.

331. The evidence of PW261 investigating officer about these aspects is also to be looked into. It is brought out that he got information from accused no.1 about the deposit of Rs.1 lakh in the account of PW129. He stated that Ext.P710 remand report is silent about the payment of Rs.1 lakh and admitted that position. The case of the prosecution is that accused no.1 disclosed all the details to PW121, PW135, PW164 and PW176. The fact of receipt of advance is not stated to them. PW261 clarified that there are documents showing the deposit of money received as advance. A suggestion is put to this witness that these allegations are fabricated after getting information about the deposit of money to the account of PW129 on 02.11.2015, but denied. He admitted that the handwriting and signature of PW129 in Ext.P98 series was not sent for FSL examination and those documents were not shown to PW129. He also admitted that whether the handwriting in the pay-in-slip dated 02.11.2015 belongs to accused no.1 Sunil is also not investigated. According to PW261, accused no.1 in the first instance confessed about

the receipt of Rs.10,000/- from accused no.8 and information about the transaction of Rs.1 lakh was got later. The details of Ext.P98 series regarding deposits and withdrawals are put to him. It is also brought out from him that PW129 was interrogated before her Section 164 Cr.P.C statement recorded on 19.07.2017 and he stated that it was not recorded. According to him, since PW129 gave the details, request was given for recording her statement under Section 164 Cr.P.C. A question is put to this witness that the request for recording the statement u/s.164 Cr.P.C of PW129 was given on 15.07.2017 and that was before the collection of Ext.P98 series on 17.07.2017. PW261 stated that before the collection of documents they verified the statement obtained as per the request on 19.06.2017. But, no records are produced to prove the said verification.

332. On an analysis of the evidence it is to be noted that PW129 did not mention anything about the bank transactions during her 164 Cr.P.C statement. What PW261 stated is that she was interrogated about it and thereupon she gave the details. According to PW261, that prompted him to file request for recording her 164 Cr.P.C statement. It is to be noted that request for recording 164 Cr.P.C statement of PW129

AND SESSIONS COURT ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

was given on 15.07.2017. The account details were collected by PW196 only on 17.07.2017. If this be the situation, it is difficult to believe that PW261 interrogated PW129 referring the details of deposits and withdrawals as evidenced by Ext.P98 series. He had gone to the extent of deposing that he filed the request for recording her statement u/s.164 Cr.P.C. for the reason that she gave the details on interrogation. But in the 164 Cr.P.C statement the reason for its recording is shown as chance for deviating from the previous statement. In order to fill up the lacuna PW261 deposed that before collecting Ext.P98 series by PW196 the statement of accounts were collected and verified it. No such document to substantiate this contention are produced or available in this court. Details of the person verified the records and the other required details are also not brought to the notice of the court.

333. The prosecution has alleged that information about the deposit in the account of PW129 was received from accused no.1. However, as pointed out, no such confession is produced in this court. In this context, Ext.D30 assumes relevance. In her statement dated 25.02.2017, PW129 stated that no transactions exceeding Rs.10,000/- was

effected in her account for the last three months. It is true that the deposit of Rs.1 lakh in her account was on 02.11.2015.

334. The stand of the accused no.8 is that after verification of Ext.P98 series account details, the investigating officer fabricated allegations based on the deposit on 02.11.2015. In Ext.P710 dated 11.07.2017 the investigating officer stated about the meeting of accused nos.1 and 8 at Hotel Joys Palace, Thrissur on 01.11.2016. But nothing is stated about the deposit in the account of PW129 on 02.11.2015. The investigating officer made a loose statement that he got information about this particular deposit was received only later. The details of the socalled information is not produced. Similarly, the place and time of handing over of the money is also not made available in this court. These are the available evidence at the time of filing the final report on 22.11.2017. Thereafter, during the second further investigation held after the disclosure of PW222, prosecution conducted search at the office of Grand Productions of accused no.8 for collecting the gadgets containing the visuals of PW1. This court had already narrated about the details of seizure effected at Grand Productions during this search. The prosecution

cited PW220 and produced Ext.P476 series bank account details of Grand Productions maintained in Federal Bank, Ernakulam North Branch. Ext.P477 is the bearer cheque dated 31.10.2015 for Rs.1 lakh. PW182 is the signatory in the cheque. Relying on Ext.P477, prosecution attempted to prove that Rs.1 lakh was withdrawn from the account of Grand Productions on 31.10.2015 and that was given to accused no.1 by accused no.8 on 02.11.2015 and accused no.1 in turn deposited it in the account of PW129.

335. PW261 deposed that the details of the transaction dated 02.11.2015 are not stated. The learned defence counsel put questions to him relying on the entries of Ext.P475 series. On 07.07.2015 there was a withdrawal of Rs.1 lakh. Similarly, Rs.90,000/- was withdrawn on 05.08.2015. On 25.09.2015 Rs.1,20,000/- was withdrawn. On 30.12.2015 again Rs.1,20,000/- was withdrawn. On 29.02.2016 Rs.85,000/-, on 14.03.2016 Rs.5 lakhs, on 22.03.2016 again Rs.5 lakhs were withdrawn. The details of withdrawals are put to PW261 and he admitted. Just like Ext.P804 series, without considering the transactions mentioned before, PW261 had considered only one particular transaction effected on

31.10.2015. On a perusal of Ext.P476 series, cash transactions are seen taken place periodically. No investigation is conducted with respect to those transactions. Similarly, no investigation is conducted with respect to the transaction dated 31.10.2015 also. In page number 347 of the argument note, the Prosecutor highlighted the testimony of PW220 to prove the cash transaction dated 31.10.2015. What PW220 stated is that he produced Ext.P476 series and P477 cheque. Similarly, prosecution also relied on the evidence of PW129 that she does not know anything about the receipt dated 02.11.2015 in her account. The prosecution canvassed her said statement and submitted that the deposit of Rs.1 lakh on 02.11.2015 was not known to her and accused no.1 made that deposit after receiving money from accused no.8. There is no evidence before the court showing the parentage of the handwriting in that particular deposit slip. The handwriting of accused no.1 was examined by the expert. What prevented the prosecution from forwarding that particular receipt for FSL examination is not explained. Even if it is assumed that the deposit was made by accused no.1 as asserted by the prosecution, there should be corresponding evidence to prove that he received money from accused

no.8 on 02.11.2015 and the money so received was deposited in the account of PW129. The argument of prosecution is that accused no.1 deposited the amount on 02.11.2015 in the account of his mother and the money so deposited should be treated as the money received from accused no.8 as he has no other source for that much amount.

336. Bearing this assertion in mind, we have to evaluate the evidence of PW73. PW73 is examined by the prosecution to prove the relationship of accused no.1 with accused no.8. It is asserted that accused no.1 was the driver of PW179 and being so, he was known to accused no.8 also. He deposed that he arranged accused no.1 to PW179. In his chief examination, he had given the details of the acquaintance with accused no.1, PW179 etc. and the correctness of his deposition was challenged in his cross-examination also. It is brought out in his cross examination that his wife owned a pleasure scooter, bearing registration No.KL-07-BX-2065 during 2015. MO60 document produced by PW20 before the court claiming that accused no.1 before leaving to Tamil Nadu, entrusted his purse with him and proved through him is put to PW73. On getting information about the gravity and seriousness of the case against accused

no.1, PW20 produced the belongings entrusted with him by the accused persons including accused no.1 in court. MO60 is one of the documents produced accordingly. PW73 deposed that MO60 was written by accused no.1 on 16.11.2015 in the premises of Palarivattom police station. He had narrated the circumstances leading to the execution of MO60 on 16.11.2015. MO60 was an agreement between accused no.1 and PW73 and he deposed that the scooter belongs to his wife was agreed to keep with accused no.1 till the repayment of the amount due to him. It is also agreed that he owes Rs.1 lakh to accused no.1 and that will be returned on or before 31.03.2016. He deposed that during 2015, accused no.1 approached him for getting an Innova vehicle. He arranged it from his friend. Rs.2 lakh was given as deposit for arranging the vehicle. Accused no.1 paid Rs.2 lakh to him and he inturn paid it to his friend. Accused no.1 failed to return the vehicle after two months. His friend demanded back the vehicle. PW73 contacted accused no.1, but not responded. Thereafter, one day, his friend contacted PW73 and informed that he received back the Innova car and that accused no.1 is in custody at Kakkanad jail. Thereafter, the original owner obtained the car. He did

not return the deposit as the vehicle required maintenance and demanded more money. Accused no.1 was released from jail. One day, at about 5.30 a.m., Sunil came to his residence and made altercation. He used to come there frequently. Moreover, accused no.1 went to the daycare of his child and intimidated her and when it was repeated PW73 informed the matter to Palarivattom police. He had been asked to appear before the Palarivattom police on 16.11.2015 at about 10.00 a.m. Both PW73 and accused no.1 reached at Palarivattom police station. Police intervened. MO60 was prepared accordingly at the intervention of police. He stated further that Rs.1 lakh was paid to accused no.1 two or three weeks prior to the execution of MO60 on 16.11.2015. The said scooter was not received back even today. He also stated that though all these matters were disclosed to police during his interrogation, it was not recorded. This evidence assumes some relevance in the light of the case of the prosecution that Sunil received money from accused no.8 on 02.11.2015 and he deposited it in the account of his mother. Except Ext.P98 series, Ext.P476 series and Ext.P477, no material is before court to substantiate the said claim. The learned Special Public Prosecutor argued that this is part of

conspiracy and no direct evidence can be insisted for that. The evidence tendered by the prosecution through PW73 itself shows that he paid Rs.1 lakh to accused no.1 two or three weeks prior to 16.11.2015. The alleged deposit was on 02.11.2015. The evidence of PW73 coupled with MO60 would show that accused no.1 received Rs.1 lakh from PW73 during the deposit pointed out by prosecution. MO64 series documents pertaining to the gold loan obtained by accused no.1 from Muthoot Finance Limited, Kakkanad on 29.08.2016 and in that transaction he received Rs.93,500/- by pledging gold ornaments. The period of loan was upto 28.08.2017. The other document in MO64 series is the receipt showing payment of Rs.1,03,490/- to Muthoot Finance on 29.08.2016. On a verification of these two documents, it seems that on 29.08.2016 accused no.1 paid Rs.1,03,490/- to Muthoot Finance. On that day itself, he obtained a loan of Rs.93,500/- from there by pledging gold ornaments. These two documents would further show that accused no.1 had other sources of money, that too amounting Rs.1 lakh. Therefore, even if the case of the prosecution based on Ext.P98 series is accepted as such, this court cannot take that the money deposited was obtained from accused no.8 on

02.11.2015. Apart from MO64 series loan transactions, evidence is available before the court that during this particular period accused no.1 received Rs.1 lakh from PW73 also. All these matters are to be evaluated in the light of the position that no evidence is available regarding the handwriting in the pay-in-slip dated 02.11.2015. The one and only evidence relied on by the prosecution is the confession of accused no.1 to the investigating officer touching this deposit. The learned Special Public Prosecutor urged further that accused no.1 admitted the deposit in his Section 313 Cr.P.C examination. I had considered the admissibility and relevancy of the admissions made by an accused during his 313 examination and its admissibility against co-accused. Further, as repeatedly pointed out, the confession of accused no.1 asserted by the prosecution is not produced in this court. Moreover, PW129, who deposed before the court about the transactions did not mention anything about the same in her 164 statement before the Magistrate. It is brought out that she was interrogated in detail regarding her statement about the bank transactions before the Magistrate. No such statement is produced in this court. Even if the evidence of PW261 that PW129 was interrogated

about the details is accepted, the fact remains is that why she did not mention about those details before the Magistrate.

337. Another aspect to be noted is that the case of the prosecution that accused no.1 went to Hotel Joys Palace after contacting with PW191, the driver of accused no.8. It is also alleged that he contacted PW191 on the same day on four occasions. No evidence is put in to support that case. The learned Special Public Prosecutor submitted that since the disclosure of accused no.1 was in the year 2017, the call details and related documents could not be collected. The case of the prosecution is that accused no.1 disclosed these details to the investigating officer. But nothing was put to PW191 during his interrogation. PW261 was cross-examined about this aspect. He stick on the prosecution case that accused no.1 contacted PW191 on 01.11.2015. A specific question is put to PW261 that whether PW191 was interrogated about this aspect on 28.06.2017 and 05.07.2017. The investigating officer deposed that PW191 denied his association with accused no.1. This question was put to him repeatedly. PW261 replied that he interrogated PW191 and at that time he denied any association with accused no.1. Another question was put to PW261 that

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

nothing is available in the statement of PW191 to show that he was interrogated in this aspect. PW261 denied it. The defence put the question again. Then PW261 was constrained to answer that nothing is there in the statement of PW191 about the matters connected with Hotel Joys Palace. The prosecution relied on Ext.P100 R.C particulars to show that the BMW car bearing registration no.KL-07-DQ 5445 was owned by accused no.8 and that was thereafter sold out. This fact remains undisputed.

338. On an overall analysis, the prosecution relies Ext.P713 and P713(a) confession of accused no.8 to prove the meeting at Hotel Joys Palace on 01.11.2015. The said confession has no evidentiary value and inadmissible in view of the prosecution case itself that this particular fact was disclosed by accused no.1 earlier. The learned Special Public Prosecutor tried to convince this court that though accused no.1 disclosed it since he was in judicial custody, his statement cannot be recorded and treated u/s. 27 of the Indian Evidence Act and hence, the disclosure made by accused no.8 is a valid piece of evidence. This submission itself is against the basic principles laid down u/s.27 of the Indian Evidence Act about the discovery of fact. Similarly, though prosecution relied on

Exts.P476 series, P477 cheque and P98 series to prove the transaction dated 02.11.2015, this court is not in a position to arrive at a conclusion based on these documents that on 02.11.2015, accused no.8 handed over Rs.1 lakh to accused no.1 and he inturn deposited it in the account of his mother.

339. One more aspect requires consideration regarding Ext.P714 mahazar with respect to two rooms in Garuda Hotel, Thrissur. Nobody from Hotel Garuda is cited as witness in that mahazar. Similarly, the attestors to Ext.P714 are also not cited as witnesses. The prosecution case is that accused no.8 resided in Garuda Hotel. Except Ext.714 mahazar, no other material is produced before the court showing the purpose of the investigation in relation to Hotel Garuda. PW261 deposed that Ext.P714 was prepared on the strength of the confession of accused no.8 and he was taken there accordingly. A suggestion is put to PW261 by the learned defence counsel that accused no.8 was taken to Hotel Garuda to justify his press release on the previous day that the main part of investigation is at Thrissur. He denied the making of statement to press people. As

pointed out, though Ext.P714 mahazar is prepared, what is its relevance is not explained by the prosecution so far.

340. **Receipt of Rs.30,000/- by accused no.1 from PW181 Nadirsha at the shooting location of 'Kattappanayile Rithwik Roshan' in Seemas Textiles, Thodupuzha:-**

The prosecution alleged that after the receipt of money from accused no.8 on 01.11.2015 and 02.11.2015, on 21.09.2016 accused no.1 reached at Thodupuzha and received Rs.30,000/- as directed by accused no.8. Accused no.1 also made enquiry about transfer of money through NetBanking. The learned Special Public Prosecutor argued that after the seizure of Ext.P122 letter, accused no.1 was interrogated with the permission of the court while he was in judicial custody. It is asserted by the learned Special Public Prosecutor that it was not expected that a criminal like accused no.1 would fully disclose the circumstances of his meetings with accused no.8 and their association in a single instance to break material facts and effort has to be exercised by confronting to accused no.1 with the facts and materials collected during investigation. During a subsequent interrogation accused no.1 disclosed that he received Rs.30,000/- from PW181 as per the instruction of accused no.8 at the

shooting location of 'Kattappanayile Rithwik Roshan' in Thodupuzha. During the investigation it was revealed that accused no.1 was present at the shooting location of the said film on 21.09.2016. PW181, a close associate of accused no.8 was the Director of that film. The said film was produced by accused no.8. The presence of both PW181 and accused no.1 at Seemas Textiles, Thodupuzha was established by the prosecution. The learned Special Public Prosecutor also asserted that a phone call from accused no.8 was also received by PW181 on 21.09.2016 at 9:56:13 hours when accused no.1 was in the shooting location. Accused no.1 contacted PW181 from jail on 10.04.2017 and 11.04.2017 and this shows their prior acquaintance. These calls were made, since on prior occasions accused no.8 made payments to accused no.1 through PW181. Accused no.8 and PW181 failed to report about these calls. The calls from accused no.1 to PW191 and PW176 to PW191 would also show the acquaintance between them. All these support the inference that accused no.1 and PW181 met on 21.09.2016 at the instance of accused no.8. The Call Detail Records of PW181, accused no.1 and accused no.8 would prove the details of locations as well as calls relied on by prosecution. The learned Special



Public Prosecutor also relied on the evidence of PW64, PW130 and PW175 to prove the presence of both accused no.1 and PW181 in Seemas Textiles, Thodupuzha on 21.09.2016. Reliance is also placed on MO54 produced before the court by PW20 to show the presence of accused no.1 in Thodupuzha. These assertions and submissions are reiterated in page nos.349 to 357 of the argument note - volume II.

341. The learned counsel for the accused contended that the allegation regarding receipt of money from PW181 is not found a place in the final report. PW181 directed the movie 'Kattappanayile Rithwik Roshan'. He was available in Thodupuzha as per the Call Detail Record. Accused no.8 was the co-producer of that movie. The prosecution alleges that accused no.1 reached in the shooting location as directed by accused no.8. According to the learned defence counsel, the evidence of PW130 will negative this contention. Prosecution has no case that accused no.1 and PW181 met secretly. They also submitted that CW24 and CW44 are crucial witnesses and they were given up by the prosecution for suppressing the real facts. The defence relied on the evidence of PW63 and

PW65 also and contended that the evidence of those witnesses would show the falsity of prosecution case.

342. As in the case of other conspiracies discussed hereinbefore, the learned Special Public Prosecutor fervently urged that the fact of receipt of Rs.30,000/- was also disclosed by accused no.1 during a subsequent interrogation. According to the prosecution, accused no.1 disclosed that he received Rs.30,000/- from PW181 as per the instruction of accused no.8. Except the fact that PW261 interrogated accused no.1 with the permission of the court on 23.05.2017 and 05.08.2017, no confession of accused no.1 is produced before the court. No disclosure statement, which is admissible u/s.27 of the Indian Evidence Act, is also not produced or made available before the court. It is to be noted that the prosecution throughout the hearing forgetting the basic principle of law enunciated u/s.25 of the Indian Evidence Act, advanced argument based on the fact claimed to be disclosed by accused no.1 when he was interrogated by PW261.

343. The prosecution relied on the evidence of PW64, PW175 and PW130 to prove the presence of accused no.1 in the shooting location in



Seemas Textiles, Thodupuzha during the shooting of the movie 'Kattappanayile Rithwik Roshan'. PW64 was the General Manager of Seemas Textiles, Thodupuzha. He admitted that Seemas Textiles, Thodupuzha was given for the shooting of Malayalam movie 'Kattappanayile Rithwik Roshan' and it was on 21.09.2016. PW181 Nadirsha was the Director of the movie. PW182 and one Mr. Zacharia are the Producers of the movie. He stated that Nadirsha was available there throughout from 8 a.m. till 9 p.m. It is brought out in cross-examination that he did not state to police about the presence of Nadirsha from 8 a.m. till 9 p.m. on 21.09.16. He also admitted that what he stated to the investigating officer was that Nadirsha reached there at about 9.30 a.m. It is to be noted that the fact of shooting of the movie in Seemas Textiles is not disputed.

344. Next is the evidence of PW175, who proved the Call Detail Records of accused no.1. Ext.P202 is the Call Detail Record of mobile number 9387874777 of accused no.1. He deposed that on 20.09.2016 from 9:52:49 hours to 22:36:56 hours and on 21.09.2016 from 07:53:20 hours to 09:51:00 hours, this number was available under the tower

locations of Thodupuzha Private Bus Stand and Thodupuzha Staff Quarters.

345. Next is the evidence of PW130. PW130 is a driver by profession. Accused no.1 is known to him. He resided along with PW12 Nelson at his rented house in Tammanam. Sunil used to come there. Sunil is known to him since then. He used to work as driver in the film field. During 2016 September, he worked as driver in connection with the movie 'Kattappanayile Rithwik Roshan' at Thodupuzha. PW181 was the Director. He drove the makeup, costume-tempo traveller. He had been there for ten days. He resided in PNK Lodge situates opposite to Government School, Thodupuzha. Seemas Textiles, Thodupuzha situates 200 meters away from there. Shooting was there in Seemas textiles. A question was put to this witness in chief examination by learned Special Public Prosecutor that whether Pulsar Suni came in the shooting location and he affirmed it. He does not know the date. According to him, accused no.1 came there during September 2016. He further deposed that Sunil resided along with CW44 at PNK Lodge. Both CW44 and himself shared a single room. When accused no.1 reached there, he was shifted to

DISTRICT AND SESSIONS COURT ERNAKULAM

Thazhatheparambil Lodge. A question is put to him by the learned Special Special Public Prosecutor that accused no.1 reached there on 20.09.2016 and his reply thereto was that he does not remember. According to him, there was shooting on the next day of the arrival of accused no.1. He went for shooting. Accused no.1 also accompanied him. Another question was put to him by learned Special Special Public Prosecutor that whether PW181 was available in the shooting location and he affirmed it. Another question is also put to him by learned Special Special Public Prosecutor that whether he converse with accused no.1 in the shooting location and he affirmed it. Accused no.1 enquired him about money transfer through mobile. PW130 in-turn asked it with one Mr. Ranjith. Mr. Ranjith attempted, but the transactions could not be completed. This was happened in the parking area. Both of them proceeded to the location. Accused no.1 spent there for a shortwhile and returned on his motorbike. He was cross-examined by the learned counsel for accused no.8. He claimed that accused no.1 came to the shooting location as he invited. He contacted accused no.1 and accused no.1 reached there on the next day. This fact was stated in his statement u/s.164

Cr.P.C before the Magistrate. He also stated that he called accused no.1 to the shooting location for taking food. Food was arranged in the car parking area. Somany people were available therein. CW44 was also available there. CW44 was the Production Assistant. He also stated that he did not mention about the names of lodges to the investigating officer. It is also brought out that his shifting of the lodge and the stay of accused no. 1 in PNK Lodge are not stated to the investigating officer. It is also brought out that the fact of enquiry made by accused no.1 about NetBanking is also not stated to the police. Ext.D31 contradiction is brought out through him. Similarly, Ext.D31(a) is also proved through him. In his re-examination, the learned Special Public Prosecutor attempted to clarify some aspects. PW130 stated in re-examination that accused no.1 is his friend. He reiterated that he contacted accused no.1 over phone. When accused no.1 came to know his availability in Thodupuzha, accused no.1 expressed his desire to reach there. PW130 agreed for that. It is also stated that accused no.1 talked with CW44 only. He again stated that accused no.1 talked to CW44 only and did not converse with anybody else. Ext.P178 is the statement of PW130 recorded

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

u/s.164 of CR.P.C. by PW164. It is brought out in cross examination that no summons was served on him for giving the statement u/s. 164 Cr.P.C. At the very same time, he stated in cross-examination that he had been asked by one police personnel to go to court and accordingly, he went there. But in the statement u/s. 164 Cr.P.C, it is recorded that the witness has not received the notice issued from the court. He stated that he was the driver of the vehicle attached with the production unit of the shooting of 'Kattappanayile Rithwik Roshan'. He again stated that he called accused no.1 to the shooting location and accordingly, he reached there. Accused no.1 stayed along with CW44 in PNK Lodge and he was in Thazhatheparambil Lodge. Next day morning, he called accused no.1 over phone and asked him to come to the location for taking food. Accused no.1 reached there accordingly to the location in Seemas Textiles. He enquired him about money transfer through mobile.

346. PW63 was the receptionist at PNK Tourist Home during 2016-17. This witness was examined by the prosecution to show the residence of the shooting team. However, no documents are produced by the prosecution to show that the persons connected with the shooting of

'Kattappanayile Rithwik Roshan' resided therein. PW63 admitted that no documents are available. PW65 was the Production Manager of that movie. During 2016, he worked in the same capacity in connection with the movie 'Kattappanayile Rithwik Roshan'. PW181 was the Director. According to him, shooting of the movie was held at Seemas Textiles, Thodupuzha. Accused no.1 is known to him. Accused no.1 worked as driver for seven days in the shooting location of the movie 'Marubhoomiyile Aana'. The phone number of accused no.1 was available with him. He has not seen accused no.1 during the shooting of 'Kattappanayile Rithwik Roshan'. According to him, Sunil did not make any enquiry to him about online money transfer. The learned Special Public Prosecutor sought permission to put leading questions. Ext.P43 contradiction was brought out through him. He denied that he stated to the police about the arrival of Sunil in the location. He also denied that he met Sunil in the location after a gap. Exts.P43(b) and P43(c) are also brought out through him. He stated that some of the crews stayed in PNK Lodge. A suggestion is put to him about the arrival of Sunil in the location, and he denied it. In the cross examination at the instance of

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

accused no.8, he deposed about the matters in connection with the shooting location. According to him, nobody is permitted to come to the indoor shooting location without the permission of the production team. He also stated that the sale of dress is shot at Seemas Textiles.

347. On an analysis of the evidence of PW63, PW64, PW65 and PW130, it can be seen that shooting of the movie 'Kattappanayile Rithwik Roshan' was conducted in Seemas Textiles, Thodupuzha. The case of the prosecution is that accused no.1 went there and collected money from PW181 as instructed by accused no.8. The evidence of PW63 and PW64 did not mention anything about the arrival/presence of accused no.1 in the shooting location. PW64 deposed that PW181 was available therein. The availability of PW181 in the shooting location is not in dispute. PW65 turned hostile. He was challenged by the prosecution by putting leading questions. Exts.P43 to P43(c) are brought out through the witness.

348. Next is the evidence of PW130. He also stated about the presence of accused no.1 in Thodupuzha. In the chief examination, he stated about the arrival of Sunil to Thodupuzha. He does not remember

the date of arrival. It is also stated that on the next day of arrival of accused no.1, both of them went to the parking area of Seemas Textiles for taking food. It is further stated that they thereafter proceeded to the location. Accused no.1 just watched the shooting and returned. PW130 has not stated anything about the presence of PW181 when accused no.1 came in the shooting location. In the chief examination itself, what he stated is that accused no.1 just came to the shooting location and returned. In the cross-examination, he categorically stated that Sunil came to the location as he called him. This was specifically stated in his statement u/s.164 Cr.P.C also. He stated that he contacted Sunil and Sunil reached there on the next day. He also stated that he again contacted Sunil for going to the location and it was for taking food. They proceeded to the car parking area for taking food. He also stated that they made enquiry about cash transaction through mobile with Mr. Renjith. The prosecution examined PW65 to prove that accused no.1 made enquiry with him about online money transfer. On the other hand PW130 deposed that the enquiry was to Mr. Renjith. PW65 denied this fact also. In this context, Exts.D31 and D31(a) assumes relevance.

Ext.D31 would show that accused no.1 made enquiry with PW65 about the money transfer. PW130 categorically denied this aspect. PW65 Shine also denied the allegation of enquiry by accused no.1 to him about money transfer. No other evidence is before the court about this aspect. In the re-examination also the learned Special Public Prosecutor put questions to PW130. He again categorically reiterated the statement in his chief examination. He contacted accused no.1 over phone. PW130 asked Sunil to come there. In the re-examination he stated that accused no.1 converse with one Mr Manu only. As already pointed out, nobody except PW130 deposed about the journey of accused no.1 to the shooting location.

349. On an analysis of evidence of PW130 it is seen that accused no.1 proceeded to the shooting location as directed by him. Even if the presence of accused no.1 in the shooting location is taken as true, no evidence is available on record to show that he had occasion to meet PW181 for receiving the money. On the other hand, the evidence of PW130 is that both of them proceeded to the car parking area for taking food. They proceeded to the shooting location. Accused no.1 just watched the shooting and returned back. This would show that accused

no.1 did not spend much time in the shooting location. PW130 categorically stated that accused no.1 spoken to Mr Manu only.

350. Further, Ext.D31(a) would show that PW130 during investigation stated that Sunil purchased two towels from Seemas Textiles and he covered his face using one of the towels. The other one was given to PW130. PW130 is a loyal witness examined to prove the prosecution case about the presence of accused no.1 in the shooting location. But, at the very same time, he categorically stated that he did not give any statement to the police that accused no.1 covered his face when he was in the shooting location. It is interesting to note that the said position was not clarified by the learned Special Public Prosecutor during re-examination. Thus, the available evidence would show that accused no.1 reached the shooting location as requested by PW130, stayed there on 20.09.2016 and left on 21.09.2016 morning after breakfast. It is also to be concluded in view of the evidence of PW130 that accused no.1 just visited the shooting location and he did not meet PW181 in the shooting location in Seemas Textiles.

351. The case advanced by the prosecution is that accused no.1 received money from PW181 as directed by accused no.8 at the shooting location of 'Kattappanayile Rithwik Roshan' in Thodupuzha. The evidence available before the court will show that the shooting location was surrounded by eversomany people. Accused no.1 being the driver attached with film field, he is known to several persons. Nobody deposed about the meeting of accused no.1 with PW181. The learned counsel for accused no.8 vehemently argued that CW44 Manu was given-up by the prosecution for suppressing the best evidence. PW130 claimed that accused no.1 stayed along with Manu on 20.09.2016. Though CW44 was given-up, the tower location of accused no.1 produced before the court as Ext.P202 through PW175 would prove his presence in Thodupuzha at the relevant date and time. So, the non examination of CW44 assumes less significance. CW24 was the Production Controller of movies. He worked in the films 'Sound Thoma', Vadakkumnathan etc. He also worked as Production Controller of 'Kattappanayile Rithwik Roshan'. He being the Production Controller is a competent witness to speak about the presence of accused no.1 and PW181 in the location. But the prosecution did not

examine him as a witness. It is also to be noted that he was the Production Controller of the movie 'Sound Thoma', wherein the prosecution alleges intervention on the side of accused no.1 for settling the issues of local goondas. So, accused no.1 might have been known to CW24. Inspite of that, why he is not examined is not stated by the prosecution. It is true that it is within the province of the prosecution to decide as to the witnesses who are to be examined. At the very same time, considering the nature of the allegations regarding the meeting of accused no.1 and PW181 in the shooting location and also taking into account the available evidence, his examination would have been material.

352. The learned Special Public Prosecutor submitted that MO54 would also prove the presence of accused no.1 in the shooting location of 'Kattappanayile Rithwik Roshan'. In page no.353 of the argument note Volume-II, the learned Special Public Prosecutor stated that MO54 route description found in the plastic cover entrusted by accused no.1 with PW20 Adv. E.C. Poulose further adds as a piece of evidence in this respect. MO54 is a piece of paper. It contains route description as Vytilla–Mulanthuruthy, Piravom–Koothattukulam, Vazhithala - Purappuzha,



Pallikettu junction-Santhigiri College. It is true that MO54 is produced before the court by PW20. The route referred to in MO54 is not in connection with the arrival of accused no.1 in the shooting location at Seems's Textiles, Thodupuzha and it appears that it is in connection with the conspiracy alleged between accused nos.1 and 8 at Santhigiri College. MO54 has no connection with this aspect.

353. As discussed hereinbefore, the presence of PW181 in the shooting location at Seemas Textiles is elicited by prosecution through PW64 and PW130. It is elicited through PW64 the Manager of Seemas Textiles Thodupuzha that on 21.09.2016 at the time of shooting PW181 was available there from 8 a.m till 9 p.m. But in cross-examination he stated that this fact was not stated to the police. He also admitted that PW181 reached there on that day only at about 9.30 a.m in the morning. He clarified that it is a true fact. PW181 left the location after the shooting. So, it can be seen that though in chief examination he claimed the presence of PW181 from 8 a.m onwards, in his cross examination he stated that PW181 reached there by 9.30 a.m only.

354. On an analysis of the evidence of these two witnesses, nothing is there to show that both accused no.1 and PW181 met together at the shooting location. As I pointed out, the prosecution relied on the CDR produced through PW175 to prove that accused no.8 contacted PW181 when accused no.1 was in the location. The learned Special Public Prosecutor argued that this points out the inference that accused no.1 went to Thodupuzha and collected money from PW181 as instructed by accused no.8.

355. In this background, the evidence of PW181 and PW261 investigating officer is to be considered. The final report is silent as to the receipt of money from PW181. Relying on Ext.P233 series CDR of accused no.8 and Ext.P67 series CDR of PW181, the prosecution urged that on 21.09.2016 at 9:56:13 hours accused no.8 contacted PW181. Though this fact of handing over of Rs.30,000/- is put to PW181, he denied it. As far as the availability of PW181, though the prosecution relied on the CDR and the call from accused no.8 to PW181, the location details are not produced. PW181 in his chief examination itself stated that accused no.8 is one of his closest friends. They are maintaining friendship



for the last thirty four years from their college days. He also stated about the details of their association. They were members of same troops. He also stated that they are business associates also. They commenced their joint business from 1990 onwards. According to him, both of them visited foreign countries and conducted mega shows. On analysing the evidence of PW181, it can be seen that he affirmed the thick relationship between himself and accused no.8. He also stated that they used to contact over phone. The CDR of accused no.8 produced before this court would also show the number of calls exchanged between them. On 21.09.2016 itself at 23:17:04 hours there was another call between PW181 and accused no.8. So, the call from accused no.8 to PW181 on 21.09.2016 at 09:56:13 alone cannot be attributed special status. It is urged by the prosecution that accused no.1 was available there at that time. As I pointed out, even if it is taken that both accused no.1 and PW181 were available there, no evidence is before the court about their meeting and handing over of money.

356. It is to be noted that the investigating officer did not interrogate PW181 about the meeting with accused no.1 on 21.09.2016 at

the shooting location in Thodupuzha. The tower locations of PW181 are not produced. Without placing the tower locations on record it was suggested to PW181 that on 21.09.2016 the mobile phones of accused no.1 and him were in the same tower location comes near to Seemas Textiles, Thodupuzha. PW181 replied that he does not know anything about it. It is claimed by the prosecution that the CDR would reveal the location details. But, the decoded locations, the best evidence, does not contain any details to prove the presence of PW181 in Thodupuzha on 21.09.2016. As pointed out, evidence relied on by the prosecution is the oral testimony of PW64 and PW130. What prevented the prosecution from producing the best evidence to establish the presence of PW181 on the particular date and time is not explained. The learned defence counsel contended that though prosecution relied on Ext.P202 CDR of mobile number 9387874777 to prove the presence of accused no.1 in Thodupuzha, the details of calls from this number to another mobile number 9447676363 used by accused no.1 is suppressed. These calls are proved through PW175. On asking PW261 about this aspect his answer was that accused no.1 started to use mobile no.9447676363 only from October 2016 onwards.

The mobile no.9447676363 stands in the name of PW140 as per Ext.P142 customer application form. The number was activated on 07.08.2016. The case of PW140 is that this number was given to accused no.1 for business promotion. PW261 deposed that he has not asked to PW140 about the details of the date from which this number was being used by accused no.1. The evidence of the prosecution is that both these two numbers were used by accused no.1. If this be the situation, there is no chance to have calls between these two numbers when it was used by same person. In this context this fact is to be explained by the prosecution. On a perusal of the evidence of PW140, nothing is there to show the time when he handed over the mobile phone to accused no.1. PW261 was cross examined at length about this particular aspect. He deposed that PW140 handed over the mobile phone to accused no.1 during 2016 October. He claimed that this fact is revealed during investigation. It is also brought out that the CDR of this particular number was taken from 12.11.2016 till 14.11.2016. A definite suggestion is put to him that the CDR of this number from 2016 July was obtained and its non production was for the reason that it is against the prosecution case. It is true that this fact is not put to PW140.

At the very same time, as I concluded earlier that there is no chance for making calls from one phone to another possessed by same person at the same time. So, I am of the view that eventhough no materials are produced to show the handing over of this mobile number to accused no.1 by PW140, relying on the evidence of PW261 it is concluded that it was handed over during October 2016. Moreover, the defence has no case that the mobile number 9387874777 was in the use of anybody other than accused no.1 on 21.09.2016. Moreover, the presence of accused no.1 in Thodupuzha is proved otherwise.

357. The case of the prosecution that, accused no.1 made enquiry about money transfer is also contradictory. PW130 claimed that he made enquiry to Production Manager Renjith about money transfer after the enquiry of accused no.1 to PW130. On the other hand, the prosecution case is that the enquiry was to PW65 Shine. But, PW130 categorically deposed that Shine was not available in the car parking area when accused no.1 asked him about NetBanking. The version of PW261 is that PW181 denied handing over of money to accused no.1 as instructed by accused no.8. PW261 tried to clarify by stating that there is materials to show the

presence of accused no.1 in Seemas Textiles, Thodupuzha and at that time accused no.8 contacted PW181. He stated further that receipt of Rs.30,000/- is known from accused no.1. It is to be noted that nobody stated about the meeting of accused no.1 and PW181 on 21.09.2016 as claimed by the prosecution. Moreover, I again emphasis the evidence of PW130 that he along with accused no.1 proceeded to car parking area of Seemas Textiles for taking food. PW130 further stated that he along with Sunil came to the shooting location. Sunil just watched it and returned from there. Whether PW181 was available atleast at that time is not proved. Moreover, this being a shooting location, somany people will normally be available in the location. Above all, PW130 himself claimed that accused no.1 reached Thodupuzha on his call and that is against the prosecution case that he reached in the location for collecting money from PW181.

358. Another aspect to be considered is that according to the prosecution, accused no.1 was questioned by the investigating officer on 23.05.2017 and 05.08.2017. The learned Special Public Prosecutor asserted that the details of the conspiracy were disclosed by accused no.1 after

repeated interrogation. The case of the prosecution is that the fact of receipt of Rs.30,000/- was revealed on 05.08.2017. But Ext.P232(a) seizure mahazar dated 20.09.2017 prepared in connection with the seizure of CDR of mobile number 9895151111 of accused no.8 for 20.09.2016 and 21.09.2016 assumes some relevance. The mahazar was prepared on 20.09.2017. The senior civil police officer Vinod collected the CDR for the above days from the office of the Telecom Company. This was seized by PW261. The purpose of seizure is stated as to prove that accused no.8 contacted PW181 on 21.09.2016. The mahazar alone is marked and the CDR so collected is not marked. It is true that Ext.P233 series include the CDR for these two days. Similarly, Ext.P67(a) seizure mahazar for the CDR of PW181 for the particular days was on 26.09.2017. The request for the CDR by the investigating officer was on 13.09.2017.

359. The case of the prosecution is that the receipt of Rs.30,000/- was revealed by accused no.1 on 05.08.2017. This is a vital information as far as the criminal conspiracy alleged in this case is concerned. This be the situation, why didn't the investigating officer take steps for getting the call details of accused nos.1, 8 and PW181 immediately on receiving

DISTRICT AND SESSIONS COURT ERNAKULAM-6

information from accused no.1 is not stated. The defence relying on this situation submitted that no such information is received from accused no.1 as claimed by the investigating officer. Relying on the calls between PW181 and accused no.8, the investigation team developed a story so as to fabricate allegations against accused no.8. This argument is appears to have some relevance inn view of the conclusion made hereinbefore that the prosecution failed to adduce evidence to arrive at a convincing finding that on 21.09.2016 PW181 and accused no.1 met together at the shooting location of the movie 'Kattappanayile Rithwik Roshan' conducted in Seemas Textiles, Thodupuzha and further, PW181 handed over Rs.30,000/- to accused no.1 as instructed by accused no.8.

360. **The meeting between accused nos.1 and 8 in the shooting location of the Malayalam movie 'Georgettan's Pooram' at CIFT Junction, Thoppumpady on 08.11.2016:-**

The case of the prosecution is that the investigation on the disclosure of accused no.1 that he had met accused no.8 at CIFT Junction during the shooting of 'Georgettan's Pooram' in November 2016 confirmed that the shooting as disclosed by him was on 08.11.2016. PW58, driver of the caravan, deposed about the meeting of accused nos.1 and 8 inside the

caravan bearing registration number TN-10-AE-4118 hired by him from PW174. According to the prosecution, it has come in evidence that normally nobody could access caravan of actors and only with the permission of the person inside the caravan one could enter therein. The fact that there was shooting at CIFT Junction on 08.11.2016 is admitted by PW191, driver of accused no.8. The practices in the film location and the restrictions to enter caravan are deposed to by PW37 and PW45. The acquaintance between accused nos.1 and 8 can also be seen from the evidence of PW58 and also from the entry of accused no.1 to the caravan. Further, accused no.1 admitted all these facts in his statement u/s.313(1)(b) of Cr.P.C. It is also asserted that accused no.8 failed to produce any documentary evidence to support his contention that there was no shooting at CIFT Junction on 08.11.2016 despite the positive evidence presented by the prosecution.

361. The prosecution relied on the oral testimony of PW58, Ext.P279(a), data retrieved from the mobile phone of PW191, retrieved and produced on the strength of Ext.P279 FSL report, Exts.P712 and P712(a) disclosure statements of accused no.8 to prove his meeting with accused



no.1 on 08.11.2016 in the shooting cite of 'Georgettan's Pooram'. The above allegations are narrated in page nos.364 to 375 of argument note - Volume no.II. In Ext.P710 remand report, page no.9 contains the details of criminal conspiracy hatched between accused nos.1 and 8. It is stated that accused no.1 was interrogated with the permission of court at Kakkanad District Jail. The interrogation revealed the places wherein they hatched criminal conspiracy. It is mentioned specifically in paragraph no.7 of Ext.P710 remand report that after the criminal conspiracy hatched at Hotel Abad Plaza, on 08.11.2016 at Thoppumpady CIFT Junction, Ernakulam, on 13.11.2016 at Kinattingal Tennis Club, Thrissur and on 14.11.2016 at Santhigiri College, Thodupuzha, they hatched further criminal conspiracies. It is stated specifically that the statement of witnesses, mobile tower locations and Call Detail Records would show the presence of accused nos.1 and 8 in the above said locations. So, Ext.P710 would show that at the time of interrogation of accused no.1 on 23.05.2017, the investigating officer got information about the details of the criminal conspiracy allegedly held at CIFT Junction, Thoppumpady on 08.11.2016. Therefore, it can be taken that the alleged conspiracy was

within his knowledge even before Ext.P712 mahazar prepared on 12.07.2017 at 6.30 p.m.

362. The learned defence counsel, on the other hand, disputed the shooting, allegedly held at CIFT Junction on 08.11.2016. According to him, the conversation relied on by the prosecution from the mobile phone of PW191 does not disclose that the shooting was on 08.11.2016 at CIFT Junction. It is also urged that the oral testimony of PW58 relied on by the prosecution also does not reveal any data regarding the shooting. The learned defence counsel further urged that the oral testimony of PW61, PW62 and PW130 are to be read along with the oral testimony of PW58 and that itself would show that the prosecution allegations are fabricated. It was further argued that accused no.8 never gave any disclosure statement as claimed by the prosecution. Ext.P712 mahazar is prepared without keeping the legal mandate. It is also submitted that the CDR and location details of accused no.8 are not produced atleast to show his presence in CIFT Junction on 08.11.2016. Failure of the prosecution to produce the location details of accused no.1 is also highlighted. Ext.P210 series location details of PW191 is from 12.11.2016. The assertions of the prosecution is



that PW191 was available near to caravan. However, no explanation is offered for the non-production of the location details of PW191 on 08.11.2016. Defence also contended that the evidence of PW58 is suffering from material omissions and contradictions.

363. The evidence canvassed by both sides can be looked into. As pointed out, like other conspiracies alleged by the prosecution, the learned Special Public Prosecutor asserted that accused no.1 made disclosure about his meeting with accused no.8 at CIFT Junction during the shooting of 'Georgettan's Pooram' in November 2016. In this background, the evidentiary value of Exts.P712 and P712(a) are to be analysed. Ext.P712 is the mahazar prepared by PW261 on 12.07.2017 at 6.30 p.m with respect to CIFT Junction. It is stated that the mahazar was prepared on the strength of Ext.P712(a), disclosure statement of accused no.8. In Ext.P712, it is mentioned that accused no.8 was arrested on 10.07.2017 and he was questioned. The learned defence counsel challenged PW261 about this aspect during cross-examination. He stated that the confession was given on 10.07.2017. But it is to be noted that the fact of the date when Ext.P712(a) was given is not mentioned specifically in Ext.P712. It is

mentioned that accused no.8 was arrested on 10.07.2017 in connection with Crime No.297/2017 of Nedumbassery police station. The fact of interrogation is stated in continuation to the fact of arrest. PW261 deposed in cross examination that he was interrogated on 10.07.2017 and the disclosure statement was given on that day itself. However, in Ext.P710, nothing is mentioned about the disclosure statement of accused no.8. It is true that court should bear in mind about the legal principle that all the matters should not be found a place in the remand report. At the very same time, in Ext.P712, it is stated that on 10.07.2017, accused no.8 was interrogated and his arrest was recorded on that day at 6 p.m. The custody of accused no.8 was obtained on 12.07.2017 by the investigating officer. Ext.P712 was prepared when accused no.8 was in custody on 12.07.2017. Even if the evidence of PW261 is taken into account that Ext.P712(a) was given on 10.07.2017, as I held in case of the other recovery at the instance of accused no.8, this also cannot be taken as a disclosure statement. The definite case of the prosecution is that accused no.1 made disclosure about his meeting with accused no.8 at CIFT Junction during the shooting of 'Georgettan's Pooram' in November 2016. Thus, this fact was already

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

known to the investigating officer. So, Ext.P712(a) was to be treated as a statement regarding a fact already known to the investigating officer through accused no.1. Above all, Ext.P712(a) reads as:- **"എന്നെ കൂട്ടികൊണ്ട് പോയാൽ കാരവൻ നിർത്തിയിട്ടിരുന്ന സ്ഥലവും, പരിസരവും കാണിച്ച് തരാം".** The fact discovered as per Ext.P712(a) is the spot where caravan was parked. This has no relevance considering the case of the prosecution that the alleged conspiracy was taken place inside the caravan. Above all, no witnesses are available to prove the making of disclosure statement by accused no.8. Further, the witnesses who are cited in Ext.P712 are also not examined in the court. PW261 admitted that accused no.8 was not taken out from the vehicle while preparing Ext.P712. Ext.P712 was prepared in continuation of Ext.P711 mahazar with respect to Santhigiri College, Thodupuzha. That mahazar was prepared at 4.30 p.m. Ext.P713 is prepared at 6.30 p.m. The distance between CIFT Junction, Thoppumpady and Santigiri College, Thodupuzha, is approximately 60 kms. Based on this, the defence counsel cross examined PW261 about the time when they reached at CIFT Junction etc. PW261 deposed that he reached at CIFT Junction at 6.30 p.m. He started to prepare Ext.P712 at 6.30 p.m itself. It

is admitted by PW261 that accused no.8 was not taken out from the vehicle. If that be so, how could the place where the caravan was located is not explained. It is also admitted by PW261 that no witnesses are available to prove the alleged disclosure statement of accused no.8 marked as Ext.P712(a). It is also to be considered that there is no mention in Ext.P712 that accused no.8 pointed out the place by sitting in the vehicle and accordingly, prepared mahazar. Though the learned counsel for defence put questions to PW261, on the line that considering the distance between Santhigiri College, Thodupuzha and CIFT Junction, Thoppumpady, it is not possible to reach at CIFT Junction by 6.30 p.m. , PW261 replied that there was pilot and escort. Since Exts.P712 and P712(a) have no evidentiary value as it lacks the status of the disclosure of a fact, the contentions that it was not possible to cover the distance from Shantigiri College to CIFT Junction within the time mentioned need not warrant consideration.

364. Coming to the oral testimony of PW58 relied on by the prosecution, he deposed that he is a caravan driver in film locations for the last seventeen years. He had taken caravan on rental basis from

DISTRICT AND SESSIONS COURT ERNAKULAM 682 011

TamilNadu. During 2016-17 he drove caravan bearing registration no.TN-10-AE-4118. He also stated that he does not remember the exact number due to passage of time. The learned Special Public Prosecutor put a question that has he driven caravan bearing registration no.TN-10-AE-4118 and he affirmed it. According to him, during 2016, he drove the caravan for 50 days in connection with the movie 'Georgettan's Pooram' at Thrissur, Ernakulam and Thoppumpady. The shooting of the said film was at Thoppumpady continuously for ten days in the same location. It was a place from CIFT Junction to Wellington Island. The caravan kept there in the location continuously for ten days. He used to travel by bus to the locations from his residential place. Accused no.8 acted in the said movie. Since the caravan used by accused no.8 was not in a perfect condition, his caravan was given to him. He had given another caravan to the leading actress. One day when he was waiting for bus at Irumpanam for going to the location, accused no.1 proceeded to the opposite direction on his motorbike. On seeing him, accused no.1 returned back and enquired with him about his destination. He told accused no.1 that he is about to move to the location and accordingly,

accused no.1 dropped him there. After reaching the location he checked the caravan. Production Manager Murugan (CW58) informed him that there is no change in the location. He returned back to his room by noon. Sunil was standing near to the caravan at that time. He made enquiry with Sunil about his presence till that time. Sunil replied that he is waiting for meeting a person. At that time, PW191, driver of accused no.8 was attending the caravan. He entrusted the management of caravan to PW191. Accused no.8 was available inside the caravan and he was taking food. According to PW58, Sunil is known to him for the last 5-6 years. He also stated that Sunil came as driver in the location of the movie 'Georgettan's Pooram' when PW62 was on leave and hence, Sunil is known to him. He also stated that Sunil came in the Thoppumpady location. The statement of PW58 u/s.164 Cr.P.C was recorded by PW171 and it is marked as Ext.P186. He was cross-examined by the learned counsel for accused no.8. He was challenged regarding the service of summons for giving statement u/s.164 Cr.P.C. Somany omissions and contradictions are brought out during cross-examination. It is to be noted that there was no statement either before the investigating officer or before

DISTRICT AND SESSIONS COURT ERNAKULAM

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

the Magistrate that he used to take caravan on rental basis from TamilNadu. Similarly, the fact that the shooting was at Thoppumpady continuously for ten days is also not stated to the police. The fact of taking two caravans on lease and the handing over of one of such caravans to the actress is also not stated before the Magistrate or investigating officer. According to him, the document showing the letting out of caravan to accused no.8 was not available with him and that document is available with the owner of the caravan. This fact was also not stated before the investigating officer or to the Magistrate. The availability of PW191 in the shooting location is also not stated by him. He admitted in cross examination that he met accused no.1 for the first time when he came as driver for the camera vehicle of PW62 Abhilash. He met accused no.1 one week prior to his dropping in the location at CIFT Junction by accused no.1. This fact is also not stated to the investigating officer. The fact that CW58 informed him that there is no change in location and he returned back accordingly is also not stated to the police. Another version is stated to the Magistrate regarding the information given by CW58. The presence of accused no.1 in the location or inside the caravan is not stated to the

Magistrate. He also admitted that the caravan of accused no.8 was in fault is not stated to the police. During cross examination, he stated that he went to the location along with accused no.1 during September. In the re-examination the learned Special Public Prosecutor tried to clarify the month when he proceeded to the location by putting a leading question that whether the shooting was in November. This question was objected to by the learned defence counsel. PW58 replied that he is not able to recollect. The learned Special Public Prosecutor submitted that the witness stated 'yes' firstly and thereafter he changed his answer as 'does not remember'. This court ascertained with the witness and he stated that he stated 'yes' in the first occasion and he became confused when the question was repeated. It is to be noted that the month is suggested by the learned Special Public Prosecutor by putting a leading question.

365. On an analysis of evidence of PW58, somany material omissions amounting to contradictions are brought out during cross examination by the defence counsel. All these contradictions are with respect to vital aspects such as the availability of accused no.8 and PW191 in the location. When he was interrogated by the investigating officer on





08.07.2017, he has not stated that PW191 was attending the caravan when accused no.1 was standing near to the caravan. Similarly, the fact that he entrusted the custody of caravan to PW191 is also an omission. The evidence tendered about the information passed to him by CW58 and the fact of leaving location are also not stated. The reply allegedly made by accused no.1 when he enquired about his presence by noon is also different. Before this court PW58 asserted specifically that accused no.1 informed him that he was waiting for meeting a person.

366. Coming to Ext.P186 statement recorded u/s.164 Crl.P.C, on 15.07.2017, a week after his statement to the investigating officer, PW58 has not stated anything about the presence of accused no.8 and PW191 in the shooting location. He has not stated the registration number of the caravan. He noticed the presence of accused no.1 near the caravan. Accused no.1 was available there even after he came back taking food. He claimed that accused no.1 is known to him. According to him, accused no.1 came as driver in the shooting location when he reached there as substitute for PW62 Abhilash. Though in the evidence PW58 claimed that accused no.1 is known to him for 5-6 years, he himself clarified that he met

him only when accused no.1 came to the location as substitute driver for Abhilash. The fact of acquaintance with accused no.1 is not stated to the investigating officer. In Ext.P186 he stated that accused no.1 was available in the location of the movie 'Georgettan's Pooram' for two days as substitute for Abhilash. Accused no.1 is known to PW58 accordingly. So, it can be seen that the acquaintance between accused no.1 and PW58 is only when they met in the location of the movie 'Georgettan's Pooram'.

367. The case of prosecution is that accused no.1 came to the location of the movie 'Georgettan's Pooram' on three occasions. The evidence of PW261 in this regard assumes relevance. PW261 deposed that accused no.1 went to the location of the movie 'Georgettan's Pooram' on three occasions. According to him, on 08.11.2016 accused no.1 went to the location at CIFT Junction for meeting accused no.8. He also clarified that as directed by accused no.8, accused no.1 went to the location of the said movie on 13.11.2016 and 14.11.2016 as substitute driver. We have to consider the evidence of PW61 and PW62 also for getting a clear picture about this fact. Both PW61 and PW62 claimed that both of them were drivers in the location of the movie 'Georgettan's Pooram'. According to

ND SESSIONS COURT
ERNAKULAM-682 011

PW61, PW62 was worked along with him in the said location. When PW62 was on leave during the shooting at Kinattingal Tennis Club, Thrissur, he arranged PW130 Jamsith. PW130 fell ill and he in-turn arranged accused no.1. Accused no.1 came to the shooting location at Kinattingal Tennis Club. This shooting was on 13.11.2016. PW61 met accused no.1 for the first time in that location. According to him, accused no.1 came as substitute on two occasions. Accused no.1 came as driver for the first time in the shooting location at Wellington Island and secondly, at the location in Kinattingal Tennis Club. It is brought out in his cross examination that the fact that Sunil came to the location in Wellington Island for the first time is not stated to the police. PW62 Abhilash deposed that he is working as driver in film locations. On 13.11.2016 when the shooting was at Kinattingal Tennis Club, he was on leave. Accused no.1 Sunil drove the vehicle as substitute for him. He entrusted PW130 for driving the camera vehicle. PW130 in-turn arranged accused no.1. He stated that accused no.1 drove the vehicle for two more days thereafter. Thus, according to PW62, accused no.1 came to the location as substitute driver for the first time on 13.11.2016. As far as the evidence of PW130

Jamsith is concerned, when a question is put to him by the learned Special Public Prosecutor that he had gone to the location of the movie 'Georgettan's Pooram' during 2016 November, he stated that he went to the location during 2017. He also stated that he went there as substitute driver of the camera vehicle drove by Mr Anoop. The learned Special Public Prosecutor put a question that he had gone there during 2016 November and he replied that he does not remember and reiterated that it was in 2017 after the film 'Kattappanayile Rithwik Roshan'. He also stated that the shooting of 'Georgettan's Pooram' was at Thrissur also. He went there as driver. According to him, he arranged accused no.1 to drove the vehicle of PW62 when he fell ill. The version of PW130 that he arranged accused no.1 as substitute for PW62 for the shooting at Thrissur is against the version of PW61 that accused no.1 came as driver in Wellington Island location for the first time. Both PW61 and PW62 admitted that PW62 arranged PW130 as substitute driver for PW62. When PW130 became ill, he arranged accused no.1 as substitute for him. PW62 testified that accused no.1 came as substitute driver in the location in Tennis Academy for the first time . This is fortified by PW130 Jamsith who arranged

DISTRICT AND SESSIONS COURT

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

accused no.1. PW62 clarified that though accused no.1 worked as substitute on three occasions, the other two engagements were after his engagement on 13.11.2016. So, the evidence of PW61 regarding the engagement of accused no.1 in the CIFT Junction will not stand in this count also. Moreover, this fact is brought out as a material omission. As pointed out, the statement of PW261, the investigating officer that accused no.1 went to the location of the movie 'Georgettan's Pooram' only for three times assumes importance. According to the investigating officer, his engagement as substitute driver was only for 13.11.2016 and 14.11.2016 at Thrissur. The investigating officer has stated nothing about the engagement of accused no.1 as substitute driver in the CIFT location on 08.11.2016. He clarified that accused no.1 went to the CIFT location on 08.11.2016 for meeting accused no.8. If this be the situation, we have to consider the claim of PW58 regarding his acquaintance with accused no.1. PW58 claimed that he developed acquaintance with accused no.1 when he met him for the first time when he came as a substitute driver for PW62 Abhilash when he was on leave. He also clarified that accused no.1 came as a substitute in the Thoppumpady location and he met him for the first

time. It is also stated that on account of this acquaintance, he was dropped by accused no.1 in the location on 08.11.2016. So, the meeting of accused no.1 and PW58 in the CIFT location for the first time should have been before 08.11.2016. This evidence is against the prosecution case deposed to by PW261 that accused no.1 worked as substitute driver in the location only on 13.11.2016 and 14.11.2016. Moreover, as pointed out, PW58 did not mention anything about his acquaintance with accused no.1 developed consequent to the meeting at the location as substitute driver to the investigating officer. Further, what he stated at the time of Ext.P186 was that accused no.1 came as substitute driver for PW62 for two days. The details are not stated at that time. Things being so, the acquaintance of PW58 with accused no.1 is also doubtful. What he claimed is that he met accused no.1 as substitute driver in the location before 08.11.2016. On 08.11.2016 he was standing near to Seaport-Airport Road waiting bus. At that time accused no.1 was going to the opposite direction on his motorbike. Accused no.1 returned back on seeing him standing near the road. Accused no.1 made enquiries with him. He informed accused no.1 that he is going to the location. Accused no.1 dropped him in the location.

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

This would also show that even if the case of the prosecution is admitted regarding the presence of accused no.1 in CIFT location, accused no.1 went there for dropping PW58. What PW58 deposed is that accused no.1 was going to the opposite direction of the way to CIFT Junction. He returned back only on seeing PW58 standing near the road. The case of PW58 is that accused no.1 proceeded to the CIFT location only for dropping him. According to PW58, by noon accused no.1 was standing near to the caravan.

368. In this context, the evidence of PW130 is also to be evaluated. During chief examination itself the learned Special Public Prosecutor put a question to him about his engagement in the shooting location of the movie 'Georgettan's Pooram' during 2016 November. He stated that he went there as a substitute driver in the location arranged under Thoppumpady bridge. Another question was put to him, as to whether accused no.1 came there in the location and he affirmed the arrival of accused no.1. He further clarified that accused no.1 came to the location for meeting the driver of one Mr.Rjendran, who is the brother-in-law of PW46 Mukesh. He further clarified that Rajendran called accused no.1 through his driver

Mr Sujith. Sunil accordingly reached there and met Mr Rajendran and Sujith. As I held hereinbefore, PW130 is a loyal witness. During cross examination also he reiterated this fact. According to him, he has stated this fact to the investigating officer. Another aspect to be noted is that the learned Special Public Prosecutor put questions to him during chief examination regarding his presence in the shooting location. He replied about his presence in both Thoppumpady location and the location at Thrissur. He has not stated anything to the investigating officer about his presence in CIFT location and also the purpose of the visit of accused no.1 in that location. He reiterated this fact in the cross examination also. The learned Special Public Prosecutor did not put any question challenging his claim that he stated these facts to the investigating officer. PW130 was cited to prove the presence of accused no.1 in the shooting location of the movie 'Kattappanayile Rithwik Roshan' at Seemas Textiles, Thodupuzha. Nothing is stated in the witness memorandum that he is cited to prove the presence of accused no.1 in the shooting location of the movie 'Georgettan's Pooram' at Thrissur. Even after the learned Special Public Prosecutor putting questions to this witness about his availability in the

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

shooting location of the movie 'Georgettan's Pooram', no attempt was taken in the re-examination to clarify the evidence tendered by this witness about his presence in the shooting location of 'Georgettan's Pooram' and also the purpose of visit of accused no.1 in the shooting location at CIFT Junction stated by him. Admittedly, the purpose of visit of accused no.1 in the CIFT location stated by PW130 is against the contention of prosecution. The case of the prosecution is that on 08.11.2016, accused nos.1 and 8 met together at CIFT Junction and hatched conspiracy.

369. As pointed out earlier, the case of the prosecution is that the shooting was there in the same location continuously for 10 days. Before this conspiracy on 08.11.2016, accused nos.1 and 8 hatched conspiracy and accused no.1 received money. However, the evidence of PW58 is that accused no.1 proceeded to the location without any prior decision or plan and he went there accidentally for dropping him. It is true that the case of the prosecution is that accused no.1 waited outside the caravan and met accused no.8 inside the caravan and hatched criminal conspiracy. So, it has to be presumed that this particular meeting was happened only because of the arrival of accused no.1 there for dropping PW58. The case of the

defence is that the prosecution failed to prove that shooting was held at CIFT Junction on 08.11.2016. Admittedly, no documents are produced showing the schedule of shooting of the movie 'Georgettan's Pooram'. The prosecution relied on Ext.P279(a) retrieved from the mobile phone marked as Q21A belongs to PW191 to prove the shooting on 08.11.2016. Ext.P279(a) is an annexure to Ext.P279 FSL report. Item no.21 is a call recording between PW261 investigating officer from his mobile number 9497987127 to the mobile number of PW191. Relying on this, the prosecution asserted that PW191 admitted that there was shooting on 08.11.2016 at CIFT Junction. It is also asserted that accused no.8 and his brother-in-law, who was examined as PW132, one of the producers of the movie failed to produce any documentary evidence to prove that there was no shooting at CIFT Junction on 08.11.2016, despite the positive evidence presented by the prosecution. The primary rule of criminal law is that burden of proving the case lies on the prosecution. As pointed out, the witnesses examined on the side of the prosecution to prove the period of shooting at CIFT junction are unreliable regarding that aspect. Even PW58, the witness relied on by prosecution to prove this aspect has not

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

given details about the period of shooting. PW130 has stated that it was in the year 2017. Both PW61 and PW62 also did not adduce any sound and reliable evidence.

370. The call between the investigating officer and PW191 is to be looked into in the above said backdrop. The said call is retrieved from the mobile phone of PW191. It is included in Annexure-5 of Ext.P279. Relying on this telephonic conversation, prosecution asserted that there was shooting at CIFT Junction on 08.11.2016. The learned defence counsel contended that nothing is mentioned in the said conversation between PW191 and PW261 investigating officer that the shooting was on 08.11.2016. According to them, except 8th, the month or year are not mentioned by PW191. It is also contended that this fact was stated by the investigating officer in court for the first time during his cross-examination. It is further contended that Ext.P212 series CDR of mobile number 9446351111 would show that the location at CIFT Junction was on 08.10.2016 and not on 08.11.2016. The learned defence counsel argued that even if the evidence of PW261 is accepted that PW191 mentioned the shooting date as 8th, that was not on 08.11.2016 as claimed by the

prosecution. In Ext.P710 remand report it is mentioned specifically in paragraph no.7 in page number 9 that there are statement of witnesses, CDR and mobile tower locations available to prove the presence of both accused nos.1 and 8 in CIFT Junction on 08.11.2016, Kinattingal Tennis Academy on 13.11.2016 and at Santhigiri College on 14.11.2016. But except Ext.P212 series, no CDR and mobile tower locations of accused nos.1 and 8, PW58 and PW191 are produced before the court. Though it is claimed in Ext.P710 remand report about the availability of these documents, nothing is produced before the court in that regard. On examination of the available CDR, which is marked as Ext.P212, it can be seen that the location was at Ezhupunna on 08.11.2016. The learned defence council contended that on 08.11.2016, the shooting was at Ezhupunna and not at CIFT Junction. On a perusal of Ext.P212 series CDR, on 08.11.2016, three entries are seen regarding location. First one was at 10:14:13 hours and the location was at Ezhupunna. Second available location was at 22:08:31 hours and at Ezhupunna. Again, the last one was at 23:35:45 and at Ezhupunna. The learned Special Public Prosecutor argued that the evidence of PW58 would prove the presence of accused

DISTRICT AND SESSIONS COURT
ERNAKULAM 682 011

no.8, PW191 and accused no.1 by noon at CIFT Junction. Ezhupunna is a nearby place of CIFT junction. According to him, the first entry on 08.11.2016 was at 10:14:13 hours and accused no.8 can very well reach at CIFT Junction by noon. It is to be noted that the specific case of the prosecution is that both accused nos.1 and 8 were using several phones and CDRs and location details of those phones are produced before the court. Except this entry, no other location details are available in this court. Similarly, the location details of accused no.1 are also not produced. What prevented the prosecution from producing the location details of PW58 is also not seen explained.

371. As pointed out, though PW58, PW61, PW62 and PW130 were examined, no cogent evidence is adduced regarding the period and time of shooting at CIFT location. Even, on verifying the evidence of PW58, he has not stated specifically about the month of shooting and another fact is to be considered is that the prosecution relied on the CDR and related materials to prove the receipt of money at Seemas Textiles, Thodupuzha on 21.09.2016. The prosecution relied on similar documents to substantiate their case regarding the conspiracies allegedly held on

13.11.2016 and 14.11.2016. As far as the conspiracy held on 01.11.2015 and 02.11.2015, the prosecution stated that since those dates were out of the period of availability of CDR, they could not produce the electronic evidence showing the presence and availability of the accused persons at the relevant location. The prosecution produced the records of 21.09.2016 and 13.11.2016, failed to produce those relevant records with respect to the conspiracy on 08.11.2016 falls in between 21.09.2016 and 13.11.2016.

372. On going through Ext.P710 remand report the prosecution claimed that the documents referred to therein are available to prove the presence of accused nos.1 and 8 at CIFT Junction. The one and only available record in that regard pertaining to 08.11.2016 is Ext.P212. Ext.P212 would show the availability of accused no.8 at Ezhupunna on 08.11.2016. The learned Special Public Prosecutor argued that since accused no.8 had taken the plea of alibi, the burden is upon him to prove that fact. Relying on Ext.P212 the learned Special Public Prosecutor submitted that the presence of accused no.8 can be seen at Ezhupunna from that document. According to him, the shooting was held throughout on that day at Ezhupunna. Here, the prosecution alleges that in between

DISTRICT AND SESSIONS COURT ERNAKULAM

the time shown in Ext.P212, accused no.8 along with PW191 came to the CIFT location and met accused no.1 inside the caravan. This being the case, the burden is on the prosecution to adduce positive evidence regarding the availability of accused nos.1 and 8 and PW191 in CIFT Junction. Moreover, on a perusal of the entries in Ext.P212, the gap which was seen on 08.11.2016 is available between the calls or messages of other dates also. On 07.11.2016 the first call was at 9:42:35 hours. The next entry with respect to an incoming SMS was at 15:19:48 hours. The incoming SMS was a service message. As far as the entry on 09.11.2016 is concerned, one service message was seen received at 14:32:43 hours. Similar is the case of entries with respect to 10.11.2016, 11.11.2016, 12.11.2016 etc. also. The time gap between the entries on 08.11.2016 alone cannot be taken into account to find that accused no.8 and PW191 came to CIFT Junction from Ezhupunna. The prosecution is bound to adduce positive evidence regarding their presence at CIFT Junction at the time claimed by PW58.

373. As pointed out, the evidence of PW58 is affected by material contradictions and omissions. He had given different versions regarding the availability of accused no.8 in his statements u/s.161 and 164 of Cr.P.C. He

has not stated anything about the availability of PW191 during the course of investigation. As far as the telephonic conversation referred to by the prosecution retrieved from the mobile phone of PW191, PW261 stated that he contacted PW191 on 10.07.2017 to know about the details of shooting at CIFT Junction on 08.11.2016. This court had gone through the conversation referred to by the prosecution between PW191 and PW261. The learned Special Public Prosecutor claimed that the said conversation affirms that there was shooting on 08.11.2016 at CIFT Junction. Further, the evidence of PW261 investigating officer is also to be considered. In page no.1426 of the deposition of PW261 he stated when a question was put to him by the learned counsel for accused no.8 that no records are produced to show that accused no.8 and PW191 were under CIFT tower location on 08.11.2016. He admitted that no documents are produced to prove the same. He further added that during his conversation with PW191, he stated the date of shooting as 08.11.2016 and it is retrieved from the phone. Then the learned counsel put another question that this allegation is raised for the first time. PW261 replied that this is retrieved and produced along with the FSL report. This conversation was at the



instance of PW261. On verification of the call, it is seen that PW261 contacted PW191 and asked him about the location at Thoppumpady bridge. PW191 clarified that it was not on the bridge but was under the bridge. He also clarified that they have made arrangements for making it as location. PW191 stated that it was on 8th. He has not stated anything about the month or year. Despite this fact, PW261 deposed before the court that in the conversation, PW191 stated that the shooting was on 08.11.2016 which is against the actual facts. The learned counsel for defence specifically contended that shooting was held there on 08.10.2016 and not on 08.11.2016. So, the evidence relied on by the learned Special Public Prosecutor based on the conversation between PW261 and PW191 is not helpful to show that the date of shooting at CIFT Junction was on 08.11.2016.

374. In this particular conversation, PW261 asked to PW191 about the details of Murugan. Murugan, who was the Production Executive of the movie 'Georgettan's Pooram', is cited as CW58. He was cited to prove the matters related to the shooting held at Kinattingal Tennis Academy on 13.11.2016. Though in the witness memorandum, this particular point is

stated to be proved through CW58, PW58 stated about the presence of CW58 in the shooting location at CIFT Junction. He was given up by the prosecution. He being the Production Executive, he should have been the most competent witness to speak about the shooting locations. It is true that it is not necessary that a particular number of witnesses are to be examined for proving a fact. But, as concluded earlier, the evidence of PW58 Suneesh was incapable to inspire confidence of this court. This being the situation, the non-examination of CW58 assumes relevance, especially when no records are available to substantiate the presence of accused nos.1 and 8 and PW191 at CIFT location. Moreover, it is seen that he was not even interrogated by the investigating officer at the time of recording his statement u/s.161 Cr.P.C about the availability of PW58 in CIFT location as claimed by him.

375. It is also brought out in evidence that this particular location belongs to Cochin Port Trust. PW261 in page no.1425 of his deposition admitted that this location is under Cochin Port Trust. He also admitted that the formalities such as police clearance and permission from Cochin Port Trust are necessary for organising shooting at this particular place. He

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

further admitted that there was no investigation regarding those aspects. He stated casually that he got information that shooting was conducted there. It is true that shooting was held at CIFT Junction. But, the dispute is with respect to the date of shooting. The date 08.11.2016 assumes relevance because the prosecution alleges specifically that the conspiracy was held inside the caravan parked in the shooting location at CIFT Junction on 08.11.2016. The Learned defence counsel put a definite suggestion that the shooting at CIFT Junction was from 03.09.2016 till 03.11.2016. PW261 replied that he did not investigate about this fact. He was sticking on the version that the shooting was on 08.11.2016. Though he claimed that he came to know that the shooting was on 08.11.2016, the manner in which such an information is gathered is not revealed. Even PW58, the witness relied on by the prosecution heavily did not mention this date to the investigating officer at the time of his 161 statement. Similarly, PW58 has not mentioned the date during his 164 statement Ext.P186 also. Relying on Ext.P212 series CDR PW261 was cross examined to show that the shooting was from 30.09.2016 till 03.11.2016 at CIFT Junction. He replied that he has not investigated this fact based on Ext.P212 series CDR. He also

stated that on 08.11.2016 the entries were at Ezhupunna location. However, there was no investigation about this fact also. Moreover, PW191 was also not interrogated about this aspect. On verifying the evidence of PW261, it is seen that the entries in Ext.P212 series CDR from 03.09.2016 till 03.11.2016 are put to him. PW261 was constrained to admit the tower locations. On verification of the location it is seen that during this period the tower locations were either at CIFT Junction or at Palluruthy. Both are nearby places and the tower locations are overlapping also. He also admitted that after 03.11.2016 no tower locations at Palluruthy or CIFT Junction are seen in Ext.P212 series. PW261 tried to explain that on 08.11.2016 the locations are absent for a time gap of 12 hours.

376. I have already discussed about the time gaps in between the available entries on the dates prior to and after 08.11.2016. A suggestion is put to PW261 the investigating officer that the shooting at Ezhupunna was from morning till midnight. He stated casually that there was no investigation about this aspect. The prosecution is bound to rule out this aspect regarding presence at Ezhupunna, especially when it is claimed that

DISTRICT AND SESSIONS COURT ERNAKULAM

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

accused no.8 met accused no.1 at CIFT Junction on 08.11.2016 by noon. It is seen that though PW261 claimed that he came to know that there is shooting at CIFT Junction on 08.11.2016, no convincing evidence is adduced as to the source of his knowledge. The learned defence counsel argued that the CDR as well as tower locations collected by the investigating officer would not show the presence of accused nos.1 and 8 and PW191 at CIFT Junction on 08.11.2016 and that is why he suppressed those materials. This suggestion was put to PW261 and he denied it. At this juncture, the statement in Ext.P710 remand report assumes relevance. As pointed out hereinbefore, it is stated in Ext.P710 that tower locations and CDR are available to show the presence of accused nos.1 and 8 at CIFT Junction on 08.11.2016. What happened to those records are also not explained by the prosecution.

377. The learned Special Public Prosecutor relied on the evidence of PW58, Ext.P279 FSL report, Exts.P712 and 712(a) mahazar along with Ext.P275 pendrive containing recorded conversation between accused no.1 and PW191 to prove the alleged conspiracy between accused nos.1 and 8 on 08.11.2016 at CIFT Junction. It is to be noted that PW174 was

cited by the prosecution to prove the point that TN-10 AE 4118 caravan was rented out in connection with the shooting of 'Georgettan's Pooram' movie and this caravan was used by accused no.8. It is also stated that CW54 (PW58) was the driver of that caravan. The prosecution case is that this caravan was in the CIFT location on 08.11.2016. On 08.11.2016, accused no.1 dropped PW58 in the location. Since there was no change in location, PW58 came back. At that time, accused no.1 was seen standing outside the caravan and accused no.8 was available in the caravan. PW174 was the owner of that caravan. Ext.P198 is claimed to be the notebook containing the trip details of the caravan owned by PW174. The particular page containing the details of the caravan is marked as Ext.P198(a). This notebook was seized by PW198 on the strength of Ext.P333 mahazar. Ext.P332 is the mahazar prepared by PW198 with respect to the caravan bearing registration no.TN-10 AE 4118. Ext.P333(a) Form-15 and the report field before the jurisdictional court to receive the documents are proved through PW261 as Ext.P333(a) and (b). It is interesting to note that nothing is mentioned by the learned Special Public Prosecutor about this evidence. The marking of Ext.P198 is



objected to by the learned defence counsel and it is marked subject to objection. They also objected the examination of PW174. According to the learned defence counsel, the document to be proved through this witness is in Tamil and no translated copy is produced. This witness was examined with the help of interpreter. The document was also examined subject to the very same objection. The defence also contended that copy of the document is not served to them. The prosecutor did not make any submissions regarding this objection. Every entries in Ext.P198 document except regarding the persons who have hired the caravan are in Tamil. No translated copy is produced before the court along with the original or furnished to the accused persons. Ext.P198(a) is page no.84 of Ext.P198. This page contains the entries with respect to caravan bearing registration no.TN-10 AE 4118. The entries are of from 01.09.2016 till 03.09.2016. The one and only entry in page no.84 with respect to this caravan on 10.09.2016 is the name of one Mr. Murugan TVR. No other details are stated in this book. As far as the entry on 08.11.2016 is concerned, it is written in Tamil. The most interesting aspect is that nothing is put to PW58 who claimed to be the driver of the caravans about the entries in

Ext.P198. He has not even mentioned about the person from whom the caravan was taken on lease. According to PW58, the caravan of accused no.8 got some complaints. Hence, the caravan of PW58 was given to accused no.8 for his personal use. As pointed out, that cannot be seen from the entries in Ext.P198 contained in page 88. The presence of PW174 in the location is not stated by any of the witnesses who had given the details of the user of the caravan.

378. The evidence of PW174 is that he had recorded the details of the caravan roughly in a notebook along with the details of chitty, grossery and money lending. According to him, this was in his handwriting. He deposed that in page no.87 he recorded 'Dileep Nadikar' in his handwriting. Page no.87 is with respect to vehicle no.TN-10-AM-6513. Though PW58 claimed that Dileep used another caravan, that had some problems and accordingly, caravan bearing registration no.TN-10 AE 4118 is being used by accused no.8. No evidence is available in court regarding the alleged user of TN-10-AM-6513 by accused no.8. The socalled entries in page no.87 are in Tamil. He contended that corresponding to this entry, the name Murugam TVR is also recorded. In



another occasion, PW174 stated that the handwriting in Ext.P198 is of PW58 Suneesh. In page no.19 of his evidence he stated that there is no trip-sheet for this vehicle. He used to record the entries in a notebook. He admitted that he stated to the police that the entries in the register were written by PW58. His 161 statement is also recorded in Malayalam. This witness does not know Malayalam. Nothing is there in the statement that his statement was translated to Malayalam and vice versa. PW198 Jayakrishnan who seized the notebook admitted that PW174 did not sate that the handwriting are of him. As far as the allegations of prosecution is concerned, the availability of caravan bearing registration no.TN-10 AE 4118 at CIFT location assumes much relevance. However, except the oral testimony of PW58, no evidence is available on record to show the availability of this particular caravan in CIFT location on 08.11.2016. PW58 was not able to give the registration number of the caravan and a leading question was put to him regarding that aspect. PW174 also admitted that Ext.P198 would not show that the caravan bearing registration no.TN-10 AE 4118 was used by accused no.8. He also added that it was taken by Murugan. This is against the evidence tendered by

PW58. PW58 in his chief examination itself claimed that he was taken this particular caravan on lease from Tamil Nadu. If we consider the evidence of PW174 that the vehicle was taken by Murugan, except his oral testimony regarding the entries in Ext.P198, no other evidence is available regarding that aspect.

379. As pointed out, Murugan cited as CW58 was not examined by the prosecution. Murugan is the competent person to depose about this fact. PW174 had no idea about the movies for which the caravan was taken by Murugan. The fact claimed by PW174 that the vehicle was taken by CW58 Murugan is not stated to the police. This was deposed for the first time in the court.

380. CW68 Sunil is cited as a witness in the witness memorandum to prove the fact that he acted as a junior artist in the movie 'Georgettan's Pooram' and also to prove that accused no.1 was available in the location for two days and that accused no.1 was standing near to the caravan wherein accused no.8 was taking rest. His statement u/s.164 Cr.P.C. is also recorded. For the reasons best known to the prosecution, he was also not examined. PW261 admitted that Ext.P198 notebook was neither



shown to PW58 nor asked any questions with respect to that book to him. The discussions held hereinbefore led to the conclusion that the prosecution failed to prove the availability of accused nos.1 and 8 in the shooting location at CIFT Junction and that the shooting was at CIFT Junction on 08.11.2016. I find accordingly.

381. **Meeting between accused nos.1 and 8 at Kinattingal Tennis Academy during the shooting of the movie 'Georgettan's Pooram' on 13.11.2016:-**

The prosecution case is that on 13.11.2016 at the location in Kinattingal Tennis Club, Puzhakkal, Thrissur, accused nos.1 and 8 met together and hatched criminal conspiracy to execute the crime against PW1. It is more specifically alleged that accused nos.1 and 8 met both on the back side of the caravan parked in the shooting location and also inside the indoor stadium. The learned Special Public Prosecutor argued that documentary evidence as well as oral testimonies are available to prove the presence of accused nos.1 and 8 in the said location. They relied on Ext.P212(a), P213 series, P200, P200(a), P142, P210(a) series and P216 series to prove the presence of accused nos.1 and 8 and PW191, the driver of accused no.8. In order to prove the CDRs, they highlighted the

evidence of PW175. Above all, reliance was also placed on PW59, PW60, PW61and PW62 to prove the presence of accused nos.1 and 8 in the shooting location. PW43 is examined to prove the alleged conspiracy between accused nos.1 and 8 inside the indoor stadium. MO84 mobile phone of PW59 and the images retrieved from that mobile on the strength of Ext.P282 and P282(a) Annexure are also put forward in support of the claim that accused nos.1 and 8 were present in Kinattingal Tennis Academy, where the meeting between them took place. PW192 scientific expert ruled out the fact that the images retrieved from MO84 are tamper proof. Though the learned counsel for accused no.8 alleged manipulation in the photograph, the claim was proven false through cogent oral, documentary and scientific evidence. No photograph is produced before the court showing that accused nos.1 and 8 in a single frame. Accused no.1 is not standing behind accused no.8 in any image retrieved from MO84. Accused no.1 was standing behind the selfie photo of PW59 and actor Ganapathy. All these photographs were taken from different angles conforming their authenticity. Accused no.1 is familiar with the RC number of the car of accused no.8. This shows the close acquaintance with



accused nos.1 and 8. Accused no.1 disclosed that he hatched conspiracy with accused no.8 behind the caravan at Tennis Academy during the shooting of the movie 'Georgettan's Pooram'. It is also argued by prosecution that both accused nos.1 and 8 never challenged their presence in Kinattingal Tennis Academy on 13.11.2016. Meeting behind the caravan may not be specifically noticed by anybody and the prosecution shall not be blamed for not creating artificial evidence to prove this fact. PW43 testified categorically about the meeting with accused nos.1 and 8 inside the indoor stadium between 2 p.m. and 3 p.m. during a brake in the shooting. PW43 is not a chance witness. It is also urged that though somany counter stories were raised by the learned counsel for accused no.8 against PW43, his evidence is clinching and it completely demolishes the false assertion of accused no.8 that he never met accused no.1 in his lifetime.

382. The learned counsel for the accused on the other hand contented that Ext.P710 remand report does not contain any reference about PW43 and also about the meeting between accused nos.1 and 8 allegedly held inside the indoor stadium. It is also argued that PW43 did

not mention anything about such a meeting at the time of his interrogation by the investigating officer in the first occasion. According to the learned defence counsel, PW43 was later influenced by one Mr. Amjath, the treasurer of Tennis Academy and accordingly, he stated falsehood.

383. Among the places where the prosecution claimed that accused nos.1 and 8 met together and hatched conspiracy except Tennis Academy, all places were shown by accused no.8 on the strength of his disclosure statement. On the other hand, the place in the Tennis Academy, where the conspiracy was allegedly hatched was shown by PW43. According to the counsel for accused no.8, this would also show that even on 13.07.2017, when accused no.8 was taken to various places at Thrissur, the investigating officer has no knowledge about the alleged conspiracy at Tennis Academy. According to the learned counsel, the statement of PW43 produced before the court is antedated. The statement of PW43 was prepared much after the arrest of accused no.8. According to him, though several witnesses from Tennis Academy are examined, nobody stated about the alleged conspiracy between accused nos.1 and 8 behind

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

the caravan. Similarly, in Ext.C22 dated 16.09.2017, allegation regarding the conspiracy inside the indoor stadium is absent. This fact was brought forth in Ext.P716 mahazar dated 13.07.2017 prepared by PW261. It is also contended that Ext.P715 mahazar is prepared on 13.07.2017 on the strength of Ext.P715(a) disclosure statement of accused no.8 about the place where the caravan was parked. It is further contended that, had there been any information about the conspiracy inside the indoor stadium, the investigating officer would have been prepared another mahazar for it. It is also assailed that the case of the prosecution is that accused no.1 had disclosed about these facts and hence the so-called disclosure claimed to be made by accused no.8 looses its status as disclosure statement. The defence/counsel for accused no.8 also disputed the photographs produced before the court and contended that those photographs are forged one. The defence also produced Ext.D12 photo along with Ext.D170 pendrive to substantiate the contention regarding forgery.

384. Apart from the above evidence, this court has to consider Ext.P195, the 164 statement of PW43. Ext.P340 mahazar prepared on

03.07.2017 for seizing MO84 mobile phone and Ext.P341 mahazar prepared by PW201 on 05.07.2017 for seizing Ext.P341(a). Ext.P343(a) is the authorization by PW261 to PW201 for conducting investigation at Kinattingal Tennis Academy.

385. In the light of above assertions and contentions raised by both sides, the evidence available before this court in this regard is to be evaluated. The fact that shooting was held at Kinattingal Tennis Academy on 13.11.2016 is not in dispute. Ext.P341(a) receipt would show that Rs.50,000/- was received from M/s. Chand V Creations. Ext.P341 is the inventory mahazar prepared with respect to Ext.P341(a) receipt. This was stated to be handed over by CW51 Sudhakaran, Manager of Tennis Academy. CW51 was not examined by the prosecution, though in Ext.P341(b) it is claimed that Rs.50,000/- was received from M/s. Chand V Creations as donation. Presence of accused no.8 in Kinattingal Tennis Academy in connection with the shooting of the movie 'Georgettan's Pooram' is not disputed by the defence also. PW61 and PW62 are examined to prove the presence of accused no.1 in that location as substitute driver. This fact was discussed while considering the conspiracy

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

at CIFT Junction on 08.11.2016. Moreover, the CDR and the location details would also show their presence. Hence, this court need not dwell much time again to arrive at a finding regarding the presence of accused nos.1 and 8 in the shooting location at Kinattingal Tennis Academy.

386. The evidence of PW43 Vasudevan is to be considered first about the presence of accused nos.1 and 8 inside the indoor stadium. PW43 deposed that he is working as Groundsman for 18 years at Thrissur Tennis Club. He is engaged in the maintenance of tennis court. There are four tennis courts. Among the four courts, three courts are outdoor courts and one is indoor court. According to him, on 13.11.2016, there was shooting of the movie 'Georgettan's Pooram' in the Indoor Stadium and accused no.8 was the main actor. He was on duty on that day. He was engaged in the maintenance of ground by spreading sheet over the ground. The shooting of Kabaddi competition was held there. He was engaged there throughout the shooting. In between 2 p.m and 3.00 p.m Dileep and another person were seen engaged in conversation. He later came across with the press report of this case and he could identify the person who engaged in conversation with Dileep in the indoor stadium. It

was accused no.1. He was interrogated by the investigating officer for two times. He also gave statement before the Magistrate u/s.164 Cr.P.C. According to him, accused nos.8 and 1 were engaged in conversation on the north- eastern corner of the stadium. Both were sitting on chairs. He had pointed out that place to the police and police prepared mahazar. He used to watch Malayalam movies of Mammootty, Mohanlal and Dileepettan. According to him, 'Dileepettan' is actor Dileep. He could identify accused no.1 on seeing his photos in the newspaper and television. In his cross-examination of accused no.1, he stated that nobody is permitted to enter the location during shooting owing to security issues. The learned counsel for accused no.1 put a suggestion that drivers and the people who are keeping trust are permitted to enter inside. The learned counsel for accused no.8 challenged his veracity by putting questions to show that he was taken to the court by police personnel. PW43 admitted that on 25.08.2020 PW261 along with Police Constable Mr Binu, a member of the Special Investigation Team went to the club and met him. He had been directed by them to appear before the court. He also admitted that on 26.08.2020, Binu along with PW261 reached in the



DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

Tennis Club. The learned defence counsel put a suggestion that he was taken to police club. PW43 denied it. According to him, he was dropped in the bus stand. He also stated that on 26.08.2020, police jeep reached in the club by 9.00 a.m. Though a suggestion was made by the learned defence counsel that he was taken to the custody of police on 26th and later released on 27th, he emphatically denied it.

387. The specifications about the indoor stadium was put to PW43 from the defence side and his answer was that he does not know. He stated about the specifications of the tennis court. He deposed that he had seen a selfie photo with accused no.1 behind accused no.8 brought to the Tennis Academy. He stated that accused no.8 pointed out the place inside the indoor stadium to PW261. The investigating officer had taken the measurements and recorded it. Thereafter witnesses also put their signature in that. He was approached thereafter. He was questioned about the press report dated 14.07.2017 stating that PW59 informed the police about the presence of accused no.1 and accused no.8 in the gallery. He does not know about this. He admitted that he along with PW59 went to Angamaly police station and informed the police that he had no

knowledge about the incidents. His statement was recorded. Till the arrival of Dileep along with PW261 to the club, he was not even treated as a witness. The office bearers of Tennis Club Mr Amjath and Mr. Manoj Bond contacted him after his statement before the Angamaly police. They enquired him about the statement. He informed them that he had no knowledge about the incidents and that is why he informed that fact to the police. Mr Amjath and Manoj told him that his presence was noted by other persons. If this fact was informed to the police, a case will be registered against him. Thereafter, Mr Amjath took him to Aluva Police Club. He had been directed by Mr. Amjath to inform the police that he saw accused no.1 in the indoor stadium. He was also directed to say that he failed to disclose this fact in the first occasion as he was frightened. Thereafter he gave statement claiming that the incidents are known to him. He had been further directed and instructed to say these facts thereafter before any authority. He proceeded along with Mr. Amjath. Thereafter his statement was recorded by PW201. The second statement was given two days after the first statement. He had been instructed and directed to give the second statement whenever anybody asks and also



before the Magistrate. According to him, he gave 164 statement keeping the second statement in his mind. The engagement in Tennis Academy is his one and only source of income. If he fails to obey the directions of Mr Amjath, he would have lost his employment. The details regarding shooting is put to him and he replied that he did not saw it. He also submitted that the place where accused nos.1 and 8 claimed to be sat is visible from any direction. According to him, almost 72 - 80 persons were available in the location. Some omissions in his 164 statement are brought out. He admitted that police tutored him about the matters to be deposed before the Magistrate at the time of his 164 statement. But he could not state all those matters. A question is put to him in his re-examination by the learned Special Public Prosecutor that whether Mr Amjath instructed him about the matters to be deposed before the court. He denied it. At the very same time, he again stated that he had been instructed by Mr Amjath after his 161 statement before the investigating officer that the matters are to be deposed in that tune.

388. As far as the alleged conspiracy hatched between accused nos.1 and 8 inside the tennis court, the one and only witness cited by the

prosecution is PW43. The records would show that PW201 recorded his statement u/s.161 Cr.P.C on 30.06.2017. Thereafter, PW201 again on 13.07.2017 recorded his statement. Ext.P716 prepared on 13.07.2017 at 12.45 p.m would show that PW43 pointed out the place inside the tennis court where accused nos.1 and 8 allegedly hatched criminal conspiracy to the investigating officer at 12.45 p.m in the presence of witnesses. I have already reiterated the important aspects of the oral testimony of PW43. PW43 is an employee of the Tennis Club. He claimed that he is the groundsman and engaged in the management of tennis court while the shooting was held therein. In the chief examination he has deposed about the prosecution case. He also stated that the time falls between 2 p.m and 3 p.m. Accused no.8 was seen engaged in conversation with another person. When he came across with the matters of this case in news paper, he could identify the person who engaged in conversation with accused no.8. According to him, it was accused no.1. In the chief examination itself he reiterated that his statement was recorded by police on two occasions. He also stated that he had given 164 statement before the Magistrate also. But in cross-examination it is elicited specifically that he



went to the Angamaly police station in connection with this case. His statement was recorded on that day. PW59 also accompanied him to the Angamaly police station. The statement of PW59 was also recorded. He categorically deposed that he stated to the police that he had no knowledge about the incidents involved in this case. He also admitted that he was not even considered as a witness till the police arrived in the club on 13.07.2017. He also stated that the office bearers of the Tennis Club one Mr Amjath and Mr Manoj Bond asked the erason for his statement before the Angamaly police that he had no knowledge about the incidents and he replied want of specific and clear idea about the incidents had prompted him to state so. Thereafter, Mr. Amjath and Mr. Manoj Bond told him that there are people who noticed his presence and if it is made known to police, they will register case against him. After a threat of such a nature, he was taken to the Police Club, Aluva by Mr Amjath. He had been directed by Mr Amjath to say that he had witnessed the conversation between accused nos.1 and 8 and he failed to depose it in the previous occasion as he was frightened. Thereafter, the Circle Inspector of Police reached there and his statement was recorded.

He was instructed to depose in tune with that statement before the authorities thereafter. He does not know the details of the officer whom he met at Police Club, Aluva. He also stated that PW201 recorded his statement at Police Club, Aluva. According to him, his statement was recorded two days after his statement before the Angamaly police. He had gone to the extent of stating that if he was not ready to depose as directed by Mr Amjath, he was afraid to lose his job. Relying on this the learned counsel for the defence contended that PW43 is a planted witness. It is also submitted that no reference is made about the alleged conspiracy inside the Tennis Club in Ext.P710 remand report and Ext.C22. It is further submitted that though the statement produced before the court bears the date as 30.06.2017, it was a predated statement.

389. Here the evidence of PW43 would show that in the first occasion he appeared before the police at Angamaly along with PW59 and stated that he had no knowledge about the meeting of accused nos.1 and 8 at the Tennis Academy. He specifically stated that his statement was recorded. No such statement is produced before the court. According to him, it was two days prior to the recording of his statement at Police



Club, Aluva. As I pointed out, this particular statement contains the date as 30.06.2017. This was seems to be recorded by PW201. PW201 was the then Circle Inspector of Police, Angamaly. Ext.P343(a) is the authorisation given by PW261 investigating officer to PW201. Ext.P343(a) would read as follows:- "You are authorised to conduct investigation at Kinattingal Tennis Academy, Thrissur, Hotel Merlin International Hotel, Thrissur and Santhigiri College, Thodupuzha and record the statements of relevant witnesses and seize documents/material objects in connection with Nedumbassery police station Crime No.297/2017". This authorisation was given on 30.06.2017.

390. The re-examination of PW43 by the learned Special Public Prosecutor at length. The learned Special Public Prosecutor put a question that his first statement was recorded by PW201 and the second statement was recorded by PW261. He admitted it and the learned Special Public Prosecutor again put another question that apart from these statements, no other statement was given by him. He again replied that he had given statement. He also clarified that he along with PW59 went to Angamaly police station and his statement was recorded. PW43

is the one and only witness relied on by the prosecution to prove the conspiracy inside the Tennis Club. If this be the situation, there is no reason to discard his evidence regarding the recording of statement at Angamaly police station also. His evidence would further discredit Ext.P343(a) authorisation also. As pointed out, PW201 was seen authorised by PW261 on 30.06.2017. If this be the situation, how could PW201, the then C.I of Angamaly police station recorded the statement of PW43 on 28.06.2017 is not seen explained by prosecution.

391. In his examination u/s.313(1)(b) of Cr.P.C. accused no.8 stated that Mr Amjath is in enmical terms with him. It is brought out in evidence that PW43, who is an employee in Tennis Academy was coerced and intimidated by Mr Amjath and Mr. Manoj Bond, who were the office bearers of Tennis Academy to give evidence as per their direction. He also stated that he was afraid of loosing his job, in case of his failure to comply with the direction of Mr Amjath. It is also seems that Mr Amjath threatened him that if he is not giving evidence as directed by him, criminal cases will be registered against him.







392. It is true that remand report shall not contain the entire details of the matters investigated till that time. However, in this case, the learned defence counsel contended that want of any reference in Ext.P710 about the one and only conspiracy allegedly taken place at Tennis Academy mentioned in Ext.P710 and the conspiracy allegedly hatched inside the stadium was for the reason that it was absent at the time of its preparation. When it was put to PW261 investigating officer, his answer was in an undisguised manner. According to PW261, he went to the Tennis Academy as part of investigation for the first time on 13.07.2017. PW201 conducted investigation at the Tennis Academy before 13.07.2017. He categorically stated that the one and only witness cited to depose about the matters inside the tennis court was PW43. He also stated that the allegation that accused nos.1 and 8 converse inside the Tennis Academy is a serious allegation. He also admitted that this is not stated in Ext.P710. He clarified that since there was chance to influence PW43, the information received from him was kept confidentially till his statement u/s.164 Cr.P.C was recorded. No report stating this particular aspect is filed in the court. He tried to convince that nothing is suppressed

from the court. According to him, the details of conspiracy at the Tennis Club is mentioned in Ext.P710. Thereafter, another question is put to him in the cross-examination about the conspiracy inside the Tennis Club and he was constrained to admit that this fact is not stated in Ext.P710. According to him, he received information about PW43 on 04.07.2017 and these matters are mentioned in the report dealing with investigation from 29.06.2017 till 04.07.2017. No such report is produced before the court. He again gave another version that on 30.06.2017, he received the information that PW43 witnessed the meeting with accused nos.1 and 8. Though PW261 deposed that the information about PW43 kept confidentially till the recording of his statement u/s.164 Cr.P.C., the prosecution records itself would bringforth the falsity of that claim.

393. Ext.P716 mahazar is prepared by PW261 with respect to the place where the conspiracy in question was hatched. It was on 13.07.2017 at 12.45 p.m. In the mahazar it is stated specifically that accused nos.1 and 8 in Nedumbassery police station Crime No.297/2017 engaged in conversation at Tennis Academy and on 13.11.2017 that place was shown to the investigating officer by PW43 to PW261 and accordingly mahazar

DISTRICT AND SESSIONS COURT

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

was prepared in the presence of witnesses. Two witnesses are cited in Ext.P716. One of the witnesses is the Manager of Tennis Academy. The other witness is also an employee of the Tennis Academy. PW43 is also an employee there. All these persons are known to each other. The details of the places are narrated in the mahazar. These two witnesses who are cited in the witness memorandum as CW51 and CW204 were given up. The point to be proved through these witnesses includes their attestation to Ext.P716. On that day PW201 admittedly prepared Ext.P715 mahazar of the place where the caravan was allegedly parked as pointed out by accused no.8. Somany people were present in the Tennis Academy during the said investigation. If this be the situation, the contention that the information received from PW43 was kept confidential seems to be a falsehood.

394. Moreover, another fact to be considered is that Ext.P195, the 164 statement of this witness was recorded on 21.07.2017. Ext.C32 is the order of the Chief Judicial Magistrate, Ernakulam permitting to record his 164 statement. The report of the investigating officer was seen filed on 17.07.2017. Nothing is mentioned either in the report or in the order

about the alleged confidentiality and secrecy claimed by the investigating officer. It seems that the investigating officer deposed about the so-called secrecy so as to defeat the contention of defence that PW43 is a planted witness after Ext.P710 remand report. In this particular context, the non-mentioning of the details of this conspiracy in Ext.P710 assumes relevance also. Moreover, Ext.P716 mahazar reached the court on 17.07.2017. This also negatives the claim of PW261 that the information received from PW43 kept confidential till the recording of his statement u/s.164 Cr.P.C on 21.07.2017 in order to avoid influence on him.

395. Further, the statement of PW59 and PW60 were recorded on 29.06.2017, 03.07.2017 and 01.07.2017. No reference is made about PW43 in those statements. PW261 deposed that on 29.06.2017, PW201 was authorized to conduct investigation at Tennis Academy. This is also against Ext.P343(a) authorization. As far as Ext.P716 mahazar is concerned, PW43 deposed that accused no.8 pointed out the place inside the indoor stadium to PW261. He specifically stated that accused no.8 pointed out the north-eastern corner of the tennis court. The investigating officer had taken measurements of this place and recorded it. Thereafter,



CW51 Sudhakaran and CW204 Anuth attested it. They approached PW43. He also put signature. This evidence is contrary to Ext.P716. Nothing is mentioned about the presence of accused no.8 while preparing that mahazar. As pointed out, the attestors of this mahazar were not examined by the prosecution. CW51 being the Manager is the most competent person to give details about the shooting as well as the preparation of mahazar. Why these witnesses were given up is also not explained by the prosecution. Ext.C22 is the objection filed by the investigating officer on 15.07.2017 in the bail application. In that also the conspiracy allegedly hatched inside the Tennis Club is absent. When questions were put to PW261 in his cross-examination about this aspect, he deposed that it is mentioned in Ext.C22 that the witnesses will be influenced and accordingly, accused no.8 would interfere with the investigation. He also stated that this fact of influence mentioned in Ext.C22 is about the influence of PW43. The reasons for opposing the bail is mentioned separately. The last reason stated is that since accused no.8 is an influential person and film actor, there is chance to influence the witnesses for causing disappearance of evidence. Based on this averment,

PW261 stated that this was meant about PW43. It is to be noted that what is stated therein is in plural form that there is chance to influence the witnesses. It seems to be a general statement usually raised in the bail objections. Nothing is there in Ext.C22 to show that the influence canvassed therein is about PW43. This is also another indication about the manner in which PW261 deposed before the court.

396. The learned defence counsel attempted to contend that PW43 was not in picture even on 15.07.2017. As pointed out, Ext.P716 was prepared on 13.07.2017. The presence of PW43 is mentioned in Ext.P716. It is true that Ext.P716 has reached the court only on 17.07.2017. Ext.P715 is also reached in court on 17.07.2017. The 161 statement of this witness produced in court on 22.11.2017 along with the final report. 13.07.2017 of PW43 was a Thursday. These mahazars reached in court on 17.07.2017 Monday. In the second statement dated 13.07.2017 of PW43, there is reference regarding the statement dated 30.06.2017. It is true that the two statements were reached the court only on 22.11.2017. Since Ext.P716 was on 13.07.2017, though it reached the court on 17.07.2017, the presence of PW43 can be seen from the records dated 13.07.2017.

Even if the contention of the defence that PW43 was planted after Ext.C22 is discarded and the assertion of prosecution that his statement was recorded on 30.06.2017 are accepted, the point required to be decided is, whether the evidence of PW43 is a reliable one to prove the conspiracy between accused nos.1 and 8 inside indoor stadium. The evidence of PW43 is unacceptable to arrive at such a finding in view of his own admission that he was coerced and threatened by the office bearers of Tennis Club Mr. Amjath and Manoj Bond to depose that he witnessed the conversation between accused nos.1 and 8 after his statement before Angamaly police that he had not seen anything in that regard. On the basis of the above discussions and the conclusions arrived at, I am of the considered view that the evidence tendered by PW43 before the court regarding the meeting with accused nos.1 and 8 inside the indoor stadium lacks credibility and hence cannot be taken into account for proving the said fact and I hold accordingly.

397. In the re-examination, he reiterated the very same fact. He had also stated that his master instructed to give that statement throughout thereafter. In his statement u/s.164 Cr.P.C, he stated about

the meeting with accused nos.1 and 8 inside the indoor stadium. The details which were stated to the investigating officer on 30.06.2017 including the time are not stated in that statement. It cannot be expected that a witness should speak same versions meticulously on each and every occasion. However, PW43 categorically stated without any room for doubt that Mr. Amjath and Manoj Bond took him to the Police Club, Aluva and directed him to say that he witnessed the fact of conversation by accused no.1 with accused no.8 and also to say that he was afraid and hence he could not disclose it in the earlier occasion. This assumes relevance.

398. It is brought out in cross examination that though PW43 claimed that when the news about this case came in the newspaper, he could identify accused no.1 as the person who engaged conversation with accused no.8 on 13.11.2016 inside the stadium. It is to be noted that prosecution or PW43 has no case that accused no.1 is known to PW43 prior to 13.11.2016. It is brought out in evidence that somany drivers and crew members were available in the location. Inside the stadium, the shooting of Kabaddi match was conducted. Somany persons were

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

available therein also. PW43 has not stated any special circumstance to notice the presence of accused no.1 other than the alleged conversation between accused nos.1 and 8. He does not remember how many members were available for shooting. He also stated that approximately 70-80 persons were available during the shooting. It is brought out that the fact of identification on seeing news item is not stated to the Magistrate. On the other hand, what he stated at the time of his 164 statement is that police showed the photo to him and asked whether he witnessed that accused no.8 talked to anybody. Nothing is mentioned about the fact that he had seen the photo of accused no.1 before the investigating officer showed the photograph to him. PW43 himself admitted the presence of other film personnel including the actors of the movie inside the stadium during the shooting. Those persons were not even interrogated or examined. It is difficult to believe that popular actor like accused no.8 hatched criminal conspiracy with accused no.1 during the midst of shooting without noticing anybody. PW43 was examined before the court on 27.08.2020. When he was examined the learned defence put questions to him that he was taken by the police from the club and came to the

court along with police personnel. He denied it. PW43 stated that he left his house on the previous day and stayed with his friend. A question is put to him that he was available in the police club, Thrissur on that day, but he denied it. This court has issued summons to this witness to appear on 01.04.2020. Due to the lockdown in connection with the outbreak of Covid, examination could not be conducted on that day. After the lockdown, this court resumed the examination. The witnesses were examined considering their availability. On 24.08.2020, this court enquired about the possibility of securing the presence of CW13 and CW32 and directed them to produce those witnesses subject to the availability. It was also directed to inform the availability in advance to the learned counsel for accused persons. On 26.08.2020, prosecution informed the accused that on 27.08.2020, they will produce CW64. They produced PW43. PW43 is cited as CW61. This court on 26.08.2020 ascertained the details of the witness as the rank of the witness and name were not tallying. It is thereafter corrected the rank of the witness as CW61. Though this court directed to bring CW13 and CW32 on 27.08.2020 subject to their availability, prosecution brought PW43. This

court was constrained to secure the presence of the witnesses as the restrictions in connection with the lockdown and outbreak of pandemic were still in existence. Though PW43 was brought against the direction, this court examined him in chief. Time was granted to the counsel for accused no.8 for cross examination. He was cross examined on 03.09.2020. As I pointed out, questions were put to this witness that he was brought to the court by the police. PW43 denied it. But, at the very same time, he admitted that on 25.08.2020, at about 3 p.m., PW261 along with police constable Mr. Binu came to Tennis Club and informed him about the direction to appear before the court on 27.08.2020. It is to be noted that this court had not given any such direction to bring PW43 on 27.08.2020. He stated that PW261 and Mr. Binu reached the office of Tennis Club. He was called to the office. According to him, police talked to him for about 10 minutes. Another question is put to him that on 26.08.2020, PW261 and Mr. Binu took him in a police jeep from the Tennis Club. He admitted that they again came on 26.08.2020 morning. The defence put another question that he was taken to police club thereafter. He denied it and replied that he was dropped at the bus stand.

According to him, on 26.08.2020 police jeep came to the club by 9 a.m. The defence argued that he was taken by the police to police club and tutored by the police officials. Thereafter, he was brought to the court on 27.08.2020. It is true that PW43 denied this aspect. The evidence of PW261 in this regard is looked into. A question is put to him regarding the direction of the court to bring CW13 and CW32 on 27.08.2020. PW261 replied that there was discussion about it, but he does not remember who told to bring them. It is an evasive answer. He also admitted about the mistake crept in the rank of the witness. When a question is put to him by the defence that he along with CPO Mr. Binu proceeded to Tennis Club to meet PW43 after prosecution decided to examine him, the witness replied that they went there to verify the availability of PW43 as directed by the Prosecutor. What is the purpose for giving such a direction by the learned Special Public Prosecutor is not explained and the circumstances are suspicious especially when the direction was to secure the presence of CW13 and CW32. PW261 admitted that he along with CPO Mr. Binu met PW43 at Tennis Club on 25.08.2020. He admitted that the mobile number of PW43 was available



DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

with him. A question is put to him that whether any difficulty was in existence to enquire about the availability of PW43 by contacting him over phone. He admitted that there was no difficulty in contacting him over phone. The witness added that they proceeded to meet him directly so as to enquire about the availability.

399. It is to be noted that usually higher officials such as Circle Inspector or Dy.Sp will not go to serve summons to a witness. Even if this evidence is believed, why the police officials went to the Tennis Club and took PW43 in a police jeep and dropped him in the bus stand as stated by PW43 seems to be a doubtful conduct. PW261 tried to clarify that he sent CPO Mr. Binu on 26.08.2020 as PW43 informed them that he will avail leave and go to his residence. In order to make sure of this fact and also to secure the presence of PW43 before the court on 27.08.2020, he sent the police officials along with jeep. This explanation lacks credibility especially when there was no direction from the court to secure the presence of PW43 before the court on 27.08.2020. All these matters can be discarded if the evidence of PW43 is a credible one. These matters assume relevance because PW43 himself deposed before the court that he

was intimidated and influenced by the office bearers of the Tennis Club to depose matters as directed by them. PW43 himself categorically stated that he was not even treated as a witness till 13.07.2017.

400. The prosecution alleges that both accused nos.1 and 8 met at Puzhakkal Tennis Academy on 13.11.2016. It is asserted that there were two meetings at Kinnatingal Tennis Academy, one was inside the indoor stadium and the other, on the back side of a caravan parked in the location. I have already discussed the evidence of PW43 and also related evidence as far as the meeting inside the indoor stadium.

401. The next aspect to be considered is the meeting on the back side of the caravan parked in the shooting location. In order to prove this aspect, prosecution relied on the oral testimonies of PW59, PW60, PW61 and PW62 along with the documentary evidence such as photos retrieved from the mobile phone of PW59, which is marked as MO84. Reliance is also placed on the evidence of PW192, who prepared Ext.P282 FSL report along with Ext.P282(a) Annexure - I DVD. Relying on the images retrieved from MO84 mobile phone, the learned Special Public Prosecutor submitted that the presence of both accused nos.1 and 8 in the tennis

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

academy can be seen from those images. According to the learned Special Public Prosecutor, this confirmed the meeting between accused nos.8 and 1. It is also argued that Ext.P282 would show that the images retrieved from MO84 are genuine without any tampering or forgery. It is further submitted that despite the contentions raised by accused no.8 and his associates both inside and outside court alleging that presence of accused no.1 in the photograph was digitally manipulated, that contention was proven to be false through cogent evidence. According to the learned Special Public Prosecutor, accused no.1 also categorically admitted these facts in his examination u/s.313(1)(b) of Cr.P.C.. The answer of accused no.1 would show his acquaintance with accused no.8 as he clearly stated his vehicle number. Meeting behind the caravan may not be specifically noticed by anybody. Prosecution shall not be blamed by accused no.8 for not creating an artificial evidence in relation to the meeting and conversation between accused nos.8 and 1 behind the caravan. The contentions of the prosecution in this regard are mentioned in page nos.376 to 380 of the argument note - Volume II.

402. The learned counsel for the accused, on the other hand, submitted that Ext.D12 photograph as well as Ext.D170 pendrive containing the telecast of news in Mathrubhumi news paper on 03.07.2017 and Malayala Manorama news paper on 02.07.2017 would show the manipulations at the instance of the investigating officer so as to appear that both accused nos.1 and 8 were available together in the Tennis Academy. It is also contended that though MO84 was seized by PW201 on 03.07.2017 on the strength of Ext.P340 mahazar, it is silent about Ext.D12 selfie photo of accused no.8 and PW59. It is further contended that PW261 in a dishonest attempt to defame and malign accused no.8 masked PW59 in Ext.D12 photo and circulated a false information that one of the two persons appear in the photo is accused no.1. It is also contended that this was leaked to media on 02.07.2017 and 03.07.2017 with an intention to create a stage for the arrest of accused no.8. Reliance is placed on the evidence of PW61 to negative the contention of the prosecution that accused nos.1 and 8 met together on the back side of the caravan.

403. The evidence of PW59, PW60 and PW61 in connection with the prosecution case that accused nos.1 and 8 met on the back side of the caravan are to be analysed. PW59 was working as Cardroom Manager at Kinattingal Tennis Academy during 2016-17. According to him, shooting of the movie 'Georgettan's Pooram' was held there. Indoor stadium situates near to car parking area, shuttle-court, swimming pool and cardroom wherein an independent building situates. During 2016-17 he was using a mobile with brand LETV. His mobile was produced before the C.I of Police, Angamaly. He captured a selfie photo with accused no.8 during the shooting of the movie 'Georgettan's Pooram' at Tennis Academy. He identified the phone as MO84. The selfie was captured on 13.11.2016. According to him, the selfie was captured in the car parking area of the indoor stadium and in front of the vehicle. He got information about the shooting. He made enquiry with Manager Mr. Bright. Mr. Bright informed him about accused no.8. He watched shooting location by standing in the first floor. Accused no.8 was engaged in conversation through mobile phone by standing in the car parking area. A boy reached there with a mobile phone. Accused no.8 obtained

the mobile phone from that child and captured selfie with that boy. He proceeded to the car parking area on seeing this. Accused no.8 went inside the stadium. Manager informed him that the shooting will be over within a short time. His colleagues PW60 Joji and Vineeth also accompanied him. At that time, Dileep was standing in the car parking area near to a jeep. They sought permission for capturing selfie photo. They took the selfie photo with Dileep. It was captured using his mobile phone as the mobile phones of others lack clarity. He put these photos in the Whatsapp group of Tennis Club. He also sent these photos to PW60 and Vineeth through Whatsapp. Thereafter, while they were sitting on the bridge, one Mr. Arjun reached there. Shooting of a scene with actor Sudheer Karamana was going on there. Actors Vinu Adimaly and Ganapathy were also came out from the indoor stadium. They also captured selfie photo with them. According to him, photos were captured at the car parking area. It could be seen from the photos. Porsche car of accused no.8 was parked therein. The RC number of Porsche car is KL7-CF-7861. He used to watch this photo. Moreover, the mobile number has relationship with Muslim community and accordingly, he could recollect



the number. His statements were recorded by the police. He identified the photos retrieved from MO84 and produced in Ext.P282(a). Three photos were shown to him. In one photo, he along with Mr. Arjun and PW60 were standing near to the car. Second one is the photo of actor Ganapathy and Joji. A question is put to him that who is standing behind in that photo and the question was objected by the learned counsel for accused no.8 stating that he has no connection with that photo. It is also submitted that it is a resized photo and certificate u/s.65B of the Indian Evidence Act is also absent. PW59 replied to the question that it is accused no.1. The learned counsel for accused no.8 also raised objection regarding the non-supply of photos to him. It is also stated that copy of Ext.P282(a) is also not provided to him. PW59 deposed that these three photos were shown to him by PW261 in a laptop. He was cross-examined by accused no.8 and in answer thereto, he deposed that the selfie with accused no.8. was not shown to him during investigation. It is also admitted that this particular photo was not shown to him during his chief examination. He had seen the photo in his mobile phone. Nobody except him and accused no.8 was available in that photo. This particular

photograph is marked as Ext.D12. Ext.D12 is the printout of the photograph furnished to the accused. In that photo two persons were standing behind PW59 and accused no.8. A specific question is put to him that those people are associate director Mr. Manish and associate camaraman Nikhil of the movie Georgettan's Pooram. PW59 replied that he does not know. The background of this particular photo is paddy field and trees. PW59 stated that news was spread stating that accused no.1 was available in the background of the selfie photo of PW59 with accused no.8. According to him, he captured only one selfie photo with accused no.8 and that is Ext.D12. He forwarded this photo to the Whatsapp group of club staff and also posted in facebook. A question is put to him that Sunil was not available in that selfie photo and he replied that he did not notice it. Thereafter, he admitted that Sunil was not available in Ext.D12. According to him, PW60 informed him that accused no.1 was available in the selfie photos. Ext.D13 contradiction is also brought out through PW59. Ext.D13 would show that the photos without PW59 were deleted by him on that day itself. He deposed before court that the photos were deleted some days after its capturing. According to

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

him, Joji informed him about the presence of accused no.1, when the news was telecast in television. He stated that a photograph with Pulsar Suni was showed to him by PW261. It was during October last. No other photos were showed to him. Similarly, it is elicited through this witness that he stated to the police that accused no.8 took selfie with a child in the morning. It is also put to this witness by the learned counsel that his evidence regarding the time of the selfie is changed as instructed by the investigating officer so as to tally with the evidence of PW60. He denied it. Similarly, it is also brought out that the fact of capturing selfie of accused no.8 with the child was in the evening is not stated to the police. Similarly, the evidence with respect to Porsche car is also not stated to the investigating officer. He stated that he had not seen accused no.1 directly when the investigating officer brought accused no.8 to tennis club on 13.07.2017, though he was present there. Somany police personnel, press people and TV channel people were available. All the matters which were taken place on that day were telecast by the media. According to him, he showed the place where he captured the selfie to the police. Police did not

notice that. According to him, car parking situates almost 200 meters away from the cardroom.

404. PW60 deposed that he was working as waiter in the Bar attached with Kinattingal Tennis Academy. He witnessed the shooting of Georgettan's Pooram on 13.11.2016. He captured selfie with actor Ganapathy and accused no.8 using the mobile phone of PW59. PW59 sent those photos to him through Whatsapp. He showed those photos to the investigating officer in his mobile phone. That phone is now not available with him. Photos are also not available with him. According to him, two photos are with actor Ganapathy and two are with accused no.8. Pulsar Suni was seen standing on the back side of his photo with actor Ganapathy. Accused no.1 was available there on 13.11.2016. According to him, his statement was recorded by the police. The photo with accused no.1 was shown to him on that day. He came to know about this photograph from T.V news. According to him, this fact was stated to the police, but it is an omission. This witness stated that, in the news, the photo of accused no.1 was encircled in red colour. A question is put to him that accused no.8 was available in that photo. According to him,

accused no.8 was not available. His selfie photo was with actor Ganapathy. He admitted that he stated to the police about the availability of accused no.1 in the selfie photo with actor Ganapathy. According to him, it is a true fact. Similarly, the fact that accused no.1 was seen in the shooting location is stated in the court for the first time. According to him, accused no.8 was watching mobile by slanting towards a black coloured jeep. Accused no.8 took selfie photograph with a child. This is the available evidence with respect to this particular point. It is to be noted that MO84 was analyzed by PW192, and he prepared Ext.P282 report along with Ext.P282(a) DVD. It contains the photograph. Those photographs are shown to the witness. The interesting aspect is that two persons are seen in the background of selfie photo of PW59 with accused no.8. The printout of this photograph is produced at the instance of the accused and it is marked as Ext.D12. Ext.P340 is the mahazar prepared by PW261 on 03.07.2017 in connection with the seizure of MO84 phone of PW59. The description of the phone is stated in the mahazar. Nothing about the details of the photographs available in that phone is mentioned in the mahazar. At this juncture Ext.D170 pendrive assumes some

importance. Ext.D170 contains the news item telecast in Manorama news on 02.07.2017 and in Mathrubhumi news on 03.07.2017. The photographs of two persons available in Ext.D12 are encircled in red colour. The news item says that the person encircled is accused no.1. It is stated further that the photograph showing accused nos.1 and 8 in a single frame. The attention of PW59 was drawn to this photograph. He admitted that he captured only one photograph with accused no.8, ie., Ext.D12. Sunil was not available in that photograph. PW59 does not know about those persons, whereas PW60 stated that accused no.1 is available in the background of his selfie photograph with actor Ganapathy. Though PW60 deposed that this particular phone with the photo of accused no.1 was shown to the investigating officer, it is to be noted that this was not seized. Relying on this particular photograph the learned Special Public Prosecutor argued that the presence of accused no.1 can be seen in Tennis Academy. It is to be noted that the presence of accused no.8 as part of shooting of the movie 'Georgettan's Pooram' is not in dispute. The learned counsel for accused stated that he was available there in the afternoon session. Similarly, the evidence of PW61 and PW62

coupled with PW130 would show that accused no.1 went to the location as substitute driver. I have already discussed about this particular aspect in connection with the discussions of the conspiracy at CIFT Junction, Thoppumpady. So, it is to be noticed that the presence of accused no.1 in that location was not a planned one. He went there accidentally as a substitute. Even if the entire photograph is taken into account, at the most, the presence of accused nos.1 and 8 in that location can be seen.

The question to be decided is, whether such presence alone is sufficient to arrive at a finding that both of them met together and hatched conspiracy. As I pointed out, accused no.8 is a popular artist. Apart from accused no.8, somany other artists were available in that shooting location. PW59 and PW60 deposed about the presence of actors Sudheer Karamana, Ganapathy and Vinu Adimali. They stated that they took selfie photos with these actors also. Ext.D170 would show the rush and presence of people at the time of shooting. The learned Special Public Prosecutor argued that since accused nos.1 and 8 are available in the location, the court has to presume and draw inference that both of them hatched criminal conspiracy. It is to be noted that the allegation that they

hatched conspiracy by standing behind the caravan. Nobody including PW59, PW60 and PW61 deposed that accused no.8 went to the parking ground where vehicles parked. Both PW59 and PW60 stated that accused no.8 was standing near to a jeep. PW59 categorically deposed that the parking ground is almost 200 meters away from the indoor stadium. PW59 deposed that cardroom, tennis court and swimming pool are in a separate building. Indoor stadium situates near to car parking area. According to him, the selfie was captured in the car parking area near to the indoor stadium. PW62 stated that accused no.1 substituted him as driver of camera van. PW61 also deposed this fact. He deposed categorically that he along with accused no.1 and other drivers were sitting inside the vehicles in the parking ground. They returned in the evening after pack-up. All of them were together till that time. PW61 deposed nothing about the meeting with accused nos.1 and 8. On the other hand, he deposed that accused no.1 was available with him throughout. The photographs relied on by the Prosecutor showing the presence of accused no.1 in the location is also retrieved from MO84 and produced in Ext.P282(a). As I pointed out, at the most, the presence of

DISTRICT AND SESSIONS COURT ERNAKULAM

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

accused no.1 in the parking ground can be seen from this photograph. Questions were put to PW261 about Ext.D170. He admitted that two persons available in Ext.D12 photograph are shown in Ext.D170 visuals telecast in news. He also admitted that one of them was separately encircled and marked as Pulsar Suni. PW261 deposed that accused no.1 was not available in Ext.D12. The defence contended that Ext.D12 was circulated so as to create false impression that accused nos.8 and 1 met together in the Tennis Club. The learned Special Public Prosecutor argued that investigating officer or the prosecution cannot be blamed for the circulation of notice. In this case, PW43 and PW59 also admitted about the circulation of this photograph prior to 13.07.2017, the date when accused no.8 was taken to Tennis Club as part of investigation. Ext.P282 FSL report was prepared on 07.09.2017 along with Ext.P282(a) DVD. PW59 deposed before the court that MO84 mobile phone was handed over to the Circle Inspector of Police, Angamaly. He deposed that his statement was recorded by PW201 on 29.06.2017 and 03.07.2017, but reached before the court on 11.07.2017. A specific question is put to PW261 that PW201 and police team contacted the witnesses of Tennis

Club from 26.06.2017. PW261 replied that he had given direction to PW201 for conducting investigation on 29.06.2017. He does not know whether PW201 contacted the witnesses before 29.06.2017. The evidence of PW43 attains importance at this juncture. PW43 stated that two days before his statement on 30.06.2017, he along with Mr. Bidhil went to Angamaly police station. Mr. Bidhil stated that he showed the photographs to the police. The photographs were allegedly captured using MO84 mobile phone. PW261 was not in a position to say about the date when he received MO84. He stated that MO84 was seized on the strength of Ext.P340. As I pointed out, though Ext.P340 is dated 03.07.2017, it reached before the court on 11.07.2017. Even if it is taken that the phone was seized on 03.07.2017, how these visuals were leaked and telecast in the media on 02.07.2017 is to be considered. PW49 and PW61 have no case that they had given or showed these visuals to anybody before these visuals were showed to the police. Moreover, in Ext.D170 news item telecast the selfie of PW59 with accused no.8, two persons are seen in the background. In the media, one of such persons was encircled and



specifically and categorically telecast news stating that both accused nos.1 and 8 met together and photos are available.

405. The circumstances would show that accused no.1 was not among the person available in the photo. The investigating officer is bound to investigate about this circulation of news item, especially when evidence is available before the court that PW201 recorded the statement of PW43 and PW59 on 28.06.2017 at Angamaly Police Station. PW43, even in his re-examination reiterated about this aspect, though PW61 made an attempt to clarify it by stating that Bidhil sent the photographs to PW60. When a question is put to PW261 that whether he conducted any investigation with respect to this aspect, his answer was in the negative. This shows the clandestine nature of the investigation. The learned Special Public Prosecutor argued that media people are responsible for this telecast. It is true that this particular photograph was showed as part of news telecast. At the very same time, this particular photograph was exclusively with the investigating team alone at that time. Though MO84 is produced before the court, prosecution relied on the FSL report and the DVD annexed along with the FSL report to prove the

photograph. PW261 admitted that PW60 showed him the selfie photograph with actor Ganapathy. The case of the prosecution is that accused no.1 was available in that photograph. The date is very important. According to the prosecution, it was on 01.07.2017. PW261 deposed that the case diary would show that PW201 had seen these photos on 01.07.2017. This evidence also would point to the fact that these photos were available with the investigating officer prior to Ext.D170 news telecast.

406. Discarding all these aspects, the available evidence in the court is to be analysed. The photographs would at the most show that both accused nos.1 and 8 were present in the shooting location at Tennis Academy. No evidence is available to show that both of them met together either behind the caravan or elsewhere. The evidence of PW61 would show that caravan and other vehicles were parked in the parking ground. PW59 deposed that he captured the selfie with accused no.8 in the parking ground. But no such evidence is available with respect to the capturing of the selfie photograph of PW60 with actor Ganapathy. In this context, the evidence of PW59 assumes some relevance. He stated



specifically that on 13.07.2017 when police brought accused no.8 to the location, he was also available there. He showed the place where he captured selfie to the investigating officer. Police did not consider it. Ext.P715 is the mahazar prepared with respect to the place where the caravan was allegedly parked. This was on the basis of the disclosure statement of accused no.8. I have already discussed about the disclosure made by accused no.8 in detail and its admissibility. The details of parking ground was stated in detail in Ext.P715. What PW59 stated is that he showed the place where the selfie with accused no.8 was taken. But the police did not notice it or any measurement was taken. He was available with the investigating team on 13.07.2017 during the investigation. If this be the situation, the selfie was taken at a different place than the place where the caravan were allegedly parked. Mere presence of two persons without any positive evidence, supporting to the meeting between them atleast, is insufficient to draw an inference that those persons hatched conspiracy. Even PW59 and PW60 and his friends available there did not notice a meeting between accused nos.1 and 8. PW59 deposed about his presence in the vicinity even after capturing the

selfie photograph. What the learned Special Public Prosecutor submitted is that prosecution is fair enough as they did not fabricate any evidence regarding this meeting. The circumstances of the case regarding the availability of the witnesses and other persons in connection with the shooting would negative the possibility that even in the midst of this heavy schedule both accused nos.8 and 1 proceeded behind the caravan and hatched conspiracy, that too unnoticed by anybody is very difficult to digest. The discussions made hereinbefore would show that evidence to prove the conspiracy between accused nos.1 and 8 at the Kinattingal Tennis Academy on 13.11.2016 is lacking and accordingly, that allegation is found against the prosecution.

407. **The meeting between accused nos.1 and 8 at Santhigiri College on 14.11.2016 and the criminal conspiracy between them**

The prosecution case is that on 14.11.2016, accused nos.1 and 8 met together and hatched conspiracy at the location in Santhigiri College, Thodupuzha for the execution of the offence as agreed between them without any delay. The learned Special Public Prosecutor argued that the investigation revealed that both accused nos.1 and 8 were present at the shooting location of the movie 'Georgettan's Pooram' at Santhigiri

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

College, Thodupuzha on 14.11.2016. It is specifically alleged that they met near the hall where a function was held on that day attended by accused no.8. The prosecution relied on the CDRs of accused nos.1 and 8 and also the oral testimony of PW175, the Nodal Officer of BSNL along with the oral testimony of PW261, the investigating officer. It is urged that accused no.8 identified the meeting place near to the auditorium. On the strength of the disclosure statement of accused no.8, the place was identified and accordingly, Ext.P711 mahazar was prepared by PW261 on 12.07.2017. Ext.P711(a) is the disclosure statement of accused no.8. The learned Special Public Prosecutor argued that on the strength of Ext.P711(a) disclosure statement, the meeting place of accused nos.1 and 8 discovered, which was formerly not known to the investigating officer. The assertions of the learned Special Public Prosecutor is mentioned in page nos.390 to 394 of the argument note – Volume No.IV.

408. The contention raised by the learned counsel for the accused that since no material object was recovered, the disclosure statement is inadmissible, is against the legal proposition settled down by the Hon'ble Supreme Court. It is also argued by the learned Special Public Prosecutor

that what is required under law is a discovery of new fact and not a discovery of material object. Reliance is placed on the oral testimony of PW175 about the tower location of both accused nos.1 and 8 to show that they were available at that place on 14.11.2016. In order to prove this point, Exts.P142, P200, P200(a), P212 series, P212(a) and P213 series are relied on. Prosecution also advanced argument based on MO54. Apart from this, Ext.P711 mahazar along with Ext.P711(a) disclosure statement are also pressed into service.

409. The learned defence counsel whereas contended that except Ext.P711 mahazar, no evidence is adduced by the prosecution to prove this point. Ext.P711 mahazar is inadmissible in evidence. No witnesses are examined to prove the said mahazar. The witnesses cited by the investigating officer in the final report to prove this point are given-up by the prosecution and that itself is sufficient to conclude that the allegations are frivolous and manipulated. The defence counsel also challenged MO54 route description produced by PW20 before the Judicial First Class Magistrate, Aluva. It is also argued that the mobile number of PW43,

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

which is stated in his 161 statement is also stated in the 161 statement of CW62 and this would show that the 161 statements are fabricated.

410. The evidence available in court is to be considered in the light of above submissions. Ext.P711 mahazar is prepared by PW261 on 12.07.2017 at 4.30 p.m. Ext.P711 contains Ext.P711(a) disclosure statement, which would show that **"എന്നെ കൂട്ടികൊണ്ട് പോയാൽ തൊടുപുഴ ശാന്തിഗിരി college-ഉം, മുറിയും ഞാൻ കാണിച്ച് തരാം".** It is mentioned that accused no.8 disclosed that he will point out Santhigiri College, Thodupuzha and room. Accused no.8 led the investigating officer and reached at Santhigiri College. He pointed out the place disclosed by him and accordingly, Ext.P711 was prepared. As per the description in the said mahazar, the store room situates on the northern end of corridor, lies on the western side of hostel building is the place of occurrence. The investigating officer thoroughly inspected the said room. The details of the description of the room are mentioned in Ext.P711. It is seen that each and every minute details regarding the description and also about the materials available in that room are stated in Ext.P711. The first point to be taken into account is that, as in the other cases of conspiracies

allegedly hatched between accused nos.1 and 8, the fact of this conspiracy was also disclosed to the investigating officer by accused no.1 when he was interrogated on 23.05.2017. In Ext.P710, remand report, this fact is categorically mentioned in paragraph no.7 in page no.9. The fact of disclosure at the time of interrogation of accused no.1 is also mentioned in Exts.C22 and C23 also. Further, PW261 during his examination admitted that he received information from accused no.1 that he and accused no.8 met together, exchanged conversation at Santhigiri College, Thodupuzha. As I pointed out, accused no.1 was interrogated by the investigating officer on 23.05.2017. Accused no.8 was arrested on 10.07.2017. Ext.P711 was prepared after obtaining the custody of accused no.8. The investigating officer himself admitted without leaving any room for doubt that he got information about the conspiracy at Santhigiri College during the shooting on 14.11.2016 and also about the place of conspiracy from accused no.1 when he was interrogated on 23.05.2017. So, it can be concluded without any room for doubt that the investigating officer had clear knowledge about the conspiracy at Santhigiri College and also about the place where it was allegedly occurred long before the arrest of accused



DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

no.8 and his disclosure statement. The evidentiary value of Ext.P711 is to be evaluated in the light of the above aspects.

411. I have already discussed in detail about the admissibility of information u/s.27 of the Indian Evidence Act. Since the fact, which was claimed to be discovered on the strength of Ext.P711(a) was already known to the investigating officer atleast from 23.05.2017 cannot be disclosed again. The learned counsel for the accused no.8 has already objected the marking of Exts.P711 and P711(a) raising the contention that Ext.P711 is prepared in violation of Sections 25 and 26 of the Indian Evidence Act. The learned Special Public Prosecutor canvassed a proposition that on the strength of Ext.P711, a fact was discovered by the investigating officer and hence, it is admissible. I had already concluded about the admissibility of Ext.P711. Moreover, another fact to be considered is that, though witnesses were cited in Ext.P711, nobody was examined. The evidence of PW261 about the preparation of the mahazar in question is also interesting. During his examination it is elicited that he had taken 10-15 minutes for preparing Ext.P711. He also admitted that all the matters which were taken place during its preparation was reported in

news channels as live telecast. He deposed that accused no.8 was not taken out from the police vehicle. This evidence is against the averment in Ext.P711. It is explicitly stated in Ext.P711 that on the strength of the disclosure statement, accused no.8 led the investigating officer to the place where the conspiracy was allegedly hatched. It is further stated that he pointed out that place to PW261 and he prepared the mahazar accordingly. But during examination, he admitted that accused no.8 was remained inside the police vehicle. The learned counsel for accused put a question to PW261 that he was constrained to admit this fact as he came to know about the live telecast in news channel and the pictures showing the presence of accused no.8 in the police vehicle. The learned counsel produced Exts.D166 and D167 pendrive containing news items telecast in Malayala Manorama news on 12.07.2017 and Kairaly news on 13.07.2017 and is played. PW261 deposed that he could not take accused no.8 out from the vehicle as there was mob in and around the vehicle. Nothing is mentioned about the fact that accused no.8 was kept inside the vehicle until it is elicited in the cross examination by accused no.8. As pointed out, Ext.P711 shows that accused no.8 was again taken to the place and

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

he point it out to the investigating officer. PW261 also admitted that. On that day he recorded the 161 statement of CW62, CW205 and CW206. According to him, he took 10-15 minutes for preparing Ext.P711 and also 15 minutes further for recording their statement. It is to be noted that on that day itself, he prepared mahazars of CIFT Junction and Abad Plaza. Ext.P712 mahazar with respect to CIFT Junction was prepared at 6.30 p.m on 12.07.2017. CIFT Junction is a far away place from Santhigiri College, Thodupuzha. In Ext.D166 news item, it is reported that 5 minutes time is taken for completing the proceedings at Santhigiri College. In Ext.D167 news item, it is reported that almost 10 minutes time is taken for completing the proceedings. In Ext.D166 news item, it is further reported about the proceedings which are to be conducted on the next day. It is seen that somany persons showed their protest at the Thodupuzha Santhigiri College and also on the way from Thodupuzha to CIFT Junction. When a question was put to PW261 about the time gap between Ext.P711 at Santhigiri and Ext.P712 at CIFT Junction, he replied that since they travelled in police vehicle, they could reach at CIFT Junction within this short time. The visuals would negative the contention

that there was hassle-free journey for them. If this be the situation, it is highly impossible to find that Ext.P711 mahazar was prepared as claimed by PW261. As I pointed out, he had given the details of each and every aspects about this particular room. Though PW261 claimed that 15 minutes time was taken for preparing this mahazar, the details would show that Ext.P711 could not be prepared within this time considering the narration in the mahazar. PW261 was constrained to admit before the court that this is for the first time he stated that Ext.P711 was prepared as pointed out by accused no.8 by sitting inside the vehicle. It is also elicited that he did not make any investigation about the details regarding the function allegedly attended by accused no.8 during the shooting at the college. He reiterated the statement of CW62, who is the principal as on 12.07.2017. He had no knowledge about the shooting which was held on 14.11.2016. It is elicited that one Rev. Fr. Paul Parekattil was the principal at that time. The one and only thing stated by PW261 that he received this particular information from accused no.1. What prevented PW261 from interrogating the principal, staff, students or any concerned for the relevant period is not explained.



412. It is also elicited in the examination of PW261 that the mobile number of PW43 referred to in his statement dated 30.06.2017 is also stated in the statement of CW62 dated 12.07.2017. Relying on this, the learned defence counsel put a suggestion that all the statements were prepared simultaneously at a later stage and that is why, same numbers are shown in different statements claimed to be recorded on different dates. PW261 claimed that it might be a mistake. I have already discussed about the dispute regarding the date when the statement of PW43 was recorded and also he was cited as witness. Since the evidence of PW43 lacks credibility, this court did not proceed further about this contention. CW205 and CW206 are cited as witnesses to Ext.P711. They were not examined. Their statements were also seen recorded on 12.07.2017. In the light of the admission of PW261 that accused no.8 was not taken out of the vehicle, recording of these statements also lacks credibility.

413. The point to be proved through CW205 and CW206 stated in the final report is regarding the preparation of Ext.P711 as pointed out by accused no.8. Since accused no.8 remained inside the police vehicle, how

could they witness the fact of showing the place by accused no.8 is a fact which is seen manipulated by the investigating officer. The learned Special Public Prosecutor relying on the CDRs and MO54 argued that this would prove the presence of both accused nos.1 and 8 in the location. It is to be noted that MO54 entrusted by accused no.1 to PW20, is a piece of paper containing the description of the route to Santhigiri College. It is brought out that PW62 was absent and accused no.1 was engaged as substitute driver of camera vehicle. He worked as driver on 13.11.2016. He might be proceeded to Santhigiri College on 14.11.2016 as part of his engagement. Another fact to be considered is that allegedly on 13.11.2016, both accused nos.1 and 8 met together and hatched conspiracy during the shooting at Kinattingal Tennis Academy. If this be the situation, what is the purpose of a meeting again on 14.11.2016 is also to be considered.

414. The case of the prosecution is that, on 08.11.2016, both accused nos.1 and 8 met together at CIFT Junction and hatched conspiracy. Unless any special purpose or situation is there, there is no need to meet again and again for the very same criminal conspiracy. Even if the entire case of the prosecution is accepted as such, it can be seen at

the most that accused nos.1 and 8 were available within the tower locations of Santhigiri College on 14.11.2016. In the absence of any material or evidence to draw atleast an inference pointing that they met together, the mere fact that two persons were available under a particular tower location alone cannot be treated as evidence to arrive at a decision that they hatched criminal conspiracy. Based on the discussions made hereinbefore, I find that the prosecution failed to prove the alleged conspiracy between accused nos.1 and 8 at Santhigiri College, Thodupuzha on 14.11.2016.

415. **Relevancy of Ext.P122 letter and related matters:-**

The prosecution case is that accused no.1 was admitted to Cell No.1 in 'C' Block of District Jail, Kakkanad. PW121 Vipinlal and PW176 were also underwent custody with accused no.1. PW176 was known to accused no.1. PW121 developed acquaintance with accused no.1. Owing to the acquaintance, accused no.1 disclosed the reasons as well as details of the commission of offence to both PW121 and PW176. Accused no.1 also stated that accused no.8 agreed to pay for the execution of the offence. Accused no.1 sought their assistance for getting the amount

promised by accused no.8. Accused no.1 also asked PW176 to arrange a mobile phone so as to contact accused no.8 or his associates. PW176 was released on 23.03.2017. PW135 Jinson replaced PW176 in Cell No.1 in 'C' Block. PW176 arranged MO87 mobile phone, concealed it in a chappel and handed it over to PW121 through PW178 Mahesh Kumar. Accused no.1 contacted PW181 Nadirsha, a close associate of accused no.8 using MO87 phone and Ext.P46 SIM. Since they could not secure the expected response, accused no.1, PW121 and PW176 conspired together to write a letter to accused no.8. This letter was intended to inform accused no.8 about the plight of accused no.1, his associates, and also to demand a portion of the consideration agreed to by him or else an assurance regarding payment. PW135, who was the custodian of papers, handed over paper to them. The attempt of accused no.1 to write the letter failed as it was full of mistakes and also the handwriting was not good. Accordingly, on 12.04.2017, accused no.1 sought the help of PW121 Vipinlal for writing the letter. Accused no.1 narrated the details to PW121 and accordingly, he wrote the letter for and on behalf of accused no.1 demanding financial assistance from accused no.8. The details of the

commission of the offences are narrated in the letter. PW121 who proceeded to the Judicial First Class Magistrate Court, Maradu secretly brought the letter outside the jail and entrusted it with PW176 Vishnu, who was earlier arraigned as accused No.10. PW176 proceeded directly to the residence of accused no.8. PW182, brother of accused no.8 was available there and from him he collected the phone number of the driver of accused no.8 Appunni, who is examined as PW191. PW176 contacted PW191 then and there. As directed by accused no.8, PW191 met PW176 on 14.04.2017 noon at Eloor taxi stand. Though PW191 attempted to collect the letter from PW176, he could not succeed. PW191 informed this to accused no.8.

416. The learned Special Public Prosecutor relied on the oral testimonies of PW121, PW135, PW176 along with CCTV recordings of cell no.C1 of District Jail, Kakkanad on 12.04.2017 for proving these matters including the authorship of Ext.P122. The learned Special Public Prosecutor also relied on the evidence of PW144, the Asst. Superintendent of District Jail, Kakkanad, PW155 handwriting expert, who examined the handwriting of Ext.P122 letter and also the evidence of PW192, the

forensic expert who analyzed the CCTV footage of the District Jail. The prosecution also relied on PW109, the Junior Superintendent of the Judicial First Class Magistrate Court, Maradu to prove the details of the case in which PW121 was produced on 12.04.2017 in that court. PW178 is examined by the prosecution to prove the fact that he along with PW176, proceeded to the residence of accused no.8, met PW182 and collected the phone number of PW191. Reliance is also placed on CDR and tower locations to prove the call details. It is urged that Ext.P742 series bail applications of accused no.8. would show his admission of these aspects. The prosecution also relied on the evidence of PW119 Imran to substantiate the evidence of PW176 about the arrangements made by him to proceed to Theni. The learned Special Public Prosecutor further submitted that Ext.P122 contains the details of the entire conspiracies hatched between accused nos.1 and 8 eversince the film 'Sound Thoma'. He also canvassed the position that the averments in Ext.P122 are to be treated as admissions and confessions by a co-accused in a trial. According to the prosecution, Ext.P122 would prove the defence argument that accused no.1 is a total stranger to accused no.8 is a false

and frivolous. The facts mentioned in Ext.P122 letter are not known to PW121 and hence, he cannot write a letter without disclosing these matters to him by accused no.1. Accused no.8 failed to provide reasonable explanation as to why accused no.1 wrote such a letter. After getting information from PW176 about Ext.P122 letter, accused no.8 behaved in an abnormal manner. Ext.P122 would show the close acquaintance and association between accused nos.1 and 8. All other arguments of the defence counsel are baseless and to be discarded.

417. The contentions raised by the defence in reply are as follows. The learned defence counsel argued that Ext.P122 letter is a concocted document at the instance of PW121 Vipinlal. The fact claimed by the prosecution that the person who was entrusted with the duty to serve the letter to accused no.8 has no knowledge about the incidents itself is a false statement and contrary to the prosecution allegations. The evidence of PW176 Vishnu is that accused no.1 disclosed the details of the commission of the offense when they were in C1 Cell. It is also submitted that on getting information about the letter, accused No.8 immediately sent it to the Director General of Police. The reference in Ext.P122 that

the matters transpired in between 'Sound Thoma' and 'Georgettan's Pooram' is a vague allegation. According to the learned counsel, accused no.8 acted in 18 cinemas in the meantime. They simply stated a period without pointing out any specific incident which is relevant during this point of time. This letter is fabricated for squeezing money. At one point of time, the prosecution claimed that this letter was written to gain the trust of Nadirsha as informed by PW176. PW176 was interrogated on 02.05.2017. Ext.P122 was seized only on 04.05.2017. This letter was already telecast in media. The investigating officer had clear knowledge about this. Even after clear knowledge about this letter, the investigating officer did not take any steps to seize it from PW176 atleast on 02.05.2017. The evidence tendered by PW176 is against the recorded conversation between himself, PW191 and PW181. The defence also challenged the evidentiary value of Section 65B certificate produced along with the CCTV footages collected from jail.

418. The details of CCTV footages from District Jail, Kakkanad on 12.04.2017 is made available before the court in Ext.P153 DVD. PW144, the then Assistant Superintendent of District Jail, Ernakulam was



examined to prove the collection of CCTV footages from the jail. The learned Special Public Prosecutor relied on the evidence of PW192 scientific expert also to prove this aspect. Relying on the CCTV footage, the learned Special Public Prosecutor urged that accused no.1 dictated the contents of Ext.P122 to PW121 and he wrote it accordingly. It is to be noted that PW121 admitted about the handwriting in Ext.P122. PW155 handwriting expert is examined to prove the handwriting of Ext.P122. PW155 deposed that the person who wrote the standard writings wrote Ext.P122 also. The evidence of PW155 remains undisputed. So, it can be safely concluded that the handwriting in Ext.P122 is of PW121 Vipinlal.

419. The authenticity of CCTV footages produced before the court with respect to the preparation of Ext.P122 letter is to be looked into. Evidence of PW144 is to be considered in this regard. PW144 was working as Assistant Superintendent of District Jail, Ernakulam. He deposed that he was in charge of CCTV. According to him, this duty was assigned to him by the Superintendent. As per the request, he produced the CCTV visuals in connection with Crime No.297/2017 of Nedumbassery police station. The investigating officer requested the CCTV visuals of Cell No.1

in 'C' block. On 04.07.2017 in the presence of PW192, the Circle Inspector of Kalamassery police station and the technician who installed CCTV in jail, he transferred the CCTV footages to pendrive. The said pendrive is marked as Ext.P148. It contains the visuals of C1 Cell from 10.04.2017 to 13.04.2017 along with the visuals on 21.04.2017. The visuals from 25.04.2017 to 28.04.2017 are also included in the pendrive. The investigating officer seized the pendrive on the strength of Ext.P147 mahazar. Ext.P149 is the certificate issued by him u/s.65B of the Indian Evidence Act. He also handed over Ext.P151 pendrive on the strength of Ext.P150 mahazar. Ext.P151 contains the visuals of the place where coinbox is placed. Ext.P152 is the Section 65B certificate issued for the pendrive. The visuals of C1 Cell are copied from network video recorder. The visuals of coinbox are copied from computer system. There is no change in the time recorded in NVR, whereas the timings shown in the camera display may change. He also stated that if there is any technical error, the timings in camera display will be changed. He also copied the visuals to a DVD, which is marked as Ext.P153. He was cross-examined by the learned counsel for accused no.8, challenging the competency and

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

capacity to furnish the pendrives. It is brought out in evidence that he has no technical qualification to manage CCTV operations. The visuals from 47 CCTV cameras installed in jail are stored in one NVR. The technicians who installed CCTV used to visit jail and examine the system. He joined in the jail on 04.04.2017. He admitted that he has not produced any order assigning the duty of monitoring the CCTV footages with him. He admitted that usually an order will be available showing the dates assigned to each officers. A suggestion is put to this witness by the learned defense counsel that he has not assigned with the charge of CCTV, but he denied it. He claimed that District Jail Superintendent assigned this duty to him. He had given the visuals as directed by the Superintendent. He signed Ext.P149 and P152 certificates for and on behalf of the Superintendent, District Jail. He added that he signed in these certificates in his capacity as the person in-charge of CCTV. Similarly, it is put to him that the necessary requirements for a certificate u/s.65B are absent in Exts.P149 and P152. He denied it. A question is put to him about the technical know-how required for the jail staff for operating CCTV footages and he pleaded ignorance thereto. He admitted that a register is

maintained regarding CCTV operation and maintenance. At the very same time, he stated that it is not an officially authorized register, but kept it for the sake of convenience. He also stated that they will monitor CCTV visuals. If any fault is noticed, that will be intimated to the technician. A question is put to him that has he monitored the CCTV from 04.04.2017 onwards and he denied it. He also stated that the duty assigned with him was to maintain and also to rectify the defects, if any, noticed. Another question is put to him about the recording of extraordinary incidents if noticed in the register. According to him, the direction is to record any extraordinary incident if noticed. In the absence of any extraordinary incident, that need not be recorded. He also pretended ignorance about the Circular No:3/2013 dated 18.12.2013 issued by Director General of Police (Prisons) about the monitoring of CCTV and also regarding the registers which are to be maintained in that regard. The evidence in his chief examination regarding the difference in the timing is not stated to the investigating officer and it is an omission. Another suggestion is put to him that CCTV visuals were copied by the FSL experts. He denied it and claimed that he himself copied the visuals. He also admitted that on

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

27.06.2017 he had given these visuals unofficially to PW261 the investigating officer. He admitted that the request for the visuals copied on 04.07.2017 was received after giving the visuals unofficially on 27.06.2017. This court verified the visuals produced before the court. In order to rely on the visuals, it should be produced before the court properly along with a certificate u/s.65B of the Indian Evidence Act. Admittedly, the visuals are copied to a pendrive. So, it should be appended with a certificate u/s.65B of the Indian Evidence Act.

420. As I pointed out, Exts.P149 and P152 are the certificates issued by PW144 claiming that he is competent to issue section 65B certificate. Let us consider the certificates. The wordings in both Exts.P149 and P152 are one and same. Ext.P149 is the certificate issued for the visuals copied from C1 Cell. The first and foremost fact to be considered is that it lacks the necessary mandate u/s.65B about the person who was having lawful control over the computer system from which the visuals were copied to Ext.P148 pendrive. Ext.P149 reads as follows:-

"Certified that this electronic record/computer output has been produced from Network vedio recorder, Model No.HUS-NVR-1032-E

S/N:14092200035 using sterile 64 GB Sandisk USB Drive and that its contents are true reproduction of the original to the best of my knowledge and belief. ..... Further certified that conditions laid down in section 65B(2)(a) to 65B(2)(d) of Evidence Ad, 1872 regarding the admissibility of compuer output in relation to the information and the computer in question are fully satisfied in all aspects".

421. Except a bare statement regarding the statutory requirements u/s.65B of Indian Evidence Act, nothing is seen mentioned about the controller of the system from where the visuals are copied. Similarly, nothing is also mentioned about the working condition of the computer system. Moreover, no certification is there regarding the regular feeding of data to the system. PW144 deposed that whenever fault in the system is noticed, they informed it to the technicians and he used to visit the jail for the maintenance of CCTV visuals. The visuals were copied on 04.07.2017. Whether any disruption was happened during this time is also not on record. The fact whether the system was operated properly is also absent in the certificate. As I pointed out, though PW144 claimed that he was assigned with the duty of CCTV management, no order is produced

before the court to prove that. PW144 himself admitted that office order should be there for assigning duties to each and every officer. Further, had he been authorized and assigned with the duty of CCTV, why did PW144 put signature in the certificate for and on behalf of the Superintendent, District Jail, Ernakulam is also not seen explained. The seal affixed in the certificate is of the Superintendent, District Jail, Ernakulam. This is also against the evidence of PW144 that he was assigned only with the duty of the controlling and management of CCTV system of the District Jail, Kakkanad. Above all, during cross-examination, he categorically admitted that he was assigned only with the duty of maintenance of CCTV system and its repair works. If this be the situation, we cannot accept the claim of PW144 that he was the person in lawful control over the CCTV system in all respects as warranted u/s.65B of the Indian Evidence Act cannot be accepted and acted upon.

422. At this juncture, Circular No.3/2013 dated 18.12.2013 of the Director General of Police (Prisons) assumes relevance. This circular was issued on 18.12.2013. PW144 was asked about this circular and he replied that this was not came to his notice. This circular is issued with respect to

the effective utilization of manpower. In this particular circular, the management of CCTV is also mentioned. It is stated that the persons, who are entrusted with the control of CCTV are to be provided with technical training through Keltron. The importance of arranging camera based on the importance of locations are mentioned therein. The facts which are to be noticed are also stated in this circular. It is specifically directed to maintain a register and also to record it if anything unusual is noticed. It is further directed that if there is nothing unusual, that fact is also to be noted in the register. It shows further that the monitoring is to be entrusted with officers on an hourly basis. The register has to be examined by Jailer, Deputy Jailer and should also bring to the notice of the Superintendent. Similarly, it is directed to test the video recording of the camera on a random basis. This fact should also be recorded in the register. Similarly, the details of the number of cameras in working condition and the total number of cameras are also to be recorded in the register on daily basis. If any camera is not functioning, that should be informed to the agency, who installed the camera for repair works. This circular prescribes the maintenance of register regarding the functioning



DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

of CCTV visuals and also the monitoring of the jail through this system. No such register is produced before the court. Moreover, PW144, who is a responsible officer, pretended ignorance about the circular and also deposed that though a register is maintained, it was for the sake of office purpose only. He had gone to the extent of stating that no such register is required to maintain officially. On the basis of the above discussions, I am of the view that the CCTV visuals produced before this court are not properly proved and hence, cannot be relied on. Moreover, the time which is available as per the visuals is not tallying with the time claimed by the prosecution when Ext.P122 letter was scribed. PW144 deposed that the time recorded in NVR and the time available in camera footage visuals may differ as the camera was undergoing repair works. Except his oral testimony, no convincing evidence is adduced about this explaining the changes if any seen. We cannot believe this explanation as CCTV system is installed in jail as part of maintaining security. If any difference as claimed by PW144 occurs, that will definitely defeat the purpose of installation of the CCTV visuals. Moreover, since the visuals are not

properly proved, the evidence of PW192, the forensic expert, and the examination of those visuals in the lab do not arise for consideration.

423. The another category of evidence available with respect to Ext.P122 is the oral testimony of the witnesses. It is the case of the prosecution that accused no.1 was remanded to custody to the District Jail, Kakkanad on 10.03.2017. PW121 and PW176 were his cell mates. PW176 was released on 23.03.2017. On 10.04.2017 PW181 was contacted from jail using MO87. They did not receive the expected response from accused no.8 and his allies. In the argument note – Volume-I, page no.244 paragraph no.51, it is stated by the prosecution that PW121, accused no.1 and PW176 further conspired to write a letter directly to accused no.8. The letter was intended to inform accused no.8 about the plight of accused no.1 and his five associates and to demand atleast a portion of the agreed amount or at the very least an assurance of payment. On 12.04.2017, Ext.P122 letter was allegedly taken out by PW121 outside the jail and handed it over to PW176. He thereafter, along with PW178, proceeded to the residence of accused no.8 at Paravur Kavala. They collected the phone number of PW191, contacted him,

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

informed him to the necessity for meeting accused no.8 directly. Thereafter, on 14.04.2017, PW176 met PW191 and informed about Ext.P122. Though PW191 asked to hand it over to him, PW176 was reluctant. He thereafter sent it to PW191 using the WhatsApp installed in the mobile phone of his wife.

424. The oral testimony of PW121 who allegedly wrote Ext.P122 letter is as follows:- He was in District Jail, Kakkanad from 06.08.2016 till June 2017. He was earlier admitted in the 'A' block. He was thereafter assigned with the duty of orderly to welfare officer. Thereafter, he occupied cell no.1 in 'C' block. At that time one Mr Sakkir Hussain was the inmate and on his release, Mr. Himaval Bhadrananda along with PW176 Vishnu occupied cell no.1 of 'C' block. Mr. Himaval Bhadrananda was released and accused no.1 occupied the cell no.1 of 'C' block. Sunil came to the 'C' block during the second week of March. Accused no.1 was known to PW176 through one of his friends Mr. Deepu. Accused no.1 came to the jail for visiting Mr. Deepu when he was remanded to the jail. PW176 and accused no.1 started to exchange conversation accordingly. They became friends. PW121 also joined with them. They used to smoke

by evading CCTV camera. He was engaged with the duty of preparation of list of the visitors of inmates, filing report regarding the food supply to inmates along with the control of library. He also wrote interview register, prisoners register and on some days, phone book. Coin box facility was available in the jail at that time. Coin box was installed near to the guard office in 'A' block. He used to write these registers by taking those to 'C1' cell. He clarified that he will write interview register at Welfare Office and prisoner's register at 'C1' cell. He also stated that he was writing the phone register at guard room. Sunil sought his help as well as the help of PW176. PW176 replied that if Mr Sunil disclose everything related to the commission of the offence involved in the case against him, they would help him. Sunil agreed for that. Sunil informed him that the capturing of visuals of PW1 was as a result of a quotation by accused no.8. He also stated that he captured the nude visuals of PW1 and entered oral sex with her. According to him, accused no.8 hatched enmity with PW1. If no case is registered, accused no.8 will give Rs.3 crores to accused no.1 and in the event of booking case, he will be paid with Rs.1.5 crores. There was a direction from accused no.8 that the conversation through phone has to

DISTRICT AND SESSIONS COURT ERNAKULAM

be avoided. Accused no.8 also agreed to entrust the money with the person suggested by accused no.1. Accused no.8 directed accused no.1 to videograph the ring worn by PW1 specifically. Though accused no.1 tried to meet after the execution of the crime, he could not succeed in his attempts. He went to Laksyah for giving the memory card there. Since he could not meet accused no.8, the amount was not received. Accused no.1 along with accused no.4 went to Aluva to meet accused no.8. But that attempt was also failed. Accused no.1 sought the assistance of PW121 and PW176 for collecting the quotation amount promised by accused no.8. He offered Rs.2 lakhs to PW176 and also financial assistance for getting bail for PW121. Accused no.8 is familiar with the voice of accused no.1 and Sunil informed them that without contacting accused no.8 directly, the amount can be obtained by contacting his close associates. Accused no.1 asked them to arrange a mobile phone inside the jail for this purpose. They earlier decided to bring phone to the jail by throwing it over the compound wall. Thereafter, they decided to get the phone through any of the officers of the jail. Since accused no.1 was not pleased to involve any other persons, they abandoned those plans. He also stated that accused

no.1 does not want to inform the matters to more persons as it will affect accused no.8. Thereafter, accused no.1 suggested a plan for bringing mobile phone inside the jail. According to accused no.1, after the release of Vishnu, a phone has to be arranged by hiding inside a sandals and PW176 was asked to bring it to the jail by arranging interview by a person with PW121. PW176 was released on bail by the end of March. PW121 continued his contact with PW176 by calling from jail using the coin box. While so, PW176 informed him that on 10.04.2017, one of his friends, Mr. Mahesh PW178 will come to the jail along with sandals to meet PW121. Mahesh came to the jail as told by PW176. He handed over the sandals to PW121. In order to avoid any suspicion, he worn the sandals and proceeded to the cell. He had given attention and care for avoiding any damage to the sandals. The sandals were entrusted with accused no.1. After the release of Vishnu, PW135 came to 'C1' cell. In order to use the mobile phone after 6 O' clock, this fact has to be shared with the PW135 and accordingly, he was also informed about this. They agreed to provide the phone facility to PW135 also. They have taken out the mobile by cutting the sandal using cutting blade. Accused no.1 contacted Vishnu

and informed him about the receipt of mobile phone. Thereafter, accused no.1 contacted PW181 Nadirsha and PW191 Appunni. Accused no.1 made precautions to avoid CCTV camera. PW121 identified the CCTV footage collected from cell no.1 of 'C' block. The visuals would show the entry of PW121 inside the cell along with sandal. He narrated the events in the CCTV footage. The presence of himself, accused no.1 and PW135 is seen from the visuals. He had given the details as per the visuals. According to PW121, he heard the names of Nadirsha and Appunni. He enquired about Appunni and came to know that Appunni is the driver-cum-manager of accused no.8. PW121 informed accused no.1 that he has to avoid contacting persons, who are not connected with accused no.8 over phone. He also informed him that they will inform the telephone calls from jail and the police in-turn come and conduct raid in the jail. Accused no.1 assured them that accused no.8 will not betray him. According to PW121, the user of mobile phone inside the jail was known to the police after several months. Both of them contacted PW176 Vishnu. Sunil contacted Vishnu using the mobile phone, whereas he contacted him through coinbox. PW176 told him that PW191 agreed to meet them on

the day of Vishu. Vishnu asked them to write a letter so as to gain the confidence of the Manager of accused no.8. According to PW121, though Vishnu informed PW191 about his connection with accused no.1, he did not believe it. This prompted Vishnu to ask them to scribe a letter. He also asked PW121 to bring the letter when he goes to the Judicial First Class Magistrate Court, Maradu. PW121 informed this matter to accused no.1. Accused no.1 attempted to write a letter. It was full of mistakes and his handwriting was illegible. Accused no.1 asked PW121 to write the letter. PW121 expressed his concern. Accused no.1 showed a piece of paper containing the phone number of father of PW179 Kavya Madhavan. He also informed that he is maintaining good relationship with the family of PW179. Accused no.1 worked as the driver of PW179 before her marriage with accused no.8. He wrote the letter as asked by accused no.1. PW135 kept papers containing the seal of jail. This was used for writing the letter. He identified Ext.P122 as the letter scribed by him. It contains the seal of Superintendent of District Jail. The figures '5225' is also wrote inside the seal. PW121 was about to record the remand prison number of accused no.1 inside the seal. Accused no.1 asked him to write

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

the number '5225'. Accused no.1 also informed him that it is a code known to him, accused no.8 and PW181. Accused no.1 and PW121 sat on the floor and wrote it together. He also identified the footage played before the court. According to him, the person who is engaged in writing is himself. He also identified accused no.1. A question is put to him by the learned Special Public Prosecutor that while writing Ext.P122, whether he enquired about the incidents from 'Sound Thoma' till 'Georgettan's Pooram'. PW121 answered affirmatively. He also stated that accused no.1 informed him that during the shooting of the movie 'Sound Thoma' at Alleppey, some hooligans intervened and the issue was settled by him and since then accused no.8 used accused no.1 for quotation purposes. Accused no.1 had faith on accused no.8 even at the time of writing Ext.P122. He also wrote a short note along with the letter. This was also scribed as directed by accused no.1. This note was for PW176. The manner in which Ext.P122 has to be dealt with is mentioned in that note. It is specifically directed to entrust the letter with accused no.8 only. He has to attend the Judicial First Class Magistrate Court, Maradu on 12.04.2017. PW176 came there and he handed over the letter along with

the note to PW176. He contacted PW176 to know about the letter. PW176 informed him that though he attempted to hand it over, he could not succeed in his attempts. He also informed that he sent the letter to PW191 through WhatsApp. He enquired with accused no.1 about these matters. Sunil asked him to wait. He also informed that accused no.8 will take decisions favourable to them. One inmate, Mr. Ameerul Islam informed accused no.1 that his lawyer is interested to take his brief and sought permission to meet him. Accused no.1 replied that he is not in a position to change his present lawyer as he entrusted some documents with him before he surrendered in the court. Accused no.1 decided to collect the quotation money after getting bail. But, accused no.4 insisted him to surrender before the court. The learned Special Public Prosecutor sought a clarification about this and PW121 stated that accused no.1 decided to collect the money before surrendering in the court. He was interrogated by two Dy. Superintendents during May. They asked him about the scribe of the letter. A leading question was put to him that whether they enquired the matters with accused no.1. This was objected to by the learned counsel for accused no.8. It is to be noted that without

any reference regarding this fact, a question is put to PW121 for eliciting the alleged interrogation of Sunil by the investigating officers. Moreover, he has not stated anything to the investigating officer during investigation also. PW121 thereafter replied that a petition was with the police officials. It is a complaint stating that accused no.1 intimidated accused no.8. After the interrogation, PW121 asked accused no.1 about his assurance that accused no.8 will not make any complaints against him. Accused no.1 replied that this complaint was given for safeguarding him. Accused no.1 also informed that nothing is mentioned in the letter about the phone calls from the jail. PW135 Jinson was released on bail. He made revelations about the involvement of accused no.8 in the case in which accused no.1 is involved. PW135 also revealed about the user of mobile phone inside the jail. A case was registered against PW121 in this regard. He was shifted to Central Prison, Viyyur. Jinson assisted him for charging the mobile phone. After the release of Jinson, accused no.9 Sanal gave assistance for charging the mobile phone. Sanal was reluctant to return the mobile phone. Accused no.1 asked accused no.9 to destroy the mobile phone by burning. The number of PW191 was added as the number for contacting

through coin box. The prisoner's register and interview register are proved through PW121. According to him, the entry regarding the visit of PW178 on 10.04.2017 was not recorded as it was an interview for him. He identified MO87 as the phone which was used inside the jail. The prisoner's register does not contain his entry on 12.04.2017 as he went to attend the court proceedings. PW121 was later became approver. His statement was recorded by the Judicial First Class Magistrate, Angamaly.

425. It is elicited in cross examination the details of the cases in which PW121 was involved. Documents are marked showing his involvement in criminal cases. The allegations in those are also elicited. In the said cases he offered either admission in college or Government jobs to several persons and obtained lakhs of rupees. PW121 claimed that he is a political leader of different political organisations and accordingly, instigated the candidates to part with money. Exts.D25 to D29(a) FIRs, final reports and judgment of the above cases are marked before the court.

426. As far as Ext.P122 letter is concerned, it is elicited in cross examination that, the date when Ext.P122 was allegedly written is stated

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

DISTRICT COURT ERNAKULAM-682 011

for the first time in this court. He clarified that he stated that the letter was given when he appeared before the Judicial First Class Magistrate Court, Maradu. Similarly, somany contradictions in his statements u/s.164 Cr.P.C. before the Judicial First Class Magistrate Court, Kolencherry marked as Ext.P179, the statement before Chief Judicial Magistrate marked as Ext.P256 and Ext.C40, the statement u/s.306(4)(a) of Cr.P.C. before the Judicial First Class Magistrate Court, Angamaly are brought out. In Ext.C40 he deposed that, if the name of accused no.8 is disclosed, even PW1 would not forgive him. In this court he changed that version as if the name of accused no.8 is disclosed, PW1 will forgive him. He clarified that the statement in Ext.C40 is a mistake and only when he deposed in this court, he came across with the mistake. It is also elicited that though PW176 tried to meet accused no.8 or his driver PW191, they were reluctant to meet him. He also understood that accused no.8 and PW191 were not ready to consider PW176 as the associate of accused no.1. PW121 claimed that this fact was informed by PW176 before Vishu festival. It is brought out that in Ext.P179 statement u/s.164 Cr.P.C. PW121 stated that when he contacted him on

the date of Vishu, PW176 informed him about the reluctance on the side of accused no.8 and PW191. Further, PW176 asked accused no.1 to write a letter so as to gain the confidence of accused no.8 and PW191. Thereupon accused no.1 directed PW121 to write a letter. It is also brought out that the prosecution case that accused no.1 attempted to write the letter before PW121 scribing Ext.P122 letter is not stated anywhere. He also admitted that he stated that the letter was given when he attended the Judicial First Class Magistrate Court, Maradu and no other details such as when and where this letter was written are not stated to anybody. Similarly, in Ext.C40 also he stated that Ext.P122 letter was written after Vishu. It is further elicited that he claimed to be contacted PW176 through coinbox after Vishu. It is further elicited that in Ext.P256 also he deposed that the letter was written after Vishu.

427. Another aspect brought out through cross examination was that he was arrested in connection with the case registered in Infopark police station. He was produced before the Judicial First Class Magistrate Court, Kakkanad on 07.07.2017. He made some disclosures to Asianet and Manorama channel. He admitted that he disclosed to

them that he wrote Ext.P122 letter succumbing to the coercion on the side of accused no.1. He also disclosed that officials of the jail also intimidated him to write Ext.P122 letter. The police people did not permit him to complete his statement and he had been removed from there. During the examination he clarified that in order to get an order of release from jail and also as part of the agreement between accused no.1 and himself, he made the above revelation. It is elicited that this explanation was stated for the first time in this court. He had gone to the extent of saying that what he stated in the television channels are false. It is also elicited that when he had given statement in connection with the Infopark case, nothing is mentioned about the socalled figure '5225' appears in Ext.P122 letter. It is also deposed by him in cross examination that he has not stated that he contacted PW176 through coinbox before Vishu. Similarly, nothing is stated regarding the slip claimed to be written along with Ext.P122 letter. It is also elicited that the incidents related with the shooting of the movie 'Sound Thoma' at Alleppey are stated for the first time in the Judicial First Class Magistrate, Angamaly. The discrepancy

regarding the date of his interrogation is also brought out in cross examination.

428. He admitted in cross examination that he was provided with protection under the witness protection scheme by the District Jail, Kakkanad and police escort was provided from 6.11.2020. Though this court issued summons to PW122, he failed to appear before the court on that day. He admitted that he was available in Ernakulam on 20.01.2021. He admitted that he stayed in a lodge in Ernakulam North. He was available in Ernakulam on the date when this court fixed for his appearance. He returned to Kasaragod on the next day without appearing before the court. Though a suggestion is put to him that he refrained from attending the court as directed by the investigating officers, he denied it. It is also elicited that on 21.01.2021, he had given interview to the reporter of Reporter T.V. According to him, the escort police was available with him throughout. On 21.01.2021, at 11.30 a.m, his interview telecast in Reporter T.V. He tried to clarify that the said interview was recorded on 20.01.2021. At the very same time, he admitted that he had stated about the reason for his non-appearance on 21.01.2021. He also attended

channel discussion of Asianet during 2020. A suggestion is put to him that he abstained from appearing before the court so as to get time for tutoring the prosecution case. In re-examination, he reiterated that he contacted PW176 using the coinbox. A question is put to this witness by the learned Special Public Prosecutor in re-examination that whether that call was entered in the phone book. This is objected to by the learned defence counsel stating that this is a new fact sought to be introduced in the re-examination. The learned Special Public Prosecutor replied that as the witness has already deposed regarding the phone calls, the manner how he made phone calls is to be brought out. As rightly pointed out by the learned defence counsel, when he was subjected to cross-examination, he reiterated about the phone calls. In chief examination also he had given statement regarding the phone calls made to PW176. But nothing is stated at that time that the calls through coinbox were not entered in the phone register. The attempt of the learned Special Public Prosecutor is to give an explanation regarding the absence of this entry in the phone register. Though this is a new fact deposed in the cross-examination, this court ruled out the objection raised by the learned counsel for accused

considering the fact that the entire details are highly required to arrive at a finding regarding the prosecution case that PW121 contacted PW176 through coinbox and related matters in connection with Ext.P122 letter. On further cross examination it is brought out that the calls to Vishnu through coinbox and also calls to him using MO87 mobile phone are stated for the first time in re-examination. This court asked him about the receipt of summons. He stated that he received summons through WhatsApp. He proceeded from Kasaragod on 19.01.2021 for attending the court on 21.01.2021 with police escort. This fact was known to Dy.S.P., Kanhangad. The fact that he was provided with police escort under the witness protection scheme is known to PW261 and his team also.

429. The evidence of PW176 Vishnu Aravind is as follows. It is to be noted that he was arraigned as accused no.10 and appeared before this court. Thereafter, on 21.01.2021, after the commencement of trial, he filed Crl.M.P.No.147/2021 before this court seeking permission to grant pardon. This court considered the petition and permission was granted. The petition is marked as Ext.C4. According to him, at the time of giving

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

evidence, he was residing near to Medical College Hospital, Kalamassery. During 2017 he resided at Edappally. He was remanded to District Jail, Kakkanad from 12.12.2015 till 23.03.2017. He was in 'C1' cell during 2017. PW121 and one Mr. Himaval Bhadrananda were his inmates. Thereafter, Sunil also came to 'C1' cell after the release of Himaval Bhadrananda. He was released on bail on 10.03.2017. All of them developed acquaintance. One of the friends of PW176 is the friend of accused no.1. On the strength of this relationship, they developed intimacy. Thereafter, accused no.1 sought their help. They asked them about the nature of help sought for. They also informed him that if he reveals the true facts in connection with the attack against PW1, they will help him. Accused no.1 informed him that in the year 2013, accused no.8 contacted him for the purpose of committing the offence against PW1 and the offence was committed as per his quotation. Thereafter, accused no.1 was arrested. Accused no.1 received the advance of the quotation amount. Accused no.1 sought their help for getting the balance amount and also to contact accused no.8. Accused no.1 asked them to provide a mobile phone for contacting them. According to him, visuals of the ring worn by

PW1 was captured specifically so as to prove her identity. The quotation was for Rs.1.5 crores and in the event of registration of case, it is agreed to give Rs.3 crores by accused no.8. Since accused no.1 was engaged in his cases, he could not execute the quotation on time. PW176 informed accused no.1 about his situation including the financial contingencies. Accused no.1 offered money to him after getting the amount from accused no.8. He also agreed to assist PW121 for getting bail and also promised financial assistance to PW176. The engagement of PW1 was already over and hence, accused no.8 contacted accused no.1 and asked him to execute the quotation. Thereafter, on 23.03.2017, PW176 was released from jail. He purchased a chappal with heels from the market so as to comply with the direction of accused no.1 to bring mobile phone inside the jail. He also went to the residence of PW179 Kavya Madhavan at Vennala for collecting the phone number of her or her father. There was security in the gate and hence, he did not proceed further. After two days, he went to Laksyah. One Suneer was available there. He asked the phone number of accused no.8 or PW179 or her father. Suneer asked the purpose and was unwilling to provide with the number. One day, PW121

contacted him using the coinbox of jail. PW121 informed him that accused no.1 asked him to contact PW181 Nadirsha immediately. He was residing at Thevakkal at that time. He collected the mobile number of Nadirsha with the assistance of his friend and contacted him. He called Nadirsha and introduced him as Vishnu. He also informed him about his intention to hatch conversation about the present sensational case. He introduced him as the friend of accused no.1. PW181 replied in a rude manner and asked him why did he contact him. He also asked him to contact accused no.8. Since accused no.1 asked him not to contact accused no.8 directly, he tried to contact through his friend or father-in-law. This fact was informed to PW181.

430. He purchased a black coloured chappal from Broadway. He arranged the mobile phone inside the chappal. He collected SIM through his friend Imran Khan PW119. He inserted the SIM firstly in his mobile phone and thereafter, that was inserted in the mobile phone sent to the jail. He along with PW178 Mahesh proceeded to a cobbler at Vazhakkala and stitched the chappal. They proceeded to the jail at about 4.30 - 5.00 p.m. Since PW176 was not permitted to enter the jail for three months, he

arranged PW178 Mahesh to give the chappal to the jail. PW178 applied for an interview to PW121 and accordingly, the chappal was handed over to PW121. On that day, at about 7.45 p.m, accused no.1 contacted him using the said mobile and informed about the receipt of phone.

431. Accused no.1 also asked him to contact PW181 after 10 p.m. Accused no.1 also informed him that he will contact PW181 at about 8.30. He contacted PW181 accordingly. PW181 attended the call of PW176 and informed that he was not available there. Thereafter, PW181 contacted him through another mobile phone. He asked PW176 about the matter and he inturn informed PW181 that there are several enemies for accused no.8. He conveyed the name of Smt. Poornima Indrajith as one of such enemies. PW181 asked whether film actor Prithwiraj and Antony Perumbavoor are involved in this case and told that accused no.8 has no connection with this case. He had been directed by accused no.1 to communicate with PW181 in tune with his responses. Hence, he spoke in a manner supporting PW181. He also supported PW181 that the named persons are the enemies of accused no.8. According to him, he does not know the reality. He simply supported the version of PW181. According

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

to him, PW181 informed that he will get instruction from accused no.8 about the matters. Accused no.1 contacted him after his conversation with PW181 and he informed him about the matters told by PW181. On 12.04.2017, PW121 contacted him. The conversation was played before the court. PW176 stated that it does not contain the full conversation. The witness clarified the conversation put to him, stating that he acted as directed by accused no.1 and further stated that accused no.1 has not mentioned anything about the involvement of accused no.8 in this case. He also deposed that he acted as directed by accused no.1 so as to impress PW181. He also informed PW181 that accused no.1 is known to him when he worked in a company by name 'Avent' and at that time, accused no.1 was working as the driver of film actor Mukesh. He suppressed the fact that their friendship started from jail as directed by accused no.1. PW176 denied the entire conversation and clarified that he made that conversation so as to appear that accused no.8 has no connection with the case so as to elicit news from PW181. He also stated that in the conversation he informed PW181 that the offence was committed by

accused no.1 for meeting his financial needs only to pacify him. Each and every statement in the conversation was clarified in this manner.

432. On 11.04.2017, he informed this matter to PW121 Vipinlal. He also informed PW121 that they should write a letter so as to gain the confidence of PW181. He also directed PW121 to inform this to accused no.1. Thereafter, accused no.1 contacted him on 11.04.2017 by noon and thereupon he conveyed it to him. He also informed this to accused no.1. He also asked Sunil to write a letter. Accused no.1 told him that he will write a letter and send it through Vipinlal. Vipinlal has to attend the Judicial First Class Magistrate Court, Maradu on 12.04.2017. At about 10.45 p.m. PW176 along with PW178 went to the Judicial First Class Magistrate Court, Maradu. They met PW121 and he handed over Ext.P122 letter along with a slip. In the slip, it is specifically directed that the letter should only be given directly to accused no.8. It is also specifically directed that he should not contact accused no.8 over phone directly. He proceeded to the family house of accused no.8. One person came out. He made enquiry about the availability of accused no.8 there. Since accused no.8 was in the location, he collected the phone number of

PW191. The number so provided was incorrect. He again proceeded to the house and collected the number. He contacted PW191 and informed the direction of accused no.1. He also informed him about Ext.P122 letter. PW191 replied that they were at the shooting location in Theni and will be returned on 14th. This fact was informed to accused no.1. Accused no.1 asked him to proceed to Theni immediately. Thereafter, he parted with the company of PW178. He proceeded to Edappally and met PW119 Imran Khan and asked him to accompany him to Theni. The letter was shown to PW119. PW119 was not ready to accompany him and accordingly, he abandoned the plan to go to Theni. On 13.04.2017, he received a call from accused no.1. He also contacted PW191 on 13.04.2017 to know about the meeting on the next day. He had been directed to come to Taxi Stand at Eloor. On 14.04.2017 by noon, he contacted PW191. He along with PW178 proceeded to the Taxi Stand, Eloor. He met PW191 personally. He informed that he came there as directed by accused no.1 and introduced him. He also informed PW191 about Ext.P122 letter. He asked him to arrange an appointment of accused no.8 so as to give the letter directly. PW191 demanded the letter,

but he has not heeded as accused no.1 has specifically directed him to give it directly to accused no.8. Though PW191 assured him that he will contact him after discussion with accused no.8, he did not contact thereafter. On that day he sent SMS to PW191 to alert about the seriousness of the letter and there was no response. PW191 was trying to avoid him on his attempt to contact him.

433. On 15.04.2017 PW121 contacted him through coinbox. He informed him that accused no.1 will attend the court in Cherthala on 18th and asked him to come there. On 18.04.2017 he along with PW178 proceeded to Cherthala court. He contacted PW191 and informed that accused no.1 is with him. Though he tried to hand over the phone to accused no.1, police did not permit. He asked PW191 for any message and he responded that if Sunil wants to say anything, he should call him directly. He conveyed it to accused no.1. Thereafter, PW191 contacted him and enquired about the stand of accused no.1. He sought time. He also informed PW191 that anybody other than accused no.1, himself and PW121 know about the letter. Accused no.1 directed him to send the letter to PW191 through WhatsApp. Since he has no such facility, he sent

DISTRICT AND SESSIONS COURT

it to PW191 using the mobile phone of his wife (PW66). He identified the voice clip containing the conversation with himself and PW191. He clarified this conversation also by attributing different explanations. He identified the phone sent inside the jail as MO87. According to him, on 04.05.2017 his statement was recorded by PW202 Babukumar. He identified Ext.P122 as the letter handed over to him by PW121. According to him, the slip handed over to him was lost from his custody. Thereafter, on 23.06.2017, he was arrested by PW261. MO90 and MO91 mobile phones were seized from his residence. MO85 is the phone used by him for sending the letter to PW191. He identified accused no.1 also.

434. In the cross-examination, it is brought out that he is accused in somany theft cases. Even during his examination in this court, he was arraigned as accused in Cheranallore Police Station Crime No.548/2021 for the offences u/s.395 and 452 of IPC. It is also brought out that though he came to the court on 29.07.2021, he did not appear for adducing evidence. He admitted that he left the court through the back side of the court building. A suggestion is put to him that one police constable Mr. Vinod made arrangements for hiding him in the toilet and he denied it. On

a cursory analysis of the response in cross-examination, it is seen that he had stated somany new facts before the court. The contradictions and omissions brought out during the examination and marked as Exts.D44 and D45 to D45(h). He admitted that he had not given any statement to PW202 on 02.05.2017. According to him, his statement was recorded on 04.05.2017, the date on which he produced Ext.P122 before PW202. As pointed out, several questions were put to him challenging his explanations about the telephone conversation. Since the evidence is voluminous, the complete evidence is not reiterating here as it forms part of the record.

435. Another witness examined by the prosecution to prove the aspects with respect to Ext.P122 letter is PW178 Mahesh. According to him, PW176 is known to him. When PW176 was aged about 10-12 years, he was his neighbour. There was no contact with him thereafter. After several years he met PW176 in a theatre at Edappally during 2017 April. PW178 stated that he went to the theatre for watching the movie 'Georgettan's Pooram'. Vishnu collected his mobile number. After two days PW176 contacted him. According to him, it was approximately on

10.04.2017. He proceeded to Edappally and met PW176. He had been directed to meet one of his friends who was housed in District Jail, Kakkanad. Since Vishnu released from the jail recently, he could not go there. On that day by noon, they proceeded to the jail. A packet was with PW176. PW178 enquired about it and he was informed that it contains sandals for PW121. They proceeded to Kakkanad jail. In the meantime, they went to a cobbler for stitching the sandals. He met Vipinlal and handed over the sandals to Vipinlal. Ext.P172 series are the application and his ID card. According to him, he met Vipinlal. He handed over the kit to him. Thereafter, PW176 told him that he arranged mobile for accused no.1 so as to contact accused no.8. PW176 again contacted him on the next day and informed about his conversation with PW181 Nadirsha. According to him, both PW176 and himself proceeded to Marine Drive. At that time, PW176 contacted PW181, and disconnecting the call he assured that he will contact him after a while. Next day, he along with PW176 proceeded to Judicial First Class Magistrate Court, Maradu to meet PW121. He waited outside the court. PW176 went to the court and returned with a letter. PW176 told him that Sunil gave a letter

for giving it to accused no.8. Though he asked to show the letter, PW176 was not ready for that. He further informed him that the confidentiality of the letter should be maintained. It should be given personally to accused no.8. He had seen the letter, but he could not read it. After the lunch, they proceeded to the residence of accused no.8 situates at Paravoor Junction. He waited at the junction. PW176 proceeded to the residence of accused no.8 and he returned back after a while. He was engaged in telephone conversation. Vishnu told him that accused no.8 was not available there. His brother gave the number of PW191 and he contacted him.

436. Again on the day of Vishu, PW176 called him for meeting PW191. Both of them proceeded to the Taxi Stand, Eloor. He stayed away from them. He made enquiries with PW176. Though PW191 demanded to see the letter, that was not given to him. Thereafter, he dropped PW176 at Edappally. He was again called by PW176 after two days. According to him, it was on 18th. PW176 informed him that accused no.1 will come to the Cherthala court and accordingly, they proceeded to that court. Both PW176 and accused no.1 were engaged in conversation. He was also standing near to them. Accused no.1 asked PW176 to send

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

the letter to PW191 through WhatsApp. According to him, his phone was used by PW176 to contact PW191. During cross-examination, questions were put to him regarding the phone numbers used by him. He replied that he is affected with loss of memory after the death of his parents. His father died seven years back. Thereafter he stated that the loss of memory is with respect to recollecting phone number. No other issues are available. He admitted that there was conversation with himself and PW191 during the first week of May 2017 for about 15 minutes. He also admitted that he appraised him about his financial difficulties. He admitted that Vishnu instigated him to join with him assuring financial help. He was confronted with his statement before the Magistrate u/s.164 of Cr.P.C. Similarly, he is contradicted with respect to the evidence that he along with PW176 proceeded to the court in Chertala to meet accused no.1. In his 164 statement, he stated that PW176 contacted him and asked his assistance for going to the court and accordingly, they proceeded to the court by turning left from Edappally. It is also elicited through him that he proceeded to the court where the case of PW176 is pending and accordingly, he met accused no.1 also. Though he tried to clarify that

they were proceeded to Cherthala court, he was unable to clarify whether Vishnu had case in Cherthala court. Ext.D47 contradiction is also marked through him. Ext.D47(a) contradiction that he had taken two set photocopies of Ext.P122 letter as directed by PW176 is also elicited through him. He clarified before the court that he asked PW176 to show the letter and the request was refused. He had taken two copies of the letter in his mobile phone without the knowledge of PW176. He thereafter obtained the printout. He admitted that he had given copy of this letter to the office of 'Janam T.V'. He further admitted that he stated before the investigating officer that he along with PW176 Vishnu went to the office of Janam T.V and handed over the copy of letter to them. Somany omissions and contradictions are elicited through cross-examination.

437. The reliability of the evidence mentioned hereinbefore can be considered. Before going to the reliability of the evidence, some incidents which are happened before the court during the examination of PW121 and PW176 are to be considered. Admittedly, both these witnesses were arraigned as accused in several cases. They also convicted in some of those cases also. Both of them were granted pardon. PW121 was granted



pardon before filing final report. PW176 was granted pardon by the trial court during the course of examination. It is to be noted that the trial of this case was affected on several occasions due to the outbreak of Covid-19 pandemic. This court for the first occasion issued summons to PW121, who was cited as CW227 in the witness memorandum on 12.03.2020. On account of the outbreak of Covid-19, his examination could not be proceeded with. He was again summoned to appear before the court on 06.11.2020. But the examination was not done due to the filing of transfer petition before the Hon'ble High Court by the prosecution and PW1 and also due to the resignation of the then Special Public Prosecutor.

438. In the meantime, counsel for accused no.8 filed copy application for getting copy of the order granting bail to CW227. This court verified the records and found out that no bail was granted to CW227. In this case, CW227 was remanded to Central Prison, Viyyur by the Judicial First Class Magistrate, Angamaly after recording his statement u/s.306(4) of Cr.P.C on 01.11.2017. He continued in the prison till 06.09.2018. Since he has not been granted bail, investigating officer PW261 has been directed to file report about the matters regarding the

release of PW121 from jail. He in-turn filed a report on 17.12.2020 stating that PW121 was released from jail on 06.09.2018. Thereafter, the Superintendent, Central Prison, Viyyur was directed to file report stating the facts led to the release of PW121. He filed a report stating that PW121 was released on 06.09.2018. But the report is silent about the authority authorising him to release PW121 from jail. Both the prosecution and investigating officer and also the jail authorities admitted that PW121 was set at liberty without bail order from any of the courts competent to issue such orders. The learned counsel for accused filed Crl M.P No.44/2021 before this court on 11.01.2021, praying to direct stringent action to be taken against PW261 and the officials who have colluded with him to ensure safe transmission of PW121 out of the Central Prison, Viyyur and permitting him to remain out of jail till that date. It is also prayed to take steps to ensure that PW121 Vipinlal is taken back into judicial custody and to ensure that his examination before this court is conducted after he is in judicial custody so as to ensure the compliance of Section 306(4) of Cr.P.C. This court considered the petition. The learned Special Public Prosecutor filed objection in the petition stating that the said petition was



filed by the accused for influencing and threatening the witness. PW121 complained before the authority concerned regarding the influence exerted on him for giving evidence supporting them. They had stated the details of the proceedings u/s.306 of Cr.P.C. in the objection. According to the prosecution, the final report of this case was filed on 22.11.2017. The investigating officer had no knowledge about CW227/PW121 thereafter. The examination of witnesses of this case was commenced from 30.11.2020 onwards. This court has already scheduled the examination of witnesses. Accordingly, the summons was issued to PW121 for his appearance on 12.03.2020. As pointed out, the examination could not be conducted due to the issues related to the outbreak of Covid -19 pandemic. In the meantime, prosecution filed Crl.M.P No.1299/20 for cancellation of bail granted to accused no.8. In the said petition, they specifically alleged that accused no.8 and his associates influenced PW121. A case has also been registered in that regard before Bekal Police Station as Crime No.619/2020. Moreover, the FIR of that case was produced before the court as part of cancellation of bail. This itself cuts at the root of the contention of the prosecution that

the investigating officer had no knowledge about PW121 after the filing of final report. This court had considered the rival contentions and partly allowed Crl M.P No.44/2021 and issued warrant against PW121 to bring back him to custody as provided u/s.306(4)(b) of Cr.P.C. The prayer to take stringent actions against the officials, including investigating officer, is dismissed. The order was pronounced on 20.01.2021.

439. After the appointment of a new Prosecutor, this court had again rescheduled the examination of witnesses on 11.01.2021. Summons was issued for the examination of PW121/CW227 to appear on 21.01.2021. As I pointed out, this court vide order in Crl M.P No.44/2021 on 20.01.2021 issued warrant against him. On 21.01.2021 the warrant against PW121 was not executed. The investigating officer filed report before this court. He further reported that the summons issued to PW121 could not be served as his whereabouts are not known. This court again issued warrant against PW121 and posted the case for return of warrant to 23.01.2021. In this juncture Exts.C41, C41(a), C42 and C42(a) assumes some relevance. Ext.C41 is the summons issued by this court to PW121 for his appearance on 12.03.2020 and Ext.C41(a) is the report returning

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

the summons by civil police officer '11062' Binu P.P attached to Nedumbassery police station, a member of Special Investigation Team. Ext.C42 is the copy of the summons issued to PW121 for his appearance on 06.11.2020. Ext.C42(a) is the report filed by civil police officer '12044' Dileepkumar attached to Nedumbassery police station stating that summons was served to PW121 through WhatsApp. It is brought to the notice of this court that PW121 was provided with the protection under the Witness Protection Scheme by the competent authority. Hence, this court directed Dy.S.P. Kanhangad to appear before this court on 27.01.2021 to answer about the whereabouts of CW227/ PW121. On 27.01.2021, Dy.S.P Kanhangad appeared before this court and filed report. In the report, it is stated specifically that PW121 was granted police protection under the Witness Protection Scheme 2018 vide order no. 02/WSP/Ksgd/2020 dated 06.11.2020 of the competent authority of Kasaragod District. He further submitted that PW121 was summoned by this court to appear before the court on 21.01.2021 for giving evidence in S.C.No.118/2018 and necessary police escort was provided to the witness. He was escorted by Sri Vijesh, civil police officer '2354' of Bekal Police

Station on 19.01.2021 to Ernakulam. They have returned to Bekal from Ernakulam on 21.01.2021 evening. Since then, Sri Vipinlal is present at his rented house at Malakunnu, Pallickara Village, Hosdurg Taluk, Kasaragod District, within the jurisdiction of Bekal Police Station. Sufficient protection as directed by the competent authority under Witness Protection Scheme 2018 is being provided to the witness. He further submitted that neither himself or SHO, Bekal police station has received any warrant issued by this court to produce PW121 before the court on 23.01.2021 in any case. A police officer from Perumbavoor police station has reported at his office only in the evening of 23.01.2021 to intimate about this matter. He has no idea why a report was submitted by the officer who was entrusted with the execution of warrant stating his whereabouts 'unknown' when the person concerned was residing in his rental house at House No.XIV of Puthige Grama Panchayat, Pallickara Village, Hosdurg Taluk, Kasaragod District on the date and time. No report was submitted by any officer under his jurisdiction in this regard. In this juncture, the report of the officer who returned the warrant before this court assumes relevance. PW261 Mr Baiju Poulose, the investigating



DISTRICT SESSIONS COURT ERNAKULAM-682 011

officer filed a report before this court on 21.01.2021. It is stated in the report that the warrant was received from this court by senior civil police officer Mr. Binu P.P. at 4 p.m on 20.01.2021. The warrant was entrusted to PW261 by Mr. Binu at about 4 p.m. He contacted the S.H.O., Bekal police station for the execution of warrant as they were not in a position to go directly to Bekal due to paucity of time. He sent the copy of warrant through e-mail to the S.H.O., Bekal police station for the execution and sought his assistance. The investigation revealed that PW121 was at Ernakulam for meeting lawyer. Hence, he sought time for the execution of warrant. He returned the warrant along with this report. It is to be noted that the investigating officer had maliciously gone to the extent of stating in the report that the copy of the letter received from the S.H.O., Bekal police station is also along with this report. This particular portion was seen struck off later. But the Dy.S.P Kanhangad under whose jurisdiction Bekal police station situates stated specifically that nobody contacted him for the execution of warrant.

440. As pointed out, the prosecution themselves produced the copy of FIR in Crime No.619/2020 of Bekal Police Station filed by PW121,

claiming that he was influenced by the associates of accused no.8. Moreover, it is brought out that the summons issued by this court in earlier occasions were served to PW121. If this be the situation, the contention of the investigating officer PW261 that the summons could not be served on him as his whereabouts are not known is an utter falsehood. Moreover, it is seen from records that he had been granted witness protection from 06.11.2020 in the light of registration of Crime No.619/2020 of Bekal Police Station. Even after issuing summons to PW121 for appearance on 06.11.2020 this court issued stop memo in the light of the order of the Hon'ble High Court deferring the trial till 06.11.2020. This was also communicated to PW121 by the investigating officer. So, his claim that the summons issued to this witness for appearance on 21.01.2021 could not be served as his whereabouts are not known seems to be a fabricated version.

441. The evidence of PW121 in this regard is to be considered. He categorically admitted before this court that he came down to Ernakulam on 19.01.2021 for adducing evidence before this court on 21.01.2021. Escort police constable was also with him. Both of them resided in a



lodge. He returned from Ernakulam to Bekal on 21.01.2021. How this witness came to know about the date of examination if the summons was not served on him is a fact to be considered. Moreover, the Dy.S.P, Kasaragod also stated specifically about his journey from Kasaragod to Ernakulam on 19.01.2021. As I pointed out, this court issued warrant against PW121 vide order in Crl M.P No.44/2021 dated 20.01.2021. It can be seen that even after the arrival of PW121 to Ernakulam, he cunningly avoided the appearance before the court with the aid of the investigating officer. As I pointed out, the records available before the court would show that the investigating team was in contact with PW121 atleast after the registration of Crime No.619/2020 of Bekal Police Station. The report filed by PW261 stating false reason shows that their intention was to avoid the execution of warrant issued by this court against PW121. As I pointed out, his release from the Central Prison, Viyyur was without any authority. A fair investigating officer should have been assisted this court for the execution of warrant issued against a person who unlawfully and illegally released from the jail. But the investigating officer filed report to continue the illegal release of PW121.

Thereafter, on 23.01.2021 investigating officer filed another report before this court stating that on receipt of warrant he endorsed the warrant to his subordinate officer Mr Vinod, Assistant Sub-Inspector of Police for execution. Mr.Vinod has already proceeded to Kasaragod for the said purpose. It is informed by the Senior Government Pleader that KLHC case with filing no. Crl.M.C No.1650/21 and CNR/KLHC/010054/2021 has been filed by Mr Vipinlal before the Hon'ble High Court of Kerala in order to quash the order passed by this court in Crl M.P No.44/2021. In the light of the above submissions, he prayed little more time for the execution of the warrant. This would further show the attitude of the investigating officer. He was declined to execute the warrant issued by this court against PW121 and permitted him to continue outside the jail without any authority. Thereafter this court received an order of the Hon'ble High Court in Crl.M.C.No.461/2021 directing PW121 to appear before this court on 29.01.2021 with a direction to release him on bail on his appearance. He appeared before this court accordingly and this court released him on bail.



442. The evidence of PW121 regarding the above aspect is as follows:- He admitted that he received summons from the court to appear before the court on 12.03.2020. According to him, he received summons when he was near to Ernakulam Railway Station. Police has no knowledge about his residence at Kasaragod. He also stated that senior civil police officer Mr. Binu contacted him when he filed Crime No.619/2020 of Bekal Police Station. Thereafter, PW261 Mr. Baiju Paulose also contacted him. Mr. Baiju Poulose contacted him during January 2020. According to him, thereafter he received summons for appearance during November. He admitted the receipt of summons issued from this court on 21.01.2021. According to him, that was sent to him through WhatsApp. He had been directed to appear before this court on 21.01.2021. He came down to Ernakulam for appearing before the court along with escort. He denied the fact that investigating officer contacted him on 20.01.2021. He admitted that he did not appear before the court on 21.01.2021. He came to know about the issuance of warrant through news telecast in TV channels. He does not remember whether any police officials contacted him. On 22.01.2021, he returned back to Kasaragod.

He met with a lawyer. He was available in Kasaragod throughout thereafter. He claimed that his mobile phone was in an active condition. At the very same time, he clarified that he switched off his mobile phone. A specific question is put to him, whether PW261 or any other police officials contacted him before appearing in the court. He replied that he does not remember. Though he claimed that his mobile phone was switched off, he admitted regarding the live phone interview telecast in Reporter T.V on 21.01.2021 at 11.30 a.m. He tried to clarify that, that was recorded on 20.01.2021. At the very same time, he admitted that the reason for his absence before the court on 21.01.2021 is also mentioned in that interview. If this be the situation, it is seen that his claim that the mobile phone was switched off and the interview was recorded on previous day appears to be incorrect. He also admitted his meeting with lawyer for filing Crl.M.C before the Hon'ble High Court. This itself would show the falsity of the report filed by the investigating officer before this court. The investigating officer without any hesitation filed a false report stating that summons was not served on PW121 as his whereabouts were not known. On the other hand, PW121 admitted the

receipt of summons and moreover, he came down to Ernakulam. Further, the report filed by the investigating officer regarding the non execution of the warrant issued by this court on 20.01.2021 also contains utter lie. He claimed that he contacted the Station House Officer, Bekal Police Station. It is to be noted that PW121 was available in Ernakulam. The investigating officer and his police team contacted him on his mobile phone on several occasions. The evidence before the court shows that his mobile phone was active. Moreover, PW121 himself admitted that he went to meet a lawyer for filing Crl.M.C before the Hon'ble High Court. The lawyer who filed the Crl.M.C is none other than the colleague of the then Special Public Prosecutor. Further, the investigating officer again filed report before the court stating that since the witness approached the Hon'ble High Court challenging the order, the warrant was not executed. All these would clearly show the efforts on the side of the investigating officer to protect PW121 who remained out illegally so as to flout the orders issued by this court. This shows that the investigating officer was hand-in-glove with the witness.

443. As far as PW176 is also concerned, some relevant matters of this kind are also to be considered. PW176, after granting pardon, was cited as CW360. This court issued summons to CW360 and scheduled his examination to 27.07.2021. He was present on that day. The learned Special Public Prosecutor submitted that the witness informed the police personally over phone that he is not well. Since no other information is available, he did not file any application for the witness. Hence, this court issued bailable warrant to CW360. On 28.07.2021, the investigating officer filed report stating that warrant could not be executed as he was not available at his residence. The learned Special Public Prosecutor produced one O.P ticket issued from Medical College Hospital, Ernakulam showing that the witness went to the O.P on that day at 9:47:34 a.m. This court issued non-bailable warrant to the witness and the case is adjourned to 29.07.2021 for return of warrant. On that day also, the investigating officer filed report stating that the warrant could not be executed. This court again repeated the warrant through the District Police Chief Ernakulam (Rural). On 30.07.2021, the warrant was executed and the witness was produced before this court. It is to be noted that though the

investigating officer filed report stating that his whereabouts are not known, it is brought on record that he was again arraigned as third accused in Crime No.548/2021 of Cheranallore Police Station along with one of his girlfriends. He admitted that both of them were residing together at that time. His girlfriend was arrested on 31.07.2021 in connection with Crime No.548/2021 registered for the offences u/s.395 and 452 of IPC. PW176 was arraigned as accused no.2. The summons and reports are marked as Ext.C46 to Ext.C49(a). Ext.C46 is the warrant issued from this court and Ext.C46(a) is the report filed before this court by Mr. V.K. Vinod, Grade ASI, Nedumbassery Police Station. In the report, it is stated that on 29-07-2021 at about 9.30 a.m., brother of PW176 informed that PW176 was suffering from Covid-19 and in a serious condition. This fact was informed to the brother of PW176 by PW176. Ext.C48(a) is another report filed by the very same ASI of Police stating that the whereabouts of the witness are not known. Ext.C49(a) is the report filed by the very same ASI of Police Mr. V.K. Vinod on 30.07.2021 that they executed the warrant on 30.07.2021 at 7 a.m as he was found at his rented house.

444. It is to be noted that Ext.C46(a) report dated 29.07.2021 assumes some relevance. It says that he was suffering from Covid-19 and in a serious condition. But this witness was seen in the veranda of this court after adjourning this case. This fact is admitted by PW176 when he was in the box. He himself claimed that on 29.07.2021, in between 11.45 a.m and 12 o'clock, he went to Lisie Hospital and discharged from there at about 4.30 p.m. He was under observation in casualty. He came to know about the warrant through newspaper. According to him, he was about to appear before the court. He sustained injury on 28.07.2021 early morning. On 29.07.2021 he came to the court for showing his injury to the police. He met the police and showed the injury. He also informed them about the injury and also the fact that he is going to Lisie hospital for treatment. Since he sustained injury, he could not appear before the court. According to him, press people and channel people were available in the premises and he proceeded through the way passes on the back side of the court. That area is a busy area. He came to the court in earlier occasion in connection with another case. At that time also he opted the way passes through the back side of the court building so as to avoid the press people.

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

It is to be noted that no such way is available on the back side of the court. Moreover, it is very difficult to pass through the back side of the court building as there was full of garbage and concrete structures are also available. Further, the trial of this case was pending before the Special Court (SPE/CBI-III), Ernakulam situates at Kaloor. The claim of the witness that he appeared in that court in connection with his case in earlier occasion and at that time also he opted the way passes through the back side of the court building is an utter falsehood.

445. Above all, no records are produced before the court showing his admission in the Lisie hospital. It is to be noted that in Ext.C46(a), it is reported that he could not be traced out and his brother informed that he is laidup due to Covid-19. On the other hand, the witness himself claimed that he came to the court on 29.07.2021 and informed the police about the injuries. As pointed out, at that time, the police was searching PW176 in connection with Crime No.548/2021 of Cheranallore police station and the third accused was arrested on 31.07.2021. This itself would show that police filed a false report even after meeting him. The learned counsel for defence put a definite question that police gave assurance that he will

not be arrested in connection with Cheranallore crime and that is the reason why he did not appear before the court in response to the summons. Moreover, even after his appearance before the court, he claimed that he is not fully well and accordingly, examination was adjourned midway for three days. The way the police officials filed report would show their nexus with this witness.

446. The case of the prosecution is that Ext.P122 was written on 12.04.2017 by PW121 as instructed by accused no.1. It is alleged that after the release of PW176 from District Jail, Kakkanad on 23.03.2017, he was directed to contact PW181. PW176 contacted PW181. He was not ready to accept the demands and assurance of PW176. It is the case of the prosecution that on 11.04.2017, PW121 contacted PW176. He informed them about the requirement of writing a letter for gaining the confidence of PW181 and accordingly, accused no.1 attempted to write the letter. As it was full of mistakes and his handwriting was not legible, he sought the assistance of PW121 and accordingly, he wrote Ext.P122 on 12.04.2017. The prosecution relied on the CCTV footage collected from the jail and

DISTRICT SESSIONS COURT
ERNAKULAM-682 011

produced before the court in pendrive, marked as Exts.P148 and P152 to prove this aspect.

447. I have already held that those visuals are inadmissible for lack of proper certificate u/s.65B of the Indian Evidence Act. As far as the oral testimony of PW121 is concerned, he for the first time stated about the date of scribing before the court. The date of its writing is not stated anywhere in Ext.P122. Moreover, though PW121 and PW176 deposed about their phone calls using the coinbox on 11.04.2017, no evidence supporting that claim is produced before the court. The CDR of the coinbox could have been produced to substantiate this aspect. Both PW121 and PW176 reiterated about the telephone call through coinbox on 11.04.2017. But no convincing evidence is available on record. On the other hand, Exts.D44 and D45 to D45(h) would bring-forth another aspect regarding Ext.P122. It is to be noted that the case of the prosecution is that Ext.P122 was entrusted with PW176 by PW121 when he attended the Judicial First Class Magistrate Court, Maradu on 12.04.2017. PW121 deposed that the letter was entrusted before the commencement of court proceedings on 12.04.2017. PW176 also stated

that he reached there about 10 minutes before the commencement of court proceedings and collected the letter. In the cross-examination of PW176 on 04.08.2021, he stated that he along with PW178 reached the Judicial First Class Magistrate Court, Maradu at about 10.45 a.m. He get inside the court at 10.50 a.m. and met PW121. This fact is an omission. It is not stated to the investigating officer during his interrogation. At this juncture, Ext.P228 register assumes relevance. Ext.P228 is the Gate Register of District Jail, Kakkanad. In Ext.P228, the entry regarding the prisoners departure from jail and return are recorded. In page number 105 of Ext.P228, it is seen recorded that PW121 left the jail at 10.55 a.m. after necessary body search. He was handed over to escort police. He returned back on that day at 12.25 p.m. He was taken out from the jail in connection with CC No.2150/2016. Judicial First Class Magistrate Court, Maradu situates at about a distance of 10-12 kilometres away from District Jail, Kakkanad. It is seen from records that PW121 was handed over to police personnel at 10.55 a.m after due body search. The case of the prosecution is that Ext.P122 was taken out by PW121 from the jail. He met PW176 and handed over it. The evidence of PW121 and PW176

DISTRICT COURT ERNAKULAM-682 011

that the letter was given by 10.50 a.m is against the entry in Ext.P228 relied on by the prosecution. Moreover, it is specifically recorded that his body search was conducted. Had there been any letter such as Ext.P122, that would have been searched out by the jail officials.

448. Another aspect to be considered is the relevancy of Ext.D44, D45 to D45(h), Exts.D45 to D45(h) contradictions are with respect to the statement of PW176 claimed to be recorded on 02.05.2017. It is to be noted that PW176 denied the recording of his statement on 02.05.2017. He categorically stated that he was interrogated by PW202 on 04.05.2017 when he produced Ext.P122 letter and that was seized by him on the same day. The interesting aspect is that had PW176 been interrogated on 02.05.2017 as seen from records, why the letter was not seized on that day is not explained despite the definite case of the prosecution that the letter has been in his custody from 12.04.2017 onwards.

449. The importance of contradictions can be considered one by one. The contradiction with respect to Ext.D44 is that PW176 claimed that on the previous day of Vishu, he along with PW178 went to the residence of accused no.8 situates at Aluva. But, the case of prosecution

presently is that PW178 waited at the junction and PW176 alone went to the residence of accused no.8. Ext.D44 contradiction is elicited through PW176 about this aspect. In his statement to PW261 on 24.06.2017 he stated that he along with PW178 went to the residence of accused no.8, but on a different date, that was on 12.04.2017. As per his statement to PW202, he claimed that he went to the residence of accused no.8 on 13.04.2017. He admitted that in the year 2017 Vishu festival was on April 14th and further, Ext.D45(a) would show that he contacted PW191 and PW191 replied that he will be coming on the very next date, ie., on the day of Vishu, falls on 14th April 2017. Now the prosecution asserted that on receipt of a letter on 12.04.2017 from PW121, PW176 along with PW178 proceeded to the residence of accused no.8, met PW182 and collected the phone number of PW191. The definite case put forward by the defence is that no such letter was available on 12.04.2017. This letter was manipulated after 15.04.2017 so as to demand money from accused no.8 as a result of the criminal conspiracy hatched between PW121, PW176 and accused no.1. Ext.D45(c) would show that PW176 contacted PW191 on the next day of receiving Ext.P122 letter. He clarified that he contacted

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

PW191 on 14th, but this was not stated to the investigating officer. What he stated is that he contacted PW191 again after the call on the previous day. As pointed out, this letter was written to gain the confidence of PW181 as suggested by PW176 to PW121 on 11.04.2017. But Ext.D45(f) would show that PW176 stated to the investigating officer that on the first day of his conversation with accused no.1, he informed him that he will be entrusted with a letter for giving it to accused no.8. If he gives the letter to accused no.8, he will in turn give money to him. He also offered share to PW176 from the money so received. This is also against the assertion of the prosecution. It is further claimed that after receiving the letter from PW121, PW176 along with PW178 proceeded to the residence of accused no.8, enquired about him and as he was not available there, they collected the phone number of PW191, his driver to inform him about Ext.P122. They have stated categorically that though the number was collected, one digit was missing in the number so collected. Thereafter, PW176 again went back to the residence of accused no.8 and collected correct number from PW182. But, Ext.D45(g) would show that accused no.1 had given the mobile number of PW191 to PW176 when they were in District Jail,

Kakkanad. All these creates shadow in the prosecution case in the court that PW176 collected the letter from PW121 on 12.04.2017.

450. The learned Special Public Prosecutor relying on the visuals collected from District Jail, Kakkanad urged that even on 11.04.2017, accused no.1 was seen engaged in multiple writing activities and later he handed over a notebook or paper to PW121 and that corroborates the testimony of PW121. The admissibility of the pendrive containing the CCTV footage has already negatived by this court. The prosecution advanced the argument that the visuals would show the writings dated 11.04.2017 for the first time before the court on 10.07.2025. No evidence is adduced in this regard. Prosecution has no case that accused no.1 wrote a draft on 11.04.2017. Coming to the evidence of PW121 regarding the date of scribing Ext.P122, he never stated the date of writing Ext.P122 as 12.04.2017 before his evidence in the court. As pointed out, Ext.P179, statement u/s.164 Cr.P.C of PW121 was recorded on 25.08.2017. As part of giving pardon, another statement was recorded, which is marked as Ext.P256, by the learned Chief Judicial Magistrate, Ernakulam on 25.09.2017. Ext.C40, statement u/s.306(4)(a) of Cr.P.C was also recorded

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

on 01.11.2017. He had not even given any indication regarding the date when he allegedly wrote Ext.P122. What he stated is that he handed over the letter to PW176 when he appeared before the Judicial First Class Magistrate Court, Maradu. I have already discussed about the discrepancy appeared in Ext.P228 Gate Register of the District Jail, Kakkanad regarding the time of leaving the jail and the time stated by PW176 regarding the receipt of Ext.P122 from PW121 at the Judicial First Class Magistrate Court, Maradu. A question is put to PW121 specifically during cross examination that whether he stated about the time, place and date of writing of the letter claimed to be handed over to PW176 Vishnu. PW121 replied that he has not stated any details such as place, date and time of scribing Ext.P122 except the fact that it was given to PW176 at the Judicial First Class Magistrate Court, Maradu. This part of his evidence assumes importance in view of the specific case put forward by the defence that the letter was manipulated by the investigating agency with the assistance of jail officials and Vishnu. As pointed out, the claim that PW121 contacted PW176 through coinbox on 11.04.2017 is not proved before this court.

451. I have already discussed about the contradictions elicited through PW176 about the date of scribing Ext.P122 and also the related aspects. PW121 deposed that he contacted PW176 on 11.04.2017. PW176 informed him about the requirement of getting a letter. But, PW121 in Ext.P179 dated 25.08.2017 stated specifically that he contacted PW176 after Vishu and PW176 in-turn informed him that accused no.8 and PW191 were not ready to meet him. They did not accept his claim that he approached them for and on behalf of accused no.1. In order to gain their confidence, he asked to get a letter when he appeared in the Judicial First Class Magistrate Court, Maradu. The very same fact was reiterated at the time of Ext.P256 recorded on 25.09.2017 also. According to PW121, he stated at the time of Ext.P256 that he contacted PW176 Vishnu after Vishu. Vishnu informed them that Dileep was not ready to meet him. PW181 Nadirsha was also not ready to co-operate with them. He specifically stated that he contacted PW176 through coinbox of jail one week after Vishu. He informed this matter to accused no.1. Thereafter, Vishnu went to Cherthala Court and Kunnamkulam Court for meeting accused no.1. Accused no.1 assured in this meeting that he will give a

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

DISTRICT & SESSIONS COURT ERNAKULAM-682 011

letter when PW121 appear in Judicial First Class Magistrate Court, Maradu. In his statement dated 01.11.2017 he has not stated about the date of writing Ext.P122. In the light of his specific assertions that he contacted PW176 after Vishu and that prompted them to scribe Ext.P122, the claim put forward presently by the Prosecutor that the letter was written on 12.04.2017 lacks credibility. Similarly, in this court, PW121 deposed about the circumstances in which he wrote Ext.P122. He claimed that he sat in the floor along with accused no.1 and wrote the letter. It is also stated that PW135 Jinson was in possession of papers issued by jail authorities and they used those papers to write Ext.P122. This fact was also stated for the first time in this court. Nothing in this regard was stated in Exts.P179, P256 and C40.

452. Another fact to be considered is that in Ext.P122, in between the seals of District Jail appear on the top of the paper, the figures '5225' is seen written. The case of the prosecution is that on 11.04.2017, PW176 told about the requirement of a letter from accused no.1 to PW121 and accused no.8. It is claimed that PW121 wrote a note along with the Ext.P122 letter. According to the prosecution, this particular note

contains the manner in which Ext.P122 is to be dealt with. No such notice is produced in court. PW176 claimed that it was lost from him. The prosecution claimed that Sunil asked PW176 to hand it over to accused no.8 only. But the evidence of PW121 in this court is that he handed over Ext.P122 along with this note to PW176. But, the handing over of the note along with Ext.P122 is absent in Exts.P179, P256 and C40. The fact of handing over the note is not stated in earlier occasions also. The defence argued that this fact was manipulated so as to cover-up the lacuna in the prosecution assertions. According to the learned defence counsel, since police escort was with PW121, while receiving the letter from him PW176 could not talk with him. On understanding the reality and save the situation a new story about the preparation and handing over of a note was put forward as a result of an afterthought. This particular note was not recovered and in order to explain this laches, another story is put forward that PW176 lost the note. It is to be noted that PW176 claimed that he was accompanied by PW178 to the Magistrate Court. At the very same time, he stated that this note received along with Ext.P122 was not shown to anybody. PW121 in Ext.P179 stated that he informed accused

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

no.1 about the handing over of the letter, but nothing about the note. PW121 in Ext.P179 stated further that Sunil told him that if letter reaches accused no.8 properly, he would help him and that will provide peace of mind to him. This fact was not stated in Exts.P256 and C40. On the other hand, PW121 during evidence deposed that he contacted PW176 to know about the details of the letter. PW176 informed him that though he attempted to hand over the letter, that could not be succeeded. He sent the letter to PW191 through WhatsApp. He made enquiry with accused no.1 about these matters. Sunil asked him to wait till accused no.8 take a favourable decision. This fact is not stated in any of his previous statements.

453. Similarly, his evidence regarding the arrival of investigating officers to the District Jail are also contradictory. According to PW121, investigating officer interrogated him showing a letter claiming that accused no.1 is intimidating accused no.8. Thereafter, he asked accused no.1 about this letter. He also asked accused no.1 about his claim that accused no.8 will not give any complaint against accused no.1. PW121 claimed that accused no.1 explained that though accused no.8 filed

complaint mentioning about the letter, nothing is stated about the phone calls. At this juncture, Ext.P101 complaint is to be considered. Ext.P101 is the petition at the instance of accused no.8 to the DGP Mr. Lokanath Behera IPS. Ext.P101 petition was dated 20.04.2017. On 22.04.2017, the DGP endorsed a direction in Ext.P101 with copy to ADGP (South Zone) and I.G of Police (CBCID)(North Zone) with a direction to report within three days. Copy of Ext.P122 letter was attached along with Ext.P101. In addition to the copy of Ext.P122, a screenshot of a call received from mobile number 8807339249 was also annexed. Admittedly, the copy of the letter attached with Ext.P101 is the copy of Ext.P122. So, on 22.04.2017 itself, this letter was brought to the notice of police officials. The prosecution claimed that they came to know about the letter only when they interrogated PW176 on 02.05.2017. The interrogation and recording of statement on 02.05.2017 was denied by PW176. Even if the claim of prosecution is taken into account, the claim of knowledge about Ext.P122 from PW176 is a false claim in the light of Ext.P101. In Ext.P101, it is stated that this petition was submitted to conduct a legal enquiry against few unfortunate incidents which occurred recently. It is stated specifically



that **"My friend and Malayalam movie director Mr.Nadirshah has received a phone call on his mobile by addressing someone talking on behalf of the film actress abduction case culprit Pulsor Suni. He was trying and asking for financial gain or else threatened to connect me to in this case. The voice clip has been recorded by Mr. Nadirshah and the concerned mobile number also noted down. The call came from one Mr.Vishnu says he is a friend of Pulsor Suni and the mobile number is 9645307437. On 18/04/2017 my personal driver Mr.Sunil Raj alias Appunni has received a letter by Whats app on his mobile. It was a letter with an official Govt stamp on top and supposed to be written by Pulsor Suni by asking two crore rupees from me or else he indicates to threaten by adding me to in this case and spoil my hard earned public image with the help of his gang. The photocopy of the same is attached herewith relevant mobile number details".** It is requested to conduct a legal enquiry in these incidents.

454. PW202 deposed in this court that on 01.05.2017 he received Ext.P101 with a direction to examine and report. PW202 deposed that he conducted investigation accordingly and on 02.05.2017 he recorded the statement of PW176. Thereafter, he seized Ext.P122 from PW176 on 04.05.2017. Ext.P449 mahazar is proved through this witness. Ext.P101

was produced in court on the strength of Ext.P101(c) mahazar dated 11.07.2017. When PW261 was in box, he was cross-examined referring Ext.P101. He claimed that Ext.P101 was received by PW202 on 01.05.2017. In his chief examination, he stated that on receipt of the petition, he verified it and arrived at a conclusion that somany important aspects were suppressed by accused no.8 in Ext.P101 and accordingly, Ext.P101 was produced in the court on the strength of Ext.P101(b). This was not stated in Ext.P101(b) Form-15. The learned counsel for defence put questions that nothing is there to show that Ext.P101(a) was received by PW202 on 01.05.2017. PW261 replied that it is mentioned in the case diary. But, at the very same time, PW261 admitted that nothing is available on record to show the receipt of Ext.P101(a) by PW202 on 01.05.2017. Ext.P101(a) was produced in the court on 24.06.2017. The attempt of the prosecution is to establish that on receipt of Ext.P101 they conducted investigation and that led to the seizure of Ext.P122 on 04.05.2017. As pointed out, PW176 himself denied his interrogation on 02.05.2017. Moreover, the statement would not indicate any reference about the receipt of letter by PW202 on 01.05.2017. It is merely stated by



PW176 that he will produce the letter. Had Ext.P101 along with the letter been received on 01.05.2017, that should have been shown to PW176 on 02.05.2017 during his interrogation. This was not seen done. Except the bare statement of PW261 that the case diary contains reference about Ext.P101(a), no other records are available in this court to substantiate the receipt of Ext.P101(a) on 01.05.2017. Ext.P101 was produced in court on 24.06.2017 on the strength of Ext.P101(b). In Ext.P101(b), it is stated that Ext.P101 was received by PW202. But, it is to be noted that in Ext.P101(a), the copy of the petition was stated to be received from the DGP. PW261 stated that it is a mistake. According to him, the copy is received first and thereafter they seized the original from the office of the DGP. The copy received and the original seized were produced before the court narrating in separate forms. He admitted that Ext.P101 is the original of Ext.P101(a). Ext.P101 was seized only on 11.07.2017. This was produced before the court on the strength of Ext.P101(f) on 11.07.2017. The description regarding the point to be proved in both Exts.P101(b) and P101(f) are different. In Ext.P101(b), the point to be proved is stated as to prove the fact that Rs.2 crore was demanded from accused no.8, whereas

in Ext.P101(f), it is stated to prove the petition by accused no.8 before State Police Chief seized on the strength of seizure mahazar. PW261 admitted that in Ext.P101, DGP directed ADGP (South Zone) and I.G of Police (CBCID)(North Zone) to conduct investigation. That direction was on 22.04.2017. Though he claimed that supervisory officer directed the investigation head of the Special Investigation Team to conduct investigation about Ext.P101, no material is produced before court to substantiate that claim. It is also to be noted that nothing is there in Ext.P101 to show that ADGP (South Zone) and I.G of Police (CBCID) (North Zone) acknowledged Ext.P101. Similarly, it does not show anything about the receipt of Ext.P101 also. Similarly, Ext.P101(c) mahazar is prepared at the Police Club, Aluva on 11.07.2017. It is claimed that investigation team member Sr.C.P.O Mr. Vinod collected it from the office of the Director General of Police, Trivandrum and handed over to the investigating officer. No material is produced before the court to show that Mr. Vinod collected it from the office of Director General of Police as claimed in Ext.P101(c). Moreover, the witnesses in Ext.P101(c) are two police officials. No independent witnesses were cited. PW103 was working



DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

as Junior Superintendent, Police Headquarters. She deposed that during 2017 she was working in the secret section. This section was under the direct control of DGP. She identified Ext.P101. She deposed about the procedure on receipt of a complaint in the office of DGP. She stated that as per the direction of DGP, she forwarded the copy of Ext.P101 along with covering letter to ADGP and I.G of Police. During cross examination she stated that the report after investigation will be given directly to Director General of Police. Whether any report is received in this petition is to be verified. She also deposed about the attachments along with Ext.P101. According to her, a copy of a letter and screenshot showing mobile number are attached with the petition. On a verification of the materials available before this court, though it is claimed that PW202 received the copy of Ext.P101 on 01.05.2017, except the oral testimony, no material is available before this court to support that claim. Had PW202 been conducted any investigation, a report should have been forwarded to the DGP within three days as directed. No such report is also produced before the court. There is nothing except a mere statement that on receipt of Ext.P101, PW176 was interrogated and that led to the

seizure of Ext.P122. The matters asserted by the prosecution as lead to the seizure of Ext.P122 are doubtful in the absence of any material to show that PW202 received Ext.P101 on 01.05.2017.

455. The evidence of PW176 is also to be considered about these aspects. As stated PW176 is also an approver. The admissibility of Ext.C4 application filed by him seeking pardon is to be analysed. Its marking is objected by the defence stating that it contains the matters recorded in his previous statement and hence hit by Section 162 Cr.P.C. The records would show that his statements were recorded on two occasions. The first statement was allegedly recorded on 02.05.2017 and the second on 24.06.2017.

456. This court vide order in Crl.M.P.No.147/2021 tendered pardon to PW178. Tendering pardon is a judicial proceeding and the petition need not be marked. As pointed out, in this petition PW176 reiterated his previous statement and it is hit by Section 162 of Cr.P.C. Hence, it cannot be admitted in evidence. It is elicited in evidence that on 02.05.2017 what he stated to the investigating officer is that accused no.1 told him that he will be entrusted with a letter on his release on bail so as



to hand it over to accused no.8 and thereupon he will be assisted financially. But the fact of handing over of letter is not stated in his evidence in this court and in the statement to the investigating officer on 24.06.2017. I have already discussed about the contradictions elicited through PW176. His statement on 02.05.2017 is silent about the entrustment of any letter on 12.04.2017. It is true that he stated that he received it from PW121 at the Judicial First Class Magistrate Court, Maradu. But Exts.D45(b) and (c) would negative the fact that it was received on 12.04.2017. Similarly, though he stated about the contact with PW121 through coinbox, no date is stated. However, his evidence in court regarding the call using MO87 by accused no.1 on 10.04.2017 and his call to PW181 Nadirsha contains specific details regarding time and other particulars. On 02.05.2017 what he stated to the police is that he contacted Nadirsha in connection with this case.

457. Similarly, his statement dated 24.06.2017 also does not contain any details as stated by him in court. The learned Special Public Prosecutor played a telephonic conversation between PW176 and PW181 in this court. The learned Prosecutor further put questions so as to clarify

and explain the conversations. The interesting aspect is that nothing is stated about the manner in which PW176 claimed to be contacted PW181 in his statement dated 02.05.2017. Even in his statement dated 24.06.2017 also those matters are absent. However, in this court he had gone to the extent of stating a different version so as to explain the contexts and the meaning of their conversation available in this court. He deposed totally contradictory to the conversation produced before this court. All these matters were elicited by putting leading questions also. His evidence before the court is dialectically opposite to the matters involved in the conversation. PW176 had even stated to PW181 that accused no.1 is known to him when he was working in a company by name 'Avent'. This evidence is against the prosecution case that both of them developed acquaintance at the jail when they were in Cell No.1 in 'C' Block. He had given an explanation that accused no.1 instructed him not to disclose the actual situation. All these questions were objected by the defence counsel. The entire conversation was explained in this manner. It seems that PW176 is giving evidence denying the matters in the conversation so as to corroborate the prosecution case and also the evidence of other witnesses.



458. As far as Ext.P122 letter is concerned, nothing is stated about the purpose of its writing in his statement dated 02.05.2017. In his statement dated 24.06.2017, he stated that he contacted accused no.1 over phone and informed him about the necessity of a letter. But, in his evidence in this court he changed his version and deposed that on 11.04.2017 morning he contacted PW121 and informed him about the necessity of a letter. He also stated that he directed PW121 to inform this matter to accused no.1 and accordingly, accused no.1 contacted him on that day by noon. Similarly, the evidence regarding his contact to accused no.1 that PW181 is not taking him into confidence and the assurance that the letter will be entrusted with Vipinlal when he comes to the Judicial First Class Magistrate Court, Maradu on 12.04.2017 are also not stated before the investigating officer. All these facts are embellishments and improvements amounts to material omissions. Similarly, his appearance before the Judicial First Class Magistrate Court, Maradu along with PW178 on 12.04.2017 at 10.45 a.m is also not stated to the investigating officer. Further, in his 161 statement dated 02.05.2017, he stated that he went to the residence of accused no.8 at Aluva on the previous day of

Vishu. That was on 13.04.2017 and collected the number of PW191. But, he himself stated that the number of PW191 was given by accused no.1 when he was in jail. All these are elicited as contradictions through this witness.

459. The interesting aspect is that in this court, he claimed that when he went to the residence of accused no.8, a person wearing 'jubba' came out. It is brought out that the fact of wearing 'jubba' is not stated to the investigating officer. It assumes relevance because when PW176 was present in court for giving evidence, PW181 was also present in court on summons. The learned Special Public Prosecutor elicited from PW176 that PW181 was the person whom he met at the residence of accused no.8 and gave the number of PW191. During the evidence of PW181 he deposed that he never wore 'jubba' in his lifetime. The learned counsel for the accused contended that this fact was newly introduced so as to make the evidence more believable. Even otherwise, the material contradictions elicited through this witness cast doubt regarding his evidence about the collection of phone number of PW191. The learned defence counsel argued that the statement u/s.161 Cr.P.C. dated 24.06.2017 of PW176 is

nothing, but a creation of investigating officer so as to suit the prosecution contentions. It is to be noted that though PW176 denied the interrogation on 02.05.2017, the case of the prosecution is that he was interrogated on 02.05.2017 by PW202 and his statement was recorded. It is seen that the matters claimed to be stated to the investigating officer on 24.06.2017 about the matters in existence at the time when he gave the statement on 02.05.2017 were not stated to the investigating officer on that date. Somany material facts are introduced through his statement dated 24.06.2017. This is brought out in evidence. PW176, who is involved in more than 25 criminal cases, including grave offences, is familiar with police officials and procedures. He cannot be treated as a person who is afraid of the police preventing him from disclosing the matters known to him at the first instance itself. Similarly, the alleged meeting with Sunil before Cherthala court on 18.04.2017 and the conversation with PW191 are also affected with material omissions and contradictions. As far as the knowledge of contents of Ext.P122 letter PW176 had given contradictory versions. In earlier occasion, he claimed that he had gone through the letter. But, before the court he deposed that he never gone through the

contents. But, the evidence before this court would show that on the day of Vishu he claimed to be sent a message to PW181 alerting him about the seriousness of the issues and also referring the contents of Ext.P122. Similarly, his conversation with PW191 is also produced before the court. As in the case of conversation with PW181, the learned Special Public Prosecutor put questions assigning clarifications to the conversation available in this court. His statement dated 02.05.2017 does not contain anything about the transfer of Ext.P122 letter to PW191 through WhatsApp on 18.04.2017. When the conversation was put to him, PW176 tried to assign a new meaning and explanation to the conversation. He also deposed that he engaged in such a conversation and made false assertions so as to grab money. As pointed out, his second statement was claimed to be recorded on 24.06.2017. It contains somany details which were not available in the statement dated 02.05.2017. The fact to be considered is that PW176 was arrested on 24.06.2017. The second statement was seen recorded on 24.06.2017. Even then, the matters deposed to by PW176 are not available in that statement also. On an analysis of the evidence of PW176, it is seen that he made exaggerations

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

and embellishments before the court so as to adduce evidence in tune with the prosecution case, which makes his evidence untrustworthy and unreliable.

460. Next is the evidence of PW178. PW178 is examined to corroborate the evidence of PW176 regarding the entrustment of the mobile phone with PW121 and also to prove the fact that PW121 handed over Ext.P122 letter to PW176 on 12.04.2017 at the Judicial First Class Magistrate Court, Maradu. During his examination, somany contradictions and omissions were brought out. Regarding the handing over of letter, it is come in evidence that PW178 was not with PW176 at the time when the letter was allegedly handed over. The evidence of PW176 and PW121 is that PW178 stood outside the court. PW176 went inside the court and collected the letter from PW121. The evidence of PW178 is that on 12.04.2017 he accompanied PW176 to the Judicial First Class Magistrate Court, Maradu. He waited in a shop situates outside the court. PW176 went inside. PW176 returned with a letter. PW176 informed him that the letter was given by accused no.1 for handing it over to accused no.8. Though PW178 asked to peruse the letter, PW176 did not

show it to him. He further stated that he should maintain the secrecy and to be shown exclusively to accused no.8. The interesting aspect is that PW178 did not mention anything about the availability of note with PW176 along with the letter. The case of the prosecution is that PW176 lost the note when they were on the way to the residence of accused no.8. As pointed out, except his oral testimony, no evidence is available regarding the existence of such a note. The 164 statement of PW178 was recorded on 15.09.2017. This was not marked. In his 164 statement, he claimed that they proceeded to the residence of accused no.8 the next day of meeting accused no.1. The prosecution case is that PW176 and PW178 went to the Cherthala court on 18.04.2017 and met accused no.1. If this be the situation, the alleged visit claimed by PW178 was on 19.04.2017 and that is against the case of the prosecution that PW176 and PW178 went to the residence of accused no.8 immediately after receiving Ext.P122 on 12.04.2017 and collected the phone number of PW191. As far as the evidence regarding their meeting of accused no.1, PW178 deposed that on 18.04.2017 they went to Cherthala court and met accused no.1. But in his 164 statement he stated that PW176 contacted him and informed that he

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

has to attend a case in the court and accordingly, both PW176 and PW178 proceeded to the left side from Edappally. However, during his examination in this court, PW178 tried his level best to convince the court that in order to go to Cherthala he has to take a left deviation from Edappally and he mentioned about Cherthala court. But, at the very same time, it is to be noted that PW176 has no case in Cherthala court. PW176 has case in the Judicial First Class Magistrate Court, Kunnumpuram and for going to that court, they have to take a left deviation from Edappally junction. During cross-examination he categorically admitted that PW176 sought his help offering financial assistance. He had taken those assurance into account and hence, assisted him. He also stated that PW176 cheated him. He also stated before the Magistrate that there was no contact between himself and PW176 after their visit to the residence of accused no.8. Nothing is stated before the Magistrate about his meeting with accused no.1 at Cherthala court.

461. Ext.D47 contradiction is elicited through him regarding their meeting with PW191 at Eloor taxi stand. It is to be noted that during his statement before the investigating officer, he stated that they went to

Eloor taxi stand in the morning. This is against the prosecution case. Ext.D47(a) is also proved through this witness. Before the investigating officer he stated that as directed by PW176 he took photocopies of Ext.P122. But before this court, he changed his version that since PW176 was reluctant to show the letter, he took photocopies without his knowledge. According to him, he captured the photo of the letter in his mobile phone and thereafter, obtained printout. The learned defence counsel put a definite suggestion that the contradictory and inconsistent version was given to corroborate the false evidence tendered by PW176. On an analysis of the evidence of PW176 it can be seen that though he claimed that the letter was not shown to PW178, he admitted that PW178 went to the office of channel. The fact that the photocopy was taken by PW178 without his knowledge was not stated by PW176 anywhere. PW176 voluntarily deposed before the court that PW178 asked him to show the letter and repeated the request for 3-4 days. Since accused no.1 directed him to not show the letter to anybody, he was not ready to show it to him. Thereafter, PW178 consumed alcohol and given to him also and the photocopy might have been taken using that situation. This

improvisation is made for the first time before this court. Further, he stated voluntarily that PW178 attempted to grab the letter from him when they were in front of St. George Church, Edappally. PW178 told him that he will collect money from accused no.8 and that was not acceptable to him. Moreover, PW178 tried to get the letter from PW176 by intervening one of his colleagues. PW176 had gone to the extent of stating that the incident which was allegedly happened in front of St. George Church Edappally was on the next day when he was served with liquor by PW178. PW176 again stated that he stayed away from PW178 after three days of receipt of letter. It is to be noted that the letter was claimed to be received on 12.4.2017. But the case of the prosecution is that he along with PW178 went to Cherthala court for meeting accused no.1 and accordingly, met him. Had the claim of PW176 been true that he stayed away from PW178 three days after the receipt of Ext.P122, he would not have been with him on 18.04.2017. This also cast doubt regarding the date when Ext.P122 was claimed to be received by PW176. The case of the defence is that no such letter was available till 15.04.2017 and it was concocted thereafter with the assistance of police and jail officials. As stated hereinbefore, PW178

deposed that they went to the residence of accused no.8 the next day after meeting accused no.1. This also causes doubt regarding the time and date when Ext.P122 was received by PW176.

462. PW178 stated to the investigating officer that he had taken two sets of photocopies of Ext.P122 as directed by PW176. PW178 also changed the version and claimed that he captured the photo using his mobile and thereafter, printout was obtained. It is to be noted that both PW176 and PW178 adduced evidence in this court in such a manner to tally with the present prosecution claims. PW178 admitted that he went to the office of 'Janam T.V' at Edappally and gave copy of Ext.P122 in the office. When this was put to PW178, he admitted his statement before the investigating officer. He further stated that he was afraid whether he will be trapped and accordingly, stated this to the police. He also stated that he gave false statement before the investigating officer. This evidence is against the evidence tendered by PW176 and PW178. All these would show that both PW176 and PW178 are giving false evidence before the court.



463. The 161 statement of PW178 was seen recorded on 29.06.2017. The conversation between PW178 and PW191 is produced before this court. He admitted this conversation. In this conversation he stated that he was called from the office of the Rural S.P, Aluva. The conversation was on 04.05.2017. Though this fact was put to him, he pretended ignorance. At the very same time, he admitted that he was called from the office of Rural S.P. He also admitted that the conversation is true and correct. The prosecution did not mention anything about this interrogation of PW178. On a consideration of the oral evidence of PW178, it is seen that he had given evidence so as to make corroboration for the evidence of PW176. But, many of his versions are contradictory to his statement before the Magistrate u/s.164 of Cr.P.C. Moreover, it is seen that he had given false explanations with respect to some of the material and relevant facts.

464. It is to be noted that PW121 and PW176 were originally arraigned as accused. Later they were given pardon and accordingly, became approvers. The allegations regarding the use of mobile phone in District Jail, Kakkanad so as to contact the associates of accused no.8 and

also regarding Ext.P122 letter are sought to be proved mainly relying on the evidence of these two witnesses. The learned Special Public Prosecutor argued that an accomplice is a competent witness against an accused and conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The learned Special Public Prosecutor canvassed the legal proposition u/s.133 of the Indian Evidence Act 1872 and illustration (b) of Section 114 of the of the Indian Evidence Act to substantiate his argument. Apart from the above legal propositions, the learned Special Public Prosecutor relying on Sections 306 and 307 of Cr.P.C. urged that the object of tender of pardon to an accomplice is to obtain evidence of any person, who has been directly or indirectly connected to or privy to an offence as against himself and other co-accused who are involved in any offence.

465. The learned Special Public Prosecutor also relied on the decisions reported in **2024 Volume 1 KLT page 231, Noorudeen K.M v. State of Kerala, Suresh Chandra Bahri v. State of Bihar and Others (MANU/SC/0500/1994) of the Hon'ble Supreme Court** and argued that the dominant object is that the offenders of the heinous and grave



DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

offences do not go unpunished, the legislature in its wisdom considered it necessary to introduce this section and confine its operation to cases mentioned in Section 306 of the Code. The object of Section 306 therefore is to allow pardon in cases where heinous offence is alleged to have been committed by several persons, so that with the aid of the evidence of the person granted pardon the offence may be brought home to the rest. The basis of the tender of pardon is not the person to whom pardon is granted, but the principle is to prevent the escape of the offenders from punishment in heinous offences for lack of evidence. The learned Special Public Prosecutor also relied on the decision of the the Hon'ble Supreme Court in **State of Himachal Pradesh vs Surinder Mohan and Others (MANU/SC/0070/2000)**. The learned Special Public Prosecutor further relied on the decision of **Santhosh and Others v. State of Keala (MANU/KE/2939/2023)** also for buttressing the above arguments.

466. The basic principle of law is that an accomplice is a competent witness against an accused person. Similarly, the conviction based on such evidence is not illegal merely because it proceeds upon the

uncorroborated testimony of an accomplice. But, at the very same time, the principles laid down in the above mentioned decisions emphasises that the court should bear in mind that though Section 133 of the Indian Evidence Act declares an accomplice a competent witness, often look for corroboration in material particulars before relying solely on their testimony. This is because accomplices having been involved in the crime may have motives to lie or exaggerate potentially implicating innocent individuals. The rider in Illustration (b) to Section 114 of the Indian Evidence Act and the presumption is in the nature of a precautionary provision incorporating the rule of prudence which is ingrained in the appreciation of accomplice's evidence. Therefore, the courts should be guarded before accepting the evidence of accomplice and look for its corroboration. The discretion of the court upon which the rule of corroboration rests must be exercised in a sound and reasonable manner. Whether the evidence of the accomplice has to be accepted without corroboration or not would depend on an overall consideration of the evidence of the accomplice and the facts and circumstances.



467. PW119, PW121, PW135, PW176 and PW178 are admittedly involved in several cases. The learned Special Public Prosecutor relying on the decision of the Hon'ble Supreme Court in **Saravanabhavan and Govindaswamy v. State of Madras (MANU/SC/0399/1965)** submitted that the antecedents of the approver do not really make him either better or worse. His evidence can only be accepted on its own merits and with sufficient corroboration. It is true that admittedly, approver is also a partner of crime. So, his antecedents itself cannot be taken as ground to throw away the evidence if it is admissible otherwise. But, in this case the learned counsel for accused argued that PW121 is a person against whom somany cases are registered alleging the commission of the offences of cheating and forgery. As elicited at the time of discussing his evidence, documents are also produced to support that position. Exts.D25 to D29(a) documents are marked through PW121. All these cases relate with the commission of cheating and forgery. The allegations involved in these cases are regarding the commission of cheating by offering job and thereby cheated candidates by issuing forged appointment orders for Government jobs at Collectorate and also admissions before college etc.

Relying on this, the learned counsel contended that Ext.P122 letter is the brainchild of PW121 in conspiracy with accused no.1, PW135 and PW176 to grab money from accused no.8. PW121 himself was constrained to admit about the allegations in the cases registered against him. Similarly, PW176 also involved in somany chain snatching cases and other grave offences. Though criminal antecedents alone cannot be treated as a ground to repel the evidence of these two persons, considering the circumstances involved in this case, the evidence tendered by PW121 and PW176 requires much more scrutiny. I have already held that the evidence tendered by both PW121 and PW176 is full of embellishments and exaggerations. Somany material contradictions and omissions are brought out. The learned defence counsel also challenged the way in which these two persons were tendered pardon. The learned Special Public Prosecutor replied that this court is not expected to consider the order granting pardon. It is true that PW121 was granted pardon during the crime stage itself. PW176 was granted pardon by the trial court. It is true that the procedures by which pardon was granted are not opened for consideration or challenge.

468. This court has to consider the nature of allegations levelled against PW121 and PW176 in the light of crime no.751/2017 of Infopark Police Station and the allegations levelled against these two persons in the final report of this case. On 10.03.2017, accused no.1 was remanded and admitted to District Jail, Kakkanad. Accused no.1 in order to collect the quotation amount, obtained mobile phone and SIM card through PW121 and PW176 for contacting accused no.8 and his associates and accordingly, on 28.03.2017 contacted PW181, and made enquiry about accused no.8. On 10.04.2017, accused no.1 in the presence of PW121 and PW135 contacted PW181 and PW176 using the mobile phone secured in the jail so as to reach to accused no.8. Again on 12.04.2017, as requested by accused no.1, PW121 wrote a letter demanding financial assistance from accused no.8. This letter contains the details of the commission of the offence. PW121 took this letter secretly when he proceeded to attend the court proceedings in Judicial First Class Magistrate Court, Maradu. He handed over the letter to PW176. PW176 thereafter proceeded to the residence of accused no.8, collected the phone number of PW191 and met him at the Eloor Taxi Stand on 14.04.2017. On 18.04.2017, PW176 met

accused no.1 at Judicial First Class Magistrate Court, Cherthala. Thereafter, forwarded Ext.P122 to PW191 through WhatsApp as directed by accused no.1. The prosecution alleges that both PW121 and PW176 aided accused no.1 for collecting the quotation amount as agreed between accused nos.1 and 8. It is to be noted that crime no.751/2017 of Infopark Police Station was registered under the Kerala Prisons and Correctional Services (Management) Act, 2010 alleging that the accused persons secured a mobile phone inside the jail for accused no.1 for communicating with his friends who are remaining outside. Accused no.1 herein is the first accused, PW121 second accused, accused no.9 third accused, PW135 fourth accused, PW176 is the fifth accused. PW178 is the sixth accused and PW119 seventh accused in that case. The allegation levelled against them is that they secretly used mobile phone inside jail. In this case, it is alleged that they secured the mobile phone for aiding accused no.1 so as to collect the consideration agreed upon from accused no.8 by contacting his associates. It is alleged that accused no.1 disclosed the details of the crime herein to PW121 and PW176 and sought their assistance. As far as the so-called disclosure, the one and only evidence is the oral testimony of





PW121 and PW176. The allegations in crime no.751/2017 of Infopark Police Station are more or less similar to the allegations levelled against PW121 and PW176 in this case. Crime no.751/2017 was registered and both PW121 and PW176 were arrested before their arraigning as accused in this case. Both PW121 and PW176 denied the allegations levelled against them in crime no.751/2017 at that point of time. It is to be noted that an enquiry was conducted by the Superintendent of jail and PW121 gave statement denying the use of mobile phone. It is true that during evidence in this court, he deposed that the statement given to the Deputy Superintendent of District Jail was not true. Thereafter, he was granted pardon and subsequently, adduced evidence before this court admitting the use of mobile phone inside the jail. The Deputy Superintendent Mr. P.J. Salim is examined before this court as PW158. During his cross-examination, he admitted that the C.I of Police, Perumbavoor filed a report regarding the use of mobile phone inside the jail. He had been directed to record the statement of accused nos.1 and 9 and PW121. He recorded their statement on 25.06.2017. Deputy Prison Officer Mr. Biju recorded their statement in his presence. He admitted that all of them

denied the use of mobile phone inside the jail. Among the accused persons in crime no.751/2017, PW121 and PW176 alone were arraigned as accused in this case alleging that they aided accused no.1. Similarly, accused no.9, who is also arraigned as accused in this case alleging that he aided accused no.1 by charging the mobile phone secretly used inside the jail. The evidence of PW121 in this regard assumes very relevance. He deposed that till the release of PW135 Jinson from jail, he charged the mobile phone using the charger of jail officials. PW121 clearly stated that thereafter this mobile phone was entrusted with accused no.9 for charging it. But he failed to return it back. It is to be noted that if the evidence of PW121 is taken into account, both PW135 and accused no.9 made arrangements for charging MO87 mobile phone. It is also alleged by prosecution that PW135 also joined with accused no.1 and PW121 for taking out the mobile phone from the chappal. It is stated specifically that PW135 used a blade made available for office purposes to cut open the chappal and took the phone outside and handed it over to accused no.1. Moreover, it is the case of the prosecution that PW135 arranged papers for writing Ext.P122 letter. However, he was not arraigned as an accused.

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

469. The case of the prosecution is that accused nos.1 and 8 conspired together for the commission of offence against PW1 and accused no.8 agreed to pay consideration to accused no.1. The alleged partnership of accused no.1, PW121 and PW176 were after the commission of the crime involved in this case. The case of the prosecution is that PW121 and PW176 assisted accused no.1 for collecting the money agreed for the commission of crime. The prosecution alleges that accused no.1, PW121 and PW176 hatched criminal conspiracy for this and accordingly, obtained phone, wrote letter and contacted the associates of accused no.8. All these facts are stoutly denied by accused no.8 and contended that the investigating officers made PW121 and PW176 as instrumentals to fabricate case against accused no.8. Definite suggestions were put to both PW121 and PW176 that the investigating agency offered to help both of them in their pending cases. Both the witnesses as well as PW261 denied it. At the very same time, the incidents which were taken place before the examination of PW121 and PW176 exposed the high-handedness on the side of the investigating officer to grab and influence them. Moreover, both these witnesses deposed somany new facts in the

court. It is true that the statement before the investigating officer cannot be treated as Magna Carta. The witnesses are at liberty to give complete facts before the court. But, at the very same time, that should not be by deviating from their earlier statements amounting to material contradiction and omission.

470. While considering the evidence of PW121, it is seen that he himself admitted that on 07.07.2017, when he was produced before the Judicial First Class Magistrate Court, Kakkanad in connection with crime no.751/2017 of Info Park Police Station his custody was obtained by the police. He also admitted that press persons of Asianet and other Malayalam channels asked him about the facts and he made disclosures to them. He himself admitted that he stated to the news personnel that he wrote the letter as accused no.1 intimidated him. He further stated that jail officials and accused no.1 instigated and threatened him to write the letter and accordingly, he wrote Ext.P122. When the disclosure was progressing, the escort police and other police officials intervened and he was forcefully removed from there. He also stated that accused no.8 is innocent. But, before this court he had given a different statement. He



DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

had gone to the extent of stating that what he mentioned to press people were false. He further stated that it was decided between himself and accused no.1 to say in that tune to the press people. Similarly, in Ext.P256 statement dated 25.09.2017, PW121 stated that accused no.1 told him that if the name of accused no.8 is mentioned in this case, even PW1 herself will not forgive accused no.1. But, later he changed his version in Ext.C40 dated 01.11.2017 that if the name of accused no.8 is mentioned, PW1 will also forgive him. When this contradiction is put to him, he stated that he could come across with the mistake during the evidence before this court. This is the way in which PW121 tendered evidence before this court. Same is the case of PW176 also. PW176 in his conversation with PW191 stated about the intention to grab money. He also stated about the intervention of third parties to collect the letter on monetary terms in his conversation with PW181. PW178 also deposed that PW176 offered him money. PW176 on the other hand, deposed about the plan of PW178 to grab money from accused no.8 using Ext.P122 letter and attempts to take copy. Except Ext.P122 letter and telephone conversations made by these persons to PW181 and PW191, no evidence

is available to corroborate the evidence of PW121 and PW176. The socalled meeting of PW176 with PW178 at a theatre in Edappally after a long gap is also doubtful. On an overall analysis of the entire evidence, I hold that not only the evidence of PW121 and PW176, but the way in which both of them were arraigned as accused and the subsequent events of filing petition seeking pardon by the investigating agency are doubtful. It is to be noted that PW176 was appeared before the court through an advocate. The fact of filing Ext.C4 petition seeking pardon was not even known to the advocate holding Vakalat for him. Considering the omissions, contradictions, additions and embellishments and their overall conduct while giving evidence in this court discussed and enumerated above is prompting me to hold deviating from the general principle enunciated in Section 133 of the Indian Evidence Act that the evidence of PW121 and PW176 is not reliable and acceptable.

471. Another argument advanced by the learned Special Public Prosecutor that the contents in Ext.P122 and also the disclosures made by accused no.1 to PW121 and PW176 are extra judicial confessions and hence it has to be accepted. The case of the prosecution is that Sunil was



DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

admitted to Cell No.1 in 'C' Block of District Jail, Kakkanad on 10.03.2017. It is claimed that PW121 and PW176 were his cell mates. It is alleged that one of the friends of PW176 Deepu is the friend of accused no.1. Hence, there was conversation between accused no.1 and PW176. Accused no.1 demanded for a cigarette from PW176. Both of them became in cordial terms very soon. Accused no.1 talked with PW121 also. Accused no.1 was smoking always. During the course of smoking accused no.1 sought the help of PW121 and PW176. PW176 informed him that if he discloses all secrets regarding the commission of the offence, they will help him. Accused no.1 hence confessed to both PW121 and PW176.

472. It is to be noted that prosecution has no case that accused no.1 had prior acquaintance with PW121 and PW176. The one and only connection pointed out is that one of the friends of accused no.1 Mr. Deepu was in District Jail, Kakkanad. PW176 had connection with this Deepu when he was in District Jail. Accused no.1 came to the District Jail for meeting Deepu. At that time Deepu mentioned about PW176 to accused no.1. PW176 claimed that he introduced himself as the friend of

Deepu to accused no.1 and accordingly, accused no.1 had shown special consideration to him. It is to be noted that the case of prosecution is that within a short time after the arrival of accused no.1 to C1 cell, he confessed all these matters to both PW121 and PW176. The claim of PW176 that Sunil arrived to District Jail for meeting his friend Deepu is not proved in court. It is alleged that when accused no.1 sought their help, PW176 asked him to disclose full particulars and accordingly he disclosed everything.

473. The one and only evidence available before this court in this regard is the oral testimony of PW121 and PW176, the approvers. I have already discussed about their evidence and arrived at a finding that they cannot be relied on. Another fact is to be noted is that though PW176 claimed that through his friend Deepu he developed acquaintance with accused no.1, during his telephonic conversation with PW181 he stated another story regarding his connection with accused no.1. Above all, the case of the prosecution is that accused no.1 made confession to PW121 and PW176 together. But, accused no.1 during his examination u/s.313(1) (b) of Crl.P.C., denied and retracted the alleged confession to PW176. All

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

the incriminating evidence deposed to by PW176 was denied by accused no.1 during his examination. So, this also to be considered while considering the reliability of alleged confession to PW121 and PW176. Even if it is taken into account, as far as the alleged confession to PW176, accused no.1 retracted from that. Moreover, while seeking corroboration of evidence of approver, the evidence of another approver cannot be taken into account for corroboration. The basic principle is that the evidence of extrajudicial confession in its very nature of things is a weak piece of evidence. It is well settled that a retracted extrajudicial confession, though a piece of evidence on which reliance can be placed, but the same has to be corroborated by independent evidence. That apart, the court must be satisfied that the confession alleged to have been made was true and voluntary one and judging the same, the conduct of the person to whom the confession is allegedly made in the circumstances which prompted the accused to make such a statement should also be considered. It should be free of suspicion. Moreover, it is claimed that when accused no.1 sought help, both PW121 and 176 induced him to disclose the full particulars for rendering help. This is also to be

considered. Here, the extra judicial confession is said to have been made to PW121 and PW176, who stand thoroughly discredited in their cross examination and suffered a finding that they are unreliable. Their evidence does not inspire confidence. Even otherwise, both PW121 and PW176 are not persons on whose testimony, faith could be placed. During the examination u/s.313 Cr.P.C., accused no.1 explicitly denied the discourses made to PW176. He also denied the introduction of PW176 by Mr. Deepu. Accused no.1 also denied the so-called confession made to PW121 during his questioning u/s.313(1)(b) of Cr.P.C. Accused no.1 specifically stated that he never sought any help from PW121 and PW176. When questioned with respect to the scribing of Ext.P122 by PW121 and also regarding the supply of papers by PW135, accused no.1 stated that he does not know anything about these matters. The evidence available on record is incapable atleast to a suggestion that Ext.P122 was prepared at the behest of accused no.1. The evidence regarding the alleged extrajudicial confession is also not reliable and trustworthy. The above made discussions led this court to the conclusion that reliance cannot be

placed on Ext.P122 to prove the alleged conspiracy between accused nos.1 and 8.

474. The learned Special Public Prosecutor also advanced an argument that in the light of the order of Hon'ble High Court in Crl.M.C.No.758/2020 dated 09.03.2020, accused no.8 cannot challenge the evidence tendered by the prosecution regarding charges 14, 15 and 16. According to him, the order in Crl.M.C.No.758/2020 attained finality. The Hon'ble High Court held that the contentions raised by accused no.8 were factually and legally unsustainable as no appeal filed challenging the said findings upholding the sustainability of the charge framed by this court.

475. Accused no.8 filed Crl.M.P.No.3211 of 2019 before this court u/s.227 of Cr.P.C. on 31.12.2019. They have raised a contention that the allegations levelled against accused no.8 are baseless and groundless in toto. In the petition, they have taken up a contention that the charges 14, 15 and 16 against accused nos.1, 9 and 10 are to be tried separately as accused no.8 being the victim of the offences made mention of in those charges. This court dismissed the petition and framed charges against all

the available accused including accused no.8. This court held that the offences alleged are allegedly committed to achieve the object alleged in this case and consequential matters happened are arising out of the same transaction. The expression "the same transaction" means during the period when the first act forming the series was committed and commission of the last act finished. Thereafter, accused no.8 filed Crl.M.C. No.758/2020 before the Hon'ble High Court challenging the charge framed by this court on the ground that charges 14, 15 and 16 pertain to the conspiracy hatched by accused nos.1, 9 and 10 at the District Jail, Kakkanad are not part of the transaction as he is the victim of the said conspiracy and those are to be tried separately. The Hon'ble High Court dismissed the petition holding that the meeting of mind between accused nos.1, 9 and 10 at the District Jail, Kakkanad and the various acts committed by them are related to the conspiracy made mention of in the final reports in which the petitioner is one of the conspirators, in point of purpose. It is held further that the offences alleged are committed in the course of the same transaction. The Hon'ble High Court relying on the decision in **Balbir v. State of Haryana** reported



in **(2000) 1 SCC 285**, held that the expression "same transaction" would mean not only a transaction consisting of a single act, but also a transaction consisting of series of connected acts. The contention of the learned Special Public Prosecutor is that since this finding attained finality, accused no.8 has no right to challenge charges 14, 15 and 16. It is to be borne in mind that while framing the charge, the court should ensure that the accusation made against the accused is not frivolous and that there is some material for proceeding against him. The stage at Section 227 of the Cr.P.C is to see after considering the material produced before the court by prosecution that ground is available prima facie to proceed against the accused and whether the court should proceed with the trial or not. It is settled proposition of law that with the materials produced by the prosecution along with the final report alone are to be considered for framing charge. Moreover, no detailed consideration and evaluation are not permitted at this stage. It is very strange to hear the argument advanced on the side of the prosecution that a person whose discharge petition is dismissed is not entitled to challenge the prosecution case during trial. If this contention is accepted, whenever a discharge

petition filed by an accused is dismissed, he is not expected to challenge the prosecution evidence and should remain non prosecuted. The findings in discharge petition as well as Crl.M.C.No.758/2020 were with respect to the joinder of parties, discharge and related matters and that cannot be taken as a ground barring the accused from challenging the evidence by participating the trial. So, on an over all analysis, I hold that Ext.P222 is not at all useful to prove the conspiracy alleged between accused nos.1 and 8. Ext.P122 is relied on to prove that charge levelled against accused no.1 that he intimidated accused no.8 to extract money. Since the prosecution failed to prove Ext.P122 consequentially failed to prove the charge against accused no.1 u/s.50 of IPC.

476. **Relevancy of Ext.P457 letter.**

The prosecution alleges that accused no.1 wrote Ext.P457 letter on 07.05.2018 for giving to accused no.8. Accused no.1 thereafter entrusted this letter with PW208 Sajith. This letter would show the relationship and connection between accused nos.1 and 8. The copy of this letter was entrusted by accused no.1 with his mother also. The investigating officer got information about this letter when it was published through channel

on 06.01.2022. Thereafter, they seized the copies of Ext.P457 from the mother of accused no.1 Sobhana, who is examined as PW129 on 06.01.2022 itself. The investigation thereafter has culminated in the seizure of Ext.P457 as it was produced before the Special Investigation Team by PW208 on 29.01.2022. The learned Special Public Prosecutor submitted that the prosecution proved that accused no.1 wrote Ext.P457 letter to accused no.8 remembering him about the conspiracy to execute the crime of sexual assault planned at Abad Plaza. Accused no.1 also mentioned about the persons who were present at that time. Ext.P457 clearly states that accused no.1 did not execute the crime for himself and he reminded accused no.8 about this. Inspite of getting knowledge about Ext.P457 and its publication, accused no.8 has not taken any step to challenge the same or failed to take legal actions against accused no.1. Only guilty will decide to suffer such publication in the normal circumstances knowing very well that the legal actions against the same will harm him more. The evidence of PW208 proved that Ext.P457 was handed over to the senior counsel appearing for accused no.8. Accused no.1 also admitted about the execution and transmission of Ext.P457

letter to the senior counsel appearing for accused no.8 and also the handing over of the copy to his mother PW129. The evidence of PW129 is clear and unambiguous enough to explain the circumstances leading to its publication in media. PW129 also deposed about the circumstances compelled her to publish Ext.P457(a) letter. They also relied on the evidence of the handwriting expert and the report to conclude that Ext.P457 was written by accused no.1. The learned Special Public Prosecutor argued that Ext.P457 further proves the relationship and conspiracy between accused nos.1 and 8 and also the matters in connection with the execution of the crime involved in this case. The learned defence counsel, on the other hand, strongly challenged the assertions of the prosecution and consistently submitted that Ext.P457 is a fabricated document at the instance of the prosecution during the course of the second further investigation so as to fill up the lacunas appear in the evidence adduced till that time. He also challenged the seizure and the evidence of PW129 regarding the manner in which Ext.P457 was brought into light. According to him, this is created and published through the Reporter T.V channel by the Special Investigation Team in collusion with



accused no.1 and his mother PW129. The allegations in Ext.P457 are not established by any supporting evidence. It is also argued that the date, time and the occasion when accused no.1 allegedly wrote this letter are not proved by the prosecution. It is further contended that PW208 is a planted witness like PW44 and PW213. The defence counsel also highlighted the embellishments, exaggerations and contradictions in the evidence of PW129 and PW208 with respect to the production and seizure of Ext.P457. The evidentiary value of Ext.P457 is also challenged.

477. Ext.P457 was produced in court as part of the second further investigation after the revelation of PW222. As I pointed out hereinbefore, on several occasions, the second further investigation was commenced at the time when the examination of last witness, investigating officer, was scheduled on 29.12.2021. The investigation was with respect to the matters stated by PW222 in his interview through the Reporter T.V channel telecast on 25.12.2021. PW222 has not mentioned or stated anything about Ext.P457. The prosecution alleges that this particular letter was telecast through Reporter T.V channel on 06.01.2022. They conducted investigation and accordingly, seized the copies of

Ext.P457 from the mother of accused no.1 Sobhana. The copies of those letters are marked as Exts.P457(a) and (b). Exts.P457(a) and (b) were seized on the strength of Ext.P585 mahazar and it was proved through PW235.

478. The evidence of PW129, PW208 and PW235, who were examined to prove the transactions in connection with Ext.P457 letter is to be evaluated. PW129 was examined in court for the first time on 20.03.2021. She was recalled and examined after the filing of the second supplementary report regarding the matters connected with Ext.P457 letter. She deposed that she was entrusted with a letter by accused no.1 when this case was pending before the District and Sessions Court before its transfer to the Additional Special Sessions Court, SPE/CBI-III, Ernakulam. She handed over the letter to the investigating officer after the revelation of PW222. She heard about the attempt of suicide by accused no.4 inside the jail. That prompted her to produce the letter. The learned Special Public Prosecutor put a question to this witness that whether this letter was shown to anybody before she produced it to the investigating officer. Answering the question in the affirmative it is stated

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

that it was shown to the Reporter T.V channel personnel. The channel people approached her and asked about the availability of evidence with her and she showed the letter with a direction that it should not be shown to anybody. She stated that the letter was entrusted with her three and a half years before the handing over of the letter to the investigating officer. According to her, accused no.1 gave a book to her wherein he wrote that no justice will be served to him. Nobody is showing any mercy to him. A letter is thereafter shown to her and marked as Ext.P457(a), subject to the objection that it is a photocopy. It is to be noted that the claim of the prosecution is that copy of the letter was entrusted with PW129. The original was entrusted with PW208. Moreover, the original is marked as Ext.P457. If this be the situation, the witness could produce photocopy only and hence, the objection is overruled. A question is paused to her by the learned Special Public Prosecutor that whether she had gone through the letter. She replied in the affirmative. Another question is put to her about its author. She replied that she does not know anything about its author. She stated that this was handed over to her by accused no.1. Then another question is put to this witness by learned Special Public

Prosecutor that whether her son told anything to her at the time of handing it over. She stated that she was directed to not to show the letter to anybody and also directed her to keep it with her. She kept the letter in her house. Whenever she meet her son, she asked about the letter and also asked whether to show the letter to anybody. Accused no.1 replied that he will inform her when it is required to publish. On hearing the revelation of PW222 and also the news about the attempt of suicide of accused no.4, she became desperate. She was ready to bear any consequences and accordingly, she showed the letter. Thereafter, she visited accused no.1 in jail and informed him about the publication. Accused no.1 kept mum. According to her, she folded the letter and kept it with her. This letter was in a damaged condition. She had taken a copy of this letter. This copy is also put to her and it is marked as Ext.P457(b). Her statement was recorded before the Judicial First Class Magistrate Court, Aluva u/s.164 of Cr.P.C. Another question is put to her about the interrogation by the investigating officer and recording of statement, she replied that her statement was recorded in the first occasion. She was not interrogated after the seizure of Ext.P457(a) and (b). Again, the learned

Special Public Prosecutor put a question whether she knows the investigating officer. She stated that she knows the investigating officer Mr. Baiju Poulose. He again put a question that whether Mr. Baiju Poulose recorded her statement, her reply was that she was interrogated by him at Aluva Police Club. The learned Special Public Prosecutor put a question to her that whether accused no.1 told her about the circumstances leading to his involvement in this case. She replied that she asked it on several occasions. Then, another question is put to her, what was the reply. Then she stated that he was trapped. The witness added that on the date of examination also, she went to the jail and met him. She does not remember the matters stated by her during her 164 statement at Judicial First Class Magistrate Court, Aluva. She was cross-examined by accused no.1. Accused no.1 put a question to her that in the letter it is mentioned in several places, "chettan" and whether she knows about the details. She stated that it was about accused no.8. Some contents in Ext.P457 were put to this witness and she claimed that she remember those averments. Another question is put to her that accused no.1 was under the impression that nobody would help him and accordingly, he

started to reveal the truth. PW129 admitted this. She also stated that in her 164 statement, she stated the matters which were informed to her by accused no.1. The counsel for accused no.4 cross examined her and brought out that accused no.4 attempted to commit suicide because of his long incarceration in jail. She also stated that she has no direct knowledge about the matters mentioned in Ext.P457. She was cross-examined at length by accused no.8. It is elicited that PW261 asked her to write matters at Police Club, Aluva for about 10 minutes. It was for considering her handwriting. She admitted that nobody witnessed the handing over of the letter to her. She does not remember the date and month of its handing over. She stated that two or three police personnel were also with accused no.1 as escort. The other accused persons were also with accused no.1. She stated that the letter was given after the court proceedings. Nobody heard about the directions from accused no.1. She categorically stated that after recording her statement by the investigating officer during 2017, her statement was not recorded. When a question is put to her regarding her alleged statement before the investigating officer on 06.01.2022 that the letter was handed over to her by accused no.1

DISTRICT AND SE... ERNAKULAM-682 011

before the commencement of court proceedings, she admitted it. It is also elicited through this witness that nothing is stated to the investigating officer or the Magistrate that she opened the letter and read over the contents. Similarly, the fact that the term "chettan" appears in Ext.P457 refers to accused no.8 is also not stated anywhere before adducing evidence in this court. A specific question is put to her that whether PW208 is known to her and she replied categorically that he is not known to her. Another question is put to her that whether PW208 contacted herself or her daughter through phone. She again stated that she has no acquaintance with PW208. When a question is put to her that Ext.P457(a) was not handed over to her by accused no.1 and she came across with this fact for the first time through Reporter T.V channel and she replied that it was given to her by accused no.1 and she does not have any knowledge about the other matters. She was confronted with her statement regarding the threat to the life of accused no.1 and she admitted that she does not remember whether she stated it during her 164 statement. She further stated that it was stated to the press people. Similarly, the alleged attempt to commit murder against the members of

the investigation team and investigating officer is also stated to the Judicial First Class Magistrate, Aluva as part of her statement u/s.164 Cr.P.C. She admitted that she gave the 164 statement before the Magistrate in the afternoon session. Press people including the channel persons contacted her when she was on her way to the Magistrate court. PW129 stated that when she returned back from District Jail, channel people contacted her and she disclosed about Ext.P457 to them. They came to Aluva and asked to handover the letter. She was not ready. They took a photograph of the letter. On seeing the telecast, police came to her residence. A police person approached her and asked to handover the letter. She handed over a book to the police personnel and asked them to detach the particular page from the book. But the police had taken the book itself. Ext.P581 postcard is shown to her. But, she replied that she did not see that postcard. She stated that the statement before the Magistrate referring "an angel in black coat" is wrote in a paper and kept inside a book. That book was taken by the police. Ext.P580 book is shown to her. She replied that she had no opportunity to come across with this book. She claimed that she had shown a library to the channel



people. She clarified that what she meant by using library is that it is a book meant for reading. This was shown in the channel after the revelation of PW222. Definite suggestions were put to this witness regarding the explanations for not showing the letter and also the secret in keeping it with her. But she denied those suggestions.

479. PW208 deposed that accused no.1 is known to him and there was financial transactions between himself and accused no.1. He belongs to Kunnamkulam in Thrissur. One of his friends Mr. Ebin introduced accused no.1 to him. During 2014, accused no.1 pledged a Tavera car with him and borrowed Rs.1 lakh in connection with the marriage of his sister. He contacted Sunil in his mobile number, but it was switched off. He made enquiries with Mr. Ebin. He also stated that Sunil is not available in his phone numbers. Thereafter, accused no.1 contacted him and informed that he got money and demanded back the car. PW208 asked him to return the money with interest. Accused no.1 again contacted him on a day falls in the month of May and asked him to come to Container Road, Aluva. He proceeded accordingly. Sunil paid him the money and he returned the car. Thereafter, Sunil invited him for taking

food and accordingly, they went to the shop of accused no.8 by name "Dhe Puttu". They have the food and he was about to pay the bill. Sunil prevented him and told that this shop is to be treated as his own. Sunil proceeded to the counter and talked with them. So, bill was not paid. He came to know about the incidents through television channel. During 2017 he had been directed by Ettumanoor police to appear before them along with his Tavera car. He proceeded accordingly. They enquired him about the Tavera car and his connection with accused no.1. He came to know that the money paid to him by accused no.1 was the amount involved in the robbery committed within the limits of Ettumanoor Police Station. Police asked him to return the money. He informed that he arranged the money on commission basis. He had been directed to repay the money within one month. He could not arrange it and thereafter, he was arrested by Kunnamkulam police and handed over to Kottayam police. He was remanded for receiving stolen property. He was thereafter branded as the partner of accused no.1 and people lost faith on him. He again met accused no.1 during 2017 when he appeared before the Ettumanoor court. He informed Sunil about his bitter experiences and he



pacified him and assured that everything will be settled. Sunil sought his help. Sunil stated to him that he committed the offence as directed by accused no.8. He will be received money for that and accused no.1 sought his help for that. He had been directed to come to Thrissur jail. He met Sunil accordingly in the Sub Jail, Viyyur. He was informed by accused no.1 that his mother or relatives will contact him and inform the date of production of accused no.1 in court. He had been further directed to come to the court when accused no.1 is produced before the District and Sessions Court, Ernakulam. He stated that Sunil informed him that he will receive Rs.1.5 crores. He came to the court as directed by Sunil and accordingly, Sunil handed over Ext.P457 letter to him while standing in the veranda. He had been asked by accused no.1 to give it to accused no.8. He proceeded to the residence of accused no.8 at Aluva. He attempted to entrust the letter to PW182. But he was reluctant to receive it. He also informed that he has no connection with this case. He again met accused no.1 in Viyyur jail and on informing about the unwillingness of PW182, he directed him to meet Senior Adv. B. Raman Pillai and inform him about the letter. He obtained the number of Senior Advocate

Sri.B.Raman Pillai by searching in Google and secured an appintment. On the date given, he proceeded to the office of Senior Adv. B. Raman Pillai and disclosed all the matters in connection with Ext.P457 and handed over it to him. Adv. B. Raman Pillai read over the letter and informed him that this case was entrusted to him by Adv. Philip T Varghese and he will inform the matter to him. Senior Adv. B. Raman Pillai told him that he will contact him after getting instruction from Adv. Philip and obtained his phone number and returned Ext.P457. He contacted Adv. B. Raman Pillai after a week. Adv. B. Raman Pillai informed him that he will come to the court in Irinjalakuda and asked him to come there. He reached there and met Adv. B. Raman Pillai at Hotel Kallada. He had been advised by Adv. B. Raman Pillai that he need not spend his time by joining with accused no.1 and alerted with the consequences. He was informed further that his clients have nothing to do with this letter and advised him to lead a better life and also to proceed with marriage. Thereafter, he stopped contacting accused no.1.

480. Whileso, during January 2022, Circle Inspector of Police, Kunnamkulam Mr. Sooraj contacted him and asked him to appear in the



DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

Police Club, Aluva on 03.01.2022. He went there accordingly and met one Mr. Anil. Mr. Anil interrogated him and informed that he had been directed to appear by PW261 Mr. Baiju Poulose. Mr. Anil informed him further that Mr. Baiju Poulose was not available there and asked him to appear as and when Mr. Baiju Poulose is available and collected his phone number. Later, Mr. Anil contacted him and asked to appear on 29.01.2022. He went there again on 29.01.2022. He was interrogated about the connection with accused no.1. They also asked whether Ext.P457 was with him. He informed them that the letter was not available with him. He was taken inside for recording his statement. Mr. Anil again asked him to hand over the letter if it is available with him. Mr. Baiju Poulose interrogated him. Mr. Anil recorded his statement. Again Mr. Anil asked him to produce the letter if it is with him. Mr. Anil also alerted him that if the letter is produced, then nothing would be happened to him and if the fact of non-production is known at a later stage, that would create troubles to him. The letter was kept in his car. He took it from his car and contacted Mr. Anil. Mr. Anil informed this to Mr. Baiju Poulose. Mr. Baiju Poulose asked him about the reason why did he

suppress this fact earlier. Mr. Baiju Poulose obtained the letter from him. Another police personnel reached there for recording his statement. The letter was shown to him. He stated that the letter contains the seal of jail. He identified and the letter is marked as Ext.P457. A question is put to him, whether he subscribed signature in the mahazar prepared for the seizure of the letter and his answer was in the negative. Ext.P457(d) is the mahazar, which is proved through PW261 investigating officer. His statement before the Magistrate is marked as Ext.P643. He was cross-examined by accused no.8. According to him, he went to the office of Senior Adv. B. Raman Pillai during 2018 April. Though he stopped his connections with accused no.1, he kept the letter with him. According to him, he kept the letter for a purpose, whether it requires in connection with this case. He pretended ignorance about the publication of the letter through news channels. It is elicited that he does not know the name of the mother of accused no.1. But he stated that PW129 is known to him. He met her in the court premises. He stated further that he met her when he came to the court in connection with the letter and also he went to her residence. He denied that he has not heard anything about the statement

of PW129 through YouTube. Ext.D83 portion of his 161 statement is elicited through this witness. Ext.D83 would show that he came across with the fact of publication of this letter through channel and also that he came across with the statement of PW129 through YouTube. He apprehended that he will be called by the police. It is elicited that the facts regarding his acquaintance with accused no.1 and introduction by one of his friends Mr. Ebin and the money transaction with accused no.1 were not stated during his statement u/s.164 Cr.P.C. It is brought out that somany material facts deposed in this court were not stated during his 164 statement, which is marked as Ext.P643. He admitted that he stated to the Magistrate that a portion of the amount borrowed by accused no.1 was returned to him at Aluva after three months of borrowal. It is brought out that what he stated before the Magistrate that the amount was paid at Aluva, but not at Container Road. Similarly, it is elicited that the facts regarding their journey to the hotel of accused no.8 and non-payment of bill is not stated to the Magistrate. This fact is not stated to the investigating officer also. All these are new facts deposed in this court for the first time. Similarly, the matters which were allegedly transpired

before the Judicial First Class Magistrate Court, Ettumanoor are also not stated in Ext.P643. The instruction from accused no.1 that he will be contacted by the mother or relatives on the prior day of his production in court is also not stated to the Magistrate. He does not know who authored Ext.P457. He admitted that other accused persons were also with accused no.1. At the very same time, he stated that nobody noticed the handing over of the letter. The direction from accused no.1 to proceed to the residence of accused no.8 is also stated neither to the investigating officer nor to the Magistrate. Similarly, the fact of contacting Senior Adv. B. Raman Pillai is also not stated before the Magistrate or investigating officer. He denied the statement before the Magistrate that he handed over the letter to Adv. B. Raman Pillai. Similarly, the meeting at Hotel Kallada, Irinjalakuda is also not stated to the investigating officer or Magistrate. He admitted that he did not state about his appearance before the investigating officer on any other date than 03.01.2022. According to him, his statement was recorded by two different police personnel. Dy.S.P. was not available at that time. A suggestion is to put to him that he met the investigating officer only on 03.01.2022 and no such letter was

with him on that day. He denied it. Another suggestion is put to him that the letter was fabricated subsequently and a story was concocted regarding the seizure on 29.01.2022. In re-examination, question is put to him, whether he met PW261 at Aluva Police Club on 03.01.2022. He stated that he did not meet PW261 on that day. A leading question is put to him that two documents were prepared on that day and he answered in the affirmative. The learned Special Public Prosecutor argued further about the details, but he claimed ignorance. Again the learned Special Public Prosecutor tried to put question regarding the mahazar. He replied that he does not know anything about the mahazar. The learned Special Public Prosecutor also attempted to identify Senior Adv. B. Raman Pillai through him and the court dissuaded him from that attempt.

481. PW235 is an attestor to Ext.P585 mahazar prepared on 06.01.2022 for the alleged seizure of Ext.P457(a) and (b) from PW129. She admitted her signature in Ext.P585. According to her, she had been asked to come to the residence of PW129 on 06.01.2022 evening. She went there accordingly. Police personnel were there. PW261 told her that he came to know about the letter through media as spoken to by the mother of

accused no.1. She had been called for witnessing the seizure. She also identified Exts.P457(a) and (b) letters. She stated that PW129 informed her about the letter and also informed her that people will reach there for its collection and her presence was secured in connection therewith.

482. The interesting aspect to be noted is that the claim of the prosecution is that the letter was entrusted with PW129 by accused no.1 during 2018. She kept the fact of this letter confidentially. She was afraid about the life of her son. She decided to disclose the letter as she came across with the revelation of PW222 and also on hearing the news about the attempt of suicide by accused no.4. She had concern about the safety and security of her son. She accordingly decided to reveal about Ext.P457. She claimed that channel people contacted her and asked, whether any evidence is available with her. She informed them about the letter. She also directed them not to disclose the letter. According to her, she went to meet accused no.1 in jail. When she came back from jail, channel people contacted her. They came to Aluva. They obtained a photo of the letter. It is to be noted that the case of the prosecution is that they came across with this letter through the telecast in Reporter T.V channel. They

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

approached PW129 and accordingly, the copies were seized. Investigation led to the matters in connection with PW208.

483. The prosecution alleges that this letter was written by accused no.1. In order to prove this fact, his specimen handwriting were taken. PW154 Assistant Director is examined to prove this aspect. According to her, on 30.09.2022 she examined 'Q1' and 'Q2' with the standard items supplied for comparison stated to have been written by accused no.1. Specimen writings were marked as 'S1' to 'S24'. Those specimen writings were collected on 05.07.2022. She opined that examination of questioned writings and standard writings led to the conclusion that the person named Sunil.N.S @ Pulsar Suni, who wrote the standard items wrote the red enclosed questioned writings marked as 'Q1' and 'Q2'. She was cross examined at length referring each and every characteristics and letters in Ext.P457 and standard writings. The defence proved Ext.C17 through this witness. Ext.C17 is a communication from Joint Director after preliminary examination of the documents received for examination. It is reported that the specimen standard writings does not contain the name of the writer, name and signature of the witnesses and the investigating

officer concerned and the seal of the court. It is asked to have the admitted standard writings written of the persons concerned in the normal course near about the period of the questioned documents containing similar letters, combinations, words as that of the questioned writings. Both PW129 and PW208 pleaded ignorance about the author/scribe of Ext.P457.

484. The one and only evidence available in court is the oral testimony of PW154 and Ext.P573 report to show that it was written by accused no.1. The case of the prosecution is that Ext.P122 letter was written by PW121 Vipinlal as accused no.1 sought his help for writing it. Ext.P122 was claimed to be written on 12.04.2017, that is, one year before the alleged scribing of Ext.P457 letter. Ext.P457 contains the date 07.05.2018. The reasons stated by the prosecution and also the evidence before this court at the instance of PW121 was that on 12.04.2017 accused no.1 wrote a letter, but it was full of mistakes and his handwriting was also not legible. Since the letter allegedly wrote by accused no.1 contains somany mistakes and the handwriting was not legible, he sought the help of PW121 for writing Ext.P122. But, the interesting aspect is that

DISTRICT COURT ERNAKULAM-682 011

Ext.P457, allegedly wrote by accused no.1 does not contain even a single mistake. Moreover, the handwriting is legible, clear and readable. It is unbelievable that a person who could not able to write a letter without mistakes is competent to write a letter like Ext.P457 without any mistakes and legibly. The learned Special Public Prosecutor submitted that accused no.1 could have been improved within one year. It is to be noted that the prosecution has no case that accused no.1 underwent any continuing education or any other situations were prevailed over for improving or developing his knowledge in writing. Even if it is taken for granted that the letter was written by accused no.1 as alleged by the prosecution, Exts.P580 and P581 will stand in the way of that claim. Exts.P580 and P581 were seized from Sub Jail, Ernakulam by PW261 on 12.01.2022 on the strength of Ext.P582. PW231 is examined to prove this aspect. PW231 was the then Superintendent, Sub Jail, Ernakulam during 2022. According to him, a diary of the year 2021 along with a postcard were seized from jail. The diary is marked as Ext.P580 and the postcard is marked as Ext.P581. In Ext.P581 postcard, accused no.1 wished Christmas and New Year wishes to Father, Sisters and their team. It is

written there further that court is not showing any mercy to him. Ext.P580 diary contains somany writings. On a comparison of the writings in Exts.P580 and P581 with that of in Ext.P457, the writings in Exts.P580 and P581 are dissimilar with the writings in Ext.P457. In the front page of the diary provided for personal memoranda, the telephone number, mobile number and vehicle number of accused no.1 are recorded. Prosecution has no case that the writings in Exts.P580 and P581 are of any person other than accused no.1.

485. Another aspect to be noted is that Ext.C11 report is marked through PW202. Ext.C11 is filed by PW202 as reply to a complaint filed by accused no.1 before the Magistrate on 24.03.2017. It is alleged that he was manhandled by Circle Inspector of Police and other police personnel attached to Thripunithura Police Station. This petition is signed by accused no.1 Sunil and filed before the court. Thereafter, on 30.03.2017, statement of accused no.1 was recorded about this complaint. Signature of accused no.1 appears in the statement recorded by the Judicial First Class Magistrate Court, Angamaly dated 30.03.2017 and the signature appears in the complaint numbered as CMP 240/2017 dated 24.03.2017



are similar. The handwriting of the petition is totally different from the handwriting in Ext.P457. The learned Special Public Prosecutor argued that there is no evidence before the court to show that this was written by accused no.1 himself. As I pointed out, it contains the signature of accused no.1. It is the duty of the prosecution to prove that the petition does not contain the handwriting of accused no.1 if it is as argued by them and moreover, in response to Ext.C17, prosecution failed to produce any contemporaneous document as directed by the FSL authorities. Prosecution themselves produced and relied on the route details to Santhigiri College, Thodupuzha, which is marked as MO54. MO54 was produced before the court by PW20 as it is claimed to be entrusted with him by accused no.1. Somany items were produced by PW20 before this court. Prosecution has not taken any steps to see whether MO54 contains the handwriting of accused no.1 or not. As pointed out, the petition filed by accused no.1 before the Judicial First Class Magistrate Court, Angamaly on 24.03.2017, Exts.P580 and P581 seized from Sub Jail, Ernakulam claimed to be written by accused no.1 and Ext.P457 allegedly written by accused no.1 are per se dissimilar in writings comparing to each

other. Similar is the case of M054 route description also. The one and only available evidence to show that Ext.P457 contains the handwriting of accused no.1 is the evidence of handwriting expert alone. The prosecution forwarded the specimen writings allegedly wrote by accused no.1 in the year 2022. What prevented them from forwarding Exts.P580, P581 and Ext.C17 for comparison to show that Ext.P457 was in the handwriting of accused no.1. Except the date in Ext.P457, no material is available to show the date when it was written. It is true that PW129 and PW208 stated about the receipt of the letter at the time when accused no.1 was produced before this court during 2018. But, both of them could not able to give the details of date and month. They stated that they received the letter almost three years or three and half years ago.

486. As far as the receipt of the letter, the evidence of PW129 is contradictory. During evidence, at one point of time, she claimed that the letter was received after the conclusion of the court proceedings, whereas at another point of time, she stated that she received it before the commencement of the court proceedings. The case of the prosecution is that she received the photocopy of Ext.P457. No investigation is



conducted as to how accused no.1 happened to be in custody of a photocopy of Ext.P457. It is also alleged and claimed by PW208 that he also was present on that day and received Ext.P457. The most important aspect is that both of them kept mum about the receipt of this letter till 2022 January. PW129 attempted to give an explanation for keeping it confidentially. It is to be noted that she was examined before this court on 20.03.2021 and at that time kept mum with regard to Ext.P457. As far as the explanation of PW208 is concerned, it is very astonishing. He himself stated that after meeting the senior counsel at Irinjalakuda, he bowed head to his advice and severed his relationship with accused no.1. However, at the very same time, he kept it with an impression that it will be useful in connection with this case. This explanation lacks bonafides. Admittedly, he underwent judicial custody and arraigned as an accused in a robbery case along with accused no.1. He has no connection with this case except Ext.P457. He received it during 2018 when the trial of this case was going on. Though he kept it for using in connection with this case, he failed to inform the police about this letter until he had been allegedly contacted by the Circle Inspector of Police on 03.01.2022. It is to be noted

that he tried hard to convince the court that he had no knowledge about the publication of this letter through television channel. Ext.D83 would disprove this stand. Ext.D83 would show that he stated to the investigating officer that he came across with the statement of PW129 through YouTube and also seen the telecast of this letter through channel. He was under the impression that he will be called by the police. What prevented him from producing the letter voluntarily before the investigating officer without waiting for a call atleast at that time is not explained.

487. This contradiction assumes relevance because he himself deposed that he kept the letter even after severing his relationship with accused no.1 as he was under the impression that it will be required in connection with this case. The story put forward by PW208 that he, who kept the letter for a pretty long time with the impression that it will be required in connection with this case has failed to produce it even after getting knowledge about the matters related with Ext.P457 till 29.01.2022 is an unbelievable story and that itself is enough to take that he is suppressing material facts and that he is not a credible witness. Moreover,

DISTRICT AND SESSIONS COURT

PW208 who claimed that he met accused no.1 twice in Viyyur jail has not placed any material before this court to substantiate that claim. His case is that when he met accused no.1 at Ettumanoor court during 2017, he sought his help and accordingly, he went to Viyyur jail for meeting him. He specifically stated that he had been informed by accused no.1 that his mother or family members will contact him and inform him about his production in this court on the previous day of production. PW208 claimed that he had connection with PW129, mother of accused no.1. He also stated that he went to the residence of accused no.1 and met PW129. But PW129 categorically stated that she has no connection with PW208. She also clarified that PW208 is not known to her. If this be the situation, the contention of PW208 that he reached this court for collecting Ext.P457 as claimed by him is also appears to be false and baseless. How accused no.1 could bring Ext.P457 and Ext.P457(a) from jail to court is also not even explained by the prosecution. It is a well settled practice that whenever a remand prisoner is sent to jail, thorough body checkup is conducted before leaving the jail. Both PW129 and PW208 stated that co-accused and escort police personnel were with them. No police personnel

was examined in connection with the handing over of this letter. Moreover, how both PW129 and PW208 could manage to collect the letters without noticing the escort police personnel is also not explained. If this be the situation, the evidence of both PW129 and PW208 that they received the letter during 2018 when accused no.1 was produced before this court lacks credibility. Therefore their evidence cannot be taken into account to arrive at a conclusion that Ext.P457 was written in the year 2018. Moreover, PW129 clearly stated that the letter received by her does not contain any seal of the jail.

488. In this background, the evidence of PW154 and Ext.P573 report is to be analysed and appreciated. The evidence of expert is only an opinion evidence. No supporting material is available to corroborate the evidence of PW154. The learned defence counsel submitted that Ext.P573 cannot be relied on as the comparison was not conducted using contemporaneous document. They also argued that Forensic Science Laboratory, Trivandrum and Regional Forensic Science Laboratory, Kochi are part of police department and under the control of the Additional Director General of Police, who was the supervisory officer at



DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

the time of the investigation of this case and at the time of the alleged seizure of Ext.P457. The counsel was very stern in submitting that PW154 has provided an opinion in tune with the directions of the Special Investigation Team. It is true that Forensic Science Laboratory department is under the police department. At the very same time, we treat the experts as independent witnesses. Their evidence has to be considered bearing their independence in mind. But at the very same time, the court should also bear in mind about the basic principle of the accessibility of handwriting and the opinion by experts.

489. The evidentiary value of a handwriting expert's opinion is generally considered weak and not conclusive. While it is relevant under Section 45 of the Evidence Act, it is typically treated as corroborative evidence, means it needs to be supported by other evidence to be given significant weight in court. It is an opinion based on specialized knowledge and analysis. But it is not a substitute for direct evidence or other corroborated information. It can strengthen a case if it aligns with other findings or witness testimonies. Courts are generally cautious about relying solely on expert opinions, especially in criminal cases where

someone's liberty is at stake. In the decision reported in **Murari Lal v. State of Madhya Pradesh (1980 AIR 531 SC)** of the Hon'ble Supreme Court held that, opinion of an expert, handwriting expert or any other kind of expert without substantial corroboration is not safe. Accepting the opinion of any expert, in general without corroboration are unreliable in quality.

490. As pointed out, except the evidence of PW154 along with Ext.P573, no evidence is available before this court regarding the handwriting of Ext.P457. The expert evidence cannot be relied on in this case to arrive at a conclusion that it was written by accused no.1, especially in the light of other materials claimed to be written by him, which contains entirely different handwriting than the handwriting in Ext.P457. The Hon'ble Supreme Court in **Lalit Popli vs Canara Bank & Others, AIR 2003 Supreme Court 1796** held that, it is to be noted that under Sections 45 and 47 of the Indian Evidence Act, the court has to take a view on the opinion of others, whereas under Section 73 of the said Act, the court by its own comparison of writings can form its opinion. Evidence of the identity of handwriting is dealt within three Sections of

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

the Evidence Act. They are Sections 45, 47 and 73. Both under Sections 45 and 47 the evidence is an opinion. In the former case it is by a scientific comparison and in the latter, on the basis of familiarity resulting from frequent observations and experiences. In both the cases, the court is required to satisfy itself by such means as are open to conclude that the opinion may be acted upon. Irrespective of an opinion of the handwriting expert, the court can compare the admitted writing with disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under Section 73 of the Indian Evidence Act. Ordinarily, Sections 45 and 73 are complementary to each other. Evidence of handwriting expert need not be invariably corroborated. It is for the court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when experts' evidence is not there, court has power to compare the writings form an opinion and decide the matter. In this decision, the decision of the Hon'ble Supreme Court in **Murari Lal v. State of Madhya Pradesh** referred to supra is also relied on. Further, the Hon'ble Supreme Court in **Rajeshbhai Muljibhai Patel vs the State of Gujarat, AIR 2020 Supreme Court 818** held that in terms of Section 45 of

the Indian Evidence Act, the opinion of handwriting expert is a relevant piece of evidence; but it is not a conclusive evidence. It is always open to the parties to adduce appropriate evidence to disprove the opinion of the handwriting expert. That apart, Section 73 of the Indian Evidence Act empowers the court to compare the admitted and disputed writings for the purpose of forming its own opinion. Based on the sole opinion of the handwriting expert, the court is not expected to arrive at a conclusion.

491. As pointed out, though the learned Special Public Prosecutor put forward an argument that there is no evidence that either the petition leading to Ext.C12 report or Exts.P580 and P581 are written by accused no.1, the fact remains is that accused no.1 himself signed all these documents. The petition in Crl.M.P No.297/2017 bears his signature also. Moreover, the learned Judicial First Class Magistrate has recorded his statement on 30.03.2017 as part of enquiry. The file contains the statement recorded by the learned Magistrate. Accused no.1 had clearly reiterated the averments in the said petition. In his statement accused no.1 specifically stated that the petition numbered as Crl.M.P No.240/2017 and another Crl.M.C.No.9/2017 registered by the court relate with two

different incidents. Accused no.1 himself admitted before the Judicial First Class Magistrate Court about the filing of the petition in Crl.M.P No.240/2017. As pointed out, the signatures appear in this statement and the petition appear to be similar. Unless the contrary is proved, the court has to consider that it is the admitted writings of the person who signed it. Moreover, prosecution has not conducted any investigation even at the time of forwarding Ext.P457 for FSL examination about the writings of the documents available before the court admitted to be written by accused no.1. On a comparison of the handwriting in Ext.C12 petition, Exts.P580 and P581 with Ext.P457, all the handwriting appear to be different.

492. As stated earlier, the sole evidence on which the prosecution placed reliance to put the authoriship of Ext.P457 with accused no.1 is the oral testimony of PW154, handwriting expert and her report marked as Ext.P573. PW154, the Asst. Director of Forensic Science Laboratory has reported on 30.09.2022 comparing the writing in Ext.P457 alleged to be of accused no.1 with the specimen handwriting taken on 05.07.2022 that the handwriting in the disputed document as well as in the specimen

handwriting are of the one and the same person, ie., accused no.1. However, this court is not in a position to ignore or bypass the position that PW154 compared the writing in Ext.P457 with the standard writing referred to in Ext.P573 ignoring that direction of the Joint Director, her superior officer as evidenced by Ext.C17 for the production of standard writings in the normal course near about the period of the questioned document containing similar letters, combinations, words as that of the questioned document for a comparison with the handwriting in the questioned document. Had the writing in the standard document with which PW154 compared the handwriting in Ext.P457 been suitable for a suitable and proper comparison, Ext.C17 with such a direction would not have been issued. The prosecution has no case that documents of such a nature mentioned in Ext.C17 were not available. PW154 had no claim while in the box that documents of such a nature mentioned in Ext.C17 were produced and she prepared Ext.P573 report on a comparison of the handwriting in Ext.P457 with the handwriting in the documents so produced. Ext.P573 and the evidence of PW154 being by comparing the handwriting in Ext.P457 with the handwriting in the document unsuitable

for a proper and lawful comparison and in view of the well settled legal principles governing opinion evidence as discussed above, I have no hesitation to conclude that the prosecution has totally failed to prove that Ext.P457 is in the handwriting of accused no.1 and I conclude so.

493. The evidence of PW208 and the chronological events deposed by him regarding Ext.P457 letter is to be looked into. The case of the prosecution is that on 06.01.2022, Ext.P457 letter was published through Reporter T.V channel and accordingly, police came across with this letter. They proceeded to the residence of PW129 and seized the letter on that day itself in the presence of witnesses on the strength of Ext.P585 mahazar. Thereafter, they continued with the investigation and seized the original from PW208 on 29.01.2022 on the strength of Ext.P457(d) mahazar. The definite case of the defence is that the letter was with the investigating officer on 03.01.2022. According to them, the statement of PW208 was recorded on 03.01.2022. Thereafter, it was telecast through Reporter T.V. channel and they created a plot using PW129. PW208 deposed before the court about the matters. According to him, on one day during January 2022, Circle Inspector of Police, Kunnamkulam Mr

Sooraj contacted him and directed him to appear in the Police Club, Aluva on 03.01.2022. He went there and met Mr. Anil who is a member of the Special Investigation Team. Mr. Anil informed him that he was called by PW261 Mr. Baiju Poulose and since Mr. Baiju Poulose is not available, he had been directed to come on 29.01.2022. He appeared before the Special Investigation Team on 29.01.2022 also. The letter was produced by him to PW261 on that day. The defence vehemently challenged the evidence that the letter was produced on 29.01.2022. They also submitted that the statement of this witness with date 29.01.2022 is a forged document. According to them, the date was manipulated as 29.01.2022 after having recorded his statement on 03.01.2022. PW261 clearly admitted in his evidence that Ext.P457 was seized after it was circulated through channel. In the first instance, he admitted that the letter was telecast through Reporter T.V channel. But he corrected that he does not know the name of the channel. But he admitted in the report dated 01.02.2022 filed before this court that he stated about the action plan regarding future investigations. In the action plan, he stated that the reporter of the channel Reporter T.V is to be interrogated. Similarly, in



the same report he also mentioned about the collection of documents. The investigating officer stated that the interview of PW129 to Reporter T.V channel is be collected. This evidence would show that though the investigating officer pretended ignorance about the channel in which this interview was telecast, his own reports will disprove his stand.

494. Ext.P643 is the statement of PW208 recorded u/s.164 of Cr.P.C on 14.02.2022. He specifically stated that he was interrogated by PW261 on 03.01.2022 and the letter was handed over on that day. He has not stated anything about the interrogation on 29.01.2022. Admittedly, the records would show that the statement of PW208 was recorded only once. Moreover, the statement produced before the court does not contain any averment regarding his appearance before the investigation team on 03.01.2022 and the socalled direction to appear before the investigating officer on 29.01.2022. In Ext.P643 he stated that the Circle Inspector of Police, Kunnamkulam Mr. Sooraj contacted him and directed to appear before PW261 at Police Club, Aluva on 03.01.2022. He appeared accordingly and co-operated with the interrogation. The letter entrusted with him by accused no.1 was handed over to the police.

Though PW261 claimed that the date stated is only a mistake, not even an attempt is made for a clarification. The explanation on the side of PW261 is that PW208 mistakenly stated the date in his 164 statement. But, as pointed out, during evidence before this court also he specifically stated about the direction of the Circle Inspector of Police, Kunnamkulam to appear before PW261 on 03.01.2022 and his appearance on that day. The deviation made by this witness is that since PW261 was not available on that day, he had been directed to appear again on 29.01.2022. Accordingly, he appeared on 29.01.2022 and produced the letter. In this context, the correction in the the date of appearance in 161 statement of PW208 assumes relevance. This statement was reached before the court only on 22.07.2022. It is seen that the date was corrected and the figure '9' on the date '29' was seen overwritten. The learned counsel for accused put specific questions about the overwriting in the 161 statement of PW208 asserting that the date 03.01.2022 was corrected as 29.01.2022 by overwriting. PW261 denied that there is correction. What he stated is that there is no correction. But, the figure '9' is seen written boldly. Thereafter, the statement is handed over to the witness and he verified. Again, the

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

learned counsel put questions to PW261 regarding the overwriting. But he denied it. A mere perusal of the statement of PW208 would show that there is overwriting in the writing of figure '9'. PW261 was not fair enough to admit even a simple fact.

495. Another important fact is to be considered is that Ext.P457(d) mahazar prepared showing the seizure of Ext.P457 at Police Club, Aluva. But no independent witnesses were cited. The witnesses shown there are the members of the Special Investigation Team. A suggestion is put to PW261 by the learned counsel that the statement of PW208 recorded u/s.161 Cr.P.C. is prepared in tune with the prosecution case. They contended that since the matters mentioned there are unknown to the witness, all those matters are not stated before the Magistrate by PW208. I have already discussed about the omissions and contradictions elicited through this witness. Though he stated about the quotation at the instance of accused no.8 and the quotation money, nothing is spoken to the Magistrate about those aspects at the time of Section 164 Cr.P.C statement. Had the letter been brought into light only on 06.01.2022 by the telecast in the Reporter T.V, why PW208 was directed to appear

before the investigating officer on 03.01.2022 and his interrogation after appearance is not seen explained by the prosecution. This evidence stands against the case of the prosecution that on getting information about Ext.P457, they conducted investigation and reached to PW208 and effected its seizure. Further, in the re-examination of PW208, he reiterated that on 03.01.2022 he went to the Police Club. The learned Special Public Prosecutor put question that on that day two documents were prepared at his instance and he admitted that. The learned Special Public Prosecutor again put questions regarding the nature of the documents and he pleaded ignorance. So, the questions put by learned Special Public Prosecutor itself showed that PW208 appeared before the investigation team on 03.01.2022 at Police Club, Aluva. Ext.P457 itself came into light only on 06.01.2022 as per the prosecution case. If this be the situation, what is the purpose for the interrogation of PW208 on 03.01.2022 was suspicious.

496. The case of the prosecution is that PW208 handed over Ext.P457 to the investigating officer. But, in Ext.P643 he stated that the letter was handed over to a Senior advocate and there was no claim of its return. But, before this court he stated that the letter was handed over to

him by the senior counsel after going through it. The learned counsel for accused no.8 submitted that this fact is introduced newly so as to fortify the alleged seizure on 29.01.2022. It is true that during this statement before the Magistrate, he specifically stated that since the letter was not received by the brother of accused no.8, he again met accused no.1 at jail and thereupon he was directed to entrust the letter with Senior Adv. B. Raman Pillai and accordingly, he handed over the letter to him. He further stated that the senior counsel informed him that he will contact him within two days after reading the letter. This is against his averment that the counsel read it over in his presence and returned to him then and there. As pointed out, Ext.P643 statement was recorded within two weeks of his alleged statement u/s.161 Cr.P.C. The change in version assumes relevance, especially when the alleged seizure on 29.01.2022 itself is doubtful. PW261 admitted that no investigation was conducted with respect to the date and month or time of alleged handing over of Exts.P457 or P457(a) and (b) to PW129 and PW208. He also stated that whether the handing over of letters to PW129 and PW208 was on the same day or different dates is also not investigated. Similarly, no

investigation is conducted about the claim of PW129 that the letter was enclosed in a book and about that book. He also admitted that no investigation is conducted about the letter recording 'angel in black coat' seized from PW129. He also admitted that no investigation is conducted about the taking of photocopies by accused no.1 from Ext.P457 letter.

497. The jail officials were not interrogated about the circumstances leading to the writing of Ext.P457 and also about the fact whether accused no.1 wrote this letter when he was in jail. Why the reporter who approached PW129 was not interrogated and investigation conducted about this fact seems unexplained. He also admitted that no investigation is conducted about the matters mentioned in Ext.P457. He also admitted that no attempts were taken to identify the handwriting in Ext.P580 and P581 by showing them to witnesses.

498. Referring to Ext.C17, the learned defence counsel put a suggestion that they forwarded defective materials so as to tutor accused no.1. PW261 denied it. But, at the very same time, it is to be noted that he admitted that he conducted investigation about the petition submitted by accused no.1 before the jail authorities. But, no request was given for

getting those writings. He also admitted that the application of accused no.1 before the court in his own handwriting was also not collected. It is also significant in the light of direction in Ext.C17 to produce the admitted writings of the contemporaneous period. Instead of producing those writings, specimen writings of accused no.1 alone were given for comparison. Why the admitted writings were not collected and forwarded it for comparison is also remained unexplained. On an overall analysis of the evidence detailed hereinbefore, I am of the view that PW208 is a planted witness and the evidence and related matters with respect to Ext.P457 appears to be untenable as the so-called introduction and seizure itself is doubtful. So, Ext.P457 letter will not improve the prosecution case.

499. **Reach of MO87 mobile phone inside the jail as claimed by the prosecution.**

The prosecution case is that accused no.1 with the help of PW121 and PW176 secured MO87 mobile phone and Ext.P46 SIM card so as to contact accused No.8 and his associates for collecting the consideration for the execution of the crime and that mobile phone was brought inside the jail by PW176 with the help of PW178. PW178 handed over the

mobile phone to PW121 by arranging an interview to meet him in the District Jail on 10.04.2017 afternoon. PW121 took the mobile phone, which was placed inside a chappal to the cell wherein accused no.1, PW121 and PW135 were housed. On that day, accused no.1 contacted PW176 and informed about the receipt of mobile phone. He thereafter contacted PW181. He also contacted PW176 and asked him to contact PW181 so as to reach it to accused no.8 for getting the consideration. PW181 informed the fact of communication to accused no.8. The fourteenth head of the charge framed by this court is that accused no.1 was arrested and remanded to District Jail, Ernakulam and as part of criminal conspiracy with PW121 and PW176 to collect money from accused no.8, they agreed to obtain a mobile phone stealthily. On 28.03.2017, accused no.1 contacted PW181, who is the friend of accused no.8. On 10.04.2017 also, first accused attempted to reach to accused no.8 by contacting PW176 and PW181 using MO87 mobile phone. The learned Special Public Prosecutor in his argument note submitted that as per the instruction of accused no.1, PW121 and PW176, who were inmates of C1 Cell in District Jail, Kakkanad helped accused no.1 for smuggling a

mobile phone with SIM card. PW176 secured Ext.P46 SIM card from PW119 Imran Khan. PW119 purchased Ext.P46 SIM card in the year 2016 along with a mobile phone from a street vendor near Coimbatore railway station. PW92 used Ext.P46 SIM card, which was issued to his father PW94. Thereafter, Ext.P46 was used by PW93, a friend of PW92. He lost it from his hostel when he was hospitalized. This particular SIM card, which is marked as Ext.P46 was later came into the possession of PW119 in 2016. PW176 asked him to arrange a SIM card and in-turn PW119 handed over Ext.P46 to PW176 about two weeks after his release from the District Jail. PW176 inserted Ext.P46 SIM card in his mobile phone MO90 on 05.04.2017. On 10.04.2017, PW176 arranged PW178 to hand over the mobile phone with SIM to PW121. Both PW176 and PW178 reached in the premises of District Jail, Kakkanad. Since PW176 was prohibited from entering the jail for three months after his release, he arranged PW178 to meet accused no.1 by arranging interview by PW178 with PW121. PW178 accordingly met PW121 and handed over the mobile phone. PW121 after receiving the mobile phone, placed it inside the chapel and entrusted with accused no.1. The learned Special Public

Prosecutor relied on Ext.P148 pendrive containing the CCTV visuals to prove those matters. This SIM and mobile phone was in use inside the jail from 10.04.2017 at 7.47 p.m onwards. The location of Ext.P46 SIM proved through Ext.P62 CDR would establish the fact that the SIM card was active under the CEPZ mobile tower which covers the District Jail Kakkanad from 10.04.2017 to 14.04.2017. The application submitted by PW178 for visiting PW21 in the jail marked as Ext.P172 series is also relied on to prove this aspect. The learned Special Public Prosecutor placed reliance on the visitor's register of the District Jail, Kakkanad to prove the arrival of PW178 to the District Jail and it is urged that no accused will dare to smuggle a phone and communicate with the allies of master conspirator, unless he has strong bondage with the master conspirator. The counter story of accused no.8 that it was a blackmail attempt is disproved by the conduct of accused no.8 himself and his associates, since it was not promptly reported to any investigating agency then and there.

500. The learned counsel for accused no.8, on the other hand, stoutly refuted the prosecution case and also stated that all these matters



are fabricated. It is further contended that the analysis of the prosecution evidence regarding the chronology of events claimed, which happened in the District Jail, Kakkanad would show the tainted and malafied attempts on the part of the Special Investigation Team to implicate accused no.8 either by hook or by crook. The Special Investigation Team was hand in glove with accused no.1 and his jailmates for fabricating evidence. The predetermination of the Special Investigation Team to suppress true facts and project a totally distorted picture coupled with malafide fabrication of evidence is brought out from the evaluation of evidence with respect to these aspects. They also argued firmly and disputed the case put forward by the prosecution that accused no.8 failed to report the matter about the receipt of calls and so-called attempts on the side of PW176 and other associates of accused no.1 for grabbing money from him. According to the learned defence counsel, they have informed about the call from PW176 to PW181 then and there to the Director General of Police. They also disputed the contention of the learned Special Public Prosecutor that Ext.P101 complaint was submitted by accused no.8 to make it sure that he is not arraigned as accused in the first final report and it was filed so as to

create a smokescreen. They also argued that the oral testimonies relied on by the prosecution and the documents produced to substantiate the contentions are distorted and fabricated.

501. The evidence relating to these points can be analysed bearing in mind the contentions referred to above. As pointed out, the prosecution mainly relied on the oral testimonies of PW119, PW121, PW176 and PW178 to prove the alleged securing of MO87 and Ext.P46 SIM. The prosecution further relied on the oral testimony of PW159 George Chacko, the then Welfare Officer of the District Jail, Kakkanad. The relevant portions of their testimonies are elicited in the argument note Volume-I filed by the learned Special Public Prosecutor. I have already considered and evaluated the oral testimonies of PW121, PW176 and PW178 regarding the matters connected with the writing of Ext.P122. As I discussed hereinbefore, it is alleged that accused no.1 was put inside cell no.1 of 'C' block from 10.03.2017 onwards. It is alleged that he saw his associates and made confessions during that period. I have already considered the relevancy and evidentiary value of those confessions of accused no.1 and also regarding the matters leading to such confession. It

is alleged that on 10.03.2017 itself, accused no.1 sought the help of his inmates, PW121 and PW176 for squeezing money from accused no.8. They planned together regarding several methods for that. They have finally reached at a solution for getting a mobile phone secretly inside the jail. While so, PW176 was released from jail on 23.03.2017. Accused no.1 asked him to secure a mobile phone for him in jail and accordingly, he made arrangements for securing a mobile phone to produce in jail. PW119 and PW176 are co-accused in several criminal cases. He approached PW119 for getting SIM. The relevant portion of evidence of PW119 is as follows. PW176 Vishnu is known to him. Vishnu is his co-accused in chain snatching case. When he met Vishnu at Judicial First Class Magistrate Court Kakkanad, Vishnu asked him to arrange a SIM card for him using the ID number of PW119. It is stated that Vishnu has no ID proof. PW119 agreed to arrange a SIM card for him. He was in possession of a SIM card purchased from Coimbatore. According to him, he purchased the SIM card from a street vendor near to railway station, Coimbatore without knowing the details. He gave that SIM to Vishnu. The SIM was given after two weeks of release of Vishnu from jail. Vishnu contacted him

again after four days to accompany him to Kumaly. But he was not ready. PW119 was cross-examined at length. He was confronted with the evidence that he had not stated to the police that he purchased phone from a street vendor in Coimbatore. He has no knowledge that it contains SIM card. He does not know the number of the SIM card. No details regarding the phone accordingly purchased are stated to the investigating officer. PW119 stated that he proceeded to Coimbatore for purchasing dress materials for his mother-in-law. This is also not stated to the investigating officer. His relationship with PW176 is also not stated to the investigating officer. Similarly, the evidence before the court that Vishnu approached him for getting a SIM as he has no I.D proof is also not stated to the investigating officer. The matters regarding the release of Vishnu from jail are also not seen stated to the investigating officer. They also challenged the claim of PW119 that he was released from jail during 2016. He stated to the investigating officer that he was released two days before Ramsan. Ramsan was on 25.06.2017. Nothing is stated to the investigating officer that he was released from jail during 2016. Details of some of the criminal cases pending against him are also brought out. A



suggestion is put to him that the improvements and embellishments made before the court were stated as tutored to him by the prosecution.

502. The evidence of PW176 in this regard is that accused no.1 asked him to purchase a chappal with heels and to hide the mobile phone inside the chappal for bringing it inside the jail. He was contacted by PW121 and directed to contact PW181. He collected the mobile number of PW181 and contacted him, but he did not entertain him. Thereafter, he purchased a black colour chappal with heels from Broadway spending Rs.200/-. He purchased gum and a knife for opening the chappal from Edappally. He arranged the chappal so as to put a mobile phone inside the same. He got a SIM from PW119. He put that SIM inside his mobile phone. He thereafter put that SIM inside the mobile phone arranged to send to the jail. That phone was with him. It is a 'For Me' brand phone in orange and black colour. He put the SIM inside the phone and placed inside the chappal. Thereafter, he proceeded to Vazhakkala and approached a cobbler. The cobbler stitched the chappal. By about 4.30-5.00 p.m he along with PW178 proceeded to the District Jail, Kakkanad

on 10.04.2017 evening and handed over the chappal with the mobile phone inside to PW121 and he waited near the District Jail.

503. On 10.04.2017, accused no.1 contacted him at about 7.45 p.m. using the mobile phone and informed that he received the mobile phone safely. Accused no.1 also informed him that at about 8.30 p.m. he will contact PW181 and asked him to contact PW181 thereafter. He contacted PW181. Since PW181 was not available there and also charge was not in his mobile phone, he called back PW176 using the mobile phone of another person and they engaged in converse. He also stated that on 10.04.2017, accused no.1 contacted him from MO87 mobile phone for two or three times. He was cross-examined in this aspect. It is brought out that he purchased chappal from Broadway and gum and knife from Edappally are not stated to the police. Similarly, the stitching of chappal by cobbler is also not stated to the police. The evidence of PW176 in chief that on that day at about 4.30-5.00 p.m, he reached near to the premises of District Jail, Kakkanad. PW178 went to the jail for handing over the chappal. He was waiting in a shop and at that time a phone number ends with '437' was with him is not stated to the investigating officer.

Similarly, the date 10.04.2017 is also not stated to the investigating officer. It was suggested to him that the evidence that on 10.04.2017 he went to the jail along with PW178 is a story fabricated in tune with the case concocted by the police. Similarly, the details of time of the calls are not stated to the police. Based on this, the learned defence counsel suggested to him that the times were spoken out by referring to the entries in the CDR.

504. Coming to the evidence of PW178, the person who allegedly handed over the chappal to PW121, he stated that on 10.04.2017, PW176 contacted him and informed that one of his friends was in jail. He stated that he went to meet PW121 along with a kit. He had been informed that it is a chappal for PW121. Ext.P172 series application is proved through him along with his Aadhar card. He went to the jail with chappal. Jail official enquired him about the kit. He replied that it is a chappal. He handed over the kit to that official. He proceeded inside and met PW121. Another official was available there. He had given the chappal through a space covered with the grill. It was given at about 3.30 p.m. Vishnu was waiting outside the jail. He pacified PW121. The plastic kit was returned

to him. At that time, PW176 informed him that a phone was given to accused no.1 for contacting accused no.8. He was cross-examined. It is to be noted that in order to prove the presence of PW178 at the District Jail, CDR of his mobile phone and customer application form are produced. He claimed that Ext.P74 application form is with respect to a mobile number ends with '700107'. He is confronted in cross-examination stating that this fact was not stated to the investigating officer. Similarly, it is not stated to the police that he met PW176 on 10.04.2017. The evidence that he had been directed by PW176 to go to jail for meeting Vipinlal is not stated to the police. The evidence that he made enquiry about the kit on seeing it with PW176 is also an omission. The fact that he reached in the jail by evening is also not stated to the Magistrate. The time when they reached in the jail is also not stated to the police. The evidence regarding the filling of form for meeting PW121 is also not stated to the Magistrate. The fact regarding the handing over of the kit to PW121 is also an omission. The evidence regarding the presence of PW176 in a shop near to the jail during his visit to jail is also an omission. Similarly, the claim

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

that PW176 informed him that the mobile phone was for accused no.1 to contact accused no.8 is also not stated to the police.

505. Next is the evidence of PW121, the recipient of MO87 mobile phone. PW121 stated that during his talk with accused no.1, he informed that accused no.8 could identify his voice and they made a plan to contact his associates so as to collect the quotation amount. They have discussed about different plans. They earlier decided to get the mobile phone inside by throwing it over the compound wall situates on the backside of the cell and that can be collected with the assistance of the prisoners who were engaged in agricultural operations. They abandoned that plan. They again decided to collect the mobile phone through any of the jail officials. They dropped that plan also. Accused no.1 does not like the involvement of any person other than PW121 and PW176. Accused no.1 himself prepared a plan. He directed PW176 to arrange a mobile phone inside a chappal and also to arrange an interview for meeting PW121. PW121 continued his contact with PW176. PW176 informed that on 10.04.2017, PW178 will come to the jail for meeting him along with a chappal. As stated by PW176, PW178 came there to meet him on 10.04.2017. PW178 handed

over the chappal to him. In order to avoid suspicion, he wore the chappal and proceeded to the cell. At the very same time, attention was paid to avoid any damage to the mobile phone. He handed over the chappal to accused no.1. PW135 was also available with them at that time. Since the mobile phone cannot be used without his knowledge, he was also stated about the fact. It was promised that mobile phone will be given to him also, to which he was amenable. They removed the mobile phone from the chappal using a blade kept for official purpose. Sunil contacted PW176 and informed him about the receipt of the mobile phone. He thereafter contacted PW181 and PW191. He identified the visuals of CCTV footage stating that the person available in the visuals is he himself. He also identified the chappal containing the mobile phone. He further identified the visuals claimed to be with respect to the use of the mobile phone. During cross-examination he admitted that he stated before the Deputy Superintendent of Jail that he has not brought the mobile phone to the jail. He also denied the use of mobile phone inside the jail. He clarified that it is a false evidence. This was stated for the first time in this court.

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

He also stated that on receipt of mobile phone, accused no.1 contacted PW176 and PW181.

506. Somany omissions and contradictions were brought out through this witness during cross-examination. He stated that he has not committed the offence of using mobile phone inside the jail. According to him, Mahesh Kumar visited him in jail in the afternoon session. A suggestion is put to him that Mahesh Kumar has not come to the jail on 10.04.2017. Ext.P171 interview register is containing false and forged entries. He stated that other persons were also arrived in the jail after the arrival of PW178 Mahesh Kumar. Serial no.33 is the last entry with respect to the arrival of PW178 on 10.07.2017 written by PW121. Another suggestion is put to him that entry no.33 was incorporated after the signature of jail officials. He also admitted that the last entry shown as serial no.33 is also written as entry no.17 in Ext.P171 in the afternoon session. He claimed that entry of serial no.17 was not of him and all the entries except sl.no.17 are of him. He also admitted that the first entry in the afternoon session is serial no.17. He further admitted that the last entry in the forenoon session is also serial no.17. A specific question is put

to him that Mahesh Kumar has not visited him in the forenoon. According to him, he remember that Mahesh visited him in the afternoon. The defence put a question that Mahesh has not visited him on 10.04.2017 and the entires in Ext.P171 were fabricated so as to support the prosecution case. The plan to arrange mobile phone through PW176 Vishnu is also not stated to the police. The information from PW176 Vishnu that Mr.Mahesh will come to meet him on 10.04.2017 with the chappal is an omission. Somany omissions regarding material aspects were brought out through him. He has not stated to the Magistrate during his 164 statement that Mahesh informed him about the availability of mobile phone inside the chappal.

507. PW124 is the cobbler. According to him, he is working as cobbler at Vazhakkala for the last six years. A person was produced before him by the police for identification. He identified him as the person who approached him for stitching a chappal about three years back. He had given statement before the Magistrate u/s.164 Cr.P.C. During cross examination, he stated that the chappal allegedly stitched by him were not shown to him and the person brought by the police was sitting in the jeep

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

itself. It is elicited that he could not identify that person when the police showed that person to him. He could identify on seeing him is not stated to the Magistrate. In his 164 statement, it is recorded that the police showed the chappal to him. He stated specifically before the Magistrate that he could not identify the person, but he identified the chappal stitched by him. He also stated to the Magistrate that usually 10-30 customers will come to him daily and he is not able to identify them. He stated further that he was not able to identify the person showed to him by the police.

508. The evidence of PW159 is that he was working as Jail Welfare Officer. He stated about the procedure in connection with the interview for inmates by the private persons. According to him, dress materials, magazines and toilet articles are permitted to handover to the inmates through Wicket gate. Jail officials examine the items and thereafter, it will be given to the inmates. He identified Ext.P171 interview register. According to him, Vipinlal was his orderly. It is the duty of the Welfare Officer to maintain interview register. He entrusted this work to PW121. In Ext.P171 entries were made by PW121. According to him, Vipinlal

used to come to him by 10.00 a.m and go back by 5.00 p.m. Vipinlal was enjoying freedom as he was his orderly. Ext.P172 series application is proved through him. The defence objected its marking as it is an attested copy. The original was produced by him later. According to him, the entries in Ext.P171 of 10.04.2017 are certified by the then Assistant Superintendent Grade-I Mr. Baburaj. According to him, Mr. Baburaj put his signature after serial no.33 entry. Serial no.33 entry relates to the visit of PW178 and it is corresponding to the entries in Ext.P172 series application. He claimed that the very same entry is shown as serial no.17. According to him, it is a double entry. The handwriting of entry no.17 was not of Vipinlal. The handwriting in entry no.33 was of Vipinlal. According to him, since he was on paternity leave, Mr. Baburaj was holding the charge of Welfare Officer. He produced Ext.P171 register before police on 06.07.2017. He collected back the register on the strength of Ext.P173 Kaichit. During cross-examination, the defence challenged his competency to grant permission for visitors. The defence relying on the rules of Kerala Prison Manual put questions to him to show that Welfare Officer is incompetent to deal with the interview for inmates.

According to him, in the absence of officer for putting initials in the application, direction was given to show the inmate to the persons in order to avoid delay. In such cases, the applications will be initialed thereafter. He admitted that Ext.P172 series application does not contain any initials or signature of another jail official. PW159 added that he received the application when he came back to jail and that was accordingly entered in Ext.P171.

509. Somany anomalies regarding Ext.P172 series and corresponding mahazars are brought out through PW159. According to him, Mr Baiju Poulose PW261 prepared the mahazar. He specifically stated that Mr Baiju Poulose alone met him. He clarified that PW194 and PW198, Circle Inspectors of Police talked him casually. He corrected thereafter that interview register was seized and mahazar was prepared by PW198. According to him, PW261 also accompanied PW198. It is brought out from him that PW121 was his orderly is not stated to the police. A question is put to him that the entries with respect to Mahesh Kumar on 10.04.2017 were not in Ext.P171 when the mahazar was prepared on 06.07.2017. He replied that he is not able to state about that

position and thereafter he corrected and answered that those entries were there. This is not stated to the investigating officer. According to him, the fact of visit of PW178 is not known to him directly. He was asked about the procedure for body search of visitors relying on Prison's Manual and he pretended ignorance thereto. He also denied the suggestion that the items produced by visitors are to be recorded in the register. Relying on the entries in Ext.P171 interview register, questions were put to him that the items are to be mentioned in the register. He stated that sometimes it will be recorded in the register. He also added that if any serious issue is there, that has to be recorded in the register. He admitted that Ext.P171 contains somany entries regarding the receipt of goods to inmates. The third and fourth column in Ext.P171 are provided for recording name and number of prisoner and also his relationship with the visitor. It is brought out that as far as the 33rd entry, such details are kept blank. He clarified that such details regarding the visit of PW178 are absent in Ext.P171. He further stated that the details of PW178 can be seen from entry no.17. A question is put to him that has he certified that person referred to in entry No.33 has come to see Vipinlal of RP 7992 and he had omitted this entry

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

and a certificate to that effect is issued to the Circle Inspector of Infopark Police Station. He answered it affirmatively. Ext.D39 series is proved through PW159 and it bears the date 18.09.2017. He stated that he verified the entry dated 10.04.2017 while preparing Ext.D39 series. It is put to this witness that the entry nos.17 and 33 in Ext.P171 were not available originally and those entries were forged subsequently so as to create corroboration for the evidence of PW121 during September. It is further put to him that these entries were forged due to the high-handed influence of the police officials. He admitted that the entries such as 'RP 7992' and date '10.04.2017' available in Ext.D39 series are not available in Ext.D39 series at the time of its preparation on 18.09.2017. He admitted that RP no.7992 appears against entry no.17 is in different ink. Entry in the left margin is written using another ink. PW159 admitted that the entries are recorded using three different inks. A specific question is put to him that how entries which were absent in Ext.D39 series prepared 18.09.2017 appear in Ext.P171 when it was produced before the court. He replied that he got transfer in October and he does not know about the matters which were transpired thereafter. It is also brought out that the

entries in the afternoon should be in chronological order after the entries in the forenoon. It is also brought out that the details of Aadhar number is mentioned only in entry no.17. A suggestion is put to him that serial no.33 was subsequently forged so as to make it appear that PW178 visited PW121 in the afternoon to which he pretended ignorance. Somany omissions regarding the engagement of Vipinlal as his orderly and the nature of work assigned to Vipinlal are also brought out through PW159. Similarly, the evidence regarding the making of entries in Ext.P171 by PW121 and the alternate arrangement during his absence is also not stated to the police. Further, the certification by the then Assistant Prison Officer Mr. Baburaj, entry no.17 is a double entry and Mr. Vipinlal wrote entry no.33 and the handwriting of entry no.17 was not of Vipinlal etc. are not stated to the police. During re-examination questions were put to this witness for making clarification regarding the non-availability of entry in Ext.D39 series. According to him, when PW197 Radhamani asked for the copy of Ext.P171, he felt that the entries were incomplete. He verified the applications and found that PW178 came to visit PW121. He recorded that entry. The remand prisoner number of PW121 was known to him. He



DISTRICT & SESSIONS COURT
ERNAKULAM-682 011

recorded the RP number and also "Vipinlal friend". He also stated that he had some suspicion and hence he put the question mark after that. The entry no.17 was not noticed by him when he issued Ext.D39 series.

510. PW180 is another jail official. He was examined to prove Ext.P218 search list prepared in connection with the search conducted to find out the chappal used for bringing mobile phone inside the jail. According to him, the food waste will be used in biogas plant and other waste will be taken by the municipality. It is brought out in cross examination that his statement regarding the waste management inside the District Jail, Kakkanad is not stated to the investigating officer.

511. PW198 seized Ext.P171 register and conducted investigation in this regard. According to him, he was included in the Special Investigation Team of Crime No.297/2017 of Nedumbassery police station. On 04.07.2017 he collected the CCTV visuals under the supervision of PW192 from PW144, the custodian. Ext.P147 is the mahazar prepared in connection therewith. Ext.P148 is the pendrive and Ext.P149 is the certificate u/s.65B of the Indian Evidence Act issued for that. On that day he also collected Ext.P151 pendrive along with Ext.P152

certificate on the strength of Ext.P150 mahazar. On 06.07.2017 at about 3.30 p.m he seized Ext.P171 mahazar as produced by PW159 on the strength of Ext.P223. Ext.P173 is the Kaichit for returning Ext.P171. During cross examination a question is put to him that whether he conducted investigation on the allegation that mobile phone was brought inside the jail. He pleaded ignorance regarding its details. He had been directed to seize the interview register. Since accused no.1 is the main accused, he recorded the details of the visitors of accused no.1 in the mahazar. It is also brought out that the dates appear in Exts.P173 and P223 are overwritten. The defence put a question that the dates were corrected so as to suit the prosecution allegation. To that also PW198 stated that there is overwriting. According to him, he does not know whether additions and alterations were made in the registers returned to the jail officials. According to him, no photocopies of those registers were taken. Similarly, the omissions brought out through PW159 regarding the engagement of PW121 as his orderly and the nature of duties assigned to him are not stated to him by PW159.

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

512. This court has already discussed about the evidence of PW144, who had handed over the visuals to PW198 and his competency to issue Section 65B certificate. Ext.P148 is the pendrive containing the CCTV footage of Cell No.1 in 'C' block. Ext.P149 is the certificate issued u/s.65B of the Indian Evidence Act. This pendrive was seized on the strength of Ext.P147 mahazar by PW198. The learned Special Public Prosecutor in his argument note had given much reliance to the CCTV footage to prove the use of mobile phone inside the jail. During the examination of PW121 and PW135, CCTV visuals were shown to them and put questions to them elaborately to substantiate the alleged use of mobile phone inside the jail. I have already discussed about the evidentiary value of Ext.P148 and Ext.P149 certificate issued u/s.65B of Evidence Act, while discussing in connection with the matters relating to the scribing of Ext.P122 letter. This court has already arrived at a finding that PW144 was not the custodian of the CCTV footage and also held that he is incompetent to issue Section 65B certificate, which is marked as Ext.P149. Moreover, Ext.P149 certificate is against the provisions of Section 65B of the Indian Evidence Act. In the absence of proper evidence

and also due to the lack of proof that visuals were produced by a competent person, the CCTV visuals cannot be taken into account.

513. The case of the prosecution is that on 10.03.2017, accused no.1 sought the assistance of PW121 and PW176 for collecting the quotation amount from accused no.8. All of them decided to reach to accused no.8 by contacting his associates and also decided to get a mobile phone inside the jail for the implementation of their plan. PW176 who had been released on 23.03.2017 was directed by accused no.1 to bring a mobile phone inside the jail by putting it in a chappal. PW176 made attempts for collecting SIM and mobile phone. Since identity card was not available for him, he approached PW119 for getting a SIM by filing application. PW119 purchased a second hand mobile phone from a street vendor in Coimbatore. He thereafter handed over this particular SIM to PW176. PW176 put this SIM inside a mobile phone available with him and arranged PW178 to hand it over to PW121. PW176 identified the mobile phone as MO87 and the SIM as Ext.P46. The stand of PW119 is that the SIM was not used by him eversince he obtained it from the street vendor. The CDR of this particular SIM is produced in court. Similarly,



the CDR of PW176 is also produced to show that he obtained it on 05.04.2017 and inserted in his mobile phone.

514. The evidence in this regard is to be looked into. Ext.P62 is the CDR of Ext.P46 SIM. Ext.P62 is for the period from 10.04.2017 to 14.04.2017. Ext.P62 CDR contains first entry on 10.04.2017 at 17:07:17 hours of Ext.P46 SIM. The last entry in Ext.P62 is the entry dated 13.04.2017 at 07:30:57 hours. Ext.P62(a) is the certification issued by the Nodal Officer and it is certified that this contains the call particulars of mobile number 8807339249 for the period from 10.04.2017 to 14.04.2017. A covering letter is also attached with Ext.P62 and Ext.P62(a). In the covering letter, the subject is showed as request for Certified Call Details and Decoded Cell ID details for the period between 10.04.2017 and 14.04.2017 made by A.V. George, District Police Chief, Ernakulam (Rural). This covering letter is marked as Ext.P62(b). Exts.P62(a) and (b) were proved through the Nodal Officer PW91. So, it can be seen that the prosecution produced the CDR of Ext.P46 from 10.04.2017 till 14.04.2017. The case of the prosecution is that on 10.04.2017 by evening PW178 handed over MO87 with Ext.P46 SIM to PW121. At this point of

time, the entries in Ext.D15 marked on the side of accused no.8 assumes importance. This was collected by PW261 with respect to Ext.P46 SIM. In Ext.D15, call details of 09.04.2017 are also included. The case of the prosecution is that on getting Ext.P46 from PW119, PW176 inserted it in his mobile phone on 05.04.2017. The prosecution relied on the oral testimonies of PW119 and PW176 to prove that the SIM was handed over during this period to PW176. They relied on Ext.P279(a) to prove this aspect. According to the prosecution, thereafter, this SIM was not used for any purpose. PW176 purchased chappal and entrusted it with PW121 through PW178. If this be the situation and contention advanced by the prosecution, how these two entries on 09.04.2017 were available in Ext.D15 is not proved by the prosecution. It is seen that the first entry on 09.04.2017 was at 07:50:15 hours and the second entry was at 23:14:16 hours. This fact is suppressed by the prosecution. The intensity of the suppression is much more significant if Exts.D70 series is taken into consideration. Exts.D70 series contain the CDR of Ext.P46 from 01.03.2017 till 15.06.2017. Ext.D70 series CDR along with the certification was issued by PW91 Nodal Officer to PW197 Radhamani



who recorded the FIR in this case and a member of the Special Investigation Team. This was issued on 25.10.2017. Ext.D15 was seized on 26.06.2017. Ext.P62 was issued on 04.10.2017. The dates also assume relevance considering the nature of entries. Ext.D15 was seized by PW261 on 26.06.2017. Ext.P62 relied on by prosecution was issued to the Rural S.P on 04.10.2017. Ext.D70, which was issued on 25.10.2017 contains more details from 01.03.2017. On a comparison of the dates available in these three documents, it is seen that the document relied on by the prosecution, that is Ext.P62 is for four days only. Ext.D15 contains the entries of five days. This itself would show that the prosecution was not fair enough to produce the entire available materials before the court so as to arrive at a correct finding.

515. Coming to the entries in Ext.D70 series it is seen that the first entry therein was on 01.03.2017 at 18:37:00 hours. This particular phone was continuously used from 01.03.2017 till 09.04.2017. Similarly, other than the entries in Ext.P62, it is seen that this phone was seen used continuously from 25.04.2017 till 15.06.2017. The last entry was on 15.06.2017 at 19:06:33 hours. The phone was not seen used between

13.04.2017 and 25.04.2017. Ext.D70 series is proved at the instance of accused no.8 as they obtained the certified copy from the CDR produced in crime no.751/2017 of Infopark Police Station. As I pointed out, Ext.D70 series and Ext.P62 relied on by the prosecution were collected in the month of October 2017 itself. Why the prosecution failed to produce the entire details assumes significance in this case. It can be safely concluded that prosecution intentionally suppressed this document so as to avoid evidence negativing their assertions. This suppression is very crucial in the light of evidence tendered by PW119, who allegedly handed over the SIM to PW176. PW119 stated before this court that though he purchased the mobile phone from Coimbatore, he had no knowledge about the availability of SIM card in that phone. He later opened the phone and could realise the availability of SIM card. He does not know the number of SIM. The said SIM was in his possession for almost 4-5 months. He specifically and categorically stated that he never used that SIM. His contention is that he handed over this SIM card to PW176. The one and only activation, according to the prosecution case, was on 05.04.2017 when it was inserted in the mobile phone of PW176 by himself.



DISTRICT COURT ERNAKULAM-682 011

In this context, the entries in Ext.D70 series CDR are very fatal to the prosecution. As I pointed out, PW197, who recorded Ext.P1 F.I statement and also a member of Special Investigation Team had collected Ext.D70 series. It is highly unbelievable that PW261 has no knowledge about the CDR of Ext.P46 from 01.03.2017 till 15.06.2017. No material is available before this court to show that they conducted investigation with respect to the calls made from 01.03.2017 till 10.04.2017 using Ext.P46 SIM. Moreover, no explanation is also given by prosecution regarding the production of Ext.P62 for a limited period from 10.04.2017 till 14.04.2017. PW261 had clear knowledge atleast about the call data recordings on 09.04.2017 as Ext.D15 was seized by him on 26.06.2017. It can be concluded that prosecution suppressed all these material evidence before the court. These documents would also show that the testimony of PW119 lacks credibility. So, the alleged handing over of SIM by PW119 to PW176 and the related matters appear to be shabby and scruffy.

516. The case of the prosecution is that PW176 arranged PW178 to hand over the mobile phone to PW121 in jail. The learned counsel for defence argued that PW178 was not in the picture in the first inception.

He was introduced later so as to fabricate the story of the prosecution. In order to prove this aspect, prosecution relied on the testimony of PW121, PW176 and PW178. They also relied on the testimony of PW124, Muthu, the cobbler. The learned counsel for the accused relying on Ext.P700, Ext.C35, Ext.C36, Ext.C37 and Ext.P710 argued that nothing is mentioned about PW178 in these documents. According to him, the story that PW178 brought the mobile phone inside the jail was created after the arrest of accused no.8. He argued further that in Ext.P710 remand report of accused no.8 dated 10.07.2017 also the investigating officer stated that PW176 produced the SIM card by hiding inside a chappal and handed it over to accused no.1. Relying on that statement the learned counsel argued that PW121 and PW178 were introduced only later. In page nos.5 and 6 of Ext.P710 remand report it is recorded that "ഈ കേസ്സിൽ 1-ാം പ്രതിയുടെ സഹതടവുകാരനേയും മറ്റും ചോദ്യം ചെയ്ത് മൊഴി രേഖപ്പെടുത്തിയും പ്രതിയും മറ്റും ഉപയോഗിച്ചിരുന്ന മൊബൈൽ ഫോൺ നമ്പറുകളുടേയും മറ്റും കോൾ ഡീറ്റയിൽസും, ടവർ ലൊക്കേഷൻസും പരിശോധിച്ചും മറ്റും നടത്തിയ അന്വേഷണത്തിൽ ജയിലിനുള്ളിൽ കഴിയുന്ന 1-ാം പ്രതിക്ക് അതീവ

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

രഹസ്യമായി മൊബൈൽ ഫോൺ എത്തിച്ച് കൊടുക്കുന്നതിനും അത് ഉപയോഗിച്ച് ഈ കേസ്സിലെ ആവലാതിക്കാരിയുടെ നഗ്ന വീഡീയോ ചത്രീകരിച്ചതുമായി ബന്ധപ്പെട്ട് 11-ാം പ്രതിയിൽ നിന്നും (A8) പണം ലഭ്യമാക്കുന്നതിനുമായി 1-ാം പ്രതി 8-ും, 9-ും 10-ും പ്രതികളുമായും (PW121, PW176, A10) മറ്റും ജയിലിനകത്ത് വച്ചും പുറത്ത് വച്ചും കൂറ്റകരമായ ഗൂഢാലോചന നടത്തി എന്നും തുടർന്ന് 9-ാം പ്രതി വിഷ്ണു മോഷണ മുതലായ സിം കാർഡും, മൊബൈൽ ഫോണും ജയിൽ ചട്ടങ്ങൾക്ക് വിരുദ്ധമായി ഒരു ചെരുപ്പിനടിയിൽ ഒളിപ്പിച്ച് വച്ച് കാക്കനാട് ജില്ലാ ജയിലിനകത്ത് കടത്തി 1-ാം പ്രതിക്ക് എത്തിച്ച് നൽകിയെന്നും. 1-ും, 8-ും പ്രതികൾ രഹസ്യ മൊബൈൽ ഫോൺ ജയിൽ മുറിയിലും, അടുക്കളയിലെ പച്ചക്കറി തട്ടിലും രഹസ്യമായി സൂക്ഷിച്ചും. 8-ാം പ്രതി മൊബൈൽ ഫോൺ ഒളിപ്പിച്ച് കൊണ്ട് വന്ന ചെരുപ്പ് നശിപ്പിച്ചും കൂറ്റകരമായ ഗൂഢാലോചന നടത്തിയും".

517. It is specifically averred in Ext.P710 remand report that PW176 handed over MO87 along with Ext.P46 violating the jail rules personally to accused no.1. Nothing is mentioned about PW178 in Ext.P710. It is true that the remand report need not contain the entire details. But, in this case, the non-mentioning of handing over of the

mobile phone through PW178 assumes importance. The prosecution from the very inception put forward a specific case that since PW176 was released on 22.03.2017, he cannot enter the jail for next three months. The prosecution alleged further that because of this restriction PW176 arranged PW178 for handing over the mobile phone. So, the non mentioning of the presence of PW178 in Ext.P710 has its own significance. Ext.P710 was prepared on 11.07.2017. Exts.C22 and C23 prepared on 15.07.2017 and 16.09.2017 respectively also contain the very same allegations.

518. Ext.P172 series is the application form produced by the prosecution to prove that PW178 met PW121 in jail on 10.04.2017. Ext.P172 series application form along with ID proof of PW178 was produced before the court on the strength of Form-15 on 28.09.2017 and it contains a letter from the Superintendent, District Jail, Ernakulam addressed to PW261 on 27.09.2017. It is mentioned in the said letter that the investigating officer sought for the details of the persons who visited PW121 in jail. In the letter, it is stated that Mr. Maheshkumar alone came to the jail for visiting PW121. They produced the ID proof and a

DISTRICT AND SESSIONS COURT ERNAKULAM

photocopy of application. The original of this application was produced in this court by PW159 at the time of his examination. The case of the prosecution is that interview register showing the visit of PW178 to PW121 was seized by PW198 on 06.07.2017 on the strength of Ext.P223 mahazar. That is why the application form was not collected at the time of seizing Ext.P171 interview register on 06.07.2017. Considering the nature of allegations regarding the visit of PW178, his application for meeting PW121 is a crucial document. It is to be noted that in this application or the ID proof attached, nothing is there to show that this was received in the jail. No official marks, seals and initials were seen in the application. The details of the official who received it permitted PW178 to meet PW121 and such other details should be there in the application. atleast initials should have been there to show the receipt of application in jail. It is seen that this document is produced at a belated stage. No mahazar or any like documents were prepared by PW261 with respect to Ext.P172 series. It is seen that the Superintendent, District Jail, Ernakulam forwarded its photocopies to PW261. The request allegedly

given to the Superintendent on 26.09.2017 is also not made available before the court.

519. CW234 is cited as a witness to prove the point that he was performing interview, search duty at District Jail, Kakkanad on 10.04.2017 and also to state that PW121 Vipinlal had visitors on that day. He was not examined by the prosecution for the reasons best known to them inspite of the position that he was a crucial witness as far as the visitors to Vipinlal on 10.04.2017 is concerned. He is the competent person to say about the interview register and the application form which is marked as Ext.P172 series.

520. The reason for want of official seal or signature in Ext.P172 series is also not explained by the prosecution. The learned counsel for accused no.8 argued that it is forged subsequently so as to fabricate evidence to show the involvement of PW178 as alleged by the prosecution. This contention assumes relevance in the light of Ext.P764 letter dated 09.06.2017 issued by the Superintendent, District Jail to PW261. Ext.P764 would show that on 03.06.2017 PW261 issued a letter to the Superintendent, District Jail, Ernakulam seeking the details of visitors



and the calls made by the prisoner namely Sunil @ Pulsar, Vijeesh and Vipinlal. In Ext.P764 the details of the information sought for by PW261 are furnished. The details of visitors to accused no.1 from 13.03.2017 till 05.06.2017 are stated. The contention of the prosecution is that PW178 visited PW121 on 10.04.2017. Such a visit is not stated in Ext.P764. The details of visit on 10.04.2017 as per that document are with respect to accused no.1 Sunil. Nothing is there to show that PW178 visited PW121 on 10.04.2017. The date of this letter assumes importance. This letter was issued on 09.06.2017. As I pointed out, the claim of the prosecution is that Ext.P171 containing the details of visit of PW178 to PW121 was on 06.07.2017. The entries therein were said to be prepared chronologically. Ext.P171 produced before the court contains the visit of PW178 on 10.04.2017. Had this entry been there in Ext.P171 this ought to have been found a place in Ext.P764 prepared on 09.06.2017, especially when the request of PW261 was to furnish the details of visits and calls made by accused no.1, PW121 Vipinlal and accused no.4. This situation is also remained as unexplained. Though prosecution produced Ext.P172 series stating that it was sent to PW261 on 27.09.2017 with a covering letter,

PW159 deposed before the court that he produced Ext.P172 series to PW198 along with Ext.P171 interview register on 06.07.2017. According to him, he had gone through Ext.P223 mahazar prepared in connection with the seizure of Ext.P171 interview register. Ext.P172 series were handed over to the police on that day itself. He also stated that separate mahazar was prepared in connection with Ext.P172 series also. Thereafter, he corrected that the investigating officer prepared only one mahazar for both Exts.P171 and P172 series. This evidence stands against the case of the prosecution that it was received from the Superintendent, District Jail by PW261 on the strength of the covering letter dated 27.09.2017.

521. Another circumstance casting shadow on Ext.P172 series is the entries mentioned in Ext.P223 mahazar. Ext.P223 mahazar is prepared by PW198 on 06.07.2017 at 3.30 p.m. in connection with the seizure of Ext.P171 interview register. He had given the details of the register including its physical appearance. It is to be noted that this mahazar is prepared after the request of PW261 to the Superintendent, District Jail on 03.06.2017 seeking the details of the visitors of accused

no.1. The definite case of the prosecution is that PW176 was interrogated much prior to this request and mahazar and they came across with the incidents by which the mobile phone was reached inside the jail. The involvement of PW121, PW176, PW178 and everything were known to the investigation team at that time. But, in Ext.P223 mahazar, the details of the visitors from 13.03.2017 to 05.06.2017 to accused no.1 alone are stated. The entire details are with respect to the visitors of accused no.1. Why did the details of visitors to PW121 on 10.04.2017, which is the most crucial detail as far as the prosecution allegations in relation to the handing over of mobile are concerned is not mentioned in Ext.P223 mahazar remains unexplained. It is stated in Ext.P223 that PW159 George Chacko, the Welfare Officer handed over Ext.P171 interview register to PW198. What is the reason for not obtaining Ext.P172 series on that day itself also casts doubt. PW198 deposed that he had knowledge about the details of the investigation going on at the time when he effected seizure of Ext.P171. He further stated that he had been directed to effect seizure of Ext.P171. Since accused no.1 is the main accused, he recorded the details of visitors of accused no.1 in the mahazar. This explanation appears to be

flimsy because the important aspect leading to the seizure of Ext.P171 was the alleged visit of PW178 to PW121 for handing over the mobile phone. Therefore, the explanation by PW198 for recording the details of accused no.1 alone in Ext.P223 cannot be accepted. The investigating officer PW261 also failed to explain about this interview. All these matters affect the credentials of Ext.P172 series application produced after a long period, that too, without any official marks or seals.

522. Prosecution relied on Ext.P171, yet another document to prove the contention regarding the visit of PW178 to District Jail, Kakkanad on 10.04.2017 for handing over MO87 mobile phone. Ext.P171 is the interview register of District Jail, Kakkanad seized by PW198 on 06.07.2017. The case of the prosecution is that this was returned to PW159, Welfare Officer on kaichit, on the date of seizure itself. As I mentioned hereinbefore, PW198 had given the details of the interview register in Ext.P223. Ext.P173 is the kaichit prepared on that day itself. In Ext.P173 it is stated that the interview register, which was seized by PW198 on 06.07.2017 at 3.30 p.m. on the strength of seizure mahazar was received back by PW159 on bond. He also agreed to produce the

interview register as and when directed by the court. The learned defence counsel put questions regarding the correction of dates appear in both Exts.P223 and P173. It is seen that the date of mahazar is seen corrected in Ext.P223. A similar correction appear in Ext.P173 also regarding the date of mahazar. Further, correction in the date regarding the preparation of kaichit is also there in Ext.P173. This fact was put to PW198. He stated that there is overwriting. He denied the suggestion that the date is corrected. The defence had taken-up a contention that the documents were not prepared as claimed by the prosecution. It is true that Ext.P223 was produced before the court on 25.07.2017, whereas Ext.P173 was produced before the court on 06.10.2017. Even then this court consider this as overwriting believing the evidence of PW198, the prosecution failed to explain the fact why this document is not produced along with Ext.223 on 25.07.2017.

523. Considering the interview register apart from the entries in Exts.P173 and P223, the learned Special Public Prosecutor argued that the visitors register Ext.P171 of the District Jail, Kakkanad placed a crucial role in confirming PW178 Mahesh Kumar's presence apart from CDR

and CCTV footage. In the argument note, page no.211, the learned Special Public Prosecutor urged that PW178 Mahesh Kumar submitted an application Ext.P178 series to visit PW121 Vipinlal, which serves as documentary proof of his entry into the jail. The learned defence counsel, on the other hand, taken a concrete stand that Ext.P171 was forged by the Special Investigation Team in connivance with the jail officials as part of the fabrication of allegations to support the transactions allegedly took place inside the jail. The original of Ext.P171 was produced before the court by PW159 at the time of his examination.

524. As I pointed out, the prosecution case is that the register was given back to PW159 on the date of seizure itself by virtue of Ext.P173 kaichit. It is to be noticed that the usual practice of returning documents on the strength of kaichit is that the copy of the document should be appended with the kaichit for ensuring the correctness and veracity of the entries in the document and also to avoid manipulations while the document was released to the person till its production before the court. This document was produced before the court for the first time during trial. In this case, surprisingly, though kaichit is prepared, no such

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

practice is stated to be adopted. PW198 deposed that no photocopies were taken. The reason behind the explanation by PW198 in this aspect will be dealt with while considering the evidence of PW261 in this regard. In Ext.P171 interview register, the details of visitors from 11.01.2017 till 17.07.2017 are seen included. It is claimed by the prosecution that entries in Ext.P171 are made by PW121 in his capacity as orderly to PW159. It is asserted that PW159 Welfare Officer is the person who is authorized to maintain the affairs of visitors and also the interview register. In the front cover of the interview register, it is seen that the details from 11.01.2017 is recorded, the date "01" is seen corrected using another ink as "11". Keeping this correction aside, somany other corrections are there in Ext.P171 with respect to the entries pertaining to this case. Though it is a printed format, page numbers were assigned manually. From page number 190 onwards, the details of visitors on 10.04.2017 are seen recorded. The last entry on 10.04.2017 are seen recorded in page number 195. As I repeatedly mentioned hereinbefore, the specific case of the prosecution is that PW178 visited PW121 on 10.04.2017 by evening. But the fantastic aspect is that the entries in Ext.P171 would show that on

10.04.2017, PW178 is seen visited PW121 in the forenoon session commence from 11.00 a.m till 1.00 p.m. This particular entry is noted as entry number 17. The details are as follows. Mahesh Kumar K.M, Palakkal House, Eloor South, Udyogamandal, Paravur, Ernakulam and the corresponding prisoner is recorded as "Vipinlal, RP 7992 and the relationship is shown as a 'friend'. This particular entry is against the case of prosecution that PW178 visited the jail in the evening. If the visit was in the evening how this entry happened to be made in the forenoon session is a vital point ought to have been clarified by the prosecution. However, that position was not clarified. Above all, it is pertinent to be noted that this particular entry is made as an interlineation inserted subsequently. On a perusal of Ext.P171 it is seen that in the forenoon session sixteen persons visited different prisoners. In the afternoon session commences from 3:00 p.m., serial number 17 Sivadas P.K, Pooyath house, Nellayi as a visitor to Ramachandran, RP 8815 is recorded as the first entry. The entry of Mahesh Kumar is made between the above two entries as an interlineation assigning serial no.17 despite the first entry in the afternoon with serial no.17. Chronologically, subsequent

DISTRICT AND SESSIONS COURT
ERNAKULAM-682



entries were made upto 33. This cannot be taken as a repetition or duplication in number due to oversight considering the nature of entry of Mahesh Kumar as serial no.17. The entry with respect to Mahesh Kumar is made in the gap separating the upper page and lower page. That is, this entry is inserted in the folding portion separating the upper and lower pages. On a careful verification of Ext.P171 from the first page onwards till the last entry, no such entries were made in this particular space separating the upper and lower pages. Another entry of such nature is seen recorded in page number 117. There also it is seen that that particular entry is recorded as interlineation. That entry comes under the visitors on 03.03.2017 forenoon. After serial no.7, serial no.3 is inserted as Thilakamma before serial no.11 on 06.03.2017.

525. Further, apart from this falsification on account of interlineation, some more additions are made in Ext.P171 corresponding to this particular entry after it was returned to PW159 on kaichit and before the production in the court during his evidence. Ext.D39 series is the certified copy of Ext.P171 produced in Crime No.751/2017 of Infopark Police Station. PW159 admitted about the issuance of Ext.D39

series to PW197. It is to be noted that Ext.D39 series was produced by PW197 before the Judicial First Class Magistrate Court, Kakkanad on 10.11.2017. In Form-15, appended with Ext.D39 series, it is stated that PW178 filed application on 02.04.2017 to meet PW121 along with ID proof. It is true that the points to be proved are mentioned that on 10.04.2017 PW178 visited PW121. All these discrepancies can be considered as minor discrepancies comparing to the additions made in Ext.P171 when it is produced before this court. On a comparison of Ext.P171 and Ext.D39 series, it is seen that in Ext.P171 in the left column provided for recording serial number contains the entry "10.04.2017" against the entry of Mahesh Kumar. Similarly, in column number 4, provided for recording the name of prisoner along with remand prisoner number, the name of PW121 Vipinlal along with RP number 7992 are seen recorded. These two entries are absent in Exts.D39 series. Ext.D39 was seen certified by PW159 on 18.09.2017. So, it is to be concluded that atleast as on 18.09.2017, these two entries corresponding to the entry of Mahesh Kumar were not there in Ext.P171. However, when Ext.P171 was produced in court at the evidence stage, these two entries are seen in

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

Ext.P171. Moreover, the entry appears in the left column regarding date appears to be in one ink, whereas the insertion of RP number 7992 is in another ink. These two entries are made in two different inks. Similarly, the main entry is made in an ink different from the ink used for the entries inserted as additions. This would show that the additions appear in the extreme left margin and third column are not made simultaneously. What is the purpose for making such additions in a document seized in connection with a case pending before the court is not explained or clarified by the prosecution or the person claimed to be the custodian. Above all, how the details of the person claimed to be visited PW121 in the afternoon session appear in the forenoon session, that too, with all particulars are also crucial considering the nature of the allegations. In the absence of any explanation or clarification as to how those entries which were not in Ext.P171 at the time of the issue of Ext.D39 happened to be in Ext.P171 at the time of its production in evidence stage will lead to the irresistible conclusion that PW159 or somebody else with his knowledge made manipulation in Ext.P171 with ulterior motive.

526. The entry relied on by prosecution in Ext.P171 to prove the so-called visit of PW178 to PW121 is to be evaluated. This is recorded as entry no.33 in page number 195 of Ext.P171. On a perusal of this particular entry it is recorded that Mahesh Kumar, Palakkal House, Udyogamandal, Ernakulam. The details appear in serial no.17 in the forenoon session are absent in entry no.33. Moreover, all other columns for recording the name of prisoner with remand prisoner number, relationship with the prisoner, and remarks are kept blank. In Ext.D39 series interlineations and additions are made with respect to this particular entry also. In column no.3 provided for mentioning the name of prisoner with RP number, it is recorded that Vipinlal, RP7992. In the column provided for stating the relationship, it is recorded that 'friend' with a question mark. Further, there is a certification by PW159 stating that this is to certify that the person no.33 has come to see Vipinlal, RP 7992. This fact is not mentioned in P171 and PW159 corrected it later. This particular certification is not available in Ext.P171. The important aspect is that Ext.D39 series are the photocopies of Ext.P171. If this is the situation, the certification appears in Ext.D39 series ought to have been





available in Ext.P171. As I pointed out, Exts.D39 series were produced before the court on 10.11.2017. From where did PW159 obtained Exts.D39 series with this additional entry remains in vacuum. What prompted him to make these additions along with the certificate and for what purpose is remain unexplained. This would clearly affect the evidentiary value of Ext.P171.

527. The learned Special Public Prosecutor in his argument note tried to justify the interlineations and alterations made in Ext.P171. The learned Special Public Prosecutor in his argument note, page no.212 stated that, however an anomaly is present in Ext.P171 visitors register where two separate entries are recorded for PW178 Mahesh Kumar's visit on the same day. One in the forenoon and one in the afternoon session, while the prosecution asserts that the visit took place in the evening. This discrepancy is clarified by a certificate from PW159 stating that PW121 Vipilal, who was responsible for recording visitor's entry initially omitted to make the entry in the register. The omission was later corrected by the jail authorities after receiving intelligence regarding the mobile phone smuggling operation.

528. If the argument so advanced is with honesty, the mistake crept in the correction made in a crucial document like Ext.P171, a report to that effect should have been filed in court on its production or atleast it should have been brought out at the outset of the chief examination of the witness who produced that document. Definitely, a report stating the mistake crept in Ext.P171, the correction made rectifying the mistake after its return on kaichit should have been filed in court on its production in court as directed or it should have been brought out at the outset of the chief examination of the official who produced it in court. The wait and see attitude of the prosecution till the closure of the evidence to admit the correction is casting serious doubt about the honesty behind the above argument.

529. In view of the unexplained corrections and interlineation in Ext.P171 relating to the visit of PW178 to PW121 in jail on 10.04.2017 and the claim of PW261 the investigating officer that it has not come to his notice, the evidence of PW121, PW176 and PW178 and Ext.P171 are not inspiring the confidence of the court to conclude that PW178 visited PW121 in jail in the afternoon of 10.04.2017.

530. The case of the prosecution itself is that Ext.P171 was seized on 06.07.2017 by PW198 and returned back to PW159 on the strength of Ext.P173. As I pointed out, the purpose for returning the document to the person on kaichit is to return it in the very same form and condition as and when directed by the court or any lawful authority. In this case, the learned Special Public Prosecutor had gone to the extent of justifying the interlineations and additions made in Ext.P171 seized on the strength of Ext.P223 till the conclusion of the evidence. Another aspect to be noted is that PW198 deposed that he had been directed to seize the documents and accordingly, seized the registers including Ext.P171 from jail. He specifically stated that he had not conducted any investigation. According to him, he produced the documents before the investigating officer. It is true that he stated that Ext.P171 was returned to PW159 on the strength of Ext.P173. PW198 also stated that he has not taken photocopy while returning it to PW159. The learned counsel for defence put definite questions to PW261 about the corrections crept in Ext.P171 and also about the additions appearing in Ext.D39 series. PW261 has without any hesitation stated that he had not seen this document. It is

very surprising to hold that PW261 who conducted almost the entire investigation did not come across with a crucial document such as Ext.P171. It appears that such an evasive answer from the side of PW261, the investigating officer is with ulterior motives. It is pertinent to be noted that the further investigation was commenced mainly based on the incident allegedly happened inside the jail. Several high police officials including PW261 visited the jail on several occasions. Moreover, in Ext.P171 remand report and other remand reports prepared subsequently and also in almost all reports filed by PW261 before various courts including the Hon'ble High Court, the matters allegedly happened inside the jail are stated. It is to be noted that the case of the prosecution is that though accused no.1 and PW176 made calls to PW181 so as to reach to accused no.8, they could not secure the required result. This fact was communicated to accused no.1 and PW121 and also suggested to give a letter and accordingly, Ext.P122 letter was authored. If this be the situation, it is highly difficult to believe the evidence of PW261, the investigating officer investigating officer that he conducted investigation for almost six months and filed final report on 22.11.2017 without



perusing or considering the entries in Ext.P171, which is a crucial document. Moreover, PW198 stated that he has not conducted any investigation other than the seizure of the documents as directed by PW261. If that is so, the question as to who conducted the investigation based on Ext.P171 is remaining without any answer. So, the evidence tendered by PW261 that he has not seen the register appears to be a solid lie.

531. Another aspect to be considered is that the register was returned to PW159 on 06.07.2017 itself. That too, without obtaining a photocopy. If this be the situation, what material is available with the prosecution to verify the allegations and also the statements of witnesses recorded in this regard. The records would show that the statement of CW234 was seen recorded by PW261 on 01.10.2017. So, these matters would show that the investigation led to the filing of supplementary final report on 22.11.2017 cannot be conducted without perusing Ext.P171. When PW159 was in box, questions were put to him regarding the certification appears in Ext.D39 series against serial no.33 entry. PW159 claimed ignorance about this. During his cross examination the learned

counsel for accused no.8 put question referring Ext.D39 series. According to him, he is ignorant of the author of the entries in Ext.P171 which are not available in Ext.D39 series. At the very same time, he admitted that on 18.09.2017 he made the attestation which is seen in Ext.D39 series. Moreover, the case of the prosecution is that Ext.P223 mahazar on the strength of which Ext.P171 was seized and Ext.P173 kaichit was prepared simultaneously on 06.07.2017. However, it is to be noted that Ext.P223 mahazar reached the court on 25.07.2017, whereas Ext.P173 reached only on 06.10.2017. What prevented them from producing Ext.P173 kaichit along with Ext.P223 is not explained. It is seen that Ext.P173 was produced exactly after a gap of three months from the alleged date of preparation. The learned counsel for the defence argued pointing out the said gap that Ext.P173 kaichit was prepared subsequently with back date to show that the document was handed over to the jail authorities on the date of seizure itself so as to suppress the forgeries made therein at the instance of the investigation team. This argument assumes relevance considering the nature of the entries appear in Ext.P179 after its alleged seizure on 06.07.2017. No evidence is before this court to show that who

made these interlineations and additions in Ext.P171. On an analysis it is seen that these entries were made falsely so as to substantiate the prosecution allegations.

532. Let us consider the evidence of PW121 regarding the preparation of Ext.P171. The case of prosecution is that PW121 made entries in Ext.P171 in his capacity as orderly to PW159 Welfare Officer. The fact that PW121 was working as the orderly to PW159 was deposed in court for the first time by PW121 and PW159. Both of them admitted that position. Moreover, PW159 has not even stated to the investigating officer that the duty of making entries in Ext.P171 was entrusted with PW121. However, in the court he claimed that this duty was also entrusted with PW121. This is a material omission considering the nature of the allegations and also the entries in Ext.P171. PW121 claimed before the court that he wrote the entries in Ext.P171. The learned Special Public Prosecutor showed Ext.P171 to PW121 during his examination and he identified his handwriting. He claimed that majority of the handwriting are of him. He further stated that the entries on 12.04.2017 were not written by him. He added that there is entry on 10.04.2017

regarding the visit of PW178 Mahesh Kumar. According to him, this was not written by him since the visit was to meet him.

533. The entries in Ext.P171 on 10.04.2017 is to be considered in the light of the above evidence of PW121. On 10.04.2017 altogether 33 entries were seen made in Ext.P171. I have already pointed out about the interlineations. The entry which is seriously numbered as '17' corresponding to the name Mahesh Kumar K.M alone is seen written by another person than the person who had written the other 32 entries. The case of prosecution is that Mahesh Kumar visited PW121 on 10.04.2017 afternoon. Serial no.17 entry shows that Mahesh Kumar visited PW121 in the forenoon session ends at 1 p.m. The evidence of PW121 is that since the visit of Mahesh Kumar was for him, he did not record that. The prosecution relied on entry no.33 to prove the prosecution contention that PW178 Mahesh Kumar visited PW121 in the afternoon. This particular entry numbered as serial no.33 is admitted by PW121 in his handwriting. This also contradicts his evidence that since the visit of Mahesh Kumar was for him, he did not write it. Another aspect to be noted is that except this serial no.17 entry of Mahesh Kumar, Aadhar number is not seen



recorded in all other visits. The Aadhar number is seen recorded with respect to serial no.17 Mahesh Kumar only. Moreover, the date 10.04.2017 in another ink was also seen inserted on the left side of entry. Why this particular entry is specifically assigned with the date is also not seen explained. Further, the case of prosecution is that PW178 visited jail on 10.04.2017 evening and that was recorded as entry no.33 in Ext.P171. The another interesting aspect is that except the name and address in column no.2 of Ext.P171, no other datas are available corresponding to this entry. The column provided for writing the name of prisoner and relationship with him are seen vacant. If this be the situation, how could prosecution arrive at a conclusion that Mahesh Kumar visited the jail on 10.03.2017 for meeting PW121. It is seen that in order to fill up this vacuum they have inserted certification claimed to be made by PW159. Exts.D39 series were produced before the court by learned counsel for accused no.8. Unless and until Exts.D39 series were produced before the court, this fact was not known to the court. Apart from this, even today these particular columns in Ext.P171 remain vacant. However, Exts.D39 series would show that the name of PW121 with the remand number and

relationship are filled in these particular columns. From where did they obtain Exts.D39 series copy is also not explained. If the evidence of PW121 is taken into account that since the visit was for him, he did not make the entry of the visit of PW178 that was seen taken place in the forenoon session. That is also against the prosecution contention. So, it can be concluded without any doubt that entries were forged in Ext.P171 so as to fabricate allegations whenever it is required. PW159 has taken a stand throughout his evidence that he was on paternity leave and Mr. Baburaj, the then Assistant Superintendent was holding his charge and accordingly, responsible for the entries in Ext.P171. He stated specifically that the entries on 10.04.2017 were certified by Mr. Baburaj. The fact to be considered is that Mr. Baburaj was not even interrogated by the investigating officer. It is brought out that Mr. Baburaj is no more and he died in the year 2020. The attempt of this witness seems to fasten liability of these entries on a person who is now no more. Had these entries been certified by Mr. Baburaj as claimed by PW159, that fact should have been informed to the investigating officer. This was not done. Moreover, no records are available to prove the contention that PW159 was on leave on

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

10.04.2017 and Mr. Baburaj was in charge on that day. Who wrote entry no.17 corresponding to Mahesh Kumar is also not proved by the prosecution. PW159 claimed that the certification dated 18.09.2017 was made by him. He himself claimed that he was on leave on 10.04.2017. In re-examination, the learned Special Public Prosecutor put question to PW159 about the circumstances which prompted him to make Exts.D39 series certification. He replied that when PW197 Circle Inspector, Infopark Police Station asked copy of Ext.P171, he verified Ext.P171 and entry no.33 appears to be incomplete. He had gone through the application and found out that the visit was for meeting PW121. He filled the name of PW121. He could recollect RP number of Vipinlal and that was also recorded. He also explained the reason for putting question mark after 'friend'. He felt doubt and that is why he put question mark. The case of PW159 himself is that he was on leave on that day and Mr. Baburaj was in charge on that day. If this be the situation, how can he fill-up the details in Ext.P171 without consulting or asking with Mr. Baburaj. This also exposes the falsity of the claim of PW159. PW159 deposed before the court that his statement was recorded by PW261. He also

stated that Ext.P171 was seized by PW261 on the strength of Ext.P223. He was interrogated by PW261 on that day. He also stated that Ext.P223 was prepared by PW261. According to him, PW194 and PW198 were also with PW261. A question is put to him by the learned defence counsel that Ext.P223 was not prepared by PW261. He articulated that PW261 alone met him. Both PW194 and PW198 engaged in casual conversation with him. Then, another question was put to him that the records would show that he had given statement to PW198 on 06.07.2017 and then, he changed his version and admitted it.

534. Another aspect to be considered is that the case of prosecution is that PW159 was in charge of conducting interviews of prisoners. Mr. Vipinlal was his orderly. PW159 in-turn entrusted his duty with PW121 and hence, he made entries in Ext.P171. When PW159 is in box, the learned defence counsel put questions to him about the duties of Welfare Officer referring relevant rules in Kerala Prisons Rules. He denied and claimed that supervising and managing interview is also his duty. Kerala Prisons Rule, chapter 15 deals with Welfare Officers. Rule 166 says about the duties of Welfare Officers. It is seen that his prime duty



is to act as a counselor so as to assist the inmates for maintaining good behavior. He has prepared social case records of prisoners with the permission of Superintendent. It is seen that he is duty bound to organise cultural programs and other programs for the improvement of general development and welfare of the inmates. He has to act as a liaison officer with the permission of Superintendent and Joint Superintendent connecting the jail officials and prisoners. He has to arrange the rehabilitation of prisoners after release. Rule 161 deals with the duties and responsibilities of Chief Welfare Officer also. His duties are also in connection with the welfare programs for the inmates and also coordination of the Welfare Officers of different jails. So, on going through the prison rules, it is seen that what is claimed by PW159 is false. He stated that maintaining interview register and conducting interview is his duty as per prison rules. The learned counsel for accused submitted that whether the Superintendent issued any order authorising him to supervise the interview and he replied that there is no need for such an order. But rules 23 and 24 deals with the duties and responsibility of Superintendent, District Jail. In sub-rule 6, it is mentioned specifically

that without prior permission of DIG, Superintendent cannot assign or delegate responsibility of jail to any other persons. Rule 814 says specifically that permission of Superintendent is required for interview. It is mentioned clearly that no prisoner shall be permitted to meet any persons or to write letters without the permission of Superintendent in writing. It is further stated that the Superintendent can in his discretion permission can be granted orally also. So, the jail rules clearly says that the Superintendent, District Jail is the competent person to permit interview. In this case, PW159 claimed that he is the person competent to arrange interview and maintain Ext.P171. This is against the provisions and rules. Moreover, not even an authorisation is also produced to support his contention. He further claimed that PW121 was entrusted with the duty of making entries in the interview register in his capacity as orderly. As I pointed out, this is a new version before the court both by PW121 and PW159. So, how could PW159 produce Ext.P171 before the investigating officer and receive it back on the strength of Ext.P173 also creates suspicion. This has to be viewed in the light of non examination of

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

CW234, the person cited in the final report as witness in-charge of interview and search duty on 10.04.2017.

535. The learned Special Public Prosecutor had given much reliance to the CCTV visuals produced before the court to prove this fact. I have already discussed about the admissibility of Ext.P148 pendrive coupled with Ext.P149 certificate issued u/s.65B of Indian Evidence Act and also the oral testimony of PW144 who handed over this to the investigating officer. The prosecution has also produced Ext.P151 pendrive along with Ext.P152 certificate u/s.65B claiming that the visuals of the area where the coinbox is placed. Some of the visuals are copied to Ext.P153 DVD. But, the interesting aspect is that though the prosecution relied on the visuals inside the C1 Cell to prove the use of mobile phone inside the jail, the visuals of the interview area where the alleged handing over of mobile phone by PW178 to PW121 are not produced. It is brought out through PW144 that CCTV cameras are available in the gate of District Jail and also in the interview area. The explanation of prosecution through PW144 is that the visuals were not available as it was overwritten. PW144 also admitted that there are cameras which could

capture visuals of persons visiting the jail. PW144 deposed that PW261 made request for visuals of specified areas and also of particular dates. When PW144 was in box, during chief examination, the learned Special Public Prosecutor put a question that whether the police requested for the visuals of interview area. He replied that they requested for, but could not be given as the visuals were not available due to overwriting. Then the learned Special Public Prosecutor asked the reason for overwriting. PW144 deposed that the requirement of those cameras are more and hence, it requires much more resolution. He clarified that resolution means the clarity of capturing visuals. According to him, if there is more clarity, data requirement will also be more. Backup will be available for minimum days. Overwriting will be taken place. The outside cameras are also connected with the NVR of the cameras of interview area. So, the backup is less. All these visuals are stored in a hard disk having capacity of 64 GB. If this is taken, new hard disks has to be installed and that will affect the safety and security of jail. During cross-examination, he stated that the Circle Inspector of Kalamassery Police Station requested for visuals recordically. That document is available in jail. It is specifically

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

mentioned in the request regarding the places of which the visuals are required. That was not given to the investigating officer. He admitted that there are forty seven CCTVs in District Jail, Kakkanad and the visuals from those cameras are stored in NVR. NVR is a single device. He does not know how many hard disks are there in the NVR. He also stated that he is not in a position to say specifically about the cameras in which the visuals of visitors to prisons are available. He admitted that the CCTV cameras are available outside the gate of jail. The jail building situates 20 meters away from the gate. Cameras are available to capture the visuals covering this area. On verifying those cameras, it can be seen that who have visited the jail at a particular time. He stated that Superintendent assigned him with the duty to monitor CCTV. No such order is produced before the court. According to him, he was in charge of CCTV from 04.04.2017. But he stated that he has not monitored the CCTV visuals. He claimed that the charge of CCTV was given to him for maintenance and also to repair any complaints. He also admitted that there is camera installed inside the interview room, which situates near to the room of Welfare Officer. He further admitted that there is a grill and wire mesh

separating the prisoner and the visitor. They can see and converse through this wicket gate. But they cannot hand over any article. He stated specifically that if they want to hand over any items, that will be examined and verified by authorised Assistant Prison Officer and will be handed over if he permits. CCTV cameras are available in these areas also. The prisoners as well as visitors can be seen clearly through CCTV visuals. A question is put to him that whether he stated to the investigating officer that the investigating officer requested for the CCTV visuals of interview area of any of the days. He replied that it was not stated. He clarified that the investigating officer did not ask about these matters and that is why those matters are not stated to the investigating officer. He also admitted that the evidence deposed to by him regarding the resolution of CCTV visuals, its requirement and related matters including the overwriting are not stated to the investigating officer. He also admitted that the fact that outside cameras are connected to the NVR of the cameras of interview area and hence, backup is less is also not stated to the investigating officer. He also admitted that PW261 visited jail on several occasions prior to 04.07.2017. According to him, he had given

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

visuals to PW261 unofficially before 27.06.2017. He clarified that he could not give the entire visuals including the CCTV visuals of interview area of any of the days. Similarly, it is brought out that the evidence tendered by him regarding the overwriting of visuals and its non availability are also not stated to the investigating officer. He clarified that the investigating officer did not ask about these matters and the omission to state those things was for want of any question. He also admitted that the request dated 04.07.2017 was made after giving the visuals on 27.06.2017.

536. So, on an analysis of the evidence of PW144, it is seen that the evidence regarding the non-availability of visuals in the interview area and also the visuals of the gate and related area of jail due to overwriting is stated for the first time in this court. Similarly, though the request furnished by the investigating officer for visuals is available in the jail, the same is not produced. Had this request been produced, it could have been easily seen that the investigating officer atleast demanded for the visuals of the interview area and that is not available. Without producing any material, PW144 deposed about the non availability of the visuals of

interview area and also about its reason. It is a material omission considering the nature of allegations. Had these visuals are not been available, that would have been stated at that time itself and court is not the proper forum to state about the non availability for the first time. The learned counsel for defence argued that these visuals are intentionally suppressed as it is against the case of the prosecution that PW178 visited the jail on 10.04.2017. PW144 fairly admitted that the matters regarding the non availability of the visuals of the interview area and related matters are not stated to the investigating officer. The learned defence counsel argued that the file name, time of video and sequence of visuals in Exts.P148 and P153 are different for the dates 10.04.2017 and 12.04.2017. According to him, this would show that the visuals were edited. I have already held that Exts.P148 and P153 are not admissible and hence, this aspect need not be considered. So, the one and only evidence relied on by prosecution to prove that visuals of interview area are not available is the oral testimony of PW144. But, his evidence is affected with contradictions amounting to omissions with respect to material aspects and cannot be relied on. Another aspect is the evidence of



PW159 and PW144 regarding the handing over of articles to the prisoners. PW159 stated on one occasion that visitors cannot hand over any article to prisoners. But, later he changed his version and deposed that some visitors give articles directly and sometimes that may not be found a place in the register. He also stated that these types of entries need not be recorded in the register. Ext.P171 does not show the handing over of chappal to PW121 by PW178. But, during the evidence of PW159, he was confronted with the entries in Ext.P171. He was constrained to admit such endorsement in Ext.P171. There are entries in Ext.P171 dated 27.02.2017, 10.03.2017 and 07.03.2017 etc. showing the recording of the handing over of items in Ext.P171. Moreover, PW144 categorically stated that articles cannot be handed over by a visitor to prisoner. He also stated that it should be entrusted with the official, who is in charge. The official will examine the items and he will in-turn hand it over to the prisoners if it is a permissible items. This also stands against the contention of prosecution that PW178 handed over chappal to PW121.

537. The learned Special Public Prosecutor argued that Call Detail Record of PW176 and PW178 shows their presence within the tower

location covering the area of District Jail, Kakkanad. According to him, this would show their presence in the jail as asserted by the prosecution. The learned counsel for the accused put questions to PW121 and PW135 regarding the receipt of narcotic drugs and other items inside jail by throwing it over the compound wall. They stated that they heard about such practice. The defence put a suggestion that even if MO87 was there in jail, that was not reached there as claimed by the prosecution. PW135 Jinson deposed before the court that he heard about the fact that the prisoners will bring cigarettes and other similar items by hiding inside chappal. He also stated that narcotic drugs will also bring inside the jail adopting the same practice. He heard about this practice when he was in District Jail, Kakkanad. PW135 deposed that he opened the chappal with the knowledge that mobile phone is available in the chappal. But in his statement u/s.164 of Cr.P.C he stated that he was under the impression that beedi or like items will be there in the chappal and because of this impression he also assisted them to open the chappal. He admitted that he stated this fact before the Magistrate. But, before this court he deposed that the said statement is a false one. A question is put to him, whether he

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

stated this fact before Magistrate with the knowledge of its falsity and he replied that he does not remember. He further stated before the Magistrate that after opening the chappal, a cover was seen and he had seen a pack inside the chappal. PW121 also stated about this. The specific and definite case of the prosecution is that in the evening on 10.04.2017 PW178 reached the District Jail, Kakkanad as a visitor to PW121 and during the course of their meeting, PW178 handed over a mobile phone to PW121. The basic documents in jail to show the visit of an outsider to a prisoner is the visitors register and the said register pertaining to the visit of PW178 is proved to be as Ext.P171 through PW159 the Welfare Officer of the jail. On verification and a thorough scrutiny, somany corrections and interlineations in different ink are seen in Ext.P171 so as to show the visit of PW178 to PW121 in the evening on 10.04.2017. PW159, its custodian and jail welfare officer was unable to account for those corrections and interlineations. Ext.D39, certified copy of the relevant portion issued by PW159 would make it clear that those corrections were not there in Ext.P171 originally. The unintelligible explanation offered from the prosecution justifying those corrections and the interlineations is

unable to be swallowed without a pinch of salt. It is pertinent to be noted in view of the oral testimony of PW159 that the investigation team took PW171 and connected documents to their custody long before its official seizure. Though it is incumbent upon to obtain a copy of the seized document on its return or kaichit, it is an admitted position that return of Ext.P171 to PW159 was without obtaining its copy and the reason for such a course is not explained. Even though CCTV cameras are available at different points in the jail, including the entry gate, the visuals pertaining to the visit of PW178 on 10.04.2017 are not available and according to PW159, the welfare officer and PW144, the person in-charge of CCTV, the particular visuals are defaced by overwriting and it was due to technical reasons. The said explanation is also unintelligible. The jail rules and the prevailing practice prohibits handing over of anything to the prisoner directly and a direct dealing is impossible as the meeting is in the supervision of jail authorities.

538. The conclusion arrived at as above on an evaluation of the entire evidence on record would lead to the unimpeachable conclusions that the manipulations in Ext.P121 by correction and interlineation to



appear an entry showing the visit of PW178 to PW121 on the evening of 10.04.2017 was for the sole purpose of creating false evidence to support the prosecution case that there was such a visit and in that visit PW176 handed over a chappal inserting a mobile phone therein was handed over to PW121. The position being so therein, I have no hesitation to find that the prosecution has totally failed to prove that PW178 visited PW121 in the District Jail, Kakkanad and in the course of that meeting the former handed over a chappal with a mobile phone and SIM card inside. Considering the evidence available, it can be concluded that the prosecution failed to prove that PW178 came to the jail on 10.04.2017, met PW121 and handed over MO87 to him as claimed by the prosecution. The contentions raised by the defence that even if it is seen that mobile phone is available in the jail, the assertion of prosecution that it is reached there through PW176 and PW178 are untenable. This contention is to be discussed, though this court find that there is lack of evidence to prove the prosecution case, but considering the calls made on 10.04.2017 using MO87. The tower location at most show the presence of PW176 and PW178 in the premises of the tower location covering the area of District

Jail, Kakkanad. In the light of evidence available in court and also based on the discussions made hereinbefore, I am of the view that mere presence of PW176 and PW178 alone cannot be considered to prove that PW176 and PW178 went there to handover MO87 mobile phone to PW121. The evidence of PW135 regarding the practice of throwing articles over the compound wall show a chance of reaching the mobile phone inside the jail by resorting to this practice. Moreover, the evidence of PW121 and PW176 before the court is that when accused no.1 sought their assistance, they planned to bring the mobile phone by throwing it over the compound wall situates on the back side of jail and that can be collected using prisoners deputed for agricultural operations. PW121 specifically stated that though they decided to secure the mobile phone in this manner, that plan was abandoned later. They again decided to bring the phone with the assistance of any of officials. Since accused no.1 does not like the involvement of persons other than PW121 and PW176, this plan was also abandoned. Thereafter, accused no.1 himself put forward the present plan to bring the mobile phone by hiding it inside a chappal. This also probabilises the existence of different methods of bringing mobile phone

inside the jail. The case of the prosecution is that on receipt of Ext.P101 petition by PW202, he conducted investigation. He interrogated PW176 on 02.05.2017. This paved the way to the investigation with respect to the affairs allegedly happened inside the jail. The prosecution claimed that the statement of PW176 was recorded on 02.05.2017. It is true that PW176 denied the recording of his statement on 02.05.2017. Even if the contention of the prosecution is taken into account, not even a whisper is made by PW176 during his first interrogation allegedly conducted by PW201 about the use of mobile phone inside the jail and the related matters. The details regarding the use of mobile phone inside the jail and the involvement of PW178 and collection of SIM from PW119 etc. are claimed to be stated to PW261 only on 24.06.2017. Had the phone been given to the jail on 10.04.2017 as contended now, that would have been stated by PW176 at the time when he was interrogated by PW202 on 02.05.2017 itself.

539. Another contention of prosecution is that the chappal in which MO87 was put could not be seized in order to prove this aspect. When PW180 was examined, he deposed before the court about the

disposal of waste inside the jail. It is alleged that after taking MO87 out from the chappal, that was put in the waste basket. He deposed that search was conducted to find out the chappal, but that could not be traced out. Ext.P218 is the search list and he is the signatory to that. According to him, all the waste materials will be put in a sack and that will be taken by the Municipality.

540. PW124 is the cobbler, who allegedly stitched the chappal. He deposed before the court that one day a person involved in this case was brought to him by the police. He was interrogated about the identity of that person. According to him, he identified him as the person who came to him for stitching chappal. He also admitted that he had given Ext.P143 statement before the Judicial First Class Magistrate Court, Kakkanad. The interesting aspect is that his statement u/s.164 Cr.P.C was recorded on 19.09.2017. He stated specifically before the Magistrate that one day police came to him and showed a person. He could not identify him. But, at the very same time, the chappals stitched by him was shown to him on that day. He reiterated that the person who was sitting inside the jeep was not known to him. He had given the reason for non-identification also.



PW124 is cited to prove the fact that PW176 approached him and stitched the chappal. Even on 19.09.2017, he stated that the chappal was shown to him by the police. Of course, he denied it while giving evidence. This casts doubt in the assertion of prosecution that chappal was not seized. Whether the mobile reached inside the jail if reached, how the mobile came inside the jail are facts to be decided independently. Crime No.751/2017 of Infopark Police Station is registered in connection with the use of mobile phone inside the jail. The manner of bringing mobile phone inside the jail is a point to be decided in that case. Therefore that aspect is left open for consideration in the appropriate proceedings.

541. The case of the prosecution is that MO87 was recovered u/s.27 of the Indian Evidence Act from the residence of accused no.9 on the strength of Ext.P695 (a) confession. Ext.P695 is the mahazar prepared in connection with that. On that day MO86 phone was also seized from the residence of accused no.9 on the strength of Ext.P45 mahazar. It is seen that Ext.P695 and Ext.P45 were prepared on 23.06.2017. It is to be noted that MO87 was seized on the strength of confession of accused no.9. This mahazar was prepared at 12.30 p.m. Ext.P45 search list was prepared on

that day. It is claimed that at about 1.30 p.m. he conducted search in the house to know about the availability of phone containing the visuals of PW1. He seized one phone, which is marked as MO86. Ext.P45 was proved through PW68 attestor. Ext.P695 was proved through PW261. PW68 is not made as a witness in Ext.P695. One of the witnesses Mr Gopakumar in Ext.P45 is cited as a witness in Ext.P695. This witness was not examined. Moreover, the second witness in Ext.P695 is civil police officer Mr Anil Kumar P.K., a member of Special Investigation Team. The independent witnesses in Ext.P45 are not made as witnesses in Ext.P695. The common witness in both these Ext.P45 and Ext.P695 is given-up. The above discussions constrained me to arrive at a finding that the prosecution miserably failed to prove that MO87 phone was brought inside the jail by handing it over to PW121 by PW178 on 10.04.2017 evening at the instance of PW176.

542. Ext.P171 along with other records were produced before the court by the Superintendent of District Jail, Ernakulam on 21.01.2021. The case of the prosecution is that Ext.P171 was seized on 06.07.2017 by PW198 from PW159 and it was returned to PW159 on that day itself on

the strength of Ext.P173 kaichit. PW198 further stated that he has not taken any photocopies of the document. PW261 had gone to the extent of deposing that he had not even perused the document in his capacity as investigating officer. PW159, who is the then Welfare Officer of the jail cited as CW233 and CW234, then officer attached with the duty of interview and search duty on 10.04.2017 examined to prove the visit of PW178 to PW121 on 10.04.2017. The point to be proved through PW159 is noted as to identify the handwriting of PW121 in Ext.P122 and also to prove the interview register and phone register during that period. It is the case of the prosecution that PW159 handed it over. I have already discussed about his capacity to keep and maintain the interview register. Apart from that, it is to be noted that PW159 deposed before this court that he was the custodian of Ext.P171 and accordingly, it was produced before the police. According to PW159, he had given the certified copy of Ext.P171 to PW197 in connection with Crime No.751/2017 of Infopark Police Station. PW159 stated that he got transfer in October 2017 from District Jail, Kakkanad and he does not know about the entries additionally made in Ext.P171. The supplementary final report of this

case was submitted on 22.11.2017 before the Judicial First Class Magistrate Court Angamaly.

As per section Sub Section (5) of Section 173 Cr.P.C:- When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report;

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

Sub Section (6) says that:- If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

Sub Section (7) says that:- Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

543. It is mandatory that all documents or relevant extracts thereof, which the prosecution proposes to rely shall be given to the accused. If the documents are not served, that will cause prejudice to the accused. The purpose of furnishing documents to the accused ensures that

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

the accused is aware of the charges and the evidence against them allowing for a fair trial. The accused can use these documents to understand the prosecution case and build their own defence strategy. Further, Section 207 of the Code of Criminal Procedure mandates that the accused in a criminal case initiated based on a police report is entitled to receive free copies of documents from the Magistrate. These documents are crucial for the accused to prepare their defence.

544. In this case, though in the witness memorandum, witnesses were cited to prove the interview register on verification of records produced before the court, it is seen that those documents are not produced along with the final report. No permission is obtained by the investigating officer exempting them from the production of these documents. Further, as I pointed out, these documents were produced only during trial of this case in the year 2021. This document is not a document falls under the category affecting the public tranquility or security. These are not protected documents also. The learned counsel for the accused filed Crl.M.P.No.985/2018 before this court on 28.03.2018 seeking for a direction to the prosecution to furnish the documents to

them. They contented that the statutory right of an accused to obtain documents both provided during the investigation and those sent along with the final report cannot be defeated or eroded except in accordance with the law. It is to be noted that in Section 207(v) Cr.P.C, it is stated specifically that, any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173 shall be furnished to the accused free of cost. Proviso is added to this sub section and it says that: The Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused: Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

545. As I pointed out, no such direction is issued in this case. Moreover, the defence filed Crl.M.P.No.50/2018 on 15.01.2018 before the



committal court seeking a direction to the prosecution to forthwith furnish to the accused all the records mentioned in the petition. In this petition, serial no.63 is mentioned about interview register of District Jail, Kakkanad seized on 06.07.2017. On 02.02.2018 PW261 filed a report as reply to Crl.M.P.No.50/2018. It is stated in the report that they have already furnished copies to accused person along with final report. Since the accused filed petition claiming that some of the documents are not legible and some of the documents are not furnished to them, those documents are served to them as directed by the court. He also stated that except the documents affecting the privacy, all those documents are produced for the certificate of accused person. This Crl.M.P and report is filed as annexure to Crl.M.P.No.985/2018. Thereafter, on 07.02.2018, the learned counsel for accused no.8 again filed a statement stating that all the documents mentioned in the Crl.M.P.No.50/2018 are not served to them. It is specifically alleged that it is most respectfully submitted that none of the above documents are voluminous or capable of denial of any pretext or ground as contended by the prosecution. Moreover, the learned Special Public Prosecutor also filed objection in Crl.M.P.No.50/2018 on

22.01.2018, stating that since some of the documents which are either voluminous or which are affecting the privacy or reputation of the victim in this case, those cannot be given. Moreover, among the documents mentioned in the petition, they stated that six of the documents were already furnished. They have given copies of ninety three documents to the accused. Further, five documents are stated to be contained highly personal and private contents and cannot be furnished. The very same Prosecutor filed statement of objection in Crl.M.P.No.985/2018 on 11.07.2018. In paragraph no.35 of the objection, it is stated that the copies of the phone book, interview register, gate register, remand prison register, convict register etc. of District Jail, Kakkanad are not available with the investigating agency/prosecution. The relevant portions of the above documents are described in the mahazar and released the same document to the concerned on kaichit. Copies of the mahazars prepared for the above were already furnished to the petitioner. The one and only contention taken up by the prosecution is that these documents were released to the custodians on kaichit. It is the basic principle that whenever a document is released on kaichit, the photocopy should be





appended with the kaichit for future purposes. I have already discussed about those aspects. In this case, nothing is mentioned in the final report about the non supply of those documents to the accused. Even after filing the petitions, those documents are not furnished to the accused. Thereafter, during trial, the learned Special Public Prosecutor filed Crl.M.P.No.128/2021 before the trial court, praying to issue summons to summon the remand prison register, phone book, gate register, interview register, convict register and UT register which were returned on third party bond. In this petition, it is stated that the documents seized from jail as per mahazars had been returned to the custodian, Superintendent, District Jail, Kakkanad on third party bond. This averment is against the averment in Ext.P173 that the documents were returned to PW159 Welfare Officer. PW159 claimed that he is the custodian of the documents. The learned counsel for the defence relying on the rules of the Kerala Prisons Rules challenged this. But, he reiterated that he is the custodian. This averment in Crl.M.P.No.128/2021 regarding the custody of Ext.P171 supports the contention raised by the accused. In this petition, PW261 is the signatory. He filed this petition through the

Prosecutor. Moreover, this court had issued summons to the Superintendent, District Jail, Kakkanad for the production of those documents and in response to that summons, the Superintendent produced the documents before the court from his custody. Why the documents were not furnished to the accused is a fact to be considered. As I pointed out, it is not a protected or exempted one. Why these documents were not produced along with the final report is not explained and there is no justification for such non-production. It is true that the non-compliance of Sections 173(5) and (7) may not itself vitiate the trial. But, at the very same time, if the court is satisfied having regard to the manner in which the case has been conducted, the court has to see whether prejudice is caused to the accused or not. Considering the manner of producing Ext.P171 and also the forgery committed in the register, the non-production of that document along with the final report is fatal. The prosecution has not even ready to furnish it to the accused even after filing petition. The further investigation centered around the allegations regarding the events allegedly taken place in District Jail, Kakkanad. If

this be the situation, the non-furnishing of the relevant records relied on by the prosecution to prove these allegations are fatal.

546. **Whether there was calls from accused no.1 and PW176 to PW181 and those calls are suppressed by accused no.8 and PW181:-**

The prosecution case is that accused no.1, PW121 and PW176 were in C1 Cell in the District Jail, Kakkanad during March-April, 2017 and accused no.1 was in remand in connection with the sexual assault of PW1 in a moving vehicle. Accused no.1 disclosed to PW121 and PW176 that he humiliated and sexually assaulted PW1 on the basis of the direction of accused no.8 and in return, he promised money consideration. Accused no.1 further stated to them that accused no.8 has not performed as promised and he wanted their help to secure a mobile phone to contact accused no.8 and promised financial assistance to them. After his release on 23.03.2017 PW176 secured a mobile phone. He also went to the house of PW179, wife of accused no.8 for collecting the phone number of her or her father, but he could not succeed. After two days, he went to Laksyah and asked for the phone number of accused no.8, PW179 or her father to one Suneer, who was available there. As directed by PW121, through coinbox directed PW176 to contact PW181, a close associate of accused

no.8. Accordingly, PW176 collected the phone number of PW181 and introduced himself as the friend of accused no.1, expressed his desire to speak about the sensational case in which accused no.1 is in remand. PW181 asked the reason for contacting him and asked to contact accused no.8 himself. PW176 was prohibited at the time of his release on 23.03.2017 from entering the precincts of the jail for three months. On account of that prohibition, he entrusted the mobile phone inserted in a chappal with PW178 to hand it over to PW121 and accordingly, PW176 went to the jail as a visitor to PW121 in the afternoon of 10.04.2017 and handed over the chappel with the mobile phone inside to PW121. On the same day, accused no.1 contacted PW176 from that mobile and informed about the receipt of the mobile and also asked to contact PW181 immediately. To his call, PW181 replied that he is not in station. Later, PW181 contacted him from another phone and asked the reason for contacting him. The learned Special Public Prosecutor vehemently urged that accused no.8 has significant influence through direct contacts with key political figures such as Chief Minister of Kerala, Media Secretary to the Chief Minister, State Police Chief and other police officers and he was

DISTRICT AND SESSIONS COURT
ERNAKULAM

fully aware of the incident that occurred to the victim and more importantly, he was aware about the involvement of accused no.1. It is further urged that accused no.8 had lodged Ext.D18 series complaint and it was under the consideration of Deputy Commissioner of Police, Kochi City and there was communication between them on 13.03.2017. Pointing out this, the learned Special Public Prosecutor argued that accused no.8 was actively engaged in attempting to clarify his position regarding the case and on 22.02.2017 he made a declaration through facebook post and denied any acquaintance with accused no.1. In such a situation, it is expected from an ordinary human being that any call from an accused like accused no.1 would immediately raise concerns and prompt him to inform the police. According to the learned Special Public Prosecutor, since accused no.8 denied any association with accused no.1 and then, the calls received from accused no.1 should have heightened the importance of the calls leading to an immediate report to the authorities. When a person receives such dangerous calls from accused no.1, who is lodged in jail, especially in a case like this, he will definitely report it immediately to the authorities, if he is not having any connection with the crime or accused

no.1. It is also urged that Ext.P101 petition is filed on 18.04.2017 after making sure that he is not arraigned as accused. It is also argued that the said attempt of accused no.8 was to create an impression that he has no connection whatsoever with the crime in which accused no.1 is behind the bars and conceal his involvement. PW181 received calls from accused no.1 on 10.04.2017. He informed this fact immediately to accused no.8. Both of them surprisingly failed to report these calls to any lawful authority. It is alleged that in order to manipulate a situation that he contacted the Director General of Police, a 13 seconds call is made to him. According to the learned Special Public Prosecutor, it is sure and certain that accused no.8 not even mentioned about the call of accused no.1 from jail to DGP because had it been atleast mentioned, the case in which accused no.1 is in jail being a sensational one he would have taken immediate action by informing his subordinates to cross-check the same. It is the duty of accused no.8 to convince the court that actually within 13 seconds, he has informed the DGP about the events. It is further submitted that the conversation between PW176 and PW181 would also show that there was reference about the call made by accused no.1 from jail. Relying on the



above submission, the learned Special Public Prosecutor vehemently argued that accused no.8 and PW181 intentionally suppressed the calls from accused no.1 as they know that if it is reported, their involvement would be revealed.

547. The learned counsel for accused no.8, on the other hand, submitted that it is improper on the part of the learned Special Public Prosecutor to make dishonest and false statements contrary to the evidence on record. It is also submitted that the arguments advanced in the argument note are without any basis. According to him, the evidence available would show that accused no.8 has reported the calls or any movement pointed against him then and there to the police officers of highest rank. It is further argued that in addition to the communications made to the DGP, he had given written complaints whenever it was required. According to the counsel, Ext.D18 series were given on 22.02.2017 on the basis of media reports alleging involvement of accused no.8. This also has led to the facebook post on 22.02.2017. It is also submitted that at that time, accused no.1 was not arrested. Had there been any conspiracy between accused nos.1 and 8, such facebook post would

not have been published demanding maximum punishment for accused no.1 and other accused persons. The learned counsel further argued that Ext.P101 petition was also filed then and there consequent to the phone calls received by PW181 on 10.04.2017 and also the receipt of copy of Ext.P122 in the WhatsApp of PW191 on 18.04.2017.

548. The rival claims and contentions of either side are to be considered. The incident was allegedly took place in the night of 17.02.2017. Ext.P1 was given in the eve hours of 18.02.2017. Ext.P1(a) was registered around noon on 18.02.2017. Admittedly, accused no.8 participated in the protest meeting organised by the film actors in Durbar Hall Ground on 19.02.2017. It is also an admitted fact that some of the prominent Malayalam film actors and actresses delivered speech in that meeting. The contention advanced by learned counsel for defence is that the former wife of accused no.8 during her speech alleged criminal conspiracy in the commission of offence against PW1. This resulted in reports in the media pointing out the involvement of accused no.8 under the caption "a prominent actor from Aluva". Thereafter, on 22.02.2017 accused no.8 published the facebook post. It is to be noted that Ext.D18

series complaint was filed on 27.02.2017 before the Director General of Police, Kerala. On 28.02.2017 itself the DGP forwarded the petition to the Deputy Commissioner of Police, Kochi city for taking necessary action. In Ext.D18 series petition it is specifically mentioned that from 20.02.2017 onwards stories were published in a section of media distally and even openly alleging that accused no.8 is involved in the criminal offences committed against the actresses. It is stated in the petition that accused no.8 has other reasons to believe that such an allegation was fabricated purposefully, maliciously and fraudulently by a group of persons having vested interest against him. He also referred to about the involvement of Mr. Liberty Basheer, the President of the Kerala Film Exhibitors Federation in fabricating propaganda against him. In the petition, the news items reported in somany medias including online portals are referred to. Further, the printouts of these news items were attached along with the petition. It is to be noted that Ext.D18 series petition and the attachments were proved at the instance of accused no.8. Though this was produced before the court along with the supplementary final report, that was not tendered in evidence from the prosecution side. The learned

counsel for the accused submitted that the non marking of this document by the prosecution itself would show their malafied intention. According to him, had there been any truth in these allegations, accused no.8 would not have produced or filed Ext.D18 complaint before the highest police officials requesting investigation. The non-marking of those documents by the prosecution shows their deliberate attempt to suppress the actual facts and material evidence favourable to the defence. As I pointed out, Ext.D18 series was filed on 22.02.2017, that is, within five days of the alleged commission of offence. In Ext.D18, the reasons for raising allegations against accused no.8 and also about the persons are narrated in detail. Somany materials were also attached with Ext.D18 petition. Though the Deputy Commissioner of Police was directed to take necessary action, the court is put in dark as to what was happened thereafter. Therefore, it can be concluded that this petition was given to police immediately after the crime against PW1. However, the surprising argument taken-up by the learned Special Public Prosecutor is that there was communication between accused no.8 and Deputy Commissioner of

Police on 13.03.2017 and thereby accused no.8 was actively engaged in attempting to clarify his position regarding the case.

549. In page no.242 of the argument note, the learned Special Public Prosecutor submitted that on 14.03.2017 also there was communication between accused no.8 and the Deputy Commissioner of Police. It is alleged that no records are produced before the court to show about the actions taken by the Deputy Commissioner of Police in pursuance to Ext.D18 petition. The evidence of PW193 has to be considered at this juncture. PW193 is a Sub Inspector of Police and according to him, he worked as civil police officer in Cyber Cell, Kochi. According to him, Ext.D18 petition along with the annexures were received in the office of the Deputy Commissioner of Police from the State Police Chief. He was also a member of the investigation team. He verified the petition and also the annexures including case diary. Since the allegations are of the nature of non-cognizable offences, petitioner had been directed to approach civil court. According to him, the Deputy Commissioner of Police had given such a direction. Ext.D18 series were seized by the investigating officer on the strength of mahazar. PW193

produced it before the investigating officer. During cross-examination, he admitted that he verified the veracity of the attachments of Ext.D18 in his capacity as the member of Cyber Cell. He has not participated in the investigation. He added further that he verified the news items produced along with Ext.D18. It is also brought out that he had no direct knowledge about the alleged direction of the Deputy Commissioner of Police that since the allegations are in the nature of non-cognizable offences, accused no.8 had been directed to approach the civil court. He also admitted that this is stated before the court for the first time. Except his oral testimony, no material is placed before the court to show what happened to the investigation allegedly took over by the Deputy Commissioner of Police, Cochin as directed by the State Police Chief. The averments in Ext.D18 will explicitly disprove the claim of PW193 that the allegations are of the nature of non-cognizable offences. Why the police failed to comply with the direction of State Police Chief or if it is complied, what was the result are also remaining blank. Moreover, it is to be noted that PW193 is incompetent to say about the matters in connection with Ext.D18 as admittedly he was not taken part in the



investigation. Though this petition was given before filing the first final report on 18.04.2017, no investigation was conducted. Further, PW261 admitted that he has also not investigated about the contents of Ext.D18 series.

550. As far as Ext.P101 petition is concerned, as I pointed out hereinbefore, the learned Special Public Prosecutor repeatedly argued that it was filed by accused no.8 with an intention to fabricate evidence. The prosecution allegation is that MO87 phone was reached inside the jail on 10.04.2017. On that day itself, accused no.1 contacted PW181 through that as part of their attempt to squeeze money from accused no.8. The Call Detail Records of Ext.P62 of Ext.P46 SIM is produced for the period from 10.04.2017 till 13.04.2017. I have already discussed about the three CDRs available before this court with respect to Ext.P46 including Ext.P62. The CDRs would show the alleged call on 10.04.2017 from the mobile number 8807339249 to mobile phone number of PW181. It is seen that on 10.04.2017 at 20:04:27 hours and 20:21:53 hours, two calls were made to mobile number 9567000000. These two calls were having a duration of 36 seconds and 147 seconds respectively. The learned Special

Public Prosecutor relying on the CDR of accused no.8 argued that immediately on receipt of these two calls, PW181 informed accused no.8 about the calls from accused no.1, who was lodged in jail. This shows the nature of the acquaintance and relationship between accused nos.1 and 8. Had this been reported to the police then and there, the caller could have been located and booked without any delay. Accused no.8 purposefully refrained from reporting about the calls knowing very well that identification and location of the caller would be detrimental to him. The learned counsel for the accused no.8 whereas refuted these arguments asserting that the receipt of these calls were informed to the Director General of Police then and there. The CDR itself would prove this fact. It is further asserted that the learned Special Public Prosecutor intentionally suppressed the actual facts regarding the telephone calls between accused no.8 and the State Police Chief on 10.04.2017. The counsel also argued that the learned Special Public Prosecutor deliberately avoided even in his argument note about the second call between accused no.8 and the Director General of Police. On the other hand, so as to create a false impression, they had relied on the call which was having shortest duration

and asserted that it is impossible to communicate about these calls to the Director General of Police within this short time. The learned Special Public Prosecutor further argued that this was intentionally created by accused no.8 so as to fabricate evidence. In page no.237 of the argument note, all these allegations were stated by the learned Special Public Prosecutor. As rightly pointed out by the learned defence counsel, not even a whisper is made about the second call between accused no.8 and Director General of Police on 10.04.2017 in the argument note, which was having the longest duration. Why this fact was suppressed assumes relevance. Ext.P233 series are the CDRs of mobile number of accused no.8 9895151111. Evidence is brought out before this court that 9654409230 is the personal mobile number of the then DGP Mr. Lokanath Behera. Accused no.8 from his mobile number 9895151111 contacted to 9654409230 on 10.04.2017 at 21:57:06 hours. This call was for 13 seconds. It is highlighted by the learned Special Public Prosecutor and argued that it is impossible to reveal the matters regarding the phone call from accused no.1 to PW181 within that much of time. But, it is pertinent to note that on that day at 22:10:30 hours, accused no.8 received

a call from the DGP from his mobile number 9654409230. The call duration was for 68 seconds. This is cunningly left untouched in the argument note.

551. Apart from the suppression of the call received from the DGP to accused no.8 on 10.04.2017, the evidence received in this court on examination of the mobile phone of accused no.8 in the Forensic Science Laboratory is also suppressed by the prosecution. The evidence so received would show that accused no.8 collected the e-mail address of the State Police Chief himself on 22.02.2017. Accused no.8 sent complaint to the State Police Chief on 24.02.2017 through e-mail. The evidence of PW127 also fortified this aspect. Moreover, PW192, who examined the mobile phone in the Forensic Science Laboratory also deposed about this fact. Ext.D18 series petition was given to the DGP thereafter. Ext.P227(a) FSL report would show the above transactions regarding the collection of e-mail address from the DGP. Similarly, there is no dispute to the fact that Ext.D18 series petition was forwarded to the then DCP, Kochi for taking necessary action. The DCP, Kochi was also a member of the Special Investigation Team. The learned Special Public Prosecutor had



given much reliance to the calls between accused no.8 and the DCP on 13.03.2017 and 14.03.2017 and asserted that he failed to inform the DCP about the calls received from accused no.1. The factual interconnection in this submission is already pointed out earlier. At the very same time, as far as these communications are also concerned, it is to be noted that DCP on 13.03.2017 contacted accused no.8. It is true that accused no.8 contacted DCP on 13.03.2017 at 21:50:15 hours. This call was made in continuation of the SMS received from the DCP on that day at 18:45:39 hours. This fact is also not found a place in the argument note. It is true that the prosecution may advance an argument that the entire materials collected are produced before the court and the FSL reports and like documents are voluminous in nature. The prosecution placed reliance only on materials which are suitable for advancing argument in the manner mentioned in the argument note. It is seen that the entire transactions with respect to a particular communication are not relied on. It is to be noted that as far as the communications between DGP and DCP Kochi with accused no.8 is concerned, only those portions favourable to the prosecution alone is highlighted. This practice cannot

be encouraged because the duty of the court is to analyze the entire evidence and arrive at a just finding with respect to the point to be decided.

552. One of the allegations of the prosecution is that accused no.8 suppressed the calls to PW181 in connection with the humiliation and sexual assault of PW1. The evidence of PW181 is to be appreciated. PW181 deposed that on 10.04.2017, he went to Bangalore through Nedumbassery Airport. PW55 also accompanied him. A specific question is put to him by the learned Special Public Prosecutor that, has he received a call from accused no.1 lodged inside jail on 10.04.2017 at 08:04 hours, to which he answered in the negative. Another question is put to him that accused no.1 called him and both of them have had conversation lasting 136 seconds. He also denied it. Another question is put to him that accused no.1 again contacted him at 8.21 p.m from jail and both of them exchanged conversation for 147 seconds. He emphatically denied it. He also added that no person with name Sunil Kumar contacted him. Referring his Call Detail Records, the learned Special Public Prosecutor put another question that the receipt of these calls could be seen from the



CDR. He replied that, call might have been received, but nobody by name Sunil contacted him. Specific questions were put to him that he suppressed the fact that Sunil contacted him, but he denied. He admitted that accused no.8 contacted him on that day at 8.29 pm. According to him, he received two calls while waiting in the Nedumbassery Airport. Accused no.8 was referred to in those calls. In order to inform that fact to accused no.8, he contacted him. But, accused no.8 was not available. Thereafter, Dileep called back him. Somany questions were put to him suggesting that he had knowledge about the person who made those calls. He denied all those suggestions. A question is put to him, whether he considered the calls are important as far as this case is concerned. He replied that he felt that those calls were intended to trap accused no.8. According to PW181, immediately after the first call of accused no.8 to him, he boarded the flight. He also stated that there is acquaintance between the DGP and accused no.8. He further stated that Dileep contacted the DGP and at that time the DGP informed him that he was attending a meeting. The DGP directed accused no.8 to record the calls. Accused no.8 communicated this to him. Another suggestion is put to him

that no such instruction was given by the DGP. PW181 denied it and also added that nothing false will be deposed against a higher official such as Director General of Police. According to him, after landing at Bangalore Airport, he received a call from accused no.8 having a duration of 392 seconds. Accused no.8 informed him that the DGP directed to record the calls if the person contacted PW181 at Nedumbassery Airport called him again. Ext.P62 CDR would show that on 10.04.2017 at 22:13:41 hours PW181 received a call from Ext.P46 SIM in MO87. This was a duration of 184 seconds. PW181 admitted the receipt of that call. According to him, since his mobile phone has no facility to record the calls, he informed him that he will call back him. He also added that he was engaged in the collection of baggage and hence, the said call was not disconnected. A suggestion is put to him that he intentionally avoided the recording of this call as, had these calls were been recorded, that would have reveal the relationship between accused nos.1 and 8. Another suggestion is put to him that had accused no.1 informed him that PW176 Vishnu will contact him and he answered in the negative thereto. Suggestions put to him by the learned Special Public Prosecutor that he had knowledge about the

DISTRICT AND SESSIONS COURT ERNAKULAM

person who made the call and alleged conversations were denied by him. The learned Special Public Prosecutor relying on the above evidence argued that accused no.8 and PW181 had clear knowledge that the calls were from accused no.1. It is to be noted that accused no.1 was in jail. In the ordinary course, nobody can presume a call from a person lodged in jail. Prosecution has no case that either PW181 or accused no.8 had knowledge about the alleged handing over of MO87 phone with Ext.P46 SIM to accused no.1 through PW121 on 10.04.2017. The prosecution claimed that accused no.1 disclosed his identity to PW181. PW181 though admitted the receipt of call, he denied the identity of the person and also the alleged contents of conversation.

553. The case of accused no.8 is that on 16.04.2017, he along with the DGP attended the switch-on ceremony of a Malayalam movie at Trivandrum. Mr. Lokanath Behera, the then DGP was the chief guest of that function. According to the defence, on that day also he informed the DGP about the receipt of calls on 10.04.2017. It is further stated that DGP asked him to give a petition in writing. It is also stated that in the meantime, on 18.04.2017 PW191 received the copy of Ext.P122 letter

through WhatsApp. This led to the lodging of Ext.P101 letter to DGP. The contention advanced by learned Special Public Prosecutor is that Ext.P101 was given after filing the first final report on 17.04.2017. He also added that accused no.8 made sure that he was not arraigned as an accused in the first final report and later this petition was given so as to create a false impression among the public. The cardinal point to be noted is that throughout the proceedings, the prosecution as well as the investigating officer have taken a stand that the final report was filed on 17.04.2017. On verification of records, it is seen that the final report was filed only on 18.04.2017. Though they have taken up a stand that the final report was filed on 17.04.2017, they have later constrained to accept the fact that the final report was filed only on 18.04.2017. So, the contention that after the filing of final report on 17.04.2017, accused no.8 filed the petition will not stand even for a moment. At the very same time, it is to be noted that on 18.04.2017 the copy of Ext.P122 was received by PW181. Moreover, the call recordings of the calls received from PW176 to PW181 were sent to the personal mobile number of the DGP on 18.04.2017.

554. PW157 is examined to prove this point. PW157 was working as Police Inspector holding the charge of Hitech Crime Enquiry Cell of headquarters during 2017. According to him, Hitech Cell was under the direct control of the Director General of Police. His duty is to verify the cyber related complaints to officials of headquarters and also to submit it before the officers. On 06.11.2017 he handed over the voice clips received on 18.04.2017 from the mobile no.9895151111 to the investigating officer. He copied those voice clips in a CD. The investigating officer seized the CD on the strength of mahazar. The investigating officer verified the voice clips and heard it. According to him, since the personal mobile phone of the DGP was an i-phone, the messages could not be retrieved using computer. He retrieved it from the personal space 'i-cloud' as directed by the DGP. The username and password of 'i-cloud' of DGP was furnished by him. The CD containing the said voice clips is marked as Ext.P164 and Section 65B Certificate as Ext.P164(a). Though the defence challenged Exts.P164 and P164(a) certificates, it is brought out that these messages were received on 18.04.2017 at 1.05 p.m. So, it can be seen that these messages were forwarded to the DGP without

understanding anything about the final report including his absence in the array of accused.

555. Similarly, the evidence of PW127 is that he has acquaintance with the then State Police Chief Mr. Lokanath Behera. Both of them are residing in the neighborhood. He used to meet him in connection with official affairs. He also stated that Dileep is also maintaining such kind of relationship with the Director General of Police. According to him, on 16.04.2017, he attended the switch-on ceremony of a Malayalam movie at Poojapura Ground, Trivandrum. The DGP was also there. Accused no.8 was seen conversing with the DGP. The DGP asked him to file a petition. Thereafter, on 21.04.2017 when he was in Ernakulam, Dileep contacted him over phone. He was the Secretary of Producers Association and came to the office of that association in Ernakulam. Dileep asked him to collect a letter from the reception of the hotel 'Travancore Court'. He also stated him to collect the letter and hand it over to DGP. He had been further requested to make arrangements to talk with DGP when the letter was being given to DGP. He went to the office of DGP on 22.04.2017 and handed over the letter to DGP on that day itself. He further stated that



this letter was given as directed by DGP on 16.04.2017 during the switch on ceremony of a Malayalam movie at Trivandrum. A suggestion is put to him that since the final report was given on 17th, he is lying before the court so as to create an impression that accused no.8 made complaint to DGP atleast a day before the filing of final report. He submitted that he does not have any knowledge about the filing of final report. He clarified that DGP spent a pretty long time in the shooting of the movie on 16.04.2017. Again, a question is put to him that on getting knowledge that accused no.8 was not arraigned as an accused in the final report filed on 17.04.2017 he praised the police, which was denied by him. As I pointed out, the prosecution has taken up a stand that the final report was filed on 17.04.2017 and that itself is factually wrong. PW127 stated that his friend Dy.S.P Rajkumar is working in the office of DGP. Since Mr. Dileep conveyed about the urgency, he contacted Mr. Rajkumar. Mr. Rajkumar informed him about the availability of DGP and he accordingly, proceeded to meet DGP. DGP received the letter. Though he tried to contact accused No. 8, he was not available. The DGP verified the petition. Accused no.8 called back him after some time. Accused no.8

informed him that he will call DGP. Though a suggestion is put to him that he is giving evidence as tutored for and on behalf of accused no.8, his answer was in the negative. He replied that he stated about the matters personally dealt with by him. He also stated that DGP made some endorsement in that letter. DGP also gave the phone numbers mentioned in the letter to the police officials. He identified Ext.P101 also. During cross-examination, he reiterated the very same averments deposed in the chief examination. He also stated in cross-examination that Ext.D18 series were also given to the DGP. Nothing is there to disbelieve the testimony of PW127. The evidence of PW127 and PW157 would conclusively show that even before the filing of final report on 18.04.2017, accused no.8 contacted the DGP and forwarded the recorded voice clips of the conversation between PW181 and PW176.

556. It is to be noted that Ext.P101 bears the date 20.04.2017. The endorsement made thereon by the DGP bears the date 22.04.2017. The evidence of PW127 is that accused no.8 called him on 21.04.2017 and asked to collect the letter from a hotel in Ernakulam. So, it can be seen that, Ext.P101 was in existence atleast on 21.04.2017. Moreover, evidence

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

is available on record to show that Ext.P101 was made to the DGP on 20.04.2017. So, the evidence on record would show that atleast on 16.04.2017, accused no.8 communicated to the State Police Chief. Similarly, there is oral testimony of PW127 before the court that Ext.P101 was lodged as directed by the DGP. Moreover, Ext.P233 calls between accused no.8 and the DGP on 10.04.2017 would also probabilise the contention of accused no.8 that he contacted the DGP then and there. The learned Special Public Prosecutor by suppressing the second call from DGP to accused no.8 argued that it is impossible to convey these matters during this short period. Why the contention is taken-up excluding the second call from DGP to accused no.8 is to be looked into. Moreover, the forwarding of recorded voice clips will also probabilise the contention of the accused that the fact was communicated to the DGP on 10.04.2017 and again on 16.04.2017. The learned Special Public Prosecutor argued that it is the duty of the accused to convince the court that actually within 13 seconds he has informed the DGP that his friend PW181 received recurrently, calls from jail from accused no.1 who was a notorious criminal involved in the master sexual crime at that time. It is to be noted

that all these averments were made suppressing the second call from the DGP to accused no.8. Moreover, the investigating officer had seized the recorded phone calls forwarded to the DGP by accused no.8. Even in the bail application, which is marked as the Ext.P742 series, this contention was taken up by accused no. 8. The DGP being the highest official in the State, this fact could have been interrogated.

557. Another argument raised by the learned Special Public Prosecutor in page no.242 of the argument note is that accused no.8 had conversation with the Deputy Commissioner of Police on 13.03.2017 and 14.03.2017. He failed to report the calls from accused no.1 Sunil to DCP during those conversation. How these calls which were allegedly made on 10.04.2017 be informed to the DCP, during the calls between accused no.8 and DCP made on 13.03.2017 and 14.03.2017.

558. The next contention taken-up by the learned Special Public Prosecutor is that though accused no.8 filed Ext.P101 petition, he cunningly and crookedly suppressed the material datas from the petition so as to avoid a proper investigation. Let us consider the averments in Ext.P101. It is averred in Ext.P101(a) petition that **"My friend and**



Malayalam movie director Mr.Nadirshaccused no.8 has received a phone call on his mobile by addressing someone talking on behalf of the film actress abduction case culprit Pulsor Suni. He was trying and asking for financial gain or else threatened to connect me to in this case. The voice clip has been recorded by Mr. Nadirshaccused no.8 and the concerned mobile number also noted down. The call came from one Mr.Vishnu says he is a friend of Pulsor Suni and the mobile number is 9645307437. On 18/04/2017 my personal driver Mr.Sunil Raj alias Appunni has received a letter by Whats-app on his mobile. It was a letter with an official Govt stamp on top and supposed to be written by Pulsor Suni by asking two crore rupees from me or else he indicates to threaten by adding me to in this case and spoil my hard earned public image with the help of his gang. The photocopy of the same is attached herewith relevant mobile number details". Even on a plain reading of Ext.P101 letter, it is seen that the telephone calls to PW181 from 10.04.2017 upto the receipt of letter through WhatsApp by PW176 are mentioned in detail. Moreover, as rightly contented by the learned defence counsel, the name of police station is mentioned twice in this letter. Above all, the copy of the letter, which is referred to in the petition is appended therewith. Further, the screenshot of mobile number 8807339249 showing the receipt of call is

also produced along with Ext.P101. Further, the mobile number of Vishnu is also stated in the petition. All these matters are described in a crystal clear manner. The details are also mentioned therein. Despite all these details, the learned Special Public Prosecutor argued that accused no.8 suppressed the involvement of accused no.1 in Ext.P101. This contention is utter false. It is repeatedly mentioned in the argument note that neither PW181 Nadirsha nor accused no.8 ever reported about these calls to any lawful authority except making a 13 seconds call record with the DGP. As I pointed out, it is asserted that accused no.8 made this particular call with an intention to fabricate evidence and create an impression that he has nothing to do with the attack on PW1 in a moving vehicle. The call received from the DGP to accused no.8 itself will expose the falsity of this assertion.

559. The State Police Chief forwarded the complaint to Additional Director General of Police (South Zone) and I.G of Police (CBCID) (North Zone) for necessary action and report within three days. It is the contention of the prosecution that this letter was forwarded to PW202 and it was received on 01.05.2017. They interrogated PW176 on

02.05.2017 and recorded his statement. As I pointed out, nothing is there in the statement produced before this court to show that PW176 stated about the use of mobile phone inside the jail on 02.05.2017. The contention of the prosecution is that this letter was received on 22.04.2017. The so-called interrogation by PW202 was on 02.05.2017, after a gap of 10 days. Even after furnishing the mobile numbers from which the calls were received by PW181, the prosecution did not make any move for conducting investigation with respect to these mobile numbers. What prevented them from conducting investigation about these phone numbers, atleast on 02.05.2017. Even after getting the full details of the phone numbers, the prosecution kept mum. It is seen that in order to cover-up this, the learned Special Public Prosecutor raised a contention that had it been reported by accused no.8 with the calls from accused no.1, it would have been investigated. The investigating officer could have been located the tower locations and calls very well using the mobile number. That was not done. The Call Detail Record of Ext.P46 produced before this court by accused no.8 would show that this particular phone was in use during this relevant period also. No attempt

was made by the prosecution. Moreover, Ext.P101 was forwarded to the ADGP (South Zone) and I.G of Police (CBCID)(North Zone) with a direction to report within three days. No report was given as directed by the State Police Chief. The ADGP (South Zone) was the head of the Special Investigation Team. The averments in Ext.P101 would show that the allegations are with respect to the matters involved in this case. Why didn't they conduct any investigation or file report as directed by the highest police official in the State assumes relevance. This was not explained. Moreover, the letter which is marked as Ext.P122 was also attached with the petition. The prosecution has given much more reliance to the averments in Ext.P122 to prove the involvement of accused no.8 in this case. Admittedly, this was also received on 22.04.2017 along with the petition. Why didn't they conduct any investigation. The case of the prosecution is that PW202 contacted PW6, the brother of PW1 to inform about the filing of final report on 21.04.2017. It is stated that PW6 asked specifically whether they conducted investigation about the involvement of accused no.8 in this case. Ext.P101 was received on the next day. The prosecution now claimed that the enquiry of PW6 about involvement of



accused no.8 prompted the further investigation. Had this been the situation, they would have been taken into Ext.P122 into account on 22.04.2017 itself and conducted investigation. That was also not done.

560. The Director General of Police forwarded Ext.P101(a) to the Additional Director General of Police(South Zone) and I.G of Police (CBCID)(North Zone) on 22.04.2017 itself. Thereafter, nothing is there in Ext.P101(a) to show that this was received in any of these offices and also in the office of PW202. Moreover, the prosecution has no case that the DGP forwarded the copy directly to PW202. As I pointed out, the Additional Director General of Police Smt. B. Sandhya IPS was the head of the Special Investigation Team. What was the action taken up as per the direction of DGP is not seen. Unless and until any direction is issued from any of the officers to whom Ext.P101 was marked, PW202 would not have received and proceeded with investigation as claimed by them. That is absent in Ext.P101(a) copy. Further, no covering letter showing forwarding or directions from the officers marked in Ext.P101 is also not available. The most interesting aspect is that Ext.P452 is the report filed before the court by PW202 informing the court that further investigation

is going on. This report was filed on 18.05.2017. In this report also it is falsely stated that the final report was filed on 17.04.2017, whereas it was actually filed on 18.04.2017. As far as the contentions of prosecution are concerned, the date of filing of final report before the court also assumes relevance. Ext.P452 is silent about the receipt of Ext.P101. It is the case of the prosecution that after receiving Ext.P101, they interrogated PW176 on 02.05.2017. No whisper is seen made in Ext.P452 filed after around one and half months of the alleged receipt of Ext.P101. On a careful analysis of Ext.D18 series and Ext.P101, it is seen that the allegations contained therein and the chronological events mentioned are later became the allegations of prosecution against accused no.8. All these allegations lead to the further investigation and filing of supplementary final report on 22.11.2017. Had the copy of Ext.P101 been received as claimed by prosecution on 01.05.2017, that should have definitely been appended with Ext.P452. That is not seen appended. This also cast doubt in the prosecution contention that Ext.P101(a) was received on 01.05.2017 by PW202.



561. The evidence of PW202 before this court is that on 01.05.2017 he received the petition of accused no.8 to DGP with a direction "'you are directed to examine and report". Ext.P101 was identified by this witness as the copy received by him with the above direction. On the strength of the investigation conducted after the receipt of Ext.P101(a) he recorded the statement of PW176. Thereafter, he seized Ext.P122 on 04.05.2017 on the strength of Ext.P449 mahazar. So, from the evidence of PW202 it is seen that the copy of Ext.P101 received by him contains the endorsement. But, no such endorsement is seen available in Ext.P101. As I stated, the averment in Ext.P101(b) Form-15 is also against the endorsement in Ext.P101(a). As far as the evidence of PW261 is concerned, what he deposed is that the copy of Ext.P101 was received by PW202. According to him, this was received on 01.05.2017. The interesting aspect is that this evidence was not adduced during chief examination. During chief examination what PW261 deposed is that on verification of the copy of Ext.P101 it is learned that accused no.8 suppressed many vital informations from the petition and accordingly, it is produced before the court. But, this evidence is against the point claimed to be proved in

Ext.P101(b). PW261 tried to clarify by stating that the entire aspects were not stated in Ext.P101(b). He consistently stated that somany vital informations were suppressed from Ext.P101(b). He also stated that the averment in Ext.P101(b) that the copy of Ext.P101 was stated to be received from the Director General of Police is a mistake. This evidence is against the testimony of PW202. What PW202 deposed is that the petition was received by him with a direction to examine and report. He has not stated anything about the person from whom he received the copy. He was questioned by the learned counsel for the accused that has he filed any report to the effect that the verification of Ext.P101 and Ext.P101(a) disclose the suppression of vital parts on the side of accused no.8. He admitted that no such report is filed. At the very same time, he had given another explanation that somany other documents were produced. According to him, the statement of witnesses, phone conversations, CDRs and Ext.P122 would substantiate this fact. Again, he was confronted by the learned counsel for defence that his claim is incorrect. Then PW261 submitted another version that the relationship between accused nos.1 and 8 was intentionally suppressed by both

accused nos.1 and 8 in Ext.P101. A definite suggestion is put to PW261 by the learned counsel for defence that in order to cover-up his inability to give answers properly, he is giving false explanations. Then the investigating officer added that though accused no.8 realised that the call was from accused no.1, who was inside the jail, that was excluded from Ext.P101. It is seen that sufficient material is available there to identify the number from which the said call is received and consequentially the person who made the call also. PW202 admitted that no endorsement is seen in Ext.P101(a) to show that the copy was forwarded to PW202. He again clarified that the copy forwarded to PW202 was available in the case diary, but that was not produced before the court on 24.06.2017. But, he admitted further that nothing is there in Ext.P101 to show the date when it was received in the office of the Special Investigation Team. PW261 again stated that since the copy was received by PW202 he conducted investigation and collected Ext.P122. As I discussed earlier, PW176 denied the recording of his statement on 02.05.2017 as claimed by the prosecution. PW261 deposed that Ext.P101(a) was received from IGP (Crimes) and ADGP (South Zone). PW202 thereafter conducted initial

investigation and filed report to IGP (Crimes). He was confronted with Ext.P101(a) and he admitted that it does not contain any endorsement or initial to show that PW202 received it either from ADGP (South Zone) and I.G of Police (CBCID)(North Zone). The witness added that it is seen from records that the petition was forwarded through official e-mail ID. He categorically admitted that nothing in this regard was recorded in Ext.P101(b). He also admitted that nothing is there in Ext.P101(a) to show that it was seen by PW202 or received by him.

562. The evidence of PW261 about Ext.D18 series also assume relevance. He deposed that he questioned Sreekumar Menon and made as a witness in this case. He also interrogated Liberty Basheer. These two persons are referred to in Ext.D18 petition as the persons who were propagating allegations against accused no.8. The learned counsel for accused no.8 put a question about the publication by name 'DNA'. According to them, the report against accused no.8 was reported for the first time in the publication 'DNA' and 'Filmibeat. He replied that no investigation was conducted about this. But, at the very same time, he stated that he conducted investigation about the enmity alleged by



accused no.8 with Sreekumar Menon and Liberty Basheer and found that it was incorrect. As I pointed out, the allegations in Ext.P101 and Ext.D18 series are raised by prosecution against accused no.8 in the supplementary final report and that became the basis for accusations against him also. Even then, the prosecution failed to adduce Ext.D18 in evidence. Even though it was produced before the court, why did not they put forward it in evidencing atleast to show that accused no.8 suppressed the information from the petitions filed by him as they contended now. So, the discussions held hereinbefore and also on the basis of over all analysis of the evidence will show that the contention advanced by prosecution that accused no.8 filed the petitions before the authorities suppressing vital informations and also the fact that the phone calls from accused no.1 to PW181 was withheld from the Special Investigation Team so as to mislead them from proper course of investigation is untenable. The evidence of PW127 and PW157 would conclusively show that even before the filing of final report on 18.04.2017 accused no.8 contacted the DGP and forwarded the recorded voice clips of the conversation between PW176 and PW181. In view of the above discussions and conclusions

arrived at, I hold that the calls from accused no.1 and PW176 were promptly reported by accused no.8 and PW181 then and there.

563. **Has the prosecution proved the confession allegedly made by accused no.1 to PW165 and the related matters including the attempts to contact accused no.8:-**

The case of the prosecution is that accused no.1 was arrested on 23.02.2017 and remanded to judicial custody. His police custody was obtained from 25.02.2017 till 10.03.2017. Accused no.1 was housed at Police Club, Aluva. Accused no.1 during the interrogation on 05.07.2017 revealed to the investigating officer about the attempts made through PW165 to contact accused no.8. PW165 is a police constable assigned with the guard duty of accused no.1 during his stay at Police Club, Aluva. PW165 was a member of Quick Reaction Team. While he was engaged in guard duty of accused no.1, he sought the help of PW165 to communicate with accused no.8 to collect the quotation money. As part of this attempt, accused no.1 using the mobile phone of PW165 recorded the voice clip addressing accused no.8. Accused no.1 also gave him the contact number 9656303333 of PW82, Mithun, the brother-in-law of accused no.8. As agreed between them, on 07.03.2017 PW165 made attempts to contact this

number through a coinbox installed at bus stand, North Paravur. Since the conversation was not a successful one, he on 09.03.2017 while coming back from Medical College Hospital, Thrissur after performing his guard duty therein attempted again to contact this mobile number through a coinbox installed at KSRTC Bus Station, Thrissur. Exts.P80 and P81 series customer application form, CDR coupled with the oral testimony of PW77 and PW78 would prove these aspects. Moreover, Ext.P154 duty book of DHQ, Kalamassery, Ext.P156 duty register maintained at the Police Club would substantiate the evidence of PW165. Accused no.1 made disclosure to PW121 also his attempts to reach to accused no.8 through PW165. PW214 Mr. Sai Sankar deposed about the presence of PW81 and PW82 in the office of counsel for accused no.8. PW81 is the wife of PW82. PW81 and PW82 initially supported the version of PW165, who later retracted their statements during the examination as they were influenced by accused no.8. PW165 stated that he recorded the voice message of accused no.1 in a memory card, but it was later destroyed after a few days out of fear. Though a search was conducted at his residence and premises, nothing could be recovered. Considering the fact that

PW165 caused disappearance of evidence and also assisted the culprit to grab the quotation amount, he was arraigned as an accused in this case. But, thereafter, he was granted pardon and accordingly, examined before the court as a witness. Accused no.1 was bold enough to contact accused no.8 since he has successfully completed the assignment entrusted to him. It is natural for a hired conspirator to demand the amount promised between himself and the master conspirator. The learned Special Public Prosecutor also submitted that the challenges levelled by accused no.8 against PW165 are unsustainable. PW165 is not a planted witness. According to him, the calls made by him to the number of Laksyah would clearly substantiate the contentions of PW165. The entries in the Call Detail Record cannot be manipulated. Unless and until accused no.1 directed him to make those calls PW165 has no requirement or purpose for contacting PW82. The evidence regarding the duty of PW165 at the Police Club, Aluva remain undisputed and unchallenged. Accused no.1 also admitted his examination u/s.313 Cr.P.C about the matters disclosed to PW165 and the attempts made by him. The tower locations of PW165 would showsthe presence of PW165 in the particular locations during the

relevant period. The allegations raised regarding Exts.P154 and P156 itself prove that those documents are genuine. Had these documents been forged, there would have been discrepancies. Though PW165 is an approver, independent conformation of every material circumstances may not be required to consider his evidence. In order to substantiate this contention the learned Special Public Prosecutor placed reliance on the decision of the Hon'ble High Court in Satheesh v. State of Kerala (MANU/KE/2939/2023).

564. The learned Special Public Prosecutor also argued that the contention of learned counsel for accused no.8 that the subscriber of the SIM card allegedly used by PW165 Aneesh was not examined has no merit. This contention was raised to mislead the court. According to him, it is common practice in India for individuals to use SIM cards taken in the name of friends or relatives. The learned Special Public Prosecutor also relied on Section 88A of the Indian Evidence Act and submitted that the court shall not make any presumption as to the person by whom such message was sent, cautioning the courts in attributing ownership of communication solely based on SIM ownership. Exts.P63(a) and 63(b)

along with Ext.P209 would prove the case of the prosecution. The learned Special Public Prosecutor also disputed the contentions advanced by accused no.8 that the evidence of PW165 is hit by Sections 25, 26 and 27 of the Indian Evidence Act. According to him, the request of accused no.1 for help in contacting accused no.8 does not amount to a confession. The learned Special Public Prosecutor had raised contentions in Volume-I of the argument note about this aspect. Thereafter, the learned Special Public Prosecutor filed volume-IV of the argument note which contains clarifications regarding the contentions advanced by learned counsel for accused no.8. The learned counsel for accused no.8, on the other hand, vehemently objected the evidence of PW165. According to him, the entire evidence is hit by the bar u/s.25 of the Indian Evidence Act. It is also stated that accused no.8 filed Crl.M.P. No.1118/2021 against the examination of PW165. It is also argued that the alleged conversation between accused no.1 and PW165 was taken place much after the alleged commission of offence and hence, that cannot be fallen u/s.10 of the Indian Evidence Act. They also challenged the testimony of PW165 contending that he is an approver and it requires corroboration with

independent evidence. The learned counsel for accused no.8 thoroughly cross-examined PW165 and levelled contentions based on his evidence in the court. The counsel also challenged the records relied on by the learned Special Public Prosecutor, especially Exts.P154 and P156. He challenged the genuineness of Exts.P154 and P156 pointing out the discrepancies appearing on the face of those documents. They also challenged the evidence of PW165 by eliciting the contradictions and omissions appear in his previous statements before the investigating officer and also during the proceedings to get pardon.

565. It is to be noted that as far as the alleged confession made by accused no.1 to PW165, the one and only testimony available is the solitary evidence of PW165. Let us consider his evidence. PW165 deposed that during 2017, he was a police constable attached to AR Camp, Kalamassery. He was engaged in various duties such as guard duty, escort duty and QRT duty. According to him, QRT duty is a duty wherein 7-8 civil police officers along with driver were arranged under the leadership of a Sub Inspector of Police. Whenever any law and order situations occur within the Rural Police District, they will be deployed therein. They

also attend the guard duties of accused persons. The functioning of QRT is as per the direction of the Superintendent of Police. The men for the QRT will be provided from AR camp. On 06.03.2017, PW165 as the member of QRT team discharged duty at the Police Club, Aluva. He performed the guard duty of accused nos.1 and 4, who were lodged at Police Club, Aluva. Accused no.1 was housed in a room situates on the right side of staircase leading to the first floor. Two police constables were deputed for the guard duty of accused no.1. One person was inside the room and the other was outside the room. Accused no.4 was housed in a room in the first floor. One police constable was deputed for the guard duty of accused no.4, that was inside the room. The duty of QRT team including PW165 commenced at 9 a.m. on 06.03.2017 and closed at 9 a.m. on 07.03.2017. Four turns were there. He performed the duty from 9 a.m. till 12 p.m., 3 p.m. to 6 p.m, 9 p.m. to 12 a.m. and 6 a.m. to 9 a.m. He was engaged in the guard duty of accused no.1 during all these turns inside the room. Higher officials had given directions for the duty. He had been directed to have conversation with accused no.1 as he was mentally weak. They also instructed him that there is chance for committing suicide by

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011



accused no.1 and he has to be keen enough to avert any such situation. He further deposed that considering the direction he started to converse with accused no.1. Both of them mutually enquired about the family affairs. PW165 also asked about the employment details of accused no.1. Accused no.1 told him that he is engaged as driver of vehicles used in the film field. Both of them developed strong acquaintance. Whileso, accused no.1 revealed the matters of this case. PW165 told him that what he did was wrong. He also informed him that he will be imprisoned for a minimum period of 5-8 years. Accused no.1 told him that he was under the impression that he could lead a peaceful life using the quotation amount. Though he made attempts to collect the quotation amount, he could not succeed. He surrendered before the police. PW165 asked accused no.1 about the details of the quotation and also about the person who entrusted him with this quotation. Sunil disclosed everything including the abduction of another actress on an earlier occasion. Accused no.1 further told that he is maintaining good relationship with accused no.8 and their relationship started from the movie 'Sound Thoma' till the movie 'Josettan's Pooram'. Accused no.1 sought the help of PW165. He

was reluctant as it would affect his career. Accused no.1 asked him to stand as a mediator in between him and accused no.8. PW165 told that he being a police official, accused no.8 may file complaint against him for alleging blackmailing. Thereupon accused no.1 asked him to convey some matters to accused no.8 and on hearing those matters, accused no.8 will understand the situation. Accused no.1 also informed him that he will record the matters in the mobile phone of PW165. PW165 gave his Nokia phone for recording the conversation. He was using a SIM with mobile number 8089800544 at that time. The mobile phone had the facility to use memory card. The memory card was also available therein. Sunil recorded the conversation using the phone. It contains the matters intended to communicate to accused no.8. He also informed PW165 that he will give the phone number of the person, who gave the quotation. He asked PW165 to remove the temporary sole used by accused no.1. PW165 did it accordingly and obtained a piece of paper containing phone numbers. PW165 handed over that piece of paper to accused no.1. Accused no.1 copied a phone number in a piece of newspaper and gave it to PW165. The newspaper piece contains three numbers. First number was of



Vishnu, and the second was of brother-in-law. As far as the third number is concerned, no name was written. The pen of PW165 was used for writing the numbers. All these acts were performed during the duty turn from 9 p.m. to 12 p.m. PW165 heard the recorded conversation after his duty. He recollected a portion of the statement and deposed that it was as follows. "ദിലീപേട്ടാ സുനിയാണ്, ഞാൻ എന്തായാലും പെട്ടു, Sound Thoma മുതൽ ജോസ്സേട്ടൻ പൂരം വരെയുള്ള കാര്യങ്ങൾ ചേട്ടനറിയാമല്ലോ, എനിക്കെന്തായാലും കുറച്ച് കാശ് വേണം, അല്ലെങ്കിൽ അത് കിട്ടുമെന്ന് ഒരുറപ്പ് കിട്ടിയാൽ മതി".

566. PW165 says that Sunil informed accused no.8 that he was already trapped. Since accused no.8 knows about their relationship from 'Sound Thoma' till 'Josettan's Pooram', accused no.1 also demanded money from accused no.8 or else accused no.8 has to give assurance regarding the payment of money. He identified the entries in Ext.P156 to substantiate his claim about the performance of duty in the Police Club, Aluva. According to him, the leader of QRT team recorded the details in Ext.P156. While on his way from police club to his residence on 07.03.2017, he made a call using a coin box installed at private bus stand,

North Paravur to the number provided by accused no.1. A lady attended the call. But the conversation was not clear. He disconnected the call. On 08.03.2017, he was assigned with the surveillance duty at Medical College Hospital, Thrissur. He joined the duty from the evening of 08.03.2017. His duty was over by 9 a.m. on the next day. He returned from Medical College Hospital to his residence through Thrissur. When he reached at KSRTC Stand Thrissur, he again made a call to that number through coin box installed therein. The calls were not clear and he disconnected it. He again made a call. A male attended that call. He informed the person that this call was made as directed by accused no.1 and also sought their help for accused no.1. His identity was enquired by the other side. The other side also informed that the mobile phone number to which he was connected was the number of Laksyah. On his enquiry about the availability of accused no.8, he had been directed to contact him in his personal number and disconnected the phone. On 10.03.2017 also, he was assigned with QRT duty. A question is put to this witness by the learned Special Public Prosecutor that whether he attempted to get the details of the calls. He replied that he made search in Google about Laksyah. He



DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

came to know that Laksyah belongs to PW179 Kavya Madhavan. The number which he contacted was available in the site of Laksyah as its official number.

567. The learned Special Public Prosecutor put a leading question to this witness that after the phone call on 09.03.2017, has he made any steps to get the details of the number in which he contacted. He stated specifically that since the person at the other side replied about Laksyah, he searched in Google. He came to know that it is a textile shop owned by PW179 Kavya. He also stated that the number in which he dialed is the official number shown in the website of Laksyah. During the cross examination of accused no.1, he stated that the number of Laksyah was written in the paper using code. Accused no.1 decoded it and wrote it on another piece of paper. He also stated that the other two numbers were not written using code.

568. On 10.03.2017 also he was assigned with guard duty of accused no.1. He informed accused no.1 that the number provided to him was of Laksyah. The accused persons were taken for medical examination. They assisted the investigation team for that. The accused

were taken in the vehicle of QRT. On that day, they were sent back to Sub Jail, Kakkanad in the vehicle of QRT. He sat near to accused nos.1 and 4. Accused no.1 told accused no.4 that we can lead the life using narcotic drugs and also by dealings with the affairs of ladies. He was sitting behind accused no.1. He had been asked by accused no.1 to hand over the memory card containing voice recording to the father of PW179, Madhavan or anybody related to accused no.8. He further stated that if there is any threat or danger to PW179, her father would definitely intervene. His duty was over on the next date. This duty also entered in Ext.P156. Thereafter, he was attached with the Traffic Police Station, North Paravur. After two weeks, he contacted the cousin brother of accused no.1, Mr. Vishnu and asked him to meet accused no.1 in jail. He did not make any attempts to hand over the memory card containing the voice clip as requested by accused no.1. Accused no.8 was arrested in connection with this case. Thereupon he was afraid and destroyed the memory card containing the voice recording of accused no.1 by abandoning it in the paddy field situates on the back side of his house. While he was engaged in the duty at traffic station, one police official



contacted him and informed that PW261 enquired his details. Two or three days after this, PW261 came to the traffic police station. PW165 was in uniform. He could understand the purpose of visit of PW261. He changed his uniform shirt and entered in the police jeep of PW261. They proceeded to the Police Club, Aluva. He was in mental trauma after hearing the news that PW261 made enquiries about him. He communicated with his wife about his plan to commit suicide. He disclosed every matters to his wife. His wife directed him to disclose the matters to anybody. He handed over his phone to PW261. MOs123 and 124 were identified by PW165 as the phones handed over accordingly. He inserted memory card in the Nokia phone for recording the voice clip of accused no.1. He disclosed the entire matters to PW261. PW261 proceeded to his residence and conducted search for seizing the memory card. The place where the memory card left was waterlogged. He was arrested after a few days. His statement was recorded by Chief Judicial Magistrate, Ernakulam and granted pardon. Again his statement was recorded before the Judicial First Class Magistrate Court, Angamaly. His statement was recorded by Judicial First Class Magistrate, Mattancherry

before granting pardon. Ext.P180 is the attested copy of the application for getting mobile connection no. 8547990855. Ext.P63 series application form and ID proof with respect to the SIM used in MO123 was in the name of his colleague Mr Shameer. He used this number for contacting the cousin brother of accused no.1 also. He was under suspension for nine months in connection with this case. Further, his two increments were also barred cumulatively. He identified accused nos.1 and 4 before the court.

569. The learned counsel for accused no.1 cross examined PW165 and during his cross examination he stated that he was made as an accused for causing disappearance of evidence and also for standing as a connecting link in between accused nos.1 and 8. It is elicited from PW165 that the paper he allegedly obtained from the shoe of accused no.1 contains three phone numbers. Two numbers were written in figures, whereas the other number was written using code. Accused no.1 decoded this particular number and wrote it on a paper. Some omission is also brought out through him. A suggestive question is put to him by the counsel for accused no.1 that accused no.1 asked him to handover the



memory card to accused no.8 or PW179. PW165 replied that he had been asked to entrust the memory card to accused no.8 or any of his associates through the friends or relatives of accused no.1. Counsel for accused no.8 also cross examined him extensively. The fact that he was attached with North Paravur Traffic Police Station and PW261 reached there is not stated before the investigating officer or the Magistrate. Similarly, his evidence in chief examination that civil police officer attached to A.R Camp contacted him and informed that PW261 made enquiries about him is also an omission. Similarly, it is also brought out that he has not stated to the investigating officer or the Magistrate that PW261 verified the duty register and came to know about the duty details. He admitted that no records are available in the A.R camp showing that he was deployed at Police Club, Aluva. He clarified that the documents would show that he was deputed for QRT duty. According to him, QRT duty will be performed as per the directions of Rural S.P. According to him, passport will be issued from A.R Camp and this would show the strength of the team and also about the leading officer. This passport will be entrusted with the officer where they report for duty. He stated that no such

passport was shown to the investigating officer. He claimed that he signed the sentry book, which would show his duty at Police Club, Aluva. This fact was not stated to the investigating officer or the Magistrate. PW165 deposed that G.D was available in the Traffic Police Station, North Paravur. He also admitted that duty card was with him. Duty assignment will be recorded in the duty card as well as in the GD. One of his batch mates Mr Shameer was also available therein. He claimed that Baiju Poulose came to the traffic police station and on seeing him he could understand the purpose of his visit. He then voluntarily proceeded and got in the jeep. A question is put to this witness by the learned counsel that during his statement u/s.164 Cr.P.C before the Judicial First Class Magistrate, Mattancherry , he stated that he appeared before the police as police called him. He clarified that it might be a mistake. It is also elicited that nothing is stated to the police about his mental pressure after the alleged incident. The disclosure to his wife is also admittedly not stated on any prior occasion. He further admitted that till he disclosed these matters to the investigating officer he has not made any disclosure to any persons including his family members. At the very same time, he

stated that he was deployed in Police Club, Aluva for the guard duty of Suni and this fact was stated to his family members and friends. This is also an omission. According to him, he was called by police on several occasions. He disclosed to the investigating officer about the entire matters. He does not know whether that was recorded. He admitted the presence of Dy.S.Ps Mr. Sudarsan and Mr. Sojan in Police Club, Aluva during his interrogation. They also interrogated him. It is brought out that the evidence regarding the recording of phone number of Laksyah was using code is stated for the first time in court. The alleged decoding by accused no.1 is also stated similarly. It is brought out that during his statement before the Chief Judicial Magistrate, nothing is stated about the quotation and also referring accused no.8. The learned counsel for defence had elicited somany contradictions and omissions referring to his previous statements before the investigating officer and also before the Magistrate. It is elicited that during his statement before the Chief Judicial Magistrate, he stated that when he met accused no.1 as part of his duty on 10.03.2017 he informed him that the number provided to him was the official number of Laksyah. Accused no.1 had no knowledge about

this fact till that time. When this fact is put to him, he submitted that he has nothing to explain. During his statement before the Judicial First Class Magistrate, Angamaly, he stated that one of the numbers contained in the paper piece was of Vipin. Similarly, it is elicited that he deposed before this court for the first time that the shoe of accused no.1 was with a temporary sole and it can be lifted. He stated that the piece of paper containing the phone numbers were given up by him. It is brought out that he has not stated before the investigating officer or Magistrate about the piece of paper where accused no.1 recorded the numbers again. He also admitted that he stated to the police that Sunil gave him the phone numbers stating that those are numbers of the younger sister of PW179 Kavya. According to him, this was the one and only number provided to him for contacting accused no.8. This fact is not stated to the Magistrate. Ext.D42 is elicited through him that when he contacted the number on 07.03.2017 he asked whether the number was of Kavya Madhavan. A question is put to him whether passport was issued to him in connection with his duty at Medical College Hospital, Thrissur on 08.03.2017 and he stated that he went to the Medical College in the afternoon session. In the

morning he went to the Sub Jail, Ernakulam for collecting the expense of accused for food and medicine. His colleague proceeded to the Medical College Hospital with passport. This is an omission. He admitted that there is register showing the deployment of duty at Medical College Hospital. The details of his colleague at Medical College Hospital were not stated to the investigating officer. The fact that he joined duty at Medical College Hospital in the evening is not stated to the police or Magistrate. The alleged reply received when he contacted to the numbers is also not stated to the police or Magistrate. He admitted that no records were produced before the court to show that he was engaged in duty at Medical College Hospital, Thrissur. Another question is put to him that whether he stated that he was afraid of on hearing the news about the arrest of accused no.8 as the memory card was with him to any authorities before stating in the trial court. He replied that he does not remember. It is also an omission. According to him, he has thrown away the memory card one week after the arrest of accused no.8. This was not stated to anybody. He stated before the Chief Judicial Magistrate that he abandoned the memory card one week after 10.03.2017. Similarly, the

fact that he was in possession of a Nokia phone is stated before the Judicial First Class Magistrate, Angamaly for the first time. When this question was put to him, he claimed ignorance. Similarly, the evidence of PW165 that Nokia phone was having the facility to insert memory card and the card was already inserted there is stated for the first time before this court. He categorically stated that he was deployed for duty at Police Club, Aluva for the first time on 06.03.2017. He stated further that he has not performed duty there on 02.03.2017 and 04.03.2017. Ext.D42(a) contradictions regarding the discrepancy in the number of persons deployed for duty inside the room of accused no.1 is brought out through him. Ext.D42(b) is also elicited through him. He admitted that he has not stated anything about Ext.P156 document before the investigating officer or the Magistrate. Similarly, the fact of alleged entry in the sentry book is also not stated anywhere. Page no.8 of Ext.P156 contains an entry that he performed duty in the Police Club, Aluva on 02.03.2017. He admitted his signature appears therein. He also admitted that the entry in the same page about the duty turn 12 – 15 hours also show his signature. He admitted that there is slight difference between the

signatures appear in that page. At the very same time, he stated that both the signatures belong to him. He clarified this situation stating that he forgot about his duty on 02.03.2017 as he was disturbed. Somany discrepancies appear in Ext.P156 are brought out through this witness. It is also brought out that there is difference in the signatures claimed to be of PW165. It is also elicited through this witness that page no.12 of Ext.P156 contains the entries regarding the duty details of 04.03.2017 at Police Club, Aluva. This page also contains his signature. According to him, he accompanied the accused for medical examination. A question is put to him that he had no knowledge about the examination of accused no.1 by doctor at Police Club, Aluva as he was not available there. Similarly, Exts.P154 and P156 are put to the witness and his attention is drawn to the discrepancies appeared therein.

570. The contradictions and omissions appeared in his previous statements also elicited during cross-examination, while considering the evidence of PW165 in the light of the contentions advanced by both sides. Admittedly, PW165 is an approver. Similarly, it is a fact that the memory card used for recording the alleged confession of accused no.1 to PW165

is not produced before the court. It is the case of the prosecution that PW165 destroyed it. PW165 was arrested on 09.09.2017 at Police Club, Aluva. Ext.P755 is the arrest memo. On that day itself, he was released on bail. Ext.P756 is the bail bond. Ext.P757 is the report filed by PW261 before the Judicial First Class Magistrate Court, Angamaly for adding him as accused No.14. On a perusal of the arrest memo, the section of law noted are 120B, 342, 366, 376D, 506(1), 201 and 212 IPC r/w S.34 IPC and 66E and 66A of the Information Technology Act. In the final report dated 22.11.2017, it is reported that on 06.03.2017, when accused no.1 was lodged at Police Club, Aluva, PW165 was entrusted with his guard duty. In order to aid and assist accused no.1, he provided with his mobile phone to him and recorded his voice clip in the said mobile phone and PW165 heard it. Thereafter, as directed by accused no.1, PW165 attempted to hand over this voice clip to accused no.8 and also tried to contact accused no.8. PW165 later destroyed the said memory card and thereby caused disappearance of the evidence. It is to be noted that though the nature of allegations raised against PW165 are different than the allegations raised against PW121 and PW176, the other approvers, on an analysis of the

role allegedly played by them, all these persons aided accused no.1 to reach to accused no.8 for collecting money from him. PW121 and PW176 were also arraigned as accused. PW121 was made as an approver before filing final report, whereas PW176 was granted pardon during trial. PW165 was granted pardon before filing final report. The crux of the allegations against all these three persons are that accused no.1 made confession to them regarding his involvement in the crime and also sought their help to get money from accused no.8. PW176 contacted PW181 and PW191, the associates of accused no.8 to reach him. PW176 assisted to obtain mobile phone inside the jail. PW121 collected the mobile phone and handed it over to accused no.1. He also wrote Ext.P122 letter as directed by accused no.1. As far as the allegation against PW165 is concerned, he gave his mobile phone to record the voice clip addressing accused no.8 demanding money. PW165 deposed before the court that accused no.1 told him that he tried to collect the quotation amount before surrendering the police. PW165 asked him about the quotation and also about the person who gave the quotation. PW165 deposed further that accused no.1 disclosed all these matters to him. Accused no.1 sought his

help. PW165 expressed his apprehension of implication. Then accused no.1 asked him to provide with his phone so as to record the voice clip. He gave the mobile phone. He also handed over the mobile number so as to contact the person who gave the quotation. According to him, the voice clip contains the demand for money from accused no.8 The role allegedly played by PW121 and PW176 are also similar that they also made attempts to get money from accused no.8 for accused no.1. If this be the situation, the offences alleged against PW121 and PW176 should also have been alleged against PW165. But, interestingly, the offence u/s.201 IPC alone is alleged against PW165. The allegation against PW121 and PW176 is that on 10.03.2017 accused no.1 sought their help and on disclosing the details pertaining to the case, they agreed to help him. As far as the case of the prosecution in relation to PW165 is that on 06.03.2017 while he was discharging guard duty, he engaged in conversation with accused no.1 and thereafter, accused no.1 disclosed about the matters of this case to him and sought his assistance and he agreed for the same. Why the other offences alleged against PW121 and PW176 are not alleged against PW165 though he was in the same position

like them, is a matter to be considered. The learned counsel for defence argued that he is a police personnel. Even after getting information about his involvement in a serious offence, no severe actions were taken against him and it was with the sole intention of making him as a strong prosecution witness to give false evidence. The learned defence counsel further submitted that the case of the prosecution is that PW261 went to the North Paravur Traffic Police Station on 12.08.2017 and came to know about his involvement and even then he was arrested only on 09.09.2017 and there was no action against him in the intervening period. The learned Special Public Prosecutor, on the other hand, submitted that the offence committed by him falls only u/s.201 of IPC, which is a bailable offence. Therefore, just like any other accused in a similar situation, he was released on bail after his arrest. It is also submitted that the involvement of PW165 was reported properly to the department. He was under suspension for nine months and subjected to disciplinary proceedings. He was awarded with a major punishment of barring two annual increments with cumulative effect. It is to be noted that PW165 was suspended for nine months and his increment was admittedly barred.

571. The pertinent question now remains is with respect to the charging of offences against PW165, PW121 and PW176. PW121 and PW176, the other two approvers who stood in position similar with that of PW165 were arrested and remanded to judicial custody. They continued in the judicial custody for a long period. Why all the offences alleged against PW121 and PW176 are not alleged against PW165 is to be explained by the prosecution. However, no valid explanation is forthcoming from the side of prosecution. The submission of the learned Special Public Prosecutor that he was subjected to departmental actions is not sufficient enough to exclude PW165 from grave offences charged against PW121 and PW176.

572. Another aspect to be noted is that the case of the prosecution is that PW261 interrogated accused no.1 on 23.05.2017 as part of further investigation. The case of the prosecution is that accused no.1 made disclosures to PW261 about the conspiracy between himself and accused no.8 during such interrogation. All these matters were stated in Ext.P710 remand report of accused no.8. It is explicitly stated in Ext.P710 report that accused no.1 and co-prisoners were interrogated. In Exts.C22 and

C23 also the very same averments are made mention. But the prosecution has no case that accused no.1 made disclosure about the involvement of PW165 during his interrogation. PW261 again met accused no.1 and other prisoners when he conducted search in the District Jail. It is brought out in evidence that Superintendent of Police Mr Sudarsan and Mr Sojan were also went to the District Jail and interrogated with accused no.1 and other co-prisoners involved in this case. PW198 also visited the jail and effected the seizure of records. Prosecution has no case that accused no.1 mentioned about his alleged disclosure to PW165 and the socalled voice clip recording using mobile phone. Further, the case of prosecution is that PW261 again recorded the confession of accused no.1 on 05.08.2017. PW261 deposed that on 05.08.2017 he visited the jail and questioned accused nos.1, 2 and 4. Even on that day nothing is stated about PW165. The evidence of PW165 is that while he was attached with Traffic Police Station, North Paravur, one police constable of A.R Camp, who detailed duty to him, contacted him over phone. He informed him that PW261 visited the A.R. Camp for collecting the details of PW165. He informed him further that PW261 verified the registers also.

According to PW165, on hearing this information, he came to know about the matters. After two days, PW261 came to the Traffic Police Station, North Paravur directly. He got the purpose of his arrival. He was in uniform. He changed his uniform shirt and wore the casual shirt. He got into the police jeep of PW261. They proceeded to Police Club, Aluva. The evidence of PW165 is that this was on 12.08.2017. So, it can be seen from the evidence of PW165 that he received information from the civil police officer of A.R Camp two days prior to his arrival and hence, that was on 10.08.2017.

573. The prosecution case is that the confession of accused no.1 was recorded on 05.08.2017. Where did the investigating officer got information about the involvement of PW165 is not mentioned. It is true that the investigating officer is not expected to disclose the source of information. But, at the very same time, he is bound to convince the court about the matters which led him to reach PW165 and also the recording of his statement. The protection from disclosing the source is extended only to the protection provided u/s.125 of the Indian Evidence Act regarding the information as to commission of offences. Here, the

question to PW261 was very specific that where did he got information about the involvement of PW165, that too, after a considerable point of time during the further investigation. In page no.169 of argument note of the prosecution it is contended that during a later interrogation, on 05.08.2017 it was revealed that accused no.1 had attempted to reach out to accused no.8 through a police constable named Aneesh P.K., who was assigned with his guard duty during police custody. The investigation into this aspect unearthed that on 06.03.2017, PW165 was on guard duty for accused no.1 at Police Club, Aluva and accused no.1 disclosed the involvement of accused no.8 in the crime and also sought help from PW165 to communicate with accused no.8 to receive the quotation money offered by accused no.8. It is to be noted that no such confession is seen produced. Another important aspect is that nothing is mentioned about PW165 in any of the remand reports or bail objection reports filed by the investigating officer before the court during the time in which confession of accused no.1 was stated to have recorded. On what basis the learned Special Public Prosecutor raised a contention in the argument note that accused no.1 disclosed the involvement of PW165 on 05.08.2017 is not

explained before the court. Moreover, it is the case of the prosecution that accused no.1 while made confession to PW121 and PW176 in the District Jail on 10.03.2017 revealed about PW165. Admittedly, PW121 and PW176 were interrogated on several occasions prior to 12.08.2017. Had the involvement of PW165 been disclosed to PW121 and PW176, this would have been stated to the investigating officer during their interrogation. Moreover, though PW121 deposed before the court about such a disclosure, it is a material omission. This fact was deposed before the court for the first time. Even if the evidence of PW121 is taken into consideration, the fact remains is that, why it was not stated to the investigating officer prior to 12.08.2017. Moreover, the case of the prosecution is that on 23.05.2017, accused no.1 confessed to the investigating officer about the conspiracy with accused no.8 and also regarding the attempts to get money from him. If this be the situation, it is highly improbable to believe that he suppressed the confession allegedly made to PW165 and the recording of it in a memory card by him. Hence, on an overall consideration, the non-mentioning of the investigating officer that, how did he find out PW165 assumes relevance.

574. The learned counsel for accused raised a contention that if the prosecution case is that the statement of PW165 was recorded on 12.08.2017, he should have been made as an accused on that day itself. According to them, he was made as an accused on 09.09.2017, after a gap of almost one month. The statement of PW165 recorded u/s.161 of Cr.P.C contains the date 12.08.2017. This was produced before the court only on 28.06.2021, the date when he was examined before this court. His 161 statement was produced before the court along with Crl.M.P.No.1076/2021 dated 28.06.2021. It is contended that they omitted to produce the original of his 161 statement. The prosecution has already furnished copies of statements to all accused persons in compliance of the orders of this court in Crl.M.P.No.985/18. However, due to oversight, the original statement was not produced before the court. Hence they produced it along with the petition on 28.06.2021. It is to be noted that Crl.M.P.No.985/18 was ordered only on 11.12.2019. It is true that this court allowed the petition filed by prosecution and accepted the original of statement of PW165 recorded u/s.161 of Cr.P.C. on 28.06.2021. PW261 was cross examined about the long delay of four

years in producing his 161 statement, but nothing is stated in this regard. The learned counsel for defence also challenged that Ext.P756 bail bond is prepared without including the necessary particulars such as the bail amount, date of execution of bond, case number, police station etc. It is to be noted that though Ext.P757 report was received by the court on 11.09.2017, these two documents were not produced along with Ext.P757. On its perusal, it is seen that necessary details are not mentioned in Ext.P756. Though the learned counsel for accused no.8 argued that the documents produced before the court in connection with the arrest of PW165 would show that the arrest and release were sham proceedings, Ext.P757 report of PW261 is making that contention flimsy. In Ext.P757 report it is stated that PW165 is involved in this case and accordingly, he is arraigned as accused no.14. Though PW165 deposed that he proceeded with PW261 on 12.08.2017 from Traffic Police Station, North Paravur, PW261 deposed before the court that he does not remember the time when PW165 reached the Police Club, Aluva. He also stated that nothing is there in the case diary to show this aspect. No notice was also seen served to PW165. When PW261 was in box, the learned counsel for

accused no.8 suggested to him that Ext.P755 contains the offences mentioned in the final report and he admitted the same. He also added that the offences allegedly committed by PW165 are also mentioned in Ext.P755. He admitted that the offences mentioned in Ext.P755 are non bailable and triable by Sessions Court. A definite question is put to him that why PW165, who allegedly committed those offences are released on bail. PW261 replied that he committed the offence u/s.201 IPC alone and hence, he was released on bail. He also stated that no report is filed before the court stating that PW165 has not committed the offences mentioned in the arrest memo. A definite suggestion is put to him that these documents are fabricated so as to arraign PW165 as an approver and he denied it. He further stated that how PW165 arrived at the police station is not known to him. Another question is put to him about the occasion when he met PW165 for the first time. He replied that his memory is that he met PW165 on 12.08.2017. He stated that on getting information about the involvement of PW165, he was taken from North Paravur Police Station. But he admitted that this was not stated in the case diary. Similarly, the details of recording his statement was also not

mentioned in the case diary. A question is put to him that whether he served notice to the superior officer of PW165 before his interrogation. PW261 replied that they were informed orally. The defence put a suggestion that the copy served to the accused after several years was a statement prepared for tutoring PW165. They also confronted PW261 by putting question that it does not contain any page numbers to show that the statement was part of case diary. PW261 replied that it contains page numbers from 1 to 5. He admitted that no such indication is available to show that it was part of case diary and pagination therein as continuation of the remaining portion of the case diary is not available there. The evidence of PW261 would show that though prosecution claimed that PW165 was taken from the Traffic Police Station, North Paravur on 12.08.2017 to Police Club, Aluva and his statement was recorded on that day, nothing is available in the case diary referring this investigation with respect o PW165. This is against the provisions of law. Section 172 of Cr.P.C mandates that, every police officer making an investigation shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he

began and closed his investigation, the place or places visited by him and statement of the circumstances ascertained through his investigation. Section 172(1-A) of Cr.P.C introduced on 31.12.2009 stated specifically that the statements of witnesses recorded during the course of investigation under Section 161 shall be inserted in the case diary. Sub Section (1-B) further states that the diary referred to in sub-section (1) shall be a volume and duly paginated. So, the details and the statement allegedly recorded on 12.08.2017 should be appended with the case diary, that too after due pagination. In this case the page numbers are shown from 1 to 5. If the statement was included in the case diary as mandated u/s.172 Cr.P.C., it should be numbered chronologically. That is not seen done in respect of the 161 statement of PW165. Though the courts usually need not give much importance for these types of lapses regarding pagination, the unexplained long delay of four years in producing the original 161 statement is a suspicious circumstance. PW165 was granted pardon before filing the final report on 22.11.2017. If this be the situation, his statement should have been produced along with the final report. That was not done. Moreover, PW261 pleaded short of memory

as to how PW165 happened to be at the Police Club, Aluva on 12.08.2017. PW165 is not a layman and he claimed that he was discharging duty at Traffic Police Station, North Paravur on 12.08.2017. If this be the situation, definitely, his departure from the police station ought to have been found a place in the General Diary of that police station. Moreover, as I pointed out, the investigating officer ought to have recorded the place or places visited by him. Admittedly, this is also not available in the case diary. The prosecution cited CW247 in the final report dated 22.11.2017. The point to be proved through this witness is shown as the statement of PW165 recorded in his presence. This is the one and only point sought to be proved through CW247, who was the then Village Officer of Aluva West Village Office. Why the presence of CW247 is secured only during the recording of statement of PW165 is not explained by the prosecution. Similarly, the reason for non examination of CW247, especially when the defence raised grave allegations about the recording of statement of PW165 u/s.161 Cr.P.C on 12.08.2017, is also not seen explained by the prosecution.

575. The case of the prosecution is that PW165 discharged the guard duty of accused no.1 at Police Club, Aluva on 06.03.2017 and during that time, accused no.1 confessed to him in relation to the attack and sexual assault on PW1 in a moving vehicle on 17.02.2017. The prosecution also alleged that PW165 was engaged in surveillance duty at Medical College Hospital, Thrissur on 08.03.2017. It is the further case of prosecution that while returning from Police Club, Aluva on 07.03.2017 and also returning from Medical College Hospital on 09.03.2017, PW165 made calls to the number provided to him by accused no.1. In order to substantiate these assertions, prosecution heavily relied on Ext.P154, the detailing book at A.R. Camp and Ext.P156, the duty book kept at Police Club, Aluva. The learned Special Public Prosecutor argued that Ext.P154 clearly shows that PW165 was deputed to Quick Reaction duty on the relevant dates. He also contended that Ext.P156, the Sentry Relief Register, which was raised and produced clearly recorded that PW165 was on sentry duty on 06.03.2017 at Police Club, Aluva. According to him, these registers were not maintained by the Special Investigation Team and it is impossible to concoct such register by Special Investigation Team.

The records were maintained by Quick Reaction personnel in the camp as well as the Police Club during the custody of the accused as part of a routine arrangement. The mobile tower location data of PW165 for the relevant dates also show that he was present at Aluva and also at Medical College Hospital, Thrissur. Accused no.8 was arrested on 10.07.2017, even before the disclosure of accused no.1 about PW165 on 05.08.2017. So, the investigation team is not expected to create evidence against accused no.8 after his arrest. The learned counsel for accused no.8, on the other hand, contended vehemently that Exts.P154 and P156 are not registers or documents maintained as per the regulations or any prescribed procedures. They also contended that somany discrepancies are noted in these two records and that itself would show the falsity of these records. According to them, the passport of PW165 showing his duty is not produced and the prosecution suppressed the best available evidence. PW165 himself deposed that he had a duty card, which would show the details of duty assigned to him and that also not produced before the court. The General Diary showing the duties assigned to PW165 is also withheld by the prosecution. According to the learned

counsel, all these available documents were suppressed so as to suppress the fabrications made in Exts.P154 and P156.

576. PW145 is the then Inspector attached to A.R Camp Kalamassery. According to him, he handed over the duty book of 2017 March to the investigating officer. The investigating officer seized it on the strength of mahazar. He received it back on bond. He identified Ext.P154 as the duty book containing the details of the officials of A.R Camp from 31.10.2016 till 09.05.2017. He was the custodian of the book. According to him, Ext.P154 would show that on 06.03.2017 PW165 was deputed to Quick Response Team of Rural S.P. The Quick Response Team is for deputing emergency duty of the Superintendent of Police. He further deposed that Ext.P154 would further show that on 08.03.2017 PW165 was deputed at Medical College Hospital, Thrissur for surveillance duty. He was on rest on 09.03.2017. Ext.P154(b) is the mahazar prepared in connection with the seizure of Ext.P154. He was cross examined by accused no.8. According to him, there is no page certification in Ext.P154. It has no page numbers also. He stated that it is maintained in duty-wise order. The first three pages of Ext.P154 are

blank. A question is put to him that Ext.P154 is prepared adding some pages. He denied it. According to him, Ext.P154 does not contain his handwriting or signature. He further deposed that Ext.P154 would show that on 06.03.2017 seven Q.R team men along with an Asst. Sub Inspector of Police were detained to the Rural S.P., Aluva. Nothing more can be seen from Ext.P154. They were sent for 24 hours duty. According to him, on 08.03.2017 ARPC 12787 was deputed along with PW165. He admitted that when they were deputed is not mentioned in Ext.P154. He also stated that Ext.P154 does not show when these two police personnel reported to the camp on 09.03.2017. PW145 deposed that the GD would show the arrival or leaving of the police personnel from the A.R. Camp. This GD was not demanded by the investigating officer. This was not produced also. It is to be noted that Ext.P154(a) mahazar was prepared on 30.08.2017 at 12.15 p.m. No independent witnesses were cited in Ext.P154(a). The witnesses cited are police personnel and they were not examined also. The evidence of PW145 would show that Ext.P154 shows that PW165 and other police personnel were sent to the Rural S.P., Aluva. Nothing is stated in Ext.P154 about the duty allotted to them by the

DISTRICT AND SESSIONS COURT
KUNNAMKULAM-680 011

Superintendent of Police. The learned defence counsel argued that the first three pages are kept blank. On a perusal of Ext.P154 it is seen that the first page is left and the one side of the second page is also kept blank. They started the entries from the other side of second page onwards. The right hand page contains the date. It is maintained chronologically from 31.10.2016. When PW261 was in the box the learned counsel for accused no.8 put questions to him relying on Ext.P154. It is put to him that there are corrections in Ext.P154 register. PW261 admitted that it does not contain the signature or handwriting of PW145. He also stated that the persons who wrote Ext.P154 are not made as witnesses. The defence put questions to PW261 regarding the date appears in the right hand side page. According to them, the entries on the other side is the continuation of the entries of the date mentioned in the right hand side page. PW261 denied it. According to him, the entries in right hand side page is the continuation of the entries in the left hand side page. It is true that Ext.P154 is a stock book. PW261 deposed that stock book was used as duty book. PW261 also admitted that the General Diary is available at A.R. Camp. He also admitted that passport would show the duty

detailing. It is true that the General Diary as well as passport as contended by accused are not produced before the court. These documents were admittedly available there in the A.R Camp. Similarly, neither the handwriting nor the signature of PW165 are available in Ext.P154. Even then, on a perusal of Ext.P154 it is seen that PW165 was deputed for QRT duty on 06.03.2017 and duty at Medical College Hospital, Thrissur on 08.03.2017.

577. The next document relied on by the prosecution to prove that PW165 was engaged with the guard duty of accused no.1 on 06.03.2017 till 07.03.2017 at Police Club, Aluva is the duty book maintained there. Two witnesses were examined by the prosecution to prove this particular aspect. PW152 was the Asst. Sub Inspector of Police, A.R. Camp, Kalamassery during 2017. According to him, on 06.03.2017 he was the leading officer of Quick Response Team and they proceeded to Police Club, Aluva. According to him, Mr Aneesh and Ajesh were included in his team. He does not remember the names of other persons. He stated that duty book was kept at Police Club, Aluva. He identified Ext.P156 as the duty book. According to him, the entries on 06.03.2017 from 9 a.m



till 9 p.m were in his handwriting. They were assigned with the guard duty of two accused persons. One accused was accused no.1. He does not remember the name of the other accused. According to him, one police constable was deputed inside the room of accused no.4. As far as accused no.1 is concerned, one police constable was deputed inside the room and the other was deputed outside the room. Seven police personnel were deputed as per turn. The names of police personnel assigned with duty on 06.03.2017 were recorded by him in Ext.P156. He explained some corrections made in Ext.P156. A question is put to him by the learned Special Public Prosecutor that whether one Mr. Arunlal was there for duty. He replied in affirmative. He was cross examined by counsel for accused no.8. According to him, the Quick Response Team members will report to the Rural S.P at his office. Thereafter, the Superintendent of Police will deploy the policemen for duty. He admitted that a register is available in the office of the Superintendent of Police showing the duty detailing. He was cross examined based on the differences appear in the signatures of police personnel in Ext.P156. He denied the suggestions that those signatures are forged. A question is put to him that he has not

recorded anything in the remark column of Ext.P156 and that would show that he was not present at Police Club, Aluva. He denied it. According to him, remarks will be recorded only if the circumstances warrant. Though he claimed that the entries on 06.03.2017 of Ext.P156 were written by him, it was not stated to the investigating officer. Similarly, it is also brought out that the arrangement by police personnel claimed by him before the court is also not stated to the investigating officer. A suggestion is put to him that Ext.P156 is not properly and regularly maintained as claimed by him. But he denied the suggestion.

578. PW149 is another witness. According to him, he was working as civil police officer at A.R. Camp during 2017. On 06.03.2017 as part of Quick Response Team, he performed guard duty at Police Club, Aluva. PW152 was their leading officer. According to him, six other police personnel were also performed the duty along with him. They were assigned with the guard duty of accused involved in this case. He was assigned with the guard duty of accused no.1. According to him, he did the duty outside the room, whereas PW165 was inside the room. Accused no.4 was in the upstairs. Three police personnel were engaged in one turn

duty. Two persons were engaged in the guard duty of accused no.1, whereas one was engaged in the guard duty of accused no.4. The duty details were recorded in a book kept therein. He identified Ext.P156 and also the details of the duty performed by him. He also deposed about the details of the duty performed by his colleagues. He was cross examined by accused no.8. He admitted that page no.18 of Ext.P156 does not contain his signature. He also admitted that this page contains his name, but nobody signed against his name. Similarly, the entry showing that he performed duty from 3 a.m to 6 a.m also not contain his signature. He admitted that Ext.P156 was not shown to him during his interrogation. He admitted that nothing is there in Ext.P156 to show that Sunil and Vijeesh were available at Police Club, Aluva as per the entries dated 06.03.2017 and 07.03.2017. It is also elicited through this witness that he stated to the investigating officer that he performed the guard duty for accused no.1 from 9 a.m to 12 noon only. No other details are stated to the investigating officer. During re-examination, an explanation is brought through the witness that he omitted to put signature against the duty details from 3 a.m to 6 a.m as he was busy.

579. PW165 deposed that he went to the Police Club, Aluva for the first time on 06.03.2017. He again went there on 10.03.2017. He specifically stated that he has not gone there for duty on 02.03.2017 and 04.03.2017. Ext.D42(a) contradiction regarding the deployment of two police personnel inside the room of accused no.1 is brought out through him. Similarly, Ext.D42(b) is also brought out. Nothing is stated by him about sentry book during his previous statement. Though he denied the discharge of duty at Police Club, Aluva on 02.03.2017 and 04.03.2017, Ext.P156 would show that he was on duty at Police Club, Aluva on those days. These entries were put to PW165 and he admitted that it contains his signature. It is brought out that in page no.9 of Ext.P156, his signature was seen against the name of civil police officer 12579 Ajesh. According to him, he has not performed duty in that particular turn. Similarly, on that day 3 – 6 a.m duty entry would show that PW165 performed duty. PW165 admitted it. At the very same time, he stated that, he does not know who put the signature. He perused the signature again and later admitted that the signature belongs to him. It is also elicited through this witness that the duty details of the turn 3 a.m on

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

04.03.2017 would show that PW165 performed duty. At the very same time, PW165 stated that he does not know who put the signatures. He was also confronted with the signatures available in his earlier statements produced before this court. He admitted that there is difference in those signatures. Ext.P156 was seized on the strength of Ext.P156(a) mahazar dated 22.09.2017. Ext.P156(a) would show that Ext.P156 was handed over to PW261 by the civil police officer 12652 Darly Paul, who was working as the caretaker of Police Club, Aluva. He is cited as CW331. In this mahazar also no independent witnesses are cited. The one and only witness shown in Ext.P156(a) is the senior civil police officer attached to Traffic Unit, Perumbavoor. Nobody was examined to prove Ext.P156(a). The learned counsel for accused no.8 contented that Ext.P156 is a self-serving document. It contains alterations, over-writings and forged signature. They also argued that the name of the accused to whom PW165 performed guard duty is also not stated in the register. PW152 admitted that a register is available at the Office of Rural S.P to show the detailing of duty of the members of Quick Reaction Team as directed by the Rural S.P. That document is not produced in court. Ext.P156 was seized after

the arrest of PW165 on 09.09.2017. PW261 deposed that he was unaware about Ext.P156 when he interrogated PW165. The evidence of PW261 is that he came across with Ext.P156 when he interrogated PW152. PW165, on the other hand, deposed that even on 10.08.2017 a civil police officer from A.R Camp informed him that PW261 reached the A.R Camp and verified his duty details. Above all, Ext.P156 is the duty register allegedly kept at the Police Club, Aluva. The office of the Special Investigation Team of this case was functioning at Police Club, Aluva. PW261 admitted that even now police personnel attached with the Special Investigation Team is working at Police Club, Aluva. If this be the situation, it is very difficult to believe the evidence of PW261 that he had no knowledge or idea about Ext.P156 kept at the Police Club, Aluva while interrogating PW165. On a perusal of the evidence of PW165, it is seen that he categorically denied the fact of his duty at Police Club, Aluva on 02.03.2017 and 04.03.2017. He asserted that he went there for the first time on 06.03.2017 and thereafter, on 10.03.2017. But, it is seen that during his examination on the next day, he stated about his duty at Police Club, Aluva on 02.03.2017 and 04.03.2017.



580. The evidence of PW261 regarding Ext.P156 is that a sentry book is maintained at Police Club, Aluva showing the details of the police personnel discharging guard duty. He admitted that this fact is not stated anywhere. He further stated that he had no knowledge about this particular book when he interrogated PW165, CW331 and PW149. He further deposed that the statement of PW152 was recorded on 28.08.2017. But the statement of PW149 and CW331 were seen recorded on 29.08.2017. So, it can be seen that the contention of PW261 that he has no knowledge about Ext.P156 when he interrogated PW149 and CW331 was untrue. He was constrained to admit that he did not put any questions to PW149 and CW331 about Ext.P156. PW261 had gone to the extent of stating that he does not remember whether CW331 Darly Paul, the caretaker of Police Club, Aluva was available there during his visits. He admitted that he frequently visited Police Club, Aluva. In order to manage the situation he attempted to clarify that two persons were there as caretakers. He does not remember whether CW331 was available therein. This cannot be relied on. It is to be noted that CW331 is a police constable attached to District Head Quarters, Kalamassery. Moreover, it

is the case of the prosecution that he was entrusted with the duty of caretaker of Police Club, Aluva. If this be the situation, the evidence of PW261 regarding the availability of CW331 cannot be taken into account. PW261 categorically stated that he came to know about Ext.P156 for the first time on 28.08.2017. He had gone to the extent of stating that he had no knowledge about the keeping of such a document at Police Club, Aluva. At this juncture, we have to consider Ext.P156. It is claimed that the entries from 26.02.2017 till 10.03.2017 are available in Ext.P156. The case of the prosecution is that Ext.P156 is prepared and kept in the Police Club, Aluva exclusively for recording the guard duty details of Quick Reaction Team personnel assigned for the said duty of accused nos.1 and 4 in this case. Page no.1 of Ext.P156 contains a recital dated 26.02.2017 as the opening entry. It reads as follows:- "As per the direction of Respected Aluva Dy.S.P Sri Babu Kumar (PW202); QRT personnel are giving guard to Pulsar Suni and Bineesh in the Police Club, Aluva. QRT strength is 7 CPOs, 1 driver and 1 GASI. As instructed 1 CPO is along with the accused in the locked room and two CPOs are posted in the door front".



581. So, it can be seen that Ext.P156 claimed to be produced as guard duty book is opened for this specific purpose. PW261 was there in the investigation team during that time also. Moreover, it contains entries regarding his arrival to Police Club and also going back with accused no.1. In the second page of Ext.P156, the entry corresponding to 6 hours is that "ഈ സമയം പ്രതികളിൽ ഒരാളായ സുനിലിനെ പെരുമ്പാവൂർ C.I ബൈജു പൗലോസ് സർ വന്ന് കൂട്ടികൊണ്ടു പോയി". Ext.P156 mention that PW261 has taken accused no.1 out at 6 hours. It is true that this particular entry is seen made as an interlineation. At the very same time, it can be seen that there is reference about PW261 in the first day itself. It contains somany entries of similar nature. Another entry of similar nature that "QRT personnel were accompanied PW261" is recorded in page no.12 and 13 of Ext.P156. Who put signature against this entry is not proved before this court. Moreover, the contention now advanced by the prosecution is that accused no.1 made confession to PW261 about the involvement of PW165 on 05.08.2017. It is difficult to believe that even after getting such an information, PW261 did not make any enquiry about this document. Moreover, PW165 was claimed to be interrogated and his

statement was recorded on 12.08.2017. Why PW165 not mentioned anything about Ext.P156 is also to be looked into. Moreover, PW261 deposed before the court that he was included as a member of the Special Investigation Team constituted for the investigation of another case. That Special Investigation Team was also camped at Police Club, Aluva. So, the police officials who are interested with the caretaker duty, ought to have been known to him. Another interesting aspect is that he admitted that after getting information about Ext.P156, he did not interrogate PW165. Ext.P156 is produced to prove the contention of the prosecution that PW165 performed guard duty to accused no.1 on 06.03.2017 and 10.03.2017. According to them, it contains the signatures and details of PW165. If this be the contention of the prosecution, why this register was not shown to PW165 atleast after 28.08.2017. He was arrested only on 09.09.2017. It is also to be considered as a suspicious situation. The evidence of PW261 is that he interrogated PW152 about Ext.P156 and its custodian and also about its availability. At the very same time, he admitted that case diary does not contain anything, that he met CW331 Darly Paul in between 28.08.2017 and 22.09.2017. He claimed that after

getting information from PW152, he conducted investigation. If this contention is true, he ought to have been interrogated either CW331 or the other caretaker claimed to be available in the Police Club about such a register. Had this been the situation, what prompted CW331 to produce Ext.P156 before the investigating officer on 22.09.2017 at the time of preparing Ext.P156(a) mahazar. The learned defence counsel put a suggestion to PW261 on the basis of his evidence that Ext.P156 is a forged document and the statement of PW152 was not recorded on 28.08.2017, whereas his statement was recorded after deciding to prepare a forged sentry book. PW261 denied this suggestion. Though Ext.P156 was seized on the strength of Ext.P156(a) on 22.09.2017, both the register and mahazar reached before the court only on 10.03.2017. PW261 admitted that who was the custodian of these documents till that time is not mentioned anywhere. He added that the case diary contains a recital that it was kept in the Police Club. Why the document seized on 22.09.2017 was kept in the Police Club till the production before court is not explained by PW261. In this context, non-examination of witnesses to this particular mahazar also assumes relevance. When a question is put to

PW261 about the non-examination of the witnesses to Ext.P156(a), he replied that those witnesses can be examined even after his examination.

582. The entries in Ext.P156 is to be analysed in the light of the above evidence of the investigating officer. As mentioned earlier, Ext.P156 is seen prepared in a book termed as personal register to be maintained as per manual of office procedure. In the opening page of this book, a caption is recorded as 'Guard Duty Book'. As mentioned hereinbefore, it is seen that this book was started to maintain on 26.02.2017 at 16 hours as per the direction of PW202 exclusively for recording the details of guard duty to accused no.1 and one Mr. Bineesh. The actual name of accused no.4 is Vijeesh, but it is recorded in this book as Bineesh. It is manually numbered chronologically. In the first page, in one turn, three police constables are included. Nothing is indicated corresponding to their names that they were performing guard duty for accused. As I pointed out, this was started on 26.02.2017. In page no.2, in between the entries at 6 and 7 hours, the date 27.02.2017 is seen added. It appears that this particular entry is added subsequently. Thereafter, in page no.3, the entry corresponding to 12:20 hours is that, as directed from the office of

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

Dy.S.P., CPO 12608, 12637, 12686, 12643, 8259 were sent to Sub Jail, Aluva. Accused was entrusted with CPO 12653 and 12687. It is to be considered that page no.2 contains an entry that at 6 hours, accused no.1 was taken out by PW261. The next entry after the entry at 12:20 hours is the entry regarding 17:20 hours. It is recorded that QRT party collected accused persons from Judicial First Class Magistrate Court, Aluva and produced before Nedumbassery Police Station. It is further recorded that QRT team returned from Nedumbassery Police Station and joined duty at Police Club. As I pointed out, the entry at 12:20 hours is that accused was retained with two CPOs. The entry at 17:20 hours was that accused persons were obtained from the Judicial First Class Magistrate Court -II, Aluva. When the accused persons were sent out from Police Club is not mentioned in Ext.P156. In this book, the date 28.02.2017 is not seen recorded. It is true that in page no.2, the entry corresponding to 7 hours is seen recorded as the entry of 27.02.2017. At 8:30 hours another party joined for duty. A similar entry is mentioned at the end of page no.4 and beginning of page no.5. It might be of 28.02.2017, but the date is not seen recorded. Such an omission is not expected in a register claimed to be kept

by the police officials to record the duty details of the police team. Further, in page no.6, at 18:10 hours, it is recorded that CPO 12618 returned with accused no.1 Sunil. In page no.7, the entries of 01.03.2017 are recorded. It contains the entries upto 18 hours, that is, the entries upto 6 p.m. In page no.8, the entries of 02.03.2017 are recorded. No duty details after 18 hours on 01.03.2017 till 9 hours on 02.03.2017 are mentioned in Ext.P156. Nothing is also mentioned that the party who joined duty at 9 hours on 01.03.2017 returned or changed their duty. Unlike the entries from 26.02.2017, it is recorded in the entries dated 02.03.2017 corresponding to the entries of the details of CPOs, 'accused 1' are also recorded. It is recorded from 9 hours till 18 hours. As far as the entry of 21 hours, 'accused 1' is recorded corresponding to the details of CPO 12661, Basil and ditto marks are put corresponding to the details of other two CPOs. Corresponding to the details of CPO from 24 hours, it is recorded as 'accused 1'. The details are recorded in a similar manner regarding the entries of 03.03.2017 also. In page no.11, bottom portion contains the first entry of 04.03.2017. The first entry contains the corresponding entry of 'accused 1'. As far as the entry on 04.03.2017 is



concerned, in page no.12, at 8:45 hours, the duty change is recorded. Thereafter, at 9 hours, the details of guard duty of police personnel are recorded. After this entry, it is again recorded that Grade S.I George P Daniel took over the charge from Grade S.I Sunilal. It is a duplication. But the important aspect is that the signatures appear corresponding to the entry appearing before and after the details of 9 hours are different. It is seen that Grade S.I George P. Daniel put signature to show that he took over the charge. Both these signatures are per se different. Moreover, the duty details of 9 hours are again recorded. Another interesting aspect is that in the first entry of 9 hours, the signatures of three different constables appear to be same as that of one person. As far as the second entry corresponding to 9 hours, the signature corresponding to the details of CPO 12268 is similar as that of the signatures appear in the first entry at 9 hours. The signatures corresponding to the other two constables are different than the signature of the first constable. The signatures of these two constables and the signatures of three constables with respect to the entries from 12 hours till 6 hours on 05.03.2017 seems to be similar. On a verification it is seen that somebody put signatures in a manner appearing

similar to the signatures from the second constable entry of 9 hours on 04.03.2017. Except the first entry of 9 hours, nothing is mentioned that the guard duty was for accused. In page no.14, the entries of 05.03.2017 are recorded.

583. As I pointed out, the stand of PW165 is that he went to Police Club, Aluva for duty on 06.03.2017 for the first time and on 10.03.2017 for the second time. When specific questions were put to him that whether he performed duty on 02.03.2017 and 04.03.2017, he categorically denied it. But, on the next date he stated that he went there for duty on 02.03.2017 and 04.03.2017. He explained that he forgot about it. This explanation cannot be taken as a valid explanation considering the nature of events involved in this case. As I pointed out, Ext.P156 would show that the guard duty was specifically for accused nos.1 and 4. The QRT personnel were specially engaged for that. Considering the sensational nature of this case and also the alleged involvement of PW165, it is difficult to believe his explanation about the not remembering his duty on 02.03.2017 and 04.03.2017. The claim of PW165 is that he saw accused no.1 for the first time on 06.03.2017. But the entry in page no.13 of



Ext.P156 would show that CPO 12664, i.e., PW165 was deputed for police escort duty in connection with medical examination at 14 hours. Further, at 16 hours, it is recorded that police personnel including PW165 were deputed to police escort duty to Judicial First Class Magistrate Court-I, Aluva. Moreover, the entries on 02.03.2017 would also show that he was assigned with guard duty at different turns on 02.03.2017 also. If this be the situation, his statement that he met accused no.1 for the first time on 06.03.2017 is utter falsehood. This is also against the prosecution case that on 06.03.2017 PW165 was entrusted with the guard duty of accused no.1 and he started to converse with accused no.1 and ultimately it led to the confession and recording of that confession in his mobile phone.

584. The entries in page nos.8 and 9 of Ext.P156 are brought to the attention of PW165. He admitted his name and CPO number. PW165 himself admitted that the signatures appear in different turns of duty are different and also these signatures differ from his admitted signatures. He also admitted that it is recorded there that, one CPO was allotted for one accused. So, the entries would show that in one particular turn, one CPO is deputed for one particular accused. On a verification of the entries, it

can be seen that three different CPOs are deputed for three different accused persons. As I pointed out repeatedly, this register was claimed to be opened for recording the guard duty details of accused nos.1 and 4 only. But, the entry in the bottom of page no.5 itself will negative this contention. It is recorded in the bottom of page no.5, that at 17:50 hours, CPO 12672 along with 'Delta 1' went out along with accused no.7 Charley. So, this particular entry shows clearly that accused no.7 Charley was also housed in the Police Club, Aluva along with the other two accused. If this be the situation, the entries that one CPO is entrusted with the guard duty of one accused in a particular turn is with respect to the guard duty of three constables for three accused persons at a time. PW165 during examination admitted that the third signature in page no.9 belongs to him. He clarified that, that alone is the signature belongs to him in that page. But, the fact to be considered is that this particular signature was seen put against the duty details of CPO 12579 Ajesh. PW165 was not entrusted with duty in that particular turn of 21 hours. He also admitted that each police personnel was allotted with the duty of each accused person. The duty turn of PW165 was seen recorded corresponding to the

entry of 3 hours in page no.9. The signature corresponding to that details was stated to be not known to him in the first occasion. He again perused it and claimed that it belongs to him. But, this signature is also different than that of his admitted signature. PW165 also admitted this. If this register is maintained as claimed by the prosecution, there will not be any such differences as discussed hereinbefore. Similar is the case of entries of 04.03.2017 in page no.12 of Ext.P156.

585. I have already discussed about the details of the difference appear in the signatures available corresponding to the details of CPOs mentioned therein. PW165 himself was constrained to admit that the signatures appear corresponding to his details are not of him. As far as the entries of 05.03.2017 in page nos.14 and 15 at 9 hours, availability of one accused is recorded corresponding to the name of CPO Ajith. Availability of another accused is recorded corresponding to the name of CPO Rajesh. A ditto mark is put corresponding to the name of CPO Renjith. As far as the entry of 12 hours corresponding to the entry of CPO Subhash, availability of 'accused 1' is recorded. In this particular turn, ditto marks are put corresponding to the details of two CPOs and

one Senior CPO. The same ditto marks are continued corresponding to the details of two CPOs in the duty turn of 15 hours. As far as the duty details of 21 hours, availability of accused is shown corresponding to the entry of CPO Unni as last entry in that turn. Thereafter, ditto marks are put for the duty turns of 24 hours and 3 hours. As far as the duty details of 6 hours of 06.03.2017 appear in page 16, nothing is recorded regarding the availability of accused. In some of the pages, one set of signatures are seen corresponding to the names of CPOs. Nothing is there in Ext.P156 to identify about the details of particular columns. Say, for example, in page no.16 in the details of 6 hours, CPO number and name are recorded. After that, signatures are put corresponding to each entries. All these three signatures are same. Thereafter, it is seen recorded 'accused 1'. After that three different signatures are seen put. In the very same page, in the duty turn of 9 hours, CPO number along with name are recorded. Thereafter, duty turn from 9 to 12 hours is also recorded. It is recorded in vernacular language 'accused 1'. Signatures are seen put after that. But, in page nos.14 and 15, after the name of CPOs, one set of signature is available. The purpose or manner in which Ext.P156 is maintained is not explained

before this court and hence, we cannot presume about the details and signature appear as of now in Ext.P156.

586. Coming to the entries on 06.03.2017, it is seen recorded in the duty details of 9 hours, that after the CPO number and name, availability of one accused is shown corresponding to the first two CPOs. The availability of another accused is shown corresponding to the entry of PW165 Aneesh. It is seen that this entry regarding the availability of accused was seen struck off. A ditto mark is put there. The same pattern is repeated corresponding to the entry of duty at 12 hours. As far as the duty of 15 hours, availability of three accused are shown earlier. Thereafter, availability of one accused corresponding to the entry of CPO 12434 Arunlal, PW149 is seen struck off. As far as the entry of 18 hours, availability of each accused corresponding to each police personnel are seen recorded. But, as far as the availability of accused corresponding to CPO Ajesh, some interlineations are made regarding the availability of accused recorded therein. Above that, a ditto mark is also seen made. Further, in between the entry of 15:05 and 18:00 hours, some interlineations regarding the presence of police constable including

PW165 is seen made. Though an entry showing the duty hours are recorded, that is seen struck out. Another aspect to be noted is that at 15:00 hours on 06.03.2017, PW165 was seen entrusted with guard duty. In the right hand portion, one entry as 3 – 6 is seen recorded. At 15:05 hours it is recorded that CPOs 12579, 12661 and 12634 were sent back for rest. As I pointed out, after this entry a particular entry is recorded as interlineation, which shows that three CPOs including PW165 returned back for guard duty. The time corresponding to that entry is not available now. At 18:05 hours, it is again recorded that those three CPOs joined for duty were sent back for rest.

587. The prosecution case is that two police constable were deputed for the guard duty of accused no.1 and one was deputed for the guard duty of accused no.4. On a perusal of the entry of 15 hours, three constables Aneesh, Arunlal and Narshone were deputed for guard duty. If this be the situation, why the other three constables were again joined for guard duty. Moreover, at 18:00 hours, three other persons were deputed for the guard duty. A duty turn is for three hours. The entry would show that the duty turn of 15 hours include PW165. That turn will be over by

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

18 hours. The entry at 18:05 hours would show that three constables entrusted with guard duty were sent back for rest at 18:05 hours. If the persons mentioned corresponding to the duty of 15 hours are already entrusted with guard duty, what is the purpose of the entry after 15:05 hours that the persons allotted with duty at 15 hours joined for guard duty. They are already in duty as per the entry at 15 hours. There is no need to record again about their arrival and joining of duty. Moreover, the time of their arrival is seen struck off. The time which can be seen as of now can be read either as 16:50 or 17:50 hours. This time will not be tallied with the factual situation because they are already shown in duty at 15 hours. This might be the reason for striking out the entry regarding the time. Moreover, at 14:50 hours it is specifically recorded that three CPOs including PW165 were present and joined for guard duty. They were seen allotted guard duty at 15 hours. So, the entry regarding the joining of duty by three constables including PW165 after entry at 15:05 hours creates suspicion. Had this been recorded chronologically, this entry would not hove been recorded in Ext.P156. If we consider the pattern in Ext.P156, the time regarding the second entry with respect to the arrival

of three constables including PW165 is to be taken as 17:50 hours. It is seen that in page no.17, the constables for the duty of 15 hours and 21 hours are seen reached for guard duty at 14:50 hours and 20:50 hours. Similarly, the persons who were performed duty were sent back at 12 hours after duty turn of 12, 15:05 hours after the duty turn of 15:00, and 18:05 hours after the duty turn of 18 hours. If we take the entry showing the arrival of PW165 was at 17:50 hours, he had to join duty for 18 hours. His turn will be over by 21 hours. Though the time 17:50 hours is strike out, the entry regarding the presence of three constables including PW165 for joining duty remains as such uninterrupted. The case of the prosecution is that PW165 performed guard duty at 21 hours to 24 hours on 06.03.2017 and accused no.1 made confession to PW165 during this particular duty slot. The correction of time slot 17:50 hours assumes relevance because had PW165 be joined duty at 18 hours, his duty will be over by 21 hours. If this be the situation, he will not be again assigned duty turn at 21 hours to 24 hours. If he is not assigned with duty at 21 hours to 24 hours as claimed by prosecution, that will affect the entire

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

prosecution case. Moreover, there is correction regarding the time slots 18.00 hours and 20:50 hours.

588. When PW152 was in box, in the chief examination, the learned Special Public Prosecutor tried to elicit through this witness that the entries of 06.03.2017 are recorded by him. A specific question is put to him that why the entry in Ext.P156 showing the term accused is struck off. She replied that two CPOs were entrusted with the duty of accused no.1. Hence in order to understand that fact, the term accused is struck off. During cross examination he admitted that this fact is stated before the court for the first time. A suggestion is put to him that this was deposed as per the instruction received during the lunch break. It is also elicited that he has not stated to the investigating officer that this register was maintained by the officers, who are on duty. He admitted that guard duty register is an official record. It is issued from A.R Camp. The register has to give back to the A.R Camp. The higher officials had to put signature after verification. He admitted that no such certification is available in Ext.P156. He also admitted that nothing is there to show that this book was issued from camp. Similarly, during the examination of PW149 also

prosecution tried to elicit the very same fact. In re-examination also learned Special Public Prosecutor elicited that the availability of accused was seen struck off in Ext.P156. The prosecution relying on this tried to establish the case that two persons were deputed for the guard duty of accused no.1. At this juncture, the previous entries also assumes relevance. I have already discussed about the putting of ditto marks in the entries dated 05.03.2017. Putting of ditto marks is not in a particular pattern. On a perusal of the ditto marks it cannot be concluded that two CPOs were allotted for one accused and another CPO was allotted for the other accused. As far as the entries in 05.03.2017 are concerned, the ditto marks are seen put continuously. Moreover, in 9 hours and 15 hours turn entry of 03.03.2017 recorded in page 10, ditto marks are seen recorded regarding the entries of time slot. The availability of accused is specifically noted against the entries of each CPOs. The availability of accused are seen recorded from 02.03.2017 onwards. As far as the availability of accused on 06.03.2017 also, it is seen recorded that except the entries of 21 hours and 24 hours, the availability of accused are noted against the entries of each CPOs. This was seen struck off later and added ditto



marks. No initials or signatures are available corresponding to the corrections. As I pointed out, though PW152 attempted to explain this, he himself admitted that this fact was deposed before the court for the first time. So, the said corrections and insertions are seen made so as to tally with the present prosecution case. As I pointed out, as far as the details of 18 hours on 06.03.2017, corresponding to the availability of accused against the entry of CPO Ajesh, both the writings and ditto marks are seen. This is also doubtful.

589. Thereafter, as far as the entries on 07.03.2017 are concerned, no ditto marks are seen recorded in Ext.P156. In pages 18 and 19, the availability of accused are seen recorded corresponding to the details of each CPOs. If the contention of prosecution is accepted, why the practice adopted on 06.03.2017 is not adopted on 07.03.2017 remained unexplained. As far as the entries dated 08.03.2017 in page nos.20 and 21, another pattern is seen adopted. This is also not explained. Similarly, in page 22 of Ext.P156, the entries of 8:55 hours are seen made as interlineations. This entry is with respect to the change of duty. It is seen that this particular entry is made as overwriting over the signatures

already put therein in the right hand side columns. The duty change has to be recorded in this book then and there. Why this was made above the signatures already available therein is also a suspicious and strange circumstance. Moreover, the entry just after that showing the taking of charge is also made as an interlineation. Though it is claimed that Ext.P156 contains entry from 26.02.2017 till 10.03.2017, no dates are seen put after 08.03.2017. The evidence of PW149 Arunlal also would show that Ext.P156 is not a properly maintained record. Though it is claimed that PW149 performed duty on 06.03.2017 at 3 - 6 turn, his signature was not available therein. PW149 claimed that he performed guard duty in the turn 3 – 6, nothing is there in Ext.P156 to show his duty in that particular slot. All these matters cast doubt regarding the genuineness of Ext.P156. This fact coupled with the evidence of PW261 that he has no knowledge about the availability of Ext.P156 at Police Club, Aluva till its production on 22.09.2017 is to be considered together and these matters fortify the contentions of the accused that Ext.P156 is not a genuine record.

590. Though the defence counsel argued that Ext.P156 is to be treated as a self serving document for the prosecution, the unintelligible

DISTRICT AND SESSIONS COURT ERNAKULAM-682

and unexplained corrections and interlineations appear in Ext.P156, especially the corrections pertaining to the duty on 06.03.2017 at 17:50 hours and 18 hours along with the recital therein that PW165 at 17:50 hours reached in the guard will brand Ext.P156 as a self harming document for the prosecution. The entire case of the prosecution depends on the claim that PW165 did guard duty for accused no.1 inside the room for the duty turn from 21 hours to 24 hours (9 p.m. to 12:00 a.m.). But, the corrections and also the recital regarding the presence of PW165 in the guard duty strength at 17:50 hours cast doubt on this particular claim. Had PW165 been reached and joined with the guard duty, that would have been for 18 hours turn duty. If this be the situation, his duty turn will be over by 9:00 p.m. The time slot from 9:00 p.m. to 12:00 a.m. is to be treated as his rest hours. It is true that as per Ext.P156, PW165 joined duty from 15 hours to 18 hours and again at 21 hours to 24 hours. But, the corrections and the fact showing his presence at 17:50 hours has to be considered along with other interlineations made in Ext.P156. Similarly, the writings regarding the change of duty appear in page 22 are made as overwriting. It is seen that earlier signatures were put in the right hand

side column. The duty change was written thereafter over those signatures. Why the signatures alone were there in the right hand column before recording this duty change recital is also not explained. All these discussions drove this court to find that Ext.P156 document cannot be relied on to prove the prosecution case.

591. The next point to be considered is regarding the alleged confession of accused no.1 to PW165 and its recording on his mobile phone. Admittedly, the memory card claimed to be used for the said recording could not be seized. The case of the prosecution is that PW261 after interrogation of PW165 on 12.08.2017 conducted search at his residence and also in the premises. The evidence of PW165 about this aspect is that accused no.1 sought his help to stood as a mediator in between accused nos.1 and 8. PW165 raised his apprehension. Accused no.1 then informed him that he will disclose some matters and if those matters are conveyed to accused no.8, accused no.8 will realise that he approached him as directed by accused no.1. Accused no.1 also told that these matters will be recorded in his phone. PW165 gave his Nokia phone with memory card and accused no.1 recorded the matters. PW165

thereafter stated that on hearing about the news regarding the arrest of accused no.8, he got frightened. He destroyed the memory card containing the voice clip of accused no.1. This was thrown to the paddy field situates on the back side of his residence. This is the statement and definite stand of PW165 from the very inception. He categorically stated that the memory card was destroyed by him. We have to examine the mahazar in this background. Ext.P745 is the search memorandum prepared on 12.08.2017. In the search memorandum it is stated that reliable information is received that the memory card containing the voice record of accused nos.1 to 8 is kept either at the residence of PW165 or in the premises. In order avoid the delay, they proceeded for search. Ext.P746 is the search list. The very same fact mentioned in Ext.P745 is stated in the remark column of Ext.P746 also. The time of search was at 6:15 p.m. to 7:30 p.m. on 12.08.2017. The search memo and search list were reached before the court on 26.08.2017. They conducted search in the residence of PW165. They have also conducted search in the rooftop of the said residential building using a torch. Thereafter, search was made in the paddy field and a water channel situate on the back side of the said

residence. It is a water logged paddy field. They could not trace out the said memory card during this search. No explanation is offered for a search even after PW165 stated to the investigating officer that he destroyed the said memory card. The time of search also assumes relevance. The search was conducted during monsoon season and it was commenced only at 6:15 p.m. The case of PW165 is that he destroyed it and threw it into the water logged paddy field. It is common knowledge that memory card is a very small object. How could this kind of small object be traced out from a water logged paddy field during monsoon season, that too, at late hours, is to be taken into account. PW261 stated that they used torch light to trace out the said broken pieces of memory card. Though an independent witness was cited in the search list, he was not examined. During cross examination of PW261 this fact was put to him and he claimed that prosecution conducted search at the residence of PW165 at the earliest occasion and search in the paddy field was thereafter. PW261 admitted that when they reached at the spot at 6:15 p.m., minimum light was available. The evidence of PW165 himself is that he destroyed the memory card by throwing it in the water channel. Even



after such an information, why did the investigating officer conducted search at his residential house without conducting search in the place where it is said to have been left, is not explained by him. When a question is put to him during cross examination regarding this aspect, he stated in a casual manner that he did not conduct search in the water channel at that time. No reason is assigned for this. This cannot be treated as a justifiable explanation.

592. The prosecution case is that PW165 was deputed for guard duty of accused no.1 inside the room in which he was detained. PW165 had been instructed to manage conversation with accused no.1 as there was chance for his suicide. He started to have conversation with accused no.1 and accordingly, accused no.1 sought his help and also recorded the matters in his mobile phone. Admittedly, when the mobile phone was subjected to FSL examination, nothing could be traced out from the said mobile phone. The mobile phones used by PW165 are identified as MO123 and MO124. MO123 is the Nokia phone claimed to be used for recording the said voice clip. Ext.P287(a) is the FSL report of these mobile phones. The learned Special Public Prosecutor relying on Section

30 of the Indian Evidence Act asserted that, a confession made by a co-accused can be considered by the court only along with other proved circumstances forming part of the evidence which point to the guilt of the unconfessed co-accused who are jointly tried. The only restriction is that the confession of a co-accused alone shall not be the basis for the conviction of an unconfessed co-accused. However, if the confessed co-accused becomes an approver, the position is different. According to him, since PW165 became an approver, his evidence cannot be termed as a confession of a co-accused attracting the limitations u/s.30 of the Indian Evidence Act. The arguments in this regard was stated in page nos.946 to 950 of Volume No.IV of argument note. PW165 is admittedly a police officer. It is also admitted that accused no.1 was in police custody at that time. He was housed at Police Club, Aluva. The basic principle of law is that confession to police officer not to be proved. Section 25 of the Indian Evidence Act says that, no confession made to a police officer shall be proved as against a person accused of any offence. It is very clear that in confession statement made by accused before the police is not admissible in evidence. The learned Special Public Prosecutor also submitted that

accused no.1 admitted about the transactions with PW165 in his examination u/s.313(1)(b) of Cr.P.C. The learned Special Public Prosecutor also submitted that accused no.1 never challenged the evidence given by the accomplice witness. It is to be noted that in a criminal trial different accused persons can take divergent contentions. The fact that one of the accused persons never challenged the evidence of any of the witnesses cannot be taken as a ground to take that the said evidence remains unchallenged and binding against the other accused, who disputed and cross-examined that witness. Though accused no.1 never challenged, accused no.8 has extensively cross-examined PW165 and also put suggestions that accused no.1 and the investigating agencies are in hand-in-glove so as to create evidence against accused no.8. For the mere reason that accused no.1 never challenged the evidence of PW165, it will not change the status of the evidence if it is a confession made by an accused to a police officer. The prohibition enjoined by Section 25 of the Indian Evidence Act is directed against proof of confessions made to a police officer. In each case the question must be examined whether the statement was infact made to a police officer or not. In this case, the case

of prosecution is that PW165 provided his mobile phone to accused no.1. He recorded the matters using his mobile phone. Thereafter, PW165 heard it during his rest time. But the evidence of PW165 is to be looked into. He categorically stated that when he was asked by accused no.1 to convey some matters to accused no.8, he asked accused no.1 to record those matters in his Nokia mobile phone. He handed over the phone for the said purpose. Prosecution has no case that PW165 was not available in the room while accused no.1 allegedly recorded the matters using MO123 phone. He was very much available with accused no.1 as claimed by the prosecution. This recording was allegedly made in the presence of PW165 in the room where accused no.1 was kept. He specifically stated that the recording contains the matters which accused no.1 wanted to convey. This shows that he heard the matters while recording the voice clip itself. He again stated that he heard the voice clip one or two times during his rest time.

593. The rule against admission of confessions to police is to prevent potential coercion or manipulation by law enforcement authorities and ensure that confessions are true and voluntary. Section 25



DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

of the Indian Evidence Act deals with the confession made by a person to a police officer. It says that it shall not be proved against such a person accused of any offence. But, on a reading of Section 26 of the Indian Evidence Act it can be seen that even if an accused while in the custody of a police officer makes a confession, the same can be proved as against him, if such a confession was made in the immediate presence of the Magistrate. Section 25 prohibits proof of a confession made by a person to a police officer, whether or not at the time of making the confession he was in custody. Section 26 prohibits proof of confession by a person in custody made to any person unless the confession is made in the immediate presence of a Magistrate. The principle u/s.25 of the Indian Evidence Act is again reiterated in Section 26 of the Indian Evidence Act. The term custody used in Section 26 is that it does not mean a person being in actual custody. Custody actually means control of a person's movement. In this case, admittedly, accused no.1 was in police custody. The prosecution allegation is that accused no.1 made confession to a police officer while he was in custody of police. The principles laid down u/s.25 and 26 of the Indian Evidence Act are applicable herein.

594. The learned Special Public Prosecutor asserted that since the police officer became an approver at a later stage, this principle has no application. It is true that PW165 became an approver. Though he became an approver, his status as police officer at the time of alleged confession to him by accused no.1 will not cease or change and that is the position taken of to evaluate the application of Sections 25 and 26 of Indian Evidence Act. So, the assertion of learned Special Public Prosecutor that since PW165 is an approver, the bar u/s.25 and 26 of Indian Evidence Act is inapplicable cannot be accepted.

595. The statement of PW165 u/s.161 Cr.P.C was recorded on 12.08.2017. The statement of PW165 u/s.164 of Cr.P.C., which is marked Ext.P253 was recorded on 28.09.2017. Ext.P255 statement u/s.306 Cr.P.C was on 25.10.2017. Further, the statement u/s.306(4) Cr.P.C, which is marked as Ext.C33 was recorded on 07.11.2017. Not even a whisper is made in any of the statements about the turn of duty, particularly, the turn of duty in which the alleged confession as well as recording was made by accused no.1 at the instance of PW165. The evidence regarding the turn of duty is deposed for the first time before the court. It cannot be



considered as mere omission in the light of the corrections appear in the entries regarding turn of duty in Ext.P156 and also the recital showing the arrival of PW165 to join the duty for the turn 18 hours. Moreover, in all the previous statements PW165 stated different versions regarding the socalled recording of the statement of accused no.1 using his mobile phone. In Ext.P253, the statement u/s.164 Cr.P.C. before the Judicial First Class Magistrate, Mattancherry, in page no.7, PW165 stated that accused no.1 disclosed to him that the offence was committed as directed by accused no.8 and on hearing this he felt suspicion and accordingly, he asked accused no.1, whether these matters stated by him can be recorded. Accused no.1 was initially reluctant. Thereafter, accused no.1 sought his help as a mediator. He raised this apprehension. When accused no.1 instructed that he will state some matters and if those matters are communicated to accused no.8, he will understand that the person who narrates the incidents is sent by him. On hearing this also PW165 asked accused no.1 to record these matters. In Ext.C33 dated 07.11.2017, page no.9 contains the version regarding recording. It is stated that accused no.1 sought his help. Then PW165 asked accused no.1 that how could

they identify that his involvement was for and on behalf of him. Accused no.1 replied that he will say certain matters and on hearing those matters accused no.8 could identify him. On hearing this PW165 asked him to record these matters. These matters were recorded using his Nokia mobile phone. In Ext.P255 dated 25.10.2017 PW165 stated that the recording was done as demanded by accused no.1. In his 164 statement he had given two versions regarding recording of voice clip. One explanation is that he asked accused no.1 to record it when he heard about the involvement of accused no.8. Another claim put forward by PW165 is that in order to get the trust of accused no.8, he asked accused no.1 to record the matters. In Ext.P255 he stated that accused no.1 asked him to record the matters. These two explanations are mutually contradictory.

596. Another case of the prosecution is that accused no.1 sought the assistance of PW165 to contact accused no.8. As part of this, accused no.1 gave a piece of paper containing three phone numbers to him. It is stated that the said piece of paper was kept under the sole of his shoes placed near the staircase of the room. One number in the said paper piece was of Laksyah. He contacted to this number on 07.03.2017 and

09.03.2017. It is the evidence of PW165 that he took the piece of paper after lifting the temporary sole of the shoes worn by accused no.1. It contains three numbers. The first one was of Vishnu and the second number was of brother-in-law. Another number was also available there, but without name. It is also deposed that Sunil wrote these numbers on a paper torn out from the news paper available in the room. PW165 claimed that this was also happened during the duty turn between 9 p.m. and 12.00 a.m. In Ext.P255, statement u/s.306 Cr.P.C he stated that he recorded the voice clip of accused no.1 in one turn of his duty. He took rest also. He appeared for another turn of duty after 3 hours of rest. At that time he collected the piece of paper containing three phone numbers from the shoes. Accused no.1 asked him to keep that piece of paper with him. Nothing is stated about the turn of duties in his 164 statement. Similarly, in Ext.C33 also no mention is made about the turn of duties. Nothing can be seen from Ext.C33 or Ext.P53 that both these acts were performed during a single turn or during different turns. In Ext.C33 he stated that three numbers were there in the piece of paper. One was of Vipin and the other was of brother-in-law. No name was given for the

third number. But in his Ext.P253 statement he stated that he had been directed to take out a piece of paper from the shoes. He collected it from the shoes. Accused no.1 told him to contact anybody available in the said number. It seems that only one number was available therein.

597. I have already discussed about the full circumstances exist in the duty turn claimed by PW165. Here also, as far as the handing over of the piece of paper containing phone number, different versions are available. On a perusal of Ext.P255, statement before the Chief Judicial Magistrate, PW165 stated that the recording of voice clip and handing over of paper piece containing mobile numbers were happened in two different duty turns. In all other previous statements, no details regarding the duty turns are stated. But, before this court PW165 specifically stated that both these acts were done during the duty turn falls between 9 – 12 in the night. In the light of material contradictions and also regarding the omissions to mention the duty turns coupled with the corrections available in Ext.P156, this court is not in a position to rely on the oral testimony of PW165 regarding the duty turn. In one statement, he claimed that accused no.1 has hidden the phone number of Laksyah in his

shoe. But, the evidence of PW165 before this court in this regard assumes some relevance. He categorically deposed that he contacted in the said number on 07.03.2017. Since the conversation was not clear, he disconnected the call. He thereafter searched the phone number in the Google. A specific question is put to him, whether he saw the paper containing the name of Laksyah while taking the piece of paper from the shoe. He answered affirmatively. He also added that he does not know what was Laksyah. He does not remember whether accused no.1 stated anything about Laksyah. This is also against his previous statement that the piece of paper containing three numbers amounts to a contradiction. But one number was without name. In his statement before the Chief Judicial Magistrate he stated that when he joined for duty on 10.03.2017 he informed accused no.1 that the number provided to him was of Laksyah. Accused no.1 Sunil has no knowledge about this fact till he conveyed this fact to him. When PW165 was in box this fact was put to him and he pretended ignorance. Though he stated before the investigating officer that he had seen the piece of paper containing the number of Laksyah inside the shoe, this fact was not stated before the

Magistrate. The piece of papers allegedly containing the numbers are not produced before this court.

598. During re-examination this fact was attempted to clarify by the learned Special Public Prosecutor. PW165 in the re-examination reiterated that when Sunil provided the number stating that the number was of the sister of Kavya Madhavan, he replied that Kavya Madhavan has no sister. At that time accused no.1 informed him that, that number was being used by accused no.8. This fact was not stated to the investigating officer or any of the Magistrates. The learned counsel for accused no.8 cross examined PW165 further after the re-examination. It is elicited that the newly added explanation is an omission. They also put another suggestion that PW165 in his official capacity as civil police officer giving false evidence to help the prosecution. He denied it. It is seen that PW165 has never made any reference about accused no.8 in his previous statement. The learned counsel for accused argued that though the prosecution framed a story about two pieces of papers containing phone numbers, nothing is produced before this court. According to the learned counsel, similar stand was taken up by prosecution regarding the



note allegedly made by accused no.1 and entrusted with PW176 along with Ext.P122 letter. When PW165 was in box this fact was put to him. In page no.1096 of the evidence of PW261, a question is put to him by the learned counsel that has he conducted any investigation with respect to these piece of papers. He claimed that he conducted investigation. However, nothing can be seen from the records that he conducted investigation. Another question is put to him, whether during the search conducted at the residence of PW165 he searched for those papers. He stated that no search was conducted. It is seen from this evidence that PW261 was in a casual manner stated that he conducted investigation about this fact. If he conducted investigation, why this fact is not reflected in the case diary stands unexplained.

599. Another point to be considered is that Ext.P749 scene mahazar is prepared by the prosecution on 25.08.2017 with respect to the room where accused no.1 was lodged and also the place where the shoe from which the piece of paper containing phone number was kept. This mahazar was prepared on 25.08.2017 at 4 p.m. It is specifically stated in the mahazar that these places were pointed out by PW165. The details of

the rooms available along with the description of the said room of the District Police Training Centre is narrated in the said mahazar. The interesting aspect is that CW331 Darly Paul alone is cited as witness in this mahazar also. This mahazar would show that atleast on 25.08.2017 Darly Paul has had occasion to know about the involvement of PW165 and the related matters. PW261 when cross examined about Ext.P156 and deposed that he came to know about Ext.P156 only on recording the statement of PW152. Thereafter, he conducted investigation and that lead to the seizure of Ext.P156 as handed over by CW331 Darly Paul. It is seen that Darly Paul is cited as an attestor in Ext.P749 dated 25.08.2017. Why Mr. Darly Paul did not mention about the register to PW165 and similarly, why PW261 did not enquire about the matters relate to these aspects in connection with the guard duty of accused no.1 to Darly Paul atleast on 25.08.2017 appears doubtful.

600. Another aspect to be considered is regarding the testimony of PW165 with regard to the preparation of Ext.P749 on 25.08.2017. During cross examination by learned counsel for accused no.8, PW165 deposed that he does not remember how many times he was called by the police

and the dates also. He stated specifically that his statement was not seen recorded. He also stated clearly that he has not shown any places to police after 12.08.2017. According to him, he went to the Police Club as directed by the police. Dy.S.P Mr Sudarsan and Sojan were also present there. They also put questions to him. According to him, he met Dy.S.P Sudarsan on 3 – 4 occasions. He has not stated anything about the preparation of Ext.P749 on 25.08.2017 as claimed by the prosecution. In addition to that, he clearly deposed that he has not shown any places to police. So, the preparation of Ext.P749 is doubtful. Moreover, no independent witnesses are cited in the mahazar. The one and only witness shown in the mahazar is not examined also. The statement of PW165 denying identification of any place to the police officials along with want of any independent witness in Ext.P749 and non examination of the witness named therein without any explanation are prompting me to conclude that the prosecution has failed to prove that it was prepared in confronting with the provisions governing preparation of mahazar.

601. Prosecution case is that on 07.03.2017 and 09.03.2017 PW165 contacted to the number of Laksyah provided by accused no.1 on

06.03.2017. The learned Special Public Prosecutor relying on the oral testimony of PW77, PW78, PW81 and PW82 argued that ample evidence is available on record to prove the prosecution case. It is contended that on 07.03.2017 PW165 attempted to call from a coinbox installed at North Paravur Bus Stand. Thereafter, on 09.03.2017 he made another attempt to contact the said number by making two calls from a coinbox phone at KSRTC Bus Station, Thrissur. Reliance is placed on Ext.P80 customer application form along with ID proof and Ext.P81 series CDR with Section 65B certificate of the mobile number 9656303333. According to the prosecution, the CDR confirms a call from 0484 2445162 at 9:44:22 hours on 07.03.2017, from the coin booth owned by PW78 at Private Bus Stand, North Paravur. Similarly, two calls were seen received from the number 0487 2426808 on 09.03.2017 at 10:30:16 hours and 10:31:34 hours owned by PW77. The prosecution urged that these records corroborated the oral testimony of PW165 that he contacted to the number provided by accused no.1. Reliance is also placed on Exts.P154 and P156 registers to prove this aspect. They also asserted that PW81 and PW82 were influenced by accused no.8. PW214 Sai Sankar deposed about their

DISTRICT AND SESSIONS COURT ERNAKULAM

presence at the office of the counsel for accused no.8. The learned Special Public Prosecutor urged that apart from Exts.P154 and P156, the tower locations of PW165 would establish clearly his presence in the said locations. Exts.P62(b) and P63(a) and Ext.P209 CDR and tower locations of the numbers used by PW165 would prove this fact. It is further submitted that imperfections found in the registers themselves indicate its genuineness. These documents were maintained temporarily as part of official duty and hence, presumption goes in favour of its authenticity. The learned counsel for the accused on the other hand contended that the customer application form and CDR of the coinbox phones allegedly used to make calls have not been produced before the court. It is also contended that no documents are produced to substantiate that PW77 and PW78 were managing the coinbox facility as claimed by them. Except the oral testimonies of both PW77 and PW78, the best available documentary evidence is suppressed by the prosecution. They also submitted that the duty registers available at the Medical College Hospital pertaining to the duty of PW165 are not produced before the court. No investigation pertaining to the duty of PW165 at the Medical College

Hospital is also conducted by PW261. It is also submitted that after having alleged that PW165 did the guard duty at Medical College Hospital, Thrissur along with another policeman, the details of that policeman are also not verified or produced in court. The passport of PW165 relieving him for the guard duty of accused no.1 is also not produced. Yet another contention of the counsel for accused no.8 is that the investigating officer had produced only selective decoded cell ID details and failed to produce the relevant decoded details of the time claimed by the prosecution. The suppression of decoded tower locations is with an intention to fabricate evidence. I have already discussed about Exts.P154 and P156. Similarly, I have already discussed in detail about the claim of PW165 that accused no.1 handed over him the mobile number of Laksyah. It is asserted by the prosecution that the alleged confession of accused no.1 was recorded and thereafter, he handed over the mobile phone numbers to PW165 during his duty turn from 9 p.m to 12 p.m. The matters regarding the duty turn of PW165 and also the aspects with respect to his duty turns on 06.03.2017 as seen from Ext.P156 and the discrepancies therein are also discussed and considered.



602. PW77 deposed that he was running a telephone booth at KSRTC Bus Stand, Thrissur since 1990. According to him, four coinboxes were available there. He had given the details of the numbers of coinboxes. All those coinboxes were placed outside the booth. His booth will be opened by 10 a.m. and closed at 6 p.m. According to him, the booth was closed during the pandemic period. During last period, one STD phone and one coinbox were available there. In his cross examination, he admitted that no documents showing that he has had any booth as claimed by him is produced in court. He also stated that neither the bills nor any other documents showing his ownership over the telephone numbers are produced. He further stated that he is not able to mention the period or date when the six phones were closed by him. He added that all these phones were available when he met police.

603. PW78 deposed that he was running a shop at the Municipal building, Paravur. A coinbox was also installed therein. According to him, 0484 2445162 was the number. The learned Special Public Prosecutor put a question, whether 0484 2445162 is the number. He replied affirmatively. According to him, this facility was began 8 to 10 years prior

to 2020. He admitted during cross examination that no bills were shown to the police. Ext.D14 contradiction is proved through him. In his statement recorded u/s.161 of Cr.P.C. he stated that the number of coinbox was 0484 2455162. He also admitted that no records are produced to show that he was running a shop near the Bus Stand. He does not know who are the persons made calls from his booth. A suggestion is put to him that he has no shop near the Bus Stand, Paravur as claimed by him and his response was in the negative.

604. PW81 and PW82 are none other than the brother-in-law and his wife, of accused no.8. PW81, the wife of PW82 stated that PW179 and PW82 were running boutique by name Laksyah on partnership basis. She has also assisted them in the business. Laksyah was having a visiting card. The number 9656303333 was shown in the visiting card. A question is put to PW81 that on 09.03.2017 in between 10:31 hours and 10:34 hours, she received a call from 0487 2426808. She replied that she used to receive calls. But, she is not in a position to recollect the number specifically. She also stated that if the records reflect the receipt of calls, that might have been received. Another question is put to her that whether she received a

DISTRICT AND SESSIONS COURT ERNAKULAM 682 011

second call from the same number. She answered in the negative. It is also put to her that when the second call came, has she handed over the phone to PW82, to which also she answered in the negative. She was declared hostile and Exts.P50 and 50(b) are elicited through her. Questions are put to this witness stating that these calls were received and the person made the calls enquired about accused no.8 and PW179. She denied it.

605. PW82, the brother-in-law of accused no.8 deposed that he did not attend the calls received in the business number. According to him, this number is maintained with PW81. Exts.P51 and 51(a) are elicited through this witness. PW81 and PW82 specifically denied the receipt of calls as alleged by the prosecution. The learned Special Public Prosecutor contended that accused no.8 influenced PW81 and PW82. It is an admitted fact that they are close relatives. Ordinarily, no one expect positive evidence from persons troubling their close relatives who are arraigned as accused persons. Though PW81 and PW82 stated about the conversation allegedly made by PW165, they deposed that calls might have been received, if the records reflect the receipt of calls. Ext.P80 series

and P81 series of the mobile number 9656303333 are produced in court. These records would show that this number is issued to Laksyah.com. The ID proof of PW82 is given along with the application. Ext.P81 series CDR would also prove the receipt of calls as claimed by the prosecution. So, it can be seen that two calls were received in this number on 07.03.2017 and 09.03.2017 at the time alleged by the prosecution. So, from the CDR it is seen that the calls were received in the mobile number 9656303333. PW82 also deposed that calls might have been received, if the records reflect it.

606. The point to be considered is, whether these calls were made by PW165 as instructed by accused no.1. The learned Special Public Prosecutor had given much reliance to the tower locations of PW165 to establish his presence in the places claimed by them. It is to be noted that PW165 deposed that he had two mobile phones with two SIMs each. Admittedly, the CDRs of two SIMs are produced before the court. One among those SIMs is in the name of one Mr Shameer. PW165 deposed that Shameer is his colleague. Ext.P209 and Ext.P209(a),(b) and (c) documents are with respect to mobile number 8547990855 in the name of

PW165. Ext.P63 series documents are with respect to the mobile phone number 8089800544 in the name of Shameer. It is claimed by the prosecution and PW165 that this number was used by him. The learned Special Public Prosecutor submitted that the mobile tower locations corresponding to both these SIMs consistently match the locations. It is also submitted that Ext.P209 number CDR shows that almost all the calls on that number were incoming, with only one or two outgoing calls made occasionally. This confirms that PW165 primarily used Ext.P63 number for regular communication and it was in his regular use. As I pointed out, PW165 himself admitted that he was using four SIMs in two mobile phones. Admittedly, the CDRs of two SIMs alone are produced before the court. Why didn't the prosecution produce the CDRs of other two SIMs are not explained before the court. If this be the situation, we are not in a position to know about the full call details of the other two SIMs. Therefore, the submission of the learned Special Public Prosecutor that since the call details of Ext.P209 shows mere incoming calls, it can be confirmed that he used Ext.P63 for his regular communication cannot be accepted. Ext.P209 CDR would negative the assertion of the learned

Special Public Prosecutor that almost all the calls on that number were incoming with only one or two outgoing calls made occasionally. Even, on 06.03.2017 at 21:12:54 hours an outgoing call is made from the mobile number 8547990855 to the mobile number 7736431034.

607. It is to be noted that the case of the prosecution is that PW165 was engaged in the guard duty of accused no.1 on 06.03.2017 from 9 p.m to 12 a.m on 07.03.2017. No investigation is seen conducted about the above mentioned call at 21:12:54 hrs. Similarly, it is seen from Ext.P63 CDR of the mobile number 8089800544 that on 06.03.2017 from 21:14:39 hours till 21:47:09 hours, eleven calls were either made or received in this number. This fact is also not investigated by the investigating officer. The case of the prosecution is that he had been directed to monitor accused no.1 closely and also to engage him with conversation as accused no.1 showed the tendency to commit suicide. The case of the prosecution is that on the basis of above direction PW165 started conversation with him. He engaged in conversation with him and that lead to the alleged confession and also the handing over of phone numbers of accused no.1 to him. Engagement in eleven calls within the short time of 33 minutes by

PW165 who was posted for the guard duty of accused no.1 with the direction to make him engaged is also stands against the prosecution allegations. The persons with whom PW165 contacted during this particular period is also not investigated. The learned Special Public Prosecutor submitted that the mobile tower locations corresponding to these two SIMs are consistently match the locations and movements of PW165. The decoded tower locations as claimed by the prosecution is not produced. It is true that as per Ext.P209, PW165 was seen available within the tower location 'Federal Tower, Aluva' on 06.03.2017 from 20:53:57 hours till 07.03.2017 at 7:59:07 hours. Similarly, as per Ext.P63, in most of the times tower location was within 'Aluva Bypass Federal Bank'. But, on 06.03.2017 at 21:14:39 hours another tower location was seen. The decoded tower location of '26663' is not produced in court. As per Ext.P63 on 07.03.2017 at 9:48:17 hours and 09:49:52 hours, the tower location of PW165 was at North Paravur. No other details are available before this court as far as the tower locations are concerned. It is true that the tower locations are matching as far as the presence of PW165 at Aluva is concerned. The tower location at North Paravur is borne out

from Ext.P63 series. Admittedly, this phone is in the name of Shameer. Nothing is there in Ext.P209 CDR to show the presence of PW165 within the North Paravur tower location. The learned counsel for accused no.8 argued that no evidence is available in court to show that PW165 used Ext.P63 mobile phone as claimed by the prosecution. The learned Special Public Prosecutor urged that it is a common practice in India for individuals to use SIM cards taken in the name of friends or relatives, particularly among close acquaintances. It is true that PW165 deposed that he used Ext.P63 SIM though it was in the name of his colleague Shameer. When a specific challenge is raised regarding the use of mobile phone as claimed by them, it is the duty of the prosecution to prove the said fact beyond any shadow of doubt. Instead of proving the said fact, it is seen that the prosecution is attempting to stick-on to the assertions claiming that one SIM obtained by a person will be used by another and it is a common practice. We cannot take this submission as a substitute for proof considering the peculiar situations exist in this case. Admittedly, Mr Shameer in whose name Ext.P63 was issued is not a common man. PW165 categorically deposed that Mr Shameer is one of his colleagues.

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

Mr Shameer is a policeman. PW165 deposed that when PW261 Mr Baiju Poulose reached at North Paravur Police Station Mr Shameer was available in the North Paravur Police Station with PW165. PW261 claimed ignorance about this fact. When questions were put to him during cross examination he admitted that he has not investigated about Mr Shameer. He had gone to the extent of deposing that he has no knowledge whether Mr Shameer is a policeman and if so, where does he work. He admitted that he came across with Ext.P63 and knew that it was issued in the name of Shameer. It is the duty of the prosecution to prove the fact that though the SIM was issued in the name of Shameer, it was being used by PW165 as claimed by him. No explanation is forthcoming on the side of the prosecution about the non interrogation of Mr Shameer. Admittedly, Shameer is not even made as a witness. Mr Shameer is the best person to speak about these aspects. It is to be noted that as pointed out earlier, though MO123 and MO124 were sent for FSL examination, CDR of one SIM each of these phones are produced in court. The other two SIMs were issued in whose name and whether the pair SIM used in MO123 was issued in favour of PW165 are also relevant

matters to prove the alleged use of Ext.P63 in MO123 by PW165. That evidence is also not before this court. Similarly, PW165 stated that the SIM issued in favour of Shameer is used by him. No reason is assigned for the said use, especially when three other SIMs were with him. The case of the prosecution is that MO123 and MO124 were seized on 12.08.2017. Ext.P744 is the mahazar prepared in connection therewith. Though Ext.P209 CDR and Ext.P63(a) CDR are produced in court, the periods of request are different. Ext.P209 in the name of PW165 is till 08.08.2017. On the other hand, Ext.P63(a) in the name of Mr Shameer is till 12.08.2017. Why the CDR of the number in the name of PW165 for the period from 09.08.2017 till 12.08.2017 is not produced remains unexplained.

608. Ext.P744 is the mahazar prepared on seizure of MO123 and MO124 mobile phones. It is stated in Ext.P744 that the said mahazar was prepared on 12.08.2017 at 5.15 p.m. It is specifically mentioned in Ext.P744 that two mobile phones were verified by PW165 and produced before PW261 in the presence of witnesses. As in the case of other mahazars, no independent witnesses are cited in this mahazar also. The

DISTRICT AND SESSIONS COURT ERNAKULAM

witnesses cited are police constables. It is specifically recorded in the mahazar that in MO123, two SIMs were seen at the time of seizure. The very same is in the case of MO124 'Honor' phone also. The case of the prosecution is that PW261 went to the North Paravur Traffic Police Station on 12.08.2017 by noon and PW165 proceeded with him to Police Cub, Aluva. He was interrogated. This led to the seizure of mobile phones on the strength of Ext.P744. Ext.P63(a) CDR issued in the name of Shameer would show the phone calls on 12.08.2017 from 16:42:10 hours till 17:10:03 hours. It is the case of the prosecution that PW165 was in the custody of PW261. PW165 deposed that PW261 and other two Superintendents of Police were available at the Police Club. He was interrogated by all of these police officials. His statement was also claimed to be recorded on 12.08.2017. The mahazar was prepared thereafter and it is further claimed that they proceeded to the residence of PW165 for conducting search about the memory card. Ext.P756 search list is also prepared. That also shows the time when they commenced the search. If this be the total events allegedly happened as claimed by the prosecution, the CDR of the number claimed to be used by PW165 shows that he was

engaged in phone conversation with different numbers, even when he was in custody of the investigation team. Why these calls were made during this period is not seen explained by the prosecution. Similarly, no investigation is conducted about the recipients of those phone calls. This also is another suspicious circumstance in connection with the bringing of PW165 in the array of accused. It is the case of the prosecution that PW165 gave his Nokia mobile phone to record the alleged conversion of accused no.1. PW165 in the chief examination itself claimed specifically that MO123 Nokia phone has the facility to insert memory card. He recorded the conversation using this mobile phone. But Ext.P744 mahazar is silent about the availability of the said facility available in MO123. Nothing is mentioned in Ext.P744 when the details of the facilities available in MO123 Nokia phone are detailed. On the other hand, it is recorded in Ext.P744 that MO124 'Honor' phone has the facility to insert memory card. It is also stated that one memory card was available in the said slot. The non mentioning of the facility to insert memory card in MO123 is also crucial.



609. The case of the prosecution is that PW165 had discharged surveillance duty on 08.03.2017 at Medical College Hospital, Thrissur. Ext.P154 is produced to prove this aspect. I have already discussed about Ext.P154. It is to be noted that PW145 deposed categorically that there is GD in the AR Camp, but that is not produced. The one and only available entry regarding the duty of PW165 at Medical College Hospital, Thrissur is the entry available in Ext.P154 pertaining to the details on 08.03.2017. It is simply written in Ext.P154 "MCH TSR 12664, 12787". No other details are available to show the duty details of PW165. Similarly, in Ext.P154, as far as the details on 09.03.2017 is concerned, it is written as last entry "MCH TSR 12814, 12859", corresponding to this entry it is recorded that "Change 12664, 12787". But the entry "MCH TSR" is seen overwritten. Moreover, the ink used for writing "MCH TSR" and the numbers of constables are different. Ordinarily these two entries should be made continuously. Had this been made continuously, there would not have been any change as appeared. Similarly, in the next page containing the entries on 10.03.2017, last entry is shown as "Fm TSR MCH 12664, 12787". Against the CPO number of PW165, in red ink it is

written as "QRT". On a perusal of the entry on 09.03.2017, it is seen recorded that PW165 with CPO number 12664 was replaced by CPO 12814. It is the case of the prosecution that on 09.03.2017, PW165 was on rest. He joined for guard duty in the Police Cub, Aluva on 10.03.2017. If this be the situation, why there is entry "Fm TSR MCH" on 10.03.2017 corresponding to the entry of PW165. He was not returned from Medical College on 10.03.2017. Another interesting aspect is that "TSR MCH" is also seen added later using different ink. The details of these entries including the indications are not seen explained by PW145 or PW261. The corrections regarding the entry pertaining to PW165 on 10.03.2017 that "Fm TSR MCH" is also creates doubt. It is seen that "TSR MCH" is written over another entry. Moreover, the time when they joined the duty or returned back are also not available in Ext.P154.

610. PW145 was examined before this court to prove Ext.P154. In the chief examination he deposed that on 08.03.2017 PW165 was deputed for surveillance duty at Medical College Hospital, Thrissur. He was on rest on 09.03.2017. Nothing is stated about the entry in Ext.P154 on 10.03.2017. During cross examination he categorically admitted that the

police personnel will come back and report in the Camp after duty. He admitted that Ext.P154 does not contain either his handwriting or signatures. He also admitted that three persons were detained for handling Ext.P154. But, he does not remember who they are. He also admitted that Ext.P154 would show that the constables who were deputed for Medical College Hospital duty on 08.03.2017 availed rest on 09.03.2017. But, Ext.P154 does not show the details when they reported back to the camp on 09.03.2017. He categorically stated that all these details will be recorded in the GD maintained in the AR Camp. That was not demanded by the investigating officer. So, the evidence of PW145 will not help the prosecution to prove the entries in Ext.P154 regarding the duty of PW165 at Medical College Hospital on 08.03.2017. It is true that I have already relied on Ext.P154 to show that PW165 was deputed for QRT duty on 06.03.2017. But, at the very same time, as I pointed out hereinbefore, the corrections and interlineations including the overwriting appear in the duty details of PW165 on 08.03.2017, 09.03.2017 and 10.03.2017 are not explained by any of the prosecution witnesses and

suspicion is looming large on. The corrections and interlineations relating to the entries of those days in Ext.P154 assume relevance.

611. Another aspect is that PW261 categorically admitted that passport as well as the duty register maintained at the Medical College Hospital are not produced before this court. Why this best evidence is suppressed is also to be looked into. The case of the prosecution is that the tower location on 09.03.2017 would show the presence of PW165 at the Medical College Hospital, Thrissur and correspondingly, the calls relied on by the prosecution on 09.03.2017 to the number of Laksyah can be seen made from the coinbox installed at KSRTC Bus Stand, Thrissur. Though PW77 and PW78 were examined to prove that they owned the coinbox, no documentary evidence is produced in support of that claim. Even if their oral testimony is accepted, they have not stated anything suggesting the identity of PW165 as the person who made the calls in question from their coinbox. The one and only available evidence relied on by the prosecution is the oral testimony of PW165 coupled with the mobile tower location. Ext.P63(a) CDR is again relied on by the prosecution to prove this aspect. Ext.P209 CDR would show the presence



of PW165 on 08.03.2017 at 20:00:14 hours at Medical College, Thrissur. The next entry in this CDR was on 09.03.2017 at 13:01:50 hours at Kodungallore. As far as Ext.P63 CDR tower locations are concerned on the strength of Ext.P795 decoded Cell ID details, one entry is decoded. This would show that on 09.03.2017 at 08:38:16 hours the tower location was at Thangalore, Thrissur. It is a nearby place of Medical College Hospital, Thrissur. Relying on this entry the prosecution claimed that the calls allegedly made on 09.03.2017 at 10:30:16 hours and 10:31:34 hours are made by PW165. The available tower location was at 08:38:16 hours. There is a gap of almost 2 hours between these two timings. The tower location, if taken into account, shows that he moved away from Medical College Hospital, Thrissur. It is brought out in evidence that the KSRTC stand situates about 15 kms. away from this particular place. At the first blush this argument appears to be tenable. But Ext.P63 CDR would show that another call was received by PW165 at 10:00:36 hours on 09.03.2017, that is just 30 minutes before the socalled calls made to Laksyah. The decoded Cell ID details of this particular location is not produced before the court. As I pointed out, even if Ext.P63 is taken as the number used by

PW165, the non production of the decoded details of this particular location just 30 minutes before the socalled calls is crucial. Had this been produced, this should have been proved his availability either at the KSRTC Bus Stand, Thrissur or much more near locality. Moreover, PW165 claimed that though he was deputed for duty on 08.03.2017 morning, he reached at Medical College Hospital at a later point of time. He explained that he proceeded to Ernakulam Sub Jail, for collecting the amount of cost for food and medicine. His colleague went there in the morning. It is to be noted that this explanation is made before the court for the first time. He admitted that the duty details of Medical College Hospital was not asked for by the investigating officer. According to him, he has not stated also. He also admitted that a register is maintained in the Medical College Hospital showing duty details and that would show the details of the duties of each police personnel. No records are produced to substantiate the explanation that PW165 went to Ernakulam on 08.03.2017 before attending for duty at the Medical College Hospital. Moreover, nothing is stated by PW165 as to who directed him to proceed to Sub Jail, Ernakulam as claimed by him. The civil police officer, who

allegedly with PW165 at Medical College Hospital is also not interrogated.

612. Further, PW165 himself admitted during cross examination that after the duty, he has to report back in the AR Camp. According to him, AR Camp situates 10 kilometres away from Aluva. He also added that they will be returned to the Camp in the very same vehicle used for proceeding from the Camp. If this be the situation, PW165 has to return back to the Camp after his duty at Police Club, Aluva on 07.03.2017. Ext.P156 would show that on 07.03.2017 the QRT party assigned with duty on 06.03.2017 relieved from the duty at 9 a.m. Moreover, in Ext.P156 it is recorded specifically that GASI Raju and party were returned back to AR Camp. So, this also would show that PW165 had to report at AR Camp on 07.03.2017. He has to cover atleast 10 kilometres as stated by him to reach the AR Camp. Thereafter, he has to travel from Kalamassery to Njarackal. It is the case of the prosecution that during this journey he made the call at 9:44:22 hours on 07.03.2017 at North Paravur Bus Stand. The distance between Kalamassery and North Paravur is almost 23 hours. Atleast 45 minutes will be taken to cover this

distance. If this be the situation, whether PW165 could make the call at 09:44:22 hours is doubtful. Similarly, the non production of details of tower location in Ext.P63 CDR just before the calls relied on by the prosecution is also assumes importance considering the nature of allegations. PW261 during evidence categorically admitted that the details of pair SIM used in MO123 and MO124 are not produced before the court. A suggestion is put to PW261 by the learned counsel for accused no.8 that Shameer was interrogated and since his statement was against the prosecution case, he was not cited as a witness and he denied that suggestion. He admitted that he had seen the customer application form of Shameer and it contains a photo of Shameer in uniform. Even after that PW261 claimed that he did not conduct any investigation.

613. Ext.P287 is the FSL report issued after the examination of MO123 and MO124 mobile phones. The learned counsel for accused no.8 submitted that the copy of Ext.P287(a) DVD attached with Ext.P287 report is not furnished to him and the claim of the prosecution that the copy was not served as it contains private visuals also is accepted. When PW261 was in box, the learned counsel for accused put questions to him

DISTRICT AND SESSIONS COURT ERNAKULAM 682 011



in that regard. It is also submitted that the police made use of the visuals available in Ext.P287(a) and threatened him and accordingly, PW165 gave evidence favouring the prosecution. They also relied on the visuals available in Ext.P287(a), which would show the arrest and related matters of accused no.8. Two videos are available as item nos.489 and 510 retrieved from Q2 in Ext.P287(a). PW261 submitted that he has not conducted investigation about the source of these videos. The learned counsel for accused no.8 submitted that these video clippings would show that PW165 has some vested interest against accused no.8. This contention cannot be considered to see that PW165 has vested interest against accused no.8. But, at the very same time, another item retrieved from Q2 assumes some importance. Item No.32 available in page 27 of Ext.P287(a) is a message sent by PW165 to the mobile no.946696828 on 21.05.2017 at 13:46:26 hours. The messages read as follows:- "nee udheshikkunnath poole simple alla Karyangal. ethenkilum apakadam undayal onnukil jailil pokum". The attention of PW261 was drawn to this particular message by the learned counsel for accused no.8. PW261 deposed that he did not investigate about that messages or about the

circumstances prompted PW165 to sent that message. It is to be noted that this particular message was sent on 21.05.2017. The case of the prosecution is that PW165 committed the alleged offence during the course of his guard duty on 06.03.2017. Ext.P287 report was issued on 07.09.2017. PW165 was arrested on 09.09.2017. So, this particular message was retrieved before the arrest of PW165. This fact ought to have been investigated by the investigating officer. Similarly, no investigation is conducted about the recipient of this message and also his dealings with PW165. Considering the evidence of PW165 and his alleged involvement, investigation with respect to this message ought to have been conducted. It is pertinent to be noted that this message is suppressed by the prosecution. This particular message is elicited and put to PW261 by the counsel for accused no.8. MO123 Nokia mobile phone is marked as Q1 in Ext.P287. It is reported that no audio/video picture files could be found in the phone memory of the questioned mobile phone marked Q1. The description of MO123 is mentioned in Ext.P287. It is stated that two SIMs were available at the time of examination. But, the crucial fact whether MO123 has the facility to insert memory card in it is not

DISTRICT AND SESSIONS COURT
ERNAKULAM

mentioned in Ext.P287 also. MO124 is marked as Q2 in Ext.P287. It is mentioned in the report that memory card was available in the questioned mobile phone and it was marked as Q2(m). Q2(m) was examined and the contents were retrieved. It is true that the case of prosecution is that PW165 handed over MO123 Nokia mobile phone to accused no.1 for recording the voice clip. That was recorded in a memory card. The said memory card was claimed to be destroyed by PW165. But, as I pointed out hereinbefore, nothing is there either in Ext.P744 or in Ext.P287 that MO123 Nokia mobile phone has the facility to insert memory card. MO123 is not shown to PW192 to see whether this phone has any such facility. Similarly, Ext.P744(a) property list produced before the court along with the items also silent about the facility to insert memory card in MO123. Though the memory card is not available in MO123 at the time of seizure, the facility if any was available ought to have been reported in the mahazar. The scientific expert should also mention about the facilities available in MO123, especially when the case of prosecution is that the said phone is used for recording the voice clip. Ext.C29 is the report submitted by PW202 at the time when accused nos.1 and 4 were produced

back from the police custody. Admittedly, Ext.C29 does not contain the name of PW165. This fact is put to PW261. He deposed that usually the details of police personnel accompanying the accused persons will be mentioned in the report. He clarified that when more police personnel were deputed, the names of all of them will not be included in the report. PW165 deposed that he accompanied the accused persons to court and from there to jail. He also stated that he was sitting in the seat next to the accused persons. Though Ext.C29 does not reflect the name of PW165, that itself cannot be taken as a ground to conclude that PW165 did not available with the accused persons at that time. The explanation of PW261 is that the names were not included as the number of persons were more than in the usual course. This seems to be a tenable explanation.

614. The learned Special Public Prosecutor relying on Section 88A of the Indian Evidence Act submitted that this Section acknowledges the practice prevalent in India that individuals will use SIM cards taken in the names of friends or relatives, particularly among close acquaintances. In page no.976 of the argument note, the learned Special Public Prosecutor highlighted and submitted that "but the court shall not make

any presumption as to the person by whom such message was sent". According to him, this particular Section is cautioning accused in attributing authorship of communication solely based on SIM ownership." Section 88A of the Indian Evidence Act deals with presumption as to electronic messages. It says specifically that the court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the court shall not make any presumption as to the person by whom such message was sent.

615. It is to be noted that the law is very specific and clear that unless and until there is cogent evidence, the court shall not make any presumption as to the person who dealt with the device. It is true that Section 88A of the Indian Evidence Act deals with the presumption regarding electronic message. It is true that we cannot attribute the liability of a call or message to a particular person for the simple reason that either he is the holder of the SIM or any of the devices unless it is proved specifically. Similar is the case of tower locations also. We can

conclude that the device was available at the relevant time within that tower location, but that does not show the availability of the user within the said tower location conclusively. The tower location can be considered as one piece of evidence, if the other situations and circumstances substantiate the presence of the person used the gadget. In this case, the point to be decided is, whether PW165 made the calls as claimed by the prosecution on 07.03.2017 and 09.03.2017. The evidence stick-on by the prosecution is the oral testimony of PW165 coupled with the tower locations produced as Ext.P163 and Ext.P209. They also relied on Exts.P154 and P156. I had discussed about the available evidence elaborately. It is seen that calls were received in the number of Laksyah. But, at the very same time, though prosecution claimed that PW165 made these calls, the evidence available before this court is not cogent and convincing to prove the presence of PW165 in those locations. As I pointed out, the prosecution failed to prove that Ext.P63 CDR relates to the number issued in favour of one Mr. Shameer was actually used by PW165 to substantiate the contention that it was actually he who was available in the tower locations claimed by the prosecution. The non

examination of Mr Shameer is fatal. PW165 and the prosecution stated that another CPO was deputed at Medical College Hospital, Thrissur on 08.03.2017 along with PW165. Details of that CPO is not made available in court. Since Mr Shameer the friend of PW165 is a CPO, whether the accompanying officer was the said Mr Shameer or not is a fact to be considered. Similarly, PW165 himself deposed that Mr Shameer was also attached with Traffic Police Station, North Paravur. So, the presence of Mr Shameer in North Paravur during the relevant time is also possible. The best available evidence including the CDRs of the two SIMs available in MO123 and MO124 were also suppressed. The duty register available at Medical College Hospital, Thrissur is not produced before the court. No investigation is also conducted with respect to that. The evidence of PW165 regarding his duty turns and the relevant entries in Ext.P156 are doubtful and suspicious. Moreover, except the oral testimonies of PW77 and PW78, no documentary evidence is produced to show that the coin boxes through which the calls to Laksyah were allegedly made were installed in KSRTC Bus Stand, Thrissur and Private Bus Stand, North Paravur and they are its respective owners. It is brought out that

documents should have been procured about these telephone connections and produce before the court. The location of these phones assumes importance when the prosecution relying on the tower details asserted that the person who made the so called calls were available in a particular location. So, on an over all analysis of the evidence available before the court, I hold that the prosecution failed to prove that PW165 made these calls as directed by accused no.1.

616. **Visit of accused no.1 and accused no.4 to Laksyah the shop of PW179:-**

PW165 was originally arraigned as accused no.14 charged with the offence u/s.201 IPC. After their arrest accused no.1 and 4 were given to police custody and they were kept in custody in the police club, Aluva. Accused no.1 was kept in a room and PW165 was posted inside the room for guard duty apprehending suicidal tendency to accused no.1. A confession alleged to have made by accused no.1 to PW165 in the night of 06.03.2017 regarding the attack of PW1 on 17.02.2017 is also relied on for the implication of accused no.8 imputing conspiracy with accused no.1 for her attack. After the alleged confession accused no.1 sought the help of



PW165 to get the alleged quotation amount from accused 8 and as he agreed, accused no.1 gave a voice clip addressed to accused no.8 in the mobile phone of PW165. All the attempts of PW165 to get in touch with accused no.8 and accordingly he was keeping the memory card containing the voice clip. Having afraid of on knowing about the arrest of accused no.8, PW165 thrown away the memory card in the waterlogged area near his house. Thereafter PW165 was arrested alleging the offence u/s.201 IPC for causing disappearance of evidence and being a bailable offence he was released on bail then and there. Thereafter immediate steps were taken to make him an approver pleading pardon and accordingly he was made as PW165.

617. The evidence of PW165 and the stand of PW261, the investigator are casting serious doubt regarding the implication of PW165 as an accused and his conversion as an approver taking advantage of the position that he was on guard duty of accused no.1 on 06.03.2017. Strong suspicion is looming large around the arraignment of PW165 as an accused. Arraignment of PW165 charged with the bailable offence u/s.201 IPC in spite of charging PW121 and 176 who were also arraigned as

accused numbers with almost all the offences charged against the other accused, eventhough the nature of allegation against them and PW165 is highly suspicious. PW261, the investigating officer has not even offered any satisfactory explanation for delaying the arrest of PW165 after knowing about his complicity and not even interrogating him till his arrest on 12.08.2017. In spite of the admission that PW261 took him to custody from the Traffic Police Station, Paravur one month prior to his arrest not even a piece of paper is available to show the same and PW261 even pleaded short of memory in the matter of taking him to custody and recording his statement on that day. The case diary and G.D of Traffic police station, Paravur are also silent about those aspects. It is evident that 161 statement of PW165 was produced after long 4 years of recording that statement, that too only after the beginning of trial. Though the date of recording of the statement of PW165 was noted as 12.08.2017, no convincing evidence is on record to show that its recording was on that date and one Tahsildar cited as a witness thereto is not examined. The confession of accused no.1 alleged to have made to PW165 is not available on records. The above points summarised after a



detailed discussion of the evidence tendered by PW165 regarding the alleged confession of accused no.1 and recording of his voice message in his mobile phone addressing accused no.8 and his alleged attempts to hand it over to him and the shabby investigation of PW216 even after knowing that PW165, a CPO who was deputed for the guard duty of accused no.1 who was imputed with a heinous crime has conspired with him to get in to a co-conspirator to collect the agreed quotation amount on the first day of his duty itself would lead to the irresistible conclusion that he was planted as an accused after due deliberation to be a strong prosecution witness. Above all, it is highly improbable to believe that accused no.1, who is implicated in a heinous crime has confessed about his role therein to PW165, a CPO who was deputed for his guard duty a CPO with whom he was not having any previous acquaintance. So also it is unbelievable that PW165, a CPO deputed for the guard duty of accused no.1 knowing about the nature of his accusation has handed over his mobile phone to record a voice message to accused no.8 who is stated to be a co-conspirated and agreed to handover the memory card containing the voice message. It is already concluded that no evidence is there to

conclude that the two telephone calls to the associates of accused 8 stated to have made by PW165 to convey the message regarding the memory card are of him. Instead of the positions stated above I hold that PW165 is a planted accused after deliberation to be a strong witness making him an approver that it will be most unsafe to conclude that accused no.1 confessed to him about his role in the attack of PW1 on 17.02.2017 in a moving vehicle and that it was done on account of a quotation of accused no.8.

618. The case of the prosecution is that on 22.02.2017, accused nos.1 and 4 went to the shop of PW179 Kavya Madhavan and accused no.4 enquired about accused no.8. Accused no.4 collected the visiting card from there. Thereafter, they went near the residence of PW179 and made enquiries about her and her father. Accused nos.1 and 4 were arrested after this visit. The learned Special Public Prosecutor argued that the attempts of accused no.1 to contact accused no.8 before his arrest would show that there was criminal conspiracy between him and accused no.8 and between accused nos.1 to 6. In order to prove this aspect, the learned Special Public Prosecutor relying on the evidence of PW126 urged that on

22.02.2017 accused no.1 along with accused no.4 visited the shop by name Laksyah owned by PW179. According to the prosecution, this visit is significant because at that time accused no.1 was absconding and actively being sought or wanted by the police. Despite all these contingencies, accused no.1 decided to visit Laksyah and that indicates his direct connection with accused no.8 and PW179. During this visit accused no.4 met PW126 Sagar Vincent. PW126 identified accused no.4 on seeing his photograph in the newspaper. He shared this information with PW81 Riya. As instructed by accused no.1, on 20.04.2017, PW153 Sanil P Mathew made two phone calls to PW121 referring the visit of accused no.1 to Laksyah. He also argued that Ext.P122 letter also contains visit of accused no.1 to Laksyah. The learned Special Public Prosecutor also relied on documents including the CDR of the mobile numbers used by PW126 Sagar Vincent. He also submitted that the attempts on the part of accused no.8 and his lawyers to influence PW126 is also to be considered. It is also alleged by prosecution that PW126 though informed about the arrival of accused no.4 to PW81, she asked PW126 to keep it as a secret. The learned counsel for accused stressed that in the final report filed on

18.04.2017, the prosecution has no allegation that accused no.1 or accused no.4 visited Laksyah. The Special Investigation Team including PW261 had taken accused nos.1 and 4 to the places claimed to be visited by them between 17.02.2017 and 23.02.2017. They also prepared mahazars of those places. Laksyah was not included among these places as the place visited by accused nos.1 and 4 before their arrest. Counsel for accused no.8 further submitted that accused no.8 has no connection whatsoever with the management of Laksyah. According to him, the business establishments of accused no.8, his residence and residence of his brother PW182 were available in the travel route of accused nos.1 and 4, as alleged by the prosecution. Even if the prosecution case is accepted, the allegations regarding the visit to Laksyah are contradictory in nature. It is also argued that the purpose of the visit to Laksyah is also not mentioned. Four different versions are pointed out by the prosecution as the purpose of visit of accused no.1 to Laksyah. At one point of time, prosecution asserted that it was for collecting the quotation money. The prosecution also claimed that accused nos.1 and 4 visited Laksyah for handing over a letter. At the very same time, they have taken up a stand that the visit was

to give memory card. They also projected a purpose that the visit was to give the mobile phone containing visuals. The learned counsel for accused no.8 submitted pointing out the different purposes itself would prove the falsity of the prosecution allegations. He also denied the claim of the learned Special Public Prosecutor regarding the influence and coercion exerted on PW126. It is further argued that the evidence of PW126 available in the court itself is sufficient to arrive at a conclusion that he is not a trustworthy witness and his evidence is to be evaluated with much caution. The case of the prosecution is that on 22.02.2017, accused nos.1 and 4 went to Laksyah and made enquiries about accused no.8 and the witness cited to prove this aspect is PW126 Sagar Vincent. He deposed that during 2016 September he was working as co-ordinator at Laksyah, Kakkanad. He was functioning as all in all of Laksyah. He joined there in the month of September 2016. He worked there for almost 10 to 11 months. According to him, it is a partnership firm run by PW81 and PW82. Both of them were running the firm. 9072333088 was his number during the relevant time. There was CCTV in Laksyah during 2017. According to him, the DVR of the CCTV was taken by the police. He also

produced Ext.P130 attendance register to the police. He received back the register on bond. During his examination before the court on 18.03.2021, he denied the questions put to him by the learned Special Public Prosecutor about his stay at Rayban Hotel, Alappuzha and also his meeting with PW128 Mr. Suneer. He categorically denied that he was influenced by accused no.8 or his associates. He admitted that he had preferred a complaint against the investigating officer before the Judicial First Class Magistrate Court, Angamaly. It is suggested to him that he influenced PW80 Sarat Babu and he emphatically denied that suggestion. According to him, nobody came to Laksyah enquiring accused no.8, PW179 and her father. He categorically denied the questions regarding the alleged visit of accused nos.1 and 4 at Laksyah and the reference to PW81 about one of the persons visited Laksyah on seeing the photograph in the newspaper. The learned Special Public Prosecutor confronted him referring his statement before the investigating officer. He replied that this statement was made as he was intimidated by the police. He was confronted with his statement before the police and he denied all those statements. Ext.P131 contradiction is elicited through him. He was cross

examined by the learned counsel for the accused. He reiterated his contention that he has not given any statement before the police voluntarily. According to him, he had given the true statement before the Magistrate on 02.09.2017. He also stated that he had given the details of police harassment in the petition before the Magistrate. The petition in CMP No.747/2017 filed before the Judicial First Class Magistrate Court, Angamaly is marked as Ext.C3. He admitted his handwriting in Ext.C3. According to him, this was prepared at the office of a lawyer in Alappuzha. This witness was thereafter recalled as per order in CMP No.3333/2022. The examination of PW126 is objected to by the learned counsel for accused on the ground that the prosecution under the guise of Section 311 of Cr.P.C is trying to fill up the lacuna. The learned Special Public Prosecutor replied that in the pursuit of finding out the truth, in the legal history there are instances in which certain witnesses may state falsehood before a court of law because of the circumstances and compulsions, if the said witnesses give statement even contrary to their prior statement before the court. It is for the court to decide after the

evaluation of circumstances, whether any portion of his evidence could be relied on or not. He was examined subject to the above objection.

619. It is to be noted that the prosecution conducted further investigation after the revelation of PW222. The witnesses who were already examined were again interrogated and filed supplementary final report on 22.07.2022. The investigating officer interrogated PW126 also. The prosecution filed petition to recall this witness. It is the prerogative of the prosecution to decide who all are to be examined. There is no bar in interrogating a witness who was already examined by recalling him. Hence, we cannot blame the prosecution for recalling PW126 again. As rightly stated by the learned Special Public Prosecutor, the circumstances available before the court are to be considered for evaluating the evidence. The court is at liberty to consider the entire evidence. The court can also consider the contentions raised by both sides relying on the evidence of the witnesses available.

620. PW126 during the second spell of his examination deposed that when he worked at Laksyah during 2016-17, one person came there three or four days after the alleged assault against PW1. He rang the

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

calling bell. On opening the door he enquired about PW179, accused no.8 and father of PW179. PW126 replied that they were not available there and thereupon he returned back. The said person came back and asked for their phone number. He informed that their numbers are not available with him and gave visiting card of Laksyah. Two or three days after the said visit he read a news item regarding the arrest of that person along with his photo. He informed this matter to PW81 and PW82 and showed the newspaper. They asked him to keep this as a secret. He left the job after a few days. He had been called by police to record his statement. He stated the matters which were known to him. He thereafter called PW128 Mr. Suneer. Mr. Suneer was also employed at Laksyah. Mr. Suneer came to Aluva. Mr. Suneer took him to the office of Adv. Philip. Adv. Philip made enquiry to him about the matters stated to the police. He replied that he stated all the matters known to him. Adv. Philip told him that the statement to the police is not a valid statement, whereas the statement before the court is to be treated as valid statement. He had been instructed to pretend ignorance while giving statement in the court. He also deposed that Adv. Philip gave rupees fifteen thousand to him. He received the

amount owing to his helpless situation. He also stated that he did not make any demand. But, the money was given to him. When he was summoned to give statement before the Magistrate, he stated that he does not have any knowledge about the matters. According to him, he was again called by police. He informed this matter to Adv. Philip. PW128 Mr. Suneer came to Alleppey as directed by Adv. Philip. He along with PW128 went to the office of a lawyer. He sent a complaint to Judicial First Class Magistrate Court, Angamaly. The police thereafter did not make any troubles to him. When he received summons from the trial court, he informed this to Adv. Philip. He instructed him about the matters to be deposed before the court. He had stated falsehood as directed by the Advocate. Police again called him two or three weeks thereafter. This fact was also informed to Adv. Philip. Adv. Philip assured that he will take necessary steps to avoid his summoning by the police. He arranged an Advocate at Alappuzha. As instructed by the said Advocate, he sent another complaint to the CBI Court alleging police harassment. According to him, that complaint was sent by the Advocate. He also filed petition before the Hon'ble High Court as directed by Adv.

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

Philip. Police again called him and he got frightened and his name was telecast in T.V channels and newspapers. His friends and relatives scolded him and asked him to state the truth. He approached the police again. He disclosed the real matters to the police. He again gave statement before the Magistrate. According to him, accused no.4 Vijeesh visited Laksyah. He also identified accused no.4 before the court.

621. Mobile number 9072333088 was provided to him by Laksyah and that was later returned to them. Since Laksyah provided the mobile number, that mobile number 8943770582 became deactivated. After returning the SIM provided by Laksyah, he again activated mobile number 8943770582. Ext.P547 is the customer application form filed by him. According to him, there were phone calls between himself and PW128 Mr. Suneer. He also stated that after his statement before the Judicial First Class Magistrate Court, Kalamassery, he met Adv. Philip T Varghese. The learned Special Public Prosecutor put a question, whether Adv. Philip gave anything to him. He replied that since it was the pandemic period, he had financial constraints. Hence, he asked money from Adv. Philip. He occasionally borrowed money from Adv. Philip.

The learned Special Public Prosecutor put another question that why did he gave false statement before the court. PW126 replied that it was because of the influence and persuasion on the side of Adv. Philip. A specific question is put to this witness by the learned Special Public Prosecutor that "you stated that you met Adv. Philip after your statement before Judicial First Class Magistrate Court, Kalamassery and whether Adv. Philip gave money at that time". This question is objected to by the learned counsel for the accused. The learned Special Public Prosecutor claimed that since the witness is a hostile witness, he can put leading questions. But the witness replied that he met Adv. Philip on that day. The learned special Public Prosecutor put another question that how much amount was paid on that day. PW126 categorically replied that nothing was given on that day. The learned Special Public Prosecutor has again put question to a witness referring his statement before the investigating officer. He claimed ignorance. Ext.P460 copy of petition is proved through him. According to him, this petition was given to the police officials and courts after recording his statement for the second time. This court put a question to him about the petition to the trial court.

His reply was that he came to the court for meeting the judge and as he could not succeed he put the complaint in the letter box placed at the front gate of the court. This was done during 2022. The learned counsel for accused no.4 cross examined him. He deposed that he had given statement for six or seven times. He also stated that he had given false statements before the court. He added that he had given false evidence before the CBI court due to the influence and inducement on the side of Adv. Philip. A suggestion is put to him that he is at present giving evidence due to the undue influence exerted by the police and he denied that suggestion. It is also elicited from him that he does not know the names of the persons visited Laksyah other than the name of accused no.4. He has also stated that he had not given any identification features of accused no.4.

622. The learned counsel for accused no.8 cross examined him. During cross examination he stated that he had given statement on four or five times. He does not remember how many petitions are filed against PW261. According to him, he also filed writ petition before the Hon'ble High Court against PW261 through Adv. Bindu Sasthamangalam. He

executed vakalath in his favour. He had given the summons received by him and also the petition filed by him before the Judicial First Class Magistrate Court, Angamaly and CBI Court, Ernakulam. Ext.D11 series are the writ petition along with the annexures. He admitted that the handwriting in the petitions are of him. The judgment in the writ petition is marked as Ext.D117. According to him, a few days after he had given evidence before the court in the year 2021, police started to contact him. The contents of the petition filed by him are elicited during cross examination. PW126 deposed that he had been asked to write those petitions and accordingly, he wrote it. He stated that Ext.P460 was prepared on 04.05.2022 and sent on 05.05.2022. His statement was recorded at Police Club, Aluva on 04.05.2022. He is confronted with his statement recorded u/s.164 of Cr.P.C. The differences appear in his statement before the court during different time of examinations are also elicited through him. He deposed that the person claimed to be visited Laksyah was known to him. He also admitted that police has not shown that person to him during investigation. During further cross examination at the instance of the learned Special Public Prosecutor, he

stated that the photo of the person who visited Laksyah was shown by police in the mobile phone.

623. PW153 deposed that he underwent imprisonment at District Jail, Kakkanad from 13.01.2017 till 04.04.2017. He was imprisoned at 'A' Block of the District Jail. He developed acquaintance with accused no.1. PW121 introduced accused no.1 to him. PW121 and PW176 were also with accused no.1. One day Sunil was seen in a disturbed condition. He enquired about it. He informed that though PW176 offered help nothing was done so far. PW176 offered help for collecting the quotation money in connection with the humiliation of PW1. Thereupon he offered to help him. He had been asked to appear before the Judicial First class Magistrate Court on 6th after his release. He went there accordingly. Accused no.1 was not produced on that day. He later understood that Sunil was produced before the Judicial First Class Magistrate Court, Angamaly. He went to Judicial First Class Magistrate Court, Angamaly. But Sunil was not produced there also. He enquired about the next hearing date and accordingly, came to know that the case is posted to 20th. He went there on 20th. Accused no.1 was produced on that day. Accused

no.1 provided him with the mobile number of PW191 and asked to call him. He called PW191 accordingly. He informed PW191 that the call was made as instructed by accused no.1. PW191 enquired about the purpose of the call. He asked PW191 about the matter already informed by accused no.1. PW191 replied that they have no connection with accused no.1 and why did he make calls to them. He informed this matter to accused no.1. Then accused no.1 told him that he had given a letter in the shop of PW179 before his surrender. He again contacted PW191. Then PW191 replied that if any letter is entrusted by accused no.1 he can take it back. He also informed that they have no connection with accused no.1. and disconnected the call. He informed Sunil about this conversation. Sunil told him that PW176 troubled the situations and that prompted PW191 to give such a reply. Accused no.1 further informed him that he will bring a letter when he appears before the court in the next posting date along with the details of the addressee and his phone number. PW153 again went to the court on the next posting date. There were somany police personnel and media personnel. Sunil showed gestures to return back and accordingly, he returned. A specific question



DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

is put to him by the learned Special Public Prosecutor as to in what manner accused no.1 sought his help. PW153 replied that in order to get back 1.5 Crores rupees accused no.1 sought his help. Sunil offered to pay for the same and that is why he offered his help. He identified accused no.1 before the court. According to him, 9947748801 was his mobile number during the relevant period. Ext.P160 is the application filed by him for getting the mobile connection. The learned counsel for accused no.8 cross examined him. It is brought out that he has not stated anything before the investigating officer about his mobile number. According to him, he went to the Judicial First class Magistrate Court three times for meeting accused no.1. He admitted that nothing is stated before the investigating officer that the amount involved is the amount in connection with the quotation amount for committing offences against PW1. He also admitted that all these matters are deposed before this court for the first time. According to him, though two police personnel accompanied accused no.1, the conversation between himself and accused no.1 was confidential. Even the police personnel did not hear their conversation. Ext.D36 contradiction is elicited through this witness. A

question is put to him referring his previous statement in crime no.751/2017 that whether he stated to the investigating officer that since accused no.1 was accompanied by police personnel, he could not speak to him and pretended ignorance. A suggestion is put to him that he was already arraigned as accused in Infopark Police Station case and since he agreed to give evidence supporting the prosecution, the investigating officer excluded him from the party array of crime no.751/2017 of Infopark Police Station and denied.

624. PW80 deposed that he was working at TONICO Cafe, Kakkanad. PW126 is his friend. PW81, PW82 and PW179 are known to him. He arranged a job for PW126 in the shop of PW80 and PW81. According to him, PW126 told him about the arrival of a person at Laksyah. He further stated that the photograph of the person so reached Laksyah was seen in news paper. He was subjected to cross examination. He stated that after his statement before the investigating officer, PW126 contacted him and asked him to pretend ignorance about the matters or else he has to go behind this case. It is elicited during cross examination that after his first statement before the Judicial First Class Magistrate



DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

Court, Maradu, police called him and asked to give statement before the Magistrate again. He went to the Police Club, Aluva. The statement before the Judicial First Class Magistrate Court, Maradu was shown to him. His statement before the investigating officer was read over to him. He had been directed to give statement again before the Magistrate as stated before the investigating officer. Ext.P119 is his 164 statement before the Judicial First Class Magistrate Court, Maradu. This statement was recorded on 26.09.2017. He stated before the Magistrate that PW126 is known to him. He also stated that PW81 Ria is known to him and she is managing the affairs of Laksyah. He arranged job for PW126 Sagar at Laksyah as requested by PW81. He stated further that nothing is stated by PW126 to him about this case. But, in Ext.P121 statement before the Judicial First Class Magistrate Court, Thripunithura recorded on 06.11.2017 he stated about the employment of Sagar at Laksyah. He also stated that accused no.4 Vijeesh visited Laksyah and on seeing his photograph in the news paper PW126 informed him about the visit of accused no.4 to Laksyah. He further stated that he received summons from the Judicial First Class Magistrate Court, Maradu and at that time

Sagar contacted him. Sagar asked him to pretend ignorance in order to avoid complication and his statement thereafter in that court was as directed by him.

625. PW128 Suneer is another witness examined in connection with this point. According to him,he was working as the driver of PW179 Kavya Madhavan. He worked at Laksyah also. He deposed about his phone numbers during the relevant period. During chief examination he denied the fact regarding the visit of PW176 Vishnu to Laksyah during April 2017. Since he denied his statement before the investigating officer, learned Special Public Prosecutor obtained the permission of this court to put leading questions. Ext.P132 to Ext.P132(d) are elicited through him as contradictions. Ext.P133 mahazar and Ext.P134 visiting card of Laksyah are also marked through him. He stated that the DVR was taken by the police with the assistance of technicians. The learned Special Public Prosecutor put questions to him that he along with Advocates influenced PW126 to give false evidence and he denied it emphatically. Yet another question is that from 18.09.2017 till 20.09.2017 he travelled in an Innova car arranged by PW182,brother of accused no.8. He admitted it. He

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

clarified that he went to Alappuzha along with a retired Tahasildar in connection with the property of accused no.8. He admitted that PW126 visited him at the hotel. He also admitted the phone calls between him and the number 9846081214. Similarly, he admitted the phone calls between himself and PW126 Sagar. He denied the question put to him that he influenced Sagar in connection with his statement before the Magistrate.

626. In the final report the prosecution alleges that on 22.02.2017 the first and fourth accused reached at Laksyah. Accused no.4 proceeded to the shop and made enquiries about accused no.8, PW179 and her father Madhavan. He thereafter collected the visiting card of Laksyah from the shop. The visit of accused no.4 to Laksyah was informed to PW81 by PW126. She asked PW126 the co-ordinator of Laksyah to keep this fact confidentially. So, on going through the final report it is seen that accused no.4 alone went inside the shop and made enquiries about accused no.8, PW179 and her father. It is also alleges that accused no.4 collected visiting card from the shop. A visiting card of Laksyah is marked before this court as Ext.P134 through PW128 Suneer. The

purpose of visit is mentioned to be as they went there and made enquiries about accused no.8 and his relatives. Nothing else is stated. PW126 is cited to prove this aspect. It is alleged by the prosecution that accused no.4 met PW126 and made enquiries to him as claimed by prosecution. PW126 was examined in this court twice. He was examined during the first phase of trial on 18.03.2021. He denied the material particulars of the prosecution case at that time. He was extensively cross examined from the side of prosecution. Influence to him through PW128 Suneer is also put to him. He denied all these facts. Specific questions were put to him that he is giving evidence as influenced by accused no.8, his Advocate and other associates and he denied it. He categorically denied the questions put to him regarding the alleged visit of accused no.4 to Laksyah as contended by the prosecution. He also denied the fact of showing the photograph of accused no.4 by the investigating officer. Ext.C3 petition is proved through this witness. Ext.C3 is the petition filed by PW126 before the Judicial First Class Magistrate Court, Angamaly as CMP 747/2017 on 20.09.2017 alleging police harassment. In this petition he alleges police harassment. He stated therein that PW261 contacted him

over phone during the second week of August 2017. He went to Police Club, Aluva. PW261 showed photographs of some persons on his mobile phone. Since those persons are not known to him, he stated that fact. PW261 intimidated him and insisted to state that a person by name Vijeesh is known to him. He was tutored in tune with that. Thereafter, PW261 put questions to him so as to elicit the desired answers. Thereafter, he received summons from the Judicial First Class Magistrate Court, Kalamassery. He stated actual facts before the Magistrate. The police personnel and PW261 continuously harassed him after his statement before the Magistrate. He filed Ext.C3 in that circumstance to take action against police harassment.

627. PW261 filed Ext.C3(a) reply before the court on 22.11.2017 denying the allegations. It is alleged that accused no.4 visited Laksyah and made enquiries to PW126 about accused no.8, PW179 and her father. After the arrest of Vijeesh he identified Vijeesh as the person who visited Laksyah. This fact was informed to PW80 and CW183. PW261 stated that he verified the statement of PW126 recorded u/s.164 of Cr.P.C on 02.09.2017. PW126 failed to state the matters stated before the

investigating officer. He contacted PW126 to know the details. PW126 refused to co-operate with the investigation. The reason for his hostility was investigated and thereupon got information about the involvement of accused no.8 and his associates to influence PW80 and PW126. Ext.C3 was given on 20.09.2017 before filing the supplementary final report on 22.11.2017. Ext.C3 was proved through him during his examination in the first stage. He claimed that Ext.C3 was written by him. The learned Special Public Prosecutor put a suggestion to him regarding Ext.C3 that it was written at the instance of the Advocate and associates of accused no.8 and he denied that suggestion. Thereafter this witness was again recalled by the prosecution and examined before this court. He deposed before the court about the prosecution case that accused no.4 visited Laksyah 3-4 days after the alleged attack on PW1. He also stated that accused no.4 collected visiting card from the shop. He identified accused no.4 on seeing his photograph in the news paper. He stated further that he had given true statement before the investigating officer. But, thereafter, PW128 influenced him and accordingly he met the Advocate of accused no.8. Thereupon, he changed his version and stated falsehood before the

Magistrate. On instruction from Advocates he sent Ext.C3 to the Judicial First Class Magistrate Court, Angamaly. He received summons and deposed before the court as instructed by the advocate of accused no.8.

628. PW126 had given Ext.P177 statement u/s.164 Cr.P.C before the Judicial First Class Magistrate, Kalamassery on 02.09.2017. In the said statement he deposed that nothing unusual was noticed by him during his tenure at Laksyah. As I pointed out, he denied his statement before the investigating officer when he was examined in this court. Thereafter, he sent Ext.C3 to the jurisdictional Magistrate alleging harassment on the side of the investigating officer. He was again examined as he was recalled vide order in Crl.M.P.No.3333/2022. As part of further investigation conducted after the disclosure of PW222, he was interrogated. His further statement was recorded. Ext.P644 statement u/s.164 Cr.P.C. was also recorded on 27.05.2022. His further examination is objected by the learned counsel for accused nos.4 and 8 contending that the prosecution under the guise of Section 311 of Cr.P.C is trying to fill up the lacuna. It is also alleged that his further examination is to get disowned his own evidence. The learned Special Public Prosecutor replied

that sometimes witnesses may state falsehood because of the circumstances and compulsions. The evidence by the very same witnesses even contrary to their prior statement is not banned under law. It is the court to decide after the evaluation of the circumstance, whether his evidence could be relied on or not.

629. I had considered the rival contentions and claims. As I pointed out, when PW126 was examined before this court, he deviated from his statement before the investigating officer to struck on to his statement before the Magistrate. The learned Special Public Prosecutor cross examined him. He categorically denied his statement before the investigating officer even during cross examination at the instance of the learned Special Public Prosecutor. The investigating officer urged that he was again interrogated as part of the second further investigation on the basis of evidence collected. According to the prosecution, he had given statements including the situations compelled him to give false evidence before the court. His statement u/s.164 was also recorded. Considering these aspects this court recalled the witness. It is true that PW126 had given evidence in a manner contradicting his versions. As pointed out by



the learned Special Public Prosecutor this situation is not a legally valid ground to reject the evidence of a person in toto. This court is bound to evaluate the evidence available before this court on the basis of entire circumstances involved herein. The admissibility of the evidence depends on the credibility of the witness appreciated on the strength of the circumstances surrounded from the very inception of his interrogation till his evidence in this court in the light of the order in Crl.M.P.No.3333/2022.

630. The prosecution claimed that the voice clips produced by PW222 contain reference about PW126 and that led to his interrogation as part of second further investigation. It is claimed by the prosecution that he was influenced by the associates of accused no.8 and his Advocates after recording his statement by the investigating officer at the first instance and that is the reason for his retraction from the statement to the investigating officer while giving evidence in this court. Thereafter, PW126 decided to state the truth and accordingly, he had given true statement before the investigating officer, Magistrate and also in this court. The learned counsel for the accused on the other hand had raised a

contention that PW126 was influenced and threatened by the investigating officer and his team and hence, he had given false evidence before the court deviating from his earlier version.

631. Let me to consider the reliability and credibility of the evidence of PW126 for which evaluation of the entire circumstances including the claims advanced by him is necessary. Reference is already made to his Ext.C3 petition before the Judicial First Class Magistrate Court, Angamaly and Ext.C3(a) reply of the investigating officer. Ext.P177 his 164 statement on 02.09.2017 is also discussed. Thereafter, the investigating officer recorded the statement of PW126 on 04.05.2022. His 164 statement Ext.P644 was recorded on 27.05.2022. Exts.P177 and P644 are mutually contradictory. As I pointed out hereinbefore, in Ext.P177 statement he specifically stated that nothing unusual was happened or noticed at Laksyah. But in Ext.P644 he stated that after three days of the attack on PW1 two persons visited Laksyah and one among them is known to him who is identified as accused no.4. According to him, he had seen the photo of the persons who visited Laksyah in newspaper and hence he could identify them. He also stated about the influence exerted



on him by the Advocate of accused no.8 after his first statement before the investigating officer on 26.08.2017.

632. At this juncture this court has to consider the Writ Petition (C) No.9187/2022 filed by him before the Hon'ble High Court of Kerala to issue a writ of mandamus or any other appropriate writ, direction or order directing the first respondent (PW261) not to harass or threaten him any further in connection with the investigation in Crime No.297/2017 of Nedumbassery Police Station and also to issue a declaration that the first respondent (PW261) has absolutely no right or authority to threaten and harass him to give statement in contradiction to the statement given by him u/s.164 of Cr.P.C. or the evidence tendered by him before the trial court, a copy of which is marked as Ext.D116 series. Along with the writ petition he had attached the copy of Ext.C3 as Ext.P1. Moreover, he also appended with the copy of his petition addressed to the Special Court (SPE/CBI)-III, Ernakulam dated 20.02.2022 which includes a copy of his petition dated 01.03.2022 to the investigating officer (PW261). He also produced the copy of notices served on him by PW261 u/s.160 of Cr.P.C. Ext.D117 is the copy of the judgment passed in the said writ petition

dated 04.04.2022. The Hon'ble High Court declined the relief sought for in the writ petition. At the very same time, it is directed to issue summons after complying with the relevant provisions. When PW126 was in the box specific questions were put to him about the writ petition. He admitted the filing of writ petition and the appointment of an Advocate for the same. He came to the office of the said Advocate along with an Advocate from Alappuzha. He had given the details to the Advocate and also executed the vakalat in her favour. He also admitted that he entrusted the notices issued to him by PW261 asking him to appear before him. He also admitted that he had handed over the copies of petitions filed by him to the Advocate. According to him, he filed the writ petition against the harassment of PW261. He also admitted that he put signature in the writ petition as well as in the affidavit. Ext.D116 series are marked through him. PW126 further deposed that some days prior to the filing of the writ petition, police started to contact him over phone from different phone numbers. This fact was reported in news paper also. On 19.02.2022 police officials contacted him on several occasions and that led to the filing of Ext.D116 series writ petition. According to him, Advocate

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

DISTRICT COURT ERNAKULAM-682

from Alappuzha gave instructions to him for drafting the petitions appended with Ext.D116 writ petition.

633. Let us consider the petitions one by one. I have already discussed about Ext.C3 which is produced as Ext.P1 along with the writ petition. Ext.P2 in the writ petition is the petition addressed to the Special Court (SPE/CBI)-III, Ernakulam on 20.02.2022. It is clearly stated that he was compelled to give statement before the investigating officer by PW261. He was tutored to give that statement. He was also compelled to give the very same statement before the Magistrate. But he did not comply with that direction. He had given true statement before the Magistrate. The police started to harass him thereafter. He filed Ext.C3 before the Magistrate. He also stated that after getting summons he appeared before the trial court and deposed the true facts. He was harassed by police officials for giving false evidence before the court. He stated in the petition that the police again started to harass him from 2021 December onwards. He had been informed by the police officials that PW261 will arrange opportunity to adduce evidence as directed by the police. It is also informed that if he depose as directed by police, that

would be beneficial for him in future. He was not ready to concede to that direction. Somany press people also contacted him in connection therewith. He was not ready to fell in to their trap also. Police personnel continued with the harassment. He stated specifically that PW261 and his subordinates are harassing him for giving false evidence before the court. Hence, he filed the petition before the trial court. Ext.P4 in Ext.D116 writ petition is the petition addressed to PW261. In that petition also he reiterated the averments in the petition addressed to the trial court. In addition to that he had mentioned about the notice served on him on 22.02.2022. He categorically stated that he deposed before the court all the matters which were known to him. Since he was not ready to adduce false evidence, the police started to harass him.

634. Bearing these matters in mind, Ext.P460 is also to be considered. Ext.P460 is a petition by PW126 on 04.05.2022 to the Director General of Police. In the said petition he claimed that he had stated matters known to him to PW261 at the first instance. Thereafter PW128 Mr Suneer contacted him and asked him to meet Adv. Philip before his statement u/s.164 Cr.P.C. He met Adv. Philip and he

instructed him to give statement before the Magistrate as directed by him. He had given statement accordingly. He received money for that. When the police contacted him again for recording his statement, he contacted the Advocate. PW128 came to Alleppey and met him. They went to meet a Advocate at Alleppey. He prepared a petition against the investigating officer as instructed by that Advocate. He collected money from Adv. Philip during the pandemic period as consideration for giving false evidence. On getting summons from the trial court he again approached the Advocate and he instructed him to give evidence. He expressed his readiness and willingness to state the true affairs anywhere. He decided to state the truth. He sought police protection from the State Police Chief. This letter was written on 04.05.2022. When PW126 was in box he was cross examined with this aspect. PW126 deposed that the letter was written on 04.05.2022. But that was posted on 05.05.2022. According to him, his statement was recorded by the investigating officer on 04.05.2022. He returned home and wrote the petition thereafter. A suggestion is put to this witness by counsel for accused no.8 that Ext.P460 was written at Police Club in the presence of police officials. He also stated that the

letter to the trial court was put inside the letter box hung on the gate of the Special Court (SPE/CBI)-III, Ernakulam. According to him, he came to the court on 05.05.2022 by around 12 noon. He put the letter in the letter box. He admitted that at the time of Ext.P177 statement that he gave the statement voluntarily and he answered it affirmatively. It is also asked to him by the learned Magistrate that whether anybody compelled him to give the statement and he stated that nobody compelled him. So, on an analysis of the available records produced before the court, it is seen that PW126 had given different versions before the investigating officer, Magistrate and the trial court. These contradictions are elicited through him. In the earlier occasion on 26.08.2017 he stated about the arrival of accused no.4. On 04.05.2022 he stated about the arrival of the accused no.1 and 4 at Laksyah and also about the influence exerted on him by accused no.8 and his associates. He gave Ext.P177 statement before the Magistrate denying the fact of arrival of any of the accused to Laksyah. During his examination in the year 2021 he deposed the very same fact. Subsequently, as per Ext.P644 statement u/s.164 Cr.P.C. he again deposed about the arrival of accused no.1 and 4 to Laksyah and this



statement is contradictory to his previous statement u/s.164 of Cr.P.C. He was recalled by this court and thereupon gave evidence stating that accused visited Laksyah after the commission of offence. The evidence so given is against the evidence adduced by him during his examination in the year 2021. Moreover, he himself filed Ext.D116 writ petition and also several petitions before the courts and also the investigating officer alleging police harassment. The very same person on 05.05.2022 filed Ext.P460 before the State Police Chief alleging the influence exerted on him by accused no.8 and his associates. The evidence of PW126 is to be evaluated and appreciated in the said background. The learned Special Public Prosecutor submitted that the CDR produced in court would substantiate the case of the prosecution that accused no.8 and his Advocate influenced PW126 through PW128. These aspects are also to be considered.

635. PW128 and PW126 were colleagues at Laksyah. When PW128 was in the box, question is put to him from the prosecution side regarding the influence allegedly exerted by him on PW126 and he denied it. Another question is put to him regarding the phone calls to mobile

number 9846081214 which are admitted by him. It is put to him that on 02.09.2017, he contacted to 9846081214 five times. It is further put to him that these calls were made in connection with the statement of PW126 u/s.164 Cr.P.C. He denied that suggestion. On 02.09.2017 he called PW126 on two occasions. A suggestion is put to him that he along with the Advocate caused disappearance of evidence by influencing PW126. That was denied by him. During the cross examination of PW126 conducted in the year 2021, he denied any sort of influence. He specifically stated that he has not received instructions from any persons before giving statements in the Magistrate court u/s.164 Cr.P.C. He admitted his connection and acquaintance with PW128. According to him, whenever PW128 visits Alappuzha he used to meet him. In one such occasion he met PW128 at Rayban Hotel, Alappuzha. Another question is put to him that PW128 contacted him on several occasions in between 01.09.2017 and 02.09.2017. He replied that there might be calls between them. A question is put to him that he suppressed the actual matters at the time of second 164 statement due to the influence of accused no.8 and his associates and it was denied by him. Similarly, questions were put to



him regarding Ext.C3 petition that it was filed at the instance of accused no.8 and his associates and he denied that suggestion also. PW126 had gone to the extent of stating that he is maintaining brotherly affection to PW128 Suneer. According to him, they used to converse mutually.

636. It is true that the Call Detail Record reflects the calls between PW126 and PW128. Similarly, there are calls between PW128 and the mobile number 9846081214. PW128 stated that he went to Alappuzha in connection with the affairs of the properties of accused no.8. It is brought out in evidence that Adv. Philip is conducting cases for PW182 and accused no.8 for the last several years. This fact is deposed to by PW182. So, there is chance to have calls between the Advocate of accused no.8 and PW128. It is urged by prosecution that counsel for accused no.8 paid money to PW126 on different occasions. The evidence of PW126 in this regard is contradictory. Though it is submitted that Adv. Philip exerted undue influence on PW126 and PW128 to favour accused no.8, the investigating officer did not take any steps to interrogate Adv. Philip to get the details of the undue influence on his part. As I pointed out, PW126 himself denied the fact of influence at the instance of Adv. Philip

and PW128. It is true that during the second spell of examination he deposed about the socalled influence. The learned counsel for the accused contended that the interrogation of PW126 after the revelation of PW222 was with an intention to fabricate evidence. According to them, there was no need to interrogate PW126 further during that further investigation. It is to be noted that as I pointed out, since PW222 produced voice calls referring PW126, they interrogated him.

637. In this juncture, Ext.D116 series are to be considered. PW126 admitted specifically about the filing of Ext.D116 writ petition and the averments therein. He himself admitted that he went to the offence of the lawyer and gave instructions for filing Ext.D116 writ petition. The only thing claimed by PW126 is that he prepared petitions as instructed by a lawyer from Alappuzha. He has no case that he was constrained to prepare petitions against true facts. Even on 01.03.2022 he had given petition to PW261 narrating the harassment and related matters. It is true that Ext.P460 was filed by PW126 on 05.05.2022. The aspect to be noted is that his statement was recorded as part of second further investigation on 04.05.2022. Ext.P460 is dated 04.05.2022. Specific questions were put

to him regarding the preparations of Ext.P460 on 04.05.2022. He himself admitted that on 04.05.2022 he was with the investigating officer throughout the day as part of interrogation. He claimed that he prepared Ext.P460 after reaching home. What prompted him to prepare Ext.P460 is not seen explained properly. All these matters would show that PW126 is a person who can be influenced easily by anybody. He himself categorically stated at the time of Ext.P177 statement that nobody influenced him. Above all, he issued Ext.C3 petition to the court alleging influence on the side of the investigating officer. Even during 2022 he approached the the Hon'ble High Court alleging police harassment. But, after two months he had given statement alleging that he suppressed the actual matters owing to the influence on the side of accused no.8 and his lawyers. He turned around and claimed that his evidence before this court was also adduced as the result of influence exerted by accused no.8. It is to be noted that PW126 is involved in several criminal cases. It is brought out in evidence. So, he knows the consequences of giving false evidence. So, he cannot be treated as a creditworthy person.

638. Another aspect to be noted is that, as I pointed out, in Ext.C3(a) reply to Ext.C3, PW261 had given detailed narration about the alleged influence exerted on PW126 through PW128 by accused no.8 and his lawyers. Though this fact was known to PW261 prior to the filing of first supplementary final report, no investigation was conducted. But, during the second further investigation, PW126 was interrogated claiming that PW222 revealed about the influence on PW126 at the instance of accused no.8 and his associates. Why the investigating officers even after getting information about the alleged influence, did not conduct any investigation about this fact during the first further investigation and opted to conduct investigation during the second further investigation is a fact to be looked into. PW126 is cited in the witness memorandum to prove the fact that accused no.4 visited Laksyah and made enquiries about accused no.8, PW179 and her father. It is to the noted that at the time of filing the final report on 22.11.2017 he had given Ext.P177 statement u/s.164 Cr.P.C stating that nothing unusual was happened at Laksyah. It is further noted that PW80 Sarath Babu in his first 164 statement denied the prosecution case that PW126 informed him about

SESSIONS COURT

the arrival of accused at Laksyah. Thereafter, his second statement u/s.164 was recorded. In this statement, he again stated in tune with the prosecution case. In addition to that, he claimed that PW126 influenced him. The fact to be noticed is that though the second 164 statement of PW80 was recorded, the records would show that he was not interrogated in between his first and second 164 statements. If this be the situation, what prompted the investigating officer to record the second statement of PW80 u/s.164 Cr.P.C is not explained. Further, as I pointed out, even after his claim that PW126 influenced him, no investigation was conducted about this aspect. As I pointed out, even during the second further investigation, the allegation raised by PW222 with respect to the payment of Rs. 5 lakh was also not investigated.

639. If this be the situation, the reason put forward by the prosecution to interrogate PW126 after the revelation of PW222 appears to be doubtful. As far as the evidence of PW126 regarding the arrival of accused persons to Laksyah, he stated during his first examination that nobody came to Laksyah enquiring accused no.8, PW179 or her father. The learned Special Public Prosecutor put a question specifically to

PW126 that whether Vijeesh (accused no.4) arrived at Laksyah during the last week of February 2017. He replied that he was constrained to give a statement to that effect before the investigating officer as they intimidated him. The entire statement was put to PW126 by the learned Special Public Prosecutor. He replied that the statement was made as the result of compulsion exerted on him by police. He also stated specifically that he has not seen accused no.4 Vijeesh. At the very same time, he stated that police showed the picture of accused no.4 on their mobile phone. Even in the final report, as I pointed out, the contention of prosecution is that accused no.4 visited Laksyah and made enquiries about accused no.8, PW179 and her father. So on an evaluation of evidence of PW126 it is seen that he had given explanations so as to suit the occasion and also to meet the timely requirements.

640. PW153 was examined to corroborate the evidence of PW126. On going through the evidence of PW153, it is seen that, according to him, both accused nos.1 and 4 visited Laksyah. The prosecution relies on the evidence of PW153 and contended that accused no.1 had entrusted a letter at Laksyah. The prosecution further claimed that accused no.1 had



entrusted a memory card at Laksyah. In order to fortify this contention, they have relied on the telephonic conversations between accused no.1 and PW191. PW153 stated that when he contacted PW191 as instructed by accused no.1 from Judicial First Class Magistrate Court, Angamaly, he did not entertain that call and further stated that they have no connection with accused no.1 and accused no.1 was duly informed accordingly. Thereafter accused no.1 told him that he entrusted a letter at the shop of PW179 (Laksyah) before his surrender. PW153 stated that this fact was informed to PW191. PW191 reiterated his stand that they have no connection with accused no.1 and disconnected the phone. PW126 was not having a claim that accused no.1 entrusted a letter at Laksyah before his surrender, though it was the important claim of PW153. What PW126 has stated is that accused no.4 came to Laksyah and made enquiries about accused no.8, PW179 and her father. PW126 has no case that accused no.1 visited Laksyah and never stated about the handing over of letter to Laksyah. Even during his second examination in the year 2023, he has not stated about the visit of accused no.1 to Laksyah. He deposed before the court that the person who visited Laksyah collected visiting card. But,

even during the second examination, PW126 stated nothing about the alleged entrustment of letter at Laksyah. The prosecution asserted that the telephonic conversation between accused no.1 and PW191 reveals that accused no.1 mentioned about giving of something at the Kakkanad shop. Similarly, Ext.P122 letter also contains reference regarding the visit of accused no.1 to Laksyah.

641. It is to be noted that the one and only witness cited by the prosecution to prove the visit of accused no.1 and 4 to Laksyah is PW126. His specific stand all along was that accused no.4 alone visited Laksyah and made enquiries. It is to be noted that in order to suit the prosecution case during his second 164 statement, which is marked as Ext.P644, he stated before the Magistrate that after the attack on PW1, two persons visited Laksyah and one among them is known to him and he is accused no.4 Vijeesh. But, even in this 164 statement, he has not stated anything about the so-called claim of the prosecution that accused no.1 visited Laksyah and entrusted either the letter or memory card there. So, the evidence of PW153 relied on by the prosecution to corroborate the evidence of PW126 will not serve any purpose.



642. The learned counsel for defence contended that the evidence of PW126 regarding the arrival of accused to Laksyah is vague and inconsistent with the prosecution case. According to them, the time-frame claimed by PW126 regarding the arrival of the accused is inconsistent with the prosecution case. They contended that PW126 stated that the accused visited Laksyah 3-4 days after the alleged attack on PW1. The contention of the learned defence counsel is that prosecution claimed that the accused visited Laksyah on 22.02.2017. According to them, if the visit was on 22.02.2017, that was after five days of the attack on PW1 and hence, the claim of PW126 that the visit was 3-4 days after the attack is inconsistent. It is true that PW126 has not stated about the date. He stated that the visit was after 3-4 days. PW126 has not qualified his Plus Two course. So, we cannot expect that a person like PW126 should give the exact details regarding the date of visit.

643. The first statement of PW126 was recorded on 26.08.2017. The requisition for recording the 164 statement of PW126 was given on 25.08.2017. This fact was admitted by PW126 also. PW261 failed to explain the aspect that why did he give the requisition to record the 164

statement before recording the statement of a person u/s.161 Cr.P.C. Similarly, the prosecution allegation is that PW126 disclosed about the visit of accused at Laksyah to his friend PW80 and also to CW181. The statement of PW80 was recorded on 24.08.2017. PW261 further stated that he verified the statement made by PW126 before recording the statement of PW80. But, as I pointed out, the statement of PW126 was seen recorded on 26.08.2017. If this be the situation, the claim of PW261 that he verified the statement of PW126 before recording the statement of PW80 appears to be untenable.

644. Ext.P133 is the mahazar prepared by PW198 on 01.07.2017 at 11.45 a.m for the seizure of the attendance register of Laksyah. It is recorded in the said mahazar that PW126 produced the mahazar before PW198. PW126 also admitted about the production of this attendance register. Ext.P329 mahazar is also prepared on that day at 12.30 p.m for the seizure of DVR and CCTV camera from Laksyah. PW126 admitted that he was present at the time of the seizure. Ext.P130 is the kaichit prepared for the receipt of attendance register by PW126. Though PW126 was readily available there, his statement was not recorded either by



PW198 or PW261 then and there and his statement was seen recorded on 26.08.2017 only. The attendance register is seized solely for the purpose of proving the employment of PW126 at Laksyah. Why he was not interrogated till 26.08.2017, that is almost for two months, is not explained by the prosecution. This delay is fatal considering the nature of the evidence of PW126 and the contention raised by both prosecution and accused that he was influenced. The learned counsel for the defence contended that the unexplained delay of two months for recording his statement was to create a tutored statement of PW126 in tune with the prosecution case. The prosecution produced the videograph of the recording of the 161 statement of PW126. PW126 during his examination in the year 2021 deposed that his statement was recorded after 22.08.2017 when he left his job at Laksyah. Further, when the learned Special Public Prosecutor put questions relying on the statement u/s.161 Cr.P.C., PW126 deposed that he had given statement as he was intimidated and threatened by the police. He also stated that police compelled him to give such a statement and he stated accordingly. The learned Special Public Prosecutor put another question that he was influenced after his statement

before the investigating officer and thus he changed his version. He denied this aspect also. It is true that in the year 2022, he changed his version and claimed that he was paid off by the associates of accused no.8 and hence, he gave falsehood in court.

645. Two statements of PW126 u/s.164 of Cr.P.C was recorded. The first statement recorded on 02.09.2017 is marked as Ext.P177. The second as Ext.P644. The second statement was recorded on 27.05.2022. It is seen that the fact of recording Ext.P177 on 02.09.2017 is not referred at the time of Ext.P644. On a perusal of Ext.P644, it seems that the said statement was taken as his first statement u/s.164 of Cr.P.C. In pages 4 and 5 of Ext.P644 he stated before the Magistrate regarding his first 164 statement before the Judicial First Class Magistrate, Kalamassery. The investigating officer ought to have been mentioned in the request for Ext.P644 about Ext.P177. That was not seen done. In this case, two statements of PW126 were recorded with respect to a single fact. Both the Magistrates had complied with the statutory formalities of Section 164 of Cr.P.C before recording his statements.

DISTRICT & SESSIONS COURT ERNAKULAM-682 011

646. In both the statements, it is seen that he claimed that nobody influenced him and he was giving statements according to his own volition. In Ext.P177, he stated that his statement was recorded by police three times. As I pointed out, at that time, his statement recorded on 26.08.2017 alone was produced before the court. No other statements were produced before the court. The learned counsel for accused contended that since Ext.P644 was recorded after the commencement of trial, it is against the mandate u/s.164 of Cr.P.C. It is to be noted that, as I pointed out, as part of further investigation, PW126 was interrogated and subsequently, his statement u/s.164 Cr.P.C was recorded on 26.05.2022. Since Ext.P644 was recorded as part of further investigation, the contention of the learned counsel for accused that it is against law cannot be accepted. At the very same time, the preparatory in recording Ext.P644 without mentioning the recording of Ext.P177 in the request is to be taken into account. These two statements will also discredit PW126 as they are inconsistent and contradictory to each other. As far as the purpose of visit to Laksyah is concerned, the prosecution advanced different claims. In the final report dated 22.11.2017, PW80, PW126 and CW183 were cited

to prove the fact that accused nos.1 and 4 went to Laksyah on 22.02.2017 and made enquiry about accused no.8, PW179 and his father PW251. As I discussed earlier, PW126 has not stated anything other than this purpose. The learned counsel for defence contended that accused no.8 has no connection with the management or functioning of Laksyah. According to them, the business establishments wherein accused no.8 has ownership were available at Edappally and Chalakkudy. Moreover, the residence of accused no.8 and PW182 are at Aluva. Had accused nos.1 and 4 been interested to visit accused no.8, they would have been approached these establishments or his residences for this purpose. According to them, the prosecution failed to prove the purpose of visit to Laksyah, especially when accused no.8 has no connection with that establishment. They also contended that after the arrest of accused nos.1 and 4, they were taken to the places travelled by them in between 17.02.2017 and 23.02.2017. The investigating officer prepared mahazars of those places. It is pertinent to be noted that Laksyah was not a place included among those places. According to them, this would also show the falsehood of the prosecution allegation. They also contended that similarly the different versions



regarding the purpose of visit to Laksyah will also show the fabrication of evidence by the investigating officer. The prosecution relies on Ext.P122 letter to prove the visit of accused at Laksyah. In Ext.P122, as I pointed out, it is mentioned that before the surrender, he went to the shop at Kakkanad and made enquiry. He had been informed that all are at Aluva. Nothing is mentioned about the presence of accused no.4 with him during the alleged visit. Similarly, the evidence tendered by PW153 and also the voice records produced also do not contain any reference about the visit of accused no.4 to Laksyah.

647. Ext.P329(b) is the report filed by PW261 before the court in connection with the production of Exts.P133, P329, P130 kaichit and the DVR seized from Laksyah. In the said report, it is mentioned that it is suspected that after the commission of crime, accused no.1 reached Laksyah situates at Mavelipuram, Kakkanad. Both in Exts.P133 and P329 mahazars also the very same statement is mentioned that accused no.1 visited Laksyah. Ext.P329(a) is the report filed by PW198 before PW261. In that report also it is stated that accused no.1 visited Laksyah. Nothing is stated in all these records about the visit of accused no.4. The

non-mentioning of the visit of accused no.4 assumes relevance because PW126 claimed that accused no.4 approached him and made enquiry about accused no.8, PW179 and PW251. He is the one and only person deposed about the visit of accused nos.1 and 4 to Laksyah. Moreover, the photograph of accused no.4 was identified by him as the person visited Laksyah. If this be the situation, the visit of accused no.4 should have been found a place in the records. Moreover, the evidence of PW126 is that one person visited Laksyah. Only in Ext.P644 he changed his version and claimed that two persons came to Laksyah. This is an important version stated by him during the second further investigation. Moreover, PW81 and PW82 are the persons who claimed to be the Managers of Laksyah. Nothing is put to them about the claim of PW153 that a letter was given at Laksyah. When PW261 was in the box, questions were put to him with respect to this aspect. He deposed that though this aspect was put to PW81 and PW82, they denied it and hence it was not recorded. He admitted that nothing is mentioned about this in the CD also.

648. Coming to the evidence of PW121, what he stated is that accused no.1 visited Laksyah for giving memory card and he himself

informed him about the same. According to him, both accused nos.1 and 4 went to Aluva for meeting accused no.8. When PW121 was in the box, he categorically deposed that after the commission of offence, accused no.1 attempted to meet accused no.8, but could not succeed. According to him, accused no.1 told him that he went to Laksyah, a textile shop, for giving the memory card. At the very same time, the evidence of PW153 would show that accused no.1 informed him that he visited Laksyah and entrusted a letter there. The versions of PW121 and 153 as to what was entrusted by accused no.1 on visiting Laksyah appears to be contradictory. Moreover, the case of prosecution is that immediately after the commission of the offence, accused nos.1, 3 and 4 proceeded to Ambalapuzha and met PW17 Manu. Accused no.1 copied the visuals to a memory card on 18.02.2017 in the presence of PW17. They proceeded to Neerettupuram and pledged gold ornaments. From there they went to Coimbatore and stayed at the rental residence of accused no.7. During this journey he entrusted a purse along with the memory card to PW20. Prosecution has no case that accused no.1 copied the visuals to other

gadgets including memory card. Had this been the situation, the alleged entrustment of memory card at Laksyah is also seems to be doubtful.

649. When PW261 was in box, the fact of recording the visuals to any gadgets other than Ext.P262 is put to him. Pages 740 to 746 of the deposition of PW261 contain this aspect. He categorically admitted that only one memory card is found out during investigation. He tried to explain that after the revelation of PW222, it is understood that visuals were reached with accused no.8. Questions were put to him referring the remand extension report of PW121 and accused no.8 dated 11.08.2017 and 21.08.2017 respectively, that it is mentioned in those reports about the investigation to be conducted, that to verify whether the visuals were recorded to more than one memory card. He admitted that though he conducted investigation accordingly, during the investigation led to the filing of the final report on 22.11.2017, nothing is traced out to show that visuals were copied to other memory cards than Ext.P262.

650. The definite case of the prosecution is that the visuals were copied to Ext.P262 only. So, there is no chance to give the memory card containing visuals of attack on PW1 at Laksyah. In Ext.P710 remand

report of accused no.8, Exts.C22 and C23, it is averred that the visuals of the sexual attack on PW1 were copied to a mobile phone and that was given to accused no.8. In page no. 9 of Ext.P710, it is recorded that accused nos.1 and 8 hatched criminal conspiracy that nude visuals of PW1 is to be recorded using mobile phone and also to hand it over to accused no.8. It is stated further in page no.11 of Ext.P710 that on 22.02.2017, accused nos.1 and 4 went to Laksyah for giving the visuals to accused no.8. In addition to this, in page no.14, it is stated specifically that the nude visuals of PW1 was recorded using mobile phone and the mobile phone was handed over to accused no.8. But accused no.8 failed to give the consideration promised by him and accordingly, accused no.1 hatched conspiracy with PW128, PW176 and accused no.9 for collecting the quotation amount from accused no.8. The very same recitals are found in Exts.C22 and C23 also. PW261 deposed that the telephonic conversation between accused no.1 and PW191 on 21.04.2017 would show this fact. To the question by the learned counsel for accused no.8 that whether evidence is collected in this regard, he deposed that accused no.8 contacted PW82 Midhun after the call from accused no.1 to PW191.

According to him, this call from accused no.8 to PW82 would prove the prosecution case. Though PW261 gave such a version in the court, no investigation is conducted about that aspect. This fact is not interrogated with PW82 also. It is to be noted that PW82 is the brother-in-law of accused no.8. If this be the situation, the telephone call between them cannot be taken as a corroboration as claimed by the prosecution. When the fact of handing over of mobile phone is put to PW261, he clarified that the records state about the handing over of visuals, not about the handing over of the mobile phone. The wordings used in Ext.P710, C22 and C23 are as follows:- "11-)o പ്രതിയുടെ (Present accused no.8 was arraigned as accused no.11 at that time) ആവശ്യത്തിനായി 1-)o പ്രതി മറ്റ് പ്രതികളുമായി 17.02.2017 തിയ്യതി തൃശ്ശൂരിൽ നിന്നും എറണാകുളത്തെക്ക് കാറിൽ സഞ്ചരിക്കുകയായിരുന്ന ആവലാതിക്കാരിയെ തട്ടിക്കൊണ്ടുപോയി തടങ്കലിൽ വെച്ച് ഭീഷണിപ്പെടുത്തി നഗ്ന വീഡിയോയും, oral sex ചെയ്യുന്ന രംഗങ്ങളും മൊബൈൽ ഫോണിൽ പകർത്തി 11-)o പ്രതിക്ക് എത്തിച്ചു കൊടുത്തും."

651. These wordings can be interpreted in either way. Though PW261 relied on the telephonic conversation between accused no.1 and

PW191 dated 21.04.2017 to prove that the visuals or mobile phone were given to accused no.8, in his cross examination, he admitted that this conversation does not contain any reference either about visuals or phone. He admitted that it is stated regarding the entrustment of letter only. PW261 admitted filing of Ext.P730(a) and various remand reports, remand extension reports including the remand extension report of PW121 on 11.08.2017, bail objection dated 16.08.2017, custody application dated 28.07.2017, and remand extension report of accused no.9 on 30.08.2017. It is stated in those reports that the visuals containing the mobile phone was given by accused no.1 to accused no.8. He was constrained to admit the said fact before the court. It can be seen from page 734 of the deposition of PW261 that he verified all the above records. He stated that the averments in those records are different from the averments in Ext.P710. A specific question is put to PW261 that whether he had given any report before the court stating that the fact of handing over of mobile phone stated in those records are incorrect. He admitted that no reports were given. He tried to clarify by stating that no charge is stated in the final report to that effect. Another question is put

to him that whether any documents or evidence of witnesses are available to substantiate the fact of handing over of mobile phone to accused no.8. He replied that attempts were made to hand over the visuals. The records referred above would show that the prosecution alleges that accused no.1 handed over mobile phone to accused no.8 and the purpose of his visit to Laksyah was for handing over of the mobile phone. As I pointed out, the purpose of visit according to the prosecution was either to hand over phone or memory card or letter and there is no definite case. Nothing is seen put to PW126, the one and only person cited by prosecution to prove the visit of accused no.1 and PW261 admitted that position.

652. Another point to be considered is the argument of the learned Special Public Prosecutor that the CDR of PW126, PW128 and Adv. Philip would prove the alleged influence exerted on PW126 by accused no.8 and his associates. The details of calls are shown in the notes of argument. The learned Special Public Prosecutor contended that the call data shows a pattern of increased communication before and after key investigative steps, particularly regarding the statement of PW126 u/s.164 Cr.P.C. Accused no.8's associates, PW 128 Suneer and Adv. Philip, co-

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

ordinated through calls, with a decline in activity after 23.09.2017, aligning with the filing of a false petition against the investigating officer. These interactions suggest a clear attempt to influence PW 126's testimony and obstruct justice, highlighting PW 126's crucial role in exposing the conspiracy and attempt of accused to meet accused no.8 after the commission of crime. PW126 gave statement to PW261 more than once and he alleged undue influence on the part of accused no.8 and his associates to give false evidence. In his two 164 statements before the Magistrate he imputed police harassment as well as undue influence from the side of accused no.8 and his associates. He filed several complaints including a complaint to the CBI Special court alleging police harassment. Dissatisfied thereby he filed Ext.P116 Writ Petition seeking protection from the harassment of PW261 the investigating officer. Thereafter he filed Ext.P460 petition for police protection imputing threat and undue influence on the part of accused no.8 and his associates. His examination in this court was in two spells. His testimony in either spell is inconsistent and contradictory. In the light of the above I find it necessary to consider the CDRs produced including the CDR of PW126 produced in this court.

The decoded tower locations and the CDR of PW126, PW128 and Adv. Philip during the period when PW128 and PW126 were at Reyban Hotel, Alleppey are not produced. As I pointed out, these allegations are mentioned in Ext.C3(a) by PW261, as the matters found out during his investigation culminated in the filing of final report on 22.11.2017. The alleged meeting was also in the year 2017. In this case, the learned counsel for accused no.8 on 22.02.2021 filed Crl.M.P 362/21 for a direction to the prosecution to produce all the documents obtained by them relating to the CDRs and the decoded IDs obtained by them from various mobile and land phone service providers and serve him copies of the same. The learned Special Public Prosecutor on 24.02.2021 filed objection thereto contending that the attempt of accused no.8 is yet another example of the delay tactics being regularly and successfully employed. It is stated further that all the records to be proved through the witnesses have already been produced in court and the copies of those records were also given to all the accused persons. It is to be noted that Ext.P543 and Ext.P565 CDRs of PW128 for the period from 01.09.2017 to 31.10.2017 of mobile number 9656474030 and from 01.07.2017 to 25.09.2017 of

mobile number 9847976450 are produced only with the final report dated 22.07.2022. It is an admitted fact that CDRs will be saved and stored for one year only at that time. As I pointed out, these CDRs are produced in the year 2022. It is impossible to get those details during the investigation conducted in the year 2022. It can be concluded that those CDRs were collected in the year 2017 itself. As I pointed out, in the final report dated 22.11.2017, the point to be proved through PW126 and PW128 is the visit of accused at Laksyah. Why these CDRs were not produced along with the final report dated 22.11.2017 is not explained by the prosecution. What prompted them to produce these documents in the year 2022 is also not explained convincingly. Moreover despite the knowledge that the CDR in question was not produced, how and why it was contended in the objection filed in Crl.M.P.No.362/2021 that they have produced all the CDRs and related documents collected by them is not explained. The learned counsel for accused no.8 objected the marking of Exts.P543 and Ext.P565 on the ground as they were suppressed earlier and produced belatedly. Belated production alone is not a ground for its rejection especially when it is relevant. Though the collection and production of the

documents along with the final report dated 22.07.2022 shows the clandestine nature of investigation, the documents in question show the call details of PW128 Suneer. It is true that there are calls between PW128, PW126 and Adv. Philip. As I pointed out, both PW126 and PW128 had given explanation about these calls when the said fact was put to them during their examination. It is true that, as rightly pointed out by the learned Special Public Prosecutor, the calls between these persons after 23.09.2017 is considerably declining. Even if the contention of prosecution is admitted that PW126 is influenced in this manner, that itself is a reason to suspect his credibility. The very same PW126 denied the so-called influence exerted on him. He filed Ext.D116 before the Hon'ble High Court. He filed various complaints and petitions to various authorities alleging police intimidation and harassment. The very same person turned around and contended that he was influenced by accused no.8 and his associates. This itself is sufficient to discard his evidence. The chronology of events claimed by PW126 himself is sufficient to throw out his evidence for want of credibility and proof. Moreover, the evidence of

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

PW126 is that accused no.4 visited Laksyah and made enquiries about accused no.8, PW179 and PW251.

653. In the argument note, the learned Special Public Prosecutor relying on Ext.P275 pendrive and Ext.P279(a) FSL report submitted that the telephonic conversation between PW153 and PW191 would prove that accused no.1 placed memory card at Laksyah. It is further contended that CCTV footages would prove this aspect. Ext.P329 is the mahazar prepared for the seizure of DVR from Laksyah. The DVR seized accordingly was forwarded to the State Forensic Science Laboratory, Thiruvananthapuram on the strength of Ext.P717 forwarding note to retrieve the CCTV footage from 17.02.2017 to 23.02.2017. The CCTV footage could not be retrieved. Later, on the strength of Ext.P747 forwarding note, the DVR was forwarded to the Forensic Science Laboratory, Gujarat for further forensic examination as per the instruction of the State Police Chief. Nothing could be retrieved from the DVR. Ext.P129 is the certificate issued by PW126 u/s.65B of the Indian Evidence Act. When he was examined before the court he denied the

contents of the said certificate. He also submitted that he has no knowledge about the details of the said certificate.

654. Another contention raised by the learned Special Public Prosecutor in page no.153 of the argument note is that PW126 was summoned and examined by the investigating team on 24.08.2017. According to the Special Public Prosecutor, though no formal statement was recorded at this point, during examination PW126 disclosed that accused no.4 Vijeesh had been present at Laksyah after the commission of the crime and prior to his arrest. He deposed that he shared this information to PW80 and CW183. PW80 was summoned and his statement was recorded. This corroborated the information provided by PW126. According to the learned Special Public Prosecutor, they filed a formal request to the Chief Judicial Magistrate to record the 164 statement of PW126. He was summoned again on 26.08.2017 and his statement u/s.161 Cr.P.C. was recorded officially. This recording was captured via audio-video recording and submitted before the court. The contention of the learned Special Public Prosecutor appears to be astonishing that even though PW126 had given details about a vital

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

information on 24.08.2017 itself and that was not recorded, at the very same time, the statement of PW80 was recorded on 24.08.2017. The submission of the Special Public Prosecutor regarding the disclosures of PW126 on 24.08.2017 is of the records and deserved to be rejected. Similarly it is surprising that without recording the statement, they filed requisition before the Chief Judicial Magistrate to record his statement u/s.164 Cr.P.C and on the next day, recorded his statement u/s.161 Cr.P.C. It is true that u/s.161 of Cr.P.C., recording of statement of a witness is optional. But, considering the nature of information stated by PW126, the non-recording of that statement appears to be suspicious. As I pointed out, at the time of Ext.P177 recorded on 02.09.2017, PW126 stated before the Magistrate that he was interrogated thrice. Discarding all these situations, the argument of the prosecution is that PW126 stated about the visit of accused no.4 to Laksyah and his enquiry about accused no.8, PW179 and PW251. Nothing is stated about the visit of accused no.1 to Laksyah. As I mentioned hereinbefore, the records produced before the court on the other hand referred about the visit of accused no.1 to Laksyah. The said argument was by sidelining the records referring to

the visit of accused no1 to Laksyah. The conduct of PW126 starting from his first statement to the investigating officer till the conclusion of his evidence in this court in two spells and his stand at different stages of the investigation and tried elaborately discussed above would conclusively prove that he is a person of fickleness and untrustworthy and he has no definite stand in his dealings and it will be unsafe to rely on his evidence for any practical purpose. Therefore I hod that the evidence of PW126 is not at all reliable to find that either accused no.1 or accused no.1 and 4 together reached Laksyah after the humiliation and sexual assault of PW1 in a moving vehicle on 17.02.2017. The evidence of PW153, the recorded telephone calls produced before the court and Ext.P122 also refer about the visit of accused no.1 to Laksyah. The purpose of visit to Laksyah is also appears to be different as claimed by different witnesses.

655. The prosecution also alleged that PW176 visited Laksyah. PW176 deposed this fact before the court. Prosecution attempted to elicit this fact through PW82 and PW128. When PW82 was in the box, the learned Special Public Prosecutor tried to elicit evidence related to the alleged visit of PW176 to Laksyah by putting question that whether he

visited Laksyah during the last of March or first week of April. PW82 replied that he does not know. It is also put to him that PW82 contacted PW128 Suneer through intercom and directed to make enquiry about the person who came there, PW128 approached him and collected the details and he divulged those matters to PW82 and PW176 came there for getting the phone numbers of accused no.8 and PW179. These suggestions were denied by PW82. When PW128 was in box, the learned Special Public Prosecutor put questions to him that a person by name Vishnu approached him during the last week of April 2017 and made enquiries about accused no.8, PW179 and PW251. He denied that suggestion. PW128 also deposed that he has no connection or acquaintance with accused no.1, accused no.4 and PW176. He has not seen them personally. So, it is seen that the suggestion of the learned Special Public Prosecutor when PW82 was in box that PW128 approached PW176 as directed by PW82, whereas when PW128 was in box, suggestion was that PW176 approached him directly. Coming to the evidence of PW176, he deposed that he visited Laksyah after two days of his release from the District Jail, Kakkanad. He was released on 23.03.2017. According to PW176, he went

to Laksyah on ringing the calling bell a person named Suneer or Sudheer approached him. He asked for the phone number of PW179 and PW251, but that was not given. This is stated before the court for the first time. The learned counsel for defence contended that PW176, who is an approver, was made instrumental in tune with the suggestions of the learned Special Public Prosecutor to PW82 and PW128. It is true that PW176 has not given any date as the date he visited Laksyah except stating evasively that it was two days of his release. The case of the prosecution is that the statement of PW176 was recorded on 04.05.2017 on getting information about Ext.P101 petition. Nothing is mentioned at that time as well as in Ext.C4 about his visit to Laksyah. The evidence regarding the visit of PW176 to Laksyah appears to be an omission. No corroborating evidence is also available to substantiate the claim of his visit. So, the contention of the learned counsel for accused no.8 that PW176 was made to depose this fact before the court so as to create evidence in tune with the suggestions of the learned Special Public Prosecutor to PW82 and PW128 has some force. The discussions

hereinbefore is sufficient to hold that the prosecution failed to prove the visit of accused no.1 and 4 to Laksyah on 22.02.2017.

656. **Whether accused no.8 fabricated records of Anwar Hospital, Aluva to create evidence to appear that he has no connection with the incident happened on 17.02.2017 ?**

The learned Special Public Prosecutor argued that accused no.8 fabricated hospital records with a deliberate intention to establish a false alibi and distance him from the crime that occurred on 17.02.2017. This was orchestrated with the assistance of PW50 Dr. Hyderali, who instructed PW131 to fabricate an inpatient chart at Anwar Hospital. The records were fabricated to show that accused no.8. was admitted from 14.02.2017 to 21.02.2017 so as to claim alibi for the period of the execution of the crime. However, hospital registers and testimony of witnesses exposed this deception. The learned Special Public Prosecutor relied on a voice clip produced by PW222 to canvass a contention that accused no.8 is so crooked who could plant documents in advance for his defence before he was caught. The fabrication was implemented on 22.02.2017 when PW50 directed PW131 to create a false I.P chart covering the period from 14.02.2017 to 21.02.2017. PW50 and accused no.8 contacted on that day

through mobile phone. The learned Special Public Prosecutor relied on Exts.P31, P32 series and P33 to contend that PW131 who made the entries in Ext.P32 was not on duty at that time and that itself is sufficient to prove the falsification of documents. Prosecution also relied on the interview of accused no.8 broadcast in Manorama Online on 10.04.2017 and the telephonic conversation between PW50 and accused no.8. on 22.02.2017 to show the conspiracy between them. It is also alleged that the involvement of PW191, whose location was traced out to be near the crime scene raised suspicion, especially when the CDR revealed communication between PW191 and the phone of PW125, sister of accused no.8. It is further alleged that the message of PW132 Sooraj, who is the brother-in-law of accused no.8, sent a message to the counsel for accused no.8, would show the attempt to influence the investigation. The learned Special Public Prosecutor also submitted that a message retrieved from Q25A in Ext.P279(a), item 408, would show that accused no.8 received message from one Mr. Stanley enquiring about his hospital discharge. According to the prosecution the said message also shows that accused no.8 caused others to believe that he was hospitalized. The



evidence of PW176 would also show the attempt on the side of accused no.8 to create false evidence regarding his illness and hospitalization. Accused no.8 was actively engaged in phone conversations, a behavior inconsistent with the claim that he was suffering from severe fever. It is also urged that PW132 and Adv.Sri. Philip co-ordinated efforts to tutor prosecution witnesses as conferred by message.

657. The learned counsel for the accused, on the other hand, submitted that the basis for the allegation regarding fabrication of evidence that accused no.8 suspended the shooting on 14.02.2017 itself is a fabricated allegation. According to them, the shooting was suspended on 13.02.2017. They also submitted that the evidence of PW45 and PW47 clearly establish the fact that date was not pre-fixed for the promo song recording of the movie and nobody had knowledge regarding the journey of PW1 to Ernakulam on 17.02.2017. If this be the situation, how did accused no.8 suspend the shooting on 14.02.2017 to arrange for the attack of PW1 in a moving vehicle without having any idea about the journey of PW1 to Ernakulam. In addition to that, it is also contended that accused no.8 is arraigned as an accused as a conspirator. The conspirator of a

crime is normally not available physically in the crime scene. The physical location of a conspirator at the time of alleged commission of incident is irrelevant. Hence, there is no need to put forward a plea of alibi by a conspirator. According to the learned counsel, hence the allegation of the prosecution that documents were fabricated to raise the claim of alibi is senseless. They also contended that clear evidence is available regarding the presence of accused no.8 in the meeting held on 19.02.2017 at Durbar Hall Ground and his participation in the shooting held on 20.02.2017 and 21.02.2017 he could not have raised a stupid claim that he was hospitalized from 14.02.2017 to 21.02.2017. According to his counsel, accused no.8 never raised a claim of alibi anywhere either in Ext.D18 series or Ext.P101 series or any of the bail applications. The evidence of PW50 itself is sufficient to discard the contention of prosecution. PW115, who is loyal to police and assisted the police in several occasions was cited as witness with an ulterior motive. PW114 is incompetent to adduce evidence regarding the treatment and practice and procedure followed in the hospital of PW50. It is also contended that the non-examination of CW79 Mency is fatal. The contentions raised in the argument note of the

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

learned Special Public Prosecutor that the call pattern of accused no.8 on the date of occurrence would also show his involvement in the alleged commission of crime is also baseless. The details regarding the persons who were the callers is made without any evidence, but a surmises. It is further submitted that PW191 and PW125 Sabitha are persons who are in regular communications. Prosecution has no allegation that both of them had prior knowledge about the incident of 17.02.2017. Without any evidence, prosecution is raising fanciful allegations in the argument note and it is improper.

658. The oral testimony of PW45, PW47, PW49, PW50, PW75, PW76, PW114, PW131 and PW132 are to be considered in connection with the allegation of fabrication of document to show hospitalisation of accused no.8. Among them, the oral testimonies of PW45 and PW47 are already considered in detail in connection with the discussion of other points. Coming to the oral testimony of PW50, he deposed that he is a doctor by profession. He took his MBBS degree from Medical College Hospital, Alappuzha in the year 1974. He commenced Anwar Hospital at Aluva since 1979. His wife is also a doctor there. This hospital has a

capacity of 95 beds. Different departments were functioning there. Accused no.8 and his family are known to him for the last 40 years. According to him, accused no.8 comes to his hospital occasionally for treatment. He has not met accused no.8 after 2020 March. Both of them are keeping thick relationship. Accused no.8 was never admitted in his hospital. In 2017, accused no.8 was not admitted in his hospital. PW49, his brother, is the Manager of that hospital. The usual practice followed in the hospital is that a patient first of all comes to the reception, he has to pay fees and obtain O.P chart for the doctor required for treatment. The doctor concerned will attend him. If admission is required, that will also be recorded in the admission register. All the records will be kept in the hospital. The details of the patient will be recorded in the O.P or I.P chart. If admission is directed, the patient should admit there as inpatient. Accused no.8 was not admitted there as inpatient. Ext.P31 is identified by him as the admission register maintained in his hospital. Nothing is there in Ext.P31 to show that accused no.8 was admitted in his hospital on 14.02.2017. He had given the details of the patients admitted thereafter till 22.02.2017. Accused no.8 was not admitted there during

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

these days. Ext.P34 is identified as the staff duty book. Ext.P33 is the staff leave book. According to him, PW49 is the custodian of this book. Ext.P32 series are identified by him as O.P chart issued in favour of accused no.8. It contains prescription and examination reports. He had given the details of the treatment provided to him. He identified the handwriting in the prescription as of him. According to him, the name Dileep referred to in that document is of accused no.8. He deposed that accused no.8 was not admitted in his hospital on 14.02.2017. According to him, there is no need for his admission. The learned Special Public Prosecutor put a question to him that, has he given statement to the police that accused no.8 was admitted in his hospital on 14.02.2017 and he denied it. Thereafter, the learned Special Public Prosecutor sought permission to put leading questions. The learned counsel for accused no.8 objected the request on the ground that no ground is canvassed to put leading questions and the witness is adducing evidence in tune with the available records. This court deferred the objection and granted permission as the learned Special Public Prosecutor wants to discredit his own witness. The legality of this objection will be discussed while

analysing the evidence of PW50. It is elicited through him by learned Special Public Prosecutor that medicines prescribed can be administered without admission. Drip can also be administered without admission. According to him, drip was given at the hospital. The medicine "Taxim" was administered through "IV". The details available in Ext.P32 series are elicited through this witness. According to him, "Alprax" is a mild sedative. He denied that it is the medicine intended for anxiety. Ext.P35 contradiction is elicited through this witness. According to him, there is phone conversation between himself and accused no.8. He also stated that the family members of accused no.8 also were under his treatment. He does not know about the driver of accused no.8. A suggestion is put by the learned Special Public Prosecutor that he forged documents to show that Dileep was admitted at his hospital and he denied it. According to him, it is incorrect to say that antibiotics and "IV" can only be administered to the patients who were admitted in the hospital. Another suggestion is put to him that after the incident on 17.02.2017, he fabricated documents during his interrogation and produced it before the court. He denied this suggestion also. He also stated that his statement

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

was not recorded in the month of July. According to him, his statement was recorded on 01.10.2017 and 21.10.2017. He was cross-examined and elicited that accused no.8 has been consulting him since his childhood. According to him, when accused no.8 requires treatment, he will come to the hospital and administer drip. Accused no.8 will thereafter go back to home. It is also elicited that he has not received fees from accused no.8 for his treatment. No fees is collected for the treatment of family members of accused no.8 also. According to him, in Ext.P32 series, on 14.02.2017 it is recorded that "one day taken tab previously" as accused no.8 consulted him on 13.02.2017 at his residence and he prescribed medicine. Accused no.8 was suffering from fever and cough. He also stated that nurses will go to the home of accused no.8 and administer injection. The details of medicines administered including "Alprax 0.25" are also elicited through this witness. The Director of the movie in which Dileep was acting at that time contacted him. He came to his hospital and offered to clear off the bill. According to him, even if accused no.8 is aboard, he used to consult him over phone. According to him, accused no.8 came to the hospital in the morning. In the evening, nurses will go to the residence of accused

no.8. According to him, two nurses by name Remya and Mency were attached with his hospital. A question is put to him by the learned Special Public Prosecutor that he directed Mency to prepare documents and Mency in-turn directed Remya to prepare documents and she prepared the records accordingly. PW50 replied that the persons attached with the film in which accused no.8 was acting at that time asked him to prepare the documents for the payment of bill. He entrusted the preparation of documents with Mency. Remya completed the preparation of records. It is to put to him that these records were prepared without examining accused no.8 and he denied it.

659. PW50 was again recalled after the second further investigation. Questions were put to him regarding the talk with PW132 Suraj. According to him, he contacted Mr. Suraj when he received summons from the court. His hospital records were damaged in the flood happened in the year 2018. On getting the summons, he contacted Suraj to know about the details. He identified the voice clip contained in Ext.P468 retrieved from Q1 Samsung phone recorded as Item 852 of Annexure-2. According to him, it is the conversation between himself and

Suraj. Another voice clip retrieved and recorded as item 872 is also put to him. According to him, the audio is not clear. The voice appears to be of Suraj. Ext.P604 contradiction is also elicited through this witness. A suggestion is put to him that he is giving false evidence so as to help accused no.8 and it is denied by him. It is elicited by the learned counsel for accused no.8 that the second voice clip put to him was heard using amplifier. But his voice is not heard of. This was not put to him as part of interrogation. According to him, no directions were given to him by anybody about the way of giving evidence in the court.

660. PW75 deposed that he was the production executive of the movie "Ramaleela" and accused no.8 was the hero in that movie. The shooting of the movie was started on 09.08.2016. Accused no.8 joined for shooting on 15.02.2016 for a day. He again joined for the shooting from 20.12.2016 continuously. The shooting was at Fort Kochi Ramada, Panangad and Thuravur. The shooting was continued at Palakkad also. The shooting was commenced at Ramada on 10.02.2017. The shooting stopped on 11.02.2017 as accused no.8 was suffering from fever. The shooting resumed on 20.02.2017. But, again stopped on 22.02.2017 as

accused no.8 was suffering from fever. The shooting of the film was held in Maldives during the last week of March and first week of April. The second schedule of shooting was commenced on 05.06.2017. The shooting of the movie "Kammara Sambhavam" was held in between. The shooting of the movie "Ramaleela" was completed at Coimbatore on 15.06.2017. A question is put to him by the learned Special Public Prosecutor that whether he has direct knowledge that accused no.8 was suffering from fever and he admitted that he has no direct knowledge. Counsel for accused no.8 elicited through him that during the shooting at Ramada they could not proceed with the shooting as accused no.8 was suffering from fever. The Director Mr. Arun Gopi, and the Production Controller, Mr. Noble Jacob went to the hospital. Mr. Noble Jacob contacted him and asked to break the shooting. If the actor suffers from any illness during the course of shooting, the treatment expense will be met by the company. The bill was given to the company.

661. PW76 is another witness examined by the prosecution and he deposed that he is an Oracle (വെളിച്ചപ്പാട്) in Kalimalarkavu temple. He had given the details of the practices being followed in that temple.

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

According to him, accused no.8 is known to him. He visited him at his residence. The learned Special Public Prosecutor put a question to him about the date of visiting and he replied that he does not remember the date. The learned Special Public Prosecutor put another question, whether he visited him on 17.02.2017. According to him, it was on 17th. He in connection with a prior programme, attended meeting at the residence of one Mr. Nirapara Karnan. One of the friends of Mr. Baiju was present there. Mr. Baiju informed him that accused no.8 was suffering from fever. He expressed his desire to visit accused no.8. He visited accused no.8 accordingly. Accused no.8 was taking rest at that time. On seeing him, accused no.8 got-up and sat on a sofa and he was shivering. There is a practice using coconut. Accused no.8 attempted to do that. He caught accused no.8 and asked him to sit there. The body temperature of accused no.8 was high at that time. He arranged a coconut. He collected all the pains of accused no.8 to that coconut. He went back. He offered this coconut for the deity in the temple. Accused no.8 contacted him by 9.30 a.m. on that day. He informed him that his pain is subsided, but fever is remaining as such. According to him, he reached at the residence of

accused no.8 by 6 p.m. It is elicited in cross examination that he came to know about the illness of accused no.8 when Mr. Baiju informed him. According to him, since accused no.8 is a devotee of his temple, he paid a visit to him at his residence.

662. PW114 Junior Consultant (General Medicine) General Hospital, Pala is examined by the prosecution to depose about the practice adopted when a patient approaches with the complaint of fever, cough and body pain. He had given the details of medical practices being adopted in such a situation. Ext.P32 series are prepared in connection with inpatient treatment. According to him, it is recorded in Ext.P32 series that the patient was admitted on 14.02.2017 at 7.15 p.m. He stated that "Alprax" prescribed is from 17.02.2017. But, the reason for administering that medicine is not recorded in Ext.P32 series. He also stated that the patient referred to in Ext.P32 series need not administer the medicines Taxim, Cefixime simultaneously. It is elicited in cross-examination that he does not know about the practice of maintaining records at Anwar Hospital, Aluva. He has no knowledge about the persons who dealt with Ext.P32 series. The doctor who prepared the



chart is also not known to him. He had gone to the extent of stating that Ext.P32 series does not appear to be prepared by a doctor having basic qualification. He was born in the year 1977. The learned defence counsel put a suggestion to him that a doctor who obtained his MBBS degree from Medical College Hospital, Alappuzha, three years prior to his birth, recorded Ext.P32 series prescription and he pretended ignorance about it. It is elicited that he examined the accused person involved in this case. He had given evidence before the court in the petition of accused no.1 alleging police harassment. Questions were put to him regarding the use of medicine "Alprax".

663. PW131 is the staff nurse attached to Anwar Hospital during the year 2017 she deposed that PW50 is the owner of the hospital. Accused no.8 is known to her. According to her, on 14.02.2017 she was on night duty. She had been asked to arrange room no.203 as accused no.8 arrives there for treatment. She arranged the room. Accused no.8 reached there on that day at 7 p.m. Accused no.8 came to room no.203. PW50 Dr. Hyderali examined him. She had been asked to give injection to him. Blood test was also done. He spent there almost three hours and

thereafter left for his home. Usually accused no.8 will not take O.P ticket or chart. He contacted PW50 for attending him directly. According to her, nursing chart is being prepared for a patient admitted in the hospital. The medicines administered to the patient along with the treatments provided will be recorded in the chart. Ext.P32 series nurse's chart were written by her, as instructed by senior staff nurse Mency to prepare the nursing chart. She raised her apprehension, whether she would face any trouble if she prepare the document. Sister Mency passified her stating that the document is being prepared as directed by the doctor. She had been asked to prepare records one week after the arrival of accused no.8 on 14.02.2017. The order of the doctor was entrusted with her. She prepared chart in tune with the doctor's chart. She also stated that she had recorded some datas which were not available in the doctor's chart. According to her, preparation of nurse's chart in a single stretch is a wrong practice. She did it as directed by the doctor. According to her, leave will be recorded in a book maintained in the hospital. Ext.P33(a) leave letter is written by her. She was on leave on 17.02.2017. She admitted that accused no.8 came to the hospital as he was suffering from

fever. It is elicited that the evidence stated by her regarding her apprehension raised to Mency when she was asked to prepare the nursing chart is not stated at the time of her statement u/s.164 Cr.P.C.

664. As I mentioned hereinbefore, the case advanced by the learned Special Public Prosecutor is that fabrication of hospital records by accused no.8 was a deliberate effort to establish a false alibi. Section 11 of the Indian Evidence Act deals with the principle of alibi. Illustration (a) of Section 11 of the Indian Evidence Act describes about the application of alibi. The term alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place, he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime.

665. Accused no.8 was charged for hatching conspiracy with accused no.1 for attacking PW1. Prosecution has no case that accused no.8 was present along with accused no.1 at the time of commission of the offence. Even, the case of prosecution is concerned, it is alleged that, as attempted to prove through PW222, the last meeting between accused

nos.1 and 8 was on 26.12.2016. Another piece of evidence tendered by the prosecution through PW213, Renju Renjimar is that accused no.1 was seen near to the residence of accused no.8 during the first week of January 2017. Except these allegations, prosecution has no case that accused nos.1 and 8 met on 17.02.2017. If this be the situation, accused no.8 is not expected to put-up the defence of alibi as canvassed by the learned Special Public Prosecutor. The other aspect to be noted is that the hospital where accused no.8 availed treatment is very near to his residence. So, the alleged fabrication of records to prove alibi as contended by the learned Special Public Prosecutor appears to be a baseless argument.

666. One of the charges against accused no.8 is that he accused no.8 is that he caused to prepare records showing his admission in Anwar Memorial Hospital, Aluva so as to appear that he has no connection with the attack on 17.02.2017. Let me to consider the evidence based on the charge framed by this court. The charge alleged against accused no.8 is that the so-called fabrication is so as to appear that he has no connection with the attack on PW1. The prosecution alleged that the fabrication was on 22.02.2017. It is urged that, on that day, PW50 and accused no.8 were

DISTRICT AND SESSIONS COURT
ജില്ലാ കോടതി
എറണാകുളം-682 011
ERNAKULAM-682 011

in contact via mobile phone. PW50 was examined and the learned Special Public Prosecutor sought the permission of this court to put leading questions to him. This was objected to by the learned counsel for accused no.8. Despite the objection, permission was granted to the the learned Special Public Prosecutor for putting leading questions. PW50 deposed before the court that his statement was recorded by the investigating officer on three occasions. But two statements of PW50 alone are produced before the court. The first statement was on 01.10.2017 and the second was on 21.10.2017. Ext.P35 was elicited through PW50 as contradiction. On an analysis of the evidence of PW50, before the learned Special Public Prosecutor sought permission to put leading questions, he deposed specifically that accused no.8 was not admitted in his hospital. According to him, on 13.02.2017, accused no.8 consulted him at his residence with complaints of fever and cough. Thereafter, on 14.02.2017, he came to the hospital and medicine was administered through "IV". This fact was deposed to by PW131, the staff nurse whose evidence is much relied on by the prosecution to prove their case. PW131 also deposed that on 14.02.2017, at around 7 p.m, accused no.8 reached at the hospital. "IV"

was administered to him. He spent there for about 3 hours and left home. As I mentioned, in the chief examination, PW50 had narrated about his expertise in the field. He also deposed about his thick relationship with accused no.8 and his family. According to him, accused no.8 is his patient for the last 40 years. He categorically stated that accused no.8 was not admitted in his hospital as inpatient on 14.02.2017. According to him, Ext.P31 admission register is also not containing any entry to show that accused no.8 was admitted in his hospital on 14.02.2017. The details of the medicines and treatment provided to accused no.8 are elicited through PW50. He repeatedly and consistently deposed that accused no.8 was not admitted in his hospital. Even though he was deposing in his chief examination in such a manner the learned Special Public Prosecutor sought permission to put questions as asked in the cross-examination. A witness can be branded as a hostile witness and the permission of the court for putting questions as asked in the cross-examination can be sought for only if he adduces evidence against the person who summoned him.

667. It is seen that PW50 had given evidence perfectly in tune with the assertions of the prosecution. The case of the prosecution is that without admitting in Anwar Hospital, records were fabricated to show that accused no.8 was admitted in that hospital. That being the assertion it cannot be said that PW50, who deposed specifically that accused no.8 was not admitted in his hospital not adduce evidence against the prosecution. The same practice was adopted in the case of PW127 Renjith also. The one and only contradiction elicited through PW50 is Ext.P35 which contains in the statement recorded on 01.10.2017. Ext.P35 reads that accused no.8 on 14.02.2017 approached him for treatment at his hospital with complaint of fever and cough. He examined him and advised blood test. Thereafter, accused no.8 was admitted in his hospital. PW50, when he was in box, as pointed out specifically, deposed that accused no.8 was not admitted in his hospital. It may appear that Ext.P35 is a contradiction elicited through him as he stated before the investigating officer that accused no.8 was admitted in his hospital and later, changed his version in court. But, the further statement of PW50 recorded on 21.10.2017 would show that investigating officer interrogated

him about his expertise, facilities in Anwar Hospital and also regarding the details of the treatment of accused no.8. It is mentioned that the statement recorded on 01.10.2017 was read over to PW50 before recording his statement on 21.10.2017. The statement on 21.10.2017 would show that PW50 was interrogated referring to the nursing chart produced along with Ext.P32 series. It is also seen stated by PW50 that nursing chart will not be prepared for the patients who availed treatment in the OP. The learned Special Public Prosecutor examined PW50 in chief examination and he deposed evidence in tune with his statement to the investigating officer on 21.10.2017. Even after getting permission to put leading questions, the learned Special Public Prosecutor put questions to PW50 regarding the medicines administered to accused no.8 and also about the treatment provided to him. He also elicited in cross examination that on 20.02.2017 consultation was done through phone. I could not understand the intention of the learned Special Public Prosecutor in eliciting Ext.P35 contradiction through him especially when he reiterated that accused no.8 was not admitted in his hospital as claimed by the prosecution. What the prosecution intended to establish through

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

PW50 was that he fabricated documents to show that accused no.8 was admitted in his hospital so as to help him. The prosecution has no case that accused no.8 was actually admitted in the hospital of PW50 to show that he was away from the crime scene. The only allegation is that documents are fabricated to show that accused no.8 was hospitalised on 14.02.2017.

668. Let me so consider the hospital records marked as Ext.P32 series in the backdrop of the above position. In Ext.P32, in the place allotted for recording the OP number, it is seen written as C/o. Dr.CMH. It is brought out in evidence that CMH is used to show that the patient was in the care of Dr. Hyderali. It contains the doctor's chart, pulse temperature chart and nursing chart. Nothing is there in Ext.P32 to show that the patient was admitted in the hospital as inpatient. In the nursing chart it is recorded the date of admission as 14.02.2017 at 7.15 p.m. PW131 is the nurse who prepared the chart. She herself admitted that on 14.02.2017, at about 7 p.m. accused no.8 came to the hospital. He was in room no.203. PW50 reached there and examined him. PW131 had been directed to administer injection to accused no.8 and also to examine his

blood. She complied with the directions. Accused no.8 was in the hospital almost three hours and thereafter he left. So, the evidence of PW131 would show that though in the nursing chart it is recorded date of admission as 14.02.2017, he left the hospital after 3 hours on completion of "IV".

669. It is elicited through PW50 that the direction on 20.02.2017 was over phone. Further, it is also elicited through him that Ext.P32 contains a recital on 14.02.2017 that "one day taken tab previously" and it refers with respect to the prescription on 13.02.2017 when accused no.8 consulted him at his residence. On going through the final report it is stated generally that records were fabricated to show that accused no.8 was admitted in the hospital from the evening of 14.02.2017 till the morning of 21.02.2017. Nature and the details of the document alleged to have fabricated is not mentioned specifically in the final report. But, while in the box, questions were put to PW50 that the nursing chart was prepared by PW131 as directed by him. It is urged that this direction was communicated to PW131 through another nurse worked therein. The said staff cited as CW79 was not examined in court. PW50 himself during

cross-examination at the instance of the learned Special Public Prosecutor with permission admitted that PW139 and CW79 were worked there as staff nurses. A question is put to him by the learned Special Public Prosecutor that the records were prepared by PW131 as per the direction given to her through CW79 Mency. PW50 replied that since the persons attached with the cinema in which accused no.8 was acting at that time had agreed to pay the bills and hence, he issued direction to prepare the documents and had given the records for the same.

670. This evidence is fortified by the evidence of PW75. He categorically deposed that if an actor spent money for treatment during the course of shooting, that will be paid by the company. The bills of accused no.8 were forwarded to the producer and they paid it. That part of his evidence remains unchallenged and undisputed. The one and only evidence adduced by PW131 is that nursing chart is usually prepared for a patient, who is admitted in the hospital. She admitted that the nursing chart in Ext.P32 series were written by her. According to her, when she was directed to prepare the chart, she raised her apprehension about the preparation. CW79 informed her that since the direction was from doctor,

nothing would be happened. Though she deposed that the practice of preparing nursing chart is for persons admitted in the hospital, she herself admitted that she prepared it as per the entries available in the doctor's chart. A question is put to her by the learned Special Public Prosecutor that, why did she recorded the matters which were not available in the doctor's chart. Her reply thereto was that she wrote those matters in tune with the routine practice. Another question is put to her by the learned Special Public Prosecutor that, had she had knowledge that preparing nurse's chart in a single stretch is a wrong act. She replied that it was prepared as directed by the doctor. On an analysis of the entire evidence of PW131, nothing is seen there to arrive at a finding that she prepared the nursing chart by incorporating forged or fabricated entries. Evidence of PW131 is confining to the unusual practice of preparing nursing chart in connection with a patient who was treated as out patient. She herself admitted that she prepared the nursing chart after getting the chart prepared by the doctor. Prosecution has no case that PW50 prepared his chart with forged entries. As I pointed out, the evidence of PW50 and PW131 would show that accused no.8 was not admitted in the hospital.

Ext.P31 also does not contain any entry showing his admission. Ext.P32 series documents also do not contain any entry to show that accused no.8 was admitted in the hospital. Though in the nursing chart, as the date of admission was recorded as 14.02.2017, the evidence of PW131 clarifies the situation. Moreover, PW50 and PW75 deposed about the circumstances under which Ext.P32 series were prepared. Further, though several questions pertaining to the treatment given and medicines administered are put, not even a suggestion was made to PW50 that the entries in Ext.P32 are fabricated.

671. So, on an overall consideration of the evidence discussed above, even if it is taken that the nursing chart was prepared against the existing practice, not even an iota of evidence is available to show that those are fabricated documents. PW50 himself deposed that accused no.8 approached him for treatment during this relevant period. PW75 deposed that shooting was suspended during the period of treatment. PW75 further deposed that accused no.8 attended for treatment on 20.02.2017. Moreover, accused no.8 attended the protest meeting organised by the Association of Malayalam Movie Artists at Durbar Hall Ground on

19.02.2017 and addressed the gathering. The records regarding his participation in both the public meeting and the shooting location on 19.02.2017 and 20.02.2017 are available even in the public domain. If this be the situation, it is difficult to believe that accused no.8 had taken the burden to forge documents so as to appear that he was hospitalised from 14.02.2017 evening till 21.02.2017 morning.

672. The learned Special Public Prosecutor vehemently urged that inpatient records were fabricated by accused no.8, providing him with an alibi for the period surrounding the execution of the crime. In Ext.P32(a) mahazar prepared in connection with the seizure of Ext.P32 on 02.10.2017, it is mentioned that the documents seized are IP card and admission book. At the very same time, in Ext.P32(a) mahazar while narrating the description of Ext.P32 series, it is mentioned that the cover contains the recital "OP number". On a perusal of Ext.P32 series hospital records nowhere it is mentioned as IP records. The treatment details are recorded on daily basis. PW50 and PW131 deposed that accused no.8 was not admitted in the hospital. PW50 further deposed that accused no.8 visited the hospital in the morning and his temperature and other details



were taken and recorded by the nurses who were on duty. In the evening, nursing staff used to go to his residence and collect the details. Why the investigating officer as well as the prosecution treated this record as an inpatient record without any such recitals in these records are not explained. But, coming to the entries of Ext.P32(b), Form 15 prepared by PW261 on 02.10.2017 for producing Ext.P32 series before the court, the description is mentioned as "OP cheet" of Anwar Memorial Hospital, Aluva in the name of Dileep. In the very same Form 15, the column provided for points sought to be proved, it is again described the document as "OP cheet" in the name of Dileep. As I pointed out, Ext.P32 series contains the recital "OP number" in the cover. It is alleged further by the prosecution that Ext.P32 series were prepared on 22.02.2017. Neither PW50 nor PW131 mentioned about the date of its preparation. PW50 deposed that when the persons in connection with the movie asked him to furnish the documents for the payment of bill, he entrusted CW79 Mency for preparing the records, who directed PW131 to complete the preparation. No date is seen stated by PW50.

673. Coming to the evidence of PW131, she deposed that after one week of the visit of accused no.8 in the hospital on 14.02.2017, the documents were entrusted with her to prepare Ext.P32 series. She has also not mentioned any date of preparation. In order to assign the date of preparation as 22.02.2017, prosecution relied on a call between PW50 and accused no.8 on that day at 15:00:15 hours. It is urged that this call positively suggests the direct co-ordination in fabricating the hospital records. Except the entry in the CDR borne out from Ext.P233 series, no conversation is made available in court. It is brought out in evidence that both PW50 and accused no.8 are maintaining thick relationship for the last 40 years. PW50 deposed that they used to contact over phone. Above all, accused no.8 was under the treatment of PW50 from 13.02.2017 onwards. Evidence is available on record to show that though the shooting was resumed on 20.02.2017, that was again stopped as accused no.8 was not feeling well. If this be the situation, it cannot be concluded that this particular call was exclusively for the fabrication of Ext.P32 series on 22.02.2017. Above all, no date is assigned in Ext.P32 series to show that documents were prepared on 22.02.2017. When PW50 was in

DISTRICT AND SESSIONS COURT
ജില്ലാ കോടതി
ഏറണാകുളം-682 011
ERNAKULAM-682 011

box, a suggestion is put to him by learned Special Public Prosecutor that after hearing about the incident, he prepared documents at the time of his interrogation and produced it before the court. PW50 denied it. "17.2.17 ന് സംഭവം ഉണ്ടായത് കേട്ടതിന് ശേഷം ആലോചിച്ച് **മൊഴിയെടുക്കുന്ന സമയത്ത് രേഖയുണ്ടാക്കി** കോടതിയിൽ ഹാജരാക്കിയതാണെന്ന് പറഞ്ഞാൽ ശരിയല്ല." This suggestion is against the prosecution case that Ext.P32 series were prepared on 22.02.2017. As I pointed out, the records available before this court would show that the statement of PW50 was recorded on 01.10.2017 and 21.10.2017. Relying on Ext.P33 leave book, the learned Special Public Prosecutor argued that PW131 who made entries in Ext.P32 series was not on duty on the day on which one of the entries was recorded in the IP chart. PW50 deposed regarding the circumstances under which Ext.P32 series were prepared. According to him, he asked CW79 Mency to prepare documents. He also asked PW131 to complete the preparation. He had given documents for that. He categorically deposed that different nurses attended accused no.8 on different days. He also clarified that as directed by him PW131 compiled all the entries and

prepared Ext.P32 series. This evidence remains unchallenged. Considering this evidence, the fact that PW131 was on leave during one of the days mentioned in Ext.P32 series cannot be taken as a ground to discard that document. The learned Special Public Prosecutor put another suggestion to PW50 that Ext.P32 series were prepared without seeing or examining accused no.8. PW50 denied this suggestion. This suggestion is also against the prosecution case. The case of the prosecution itself is that though accused no.8 consulted PW50 at Anwar Hospital, Aluva, he fabricated documents to appear that he was admitted there as inpatient. It was not disputed that accused no.8 was ill and in connection therewith he consulted with PW50.

674. The learned Special Public Prosecutor setup yet another case that on the day of occurrence, the conduct of accused no.8 was unusual. According to him, accused no.8 usually receives an average of forty calls daily. This was found based on an analysis of his CDR for ten months. But, on 17.02.2017, accused no.8 made no calls until 22:30 hours. Similar is the case of messages also. According to the learned Special Public Prosecutor, despite claiming illness and severe fever, his actions contradict

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

his assertions. The records confirmed that he actively made and received calls after midnight. Some of the calls including a call having a duration of 32 minutes are elicited in the argument note. It is also argued that accused no.8 found using the mobile phone of his driver PW191. PW191 made calls to PW50. However PW50 deposed that he does not know PW191. According to the learned Special Public Prosecutor, these calls were actually made by accused no.8. It is also argued that the tower location of PW191 on 17.02.2017 was traced near to Cochin Airport tower and also to Kottayi tower before the abduction of PW1. They also argued that on 17.02.2017, PW50 prescribed "Alprax" to accused no.8, a tablet used for anxiety. This shows the mental state and distress of accused no.8 on that day. Based on this, the learned Special Public Prosecutor argued that accused no.8 not only participated in the conspiracy, but also monitoring the execution of the crime. On going through this argument it is seen that learned Special Public Prosecutor disputes even the fact that accused no.8 was suffering from fever. Moreover, the submission that accused no.8 was monitoring the execution

of crime is not found a place in any of the records produced by the prosecution.

675. In this context the evidence of PW76 assumes relevance. PW76, a person cited by the prosecution to prove the fact that on the date of occurrence the said person visited accused no.8 at his residence. PW76 deposed that he visited accused no.8 on knowing accidentally from one of his friends that he is suffering from fever. The friend suggested him to visit accused no.8 and accordingly, he reached at his residence and at that time he was lying. He had given evidence about his physical appearance. He had also gone to the extent of stating that accused no.8 stood up for taking a coconut. He caught him. At that time the body temperature of accused no.8 was high. The very same fact is reiterated in the cross examination also. Similarly, PW75 also deposed about the fact of fever. Moreover, PW131, the witness highly relied on by the prosecution also deposed that accused no.8 was suffering from fever. If this be the situation, the contention of the learned Special Public Prosecutor that the claim of illness is a false claim cannot be accepted. To substantiate the description of phone calls mentioned in the argument note, no material is

available on record. Similar is the case of the argument regarding the calls made using the mobile phone of PW191. It is true that PW50 deposed that he does not know PW191, the driver of accused no.8. According to him, he has not made phone calls to the driver of accused no.8. At the very same time, he deposed that accused no.8 contacted him over his mobile phone. But, nothing is seen put to PW50 that accused no.8 contacted him using the number of PW191. No evidence is forthcoming from PW191 about this aspect.

676. The allegation based on tower location of PW191 is not found a place in the final report. It is to be noted that when PW191 was in box, he stated that all those places referred to are near to Aluva where the residence of accused no.8 situates. He also deposed that on that day he visited these places and went to a hotel for purchasing food. Moreover, the prosecution has no case that accused no.1 communicated about the socalled attack on PW1 before the execution. The case of the prosecution is that accused no.1 attempted to execute the quotation at Goa during the first week of January, but could not succeed. It is alleged by the prosecution that, thereafter, on 11.02.2017 accused persons hatched

conspiracy again at the residence of Nelson for executing the crime. As I pointed out, earlier no evidence is before the court to show that this alleged plan of execution was either communicated to accused no.8 or somehow, he came to know about it. Further, no evidence is available on record to show that accused no.8 informed PW191 about the alleged conspiracy with accused no.1 to attack PW1 and to monitor the execution, he was remaining on the route of PW1 on 17.02.2017.

677. The above discussion can be summarised as follows:- The definite case of the prosecution is that without hospitalisation accused no.8 fabricated documents to show that he was undergoing inpatient treatment in Anwar Hospital, Aluva from 14.02.2017 to 17.02.2017 so as to plead 'alibi' in connection with the attack on 17.02.2017 in a moving vehicle. At no point of time, Accused no. 8 was having a case that he underwent inpatient treatment from 14.02.2017, though on a complaint of fever, he took outpatient treatment of PW50. PW50, the owner and doctor of Anwar Hospital and PW131, a nurse of that hospital, had categorically deposed that accused no.8 has not underwent inpatient treatment from 14.02.2017 and PW131 further stated that Ext.P32 series,

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

the OP chart of accused no.8 was prepared by her by referring to the doctor's chart. Though a thorough and lengthy examining in the style of cross-examining a prosecution witness from the defence side is made from the prosecution side, so as to establish that the treatment of accused no.8 was as an impatient, which is against the prosecution case that without undergoing inpatient treatment, accused no.8 fabricated documents to show that he underwent inpatient treatment. Nothing was brought out to prove so. Though the learned special public prosecutor made extensive arguments pointing out absence of any phone call to accused no.8 on 17.02.2017 till midnight as against the empty numbers of calls every day and the presence of PW191, the driver of accused no.8 on the route of PW1 on 17.02.2017. These aspects have no relevancy at all to establish that without undergoing inpatient treatment, accused no.8 fabricated document showing his inpatient treatment in Anwar hospital from 14.02.2017 till 17.02.2017.

678. The charge against accused no.8 is that he gave a quotation to accused no.1 for the sexual assault and recording the nude video of PW1 and in execution of the same accused no.1 conspired with accused no.2 to

6 and on 17.02.2017 accused no.6 executed the quotation of accused no.8 while she was in a vehicle on her way to Ernakulam. In short, the charge against accused no.8 is conspiracy. The position of law is that physical presence of the conspirator of a crime at the crime scene is quite unnecessary to make him liable for the conspired act, and being away is not all helpful to escape from the consequences of the conspired act. That being the position of law governing the liability of a conspirator in a commotion with the execution of the conspired act, the prosecution allegation to plead the 'alibi', accused no.8 get hospitalized from three days prior to the attack on PW1 or that he fabricated documents to show that he was undergoing inpatient treatment from 14.02.2017 to 17.02.2017 even without hospitalization is appears to be illogical. Concluding the above discussions, I hold that the prosecution failed in establishing that without undergoing inpatient treatment, accused no.8 fabricated documents to the effect that he underwent inpatient treatment from 14.02.2017 to 17.02.2017 to escape from the liability on account of the attack on PW1 on 17.02.2017.

679. Another contention raised by learned Special Public Prosecutor relying on Ext.P279 FSL report that a message retrieved from one Mr. Stanley recorded as item 4080 in page no.7595 dated 22.02.2017 would show that "Are you discharged from hospital. I am reaching there 25th of this month". The learned Special Public Prosecutor submitted that this would also show that accused no.8 gave false narration about his hospitalization. It is to be noted that accused no.8 has not taken the contention of alibi anywhere in connection with this proceedings. Even during the interview relied on by prosecution, what accused no.8 stated is that he was engaged with hospital matters. It is true that he was suffering from fever and was on medication. The person who sent the message is not even cited as a witness. This court is not in a position to see under which circumstance this particular message was sent by him. Except this, no other messages from accused no.8 informing the said person that he was hospitalized or any matters in connection with treatment. So, taking note of this message, this court is not in a position to hold that accused no.8 claimed that he was hospitalised as inpatient.

680. Another argument raised by learned Special Public Prosecutor is that PW50 was tutored by the associates of accused no.8 and his lawyers and accordingly, he deposed about the preparation of documents for the sake of reimbursement. This contention appears to be per-se untenable in the light of evidence adduced by prosecution itself. As I pointed out, PW75 is a person cited by prosecution and he himself deposed about the fact of reimbursement before the court. The evidence tendered by PW75 regarding the reimbursement remains unchallenged also. The contention of the learned Special Public Prosecutor that the defence could not produce any bill or receipt to prove the claim of reimbursement appears to be groundless considering the evidence of PW75. The learned Special Public Prosecutor argued that PW75 was influenced by accused no.8 using his potentials in the film field. The learned Special Public Prosecutor submitted that the counsel for accused no.8 during cross examination elicited new facts through this witness and that shows the influence exerted on him by accused no.8. The learned Special Public Prosecutor had gone to the extent of submitting that the matters elicited by the learned counsel for accused no.8 surprised the



prosecution. This contention seems to be astonishing. Even if a witness stated new facts during cross examination, the other party can very well exercise the tools of re-examination to challenge the facts so elicited. In this case, as I repeatedly pointed out, in the re-examination of PW75, the learned Special Public Prosecutor put a question to this witness that whether he had seen the bills directly and he submitted that the bills are not seen directly. Nothing is put to this witness challenging his evidence regarding the practice of reimbursement in the film location deposed by him. The learned Special Public Prosecutor submitted that copy of the summons issued to PW75 was found in the mobile phone of accused no.8. This summons was received on 1.10.2020 from Mr. Noble Jacob, the production controller of the film Ramaleela, just nine days before the examination of PW75. According to the learned Special Public Prosecutor, this suggests that accused no.8 maintained authority over witnesses from the film industry. As I held in other similar situations, no evidence is available before this court to substantiate this contention. No questions were put to PW75 about the socalled influence. Moreover, as I pointed out, PW75 deposed before the court in tune with his statement

recorded by the investigating officer and he supported the prosecution. Accused no.8 was admittedly, the leading actor of the film Ramaleela. The summons of PW75 forwarded to accused no.8 by the Director might be because of the relationship between them. It is pertinent to note that except the copy of the summons, no other message or conversation is available to show that accused no.8 influenced PW75 either directly or indirectly.

681. The learned Special Public Prosecutor also contended that telephonic conversation between PW132 and PW50 was retrieved from the phone of PW132. Relying on the data retrieved from the phone mentioned in Ext.P468 FSL report, the learned Special Public Prosecutor argued that accused no.8 and his associates tutored witnesses, who had been summoned in this case. According to him, the conversation would show that PW132 instructed PW50 that they would arrange a meeting with Adv. Philip at Aluva. On retrieval of this particular telephonic conversation during the course of second investigation, PW50 was recalled. When PW50 was in the box, specific questions were put to him, whether anybody instructed him about the manner in which he has to

adduce evidence. He categorically denied this fact. This conversation was also put to him. PW50 submitted that he contacted PW132 after getting summons from the court. According to him, the hospital records were damaged in connection with the flood happened in the year 2018. In order to get instruction about this situation he contacted PW132 and made enquiries. The socalled voice clip is also put to him. Though he stated that it is a conversation between himself and PW132, he deposed that the voice is not identifiable. He also stated that his voice is not available in the voice clip. Ext.P604 contradiction is also elicited through this witness. He emphatically denied the socalled influence exerted on him by accused no.8 or his associates. It is elicited in cross examination that even though the voice clip is amplified using amplifier, his voice was not audible. Even if we analyse the said voice clip, nothing is available to show that PW50 was persuaded or influenced to give evidence in a particular manner. It is seen that as per the transcript relied on by the prosecution, PW50 himself expressed PW132 about his desire to meet Adv. Philip.

682. PW50 is a doctor having experience of almost fifty years. He is a competent person to depose about the influence exerted on him. Though in the telephonic conversation between PW132, they have made discussions about the matters in connection with the examination of witnesses and related matters. It cannot be relied on to hold that accused no.8 coerced PW50 to adduce false evidence before the court. Even otherwise, PW50 deposed in tune with the prosecution case that accused no.8 was not admitted in the hospital. So, nothing is there to show that accused no.8 influenced PW50. The above matters were considered as those were urged by the learned Special Public Prosecutor. But, these assertions are also not enough to drive this court from the finding regarding the alleged falsification of the hospital records by accused no.8.

683. **Relevance of alleged subsequent conducts of accused no.8 after the commission of offence on 17.02.2017.**

The learned Special Public Prosecutor relying on Section 8 of the Indian Evidence Act argued that any conduct by the accused aiming at fabricating evidence, suppressing material facts, misleading the investigation or creating a false narrative to present the facts of the case in a manner favourable to himself, is relevant evidence to be considered by

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

the court. The learned Special Public Prosecutor highlighted five subsequent conducts of accused no.8 to bring it within the purview of illustration (c) to Section 8 of the Evidence Act. This court has already considered the allegation regarding the conduct of accused no.8 during the day of occurrence of crime and also the alleged fabrication of false document of hospitalisation after the occurrence of crime. In addition to these two conducts the prosecution highlighted that accused no.8 pretended ignorance despite prior knowledge of the abduction and assault on PW1, his speech at the solidarity meeting held on 19.02.2017 and the denial of any association with the other accused on social media. These allegations can be considered one by one.

684. In order to substantiate the argument, learned Special Public Prosecutor relied on the illustration (e) of Section 8 of the Indian Evidence Act. Under Section 8 of the Indian Evidence Act, the conduct of the accused and the statement which are affected or influenced by any fact in issue is relevant and admissible. Herein, the prosecution attempts to place reliance on the subsequent conduct of accused no.8 and claimed that those conducts have bearing on the matter of the occurrence and

hence it becomes relevant and admissible. It is alleged that accused no.8 claimed that he learnt about the incident for the first time through the phone call of PW69 Anto Joseph on 18.02.2017 at 10.24 a.m. According to the learned Special Public Prosecutor, this fact was stated by accused no.8 on 19.02.2017 during the solidarity meeting held at Durbar Hall Ground, Kochi. The allegation of the prosecution is that accused no.8 came across with the assault on PW1 even before the telephonic conversation with PW69 through Whatsapp messages. According to the prosecution, the early knowledge was suppressed by accused no.8 as part of his attempt to misrepresent the timeline appears to be a deliberate effort to distance himself from the crime and avoid scrutiny regarding his reaction and subsequent actions. It is to be noted that PW69 admitted about the said call exchanged between them on 18.02.2017 at 10.24 a.m. Similarly, accused no.8 also admitted this fact in his examination u/s.313(1)(b) of Cr.P.C. PW69 deposed that accused no.8 came across with the incident in the morning of 18.02.2017 on calling him over phone. It is to be noted that on that day at 09:57:37 hours, there was a call

between accused no.8 and PW69. This fact is also admitted by both PW69 and accused no.8.

685. Relying on Ext.P279(a) FSL report, the learned Special Public Prosecutor argued that Whatsapp messages were retrieved from Q25A phone belongs to accused no.8. According to him, items 65170, 65171 and 65172 show that the news regarding the attack against PW1 is received in the mobile phone of accused no.8. According to the learned Special Public Prosecutor, the FSL report would show that these messages were accessed at 10:15:06 a.m, 10:15:10 a.m and 10:15:13 a.m. The call between accused no.8 and PW69 was at 10:24:24 a.m. It is also alleged that after the access time of messages, PW181 and accused no.8 exchanged telephonic conversation. Both of them claimed ignorance about the attack on PW1. As I pointed out, the contention of the learned Special Public Prosecutor that this was a conduct on the side of accused no.8 to misrepresent the timeline so as to distance himself from early knowledge of the crime and avoid scrutiny regarding his reaction and subsequent actions. Even if the contention of the learned Special Public

Prosecutor is accepted in toto, the time gap between the access time of messages and the call between accused no.8 and PW69 is only 9 minutes.

686. It is to be noted that on that day, at 09:57:37 hours there was a call to PW69 from accused no.8. Both of them admitted that call. This call was in continuation of the missed call from PW69 on the previous ring. All these matters were categorically deposed to by PW69 also. The learned Special Public Prosecutor in page no.702 of the argument note urged that PW69 maintained the stand similar to that of accused no.8 because of their close association. This contention cannot be accepted. The prosecution and the learned Special Public Prosecutor relied heavily on PW69 to prove the attack on PW1 including the matters happened after her arrival at the residence of PW5, phone calls to accused no.1, arrest of accused no.2 and also the recording of Ext.P1 F.I Statement. If this be the situation, the learned Special Public Prosecutor is not justified in blaming PW69. We cannot expect that a person who is cited as a witness should act as a puppet of the person cited him. The basis for the contention of learned Special Public Prosecutor is that accused no.8 accessed the messages before the telephonic conversation with PW69. It is



DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

true that the FSL report would show that the messages were accessed just before 9 minutes of the call with PW69. It is also to be considered that though the messages were accessed, one cannot conclusively arrive at a conclusion that the person accessed the message should know the content. Even if it is presumed that the person who accessed the message also came across with the contents, as I pointed out, considering the time gap between the access and the time when accused no.8 admitted that he came to know the news about the attack from PW69, this court is not in a position to accept the case of the prosecution that the attempt of accused no.8 was to keep him away from scrutiny regarding his subsequent conduct. The evidence of PW69 would show that in response to his call on the previous night, accused no.8 contacted him on 18.02.2017 morning. The call was disconnected suddenly and thereupon, he called him again. PW69 informed him about the details of the incidents. He further deposed that accused no.8 asked him to hand over the phone to PW1. Considering the sequence of events as spoken to by PW69, the argument of the learned Special Public Prosecutor that accused no.8 stayed away on getting information about the attack on PW1 will not stand even for a moment.

687. The next ground alleged to canvass this position is that accused no.8 in his speech at Durbar Hall Ground, Ernakulam on 19.02.2017 revealed subtle signs of anxiety and pre-emptive defense. According to the prosecution, in the said meeting accused no.8 took out an approach that instead of affixing on justice for the victim, he cautioned the media against manipulating facts. According to the prosecution, no allegations have been raised against accused no.8 at that time from any corner. His own solicited warning suggests an anticipation on his part that he will be implicated in this case. The portion of the speech relied on by the prosecution is as follows: "മീഡിയക്കാരോട് പ്രത്യേകിച്ചു പറഞ്ഞാൽ വാർത്തകൾ വളച്ചൊടിക്കാൻ അല്ല ശ്രമിക്കേണ്ടത് ." It is seen that accused no.8 made a special appeal to the media for not publishing distorted news items.

688. While evaluating the speech of accused no.8 in the protest meeting, a portion of which is admitted in evidence as the subsequent conduct. To prove the allegation of the prosecution, the entire speech has to be evaluated. The prosecution alleges that all other speakers expressed their solidarity with the victim. On the other hand, accused no.8 took a



different approach. On going through the entire speech, it is seen that accused no.8 in the meeting stated that the news regarding the attack on PW1 is very shocking. He also expressed his great anguish and concern in the incident. He also expressed his solidarity with PW1. He repeatedly mentioned about his solidarity and desire to stand with PW1 and also discontent in the incident. The special appeal to media and press pointed out by the prosecution is only a part of his speech.

689. It is pertinent to be noted that except in the argument note, nothing is mentioned in the final report about the contention that accused no.8 had delivered a vibrated speech in the said meeting. On a consideration of the statement relied on by the prosecution that accused no.8 unusually focused on media narratives rather than justice for the victim, it is seen that what he made is an appeal to the press for staying away from telecasting wrong news. He also stated that all should stand for getting justice for the victim and also to prevent the same kind of incidents in the future. His speech in entirety will discredit the argument advanced by the prosecution. Moreover, it is seen that without any materials or evidence on record the prosecution has advanced somany

arguments based on surmises and assumptions, for the first time in the notes of argument.

690. Another ground raised by the prosecution is that accused no.8 denied his association with the accused on social media. On 22.02.2017, accused no.8 published a post through his facebook page denying any connection or association with accused no.1 or other accused involved in this case. The argument of the prosecution is that this fact was claimed in the bail application of accused no.8 before the Hon'ble High Court. The learned Special Public Prosecutor urged that the prosecution produced evidence to show the presence of accused no.1 in the studio owned by accused no.8, film locations including the shooting locations of the movie 'Sound Thoma' in Alleppey and various locations of the movie 'Georgettan's Pooram'. It is to be noted that all those are the allegations levelled against accused no.8 by the prosecution and stoutly denied by accused no.8. The socalled meetings and conspiracy are the points to be decided by the court on the basis of the evidence available before this court. It is seen that the prosecution asserted the matters as if the allegations were either admitted by accused no.8 or proved. The

contention that accused no.1 present at Lal Media owned by accused no.8 itself is a misleading one. The prosecution allegation itself is that on 17.02.2017, accused nos.1 and 2 reached there as part of their professional engagement. Moreover, the prosecution evidence would also show that the studio is not exclusively belongs to accused no.8, but a joint venture of other two persons including PW5.

691. It is to be noted that accused no.8 had given a petition to the State Police Chief along with annexures. It is specifically alleged therein that somany news media including online channels spread news alleging that he was behind the crime against PW1 and that prompted him to submit the petition before the State Police Chief. It is also stated that in the light of circulation of false propaganda, he made facebook post denying his association with accused no.1. It is true that this court has to consider the evidence to see whether the claim of accused no.8 denying his association with accused no.1 at the investigation stage is a justifiable one or not. The allegations regarding conspiracy also is to be considered to decide the bonafides of the said claim. This court has already discussed the fact, whether any conspiracy was hatched between accused nos.1 and

8 and held that the prosecution failed to establish the said allegation. Even otherwise, taking into account of the situations including the circulation of news through various media putting blame on accused no.8, publication of facebook post cannot be taken as an untimely one pointing towards subsequent conduct mentioned in illustration to Section 8 of the Indian Evidence Act. Concluding the evaluation of the five circumstances urged by the Special Public Prosecutor as the subsequent conduct of accused no.8 relying on illustration (e) to Section 8 of the Indian Evidence Act, I hold that they have no bearing at all to find him as a conspirator along with accused no.1 in connection with the attack on PW1 in a moving vehicle on 17.02.2017.

692. The learned Special Public Prosecutor alleged another contention that accused planned interview through Manorama Online with an intention to mislead the investigation and influence public opinion. This particular interview is marked as Ext.P782. This is the CD containing the interview downloaded from YouTube. The learned Special Public Prosecutor claimed that accused no.8 made false statements to clear his name. It is to be noted that in which context the interview was

arranged is not brought on record. Similarly, the person who conducted the interview is also not interrogated or cited as a witness. The learned Special Public Prosecutor, contended that accused no.8 gave false assertions in the said interview. Accused no.8, on the other hand, argued that he had narrated the actual state of affairs in the interview. On a consideration of Ext.P782 it is seen that the matters spoken out by accused no.8 in the said interview are in tune with his defences. Similarly, the message allegedly exchanged with accused no.8 and Mr Arun Gopi, the Director of Ramaleela regarding the casting of actors is also relied on by the prosecution to disprove the claims made by accused no.8 in Ext.P782 interview. Mr Arun Gopi was neither interrogated nor cited as a witness. It is brought out in evidence that the movie Ramaleela was directed by Mr Arun Gopi, in which accused no.8 was the lead actor. Moreover, the messages were seen exchanged during the time of shooting of the said movie. The circumstances under which the messages were exchanged between them are not proved by the prosecution. Without proving the said fact this court is not in a position to accept the contention of the prosecution blindly that those messages show that

accused no.8 had significant control over casting decisions and also in finalising roles.

693. Another contention raised by the learned Special Public Prosecutor is that accused no.8 on 22.02.2017 behaved in an unusual manner. According to the prosecution, accused nos.1 and 4 visited Laksyah on 22.02.2017 and that is the reason for his unusual behaviour. They also claimed that accused no.8 sent SMS to the Chief Minister falsely asserting his innocence and published a facebook post denying his association with accused persons. He also maintained contact with Mr John Brittas, the then Media Advisory to the Chief Minister and also contacted the then Additional Director General of Police Smt. B. Sandhya IPS. The learned Special Public Prosecutor submitted that the attempts of accused no.8 were to shape public perception and also to evade scrutiny. Accused no.8 influenced key individuals for interfering with the investigation. Accused no.8, on the other hand, contended that immediately after the alleged commission of offence there were media reports putting him under the shadow of suspicion. Considering that situation he filed Ext.D18 petition before the State Police Chief along

with the news items circulated against him. It is to be noted that, on going through the annexures produced along with Ext.D18 and the averments in the petition, it can be seen that accused no.8 demanded for a fair and proper investigation to unearth the truth. Accused no.8 explained that since there were false news against him, he sent message to the Chief Minister and also published facebook post as clarification. This contention is fortified by the filing of Ext.D18 petition before the State Police Chief. PW261 also admitted about the news circulated against accused no.8. It is to be noted that he contacted higher officials including Chief Minister, Media Advisory to Chief Minister and also the head of the Special Investigation Team, then Additional Director General of Police Smt. B. Sandhya IPS. Even if the messages are taken into consideration, it is seen that accused no.8 tried to clarify his position claiming that he is innocent of the allegations circulated in different medias. He had pointed out the reason for false accusation in Ext.D18 also. As I pointed out, accused no.8 also not denied these messages. Similarly, the persons to whom those messages are sent were also not interrogated. In the light of Ext.D18 and alleged circulation of news in

DISTRICT & SESSIONS COURT ജില്ലാ കോടതി എറണാകുളം ERNAKULAM-682 011

various media, we cannot arrive at a finding that accused no.8 sent these messages for influencing them unduly, especially considering the status of those persons. So, the contention of the learned Special Public Prosecutor that these acts have to be treated as subsequent conduct u/s.8(e) of the Indian Evidence Act is to be eschewed.

694. **Arrest of accused no.8:-**

Accused no.8 was arrested on 10.07.2017 by PW261 and produced before the jurisdictional court on the next day. He was remanded to judicial custody and released on bail on 03.10.2017. Ext.P708 is the memo of arrest, Ext.P708(a) is the inspection memo and Ext.P708(b) is the custody memo. In page no.912 of the argument notes filed before the court, the learned Special Public Prosecutor submitted that accused no.8 was over confident that his role and involvement in the crime would never be uncovered. However, through a detailed investigation, his role as a master conspirator and orchestrator of this heinous crime was fully revealed with clear cogent and acceptable evidence. Accused no.8 was summoned on 10.07.2017, interrogated in the light of the evidence collected and arrested him on the same day at 6 p.m. Apart from this

contention, the learned Special Public Prosecutor relied on the alleged confession of accused no.8, related recovery mahazars, Ext.P101 petition and Ext.P122 letter, mobile phones of accused no.8 and its FSL reports along with Ext.P275 pendrive containing recorded conversations between accused no.1 and PW191, PW176 and PW181, PW176 and PW191, and PW153 and PW191. They also relied on the evidence of PW261 to support the contentions advanced before this court. The learned counsel for accused no.8, on the other hand, contended that the Special Investigation Team was constituted and PW261 was entrusted with the investigation with an ulterior motive to implicate accused no.8 falsely. According to them, on the strength of Ext.P344 order dated 18.02.2017 of District Police Chief, Ernakulam (Rural), PW202 took over the charge of investigation. Ext.P360 is the order dated 18.02.2017 of IGP (Crimes No.II), North Zone co-opting seventeen persons to the Special Investigation Team. They also contended that Order No.D3/26920/2017/PHQ dated 18.02.2017 referred to in Ext.P360 order was suppressed by the prosecution. But, PW261 admitted the constitution of the Special Investigation Team comprising six members on the strength

of the said order. PW261 further admitted that Mr. Dinendra Kashyap IPS, IGP (Crimes) was empowered to induct additional members into the team when required and the overall supervision was entrusted with Smt. B. Sandhya IPS, ADGP (South Zone). According to the learned counsel for the accused, Mr. Dinendra Kashyap IPS was the person entrusted with the powers to induct additional members, whereas on the strength of Ext.P688 of the District Police Chief, Ernakulam (Rural), PW261 was appointed as the investigating officer. Though in Ext.P688 it is stated that PW261 was appointed as the investigating officer as directed by IGP (Crimes), why the order was not issued by IGP (Crimes) is remained unexplained. They also contended that though PW202 was claimed to be sent on deputation to Cochin Refineries, no material is produced to support that contention to justify the removal of PW202 from the role of investigating officer. According to them, PW261 is the second junior most member in the Special Investigation Team and five Senior Dy.S.Ps were available in the team. They also contended that other senior Circle Inspectors were also in the team. According to them, so the entrusting of investigation with PW261, a junior most officer itself is sufficient to show

the malafides in the further investigation. They contended that PW261 along with other Superintendent of Police involved in the Special Investigation Team investigated another murder case as Smt. B. Sandhya IPS was the head of the team. Both Smt. B. Sandhya IPS and the then Rural S.P Mr. A.V George played a leading role in falsely implicating accused no.8 in this case. PW261 acted as their instrumental. They also relied on Ext.D160 telecast in Manorama News dated 30.06.2017 containing the statement of the then State Police Chief Mr. T.P Senkumar. Relying on this they contended that Mr. Dinendra Kashyap IPS, who was entrusted with the powers of the head of Special Investigation Team was kept away from the further investigation conducted by PW261. The State Police Chief on 27.06.2017 issued letter no.D3/26927/2017/PHQ stating that IGP (Crimes) is not being informed about the decisions and progress in the investigation. This particular letter was not produced before the court. Though it is a specific direction to PW261, he deposed that the said letter is not available in the case diary. The learned counsel for defence also assailed Ext.P793 letter of District Police Chief including ten persons in the Special Investigation Team.

Ext.P793 does not contain any reference regarding the direction of IGP (Crimes), the head of Special Investigation Team. Moreover, Ext.P793 is dated 18.11.2017 and it was four days prior to the submission of the supplementary final report on 22.11.2017. According to the learned counsel for the accused, Mr. Dinendra Kashyap IPS was kept out from the further investigation from the time when the Special Investigation Team along with the Rural Police Chief Mr. A.V. George, Mr. M.J. Sojan, Mr. K.S. Sudarsan and PW261 under the arbitrary and high-handed directions of Additional Director General of Police Smt. B. Sandhya IPS started to prepare for the false implication and arrest of accused no.8. Accused no.8, PW181 and PW191 were interrogated in the Police Club on 28.06.2017. This interrogation was continued till the early hours of 29.06.2017. The head of Special Investigation Team Mr. Dinendra Kashyap IPS was not available during the interrogation. The learned counsel also argued that no notice was given to accused no.8 for the interrogation on 28.06.2017. According to them, though PW261 took over the investigation on 19.05.2017, he did not do anything for a month. This time was made use of by PW261 and others to fabricate evidence

against accused no.8. According to them, Ext.P731 FIR in Crime No.751/2017 of Infopark Police Station was registered by PW197 on 28.06.2017 while accused no.8 was being interrogated. This crime was registered on the strength of report of PW261. According to the learned counsel, PW121, PW176 and accused no.9, who were arrayed as accused in this case were arrayed as accused in crime no.751/2017 to obtain them in custody for creating false evidence against accused no.8.

695. The first witness PW43 was cited to prove the connection between accused nos.1 and 8 and his statement was recorded allegedly on 30.06.2017. The learned counsel contended that though his statement contains the date 30.06.2017, his statement was created much after the arrest of accused no.8. According to them, even at the time of arrest of accused no.8, no evidence was available against him and it can be seen that the arrest of accused no.8 was the result of a larger conspiracy involving PW261 and ADGP Smt. B. Sandhya IPS. They argued that Ext.D18 series petition filed by accused no.8 on 27.02.2017 was not investigated. The stories circulated in the media about which accused no.8 made complaint were used against accused no.8 to implicate him

falsely in this case. Though the police failed to conduct investigation about the allegations against CW17 Mr Sreekumar Menon, accused no.8 was asked to appear before PW261 and Mr A.V. George on 10.07.2017 to enquire about CW17. The admission of PW261 regarding the calls and messages made to accused no.8 by Mr A.V. George would prove this aspect. According to them, instead of summoning accused no.8 for interrogation to police station, police officers deceitfully asked accused no.8 to come and meet them at a private guest house and then arrested.

696. It is to be noted that the fact of arrest is not disputed though the circumstances and contentions raised by the prosecution leading to the arrest of accused no.8 is stoutly disputed by the learned counsel for accused. It is to be noted that the contentions of learned Special Public Prosecutor regarding the alleged confessions and related discoveries were already considered by this court in detail and discarded. This court has already considered the conversations relied on by prosecution to prove the connection between accused nos.1 and 8. This court also discussed and arrived at a finding regarding the contentions advanced by prosecution on

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

the strength of Ext.P101 petition and Ext.P122 letter allegedly written by accused no.1 with the assistance of PW121.

697. It is to be noted that though Mr. Dinendra Kashyap IPS, IGP (Crimes), North Zone was the head of the Special Investigation Team, it is admitted by PW261 that he was not available during the interrogation of accused no.8 at the Police Club. He also admitted about the presence of Smt. B. Sandhya IPS, the supervisory officer of the investigating team at the Police Club. PW261 also admitted about the letter issued by the then State Police Chief Mr. T.P Senkumar on 27.06.2017. This was broadcast in Manorama News on 30.06.2017. It is specifically mentioned in the said letter that the team leader Mr. Dinendra Kashyap IPS, IGP (Crimes), North Zone was not aware of what was happening in the field. It is specifically stated that the team leader must be aware of what is happening, what are the evidentiary value, what are the motives supporting evidence and action to be taken for collecting further evidence etc. If this is not followed, the case would lead to a lot of unnecessary controversies. No amount of suspicion can substitute for evidence. Even after this letter, the records would show that

the I.G of Police was not available during the course of interrogation of accused no.8. The reason for the absence of the head of Special Investigation Team is not seen explained by the prosecution. Considering the nature of this case, direction should have been obtained from the head of the Special Investigation Team regarding the investigation. PW261 during the evidence tried to explain that the successor of Mr. T.P Senkumar later issued directions expressing confidence and faith on Smt. B. Sandhya IPS about the investigation of this case. It is also to be considered that prosecution admitted that no notice was served on accused no.8 for interrogation. The telephonic conversations and messages between accused no.8 and the then Rural S.P Mr. A.V. George is also admitted by the prosecution. It is seen that on 10.07.2017 Mr. A.V. George asked accused no.8 to appear before him to enquire about CW17 Mr Sreekumar Menon. PW261 deposed that the interrogation of accused no.8, PW181 and PW191 disclosed the involvement of accused no.8 in this case. He stated that all of them intentionally suppressed several material facts so as to avoid the arrest of accused no.8. It is true that the presence of accused no.8 was secured by the investigating team

claiming that they wanted to enquire about CW17. The learned counsel for accused contended that this shows the practice of deception on the side of police officers. Though the purpose of interrogation of accused no.8 was not communicated directly to him, the purpose stated to him cannot be stated as a deceptive one because the intention of the police might have been to secure the presence of accused no.8. Similarly, accused no.8 is a popular cine artist and that might have been the reason for summoning him to a private guest house instead of a police station. The learned counsel for accused no.8 challenged the evidence available as on the date of arrest of accused no.8. This court has considered those matters in detail in connection with the discussions regarding the conspiracy between accused nos.1 and 8. The reliability of the evidence has to be considered during trial. Investigation is the collection of evidence by police. Based on the investigation conducted so far, prosecution arrested accused no.8 on 10.07.2017. Even though this court discussed the evidence and found that the evidence available before this court is insufficient to prove the conspiracy allegedly hatched between accused nos.1 and 8, that cannot be taken as a ground to arrive at a

finding that the arrest of accused no.8 was illegal, though there were allegations regarding the exclusion of the head of Special Investigation Team.

698. Another aspect to be noted is that the mobile phone used by accused no.8 at the time of arrest was seen used from 6.05 p.m on 10.07.2017 till 5.53 a.m on 17.07.2017, that is, even after his arrest. Ext.P278(a) FSL report would show this. There were 102 calls as incoming and outgoing. It shows that accused no.8 was using his mobile phone. PW182, the brother of accused no.8 deposed that the phone was handed over to him on 11.07.2017 morning. When this fact is put to PW261 he tried to explain this situation by stating baseless reasons. Irrespective of the explanation, the fact remains undisputed is the use of mobile phone by accused no.8 even after his arrest till the production before the jurisdictional Magistrate. How it was so happened is not explained by the prosecution. It is to be noted that the Call Detail Record of this particular phone was produced till 30.06.2017 only. The learned counsel for accused contended that this non production of CDR till the date of arrest was to suppress these calls. It is true that all the belongings

available with the arrestee should be seized at the time of arrest. This was not seen done in this case. The details of the persons made the calls to accused no.8 and similarly, the details of the persons to whom accused no.8 made calls are elicited during the evidence. This would show that the phone was used by accused no.8 even after his arrest. At the very same time, this situation will also not invalidate the arrest of accused no.8.

699. **Whether the contention of the prosecution regarding the delay in executing the act after the conspiracy hatched in the year 2013 is tenable?**

In the final report, it is alleged that though the conspiracy was hatched in the year 2013, accused no.1 was convicted on 05.06.2013 and also involved in another case on 06.05.2014. Accused no.1 thereafter absconded. Accused no.1 surrendered before the Judicial First Class Magistrate Court, Kolencherry on 20.07.2015. He underwent imprisonment from 20.07.2015 till 15.09.2015. The father of PW1 expired on 24.09.2015. PW1 was accompanied by her father till his demise and hence, accused no.1 could not get a convenient occasion for the execution of the conspiracy. PW1 was expected to leave the film industry soon and accused no.8 instigated accused no.1 to execute the act urgently. The

learned Special Public Prosecutor contended that on account of this urgency, accused no.8 met accused no.1 frequently in the locations of the movie 'Georgettan's Pooram' in the year 2016. Accused no.8 wanted to discredit the character of PW1 through defamatory visuals and disturbed her impending marriage. Accused no.8 also intended to protect his reputation which would be damaged by his proposed marriage with PW179 by exposing the character of PW1. The learned counsel for the accused, on the other hand, contended that the contentions raised by the learned Special Public Prosecutor are not found a place in the final report. The prosecution themselves are fully aware of the falsity of the contention advanced in the final report regarding the delay in execution, new stories are developed so as to suit the occasion.

700. The case of prosecution is that the first conspiracy was hatched in the year 2013. According to the prosecution, immediately after this, accused no.1 absconded due to the judgment of conviction passed against him. They also contended that he was arraigned as accused in another case. Admittedly, there is a gap of four years between the alleged conspiracy hatched in the year 2013 and the alleged execution held in the

year 2017. In this context, Ext.D193 assumes relevance. Ext.D193 is the proceeding sheet of S.C.No.178/2013 on the files of Additional Sessions Court-VII, Ernakulam. Vide Ext.D192 judgment accused no.1 was acquitted in that case. It is seen from Ext.D193 proceedings that all accused including accused no.1 were participating in the trial throughout. On 22.05.2013, accused no.1 was absent. But the counsel filed application to condone the absence. On 24.06.2013, accused no.1 appeared before the court in connection with S.C.No.178/2013. Ext.D193 would show that accused no.1 was appearing before the court throughout from 24.06.2013 till 08.08.2014. Ext.D192 judgment was pronounced on 13.08.2014. Accused no.1 was absent on that day. All the accused were acquitted.

701. The case of the prosecution is that the conviction against accused no.1 was on 05.06.2013 and his involvement in another criminal case was on 06.05.2014. According to the prosecution, accused no.1 absconded owing to the above circumstances. But Ext.D193 would show that, even during these periods, he was regularly appearing in S.C.No.178/2013. This would negative the contention of the prosecution that accused no.1 absconded after his conviction on 05.06.2013. The

evidence of PW261, investigating officer, in this regard is also to be looked into. When he was confronted referring to Ext.D193 proceedings, he claimed ignorance. In Ext.D189 report filed before the Sessions Court, Ernakulam in connection with bail application of first accused, the involvement of accused no.1 in Crime No.615/2011 of Cheranalloor Police Station is specifically mentioned. Crime No.615/2011 of Cheranalloor Police Station is stated in Ext.C25 report also. S.C.No.178/13 was arising from Crime No.615/2011 of Cheranalloor Police Station. Specific questions were put to PW261 referring Crime No.615/2011. But he pretended ignorance. Final report in Crime No.615/2011 of Cheranalloor Police Station is marked as Ext.D191. Ext.D192 is the judgment in S.C.No.178/2013. PW261, in order to escape from the situation, deposed that he did not conduct any investigation regarding these matters. It is also brought out through PW261 that he came to understand that accused no.1 was residing in and around Ernakulam from 2012 to 2015. Nobody was interrogated about the alleged absconding of accused no.1 during this relevant period. PW261 deposed that accused no.1 surrendered before the court on 20.07.2015 in

pursuance to the conviction warrant issued on 05.06.2013. This fact is canvassed by the prosecution to allege that accused no.1 absconded during this period and that is the reason for the alleged delay in executing the crime. The investigating officer is bound to investigate the facts in detail. It is to be noted that he himself stated that he did not conduct any investigation regarding those aspects. Ext.D189 report would show that the investigating officer had knowledge about the involvement of accused no.1 in Cheranalloor crime. So, the evidence of PW261 that he did not conduct investigation about these matters lacks credibility. A specific question is put to PW261 by the learned counsel for the accused that the prosecution allegation is that accused no.1 accompanied actor Mukesh in shooting location and other functions during the period when the prosecution claims that he was absconding. PW261 admitted this. Another question is put to him that this allegation was raised to justify the allegation of alleged conspiracy between accused nos.1 and 8 during the month of March-April 2013. PW261 replied that accused no.1 was not available at his residence during this period. At the very same time, PW261 deposed that his mother and sister informed that he visited his

house occasionally. Moreover, PW129, mother of accused no.1, deposed before the court that accused no.1 visited his residence atleast once in a month. Nothing is elicited through PW129 by prosecution to substantiate their contention that accused no.1 was absconding. The prosecution had raised another contention that since PW1 was accompanied by her father, the execution of the crime could not be effected. Father of PW1 expired on 24.09.2015. The execution of the crime was not done even after the demise of father of PW1. In order to coverup this situation, PW1 deposed that after the death of her father, she was accompanied by her mother. But, her mother was mentally disturbed and she used to go alone thereafter. The learned counsel for the accused contended that this new story was developed at a later stage. It is to be noted that this fact was not stated either in the F.I statement or any of the statements recorded till 03.06.2017. On the other hand, in Ext.P1 F.I statement PW1 stated that she used to go alone for shooting. This fact was put to PW1 when she was in box. She denied her statement in the F.I statement. The change in version about the company of father and mother in the shooting location

at a later stage along with the contradictory version in the F.I statement probabilise the contention of the accused.

702. The case of the prosecution is that the marriage of PW1 with PW2 was decided to solemnize in the year 2015. But that was postponed due to the demise of father of PW1 and also the demise of mother of PW2. Had this been the situation, if the contention of prosecution is taken into account, the alleged execution ought to have been done before the marriage scheduled in the year 2015. The marriage was postponed due to unexpected situations. In order to explain the delay till 2015, prosecution raised the contention that accused no.1 was absconding during this period and hence, the crime could not be executed. But the evidence of PW261 along with Exts.D189, D191, D192, D193 and Ext.C25 would prove that accused no.1 was appearing before the court during this relevant period. The evidence of PW129, mother of accused no.1 is also to the effect that he was very well available. The records would show that the conviction warrant against accused no.1 was executed on 20.07.2015 and he was released on 15.09.2015 before the demise of the father of PW1. Accused no.1 was in jail for a short period of about two months. Hence, the above

discussions would show that the contention of prosecution regarding the delay in the execution of crime owing to the absconding of accused no.1 appears to be untenable.

703. **Whether the contention of prosecution that accused no.1 recorded the visuals of MO8 gold ring worn by PW1 at the time of occurrence so as to disclose her identity clearly?**

It is the contention of prosecution that as directed by accused no.8, accused no.1 recorded the visuals in a manner to disclose the identity of PW1. As part of this, he recorded the visuals of PW1 revealing her identity. Accused no.1 also recorded the ring worn by PW1 clearly and specifically to convince accused no.8 that the visuals are of the original visuals of PW1. It is to be noted that this fact is stated in the final report filed on 22.11.2017. Nothing is stated in the first final report dated 18.04.2017 about the so-called recording of MO8 ring. MO8 ring was seized on the strength of Ext.P748 as it was produced by PW1 before the investigating officer at Police Club, Aluva. No independent witnesses are available in Ext.P748 mahazar. The one and only witness cited in the mahazar is a police constable, who is the member of Special Investigation Team.

704. Another aspect to be noted is that PW1 had narrated the incidents on 18.02.2017 to PW197. Her statement u/s.164 Cr.P.C was also recorded on that day. Ext.P117 is her statement u/s.164 Cr.P.C. Thereafter, her further statements were recorded on several occasions. In her statement dated 03.06.2017, she raised allegations against accused no.8. Even on that day, nothing is mentioned about the shooting of MO8 ring as claimed by the prosecution. Why PW1 did not disclose this fact at the earlier available opportunities is not explained by the prosecution. The evidence before the court would show that PW1 watched the visuals on 11.04.2017 and also on 03.06.2017. Why didn't she mention about the specific recording of MO8 ring atleast during these occasions is also remained unexplained. The learned counsel for the accused contended that this story was later concocted by the investigating team so as to create evidence in tune with the alleged statement of PW121 and PW176. Ext.P179 is the statement of PW121 recorded u/s.164 Cr.P.C. He stated before the Magistrate on 25.08.2017 that accused no.8 instructed accused no.1 to record the wedding ring of PW1. No such wedding ring was available with PW1 at that time. When he was in box, PW121 changed his

DISTRICT & SESSIONS COURT ERNAKULAM-682 011

version. The learned Special Public Prosecutor put a leading question to him, whether accused no.8 had given any instruction to accused no.1 regarding the recording. PW121 deposed that instruction was given to record the ring of PW1 so as to prove her identity. It is seen that PW121 changed his version so as to create corroboration for the evidence of PW1. The learned Special Public Prosecutor put leading questions to PW176 also to elicit the very same aspect. PW176 answered that there was instruction to shoot the ring specifically so as to prove the identity of PW1. But, at the very same time, he admitted that this fact was never stated before the investigating officer. Ext.C4 is also silent about this aspect. PW176 had gone to the extent of deposing that accused no.8 also instructed accused no.1 to execute the crime as the engagement of PW1 was over. This also would show that the evidence of PW176 regarding the shooting of MO8 ring is untrue. The engagement of PW1 was taken place after the incident involved in this case. Moreover, the visuals would show the identity of the person clearly and hence there is no need to capture the visuals of MO8 ring specifically for the purpose of proving identity. On the basis of above discussion prosecution miserably failed to prove the

conspiracy between accused no.1 and accused no.8 in executing the offence against PW1. The points are decided against the prosecution.

705. **Point no.33:-**

Has the prosecution proved that accused no.1 attempted to commit the offence against PW1 during the shooting of the movie 'Honey Bee 2' held at Goa on 04.01.2017 and 05.01.2017?

The case of the prosecution is that as the result of conspiracy hatched between accused nos.1 and 8, accused no.1 attempted to commit the offence when PW1 arrived in Goa for the shooting scheduled at Goa on 4th and 5th January, 2017. According to the prosecution, though accused no.1 attempted to execute the act, he could not commit the offence. The learned Special Public Prosecutor contended that accused no.1 was the driver for transporting PW1 from the airport on 03.01.2017. It is urged by prosecution that he secured this role. However, accused no.1 was unable to act on the plan as PW1 was accompanied by her makeup assistant PW133. Accused no.1 later vacated his room and waited nearby in a vehicle looking for an opportunity to execute the plan. Accused no.1 also contacted accused no.4 for arranging a vehicle for executing the

crime. Accused no.4 tried to get the vehicle through PW173. The learned Special Public Prosecutor relying on the CDR contended that there were calls between accused nos.1 and 4 and also between accused no.4 and PW173. There were calls between accused nos.1 and 2 and accused nos.1 and 3. Admittedly, accused no.1 went to Goa in connection with the shooting of the movie 'Honey Bee 2'. He reached there on 02.01.2017. PW1 arrived in Goa on 03.01.2017. Accused no.1 was deputed to bring PW1 from the airport to the hotel. It is also admitted that PW1 was accompanied by PW133. The fact of availability of accused no.1 at Goa is not disputed. Moreover, PW45 and PW47 also deposed about this fact. It is to be noted further that neither PW1 nor PW133 stated anything that during their journey from airport to hotel, accused no.1 made any attempts against PW1 or rather misbehaved to her. PW133 also deposed that accused no.1 took PW1 from the hotel to the boat-jetty as part of shooting. Based on inferences, the learned Special Public Prosecutor advanced argument to substantiate the contention that accused no.1 made attempts at Goa. According to him, accused no.1 contacted accused no.4 for arranging a vehicle. The learned Special Public Prosecutor submitted

that this was done with the expectation that if PW1 travelled back in the car driven by accused no.1, he could execute the crime in Goa using the hired vehicle as originally planned. The learned Special Public Prosecutor himself admitted that except this inference, nothing is available to substantiate this fact. It is to be noted that the case of prosecution itself is that PW1 was accompanied by her make-up man PW133. Moreover, the evidence of PW45 and PW47 would show that no arrangement or proposal was made for the return journey of PW1 in the car drove by accused no.1. The evidence of PW1 is that after the shooting at Goa, she returned back to Bangalore. The evidence of PW173 is that accused no.4 is known to him. In his chief examination, he deposed that accused no.4 contacted him during January, 2017 and asked to arrange a vehicle. He informed him that no vehicle is available with him. He has not stated any other details. In order to prove the period, the prosecution relies on the CDR of accused no.4. Even if this evidence is taken into account as claimed by the prosecution, this can be considered as a preparation only. In order to accomplish an act as an attempt, some positive acts towards the commission of offence than preparation is required. The stage of

preparation involves making plans and gathering the necessary resources to carry out the crime. As far as attempt is concerned, the offender has to take a significant step towards committing the crime, but does not complete it. If the attempt is unsuccessful, the person is typically guilty of an attempt, which is punishable.

706. In this case, even if the entire allegations of prosecution is considered, accused no.1 contacted accused no.4 for arranging a vehicle. Accused no.4 in turn contacted PW173 for obtaining a vehicle, but could not succeed. This act cannot be termed as an attempt. Moreover, without any cogent evidence, prosecution alleges that an inference can be drawn from this that this might have been for the execution of crime, if PW1 travelled with him. All these matters are assumptions hypothetical too. No evidence is available regarding the travelling plan of PW1 also. As I already pointed out, accused nos.1, 2, 3 and 4 were associated together as drivers and hence, the phone calls between them alone cannot be taken as evidence to arrive at a finding that they contacted as part of the plan for execution of the crime at Goa.

707. The learned Special Public Prosecutor also put forward a contention that accused no.1 reached Goa on 02.01.2017. He resided at 'La Alegro' Hotel. He vacated the room on 03.01.2017. According to the prosecution, he left Goa only on 05.01.2017. Accused no.1 vacated the hotel room on 03.01.2017 with a specific intention to execute the offence against PW1. Relying on the evidence of PW122, the learned Special Public Prosecutor submitted that accused no.1 was seen in the parking place and seashore thereafter. No evidence is available to show the place where accused no.1 resided after 03.01.2017. Ext.P243 is the register produced by the prosecution to prove this aspect. PW187 was working as the Manager of 'La Alegro' during this particular time. According to him, on 02.01.2017, accused no.1 occupied room no.4 of the hotel. His phone number was also recorded in the register. They collected PAN card of accused no.1 as ID proof. He vacated the room on 03.01.2017. He identified the person on showing the photograph by the investigating officer. The marking of Ext.P243 is objected by the learned counsel for accused nos.1 and 4 on the ground that the register is not produced before the court. It is also submitted that copy is not served to them. The learned

Special Public Prosecutor replied that copies were given to the accused. Though the register is produced before the court first time, it is seen that copies of relevant pages are served to the accused. So, the objection cannot be considered. On a perusal of Ext.P243 register, page no.24 contains the relevant entry regarding the stay of accused no.1. It is seen that accused no.1 arrived at the hotel on 02.01.2017 and vacated on 03.01.2017. The prosecution alleges that no details regarding the stay of accused no.1 thereafter are available. It is the duty of the prosecution to conduct investigation about this. It is true that PW122 deposed that he was seen at the parking place in the seashore. The evidence of PW133 is that the shooting was at an Island. They proceeded to the Island by travelling in a boat. They went to the boat-jetty in the car drove by accused no.1. If this be the situation, the presence of accused no.1 in the seashore assumes no significance. Though PW122 deposed about the presence of accused no.1 in the seashore and parking ground, other details are not stated by him. The prosecution has not conducted any investigation about the residence of accused no.1 on 04.01.2017 and 05.01.2017 at Goa. Admittedly, other crew members were also available in

Goa. Nobody was interrogated about this aspect. So, for the mere reason that accused no.1 vacated the hotel on 03.01.2017 cannot be taken as a ground to show that he attempted to execute the commission of offence against PW1. As I pointed out, even PW1 has no case that accused no.1 made any attempts against her as part of the commission of offence.

708. The prosecution advanced another contention that since the attempt at Goa was not successful, accused no.1 met accused no.8 during the first week of January, 2017. In order to prove this aspect, they relied on the evidence of PW213. The evidence of PW213 in this regard is that accused no.1 was seen walking near to the vicinity of the residence of accused no.8 in the first week of January, 2017. I have already discussed the evidentiary value of the evidence tendered by PW213 and arrived at a finding that she is a planted witness. Even otherwise, it is to be noted that the case of the prosecution is that accused no.1 proceeded to Goa in the XUV on 01.01.2017 and reached there on 02.01.2017. PW1 reached Goa on 03.01.2017 along with PW133. The shooting was scheduled on 4th and 5th January, 2017. PW1 returned from Goa to Bangalore on 05.01.2017. It is the case of prosecution that accused no.1 was available in Goa atleast

on 05.01.2017. No evidence is available before the court to show that when accused no.1 came back to Kerala, he has to come back in the XUV. Though PW213 claimed that accused no.1 was seen near the residence of accused no.8 during the first week of January, 2017, the details regarding the date are not mentioned. She simply stated that he was available during the first week of January, 2017. The evidence on record would show the availability of accused no.1 in Goa during the first week of January, 2017 atleast till 05.01.2017. If this be the situation, the evidence tendered by PW213 regarding the presence of accused no.1 near the residence of accused no.8 during the first week of January, 2017 lacks credibility. Even otherwise, the prosecution contention itself is based on assumptions and inferences and assumptions and inferences cannot replace proof. So, the above discussions lead me to arrive at a conclusion that the contention of prosecution that accused no.1 attempted to commit the offence at Goa stands unproved. Point No.33 is decided against the prosecution.

709. **Point Nos.34 to 40:-**

The evidence of PW222, its admissibility, relevance and related matters.

Since the points are interlinked all these points are considered together. I have already narrated the chronology of events involved in this case. On 29.12.2021 the case was posted for further evidence of PW202 and also for the examination of PW261, the last witness scheduled in this case. On that day PW261 filed Crl.M.P No.2466/2021 informing that further investigation is commenced on the basis of revelation made by PW222 on 25.12.2021 through media. The learned Special Public Prosecutor also filed Crl.M.P No.2465/2021 to adjourn the examination of PW261. The second further investigation commenced thereafter and culminated in the filing of supplementary final report on 22.07.2022. The learned Special Public Prosecutor, relying on the decision of the Hon'ble Supreme Court in **Hasanbhai Valibhai Qureshi vs. State of Gujarat (2004) 5 SCC 347)** contended that further investigation cannot be prevented on the ground that it will cause delay. The purpose of further investigation is to bring out the truth before the court. Often it becomes necessary when high profile accused persons conceal their role in the crime and their

involvement is revealed only at a later stage. The learned Special Public Prosecutor also contended that accused no.8 believes that based on the evidence recorded upto the second further investigation, there is no sufficient material to find him guilty. Accused no.8 alleges that the second further investigation was devised to fabricate evidence against him and that it caused prejudice to him. The learned Special Public Prosecutor also submitted in his argument that the high profile publicity accused no.8 managed to generate created an impression, atleast among a small section of the public that there is no evidence against him. According to them, the revelations made by PW222, Balachandrakumar were not new to accused no.8 and his associates. PW222 had already informed about this. The learned Special Public Prosecutor relying on the decision in **Vemireddy Satyanarayan Reddy and others v. State of Hyderabad (MANU/SC/0025/1956)** argued that it is a settled proposition of law that the evidence of a witness who makes a delayed disclosure and even that of a hostile or enimical witness can be acted upon, if the court finds it to be true, for which the rule of corroboration serves as the yardstick.

710. The learned counsel for accused no.8, on the other hand argued that second further investigation of the case was a stage managed show by the investigation team and the prosecution to derail the trial as they had failed to bring-in any credible evidence against accused no.8. According to them, PW261 wanted to delay his examination. The Additional Director General of Police Smt. B. Sandhya IPS wanted to delay the trial so as to pronounce the judgment after her retirement. They also contended that the prosecution as well as the investigation team wanted to delay the trial so as to avoid the pronouncement of judgment by the Judge who tried the case and recorded the evidence. According to them, the further investigation was conducted with the ulterior motives as mentioned above. They also contended that PW261 failed to verify the veracity of revelations made by PW222 before filing the petition before the court. PW222 sent the copy of his petition to the Chief Minister and to the Station House Officer, Nedumbassery for taking necessary action. The Station House Officer, Nedumbassery sent it through e-mail to PW261 on 28.12.2021. PW261 received the e-mail on the night of 28.12.2021 during night. According to the learned counsel for accused,

PW261 decided the next day morning itself that further investigation is required to arrive the truth and doing substantial justice. The learned counsel for accused no.8 assailed the proceedings to this court in Crl.M.P No.2466/2021 contending that this court granted approval for the second further investigation without evaluating and deciding whether permission for a further investigation has to be granted or not. This court failed to comply with the mandate of law that permission of the trial court should be sought for and obtained for conducting the second further investigation. It is to be noted that though accused no.8 filed Crl.M.C No.803/2022 before the Hon'ble High Court to close the report of second further investigation, the Hon'ble High Court dismissed the said Criminal M.C. The Hon'ble High Court further held that permission of the trial court is not necessary to conduct further investigation. So, this contention is not kept open for consideration in the light of the decision of the Hon'ble High Court. The learned counsel also contended that the second further investigation and its report is therefore illegal and has no basis. Though the learned counsel for the accused relied on a catena of decisions to substantiate their contention that permission of the trial court is

required for the further investigation, as I pointed out, since the order of the Hon'ble High Court in Crl.M.C No.803/2022 attained finality, this court is not expected to consider it again. In Criminal Crl.M.P No.2466/2021, PW261 stated about the averments in the copy of petition received from the Station House Officer, Nedumbassery. He relied on the averments in the petition as the revelations of PW222 and accordingly, projected the need for further investigation. He also averred that he intends to conduct further investigation and hence, the matter was reported to the court. The learned counsel for the accused argued that PW261 intentionally suppressed the revelation made through the interview telecast in the Reporter TV on 25.12.2021. The learned counsel also argued that the facts which motivated PW222 to give the said interview are to be appreciated so as to ascertain the credibility of PW222 and his revelations. It is an admitted fact that the interview of PW222 telecast in the Reporter TV on 25.12.2021. PW222 made several disclosures alleging the involvement of accused no.8 in the commission of the offences involved in this case, his association with accused no.1 and somany other matters which are relevant to this case.

711. In the final report dated 22.07.2022 it is stated that while the trial of this case was going on, the investigation was being conducted to trace out the mobile phone allegedly used to capture the visuals of PW1. At this time, PW222 revealed matters through media throwing light to the involvement of accused no.8 in this case. PW261 also received the copy of petition filed by PW222 before the Chief Minister. He examined the petition in detail. Considering the averments in the petition and also the disclosures made through media on 25.12.2021 and thereafter, PW261 contacted him over phone. He arrived at a conclusion that further investigation is required and thus filed Crl.M.P before the court on 29.12.2021. As part of investigation, more evidence showing the association with accused nos.1 and 8 are collected. They also collected evidence to show that the recorded visuals were reached in the possession of accused no.8. On the basis of available evidence they filed the supplementary final report. The materials collected through further investigation is intended to prove two aspects on the basis of revelations made by PW222. One aspect is that PW222 witnessed the presence of accused no.1 at the residence of accused no.8 on 26.12.2016 and he left the

residence with money received from accused no.8. The other aspect is that on 15.11.2017, accused no.15 brought the tablet containing the visuals of PW1 captured by accused no.1 on 17.02.2017 to the residence of accused no.8 and accused no.8 along with his family members and associates watched the visuals. PW222 recorded the conversations of accused no.8 and his associates during the course of above transactions and produced it to the investigating officer. The evidence of PW222 is to be analysed in the above background.

712. After the second further investigation, the offence u/s.204 IPC is added against accused no.8. Accused no.15 is also arraigned alleging the commission of offence u/s.201 of IPC. The evidence of PW222 and its admissibility is to be considered in the backdrop of the allegations raised in the second supplementary report.

713. **The meeting allegedly held between accused no.1 and accused no.8 on 26.12.2016 in the residence of accused no.8 at Kottarakkadavu.**

The prosecution case is that the acquaintance between PW222 and accused no.8 commenced since 2014. PW222 approached accused no.8 with a story and agreed to act the lead role in the said movie. Accused

no.8 also agreed to produce the movie through "Shivani Entertainments" owned by PW132, the brother-in-law of accused no.8. But, in the year 2016, PW132 withdrew from the production and hence, accused no.8 agreed to proceed with the production. Somany film personnel were engaged to write the script of the movie. On 26.12.2016, PW222 visited the residence of accused no.8 at Kottara Kadavu in connection with the discussions of the said project. He along with PW182 proceeded in a red Swift car owned by accused no.8 for purchasing food. Accused no.8 along with accused no.1 approached them and accused no.8 asked PW182 to drop accused no.1 at the bus stop. PW182 introduced accused no.1 to PW222. Accused no.1 appeared to be very familiar to PW182. The conversations between them were sufficient enough to know about their intensive relationship. Accused no.1 was seen carrying cash. During the journey, PW182 informed accused no.1 about the movie of PW222. PW222 noticed the peculiar name of accused no.1 Pulsar Suni. Accused no.1 requested for chance in his movie. Both accused no.1 and PW182 discussed about the cash, which was in the possession of accused no.1. and he was dropped at Paravur Kavala bus stop.

714. Before considering the evidence with respect to this particular meeting between accused nos.1 and 8 on 26.12.2016 as disclosed by PW222, the evidence regarding the circumstances which prompted PW222 to disclose the matters through media and also filing Ext.P633 petition are to be considered. The evidence of PW222 is that PW242 Mr. Dasan, who was working as the caretaker at the residence of accused no.8 contacted him on 26.10.2021. PW242 informed him that there is threat to his life and also alerted him about the measures to save himself. According to PW222, on getting this vital information, he prepared a complaint and submitted it to the Chief Minister on 25.11.2021. He also produced the voice clips which were available in his possession along with the petition. No action was taken in this petition. One of the friends of accused no.8 contacted him and informed him about the details in the complaint filed by him. This accelerated his apprehensions and he decided to inform the matters to public so as to save his life. He approached different media persons for this purpose. The Reporter T.V channel at last conceded his request, recorded his revelations and they telecast it on 25.12.2021. Admittedly, the petition was registered in the grievance portal of the Chief Minister.

The learned Special Public Prosecutor argued that though PW222 disclosed the matters belatedly, the investigating team tested the evidence of PW222 and collected materials to establish that he is a truthful and reliable witness. Moreover, there is ample oral, documentary and digital evidence corroborating the testimony of PW222 on material aspects. The claim of PW222 that PW242 gave information to him and that generated in his mind. In Ext.P633 petition, it is averred specifically that PW242 heard about the discussions about PW222 held at the residence of accused no.8 and cautioned him to stay away from controversies. PW222 also realised that there is threat against his life also. Though this fact is stated in Ext.P633, he did not state this fact in his chief examination. It is to be noted that PW242 left his job at the residence of accused no.8 in December 2020. The alleged information by PW242 to PW222 was on 26.10.2021. Since PW242 left his job in 2020, it is practically impossible to give such an information on 26.10.2021 based on the alleged discussions which were taken place at the residence of accused no.8 during that relevant period. The learned counsel for accused no.8 argued that at the time of preparing Ext.P633, PW222 fabricated a story without

knowing the fact that PW242 left his job, but, at the time of giving evidence, PW222 came to know this fact and thus he withheld this source claimed by him during evidence. PW242 deposed before the court that he left the employment in December 2020. If this be the situation, as rightly contended by the learned counsel for accused no.8, PW242 could not alert PW222 on 26.10.2021 based on the alleged discussions held at the residence of accused no.8 at that period. So, the claim of PW222 in Ext.P633 about the reason which prompted him to file that complaint appears to be untenable.

715. The learned Special Public Prosecutor urged that PW222 approached Mathrubhumi Television and they recorded his statement. The learned Special Public Prosecutor further contended that Mathrubhumi Television suppressed this due to the influence exerted by accused no.8. Reporter T.V channel finally on 25.12.2021 aired his interview. It is also argued that the inaction on the side of authorities concerned after filing Ext.P633 petition compelled and constrained PW222 to approach and contact media for disclosing the information available with him.

716. The phone of PW222 was examined forensically. Ext.P678 is the FSL report and Ext.P678(a) is the pendrive attached with the report obtained after analysing mobile phone of PW222 and pendrive produced by him. Image File 5005 (978) created on 25.10.2021 is a screenshot of the e-mail sent to Mr. Vinu.V.John of Asianet. Image number 5005 (1019) is the screenshot of a letter written by PW222 to Mr. Vinu.V.John on 25.10.2021.

The content of the said letter reads as follows:- "Dear Mr Vinu John, ... I want to give you a news that is very exclusive and get attention all over the world about film actor Dileep. ... Sincerely yours, ... P. Balachandrakumar (Film Director, Phone No. 9496994181, 9633433333)".

The contents of e-mail is as follows:- "Urgent, പ്രിയമുള്ള Vinu.V.John, എന്റെ പേര് P. ബാലചന്ദ്രകുമാർ. ഒരു സിനിമ സംവിധായകനാണ്. വളരെ exclusive ആയതും കേരളവും ഇന്ത്യ മുഴുവനും കത്തിപ്പടരാൻ സാദ്ധ്യത ഉള്ളതുമായ ഒരു വാർത്ത എനിക്ക് നിങ്ങളുമായി share ചെയ്യണമെന്നുണ്ട്. വാർത്ത നടൻ ദിലീപുമായി ബന്ധപ്പെട്ടതാണ്".

717. This contents of letter and e-mail are more or less similar. PW222 during evidence admitted about this e-mail and letter. This shows the attempt on the side of PW222 on 25.10.2021 itself to contact a

media person by name Mr. Vinu V. John, attached to Asianet News Channel. It is to be noted that the purpose is specifically mentioned that he wants to share a news item about accused no.8. He also stated that the news to be shared will be a sensational and crucial one. When this evidence is put to PW222, he stated that the date 25.10.2021 appears in the letter is a mistake. According to him, he signed in the ledger kept at the office of Asianet when he visited that office. He further stated that the correct date will be obtained on verification of the said ledger. He had gone to the extent of deposing that the clock settings of his phone is incorrect.

718. Image no.5005 (1073) would show the address of Mathrubhumi News and it was seen modified on 25.10.2021. A question is put to PW222 relying on this that whether he collected this address on 25.10.2021. He stated that he is not in a position to recollect. Similarly, image no.5005(1033) would show that he saved the contact address of MediaOne T.V channel on 15.11.2021. This evidence would contradict the contention of PW222 in Ext.P633 that on 26.10.2021, PW242 contacted him over phone and informed that his life is in danger. This

prompted him to file Ext.P633 and the inaction after filing Ext.P633 drove him to approach various medias. The evidence discussed above would show that atleast on 25.10.2021, he made attempts to contact several media and even the letter addressed to Mr. Vinu V John, Asianet would show that on 25.10.2021 he was available at Asianet News office.

719. The learned counsel for accused no.8 argued that the evidence available before this court would show that the revelations made by PW222 through Reporter T.V channel is not made under the circumstances claimed by PW222 and the prosecution. They also contended that the materials found in the phone of PW222 would show that the said telecast is a pre-planned event jointly organized by PW67, PW222 and PW261. PW67 Mr. Nikesh Kumar was the News Editor of Reporter TV. He was examined before this court to prove a tele-interview of accused no.8 in connection with this incident. The contention of prosecution and PW222 is that they approached the Reporter TV after Mathrubhumi channel informed their reluctance to telecast the recordings of PW222 as they were influenced by accused no.8. But, during evidence PW222 admitted that he had been in contact

with PW67 from August 2021. He also deposed that he stated about the allegations against accused no.8 to PW67 during that time itself. Had this been the situation, why did PW222 approach other channels including Asianet, MediaOne and Mathrubhumi for telecasting his revelations appears to be doubtful. Moreover, this also stands against the contention of PW222 that he approached the media owing to the inaction on the side of authorities after filing Ext.P633 complaint on 25.11.2021.

720. PW222 deposed that Ext.P633 was filed as he got information from PW242 about the threat existed at the instance of accused no.8 and his associates. He claimed that he filed the petition before the Chief Minister. But it is elicited that he submitted the petition through the Chief Minister's portal on 25.11.2021. The claim of PW222 is that no action was taken on this petition. Though it is claimed about the inaction which led to the disclosures through Reporter T.V channel on 25.12.2021, no evidence is available before the court to show the reason why the petition was not investigated or any other actions were initiated on it. The contents of Ext.P633 assumes relevance in this

context. In Ext.P633 the subject is shown as Crime No.297/2017 of Nedumbassery police station registered in connection with the attack against PW1 and the association of accused no.8 with the prime accused Pulsar Suni (വിഷയം ചലചിത്ര നടിയെ ആക്രമിച്ചതുമായി ബന്ധപ്പെട്ട് Nedumbassery പോലീസ് സ്റ്റേഷനിൽ register ചെയ്ത Cr:No:297/17-ൽ 11-)o പ്രതിയായി പേര് ചേർക്കപ്പെട്ട നടൻ ദിലീപിന് ടി crime-ലെ മുഖ്യപ്രതിയായ Pulsar Suni-യുമായി ബന്ധം ഉണ്ടെന്നുള്ള കാര്യം ബോധിപ്പിക്കുന്നതുമായി ബന്ധപ്പെട്ട്). So, from the face of Ext.P633 itself the purpose and seriousness of filing Ext.P633 can be seen. It is specifically mentioned that Ext.P633 is registered for informing the connection of accused no.8 with accused no.1 in connection with the attack on PW1. The records of this case would show that all the high profile officials including the Chief Minister were known about this case and they had treated this as a serious case. If this be the situation it is difficult to hold that no action was taken after getting a petition like Ext.P633. It is to be noted further that the crime number in the police station concerned are also mentioned in the petition. The copy of the petition was forwarded to

Nedumbassery Police Station only on 28.12.2021 after the disclosure of PW222 on 25.12.2021. What is the reason for such inaction and delay is not seen investigated. In Ext.P633, PW222 had given the details of his association with accused no.8 and all other matters disclosed by him subsequently in a detailed manner. Moreover, he had narrated about the presence of accused no.1 at the residence of accused no.8 on 26.12.2016. He also stated about the conversation between himself and accused no.8 allegedly took place on 15.04.2017 including the comments made by accused no.8 regarding the incident involved in this case. It contains an averment that PW222 had been instructed by one of the associates of accused no.8 dissuading him from disclosing the presence of accused no.1 at the residence of accused no.8. Above all, PW222 stated in Ext.P633 that a VIP brought a tablet computer to the residence of accused no.8. It is claimed that accused no.8, his relatives and associates thereafter watched the visuals of attack against PW1. He stated specifically that the video contains 8 to 9 small files. It is averred in the petition that the conversation of a female is involved in the visuals. According to him, the said tablet computer was entrusted with

accused no.8. All these avermets and allegations are very serious in nature. The visuals involved in this case are admittedly in the safe custody of the court and also with the investigating officer. The copies of the visuals were not even furnished to the accused. The averments in Ext.P633 are to be viewed in this background. Eventhough this kind of serious allegations were stated in Ext.P633 the case of the prosecution is that no action was taken on Ext.P633.

721. The learned counsel for accused no.8 contended that though PW222 claimed that there is threat against his life, he did not ask for protection, whereas he demanded to conduct further investigation of Crime No.297/2017 of Nedumbassery police station. But, on a perusal of the prayer portion in Ext.P633 it is seen that though he asked to conduct investigation about the matters stated in Ext.P633, he also sought protection for him and his family. The evidence of PW254, who was working as Joint Secretary in the Home Department from 2021 to 2023 is to be considered. He produced Ext.P633 series along with Ext.P634 certificate u/s.65B of the Indian Evidence Act. He deposed about the practice when a petition is received in the Chief Minister's

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

portal. According to him, Ext.P633 was received in the Section Office on 03.01.2022. He forwarded the petition to the Director General of Police for taking further necessary action. According to him, since the petition was forwarded to the Director General of Police, they closed the petition in the Chief Minister's portal on 11.01.2022. The learned Special Public Prosecutor during chief examination itself put a question to this witness about the procedures on getting a petition in the Chief Minister's portal. He specifically deposed that the petitions are being dealt with by another wing. He had no knowledge about the procedures. Another question is put to him about the delay and he again claimed ignorance about the procedure. He categorically deposed that he is competent to depose about the matters which were taken place after 03.01.2022. During cross examination it is elicited that page no.32 of Ext.P633 series contains grievance history. It is described that the petitioner wanted to submit a petition regarding the connection of accused nos.1 and 8 directly to the Chief Minister. It is further stated that since the petition and the annexures are running 32 pages and also contains pendrive of the voice samples of accused no.8 and his

associates, he had no other way than giving the petition directly. He also expressed his desire to appear in the office of the Chief Minister personally. He requested to take steps for the said meeting. The phone numbers of PW222 are also stated in the grievance history. PW254 admitted this grievance history. PW254 deposed that he is not in a position to say whether PW222 filed petition to the office of the Chief Minister directly. It is also brought out that Ext.P633 series contain thirty four pages. But the copy produced before this court contains only thirty two pages. He stated that page nos.33 and 34 contain the summary details and forwarding details. In the chief examination it is clarified that page nos.33 and 34 are not part of the petition. So, it can be concluded that though PW254 is examined to prove Ext.P633 series and related matters, he is incompetent to depose about the matters in connection with Ext.P633 and the reason for inaction after receiving it.

722. Another aspect seen from the grievance history is that the forwarding details would show that from the office of the Chief Minister, it is forwarded to the Secretary, Home Department on 27.12.2021. It was forwarded to one Mr. Praveen Kumar R, Secretary,

Home Department on 27.12.2021 at 15:55:52 hours. Mr. Praveen Kumar forwarded it to one Smt. Jayasree T.V. on 03.01.2022. The case of the prosecution is that copy of Ext.P633 was received at Nedumbassery Police Station on 28.12.2021. The Station House Officer concerned in turn forwarded it to PW261 on 28.12.2021 itself. On the basis of this petition PW261 filed petition before the trial court informing that further investigation is required in this case. But the records produced before the court do not contain any entry to show that Ext.P633 is forwarded to the Station House Officer, Nedumbassery on 28.12.2021. Moreover, it is seen that PW222 did not take any follow-up actions after filing Ext.P633 on 25.11.2021.

723. PW222 on the other hand contended that on account of the inaction he approached the media and at last made revelations through Reporter T.V channel on 25.12.2021. I have already discussed about the falsity of this contention based on the messages retrieved from the mobile phone of PW222 on the strength of Ext.P678 report and 678(a) annexed pendrive. As I pointed out, the revelations of PW222 are mainly with respect to two incidents. One is the presence of accused

no.1 at the residence of accused no.8 on 26.12.2016 and the other is the watching of visuals by accused no.8, his relatives and associates on 15.11.2017 as accused no.15 brought the visuals in a tablet. In order to prove the said incident, the prosecution relies on the testimony of PW222 along with the audio clips produced by him. PW222 claimed that on 15.11.2017 while he was present at the residence of accused no.8, he recorded the conversations took place between accused no.8, his relatives and associates. In addition to that the prosecution relies on the messages and photos retrieved from the phone of PW132, PW182 and accused no.8. Prosecution further produced the records from Guest House, Aluva to prove the presence of PW222 as claimed by him. The prosecution branded PW222 as a sterling witness. The accused on the other hand contended that he is a planted witness at the instance of the investigating officer and prosecution. According to them, Ext.P633 petition was allegedly filed only as a pretext to create circumstances for making revelation through media on 25.12.2021. They further contended that this interview was given as the result of illegal nexus between PW67, PW222 and PW261 with an intention to stop the trial

which was about to conclude by examining the last witness PW261. They also contended that it was also with an intention to introduce new allegations against accused no.8 so as to support the unfounded and baseless allegations levelled against accused no.8 by PW261 and prosecution. The evidence and relevant materials are to be evaluated in the light of above contentions.

724. In the final report dated 22.11.2017, the prosecution claimed that the conspiracy between accused nos.1 and 8 was spanning from March 2013 to November 2016. The prosecution reiterated and affirmed that after November 2016, there was no meeting between accused nos.1 and 8. But, as revealed by PW222, it is alleged during the second further investigation that accused no.1 was found at the residence of accused no.8 on 26.12.2016. Further, the presence of PW222 at the residence of accused no.8 claimed to be in connection with the housewarming ceremony of the renovated house of accused no.8 held on 25.12.2016. It is further alleged that due to some health issues PW222 could not attend the housewarming ceremony on 25.12.2016 and hence, he visited the residence of accused no.8 on 26.12.2016. The prosecution relied on the

alleged confession statement of accused no.1 to prove the meeting between accused nos.1 and 8 and the conspiracy which was hatched between them. PW261 stated that accused no.1 was interrogated on 23.05.2017, 01.08.2017, 05.08.2017, 18.08.2017, 06.09.2017 and 26.09.2017. I have already discussed about the alleged confession of accused no.1 about the meetings between himself and accused no.8 from 2013 till November 2016. It is to be noted that, unless and until PW222 made the alleged revelation, the so-called meeting between accused nos.1 and 8 on 26.12.2016 was not stated by accused no.1. A person who confessed all the meetings and conspiracy between himself and accused no.8 did not mention about the last meeting allegedly held on 26.12.2016 appears to be doubtful. Moreover, the case of the prosecution regarding the handing over of money between accused nos.1 and 8 on 01.11.2016 and 02.11.2016 were also attempted to prove by the prosecution. They have produced documents to substantiate the alleged receipt of money by accused no.1. PW222 deposed that on 26.12.2016 also accused no.1 returned from the residence of accused no.8 with a bundle of cash. No evidence is adduced by the prosecution as did in the earlier claims of

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

receiving money to prove the receipt of money allegedly held on 26.12.2016. PW222 deposed before the court that he had been invited for the housewarming ceremony of the renovated house of accused no.8 conducted on 25.12.2016 by accused no.8. Accused no.8 insisted for his presence in connection with the said housewarming ceremony. Since PW222 was suffering from some health issues, he could not attend the housewarming ceremony on 25.12.2016. He went there on 26.12.2016. The family members of accused no.8 and some unknown persons were available there on that day. This is the evidence tendered by PW222 in the court.

725. In Ext.P633 complaint PW222 stated that on 26.12.2016, he reached at the residence of accused no.8 for the discussion of his movie. He was invited by accused no.8. He further stated that this was on the next day of housewarming ceremony of the house of accused no.8. According to him, the relatives of accused no.8 along with some unknown persons were available there. On a comparison of these two situations, it is seen that nothing is mentioned in Ext.P633 that he had been invited for the housewarming ceremony scheduled on 25.12.2016. It

is specifically alleged in Ext.P633 that he went to the residence of accused no.8 for the discussion of movie. But, before the court, he changed his version and deposed that he had been invited for the housewarming ceremony held on 25.12.2016. If this be the situation, the fact whether any housewarming ceremony was held at the residence of accused no.8 on 25.12.2016 assumes relevance. The concrete stand put forward by the defence is that there was no such housewarming on 25.12.2016. PW132, PW182, PW242 and PW246 also denied the housewarming on 25.12.2016. They also deposed that the renovation work was not completed on 26.12.2016. Admittedly, accused no.8 is a prominent film actor in the Malayalam film industry. Had there been any housewarming ceremony, there would have been persons attended that function. Moreover, it could have been easy for the investigating team to collect evidence about it. PW222 himself deposed before the court that he had been invited by accused no.8 for attending the function. Whether any other invitees were attended is not investigated. The prosecution could have been adduced positive evidence about this aspect. But no evidence is available to prove this fact.

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

726. The evidence of PW261, investigating officer is that when a question is put to him by the learned counsel for accused that normally the relatives and friends would be knowing about the housewarming ceremony, he replied that it depends on the decision of the house owner. At the very same time, PW261 admitted that he recorded the statement of the contractor who was engaged in the renovation. He also admitted that he did not ask them about the alleged housewarming ceremony. The learned counsel for accused no.8 put another question to PW261 that he purposefully suppressed these matters. PW261 replied that what is important is the presence of PW222 at the residence of accused no.8 and digital evidence is obtained to substantiate that. PW261 at the very same time admitted that this so-called digital evidence was collected in November 2017. PW261 was constrained to admit that except the oral evidence of PW222, no evidence is available to show that there was housewarming ceremony on 25.12.2016. A question is put to PW261 by the learned defence counsel that whether he interrogated the persons who were claimed to be present at the residence of accused no.8. He replied that he questioned them about it, but they did not state about it.

He also added that the photograph captured on 26.12.2016 was shown to them. But the statements of these witnesses do not contain anything to show that PW261 interrogated the witnesses about this fact. PW261 asserted that PW222 claimed that he visited the residence of accused no.8 on the next day of housewarming and specifically stated that the visit was on 26.12.2016. According to PW261, there is evidence to show the presence of PW222 at the residence of accused no.8 on 26.12.2016.

727. In this juncture, the averments in Ext.P633 regarding the so-called housewarming is also to be considered. Paragraph no.3 of Ext.P633 starts with the averment that on 26.12.2016, he reached at the residence of accused no.8 for the discussion of cinema as invited by accused no.8. He asserted the visit stating that it was on the next day of the housewarming ceremony of "Padma Sarovaram". Another statement is mentioned specifically by putting it in brackets that the date 26 June 2016, which is stated in the beginning of this paragraph might be wrong. But he is sure that he went there on the next day of the house warming ceremony. On a cursory analysis of Ext.P633 petition, the date 26.06.2016 is not stated in the beginning of the paragraph, whereas the

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

date stated is 26.12.2016. Relying on this averment the learned counsel for accused contended that originally the date 26.06.2016 is stated in the draft of Ext.P633. But, thereafter the date was corrected as 26.12.2016 so as to fix a date for the alleged meeting between accused nos.1 and 8 for the purpose of fabricating story. It is true that, as I pointed out, the date stated in the beginning is 26.12.2016, not 26.06.2016. In the first blush, we may feel it as a clerical mistake. But considering the corrections which were effected in the draft of Ext.P633 retrieved in the FSL examination, this difference appears in the date cannot be treated as a simple mistake in stating the date. The corrections effected in the draft of Ext.P633 will be considered later. Similarly, in Ext.P633, PW222 stated that they went to North Paravur in the red Swift car along with accused no.1. He had narrated the conversations which were taken place between himself, accused no.1 and PW182 during the said journey. He also stated that accused no.1 was dropped at North Paravur junction. During evidence, PW222 deposed that he stated that accused no.1 was dropped in a junction before Paravur-Kavala. The learned defence counsel argued that PW222 realised that North Paravur is a distant

place from the residence of accused no.8. He changed his version during evidence so as to appear that the story is a genuine one. It is true that North Paravur and Paravur-Kavala are different places. PW222 being the native of Thiruvananthapuram may not be knowing about the places. So, much weightage need not be given for the difference in the places claimed by PW222.

728. The messages relied on by the prosecution is retrieved from the mobile phone of PW182, the brother of accused no.8. Admittedly, PW222 did not mentioned anything about these messages. He also failed to produce these messages to support his presence at the residence of accused no.8 on 26.12.2016. These messages are mentioned in Ext.P671 prepared in connection with Crime No.6/2022 of Crime Branch, Ernakulam. The first message in this series was on 26.12.2016 at 08:38:01 hours. The message reads as follows:- "Respected Sir, I am on my way to Aluva....in Venad Express.... I think will be reached at Aluva Station at 11 am...then I will catch a bus or auto to VIP road.....Balu". The reply at 09:52:02 hours is that "I will be there in kottarakkadavu house ...U call me when U reach'. Again at 10.10.04 hours PW222

messaged that "Reached Ernakulam. will call you when I reached Aluva.. Balu". At 10:43:04 hours reply sent stating "K". Relying on this the learned counsel for accused no.8 contended that the messages would show that the intention of PW222 was to meet PW182 and not to meet accused no.8. They further contended that this is the reason why PW222 did not mention or refer these messages either in Ext.P633 or during investigation. It is true that on a perusal of these messages, nothing is there to show that PW222 made any enquiry about accused no.8 or his availability and also about the discussion of movie. Even if the contention of prosecution based on these messages are accepted, it is to be noted that atleast PW182 had prior knowledge about the arrival of PW222 to the residence at Kottara Kadavu.

729. The case of the prosecution is that PW222 reached at the residence in Kottara Kadavu. Accused no.8 asked to buy food and accordingly, PW222 along with PW182 proceeded for purchasing food. It is true that the instruction for the purchase of food from accused no.8 was not stated in Ext.P633. This fact is stated before the court for the first time. PW222 claimed that when they were about to leave, accused

no.8 asked PW182 to drop accused no.1 in the bus stop and accordingly, accused no.1 was got into the red Swift car. This claim is against the basic contention of the prosecution regarding the relationship between accused nos.1 and 8. The definite case of prosecution is that both accused nos.1 and 8 were so particular to maintain the secrecy of their relationship. As part of maintaining the secrecy, they avoided phone calls to him. The case of the prosecution is also that even after the commission of the crime, accused no.1 had taken all earnest efforts to maintain the so-called secrecy and he avoided the meeting with accused no.8 directly. The prosecution also submitted that accused no.1 was so vigiland and thereby avoided direct calls to accused no.8 and made calls to the associates of accused no.8. If this much secrecy was maintained to hide the conspiracy and relationship between accused nos.1 and 8, it is highly unbelievable that even after getting messages from PW222 about his arrival to the residence of accused no.8 on 26.12.2016, accused no.8 did not avoid the presence of accused no.1 at his residence when PW222 and other persons were available there. Moreover, this alleged presence

of accused no.1 was after the alleged direction to accused no.1 by accused no.8 for accelerating the execution of the crime.

730. In Ext.P633 complaint PW222 stated that the C.I of Police, North Paravur Mr Chrispin Sam contacted him on his mobile during the first week of July 2017 and enquired about his relationship and financial transactions between accused no.8. He appraised him that the relationship and financial transactions with them were in his capacity as the Director of the film agreed to be done by accused no.8. He immediately informed this matter to Mr Roshan Chittoor, who is the friend of accused no.8 and a film producer. Mr Roshan Chittoor asked him to not disclose the fact that he met accused no.1 at the residence of accused no.8. On hearing this PW222 thought that either accused no.8 or PW182 informed the fact that PW222 met accused no.1 at their residence to Mr Roshan Chittoor and hence, Mr Roshan Chittoor came across with this fact. As pointed out, the contention of PW222 is that when he met accused no.1 at the residence of accused no.8, apart from the relatives of accused no.8 some unknown persons were also available there. Moreover, now the contention of PW222 is that Mr

Roshan Chittoor had knowledge about this fact. Had this been the situation, this fact ought to have been investigated. Mr Roshan Chittoor is not seen interrogated about this fact. Moreover, how did Mr Roshan Chittoor come to know about this fact is also a vital evidence. Regrading this aspect except this, there is no other evidence to corroborate the testimony of PW222.

731. Another point submitted by the learned Special Public Prosecutor is based on an image retrieved from the phone of accused no.8. Ext.P279(a) contains the images retrieved from Q25A phone of accused no.8. Item No.18533 in page 15643 is an image retrieved from the phone of accused no.8. This is the photograph of PW222 and accused no.8. Relying on this photograph, the prosecution argues that this image was captured on 26.12.2016 and that is sufficient enough to corroborate the evidence of PW222 regarding the incidents on 26.12.2016. The evidence of PW222 is that the said photograph was captured on 26.12.2016 at the residence of accused no.8. According to him, it is a selfie photograph. He also deposed that he met accused no.1 at the residence of accused no.8 on that day. But, the learned counsel for

accused no.8, on the other hand, assailed this contention stating that PW222 did not mention or refer anything about this particular photograph. Moreover, according to them, PW222 had given all photographs of himself connecting with accused no.8 from 2015 onwards to PW261. This particular photograph was not available among those photos. They also contended that Ext.P279 report and Ext.P279(a) were obtained even before filing the final report on 22.11.2017. Nothing is mentioned in the final report dated 22.11.2017. They further contended that even after the disclosure led to the further investigation and filing of the supplementary final report on 22.07.2022, that report is also silent about this photograph. According to them, this would show that the photograph was an irrelevant one. Moreover, the details such as evidence regarding the latitude and longitude to show the place where the picture was captured are not available to show that this photograph was captured as claimed by PW222. It is to be noted that PW261 admitted before the court that he has not investigated about this photograph. During evidence, prosecution tried to establish the fact that the background appears in that photograph is the residence of accused

no.8. But PW261 admitted that he has not verified the place referring to the photograph. PW261 further stated that this photograph was shown to witnesses.

732. The witness cited by prosecution to prove the maintenance of the house of accused no.8 is CW444, the contractor who was entrusted with the renovation works. But CW444 was given-up by the prosecution. It is true that though the photograph was retrieved before the filing of supplementary final report dated 22.11.2017, the relevance of this particular photograph came into picture only after the disclosure by PW222 about the incident on 26.12.2016. So, the non-investigation about this photograph before the filing of first supplementary final report on 22.11.2017 is not fatal. But this photograph grabs attention after the disclosure of PW222 about the presence of accused no.1 at the residence of accused no.8 on 26.12.2016. The presence of PW222 at the residence of accused no.8 on that day also assumes relevance. If this be the situation, since this is the one and only digital evidence available to substantiate the presence of PW222 at the residence of accused no.8, this fact ought to have been put to PW222. But PW261 admitted that PW222

was not interrogated after getting this particular photograph. Moreover, this was also not shown to PW222. I have verified the details of photograph available in Ext.P279(a). It is seen that this particular photograph was captured on 26.12.2016 at 17:59:51 hours. Even if the contention of prosecution is accepted in toto, relying on this photograph, it can be concluded at the best that PW222 met accused no.8 on 26.12.2016. The time when this photograph is captured also assumes relevance. As I pointed out, this was seen captured at 17:59:51 hours. The evidence of PW222 is that he met accused no.1 at the residence of accused no.8 on 26.12.2016 before noon. PW222 deposed that accused no.8 sent accused no.1 along with PW222 and PW182 when they proceeded for purchasing lunch. This photograph is captured after a long time gap from the time when PW222 claimed to be met accused no.1 at the residence of accused no.8.

733. Another ground canvassed by the prosecution to prove this aspect is the alleged phone call between accused no.1 and PW135 on 31.12.2021. PW135 was recalled and examined to prove this telephonic conversation. According to him, on 31.12.2021, he engaged in

conversation with accused no.1 through a conference call arranged by Mr.Vishnu and he recorded this conversation. PW261 contacted him and enquired about this particular conversation. He had been asked to produce the recorded conversation in a CD. He had been earlier asked to produce the phone itself. Since he has no other phone, he informed his readiness to produce the voice record in a CD. He copied it in a CD and handed over to PW261. The CD is marked as Ext.P459. Ext.P575 is the certificate issued by him u/s.65B of Indian Evidence Act. The transcript of this particular conversation is produced before the court and it is marked as Ext.P647(b). Vishnu, who claimed to be arranged the conference call is examined as PW232. He also deposed about the conference call arranged by him with accused no.1 and Jinson himself. According to him, he usually arranged conference call as requested by accused no.1. He also deposed before the court that Ext.459 conversation contains his speech also. PW209 is the person who transmitted the conversation from the phone of PW135 to CD. He is also an attestor to Ext.458 mahazar prepared for the seizure of Ext.459 CD. Though PW232 deposed that he arranged the conference call, he

stated that he is not in a position to identify the conversation. He admitted that he did not hear the conversation. But, at the very same time, before the court, he deposed that he heard the voice when it telecast through news. He also stated that the last portion of the conversation "ഒരു ഇക്ക എന്നെ വിളിച്ചിട്ടുണ്ട്" belongs to him. But, it is to be noted that this fact is stated before the court for the first time. Similarly, the fact that he heard this particular conversation through news is also an embellishment. His phone was also not examined. PW135 also made an exaggerated version before the court that he is doubtful that the conversation contains the voice of a third person. In the light of this evidence, we have to consider Ext.P647(b) transcript produced before this court. The said transcript is admittedly prepared by Assistant Sub-Inspector of Police attached with Nedumbassery Police Station. He is not examined before the court also. He has not verified the original device allegedly used for recording the so-called voice. Even otherwise, the transcript does not contain any conversation claimed either by PW232 or PW135. This court has verified Ext.459 conversation. It does not contain any conversation that "ഒരു ഇക്ക എന്നെ

വിളിച്ചിട്ടുണ്ട്", as stated by PW232. The last portion of the conversation contains the speech of PW135 and accused no.1. In this context, the fact that this particular conversation was not brought to the notice of PW232 assumes relevance. He admitted this also. Similarly, he has not stated anything during interrogation that this conversation contains his speech also.

734. PW258 examined Ext.P459 conversation between PW135 and accused no.1. She compared the voice of PW135 and accused no.1 with sample voice provided for comparison. She marked the specimen voices of PW135 as S1 to S5. The sample voices of accused no.1 are marked as S6 to S10. She also identified Ext.P459 voice as the voice examined by her. She stated specifically that it includes two voices which were marked as Q1(A) and Q1(B). Q1(A) is the voice of PW135 Jinson and Q1(B) is the voice of accused no.1 Sunil. She arrived at a finding on the basis of analysis in Ext.P647 FSL report that Q1(A) is the probable voice of PW135 and Q1(B) is the probable voice of accused no.1. PW258 the expert relied on by prosecution itself has not stated that Ext.P459 contains voice traces of any person other than PW135 and

accused no.1. She never stated that it contains the voice of PW232 as contended by prosecution at present.

735. The phone allegedly used by PW135 to record this particular conversation is not seized or examined. PW261 claimed that the phone of PW135 contains private photos also and hence, he did not seize it. At the very same time, he admitted that no notice was served to PW135 demanding to produce the phone. Another aspect to be noted is that the mobile phones seized by PW261 himself of different persons contain somany private photos. Even the prosecution did not furnish copies of certain FSL reports claiming that it contains private visuals. If this be the situation, the explanation offered by PW261 for not seizing the mobile phone allegedly used to record the said voice clip is untenable. Further, PW135 had assigned different reasons for the non-production of mobile phone. According to him, he had been directed by PW261 to produce the phone. Since no other device was available with him, he informed PW261 that the conversation will be recorded in a CD and the CD will be handed over. Both the explanations for the non-production of the phone appears to be contradictory and hence cannot be relied on.

Moreover, the forensic examination of the said phone ought to have been provided evidence regarding the alleged recording and also regarding the so-called conference call claimed by the prosecution. Even if the conversation is taken into account, it is seen that PW135 was eliciting facts from accused no.1 by putting questions to him. The learned counsel for accused argued that PW135 is made as an instrumental by PW261 to fabricate evidence. It is to be noted that PW135 admittedly gave this telephonic conversation to Reporter T.V channel and other medias. This shows the clandestine nature of PW135. Moreover, on analysis of Ext.P459 conversation, it is seen that he frequently stated about his contacts to the media people, especially to Reporter T.V channel, through which PW222 made the alleged disclosure. Further, though PW135 claimed that accused no.1 contacted him frequently, no evidence is produced before this court to substantiate this contention. It is seen further that when PW135 asked accused no.1 about his acquaintance with PW222, accused no.1 replied that he had seen him twice or thrice, and that is all. Then PW135 again put another question whether it was at the residence of accused no.8, accused no.1

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

replied that he met PW222 at residence and hotel. So, it is seen that the claim of accused no.1 is that he met PW222 more than once. But PW222 stated that he met him on 26.12.2016 only. When PW135 put questions to him about the introduction of accused no.1 to PW222 by PW182 Anoop and also about their journey in the car, accused no.1 did not make any specific reply. Similar is the case when PW135 put questions to him about the money, which was allegedly with him when he travelled in the car. Even if the entire conversation is taken into account, accused no.1 has not stated specifically about the meeting with accused no.8 on 26.12.2016 as claimed by PW222. From the above discussions, I hold that either the image retrieved from the mobile phone of accused no.8 or the telephonic conversation with PW135 will not be treated as a corroborative piece of evidence to substantiate the evidence of PW222.

736. The basic principle of law is that it is not the quantity of evidence, but the quality to be looked into. Even the evidence of solitory witness is enough, provided that should be trustworthy and reliable. In this case, PW261 deposed when putting questions to him about the non-investigation regarding the housewarming ceremony allegedly held at the

residence of accused no.8 that the event is insignificant, but the presence of PW222 at the residence of accused no.8 is significant. He also stated that photograph is available to prove the presence of PW222 at the residence of accused no.8 on 26.12.2016. It is to be noted that not only the presence of PW222 at the residence of accused no.8 on 26.12.2016 is significant, but the presence of accused no.1 at the residence of accused no.8 on 26.12.2016 and his alleged meeting with accused no.8 and the receipt of money is most significant and relevant fact to be proved in this case.

737. As I pointed out, though the photograph is sufficient to prove the presence of PW222 at the residence of accused no.8 on 26.12.2016 at 17:59:51 hours, that cannot be relied on to prove the presence of accused no.1 and his meeting with accused no.8 as claimed by PW222. Similar is the case of alleged telephonic conversation with accused no.1 and PW135 also. Prosecution claimed that PW222 is a sterling witness. Whether he is a sterling witness or not will be discussed while discussing the other facts related with PW222, including the messages retrieved in this case. Another fact to be considered is that

PW222 himself claimed that when he reached at the residence of accused no.8 on 26.12.2016, apart from relatives, other persons were also present there. It is seen that PW261 did not conduct any investigation about those persons. Had those persons been present there as claimed by PW222, they would have been the best witnesses to depose about the availability and presence of accused no.1 at the residence of accused no.8. Similarly, as I pointed out in the beginning of this discussion, though prosecution relied on the disclosures of accused no.1 to prove the conspiracy between himself and accused no.8, nothing is stated by accused no.1 in any of his alleged disclosures about this particular meeting, which was held just before the execution of the crime involved in this case. No particular reason is assigned for accused no.1 not disclosing his last meeting and also regarding the receipt of money.

738. The prosecution alleges that PW232 arranged conference call to accused no.1 with PW135 on 31.12.2021. During this conversation PW135 asked accused no.1 about the revelations of PW222 and also his acquaintance with PW222. This conversation is relied on by prosecution as the evidence corroborating the oral testimony of PW222. In order to

prove this conference call the prosecution produced Ext.P526 CDR of the number 9886623838 on 31.12.2021. When PW232 was examined before the court, the learned Special Public Prosecutor put leading questions to him that, have you ever talked with PW135. He replied affirmatively. The learned Special Public Prosecutor again asked about the time of that conversation. PW232 replied that he had been asked by accused no.1 to arrange conference call and he arranged the conference call. Though he stated as an answer to question put by the learned Special Public Prosecutor that in the year 2021 he arranged such a conference call, he also stated that he does not remember the date. The learned Special Public Prosecutor relying on his call list, put a question that the call list would show that on 31.12.2021 he received a call from the number 9894767087 to his number 9886623838 at 15:36:12 hours. This question was objected by the learned counsel for accused no.8 that it is a leading question. It is to be noted that when the learned Special Public Prosecutor asked him about the date when he arranged the conference call, he deposed that he does not remember. Thereafter, the learned Special Public Prosecutor put this question suggesting the

answer regarding the date and also the phone numbers. It is true that it is a leading question. He has not given any answer for this question. The learned Special Public Prosecutor again put another question about the date. PW232 deposed that accused no.1 contacted him and asked to arrange conference call with PW135 and he arranged such a conference call. It is to be noted that though the learned Special Public Prosecutor put a leading question regarding the date and time of the said conference call, he did not answer the question. The learned Special Public Prosecutor again made an attempt by putting question to this witness that whether he could identify the voice. He clearly stated that he has not heard the conversation.

739. The entries in Ext.P526 CDR is to be considered in the light of evidence of PW232. On 31.12.2021 at 15:36:12 hours the number 9886623838 received an incoming call from the number 9894767087. This call was for 189 seconds. The CDR further shows that an outgoing call from 9886623838 was made to the number 9020129212 on 31.12.2021 at 15:39:18 hours. PW135 deposed that the number 9020129212 belongs to him. The duration of this call was for 494

seconds. Another incoming call from 9894767087 is seen received to 9886623838 extending 492 seconds. One more incoming call from 9894767087 to 9886623838 is seen at 15:50:07 hours extending 149 seconds. The prosecution produced this CDR to prove the conference call. The evidence of PW232 is that accused no.1 called him and asked to arrange a conference call and he arranged it. He also deposed that since the arrangement of conference call is during his duty hours, he will keep the phone in mute position and kept in his pocket. If accused no.1 requires anything purpose, he will again contact him. This evidence is stated regarding the usual practice when he arranges conference call. But nothing is seen elicited regarding the calls appear in Ext.P526 atleast through this witness. If the evidence of PW232 is considered, the first call made at 15:36:12 hours to the number of PW232 is to be considered as the call from accused no.1 asking to arrange conference call and he in-turn made an outgoing call to the number of PW135. But the third call entry again shows another incoming call to the number of PW135 during the conference call between accused no.1, PW135 and PW232. Aassume that the first call from accused no.1 to PW232 is disconnected and

PW232 as directed by accused no.1 made an outgoing call to the number of PW135 and also added accused no.1 in the conference call. Considering duration of the first call, the starting time of the outgoing call to the number of PW135 is not tallying with. As I pointed out, the first call from accused no.1 to PW232 started from 15:36:12 hours and it was for 189 seconds. If we treat this as an independent call, the next call ought to have been started only from 15:39:21 hours. But, as per Ext.P526 CDR, the call to the number of PW135 was seen commenced from 15:39:18 hours and there is a difference of 3 seconds.

740. Another situation is that if the first call is taken as the call from accused no.1 to PW232 and PW232 arranged conference call with PW135 at 15:39:18 hours, the call from accused no.1 at 15:39:20 hours is not possible. This discrepancies appear in Ext.P526 is not explained or clarified. Even if the second and third calls in Ext.P526 are treated as conference calls, the difference of 3 seconds about the first call discussed above is also not seen clarified. Another aspect is that, as I pointed out again, an incoming call from accused no.1 at 15:50:07 hours for 149 seconds is seen received to the number of PW232. PW232 did not state

anything about this call. The prosecution is duty bound to prove the conference call by adducing cogent evidence. In this context, the non examination of the phone of PW135 and PW232 also assumes relevance. Moreover, PW231, the then Superintendent of Sub Jail, Ernakulam wherein accused no.1 was remanded on 31.12.2021 is examined before this court. As per the final report he cited to prove Ext.P582 search list and related matters. Though he was cited to prove this particular fact, when he was in the box, the learned Special Public Prosecutor put questions to this witness regarding the phone calls of inmates. PW231 deposed that there are phones available with smart card facility. He also stated about the procedure for making calls. A question is put to him regarding the phone numbers. He replied that 1792, 7087 are the last digits of two respective phone numbers used in the jail. Then the learned Special Public Prosecutor put a question that whether 9894767087 is the number of the phone arranged for inmates. The learned Special Public Prosecutor also sought permission to put leading questions to this witness on the ground that this fact is not a disputed fact. The learned defence counsel objected this stating that the contention of the learned

Special Public Prosecutor is utter falsehood. It is true that it is a leading question. But the witness again reiterated his stand that he could recollect the last digits only. During cross examination he admitted that he was not interrogated about the phones used by the inmates. He has not stated anything to the investigating officer about the phones. He also deposed that there is register available in the jail showing the numbers furnished by the inmates for making calls. He further deposed that the verification of register would show the numbers which were furnished by accused no.1 for making calls. He further stated that the dates and other particulars when accused no.1 made calls to these numbers can also be seen from this register. According to him, the numbers will be added to the smart card and the calls can only be made to those numbers. According to him, no investigation is conducted about these numbers by the investigating officer. The investigating officer has not verified the registers also. He again deposed that this phone has no incoming facility. A specific question is put to this witness about the facility of conference call for prisoners. According to him, there is a circular of the Director General of Police (Prisons) prohibiting

the conference call for inmates. There is a direction to the officers concerned to make sure that no conference calls are being arranged. He is responsible for taking actions, if any conference call is arranged. He added that no facility is available to trace out a conference call. According to him, the investigating officer has not informed him that there was conference call in his jail. Why the investigating officer did not conduct investigation with respect to the register containing numbers provided by accused no.1 for making calls is a relevant fact. Had investigation been conducted about this register, atleast the fact that the number of PW232 was provided there by accused no.1 would have been elicited, that is not done in this case. Though PW232 stated that he is not heard the conversation between accused no.1 and PW135 during the conference call, the learned Special Public Prosecutor put Ext.P459 conversation for identification. PW232 deposed that he heard the conversation through news telecast in the channel. As I pointed out, in order to prove that there was conference call, PW232 deposed before the court for the first time that the last part of conversation contains his speech. Ext.P459 is not examined forensically to identify the voice.

Moreover, as I pointed out, the transcript Ext.P647(b) also not contain this particular conversation claimed by PW232. If Ext.P459 contains the voice traces of PW232, why didn't this voice was not shown to this witness is also to be considered. So, the entries alone in Ext.P526 are insufficient to prove the contention of the prosecution regarding the conference call and also to prove the presence of accused no.1 at the house of accused no.8 on 26.12.2016. This point is decided accordingly. On the basis of above discussions, I hold that the evidence available before this court is insufficient to hold that accused no.1 was present at the residence of accused no.8 on 26.12.2016, they met together and accused no.1 returned from there with cash.

741. **The incidents allegedly took place at the house of accused no.8 on 15.11.2017 and the relevancy of voice clips dated 15.11.2017 produced by PW222 and related matters.**

In Ext.P633 complaint PW222 stated that he had been invited to the residence of accused no.8 for discussing about the movie. He had been asked to come there for two days and accordingly, he reached there on 14.11.2017. Accused no.8 arranged room no.303 of Aluva Palace for

him. On 14.11.2017 they could not engage in much discussion about the movie. On 15.11.2017 PW222 was with accused no.8 from morning onwards. While they were engaged in discussion, one of the friends of accused no.8 Mr. Byju (PW246) reached there. Both PW246 and accused no.8 engaged in conversation regarding this case. During this conversation PW246 made enquiry that whether the item is received, howmany clips are there and also asked accused no.8 to instruct the person for not copying it. On hearing this PW222 felt suspicion and he started to record their conversation. One of such recordings contains the voice of accused no.8 that he is not deserving for any punishment and the punishment is actually for a lady. He saved that lady and resultantly, he is punished. On hearing this disclosure of accused no.8, PW222 understood that accused no.8 has involvement in this case or the person who is involved in this case is with accused no.8. He lost his faith and confidence in accused no.8. This prompted him to record the subsequent conversations as far as possible. Thereafter, the brother, sister and brother-in-law of accused no.8 and also the brother-in-law of PW182 reached there. Accused no.8 asked them about PW126 Sagar. They also

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

disclosed about their influence on Sagar for giving false evidence. He had narrated the details of voice clips recorded by him. In the meantime, PW246 Byju left the residence of accused no.8. Another close friend of accused no.8 reached there. One of the friends of PW179 reached there for inviting marriage. Accused no.8 also joined with them. After their return, the friend of accused no.8 expressed his desire to leave home and also asked to take the item. Accused no.8 consented for that. The VIP looked at PW222 and on seeing this accused no.8 informed him that PW222 is his close associate and his presence will not make any trouble. The VIP went out of the house and came back with a tablet computer. He switched-on the tablet computer. Accused no.8, PW132, PW182 and the brother-in-law of PW182 assembled there. Accused no.8 asked PW222 that whether he wants to watch it. PW222 enquired about it. Accused no.8 told him that those are the videos containing the cruel acts of accused no.1 and persuaded him to watch it. PW222 realised about the item and expressed his unwillingness to watch the video. PW222 strongly believe that the videos involved in this case might have been played there. According to him, the video contains 8-9 short files. He noticed that

accused no.8 asked to play the eighth file again. He heard the voices of a male and female. This inspection extended for about 15 minutes. The VIP entrusted the tablet containing the visuals with accused no.8 and returned. PW222 also left to Aluva Palace. He conveyed these matters to his wife. Since he was afraid about threat to his life, he did not disclose the details to anybody.

742. In order to substantiate these facts PW222 produced the voice recordings before the investigating officer. Relying on the voice clips, the learned Special Public Prosecutor argued that this evidence is sufficient enough to corroborate the testimony of PW222. They also relied on Ext.P478 to Ext.P481(a), the records of Aluva Guest House coupled with the oral testimony of PW221 to prove the events claimed by PW222. PW222 while in the box also deposed about these facts. During the evidence before the court he stated that PW246 came to the house on that day at about noon. He also deposed that accused no.15 Sarath reached there in the evening. On seeing accused no.15, PW179 addressed him as "ഇക്ക" and received him. He also recorded the conversations between

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

them. He could understand that Mr Sarath met a lady officer and discussed about the matters involved in this case.

743. The voice clips were produced by PW222 on 03.01.2022 copying in a pendrive and PW261 seized it on the strength of Ext.P487 seizure mahazar. The voice clips were sent for FSL examination by PW261. The case of the prosecution is that on hearing about clips, PW222 decided to record the conversations. Admittedly, any of the voice clips does not contain the voice traces of PW222. PW222 further claimed that since he was afraid, he recorded the voices intermittently. PW222 stated that he was present when accused no.8 and his associates watched the visuals as brought by accused no.15. The voice recordings do not contain any traces of voice of this video. As I pointed out, PW222 claimed that the conversation between PW246 Baiju and accused no.8 regarding the clips made him suspicious. This is the reason why he recorded the conversations. Admittedly, the conversations do not contain any voice traces of PW246 Baiju also.

744. Ext.P678 is the FSL report prepared after examining Ext.P486 pendrive. The file properties of the retrieved files from the

pendrive marked as Q1 are enclosed in Annexure-2. The details such as the date of creation of file, the date of last access and the date of last written are mentioned in Annexure-2. All the twenty nine files were seen created on 02.01.2022 in between 20:45:11 hours and 20:45:54 hours. The last access date of all the 29 files was on 03.01.2022. The last written dates were spanning from 07.11.2021 till 05.12.2021. The hash value and also the physical size of each file are mentioned in Annexure-2. Five among the twenty nine files were deleted and retrieved. As far as the datas with respect to the creation of files and last written details, the time is also mentioned specifically. But regarding the details of last access are concerned, no time is mentioned. Ext.P486 pendrive was seized on 03.01.2022 at 8.45 p.m in Police Club, Aluva on the strength of Ext.P487 mahazar. Ext.P487 mahazar contains the details such as the description of Ext.P486 pendrive. It is stated in Ext.P487 mahazar that as part of seizure Ext.P486 was opened by connecting it to the laptop of PW261 Mr Baiju Poulose. Whether the laptop used was his personal laptop or official laptop is not mentioned in Ext.P487. In the last portion of Ext.P487 it is mentioned that the pendrive was ejected from the laptop on

DISTRICT AND SESSIONS COURT
ERNAKULAM-682 011

03.01.2022 at 23:17:00 hours. It shows that Ext.P486 pendrive is connected to the laptop of PW261 for 2 hours and 32 minutes. The last access ought to have been on 03.01.2022 at 23:17:00 hours as per the averments in Ext.P487. But Annexure-2 of Ext.P678 does not contain these details.

745. The prosecution case is that PW222 recorded the files on 15.11.2017. But, as I pointed out, the date when the files were created does not contain a date to show that any of the files was created on 15.11.2017. Though the files were seen created on 02.01.2022, the last written dates were in November and December, 2021. This fact ought to have been explained before the court, but no evidence is available to clarify this aspect. In Ext.P633 it is mentioned that eighteen audio clips are available with him. In Ext.P487 mahazar prepared by PW261 on 03.01.2022 it is stated that twenty four voice clips are there in Ext.P486 pendrive. This shows that there were twenty four voice clips. In Ext.P487 it is averred that folder no.3 contains seven voice clip files and 8th folder contains seventeen voice clip files. The details of the voice clips are also mentioned in Ext.P487 mahazar. The existence of these seven

voice clips is not stated in Ext.P633 complaint. On the other hand, Ext.P678 FSL report retrieves twenty nine voice clips including five deleted voice clips. So, the total number of voice clips as per Ext.P678 report is twenty nine. In Ext.P486 altogether twenty four voice clips are available. In addition to the above twenty four voice clips in Ext.P678, five deleted voice clips are retrieved. So, the total number of voice clips would be twenty nine. But, in Ext.P486, voice clip no.18 was missing. This was also retrieved along with the deleted five voice clips.

746. Though PW222 in Ext.P633 stated that on hearing the conversation between accused no.8 and PW246, he decided to record the voice clips and accordingly, did it. He stated repeatedly in Ext.P633 about the recordings made by him. But, interestingly Ext.P633 is silent about the device which was allegedly used for recording the voice traces. As I pointed out, he had gone to the extent of reproducing the words which were allegedly heard by him while playing the video. He also mentioned about the device in which the videos were brought to the residence of accused no.8. In Ext.P633 he claimed that a pendrive containing eighteen voice samples of accused no.8 and his associates is also with him. Despite

the detailed narrations regarding the socalled recording took place on 15.11.2017, PW222 did not mention anything about the device which was used for the alleged recording on 15.11.2017. Admittedly, the device allegedly used for recording the voice clips was not produced before the court. As I pointed out, in Ext.P633 prepared on 15.11.2021 itself, he stated about the availability of pendrive containing eighteen voice clips with him. The statement of PW222 was recorded on 01.01.2022 and 02.01.2022 as part of investigation. In his statement dated 01.01.2022 he mentioned about the device which was used for recording the voice clips. He also stated that he will produce the recorded voice clips and other gadgets. His statement was again recorded on 03.01.2022. He produced the pendrive on 03.01.2022. As I pointed out, almost all the news media telecast the revelations and also the interviews of PW222 on 25.12.2021 and thereafter. The case of prosecution is that PW135 on 31.12.2021 contacted accused no.1 over phone and they discussed about the revelations made by PW222. The pendrive was readily available with PW222 atleast on 15.11.2021 as mentioned in Ext.P633. What prevented him from producing it before the investigating officer on 01.01.2022

itself. The records would show that he had spent considerable time before the investigating officer on 01.01.2022. Moreover, no explanation is also forthcoming from PW222 or prosecution regarding the non production of pendrive on 01.01.2022. Even after collecting the pendrive on 03.01.2022 on the strength of Ext.P487, Ext.P486 pendrive was sent for forensic examination only on 27.01.2022 after a considerable delay.

747. When PW222 was in box, this court put a question to PW222 about the manner in which he recorded the alleged contents in the pendrive. PW222 explicitly deposed that he recorded the voice clips using a tablet. He copied it to a laptop from the tablet. Since the laptop was being used by several persons, he transferred the voice clips to a CD. He also deleted the voice clips from the laptop. He again copied the voice clips from CD to a pendrive using a computer. He stated that it was copied in a WAV format. He again copied the voice recordings to another pendrive during November 2021 in MP3 format. This particular pendrive was produced before the investigating officer on 03.01.2022. So, it can be seen from the deposition of PW222 that the voice clips were transmitted from tab to laptop, laptop to a CD, from CD to pendrive in

WAV format, and again to another pendrive in MP3 format. So, from the evidence of PW222 it can be seen that six devices were used for recording and transmitting the voice clips. Admittedly, Ext.P486 pendrive contains the voice clips in MP3 format. PW258 Rahila also deposed before the court that what she examined was in MP3 format. He admitted in cross examination that the voice clips were transferred through six devices. No such details are mentioned in Ext.P487 mahazar. Moreover, PW261 deposed before the court that during interrogation, PW222 does not mention about the device from which data was copied to Ext.P486 pendrive.

748. PW261 deposed that the FSL report would show that files were copied to pendrive. PW21 admitted that, this fact is not stated in his statement. A specific question is put to PW261 that whether the FSL report would show that the voice clips were recorded on 15.11.2017. PW261 replied that the conversations would substantiate that it was recorded on 15.11.2017. But, at the very same time, he admitted that no scientific evidence is available to show that the voice clips were recorded on 15.11.2017. PW261 also stated before the court that on 25.05.2022

only he conducted investigation about the devices claimed by PW222 to record the voice traces. The claim of PW222 is that the laptop to which the voice clips were transferred belongs to PW132. He handed over this laptop to PW132. Except a bare statement, no details regarding the so-called handing over is available before this court. The claim of PW222 is that PW132 gave a Toshiba laptop to him in connection with his movie. The case of PW222 is that PW132 had withdrawn from the movie from the very inception itself. PW132 on the other hand denied this and deposed that he had never given a Toshiba laptop to PW222. The contention of PW132 is that he had given an Acer laptop to PW222 and that was not returned to him. PW261 admitted before the court that he issued a notice to PW132 asking him to produce the Toshiba laptop. PW132 issued reply to that notice denying the availability of Toshiba laptop with him. Ext.D204 is the reply filed to Ext.D203 notice. Except the rival contentions of PW222 and PW132, no convincing evidence is available in the court to show that a Toshiba laptop was given to PW222 and that was later returned. Moreover, during cross-examination, PW222 deposed that message is available with him to show that PW132

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

demanded back the laptop. He kept those messages. He obtained the backup of those messages. Police demanded for those messages. He informed the police that those messages were also lost and will be produced on getting back. He specifically stated that those messages were traced out when he was examined before the court. As far as this case is concerned, those messages assume importance, especially when PW132 denied the possession of Toshiba laptop with him and the related matters. Moreover, the availability of laptop is crucial considering the chain of gadgets used by PW222 to transfer the voice clips to Ext.P486 pendrive. Nothing is produced in that regard.

749. Ext.P488 is the certificate issued by PW222 for Ext.P486 pendrive. In Ext.P488 certificate PW222 claimed that the Toshiba laptop was available with him from 2014 till April 2021. He claimed that the said laptop was returned back to PW132. It is borne out from records that PW222 himself claimed that the relationship between himself and accused no.8 was terminated by him and he decided to disclose the matters. He contacted the Additional Director General of Police Smt. B. Sandhya IPS over phone. According to him PW132 has withdrawn from

the project in the initial stage itself and no need to keep it with him. If this be the situation, it is difficult to believe that he returned the said Toshiba laptop to PW132 during April 2021. In Ext.P488, he further stated that he transferred the file including the voice clips from the CD to a pendrive during the second half of 2020. Again during November-December 2021, he converted the file format from WAV format to MP3 format using the ASUS Make laptop of his wife. In Ext.P488 report he stated that the voice clips were copied in the very same pendrive after the conversion of format. He also stated that he had given separate file names for each files. The format in Ext.P488 is against his evidence before the court. As I pointed out, as an answer to the question put by this court, he deposed that he transferred the contents from laptop to CD and from CD to pendrive in WAV format. He assertively stated that during November 2021, he again transferred the data to another pendrive in MP3 format and the said pendrive is handed over to PW261 on 03.01.2022. So, the evidence of PW222 would show that he transferred the datas to two different pendrives in two different formats. But in Ext.P488 certificate, he stated that though the format is changed, he

transferred the contents to the very same pendrive, wherein the voice clips were kept in WAV format. He also stated that he had assigned file names also. Had this been the situation, Ext.P486 pendrive ought to have been contained the voice clips in both WAV format and MP3 format. But PW258 deposed before the court that Ext.P486 contains the voice clips in MP3 format only.

750. Coming to Ext.P488, Section 65 B Certificate no date is seen mentioned in it. Ext.P488(a) is the Form 15 by which Ext.P488 is produced before the court. No date is seen in Ext.P488(a) also. Ext.P488 certificate is produced before the court on 15.11.2022 vide Crl.M.P.No.3453/2022. In Crl.M.P.No.3453/2022, it is averred that since the records involved in this case are voluminous, the certificate u/s.65B of the Indian Evidence Act produced by PW222 and other two witnesses during the course of investigation were mistakenly kept in the CD file itself. They failed to produce it along with the final report. Hence, the said report is produced along with the petition to receive the document. In the first blush, the averments in Crl.M.P.No.3453/2022 appear to be true and correct. But, considering the evidence, including the oral

testimony of PW261 regarding the production of Section 65B certificate, the falsity of the averments can be exposed. It is stated in the petition that PW222 produced Ext.P488 during the course of investigation and it was available in the CD even at the time of filing supplementary final report on 22.07.2022. It was unnoticed by the investigating officer owing to the voluminous of documents involved in this case and he produced it later. Moreover, PW261 deposed that PW222 produced Ext.P488 on 25.05.2022. PW261 admitted before the court that no date is assigned in Ext.P488. But, at the very same time, he added that it was produced on 25.05.2022. Though PW222 was interrogated on several occasions and his statements were recorded, nothing is stated about the production of Ext.P488. Neither any mahazar nor any inventory is prepared in connection with the collection of Ext.P488. A question is put to him by the learned defence counsel that even on 25.05.2022, PW222 stated that he will produce Section 65B certificate with respect to the documents submitted by him. PW261 replied that, that was with respect to the CD produced on 25.05.2022. Had PW222 been particular about the production of Section 65B certificate with respect to the CD, he ought to

have been mentioned about Ext.P488 Section 65B certificate, which was claimed to be produced on 25.05.2022. Above all, in the final report, it is averred that Section 65B certificate will be produced before the court as and when it is submitted by PW222. So, the averment in final report discredit the claim of PW261 that PW222 produced Ext.P488 on 25.05.2022. This will also prove the falsity of averment in the petition that PW222 produced Ext.P488 before filing final report and that was available in the CD at the time of filing final report on 22.07.2022. Considering the nature of evidence, including the evidentiary value of voice clips, it is unbelievable that Section 65B certificate produced by PW222 with respect to those voice clips were remained in the CD unnoticed. Moreover, had this been produced on 25.05.2022 as claimed by PW261, that ought to have been found a place in the case diary, especially when the statement of PW222 was recorded on that day.

751. Another aspect is that Ext.P489(a) Section 65B certificate issued by PW222 was produced before the court only on 14.06.2023, a day prior to the completion of examination of PW222. This was produced on 14.06.2023 along with Crl.M.P.No.2386/2023. Ext.P489(a) is

dated 29.05.2023. A question is put to PW261 that, has he made search about Ext.P489(a) atleast on 15.11.2022 when Ext.P488 is produced before the court. He has not given any proper reply for this question. This would also show the falsity of the claim of prosecution that the certificates were already produced by PW222 before filing final report, but those were omitted to produce along with the final report.

752. Coming to the certification on the strength of Ext.P488, it is to be noted that PW222 submitted that the audio clips were lost from him for a period. PW261 also deposed that it was lost from PW222 for a period. But, nothing is mentioned about this in Ext.P488. The averments in Ext.P488 would show that the voice clips were available with PW222 from the date when he recorded it till he produced it before PW261. PW261 admitted that the voice clips recorded in WAV format is not produced before the court. He also claimed that the voice clips recorded in WAV format is lost from PW222. But in Ext.P488, PW222 claimed that he converted the voice clips in WAV format to MP3 format using a laptop possessed by him from May 2021 onwards. PW261 deposed before the court that PW222 informed him on 25.05.2022 that those voice

DIST... ERNAKULAM-682 011

clips were lost from him, but no investigation is conducted with respect to this claim. PW261 admitted that he has not conducted any investigation with respect to the recording devices except iPhone and Samsung Tab mentioned in Ext.P488. In Ext.P488 it is claimed that PW222 transferred the datas from laptop to CD. PW261 admitted that he has not conducted any investigation with respect to those CDs. He also admitted that he has not conducted investigation about the pendrive to which the datas were copied from CD. PW261 deposed before the court that PW222 has not mentioned anything about the laptop owned by his wife used for converting the voice clips from WAV format to MP3 format. PW261 did not conduct any investigation about this laptop also. Even if the contention of prosecution that the laptop of PW132 was returned to him, why didn't they conduct investigation about the laptop which was allegedly used in the year 2021 to convert the format of voice clips remains unexplained.

753. The evidence of PW222 and PW261 coupled with Ext.P488 would show that what PW222 produced before the court is not the original voice clips claimed to be recorded by him. The case of

prosecution is that the voice clips available before the court are in MP3 format. The learned defence counsel vehemently contended that the forensic examination based on the available voice clips in a different format cannot be relied on to. According to them, this itself would show that the voice clips produced before the court are forged voice clips. The learned Special Public Prosecutor in his argument note urged regarding the change in format of voice clip that a formatting facility provided in an electronic device to record audio/sound may vary from device to device. Each format has its own advantages and disadvantages and it is well established that the data in one format can be entirely converted into another format without tampering with its contents as explained by PW258. It is also argued that what has been produced before the Special Investigation Team are the recordings preserved in MP3 format without any modifications to the original contents of the recordings. Though the learned Special Public Prosecutor has submitted that each format has its own advantages and disadvantages, nothing is elicited, atleast through PW258 in this regard. It is to be noted that converting a voice clip from the WAV format to the MP3 format results in a smaller file size, but loss



of some audio quality. WAV format stores a perfect, uncompressed representation of the original audio. It retains all nuances including the full vocal range and background texture. The MP3 format, on the other hand, uses a perceptual coding algorithms that removes audio data, the average human ear will loss likely to notice, particularly in the highest and lowest frequency ranges. It is to be noted that a critical listener can detect certain losses in clarity, tone, and preference.

754. PW258, who analyzed the voice categorically deposed in chief examination itself that she could not detect forgery as the recording devices are not available. She attempted to clarify that what she meant by forgery is that she could not find out the format in which the voice clips were recorded originally. She admitted that she identified the voice by resorting to critical listening. But during cross examination she conceded that forgery and format are different. It is also elicited in cross examination that she mentioned in the report that on detailed examination detection of forgery of the recordings Q1 to Q29 was not possible without its recording devices. Again, in the result portion, she reiterated that it is not possible to detect forgery of the audio recordings

marked as Q1 to Q29 involved in this case without its recording devices. She again deposed that what she wrote in the report is stated after understanding the consequences. She also admitted that forgery means the tampering and the question no.9 in the forwarding note was to detect any tampering in the voice clips sent for analysis. She clarified by stating that only on getting the original format, tampering can be detected. She also admitted that she did not conduct any examination regarding the fact that whether the voice clips were transcribed through how many devices. So, the evidence of PW258 would show that in order to find out forgery, the voice prints recorded in original format and also its recording devices are required. The argument of the learned Special Public Prosecutor that format of a voice recording has no significance and relevance became untenable considering the evidence of PW258. The evidence of PW258 would show that in order to arrive at a clear finding regarding the forgery, the original recording devices are also necessary. In Ext.P488, PW222 mentioned about somany devices through which Ext.P486 voice clips were transmitted.

755. I have already mentioned about the discrepancy regarding the gadgets stated by PW222 during evidence and in Ext.P488. PW261 deposed that he conducted investigation with respect to iPhone and Samsung phone mentioned in Ext.P488. As I pointed out, he also conceded that no investigation is conducted with respect to other devices mentioned in Ext.P488. Considering the evidence of PW258, atleast the laptop possessed by PW222 using for conversion of the format of voice clips ought to have been verified or examined. Similarly, no investigation is conducted with respect to the pendrive which contains the voice clips in WAV format with PW222 even during 2021.

756. PW261 deposed that he conducted investigation with respect to the tablet allegedly used for recording the voice clips and found that the said tab is not available with PW222. In order to prove this aspect, PW223 was examined before this court. PW223 claimed that he was running an authorized service centre of Samsung in Trivandrum since 2017. He is a B.Tech graduate. He produced Ext.P493 series receipts showing that the tab of PW222 was given to his firm for servicing. According to him, PW222 was the customer. Since the product was an

old one, he could not repair it. It is elicited in cross examination that one Mr. Sreejith was the Engineer who examined the tablet. He admitted that the receipt would show that repair was completed on 11.06.2020. It is also elicited through this witness that if the repair could not be effected, system will be upgraded with the endorsement that "Cancelled by Authorized Service Centre". This fact is stated before the court for the first time. Similarly, the fact that since the gadget was an old version, updation was not available is also stated before the court for the first time. No document is produced to show that PW223 is an authorized service person of Samsung company. He himself during the further cross examination volunteered that he is not a B.Tech graduate. He also stated that he has not stated this fact to the investigating officer. This particular portion is marked as Ext.D92. It is to be noted that the fact of servicing of tab in the shop of PW223 is not mentioned in Ext.P633. On a perusal of Ext.P493 series bill dated 17.03.2022, it is seen that one gadget was given for repair on 11.06.2020. The person who dealt with this work was noted as Mr. Sreejith. The description of defect is stated as "YouTube App not working". Repair description is noted as "Software upgraded.,

Set made ok". It is seen that PW223 had given evidence against the averments in Ext.P493 bill. When this fact is put to PW223, what he stated is that, if a person understands the fact based on the averments in bill issued by him, that will not give proper state of affairs. In order to clarify this situation, he stated that the averments "set made ok" is a default setting available in the software. Cancellation by authorized service centre will be upgraded in the system and the system could not be repaired can be seen from this updation. This evidence is against the documents produced by PW223 himself. Ext.P495 is the Section 65B certificate issued by PW223 with respect to Ext.P493 series documents. This certificate was seen issued on 06.05.2022. The statement of PW223 produced before the court was seen recorded on 25.01.2022. A question is put to PW261 by learned defence counsel that whether PW223 produced the Section 65B certificate before 25.01.2022. PW261 denied this. According to him, the date mentioned is a mistake. He had seen PW223 for the first time on 17.03.2022. Though PW223 produced a Section 65B certificate at that time, it was not in the proper format. He again collected another Section 65B certificate from PW223.

757. Another aspect to be considered is that, as I pointed out, PW223, during further cross-examination, voluntarily stated before the court that he is not a B.Tech graduate and nothing in this regard is stated to the investigating officer. But, on a perusal of his statement produced before this court, this fact is recorded as an interlineation. Why this particular fact is made as an interlineation is not explained, especially when PW223 denied this aspect. Moreover, even a bare perusal of the statement would show that this fact is made subsequently as interlineation. What prompted to make this addition is also to be considered while analyzing the evidence of PW223. The learned counsel for the accused argued that this interlineation was made by the prosecution to show that PW223 is an expert. Even otherwise, though the receipts were produced by PW223, he himself stated that one Mr. Sreejith was entrusted with the work for repairing the said tab. He also stated that Mr. Sreejith is still available in his shop. If this be the situation, Mr. Sreejith is the competent person to state about the matters regarding the certificates and also about Ext.P493 series. So, on an analysis of evidence of PW223 it can be seen that though PW261 deposed that he conducted



investigation with respect to the tab, which is allegedly used for recording the voice clips, the evidence available in the court is insufficient to hold that the tab was returned as it could not be repaired.

758. Though Ext.P488 certificate is claimed to be produced by PW222 in compliance with Section 65B of Indian Evidence Act, the statements made in the certificate itself is sufficient to prove that the details regarding gadgets are incorrect. Ext.P493 series bills would show that even during the year 2020, the tab allegedly used for recording the voice clips was in a working condition and why did he transfer the voice clips to laptop allegedly entrusted with him for professional works is not explained. Admittedly, PW261 did not conduct any effective investigation about the availability of such a laptop with PW222. PW261 also admitted that he did not conduct any investigation about the CD allegedly used to copy the voice clips from laptop. So, it can be seen that the chain of custody of voice clips mentioned in Ext.P488 certificate is false and unreliable. This fact, coupled with the doubtful circumstances in connection with the production of certificate affect the reliability and proof of Ext.P488 certificate. Hence, I hold that Ext.P488 cannot be

considered as a certificate issued in compliance with Section 65B of the Indian Evidence Act.

759. I have already discussed about the anomalies regarding the date of last access, last written appear in Annexure-2 of Ext.P678 FSL report. Nothing is there in Ext.P678 report or in the annexures to prove the date of recording of Ext.P486 voice clips. Admittedly, the voice clips produced before the court contain the file names assigned by the party. Though PW222 claimed that even at the time of filing Ext.P633 complaint on 25.11.2021, eighteen voice clips were readily available with him, those were not produced to the investigating officer when he was interrogated on 01.01.2022. Ext.P486 was produced before the investigating officer only on 03.01.2022. Why didn't he produce the readily available voice clips with him when he was interrogated on 01.01.2022 is to be considered in the light of datas available in Annexure-2 of Ext.P678. I have already discussed about those details. The file creation date was shown as on 02.01.2022. In the light of this entry, the non-production of the voice clips on 01.01.2022 creates doubt regarding



the claim of PW222 that those were available with him on 25.11.2021 itself.

760. PW192, the FSL expert deposed specifically that Q1, i.e., Ext.P486 pendrive analyzed vide Ext.P678 FSL report contains twenty nine audio files, seven video files and thirty three image files. It contains the file properties of all these files. He categorically deposed that all the sixty nine files were transferred to Q1 on 02.01.2022. A specific question is put to this witness that, can you say from your report from which device or devices these files were transferred to Q1. He stated that such type of examination was not conducted as it is not mentioned in the forwarding note. He also stated that the file created date and time indicates that multiple files present in a folder is captured in a single operation. Though PW192 deposed it before the court, this fact was not stated in Ext.P678. According to him, since it was not specifically requested in the forwarding note, these details were not mentioned in the report. It is to be noted that the evidence of PW192 is against the contention of PW222 in Ext.P488 that during May 2021, he transferred the voice clips from WAV format to a pendrive in MP3 format. As I

pointed out, the file created date in Annexure-2 is shown as 02.01.2022. It is also against the claim of PW222 that Ext.P486 pendrive was available with him on 25.11.2021. PW192 again deposed that the time of creation of sixty nine files in Q1 is between 20:45:11 hours and 20:45:54 hours. He also stated that the last written date and time can be either the last modified and saved or the file is last created. He further deposed that the accessed time will not stamp in fat file system. It will show only the last accessed date. If a file is accessed multiple times on the same date, it is not possible to say howmany times this particular file is accessed. Since the device is not stamping the time, forensic tool could not retrieve the last accessed time. Even if this evidence is accepted, the other dates such as the last date of creation and last date of written also not in tune with the claim of PW222 regarding the creation of Ext.P486 pendrive.

761. PW192 deposed specifically that it is not possible to say the exact date on which these files were recorded. He added that, but sometimes the last written dates can be the original date of recording. As I pointed out hereinbefore, the last written date varies from 07.11.2021 to 05.12.2021. All the twenty nine files are not seen written on a particular



date as claimed by PW222. PW192 also deposed that it is not possible to say about the device or devices used for original recording. PW192 admitted that he has not done forensic examination as requested in the forwarding note. According to him, authentication of audio and video files shown in Annexure-2 were not done by him, since it is not requested in the forwarding note. He again reiterated that authentication of files will do only if it is specifically mentioned in the forwarding note. As far as the voice clips are concerned, the authentication of those files is an integral and vital part to place reliability. Why didn't the investigating officer avoided to examine the authentication of those files also to be considered. Moreover, these files were produced in a gadget not used for alleged recording. If this be the situation, authenticity of the recordings is highly essential to place reliance on those records. PW261 also admitted that FSL report does not show that the voice clips were recorded on 15.11.2017. Like PW258, PW192 also stated that it cannot be said which method is used for either editing or creating audio files. According to him, only the user of the device can say about those details. PW192 further stated that there may be softwares that can create audio files of

specific size. When a question is put to him that a proper forensic examination of the audio files would have revealed all the relevant details and the FSL avoided such examination, PW192 again reiterated his stand that since it was not asked in the forwarding note, he didn't conduct the said examination.

762. The learned defence counsel argued that as per Ext.P678(a), discrepancies in several voice clips can be seen. According to them, the contents, duration, size, last written date of the file specifically establishes editing and manipulation of files. According to them, PW222 sent some of the voice clips to accused no.8 and his associates in November 2021. Those voice clips are recovered from the mobile phones. On an analysis of these files, the discrepancies can be clearly seen. When PW192 was in the box, Ext.P678(a) is played. It contains the data retrieved from Q1 pendrive. The voice clip with file name "മൂന്ന് തവണ" shown as Sl.No.5 in Annexure-2 is put to the witness. The said file begins with "മൂന്ന് തവണ ഞാൻ ഉണ്ണിയേട്ടനെ" and ends with "ഞാൻ പറഞ്ഞ് കൊടുത്ത ഓരോന്നും" is played before the court. He admitted the opening and

ending words. He deposed that the size of the audio file is 28 KB and the length of recording is 00:00:11 hours, ie., eleven seconds. Voice clip No.10 with file name "Insha Allah" is also brought to the notice of PW192. It is shown as serial No.17 in Annexure-2 of Ext.P678. This file is having a size of 118 KB and duration of 57 seconds. It also starts with the same content as that of the audio file "മൂന്ന് തവണ". But the fact to be noticed is that the contents of Sl.no.17 file "Insha Allah" contains much more audio than what is contained in Sl.No.5 audio. Sl.No.5 was one among the deleted files. Similarly, Sl.No.28 with file name "എവിടെ എങ്കിലും വന്ന് കാശ് വാങ്ങിക്കൂടെ?" is a deleted audio file having 40 KB size and 17 seconds duration. The opening words of this file are "കയ്യിൽ അഞ്ച് പൈസ ഇല്ലാതെ" and ends with "bail കിട്ടിയതോടു കൂടി police കാര്". Sl.No.15 is another file with file name "എവിടെയെങ്കിലും വന്ന് രൂപ വാങ്ങിയാൽ പോരെ – Suraj" is with a size of 38 KB and duration of 15 seconds. The opening words of this file are "കയ്യിൽ അഞ്ച് പൈസ ഇല്ലാതെ". This clip ends with the words "ഒന്നും പറയുകയും വേണ്ട". On an

analysis of the contents of the files mentioned here, it is seen that the voice clip shown in Sl.No.5 is part of the voice clip shown in Sl.No.17. Sl.No.17 contains the same content as of Sl.No.5 along with some more contents. The last written dates of these files are also on different dates.

763. Similar is the case of voice clip shown as Sl.No.28 and Sl.No.15 also. Sl.No.28 file contains the entire contents of Sl.No.15 file along with more contents. Moreover, as I pointed out, some of the files were sent to accused no.8 and his associates. Ext.P468 hard disk contains the retrieved audio clips from the phone of accused no.8. On a perusal of Ext.P468, it is seen that an audio clip identical to Sl.No.28 video clip commences with the word "കയ്യിൽ അഞ്ച് പൈസ ഇല്ലാതെ". The file retrieved from Q2 in DD 96/22 is having a size of 37 KB and duration of 19 seconds. This voice clip was sent to accused no.8 and his associate Mr Vyasan on 14.11.2021. The last written date of Sl.No.28 is 05.12.2021, whereas the last written date of Sl.No.15 voice clip is 14.11.2021. These discrepancies, atleast regarding the dates are not explained by the prosecution.

764. Another voice clip in this regard is with respect to an audio file of 54.9 KB and 25 seconds duration, received to accused no.8 from Vyasan on 14.11.2021. This item is retrieved from Q2 mobile phone of accused no.8 and available in Ext.P468 hard disk. The audio clipping Sl.No.11 in Annexure-2 of Ext.P678(a) is having a size of 38 KB and duration of 12 seconds. The date of modification was on 17.11.2021. It commences with the words "ജാമ്യം കിട്ടികഴിഞ്ഞാൽ പിന്നെ ഇനി ഈ കേസ് എന്ന് കഴിയുന്നോ" and ends with the word "ഒരു period കഴിഞ്ഞാൽ". The audio clip dated 14.11.2021 received to accused no.8 commences with the word "Passport ജാമ്യം റദ്ദാക്കി നമ്മള് സ്വാധീനിച്ചു" and ends with "vague ആയിട്ടുള്ള കുറ്റപത്രം കൊടുക്കും". The first sentence of Sl.No.11, voice clip no.4 in Annexure-2 of Ext.P678 is not there in the voice clip dated 14.11.2021 in Ext.P468. Similarly, the last portion of voice clip in Ext.P468 is missing in Sl.No.11 voice clip of Annexure-2. Both these audio clips contain some portions of a conversation. Both these audio clips contain different portions also.

765. When PW192 was in box, all the above clips were put to him. A question is put to him, whether the differences will show that there has been editing of audio recordings. PW192, the expert answered avoiding the direct answer that these are the audio clippings of an audio file having different size and duration.

766. Ext.P645 is the report prepared by PW258 for preparing the transcript of voice clips. The contents of voice clips transcribed by PW258 are stated in Ext.P645 report. On a careful analysis of Ext.P645, it is seen that there is material inconsistencies in the transcript of voice clips. During the examination of PW258, these discrepancies are elaborately elicited. She also admitted those discrepancies. According to PW258, she conducted critical listening of twenty nine audios and prepared the transcripts. A question is put to her, whether any audio files are available with the same contents. According to PW258, no such audio clips with entire contents are same is available.

767. Q6 and Q21 in Ext.P645 are put to PW258. The transcript of Q6 would show that "മൂന്ന് തവണ ഞാൻ ഉണ്ണിയേട്ടനെ അറിയാൻ വേണ്ടിയിട്ട്

വിളിച്ചോണ്ടിരുന്നു. അ... ഞാൻ അത് കഴിഞ്ഞിട്ട് പോയി. അല്ല, അവര് പറയണത് ഞാനെന്റെ അനിയൻറെ അടുത്ത് പോയി അവിടിരുന്ന് ഞാൻ പറഞ്ഞുകൊടുത്ത ഓരോന്നും". Q21 in Ext.P645 is voice clip no.10, "inshaallaaccused no.8-VIP". This voice clip contains Q6 voice also. Q21 contains more contents than Q6. But the transcript of Q21 is seen recorded as "മൂന്ന് തവണ ഞാൻ ഉണ്ണിയേട്ടനെഅറിയാൻ വേണ്ടിയിട്ട് വിളിച്ചു. ഞാനത് കഴിഞ്ഞിട്ട് അവിടെ പോയീന്നേ. അല്ല അവര് പറയണത് ഞാനവൻറെ അനിയൻറെടുത്ത് പോയി എന്നിട്ടവിടുരുന്ന് ഞാൻ പറഞ്ഞു കൊടുത്ത ഓരോന്നും." There are considerable differences in the transcript of both Q6 and Q21. In Q6 it is "വിളിച്ചോണ്ടിരുന്നു", whereas in Q21 it is "വിളിച്ചു". In Q6 it is "അ ... ഞാൻ അത് കഴിഞ്ഞിട്ട് പോയി", whereas in Q21 "ഞാനത് കഴിഞ്ഞിട്ട് അവിടെ പോയീന്നേ". In Q6 ഞാനെന്റെ അനിയൻറെ അടുത്ത് പോയി അവിടിരുന്ന് ഞാൻ പറഞ്ഞുകൊടുത്ത ഓരോന്നും. But in Q21, "അല്ല അവര് പറയണത് ഞാനവൻറെ അനിയൻറെടുത്ത് പോയി എന്നിട്ടവിടുരുന്ന് ഞാൻ പറഞ്ഞു കൊടുത്ത ഓരോന്നും." A question is put to PW258 by the learned defence counsel that Q6 is the edited portion of

Q21, but she pretended ignorance. According to her, all these matters are to be examined in the Cyber Division.

768. Similarly, in Q2 the content is "ഇപ്പോ ഓൻ ഒന്നും മിണ്ടുന്നില്ലല്ലൊ". But in Q19 "ഇപ്പോ അവൻ ഒന്നും മിണ്ടുന്നില്ലല്ലൊ". In Q2 there is a transcript that "വീട് കെട്ടിയതോട് കൂടി പോലീസ് കാര്". But this is not available in Q19. It is to be noted that Ext.P669 CD is played before the court. Ext.P645 report is prepared after examining Ext.P669 CD. Q2 and Q19 files are played before the court. PW258 admitted that the last portion is not "വീട് കെട്ടിയതോട് കൂടി പോലീസ് കാര്". But, it is "bail കിട്ടിയതോടുകൂടി police കാര്". When this fact is put to PW258, she explained that, if we hear and listen the voice clips repeatedly, we can understand it clearly. This is not expected from an expert, who claimed to be examined the voice clips scientifically. It is also elicited through this witness that she went to Forensic Science Laboratory on 08.08.2023 when she attended the court at Neyyattinkara. She also heard the audio clips. She admitted that there was no permission for such examination. She also admitted that no documents are available to support her visit on



08.08.2023. Similarly, PW258 admitted about the actual transcript put to her on hearing the voice clips played before the court. As far as Q11 is concerned, it is elicited that, what she recorded in Ext.P645 is a wrong transcript. When this difference is put to her, she admitted that, she could understand the difference when the voice clip is played before the court during her evidence.

769. The evidence of PW258 and Ext.P645 would show the discrepancies available in the voice clips produced before the court. It is seen that discrepancies are available even in the voice clips which appear to be similar in content. I have already discussed about the evidence of PW258. She categorically admitted before the court that without the recording devices, it is not possible to find out forgery in the audio clips produced in Ext.P486. Though she tried to give a new interpretation about her finding in the report, she was constrained to admit in cross-examination that forgery and format are different aspects.

770. The contention of PW222 is that he decided to record the voices after hearing the conversation between accused no.8 and PW246. He was afraid and hence, he recorded the voices intermittently. Had this

been the situation, the conversations should have been recorded continuously with gap. There should not have been any repetition of the content as the conversations were recorded whenever the parties delivered it. Why the voice clips produced before the court contain similar or repeated contents of conversations under different file names are not explained by the prosecution. Moreover, the file names of the conversations are not generated automatically, but assigned by PW222. This would definitely affect the authenticity and reliability of the voice clips claimed to be recorded by PW222 on 15.11.2017.

771. The learned Special Public Prosecutor relied on the decision of the Hon'ble Supreme Court of India in **Ziyauddin Burhanuddin Bukhari vs Brijmohan Ramdass Mehra & Ors (MANU/SC/0277/1975)** submitted that "tape recordings of speeches are admissible in evidence, if the following conditions are satisfied. (1) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who knew it. (2) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record. (3) The

DISTRICT AND SESSIONS COURT ERNAKULAM-682 031

subject matter recorded had to be relevant according to rules of relevancy found in the Evidence Act." It is to be noted that it is held explicitly by the Hon'ble Supreme Court that in order to rely on the voice clips, there should be satisfactory evidence to rule out the possibilities of tampering with record. In this case as I pointed out the scientific experts examined before this court held clearly that the forgery as well as the authenticity of the voice clips could not be detected.

772. The prosecution had given much reliance to the voice clip contains the voice of accused no.8 addressing PW246 as "ബൈജ്ജുഭായ്". In Ext.P646 report, this particular voice clip is marked as Q5. Q5 is voice clip no.1 "njan sikshikkappettu dileep" available in the folder of voice clips in Ext.P486 pendrive. It is described in Ext.P646 that the questioned audio file marked as Q5 contained in item no.1 was the clearly audible utterances of a male person starting with "ബൈജ്ജു ഭായ് ഈ ശിക്ഷ ഞാൻ അനുഭവിക്കേണ്ടതല്ല വേറെ പെണ്ണ് അനുഭവിക്കേണ്ടതായിരുന്നു; അവരെ രക്ഷിച്ച് രക്ഷിച്ച് കൊണ്ട് പോയി ഞാൻ ശിക്ഷിക്കപ്പെട്ടു".

773. The learned Special Public Prosecutor argued that PW34, who was the first wife of accused no.8, identified the said voice as of accused no.8 and also, she clearly deposed before the court that accused no.8 used to address PW246 as "ബൈജു ഭായി". Since PW34 was familiar with the behavior of accused no.8, she is the most competent person to identify his voice. She lived in the family for almost 16 years. The learned Special Public Prosecutor also argued that this would show the presence of PW246 at the house of accused no.8 and that would again substantiate the contentions of PW222. The learned counsel for accused no.8, on the other hand, contended that the evidence produced before the court would clearly show that PW246 was not available at the residence of accused no.8 as claimed by PW222. The absence of PW246 will materially affect the contentions of PW222 that on hearing the conversation between PW246 and accused no.8 about the visuals involved in this case and that prompted him to record the voice clip. In order to cover-up the absence of PW246, this voice clip was transcribed by PW258 at a later point of time as instructed by the investigating officer so as to appear that PW246 was available there on 15.11.2017.

774. The evidence of PW34 is to be looked into. According to her, she lived together with accused no.8 and his family for 16 years. She could identify the voices of accused no.8 and his family members. She identified the voices of accused no.8 and his family members in connection with this case. Ext.P486 pendrive is played before the court. She identified the voices as that of accused no.8 and his family members. During cross-examination, this particular voice clip is again played before the court. PW34 deposed that she does not know about the first word in this clip. The question was repeated. What she deposed is that she is not sure about the word, but she guessed it as "ബൈജു ഭായി". It is elicited that this fact is not stated to the police. According to her, the investigating officer did not ask her to identify the voice. She reiterated that she has not stated this fact to the police as it was not asked to her. A question is put to her, whether she stated to the investigating officer that the word is "ബൈജു ഭായി" and that was spoken by accused no.8. She denied it. The relevant portion of her statement recorded u/s.161 Cr.P.C of this aspect is elicited and proved as Ext.D119(a). A suggestion is put to her that she identified this word due to enmity to accused no.8, but she

denied it. She again stated that this word is familiar to her and hence, she deposed about it.

775. The learned defence counsel tried to prove that PW34 is not competent to identify familiar voices, including her own voice. I have already stated that Ext.D119(a) is elicited through PW34. It seems that during interrogation, she stated about the term "ബൈജു ഭായി". But, when she was in the box, she stated that nothing in this regard is put to her and she stated also. Ext.D119(a) would discredit the evidence tendered by PW34 that this particular term was not put to her as part of investigation. It is to be noted that PW34 is cited to identify the voice of accused no.8 and his family members. The evidentiary value of voice identification by a familiar person is generally considered admissible, but can be weak, if based solely on identification.

776. Ext.P646 FSL report is available regarding the comparison of voice. PW258 compared the voice. The identification did by PW34 is to be analyzed in the light of available evidence. Normally, voice identification by a familiar person is more likely to be accepted as

evidence, if it is supported by other evidence. The evidence of PW258 is to be considered. The voice samples were received by PW258 when the transcript of voice clips mentioned in Ext.P645 report was available with her. The voice samples were received by PW258 on 25.03.2022. The transcript of voice clips were available with PW258 till 27.06.2022. A question is put to PW258 that, the investigating officer after receiving the copy of Ext.P645 directed her to add the word "ബൈജു ഭായ്" in Ext.P646. She denied this, but she added that the forwarding note for Ext.P646 contains a question commencing with the word "ബൈജു ഭായ്" and hence she had given stress for that word. She stated that Ext.P486 also contains the word "ബൈജു ഭായ്". She also admitted that Ext.P646(a) forwarding note received from the investigating officer containing the word "ബൈജു ഭായ്" was available with her at the time of preparing Ext.P645 report. Another question is put to her that, while hearing the voice in Ext.P486 pendrive, whether she could identify the voice as one which had already been heard. She replied that she could not identify it. She also added that she could identify that fact now only. She admitted

that when she examined Ext.P486 importance was given to the word "ബൈജു ഭായ്". She didn't verify whether this particular word is available in Ext.P669 voice clip. Another question is put to PW258 that whether she copied the conversations stated in the forwarding note provided by the police. She replied that she verified the audio on the basis of conversations furnished by police and prepared report accordingly. Ext.P805 is the forwarding note dated 27.01.2022 sent to the lab for retrieving the contents in Ext.P486 pendrive and other gadgets. It is also asked to provide the audio contents in the text form. Ext.P646(a) is the forwarding note dated 02.03.2022. Along with the forwarding note, transcript of voice clips are attached with. It is to be noted that, as I pointed out, PW258 prepared Ext.P645 report after examining Ext.P486 pendrive and provided with the transcript. Page no.7 of Ext.P645, the transcript of voice clip no.1 "njan sikshikkappettu dileep" is included. It reads as follows:- "... ഈ ശിക്ഷ ഞാൻ അനുഭവിക്കേണ്ടതല്ല വേറെ പെണ്ണ് അനുഭവിക്കേണ്ടതായിരുന്നു; അത് അവരെ നമ്മൾ രക്ഷിച്ച് രക്ഷിച്ച് കൊണ്ട് പോയിട്ട് ഞാൻ ശിക്ഷിക്കപ്പെട്ടു". In Ext.P646(a) forwarding note

the transcript of this particular voice clip is shown as serial no.1 and it reads as follows:- "ബൈജൂ ഭായ് ഈ ശിക്ഷ ഞാൻ അനുഭവിക്കേണ്ടതല്ല വേറെ പെണ്ണ് അനുഭവിക്കേണ്ടതായിരുന്നു; അത് അവരെ നമ്മൾ രക്ഷിച്ച് രക്ഷിച്ച് കൊണ്ട് പോയിട്ട് ഞാൻ ശിക്ഷിക്കപ്പെട്ടു".

777. Ext.P645 report is dated 27.06.2022. As I pointed out, PW258 admitted that Ext.P646(a) forwarding note along with voice transcripts and the voice samples were already with her at the time of preparing Ext.P645. Thereafter, Ext.P646 report was prepared on 26.08.2022. In this report, page no.4 contains the transcript of this particular voice clip, which is marked as Q5. In this report, PW258 reported that the questioned audio file marked as Q5 contained in item no.1 was clearly audible utterances of a male person starting with "ബൈജൂ ഭായ് ഈ ശിക്ഷ ഞാൻ അനുഭവിക്കേണ്ടതല്ല വേറെ പെണ്ണ് അനുഭവിക്കേണ്ടതായിരുന്നു; അത് അവരെ നമ്മൾ രക്ഷിച്ച് രക്ഷിച്ച് കൊണ്ട് പോയിട്ട് ഞാൻ ശിക്ഷിക്കപ്പെട്ടു".

778. PW258 stated that the audio was clearly audible. The interesting aspect to be noted is that vide Ext.P646(a), she has been asked to compare the voice, whereas vide Ext.P805, she had been asked to prepare the transcript of the voice clips. In Ext.P645 report, she reported that the audio recordings Q1 to Q29 were examined by means of critical listening to identify the conversations. She further reported that the recordings were also subjected to transcript the text conversations. In page no.7 of Ext.P645, she specifically stated that the clearly audible utterances heard in the audio recording marked as Q12 is transcribed.

779. PW258 has no case that while preparing the transcript in Ext.P645 report, the audio utterances were not audible, or its quality was poor. Moreover, in Ext.P646 report, nothing is stated that she examined the voice clips by means of critical listening. PW258, when transcribed this particular voice clip, the term "ബൈജു ഭായ്" is not present in the transcript. Later, while preparing Ext.P646, she reiterated the transcript produced along with Ext.P646(a) forwarding note. Had this particular word been noticed or any change in the transcript is noticed, that should have been definitely found a place in the FSL report. No such report is

seen prepared by PW258. Similarly, why this particular word was not noticed at the time of preparing Ext.P645 report is also not proved by the prosecution. The voice identification by PW34 has to be viewed in this background. Moreover, who prepared the transcript appended with Ext.P646(a) forwarding note is not stated by the prosecution. The said person is also not examined before the court. Under which circumstances this particular transcript is prepared is also not proved. When the audio clip is played before this court, this particular word is not much audible and legible to arrive at a finding that this term is "ബൈജു ഭായ്" as stated by prosecution.

780. The learned counsel for the accused contended that PW246 Baiju was not available at the residence of accused no.8 on 15.11.2017 as claimed by PW222 and prosecution. According to them, this particular voice clip was used to create evidence regarding the presence of PW246, as the entire contention of prosecution about the recording of voice clips commences with the arrival of PW246 and his conversation with accused no.8. In Ext.P633 complaint PW222 stated that on 15.11.2017, he along with accused no.8 engaged in the discussion of movie from morning

onwards. Whileso, PW246 reached there. PW246 and accused no.8 started to discuss about the matters in connection with this case. During the discussion, PW246 mentioned about the clips and also asked not to copy those clips. PW222 adduced evidence before this court stating that PW246 reached there around noon. It is elicited through him by the learned counsel that during the investigation, he stated that PW246 reached in the afternoon. We have to consider the evidence of PW246 regarding this aspect. The learned defence counsel raised objection that PW246 cannot be examined as a witness as he is arranged as accused in crime no.6/2022. According to them, the transactions now sought to be proved are involved directly in crime no.6/2022. The attempt of prosecution is to prove the transactions in crime no.6/2022 and it amounts to self incrimination. The learned Special Public Prosecutor relying on Section 132 of the Indian Evidence Act, contended that he cannot claim such a protection. According to him, the matters involved in this case and the matters involved in crime no.6/2022 are not connected. It is to be noted that though PW246 is arraigned as accused in crime no.6/2022, the final report is not filed. Whether he will ultimately

remained as an accused is a fact to be decided after filing the final report. Hence, the objection is overruled.

781. PW246 deposed before the court that he went to Mahatma Gandhi University for collecting the certificate of his daughter. The learned Special Public Prosecutor put a question to him, on that day after leaving the family members at his family, has he gone to the residence of accused no.8, he denied it. The learned Special Public Prosecutor put another question, whether he could remember the date. He stated that it was on 15.11.2017. He also stated that he did not remember the exact time when he came back. The learned Special Public Prosecutor put another question, whether any document is available with him to show his presence in the University. He stated that the fee remittance slip was available with him and the fee was remitted at 11.57 a.m. He also stated that on the way back from University, he visited one of his relatives residence at Kallara. They have taken photographs along with the relatives. Those photographs are available in his mobile phone. Ext.P605(a) contradiction is elicited through him by the learned Special Public Prosecutor. Ext.P605(a) shows that he stated to the investigating

officer that he went to the residence of accused no.8 on that day afternoon. This was denied by PW246 specifically. During cross-examination, he stated that he has not seen PW222 directly. He also stated during cross-examination that he had stated to the investigating officer about the transactions on 15.11.2017 that he was away in University. He also added that police made investigation with his relatives to whom he visited on 15.11.2017. According to him, the mobile phone containing those photographs was obtained by police, but not returned. He stated that he came there from University and reached his residence in the evening.

782. PW246 is admittedly a close associate of accused no.8. He himself admitted about his relationship with accused no.8. In this context, the evidence of PW259, the investigating officer of crime no.6/2022 of Crime Branch, Ernakulam assumes relevance. A question is put to PW259, whether he verified the mobile phone of PW246 as part of his interrogation in crime no.6/2022. He replied that he has to verify the files. He also stated that different officers were entrusted with different duties in connection with the investigation. According to him, the case

diary is to be verified to say, who was entrusted with the duty to interrogate PW246 in connection with crime no.6/2022. A specific question is put to him that whether photograph of PW246 along with his daughter dated 15.11.2017 available in the gallery of his mobile phone was shown to the investigating officer, and PW259 replied that a photo showing the presence of PW246 at Gandhi University, Athirampuzha was shown and he heard about this fact. He stated that he also verified this. The learned counsel for accused put a specific suggestion that the photo was captured on 15.11.2017 and the time of capture was also shown to the investigator. PW259 admitted that these facts were also verified. Then the learned counsel for accused put another question that, has he convinced about those details, and PW259 replied that he has to verify the files. One more suggestion is put to PW259 that the voice sample of PW246 was not collected as the investigating officer convinced that he was not available there. PW259 denied it. On a perusal of evidence of PW259, it is seen that what PW246 deposed before the court regarding the availability of photographs along with the time of capture was shown to the investigating officer in Cr.6/2022 and the investigating officer

verified those particulars are true and correct. Above all, the evidence of PW259 show that those details are available with them. It is to be noted that several materials collected in connection with the investigation of crime no.6/2022 including the forensic reports, are produced in this case by PW261. PW259 is also examined to prove the investigation of crime no.6/2022. If this be the situation, the crucial materials regarding the availability of PW246 at the residence of accused no.8 as claimed by PW222 ought to have been collected and produced in this case. Why the said evidence is not produced before this court is not explained by the prosecution. This evidence assumes relevance especially when PW246 denied his presence at the residence of accused no.8 as claimed by PW222.

783. As I pointed out, the case of prosecution is that PW222 decided to record the conversation on hearing the discussion between accused no.8 and PW246 regarding the visuals involved in this case. If this be the situation, the non-production of evidence regarding the presence of PW246 at the residence of accused no.8 cast doubt in the prosecution case. In this context, the evidence adduced by PW261 investigating officer about PW246 is also relevant. The learned counsel

for accused put a question to PW261 that, whether PW246 is an important person among the persons who claimed to be present at the residence of accused no.8 on 15.11.2017. PW261 replied that as far as this case is concerned, the presence of PW246 is not much important. This answer is also against the prosecution case, especially when PW222 deposed that it is PW246 who made enquiries to accused no.8 about the clips containing visuals of PW1. As I pointed out, PW259 admitted regarding the presence of photograph in the mobile phone of PW246. Why didn't the said mobile phone was subjected to forensic examination for retrieving those contents are also not explained by the prosecution. Had these photographs along with the details such as the time of capturing the photographs are produced, this would have been either proved the presence of PW246 at the residence of accused no.8 or disprove the contention of PW246, that is also not done.

784. In Ext.P633 complaint, as I pointed out hereinbefore, PW222 mentioned that PW246 made enquiry about the clips. The mobile phone of PW222 was subjected to forensic examination. Ext.P678 is the report and as per P678(a) annexure to the report, the data retrieved from the

mobile phone of PW222 are produced before the court. The image file 5005(1602) is the draft of Ext.P633 complaint. It is to be noted that on comparison of this image with the averments in Ext.P633 dated 25.11.2021 it is seen that the term clips, whether the item is received and howmany, are absent in this image. Similarly, in the image, it is stated that PW222 recorded their voice, whereas in Ext.P633 it is stated that PW222 recorded the conversation intermittently. The fact intermittent recording is introduced newly. It can be seen that these particular terms including the important terms, clips and howmany clips are there, are added subsequently. When this fact was put to PW222, he pretended ignorance about the handwriting of these entries. No reason is available to discard the evidence of PW246. On the basis of the above discussions, I hold that the prosecution failed to prove the presence of PW246 at the residence of accused no.8 on 15.11.2017 as claimed by PW222 beyond reasonable doubt.

785. As far as the evidence of PW222 regarding the copying of voice clips to pendrive, some important aspects are to be considered. During the evidence of PW222, the defence produced Ext.D131 pendrive

containing discussions of News Editors Hour in Reporter TV channel telecast on 05.01.2022. Mr. Nikesh Kumar, Liberty Basheer, Adv. Ajakumar, the learned Special Public Prosecutor and PW222 are the participants of that discussion. PW222 identified the voices of all these participants. He admitted that during the course of this discussion held on 05.01.2022, the voice clip recordings allegedly recorded by PW222 on 15.11.2017 were played. He also admitted that he had given these voice clips to Reporter TV channel. PW222 deposed that all the voice clips were not given to the channel. According to him, these voice clips were given to other channels also. PW222 further deposed that he had given the voice clips to Reporter TV channel on 24.12.2021 after copying it to a pendrive. He admitted that he had taken three copies in pendrives before Ext.P486 is given to the police. According to him, the pendrive given to the channels contained eight voice clips only. He selected eight voice clips from twenty seven voice clips available with him. This fact is not even stated to the investigating officer. When a question is put to him that, has he given those pendrives to police, he replied that when the police demanded the pendrive, he obtained copies and provided it to the police.

Another question is put to him that, why didn't he gave the pendrive available with him. He stated that it contains more matters connected with the movie. It is admitted that Ext.P486 contains more voice clips than the voice clips provided to the media. This fact is also not stated in Ext.P488 certificate issued u/s.65B of the Indian Evidence Act. Moreover, he admitted that he obtained copy from the pendrive prepared by him and handed over the copy to the police. This evidence would also show that Ext.P486 pendrive is not a reliable piece of evidence. Ext.D131 would show that the learned Special Public Prosecutor Adv. Sri Ajakumar also participated actively in the said discussion and expressed his opinion against the accused and supporting PW222.

786. Another piece of evidence available is that the learned Special Public Prosecutor relied on a message sent by PW222 to PW182 Anoop from a number 13153887294 @s.whatsapp.net. in the name of one Maria Windsor Trench. This is available in Ext.P468 data from Q4 page 5993 to 5994. The message reads that, "Good morning Anoop Sir, This is Balu...I am coming...now on train...will be reached before 12 noon... Have a wonderful day..." No reply is seen sent to this message. The

evidence of PW182 is that he had seen the message on 15.11.2017 at about 3.30 p.m. According to PW222, this number is a Virtual ID provided by PW132 and PW182. It is to be noted that this fact is elicited by the learned Special Public Prosecutor only during re-examination. When this question is put to PW222, the learned defence counsel objected it on the ground that the attempt of the learned Special Public Prosecutor is to elicit a new tutored answer. The learned Special Public Prosecutor resisted it contending that the document is already marked. It is true that the messages were already marked as it contains in the annexure of FSL report. As far as other details are concerned, it is elicited only in re-examination, but still this court overruled the objection so as to consider the veracity of the contention of PW222. The learned counsel for accused in further cross-examination with permission elicited that pw222 deposed this fact for the first time in the court. Even if this message is taken into account, it can be understood that PW222 informed PW182 that he informed about his arrival to PW182. Another message sent by PW222 to PW182 is also to be considered conjointly with the above message. Data from Q4 in Ext.P468 message contained in page 5956 would show that

PW222 from his mobile number 9497354181 on 15.11.2017 at 8 a.m sent a message to PW182 that "This is Balu ... kindly call me back". When this is put to PW222 he admitted this message. Again, on 15.11.2017 at 10:12:07 hours PW222 sent another message to PW182 from the so-called Virtual ID number that "Available at any time ... Balu". The case of PW222 is that though he went to the residence of accused no.8 on 14.11.2017, much discussions were not taken place on that day. Hence the next day from morning onwards, both accused no.8 and PW222 engaged in discussions. Had there been any such discussions as claimed by PW222, there is no need for sending this message after 10 o'clock informing his availability. Moreover, another contention of PW222 is that he came down to Aluva as he had been invited by accused no.8. If he was invited as claimed by him, there is no need for sending this particular message, which would indicate that PW222 is waiting for call from either accused no.8 or PW182.

787. The case of PW222 is that despite his presence, accused no.8 and PW246 discussed about the visuals involved in this case and made enquiry about the receipt of those visuals. Similarly, it is alleged that in

the afternoon, a VIP arrived there and he brought the visuals in a tablet. The said person expressed his concern about the presence of PW222, but accused no.8 pacified him stating that PW222 is his close associate. It is to be noted that, admittedly, the visuals of the attack on PW1 was not available with anybody. The visuals were available only in the court and also with the investigating officer. Even the copy was not served to the accused.

788. I had already discussed about the allegation of the prosecution relying on the evidence of PW153, Sanil P Mathew that visuals were entrusted at Lakshya based on the telephonic call of accused no.1 to PW192. Similarly, this court had already discussed about the visit of accused nos.1 and 4 to Lakshya before their arrest. Except these contentions, prosecution has no case that the visuals were reached in the hands of accused no.8. The visuals involved in this case is a sensational matter and considering that it is highly unbelievable that accused no.8 and others made discussions about the visuals and also watched the visuals openly in the presence of third parties without any hesitation.

Moreover, even the recorded visuals do not contain anything to indicate that the visuals were played in the presence of PW222.

789. The discussions held hereinbefore would show that PW192, the expert relied on by prosecution, specifically deposed that the authenticity of the voice clips are not examined. PW258 also deposed specifically that whether any forgery was there in the voice clips could not be identified as the original device used for recording is not available, is not produced before the court. So, the much relied forensic examination of Ext.P486 voice clips and the report of experts will not help the prosecution to prove the genuineness of voice clips. Similarly, the investigating officer PW261 admitted that he had not conducted investigation about the devices which were used to transcribe the voice clips to Ext.P486. According to him, he conducted investigation with respect to the tab and iPhone only. The case of prosecution is that the tab was not in a working condition. But, the evidence of PW223 along with Ext.P493 discredit this version. Similar is the case of Ext.P488 certificate issued by PW222 u/s 65B of Indian Evidence Act with respect to Ext.P486 voice clips. This certificate is also not a proper certificate as provided u/s

65B of the Indian Evidence Act. All these material inconsistencies in the evidence adduced by prosecution affected the evidentiary value of the voice clips, including its authenticity and proof. Since the voice clips are not proved properly, this court is not expected to consider the contents of voice clips and also consequentially, the voice comparison based on these voice clips. The point is decided accordingly.

790. The learned defence counsel argued at length to establish that the contents of voice clips are inconsistent and false. The learned Special Public Prosecutor relying on the filing of petition by accused no.8 for releasing his passport and also some other incidents such as the resignation of one of the Ministers argued that PW222 was present at the residence of accused no.8 on 15.11.2017 and ultimately contended that the voice clips are genuine. The learned counsel for accused elicited somany contradictions, embellishments and improvements made by PW222 during his evidence before this court and also compared Ext.P633 complaint with its draft obtained from the mobile phone of PW222 along with his version before the Magistrate while recording the statement u/s.164 of Cr.P.C. to discredit the claim of PW222. They also submitted

that PW222 while adducing evidence before this court did not depose several facts which were stated either in Ext.P633 or in his statement u/s.164 Cr.P.C. so as to make corroboration for the evidence tendered by other prosecution witnesses so as to suit with the prosecution case as instructed by the investigating officers and prosecution. The learned counsel for accused specifically canvassed the voice clip referring PW126 Sagar, the alleged influence on him by accused no.8 and his associates. They also contended that the intention of PW261 was to interrogate PW126 as part of further investigation so as to pressurize him for giving false testimony denying his previous statement. I have already considered the authenticity and reliability of the voice clips and arrived at a finding that those voice clips cannot be relied on and hence, much discussions need not be warranted with respect to these contentions.

791. The reliability and evidentiary value of the contents in Ext.P633 complaint filed by PW222 on 25.11.2021 is to be considered independently. As I pointed out, the case of prosecution is that PW222 filed petition before the Chief Minister disclosing the matters which were known to him regarding the involvement of accused no.8 in this case.

PW222 admitted the image file 5005(1451) retrieved from his mobile phone as stated in Ext.P678(a) FSL report. This image is the draft complaint obtained from his mobile phone. In Ext.P633, PW222 stated that while watching the old visuals in connection with the arrest of accused no.8 in YouTube, the video of then Rural S.P Mr. A.V. George was seen and accused no.8 told that all the five offices will be suffered. A close friend of accused no.8 reached there during this time. He used to state "Insha Allah" during the conversation. PW222 realised from the conversation that the said friend is a close relative of one of the Ministers. He also understood that this person has had discussion with the brother of one of the investigating officers. They discussed together and decided to retaliate accused no.1 and his team when they released from jail. It is stated in Ext.P633 clearly that PW246 Baiju left the residence of accused no.8 before watching the visuals in the YouTube. The learned counsel for the accused argued that this particular version was improved a lot by PW222 in his statement recorded u/s.161 of Cr.P.C. and also during evidence. According to them, all these were done as instructed by the investigating officer and prosecution. When PW222 was in box, a

question is put to him regarding the leaving of PW246 from the residence of accused no.8. He stated that PW246 was available when accused no.8 watched the arrest visuals in YouTube. At this time, the learned counsel for accused no.8 confronted him with his statement regarding this aspect in Ext.P633. He replied that he does not remember whether he stated in Ext.P633 that PW246 was not available when accused no.8 watched the visuals in YouTube. He also added that the incidents narrated in Ext.P633 are not in order. The learned counsel for accused no.8 put questions to PW222 referring his earlier versions about this aspect. They put a suggestion to him that considerable changes were effected in his version in the statement dated 03.01.2022. According to them, this was with a specific intent to register Crime No.6/2022 of Crime Branch, Ernakulam. PW261 admitted before the court that PW222 had not stated anything during interrogation or in Ext.P633 complaint that PW246 was present at the residence of accused no.8 when the visuals of Dy.S.P. Mr A.V. George was watched in the YouTube. The learned counsel for accused no.8 put a specific question to PW261 that PW222 changed his version during his statement u/s.164 of Cr.P.C. to claim the presence of

PW246 at the time of watching visuals in YouTube so as to justify the act of arraigning PW246 as accused no.5 in Crime No.6/2022. PW261 denied this. Another question is put to PW261, whether he interrogated PW222 about this difference in version regarding the presence of PW246. He admitted that he didn't ask this fact to PW222. It is also brought out that neither in Ext.P633, nor in the statement dated 01.01.2022, PW222 stated anything about the names of officers. But in the statement dated 03.01.2022, PW222 stated about the name of officers claimed to be referred to by accused no.8 while watching the YouTube video. It is to be noted that in Ext.P483 statement u/s.164 Cr.P.C, PW222 stated the name of one more officer claimed to be referred by accused no.8. It is also brought out through the statement of PW261 dated 03.01.2022 that accused no.8 paused the video is also not stated in Ext.P633 and earlier statements and an omission. Moreover, PW222 raised serious and grave allegations such as accused no.8 paused the visuals while watching the YouTube video and he was in wrath. He openly made comments against Dy.S.P Mr. Sudarsan that the hands of Dy.S.P Mr. Sudarsan must be chopped off as he touched the body of accused no.8. He also stated

assertively that he will do it at any cost. In Ext.P633, it is stated that accused no.8, while watching the YouTube video, claimed that he will give severe punishment to the instigating officers Mr. Sojan and Mr. Sudarsan. Except these two names, no other names are mentioned in Ext.P633. In Ext.P645 report, PW258 translated voice clip number as "അഞ്ച് ഉദ്യോഗസ്ഥൻമാരേ നിങ്ങൾ കണ്ടോ നിങ്ങൾ അനുഭവിക്കാൻ പോണത്". It seems that none of the names are seen available in this particular voice clip.

792. In the transcript attached with Ext.P646(a) forwarding note, the word "Sojan" is also included. I have already arrived at a finding regarding the admissibility of the voice clip, but this aspect is considered for the sake of discussion about the averments in Ext.P633 and its reliability. In Ext.P633 the narration regarding the watching of YouTube visuals is contained in paragraph no.15. But in the image retrieved from the phone of PW222, it is stated that "അവിടെ കിട്ടുന്ന ഒരു message-ൽ A.V. George ന്റെ "video" കണ്ട് അഞ്ച് ഉദ്യോഗസ്ഥർ നിങ്ങൾ അനുവഭിക്കും എന്ന് ദിലീപ് പറയുന്നു" (voice clip no.9). It is to be noted that in the draft,

it is stated that on seeing the photo of Mr. A.V. George in a message, accused no.8 claimed to retaliate. This image would further show that this version is corrected to "അവിടെ കിടന്ന ഒരു പത്രത്തിൽ A.V. George ന്റെ "video" കണ്ട് അഞ്ച് ഉദ്യോഗസ്ഥർ നിങ്ങൾ അനുഭവിക്കും എന്ന് ദിലീപ് പറയുന്നു". The version is corrected as, on seeing a video in a newspaper available therein, accused no.8 mentioned about his revenge against the investigating officers. On verifying these two different versions, it is seen that the averments stated appear to be meaningless. This would show that the correction was effected as the result of discussions and deliberations. It is impossible to have video in a newspaper. These versions were finally corrected to the present version that on seeing the visuals of the arrest of accused no.8 in YouTube and the video of investigating officer Mr. A.V. George, accused no.8 expressed his revenge against five officers. The interesting aspect is that the correction made regarding the watching of visuals in YouTube is also available in the image retrieved from the phone of PW222. This correction is seen written in the left margin of the said page. This sentence is seen written on the left margin for the purpose

of inserting this in paragraph no.15 of the image. The statement in paragraph no.15 of Ext.P633 would show that the said correction is inserted in paragraph no.15 of Ext.P633 as is available now. For the sake of argument, it can be treated as corrections in the draft before taking the final copy. PW222 is the one and only person competent to say about these matters. The evidence of PW222 in this aspect is to be considered.

793. A question is put to PW222 that how many times corrections were effected in Ext.P633. He replied that he does not remember. A suggestion is put to PW222 that the complaint was prepared as per the instructions and advice of PW261 and then Additional Director General of Police Smt. B. Sandhya IPS. He denied it. Another suggestion is also put to him that he prepared the draft as per the instructions of the investigating officers and the draft was later shown to the investigating officers. The corrections were effected as directed by them. A specific question is put to PW222 regarding the corrections effected in paragraph no.15 of Ext.P633. PW222 replied that had there been any averment in Ext.P633 that the photo of Mr. A.V. George was seen in a message, that would have been a mistake committed by the person who typed the

complaint. At the very same time, he admitted that the draft was written by him. PW222 further deposed that the mistakes in the draft was corrected. Another question is put to him that the handwriting appear in the draft is different than the admitted handwriting in Ext.P473 series application filed before the jail and also the handwriting in the pronote available in image number 5005 (2033) of Q2. He claimed ignorance. When the draft available in the image is put to PW222 after this version, he denied that. He stated that the handwriting in the draft is not of him. He also stated that the handwriting might be of the person at the DTP centre. He also stated that he had given instruction to that lady over phone for effecting corrections. The learned counsel also put a suggestion that the draft was sent to the investigating officers and the corrections were effected by them. PW222 denied it. Similarly, the corrections regarding the conversations between accused no.8 and PW246 about clips is also put to him and PW22 stated that the handwriting is not of him.

794. PW222 claimed during evidence that the person who is preparing the complaint has the right to effect corrections till the final one is prepared. The questions regarding the handwriting and the

authorship of handwriting were put to PW222 during the examination held on 09.06.2023. His further examination was held on 13.06.2023. The dates of examination assumes some relevance. During the examination of PW222 on 13.06.2023 also questions were put to him about the corrections in Ext.P633 comparing it with the image retrieved from his phone. While so, he sought permission of this court to state one fact. He volunteered that he informed his wife about the matters which were transpired in the court on the previous day. His wife told him that the handwriting of the corrections effected in the draft belong to her. According to him, his wife went to the DTP centre for verifying the draft of Ext.P633. His wife read over the draft to him over phone. He had given instructions to her over phone about the corrections to be effected. His wife effected the corrections in the draft accordingly. He also stated that he did not have ample opportunity to see his wife writing Malayalam in his presence and hence, he could not identify the handwriting of his wife when the draft was shown to him on the previous day and put questions about the corrections.

795. It is to be noted that on 09.06.2023 he submitted before the court that he was not feeling well. The learned counsel for accused no.8 relying on this put a suggestion that he pretended illness as he was confused about the explanations to be given about the authorship of handwriting. He thereafter discussed this matter with the prosecution and PW261 and the present explanation is stated as per their instruction. He denied it. This particular evidence is to be analyzed in the light of evidence of PW256. PW256 is cited as the witness to prove Ext.P633 complaint and related matters. PW256 deposed that during 2021 she was running a DTP centre at Alummoodu Junction, Neyyattinkara. She adduced evidence about the inventory mahazar Ext.P638 prepared in connection with the collection of copy of Ext.P633 from the DTP centre. She stated that PW222 brought a written copy of Ext.P633. She typed it on 20.11.2021. According to her, a lady and a girl child accompanied PW222. The learned Special Public Prosecutor put a question to PW256 that, whether these persons came to her DTP centre again. She replied that they again came there for correction. Another question is put by learned Special Public Prosecutor that who effected the corrections.

PW256 stated that PW222 came to the DTP centre along with his wife and child. PW222 went out leaving his wife and child at the DTP centre. The corrections were effected as stated by the wife of PW222. She identified Ext.P633 series. She mailed it to the e-mail of PW222. Ext.P639 series marked through this witness to show that the complaint was mailed to his e-mail. Ext.P640 is the certificate issued u/s.65B of Indian Evidence Act. She claimed that Ext.P640 is prepared on the date of her examination i.e., on 12.07.2023 at the premises of this court. She stated that one of the investigation team members Mr. Binu approached her and asked to put her signature in Ext.P640 and she assigned signature accordingly. She also stated that Mr. Binu informed her that this certificate ought to have been signed when the police came to her, but failed to put signature and accordingly, asked her to put signature on 12.07.2023. During cross-examination it is brought out that the evidence that PW222 came to her centre along with his wife and child is an omission. Similarly, the evidence deposed by PW256 that the corrections were effected by the wife of PW222 is also brought out as an omission. When the learned counsel for accused no.8 relying on his previous

statement tried to confront her that she stated to the investigating officer that on 25.11.2021 PW222 came to her DTP centre and effected corrections, she admitted this. The interesting aspect is that during re-examination, the learned Special Public Prosecutor put a question to this witness that how did the police show the petition to her. She replied that police did not show the petition to her. The learned Special Public Prosecutor repeated the question and put a question that, whether the police showed the petition in the computer. The learned defence counsel objected this question claiming that it is a leading question. She replied that the police showed the petition in the computer. The witness, at the very same time, corrected and stated that the police showed the petition in the phone. Then this court put a question about the ownership of the phone. The witness deposed that police sent the copy of Ext.P633 petition to her phone through WhatsApp. According to her, this was sent three or four months after the arrival of police to her DTP centre. This was sent for enquiring that whether the corrections in the complaint were effected by her or not. She also stated that this particular item is available in her mobile phone. She sought the permission of this court to verify the

WhatsApp chat. This court permitted her for that. She verified her mobile phone. She deposed that the copy of Ext.P633 petition was sent to her through WhatsApp on 09.06.2023. She also added that she will be summoned for giving evidence before this court. She also stated that the police asked her whether the red ink portion in the petition was written by her and replied in negative. She saved the number from which the message is received as Crime Branch. The message was sent from the mobile phone number 9847009029. She also stated that she received the summons from this court also in her WhatsApp. According to PW256, she informed the police that the red ink portion was not written by her. The learned Special Public Prosecutor again put question to her that, how did the police show the petition when they came to her shop in the first occasion. According to her, police enquired whether she typed the petition. She opened her computer and showed it to the police at that time. It is to be noted that the mobile phone number 9847009029 belongs to a senior civil police officer Mr. Binu in the Special Investigation Team. The evidence of PW256 would show that the copy of the draft was forwarded to PW256 on 09.06.2023 and enquired, whether the

handwriting in red ink belongs to her. This is why I held that the date of examination of PW222 and his answer that the writings in red ink belongs to his wife assumes relevance. PW222 changed his version on the next day that the handwriting are of his after PW256 denied her handwriting on 09.06.2023 and hence it is seen that this version is utter falsehood.

796. Though PW256 deposed that Ext.P640 Section 65B certificate was produced on the date of her examination i.e., on 12.07.2023, Ext.P640 is assigned with the date 12.06.2023. During her examination before this court, she stated that she has no knowledge about the person who prepared Ext.P640 certificate. Ext.P640 is produced before the court along with Crl.M.P.No.2804/2023 on 12.07.2023. When PW261 was in box, questions were put to him about the discrepancies appear in Ext.P640 certificate. PW261 admitted that he collected Ext.P640 on 12.07.2023 and produced before the court. At the very same time, he claimed ignorance where Ext.P640 was prepared and who signed it. He also claimed ignorance about the person who instructed PW256 to produce the certificate. It is not expected from an investigating officer. He also deposed before the court that the learned Special Public Prosecutor

produced Ext.P640 before the court on 12.07.2023. At the very same time, he stated that he does not know who entrusted this document with the learned Special Public Prosecutor. Another question is put to him by the learned defence counsel that civil police officer Mr. Binu obtained the signature of PW256 in Ext.P640, but he denied it. He also admitted that he does not remember whether he met PW256 after 17.03.2022, the date when the investigating team went to the office of PW256.

797. The evidence tendered by PW261 is against the averments in the affidavit filed by him along with Crl.M.P.No.2804/2023. In the affidavit, PW261 stated that because of the voluminous documents involved in this case, he omitted to collect the certificate u/s.65B of the Indian Evidence Act from PW256. He noticed this fact at that time of filing petition only. In the petition, it is stated that the document is collected at the time of filing petition and prayed to receive it. The person who filed affidavit turned around and deposed before the court that he does not know about the details regarding the collection of Ext.P640 from PW256 is unbelievable. PW256 had given another explanation regarding the production of this certificate. It seems that the evidence

adduced by PW261 claiming ignorance about the details might have been for avoiding the evidence tendered by PW256 that the civil police officer Mr. Binu collected it on 12.07.2023 from the court premises. It would further show that PW261 investigating officer is not reluctant to adduce evidence to suit the situation suppressing the materials and fact available in this case.

798. As I pointed out, on 09.06.2023, somany questions were put to him about the corrections and authorship of handwriting. He categorically deposed that he does not know about the authorship of those handwriting. He also claimed that, that might be of PW256. But during his examination on 13.06.2023, he volunteered and deposed that the said handwriting belongs to his wife. It is seen that the police sent the images to PW256 on 09.06.2023 after the examination of PW222 before the court on that day and attempted to adduce evidence about the red ink handwriting that belongs to PW256 as stated by PW222. But when PW256 denied the authorship, the very next day, PW222 changed his version and volunteered that the handwriting belong to his wife. He had also gone to the extent of giving an explanation for not identifying it on

09.06.2023. PW222 adduced evidence in detail, even about minute details and it is highly unbelievable that such a person could not identify the handwriting of his own wife when specific questions were put to him based on this handwriting. Moreover, his wife is cited as a witness, but not examined. So, the explanation volunteered by PW222 on 13.06.2023 is seen made after due deliberations and discussions. The attempt on the part of Special Investigation Team would also show their clandestine attempt and involvement in furnishing such an explanation on the next day, so as to give false evidence.

799. PW192, who examined the mobile phone of PW222 and prepared Ext.P678(a) report, admitted that images of a letter prepared by PW222 addressed to the Chief Minister are retrieved from the phone of PW222. As per the report, the modification date of these images was on 20.11.2021. Ext.P633 was claimed to be submitted to the Chief Minister on 25.11.2021. As I pointed out, PW222 also admitted about these images available in his mobile phone. I have already discussed about the material differences appear in Ext.P633 and the images retrieved from the mobile phone of PW222. I have already discussed about the incorporation of the

word "clip" and also about the difference appear in paragraph 15 regarding the watching of visuals in YouTube. Apart from these differences, in paragraph no.3 of Ext.P633, it is stated that he visited the residence of accused no.8 as invited by accused no.8. But, in paragraph no.3 of the draft image, it is stated that PW222 reached at the residence of accused no.8 in connection with the discussions of movie. The averment in Ext.P633 that he had been invited by accused no.8 is not available in the image of the draft. Similarly, while describing the incidents in connection with the allegation that accused no.8 sent accused no.1 along with PW182 and PW222 in the car also there are discrepancies. In the draft it is stated that accused no.8 asked PW182 to drop accused no.1 in the stand, whereas in Ext.P633, it is asked to drop accused no.1 in the stop. Addition in Ext.P633 that accused no.8 invited PW222 and accordingly, he visited his residence on 26.12.2016 assumes importance. The contention of PW222 is that he was invited for the housewarming ceremony, but he could not attend the ceremony due to his physical conditions. He had been invited to visit there on 26.12.2016 and accordingly, he went there. But the draft would show that PW222

reached at the residence of accused no.8 without any invitation. I have already discussed about the contention of prosecution regarding the housewarming ceremony allegedly held at "Padma Sarovaram". This interlineation assumes significance in this background. Moreover, this has to be viewed in connection with the messages sent by PW222 informing his availability.

800. Coming to paragraph no.7 of both Ext.P633 and the image of the draft complaint shows material difference in the averments. In paragraph no.7 of Ext.P633, the incidents regarding the visit of PW222 to the Sub Jail, Aluva are stated. The important aspect is that in the image of draft, PW222 stated that another remand prisoner, one Mr. Francis Xavier was available when PW222 had conversation with accused no.8. It is claimed that accused no.8 talked him about their movie and its release. In addition to that, in the draft, PW222 claimed that the remand prisoner Mr. Francis Xavier fortified the assurances of accused no.8 regarding the shooting and releasing of their movie. Mr. Francis Xavier claimed to be stated that on that day morning also accused no.8 told him about PW222 and their movie. But, in Ext.P633, the statement allegedly made by Mr.

Francis Xavier to PW222 is omitted. In Ext.P633 it is stated that during the conversation between PW222 and accused no.8 at Sub Jail, Aluva, another remand prisoner Mr. Francis Xavier was also with accused no.8. It may in the first blush appear that the deletion regarding the statement made by Mr. Francis Xavier is a simple correction effected by PW222. But the evidence of PW222 and PW261 would expose the importance of this particular omission. PW222 admitted that he has not seen Mr. Francis Xavier after his meeting with him at Sub-Jail, Aluva. Specific question is put to him, whether he talked to Mr. Francis Xavier after this meeting. PW222 replied that Mr. Francis Xavier is a person with less memory. He also stated that Mr. Francis Xavier is not competent to recollect the old incidents. He is incompetent to give even his whereabouts to the officers. PW222 is confronted with the discrepancies appear in Ext.P633 and the image retrieved from his phone. A question is put him, whether the draft contains any reference about Mr. Francis Xavier. PW222 pretended ignorance and also claimed that he is not able to recollect. Another question is put to him that in the draft some averments are included referring Mr. Francis Xavier as directed by the

investigating officers so as to cite him as a witness. PW222 denied this. He also added that the corrections and additions were made by him. It is put to PW222 specifically regarding the omission about Mr. Francis Xavier made in Ext.P633. PW222 replied that he was not sure about the name of that person and hence, that particular portion is excluded. PW222 then and there changed his version and replied that he does not remember whether that particular portion is excluded or not. He also stated that he has to verify the original. The learned defence counsel put another question that, whether he referred to this particular Mr. Francis Xavier stated in the draft as the person with less memory, he admitted this. He also admitted that this fact is stated in his statement recorded u/s.164 Cr.P.C. also. A suggestion is put to PW222 that the reference in the draft regarding Mr. Francis Xavier was with an intention to cite him as a witness for making corroboration for the alleged conversation and assurance by accused no.8 to PW222 during their meeting at jail and this portion was excluded on getting information about the condition of Mr. Francis Xavier, he denied it.

801. When PW261 is in the box, question is put to him that whether he verified the register of inmates from Sub Jail, Aluva to show the availability of Mr. Francis Xavier on 13.09.2017. PW261 admitted that he has not verified the records. It is to be noted that, as pointed out, PW222 himself admitted that Mr. Francis Xavier is a deaf and dumb person, who is incompetent to speak and also incompetent to give his whereabouts also. If this be the situation, the statement in the draft that Mr. Francis Xavier informed PW222 about the statement made by accused no.8 regarding the shooting and release of movie is a fabricated one. On getting information about the condition of Mr. Francis Xavier, this particular statement claimed to be made by Mr. Francis Xavier is intentionally excluded from Ext.P633. So, the deletion of this particular statement cannot be considered as a simple correction. The fact that Mr. Francis Xavier is a deaf and dumb person is admitted by PW261 also. A question is put to PW261 about the condition of Mr. Francis Xavier and he replied that he heard about this. Specific questions were put to PW261 about the condition of Mr. Francis Xavier and also that this particular portion was excluded as per the instruction of investigating officers.

PW261 denied it. But, PW261 stated that he conducted investigation about Mr. Francis Xavier on 06.01.2022. But he admitted that no records are available to show that he conducted such investigation only on 06.01.2022. PW261 in order to make clarification stated a new fact before the court that PW222 gave statement that accused no.8 informed PW222 about Mr. Francis Xavier. But, the statement in the draft complaint would negative this contention. In the draft, PW222 stated that Mr. Francis Xavier stated the matters mentioned threin directly to PW222. This would show the falsity of the explanation made by PW261. Ext.D212 is the final report in crime no.749/2017. Ext.D213 is the report after custody of Mr. Francis Xavier and Ext.D214 is the judgment in CC No.130/2017. Exts.D212, D213 and D214 would also negative the contention of PW261 regarding the non-availability of Mr. Francis Xavier in the jail and also about his condition. The corrections in paragraph no.7 are to be viewed in the above background. This would also to be considered as another circumstance pointing to the challenge against the genuineness of Ext.P633.

802. As far as paragraph no.10 of Ext.P633 is concerned, the word "clips", the number of clips, and also the fact that the recording was done intermittently are absent in the draft. These words are available in paragraph no.10 of Ext.P633. I have already discussed about the importance of these corrections while discussing the arrival and availability of PW246 to the residence of accused no.8. PW222 stated before the court that the handwriting in the correction regarding the number of clips was not his handwriting. He also stated that he does not know the writings are in whose handwriting.

803. Next is the corrections appear in paragraph no.25 in the draft image. This particular paragraph no.25 available in the draft is fully excluded from Ext.P633. It is to be noted that in the draft para 25 reads that, he attempted to get the presence of accused no.8, PW132 and PW182 to his residence for showing the documents available with him. But, they were not ready to come to his residence. This omission also assumes relevance considering the present contentions of PW222. Similarly, in paragraph no.22 of the draft of the image, PW222 stated that he decided to drop the film with accused no.8. He also decided to

inform the matters to the public. He further decided to inform this matter bravely and directly to accused no.8. He contacted accused no.8 for that. His number was seen blocked by accused no.8, PW132, PW182 and all associated with accused no.8 blocked his number. On seeing this, he sent a message to the phone number of Mr. Dasan. It is to be noted that this particular paragraph is numbered as para 27 in Ext.P633. The portion in the draft regarding the reason prompted him to contact Mr. Dasan is seen excluded from Ext.P633. It appears in Ext.P633 that he decided to contact Mr. Dasan to inform about his proposed disclosures and accordingly, sent message to Mr. Dasan on 26.10.2021. Even in a plain reading, the difference is apparently visible. In the draft, it is claimed that he tried to contact accused no.8 and his associates and thereafter, he contacted Mr. Dasan. But, in Ext.P633 it is claimed that he contacted Mr. Dasan directly.

804. I have already discussed about the evidence of PW242 Mr. Dasan and the matters connected with the message and call from Mr. Dasan to PW222. He claimed that on getting information from Mr. Dasan, he decided to file Ext.P633. We have to appreciate this omission

in connection with these incidents and also considering the non availability of Dasan at the house of accused no.8 during the relevant time. Paragraph no.32 of the draft image contains a request on the part of PW222 for conducting investigation and also prayed to provide police protection for him from the harassment at the instance of accused no.8 and his associates. In Ext.P633, all these matters are included in paragraph no.31. In paragraph No.31 PW222 requested to conduct re-investigation. He also pleaded to the Chief Minister for providing protection. The fact of re-investigation and also the request to Chief Minister are absent in the draft. He also sought protection for his family. Relying on this change, the learned counsel for accused argued that the request for re-investigation was incorporated so as to enable PW261 to conduct further investigation. It is true that the copy of Ext.P633 received by PW261 from the Station House Officer, Nedumbassery is appended with the petition filed before the court informing that further investigation is going on. When PW222 was in the box, questions were put to him about the corrections. He admitted about the corrections. In one point of time, he claimed that he does not know who made these

corrections and also stated that the corrections are not in his handwriting. As I pointed out hereinbefore, on 09.06.2023, he stated that the corrections were made by PW256, but, on 13.06.2023, PW222 changed his version and attributed the authorship of corrections to his wife. I have already discussed about the matters prompted PW222 to change his version regarding the handwriting in the corrections.

805. When PW261 was in box, a question is put to him about the mobile phone no.9847009029. He replied that this number does not belongs to him. He also stated that he does not know the number belongs to whom. He later stated that it might be the number of civil police officer Mr Binu. Another question is put to him, whether any calls made to PW256 from this number. He pretended ignorance. He also stated that he does not remember, whether he had given direction to make such calls. A specific question is put to him about the sending of document from 9847009029 to the WhatsApp of PW256 and he also claimed that he does not know about it. PW261 emphatically denied about the sending of the draft of Ext.P633 to PW256 from the mobile number 9847009029. But, as I pointed out hereinbefore, during the examination of PW256, she in the

re-examination stated that the petition was shown to her in the mobile phone. On hearing this reply, the court enquired about the mobile phone. She deposed the matters in detail after verifying her mobile phone with the permission of court. She also provided with the mobile number from which she received the draft of the complaint. This number admittedly belongs to civil police officer Mr Binu. It is highly improbable and unbelievable that a civil police officer will send the copy of document to a witness without the permission of the investigating officer. PW261 also admitted that, he did not conduct investigation about the corrections appear in the draft complaint. On an analysis of the draft of complaint available in the mobile phone of PW222 along with Ext.P633, it can be concluded that the corrections made therein are effected as the result of due deliberations and discussions and this affect the reliability and credibility of Ext.P633.

806. **Whether the prosecution proved that on 15.11.2017, accused no.15 brought the visuals of the sexual assault on PW1 in a tablet, entrusted it with accused no.8, and accused no.8 and his associates watched those visuals at his residence in the presence of PW222?** In

Ext.P633, PW222 claimed that when accused no.8 was engaged in watching the visuals of his arrest in YouTube, one of the close friends of accused no.8 reached there. His name is not known to PW222. The person reached there said "Insha Allah" during his conversation. He has connection with one of the Ministers and brother of one of the investigating officers. Both accused no.8 and this person exchanged several matters in connection with this case. In the meantime, one of the female friends of PW179 along with her brother reached there. The female friend reached there appears to be like the actress Suja Karthika. They came there for inviting marriage. Accused no.8 came back after sending them off. The VIP friend of accused no.8 reached there informed that he wants to return. He also asked whether the item is to be taken out. Accused no.8 replied affirmatively. The VIP looked at PW222 and also to accused no.8. Accused no.8 informed the VIP that this is "Balu Bai" and no issues will be there. The VIP went out. The VIP again came to the house along with a tablet computer. He switched on the tablet. Accused no.8, PW132, PW182 and the brother-in-law of PW182 gathered around the VIP. Accused no.8 enquired with PW222, whether he wants

to watch the visuals. He enquired about the visuals. Accused no.8 informed him that this is the video of the cruel activities of accused no.1 and again asked him to watch those visuals. PW222 realised that it is the visuals involved in this case. He denied the offer. According to him, it contains eight or nine small files. He also stated that it contains voices of male and female. He specifically stated that he heard the word "sorry" stated by a male and "slowly" by a female. He also stated that he heard the female asking to put on. They took 15 minutes for watching the video. They played it repeatedly. The VIP entrusted the tab with accused no.8 and left the residence. He was afraid to disclose these matters to anybody. But he informed this to his wife. The learned Special Public Prosecutor argued that since the purpose of the quotation was to record nude photos of PW1 and sexual acts involving her, it can be inferred that handing over the visuals of the sexual assault to accused no.8 was a prime component of the criminal conspiracy. They also contended that it is clearly proved that accused nos.1 and 4 visited Lakshya after the crime and the memory card was entrusted or deposited there as early as on 22.02.2017, probably as previously decided between accused nos.1 and 8.

The learned Special Public Prosecutor also contended that the conversation between PW153 Sanil P Mathew and PW181 and accused no.1 would provide convincing proof that the memory card containing the visuals of the sexual assault on PW1 was entrusted or deposited at Lakshya and that it subsequently reached accused no.8. The learned defence counsel, on the other hand, argued that the allegation of PW222 that accused no.8 and others played and viewed the visuals involved in this case on 15.11.2017 at the residence of accused no.8 as it was brought in a tablet computer by accused no.15 in the presence of PW222 is a false and concocted story. According to them, accused no.8 was not residing at "Padma Sarovaram" house at Aluva at that time as claimed by PW222. They also contended that, though the prosecution alleged that accused no.15 brought the visuals to the residence of accused no.8, no evidence is available to prove that accused no.15 obtained the visuals or he brought those visuals. Except the oral testimony of PW222, no other evidence is available before this court regarding this particular allegation. According to them, the testimony of PW222 on this aspect remains uncorroborated and suffers from contradictions and inconsistencies.

807. Ext.P262 is the memory card containing the visuals of attack on PW1. The case of the prosecution is that accused no.1 recorded those visuals using his mobile phone on 17.02.2017. Accused no.1, thereafter, on 18.02.2017 transmitted those visuals to a memory card at Ambalapuzha in the presence of PW17. Accused no.1 on his way to Coimbatore, entrusted his belongings including Ext.P262 memory card to his lawyer PW20. On seeing the news in media about this case, PW20 decided to produce it before the court concerned and he produced it accordingly. PW202 prepared inventory and collected it from the court. He sent the memory card for forensic examination. PW192 examined the memory card and found that the said memory card contains the visuals of attack on PW1. He prepared Ext.P263 report and sent it back to the court. Ext.P262 memory card is in the custody of court since its production before the court by PW20 on 20.02.2017. PW192 copied the visuals of Ext.P262 memory card to two pendrives. One pendrive is forwarded to this court along with FSL report and the other pendrive is forwarded to the investigating officer. Admittedly, the two pendrives are kept in the respective possessions since then. The learned counsel for

accused no.8 filed Crl.M.P.No.49/2018 before the Judicial First Class Magistrate Court, Angamaly seeking permission to watch the visuals contained in the pendrive. Crl.M.P.No.49/2018 seeking for a direction to the prosecution to furnish a cloned copy of the contents of memory card containing the video and audio content in the same format as obtained in the memory card and the transcript of human voices, both male and female, recorded in it and furnished the said cloned copy of the memory card and the transcript to the petitioner. In the petition, it is contended that accused no.8 appeared in the committal proceedings on 15.12.2017 and he was furnished with copies of police report dated 22.11.2017 along with other records. But, some records including the electronic records, medical records, FSL reports and the alleged video footage of the offending act committed by accused no.1 were not served on him. When this fact was brought to the notice of the committal Magistrate, defence was allowed to watch the alleged video footage by playing the contents of a pendrive in the laptop made available before the court in the presence of Assistant Public Prosecutor on 15.12.2017. On watching of visuals, although in a restricted environment and with limited facilities, they

realised that the visuals would completely falsify the prosecution case. They also mentioned some of the conversations heard by them while watching the visuals in the petition. Several other matters were also mentioned in the petition. On the basis of those contentions, they prayed to serve a cloned copy to them. This petition was filed on 15.01.2018.

808. The prosecution filed objection in the above petition along with other contentions that accused no.8 has already been in possession with the memory card. The prosecution contended that the attempt of the accused is to tarnish the image of the victim. If the copy is served to the accused, the same may reach in the hands of the media or any other groups or persons. They also submitted that accused is trying to create unnecessary controversies. In order to safeguard the privacy of the victim, the prosecution withheld the supply of the contents of the memory card to the accused and not with any other motive. It is also stated that the accused is free to view the contents of the video footage during trial from the trial court. On the basis of the above contentions, they prayed to dismiss the petition. The learned Magistrate, vide order dated 07.02.2018, declined the prayer holding that if the prayer is allowed, that would

tantamount to a serious blow to the supreme honour of a woman. Though the prayer is declined, the learned Magistrate, so as to ensure fairness in the proceedings and for just determination of the truth, petitioner/accused is permitted to inspect the contents of the video footage at the convenience of court. This order was challenged by the accused before the Hon'ble High Court and the Hon'ble High Court also upheld the order of the learned Magistrate. This was ultimately culminated in the filing of Crl.Appeal.No.1794/2019 before the Hon'ble Supreme Court. As per the direction of Hon'ble Supreme Court, the accused persons filed applications before the trial court to inspect the contents of the memory card. The trial court on 19.12.2019 permitted the accused persons to inspect the contents along with their lawyers. The inspection was conducted with the assistance of experts from the State Forensic Lab. PW192 and PW260 assisted the court for the inspection. The investigating officer, the learned Special Public Prosecutor and some of the members of Special Investigation Team also present in the court at the time of inspection. The counsel for accused no.8 filed petition before the trial court for sending the cloned copy for FSL examination in the

Central Forensic Science Lab, Chandigarh, as permitted by the Hon'ble Supreme Court. The trial court forwarded Ext.P262 again to the State Forensic Science Laboratory for preparing cloned copy. PW192 prepared cloned copy of Ext.P262 and forwarded it back to the trial court along with Ext.P675 report. The trial court forwarded the cloned copy of memory card to the Central Forensic Science Lab, Chattisgarh as requested by accused no.8 and obtained the report. The contentions of learned Special Public Prosecutor and counsel for accused are to be addressed in the backdrop of above factual scenario transpired as part of the proceedings before the committal court and also in the trial court.

809. The learned Special Public Prosecutor submitted that since the prosecution proved that the phone containing the visuals remained in the possession of accused no.1, a legitimate inference can be drawn that he may have copied the visuals into multiple memory cards or other devices as he desired. It is also argued that since the purpose of the quotation was to record nude photos of PW1 and sexual acts involving her, it can be further inferred that handing over of the visuals to accused no.8 was the prime component of the criminal conspiracy. Another

inference is also relied on by the learned Special Public Prosecutor that unless the mission was accomplished, accused no.1 would never have demanded the quotation amount from accused no.8, who is the master conspirator behind the conspiracy and for whom the crime was executed. Similarly, as I pointed out, next submission raised by the learned Special Public Prosecutor is that the conversations between PW153, PW191 and accused no.1 proved that the memory card containing the visuals was entrusted or deposited at Lakshya and that it subsequently reached accused no.8. They also argued that it is only after the completion of the commission of the offence, accused no.1 would have had the courage to demand the money from accused no.8. The above submissions are to be discussed one by one to arrive at a finding regarding the allegation that on 15.11.2017, accused no.15 brought the visuals of attack on PW1 in a tablet computer to the house of accused no.8, and all of them watched it in the presence of PW222.

810. As pointed out, right from Ext.P633, PW222 claimed that one of the close friends of accused no.8 came to the house of accused no.8 and he appears to be a VIP. The investigating team conducted investigation

on this aspect and accused no.15 was later identified as the VIP who brought the visuals in a tablet computer and entrusted it with accused no.8. In Ext.P633, PW222 had given some identification features about the said VIP. The importance of those identification features are to be considered. As I pointed out, the said VIP was later identified as Mr. Sarath G. Nair and he was arraigned as accused no.15. In Ext.P633, PW222 stated that he does not know the name of the said VIP who arrived there. PW222 claimed that he developed acquaintance with accused no.8 since 2014. He visited the residence of accused no.8 on several occasions. PW222 further deposed that he visited accused no.8 at Sub Jail, Aluva also. It is to be noted that accused no.15 Sarath is admittedly a close associate of accused no.8. Ext.P708 arrest memo of accused no.8 is signed by accused no.15 Sarath in his capacity as the person who witnessed the arrest. Moreover, PW261 himself admitted the company or presence of accused no.15 with accused no.8, when he was released on bail and also on interim bail for performing the rituals in connection with the death anniversary of the father of accused no.8.

Considering the nature of relationship claimed by PW222 with accused no.8, accused no.15 would have been known to him.

811. The evidence of PW132 would show that he himself and PW222 along with script writer Mr. Vipin Chandran exchanged discussions about the movie twice at Surya Restaurant, Aluva. Accused no.15 is the owner of Surya Restaurant, Aluva. Had this been the situation, PW222 would have been familiar with accused no.15 during 2015 itself. Moreover, in Ext.P633, PW222 stated that during the conversation, the said VIP mentioned the term "Insha Allah". PW222 also stated during his 164 Cr.P.C. statement, which is marked as Ext.P483, that the said VIP stated the term "Insha Allah" frequently. Further, in Ext.P483 PW222 stated that the voice clips possessed by him would show that PW132 asked his son Sathya about the person arrived there on hearing the buzzer sound of the car lock. Mr. Sathya informed PW132 about the arrival of Sarath uncle. PW222 stated further in Ext.P483 that the voice clip containing the conversation of PW132 and Sathya about this aspect is available with him. He also stated that on seeing the arrival of that person, PW179 Kavya Madhavan asked him

"എന്ത് ആണ് ഇക്ക". It is to be noted that the claim of PW222 is that PW179 called him as did in the case of person belongs to the Muslim community. It is an admitted fact that we used to address elder persons of Muslim community as "ഇക്ക". In Ext.P483 he stated that one of the friends of accused no.8 reached there by evening. On hearing the buzzer sound PW132 asked his son to enquire about the person who arrived there. The son of PW132 replied about the arrival of Mr. Sarath. It is mentioned specifically that on seeing this person, the family members of accused no.8 available therein laughed loudly. PW179 asked him, "എന്താണ് ഇക്ക". He categorically stated that these voice traces were recorded. Though he produced the voice clips before the court, no such voice clips are available as stated by PW222. Moreover, the name of the person arrived there was stated by Sathya as Sarath then and there.

812. PW261 while in the box deposed that he conducted investigation about a businessman belongs to Muslim community. He also stated that PW222 informed him about the name of VIP as Sarath during March 2022. He further stated that he does not remember the

exact date. But, at the very same time, he clarified that it was before 18.03.2022. He also admitted that the specimen voice of accused no.15 was recorded on 19.03.2022. PW261 was constrained to admit during evidence that he collected the voice sample of accused no.15 unofficially. He also admitted that he identified the voices so collected through PW222. No statement of PW222 was recorded in connection with this alleged identification. No report is also filed before this court. On the other hand, PW222 deposed before the court that he could understand the name of VIP only during May 2022. He also deposed that he got such information when he was in Police Club, Aluva. The learned defence counsel asked a question, whether PW261 Baiju Poulose supplied the name of the VIP. He pretended ignorance. He also stated that four or five officials were available there. According to PW222, on hearing the name of VIP as Sarath, he felt that the said person is not a Muslim. He again added that he believed till then that the person is a Muslim. According to him, he identified Mr. Sarath in the test identification parade. He again stated that when this particular person arrived there, son of PW132 addressed him either as Sarath uncle or Sadath uncle. Somany questions

were put to PW222 to show that accused no.15 is a close associate of accused no.8. PW222 claimed ignorance about those facts. When questions were put to him regarding the so-called voice clip referring about accused no.15 Sarath and the addressing of PW179 as "ഇക്ക", PW222 deposed that he again examined the remaining voice clips available with him and the audio clips contained the conversation from the arrival of this VIP is with him. This fact was stated at the time of giving statement u/s.164 Cr.P.C. He, at the very same time, admitted that he had produced all audio clips available with him in connection with this case to the police on 03.01.2022. He again deposed that since the audio is not clear, he again verified and heard the audio clip about Mr Sarath before giving Ext.P483 statement. He could understand the names and incidents accurately after hearing the said clip again. He also admitted that this particular voice clip containing reference about accused no.15 Sarath is one of the voice clips available with him, but not produced to the police. He had gone to the extent of deposing that those clips are still available with him. According to him, this fact is stated for the first time in the court. He clarified further that this is the one and only voice clip

kept along with him without producing before the police. He further added that this particular voice clip contains several other matters relate to this case. This was played to the investigating officer during January 2022. He corrected that it was during May 2022.

813. It is to be noted that though PW222 had gone to the extent of claiming that this particular voice clip containing reference about the arrival of accused no.15 Sarath and the addressing of him by PW179 as "ഇക്ക", this was not produced before this court. Moreover, the evidence of PW222 and PW261 regarding the identification of accused no.15 is contradictory also. As I pointed out, PW261 claimed that the name of accused no.15 was disclosed by PW222 during March, 2022. But PW222 deposed that he identified accused no.15 during May 2022 only. Moreover, though the investigating officer claimed that PW261 identified the voice of accused no.15 informally, nothing is before this court to prove the so-called identification. Had any such voice clip been available with PW222, that would have been the best evidence regarding the arrival of accused no.15 as claimed by prosecution. Why didn't this particular voice clip produced before the court remains unexplained. Moreover, as I

pointed out, there is less chance to address accused no.15 as "ഇക്ക" and also for including "Insha Allah" frequently during his conversation. The learned counsel for accused no.8 argued that in Ext.P633 prosecution introduced a person as VIP without mentioning the name so as to enable the investigating officer to use it as a ruse for delaying and derailing the trial under the pretext of further investigation. They also contended that the mysterious VIP resulted and enabled the media and others to create speculation about the person and also arranged a stage for the media trial against accused no.8. They further argued that the non-identification of the VIP opened a platform for creating fear in the minds of the associates of accused no.8 that they could be falsely implicated as the mysterious VIP so as to keep them away from accused no.8 and his family members. As I pointed out, though even in Ext.P633, PW222 stated about the arrival of VIP along with the visuals and also his involvement in this case. No investigation is seen conducted to identify that person. Considering the nature of allegations raised against this particular VIP in Ext.P633 and also the contentions of PW222 are taken into account, the role played by the said VIP is serious and grave. As I pointed out, the visuals

of Ext.P262, which was available only in the court and the investigating officer are obtained by this particular person and brought to the residence of accused no.8.

814. PW261 during the second further investigation obtained FSL reports prepared by PW192 in connection with the preparation of a cloned copy of the memory card from the State Forensic Science Laboratory after the revelation of PW222. The case of prosecution is that the investigating officer came to know about the change in hash value only on getting these reports. In the light of the direction of Hon'ble Supreme Court and also considering the fact that copies of these visuals were not furnished to anybody, the bringing of visuals by the said VIP is to be viewed and investigated then and there. But, in this case, according to PW222, he identified the said VIP only on 16.05.2022. As I pointed out, this is against the evidence of PW261. It is brought out through PW261 that unofficially PW222 identified the voice of accused no.15 much before this identification, Further, the residential house of accused no.15 was searched in connection with crime no.6/2022 on 17.01.2022. PW259, the investigating officer of crime no.6/2022 admitted this during

his cross-examination. He seized the passport of accused no.15. PW259 deposed that on the date of seizure, accused no.15 Mr. Sarath was not arraigned as an accused in that case. He was not cited as a witness also. The voice sample of accused no.15 was collected by PW252 on 25.02.2022. When this fact was put to PW261, he stated that this was collected unofficially. But Ext.P619 mahazar is prepared in connection with this sample collection. Further, though PW261 collected the CDR of accused no.15, that was not produced before the court. Even after conducting these much investigations, accused no.15 was arraigned as accused only on 16.05.2022. But the fact remains is that accused no.15 in ordinary course will not use the term "Insha Allah" during his conversations and he may not be addressed as "ഇക്ക" by PW179 as claimed by prosecution. This fact is stated by accused no.15 in his examination u/s.313(1)(b) of Cr.P.C. Further, accused no.15 cannot be assigned with the status of a VIP also. He is an ordinary businessman. Even if PW222 was not in a position to get the name of accused no.15, accused no.15 could have been identified at the initial stage of investigation. No such attempt was done by the investigating officer even

after several investigations in connection with accused no.15 were made during the initial stage. The alleged non-production of voice clip with PW222 referring the arrival of accused no.15 is also to be viewed conjointly with the above aspects. Admittedly, except the oral testimony of PW222, no evidence is available to prove the arrival of accused no.15 to the residence of accused no.8 with the visuals in a tablet computer. The tablet computer is also not seized. Further, as I pointed out, the case of prosecution is that the visuals were already entrusted with accused no.8 on 22.02.2017 during the visit of accused nos.1 and 4 to Lakshya. They also relied on the evidence of PW153 to prove that the visuals are available with accused no.8. If this be the situation, what is the purpose for bringing these visuals again by accused no.15 to the residence of accused no.8. Moreover, the evidence of PW222 is that accused no.8 was in an abnormal and arrogant mood since morning. No investigation is seen conducted about the fact that, how did the visuals reach at the hands of accused no.15. Similarly, no evidence is available to show the fact, which prompted accused no.15 to bring the visuals to the residence of

accused no.8, especially when those visuals were already with accused no.8.

815. Another fact to be considered is that PW222 deposed that he was available at the residence of accused no.8 on 15.11.2022 and recorded the conversation intermittently. But the voice clips produced before the court do not contain any materials to prove the alleged playing and inspection of those visuals. PW222 explained this situation claiming that he was afraid and could not record the voice traces. He himself stated that all were engaged in the inspection of visuals and he was sitting away from them. A person who recorded the conversations could have recorded these matters too, especially when all of them were involved in the inspection of the visuals. So, the explanation that he could not record the transactions in connection with the inspection of the visuals out of fear appears to be untenable.

816. Another fact to be considered is that even on 12.01.2022, PW222 in his Ext.P483 statement u/s.164 Cr.P.C stated about the arrival of accused no.15 Sarath. He mentioned specifically that son of PW132 Sathya informed PW132 that accused no.15 came there. It is also

mentioned clearly that PW179 Kavya Madhavan addressed him as "ഇക്ക". He further stated that this person frequently used "Insha Alla" during his conversation. He also made references about PW126 Sagar. The time of arrival is also mentioned in Ext.P483. He stated that this person arrived there by evening. In Ext.P633, PW222 narrated about the arrival of accused no.15 in paragraph no.15. It is stated that accused no.15 arrived there while accused no.8 watching the visuals of his arrest in YouTube. It is further stated that he used the term "Insha Allah" during the conversation. The statement in Ext.P483 regarding the enquiry made by PW132 to his son and the reply that Mr. Sarath came there is absent in Ext.P633. So, it can be seen that though in Ext.P633 the name of the person who arrived there is absent, in Ext.P483 statement PW222 mentioned it with all clarity that Mr. Sarath arrived at the residence of accused no.8. Moreover, in Ext.P483 PW222 mentioned with all clarity that the person who arrived there brought a tablet and all of them inspected the visuals involved in this case. So, even on a bare and plain reading of Ext.P483, it can be seen that the person arrived there with tablet is Mr. Sarath. Admittedly, he was arraigned as accused only



on 16.05.2022. I have pointed out regarding the contradictory versions of PW222 and PW261 about the identification of accused no.15 and the delay in arraigning him as an accused in this case. PW261 deposed before the court when questions were put to him regarding this particular delay that he waited for scientific evidence to identify that the person arrived there was accused no.15 Sarath. But, no scientific evidence is produced before arraigning accused no.15 as accused on 16.05.2022. PW261 further stated that on 03.01.2022, PW222 identified accused no.15 by voice. Moreover, PW261 could have been shown accused no.15 to PW222 much before 16.05.2022 considering his specific claim that Sarath reached there with a tablet containing visuals. Why this was not done is not explained by the investigating officer.

817. Another aspect put to him is that PW242 Dasan is cited as one of the important witnesses during the second further investigation to prove the claims of PW222. PW261 during evidence admitted that PW242 Dasan was available at the residence of accused no.8 as gatekeeper. What he deposed is that he didn't conduct investigation that whether PW242 Dasan was available there on 15.11.2017 or not. Had these persons

visited the residence of accused no.8 on 15.11.2017, PW242 would have been a competent person to state about their arrival. Though he was interrogated by PW261, why didn't he ask him about these matters is also to be taken into account.

818. Ext.P650 is the FIR in crime no.6/2022 of Crime Branch, Ernakulam registered on 09.01.2022. In the FIR, six persons are shown as accused persons. Accused no.8, PW182, PW132, PW246 and brother-in-law of PW132 are shown as named persons. Sixth person is shown as one identifiable person. Crime no.6/2022 is registered on the basis of the complaint of PW261. In the F.I statement, it is stated specifically that the statements and audio clips of PW222 are the basis for the complaint filed by PW261 for registering crime no.6/2022. The evidence of PW222 showed the persons who were present at the residence of accused no.8 during the so-called transactions. As I pointed out, the sixth accused is arraigned as an identifiable person. Questions were put to both PW259, the investigating officer of crime no.6/2022 and PW261 about the date when accused no.15 Sarath was made as an accused in crime no.6/2022. Both of them claimed ignorance about the date. As I pointed out, on

going through Ext.P483, PW222 specifically mentioned about the arrival of accused no.15 Sarath with visuals in a tablet computer to the residence of accused no.8 at the initial stage itself.

819. I have already discussed about the seriousness and gravity of the allegation that a person brought the visuals involved in this case to the residence of accused no.8. In crime no.6/2022 also, sixth accused is shown as identifiable person. The details of accused no.15 in connection with crime no.6/2022 are furnished in the court before 08.04.2022. But PW259 admitted that the residence of accused no.15 was searched in connection with crime no.6/2022 on 17.01.2022. PW261 also admitted that after the statement of PW222 u/s.164 of Cr.P.C. on 12.01.2022, he obtained search warrant for conducting search at the residence of accused no.15. He also admitted that no search was conducted at the residence of accused no.15. So, it is seen that immediately after the statement u/s.164 Cr.P.C of PW222, PW261 obtained search warrant considering the evidence of PW222 that accused no.15 Sarath arrived there with visuals. Why didn't this warrant was not executed is not explained properly. PW261 admitted in evidence that in crime no.6/2022, one of the accused

persons is shown as an identifiable person. His role is also stated. Accused no.15 obtained bail from Judicial First Class Magistrate Court, Aluva in connection with crime no.6/2022 on 08.04.2022. Bail was granted as per the direction of the Hon'ble High Court in a petition filed for pre-arrest bail. PW261 further admitted that accused no.15 was interrogated on 19.03.2022, but his arrest was recorded in connection with this case only on 16.05.2022. Even on that day, accused no.15 was not arraigned as an accused. PW261 simply stated that on 16.05.2022, PW222 identified accused no.15. If this be the situation, what prevented PW261 from conducting his identification much before 16.05.2022 is not explained. On an overall analysis, I hold that the evidence of PW261 explaining the delay in arraigning accused no.15 as accused is not acceptable and it cast doubt in the prosecution case regarding the arrival of accused no.15 to the house of accused no.8 on 15.11.2017 with visuals.

820. **Whether the prosecution proved the allegation that accused no.8 and his associates viewed the visuals of attack on PW1 at his residence on 15.11.2017?** The contention of prosecution is that accused no.15 brought the visuals to the residence of accused no.8 in a

tablet. Accused no.8 along with his family members viewed it in the presence of PW222. I have already discussed about the contention of prosecution regarding the arrival of accused no.15 to the residence of accused no.8 on 15.11.2017 and related matters. Another aspect to be considered is that in the argument note furnished by the learned Special Public Prosecutor, it is repeatedly stated that accused no.8 obtained the visuals from accused no.1. In page no.1183 of the argument note, the prosecution argued that the image files found in the phone of PW182 were infact prepared using the copy of the memory card handed over by accused no.1 to accused no.8 through Lakshya as confessed by accused no.1. This was claimed to be handed over on 22.02.2017. As far as the allegation regarding the inspection of contents at the residence of accused no.8, it is alleged that the visuals were brought by accused no.15 on 15.11.2017. What is the purpose of bringing those visuals which were already available with them on 15.11.2017 is not seen proved by the prosecution. As I pointed out, as per the prosecution case, the visuals were already in the possession of accused no.8 from 22.02.2017. Moreover, PW222 deposed that all of them were eagerly waiting for

watching the visuals. Apart from that, he deposed that accused no.8 was in a desperate mood on 15.11.2017. All these facts stand against the contention of prosecution that accused no.8 was already in the possession of visuals from 22.02.2017. Admittedly, no evidence is adduced from where accused no.15 secured the visuals. PW261 admitted that the one and only evidence to prove the bringing of visuals by accused no.15 is the oral testimony of PW222. PW222 deposed several matters in connection with the alleged inspection of contents at the residence of accused no.8. He stated about the playing and rewinding of the visuals. He also stated that the voice in the video was amplified at Lal Media. PW261 admitted that no investigation is conducted about this alleged amplifying of voice at Lal Media studio. PW5 is one of the partners of Lal Media. PW261 admitted before the court in evidence that PW5 and all his associates co-operated with the investigation of this case effectively from the very inception. Had this been the situation, PW261 could have been conducted investigation at Lal Media. PW261 admitted about the fact that there is no evidence, either documentary or oral, to prove the alleged enhancement of voice at Lal Media.

821. As I pointed out, the evidence of PW222 is that he was available there on 15.11.2017 throughout from the morning till night. Though he recorded some voice traces, those clips do not contain anything to show the alleged playing and viewing of visuals as claimed by PW222. PW222 deposed before the court to substantiate his presence during the alleged inspection of visuals that he heard some of the words in the video. In Ext.P633 petition, he narrated about the transactions which were taken place in connection with the alleged inspection of the contents. He stated that accused no.15 sat in a Sofa placed against him. Accused no.15 put on the tablet computer. Accused no.8, PW132, PW182 and his brother-in-law gathered around accused no.15. Accused no.8 asked PW222 that whether he wanted to inspect the contents. PW222 asked accused no.8 about the contents. Accused no.8 clearly replied that it is the cruel activities of Pulsar Suni and again invited him to inspect the visuals. PW222 understood that this video is the video involved in this case. He expressed his disinterestedness to watch the video. He had narrated the details of videos including the number of files. He further stated that he heard the word "sorry" in the voice of male and the words

"slowly", "put on the other", "put on the next" in female voice. According to him, they have taken 15 minutes time for watching the visuals. Accused no.15 entrusted the tablet computer with accused no.8 and left there.

822. During his statement u/s.164 Cr.P.C, he made some embellishments regarding this aspect. He also added that he heard the voice of opening and closing the door of a vehicle. These aspects are to be considered in the light of averments in Crl.M.P.No.49/2018, which is marked as Ext.C67 is filed by accused no.8 on 15.01.2018 for getting the copy of the memory card. In the said petition, accused no.8 had made reference about some words claimed to be available in the video. Their contention is that they inspected the visuals on 15.12.2017 as permitted by the learned jurisdictional Magistrate. They have raised the contentions in Ext.C67 based on this inspection. When PW261 was in box, questions were put to him about Crl.M.P.No.49/2018 and the objection filed by prosecution in this petition. PW261 was constrained to admit that the fact that the visuals contain female voice is stated in Ext.C67 for the first time and no such details are mentioned in any of the reports including

Ext.P263 FSL report. Questions were put to PW261 about the availability of the word "ശ്ശോ slowly" in the visuals. He admitted that this particular word is not stated in any of the FSL reports prepared in connection with the examination of visuals. PW261 added that he came to know the availability of this word from the images seen in the phone of PW182. He also stated that he could understand it from the averments in Crl.M.P.No.49/2018 also. He admitted that this word "slowly" is mentioned only in Crl.M.P.No.49/20 and the images available in the phone of PW182. He also admitted that no such word is available in the FSL report. The evidence of PW261 is to be extracted as such for clear understanding of this aspect. **"Crl MP 49/18 ലും, PW 182-ന്റെ phone-ൽ കണ്ട transcript-ലും മാത്രമാണ് 'slowly' എന്ന വാക്ക് കാണുന്നത്. FSL Report-ൽ ഇപ്രകാരം 'slowly' എന്ന വാക്ക് ഇല്ല എന്ന് മനസ്സിലായി. ആയതിനെപ്പറ്റി അന്വേഷിച്ചില്ല. .... PW222-ന് നിങ്ങൾ കൊടുത്ത വിവരങ്ങൾ വെച്ചാണ് Exhbt: P633-ൽ visuals കണ്ടതായി പറയുന്ന ആരോപണവും അത് മാറിയിരുന്ന് കേട്ടതായി പറയുന്ന ആരോപണവും ഉന്നയിച്ചതെന്നും; ആയത് A8-ന്റെ കൈവശം visuals ഉണ്ടെന്ന് വരുത്തിതീർക്കുന്നതിന് നിങ്ങൾ പറഞ്ഞ് കൊടുത്ത്**

പറയിപ്പിച്ചതാണെന്നും പറഞ്ഞാൽ ശരിയല്ല; PW222-ന്റെ വെളിപ്പെടുത്തലിന് ശേഷം അദ്ദേഹത്തെ contact ചെയ്യുന്നതിന് മുമ്പ് തന്നെ മുഖ്യമന്ത്രിക്ക് കൊടുത്ത പരാതിയിൽ ഈ കാര്യത്തെപ്പറ്റി പറയുന്നുണ്ട്. മുഖ്യമന്ത്രിക്ക് കൊടുത്ത പരാതിയിൽ ഈ കാര്യത്തെപ്പറ്റി പറയുന്നുണ്ട്. മുഖ്യമന്ത്രിക്ക് പരാതി കൊടുക്കുന്ന സമയത്ത് Exhbt: P649 & P672-ഉം കോടതിയിലും ഇല്ല. Contents സംബന്ധിച്ച് ആ സമയത്ത് കോടതിയിലുള്ള ഏക രേഖ Crl MP 49/18-ലെ ഹർജി ആണെന്നും, അതിൽ മാത്രമാണ് 'slowly' എന്ന കാര്യം പറഞ്ഞിരിക്കുന്നത് എന്ന് പറഞ്ഞാൽ ശരിയാണ്. നിങ്ങൾക്ക് അറിവുള്ള ഈ കാര്യം പറഞ്ഞ് കൊടുത്തത് പ്രകാരമാണ് PW222 Exhbt: P633-ൽ 'slowly' എന്ന സ്ലീ ശബ്ദം visual play ചെയ്ത സമയത്ത് കേട്ടു എന്ന് പറഞ്ഞിരിക്കുന്നതെന്ന് പറഞ്ഞാൽ ശരിയല്ല;" Witness adds 15.1.18-ൽ Crl MP 49/18 file ചെയ്യുന്നതിനും, 15.12.17-ൽ ആദ്യമായി ദൃശ്യങ്ങൾ A8-ഉം വക്കീലന്മാരും കാണുന്നതിന് മുമ്പാണ് 15.11.17-ൽ A8-ന്റെ വീട്ടിൽ ദൃശ്യങ്ങൾ play ചെയ്തപ്പോൾ PW222 ഈ വാക്ക് ("slowly") കേട്ടു എന്ന് പരാതിയിൽ പറഞ്ഞിരിക്കുന്നത്.

823. Admittedly, the word "slowly" is not available in the visuals of Ext.P262. The case of the prosecution is that accused no.15 brought

the visuals involved in this case to the residence of accused no.8 and all of them viewed it. PW222 heard some of the words available in those visuals. He specifically stated about the hearing of the word "slowly" in female voice. How PW222 could hear the word, which is not available in the visuals is an astonishing fact. Moreover, as admitted by PW261, at the time of filing Ext.P633 complaint, the one and only document available before this court claiming that the visuals contain the word slowly is Crl.M.P.No.49/2018. PW222 had no occasion to come across with the averments or allegations in Ext.C67 Crl.M.P.No.49/2018.

824. Admittedly, the transcript of the visuals contained in Exts.P649 and P672 FSL reports were also not available at the time of filing Ext.P633. PW261 was constrained to admit that Crl.M.P. No.49/2018 is the one and only document available in this case containing the claim that the visuals include the word "slowly". Though PW261 denied the question put to him by the defence that this particular word was included in Ext.P633 as instructed by him, the evidence before the court would show that PW222 had no occasion to get the details of averments in Ext.C67 and it is to be concluded that this particular word is

mentioned in Ext.P633 only on the basis of getting information about the contentions in Ext.C67. This would further show the fabrication of evidence by claiming a fact, which is not available in the video, to substantiate his presence during the alleged playing of visuals. We may say that, had the instruction been provided by the investigating officer, he would have avoided the words which are absent in the visuals. But this possibility is to be viewed based on the prosecution case. Prosecution states that the petition was filed to create a plot suppressing the reaching of visuals to them. They also raised an argument that the petition was prepared on watching the visuals on 15.11.2017 as brought by accused no.15. These words were stated to substantiate this submission.

825. Similarly, PW261 admitted regarding the averment in Ext.P633 that the visuals contain the words "മറ്റേത് on ചെയ്യ്", "അടുത്തത് on ചെയ്യ്" in female voice are not in Ext.P262 visuals. How could PW222 stated these words which are not actually available in the visuals to prove his presence at the residence of accused no.8 while playing those visuals. This would expose the falsity of the claim as well as

evidence of PW222. In the final report dated 22.07.2022 it is stated that accused no.15 illegally collected the visuals and stored those visuals in a tablet computer brought to the residence of accused no.8 on 15.11.2017, played the visuals in the presence of PW222, accused no.8 and his associates, viewed it and thereafter, accused no.15 handed over the said tablet computer to accused no.8. The said tablet computer is not produced before the investigating officer and thereby, he caused disappearance of evidence and committed the offence punishable u/s.201 of IPC accordingly.

826. I have already discussed about the fact that the prosecution did not adduce evidence or conduct investigation from where accused no.15 obtained the visuals. In Ext.P633, PW222 stated that accused no.15, the so-called VIP came to the residence of accused no.8, they viewed the visuals and handed it over to accused no.8. Accused no.15 thereafter left the residence of accused no.8. But in Ext.P483 statement u/s.164 Cr.P.C., one fact is added by PW222 that accused no.8 on receipt of the tablet from accused no.15, handed it over to PW179 Kavya Madhavan. The very same fact is deposed before this court also. In this

context, the fact that though PW261 obtained the warrant to conduct search at the residence of accused no.15, but he did not execute the search is also be considered. He returned the warrant. This fact assumes relevance. PW259, the investigating officer in crime no.6/2022 of Crime Branch, Ernakulam admitted that he conducted search at the residence of accused no.15. The report filed by PW261 on 24.01.2022 for returning the warrant shows that the search was not conducted at the residence of accused no.15 as PW261 was under the impression that there is no chance to get evidence relevant in this case. He also stated that search was conducted in connection with crime no.6/22 and seized the properties. It is true that nothing material is seized as a result of the search conducted in connection with crime no.6/2022. So, it can be seen that no evidence is collected in this search. Moreover, even after the serious nature of allegation, accused no.15 was interrogated at a later point of time only. Further, admittedly, search was conducted at the residence of accused no.8, both at Kottarakadavu and VIP Lane. No such tablet was seized as part of search. The claim of PW222 is that when accused no.15 was available, one of the friends of PW179 along with her brother visited

them. Accused no.8 also joined with them almost for half an hour. Those persons were also not interrogated as did in the case of PW242 Dasan. No investigation is seen conducted regarding the fact that, whether the tablet computer originally belongs to accused no.15 or any other persons. Above all, in the final report dated 22.07.2022, in paragraph no.3, it is stated that accused no.8 somehow collected the visuals in a secret manner and enhanced the voice available with the visuals. The visuals were examined and the voice heard intensively and accordingly they prepared a verbatim containing four pages. The photo of this particular verbatim was captured on 30.12.2017 using the "Honor" phone of PW182 at the residence of accused no.8 at VIP lane and thereafter, this particular image was deleted from the Google photo gallery with the assistance of the lawyers of accused no.8. This statement in the final report also would show the improbability of the contention that accused no.15 brought the visuals in a tablet on 15.11.2017 and accused no.8 and all his associates viewed it in the presence of PW222. PW222 has no case that on 15.11.2017 either accused no.8 or any of his associates prepared the verbatim of visuals. On an evaluation of evidence, it is seen that except

the oral testimony of PW222 that accused no.15 brought the visuals in a tablet computer and entrusted it with accused no.8, no convincing evidence is available before this court to show that a tab as claimed was brought by accused no.15. Above all, the other evidences available before this court would show that the investigating agency did not conduct any investigation either to find out the tab or to verify the claim of PW222 regarding the alleged bringing of tablet computer to the residence of accused no.8. So, it is unsafe to rely on the sole testimony of PW222 to arrive at a finding that accused no.15 brought the tablet computer on 15.11.2017 to the residence of accused no.8 and thereafter, handed it over to accused no.8 and the said tablet was not handed over to the investigating officer and thereby suppressed the evidence.

827. **Whether the images of verbatim statement regarding the contents of visuals involved in this case retrieved from the mobile phone of PW182 be taken as a fact to prove that the visuals were already reached with accused no.8 and they enhanced the voice ?** In the supplementary final report dated 22.07.2022, it is stated that the images of the verbatim of visuals were retrieved from the "Honor" phone of

PW182. It is further stated that the images were captured on 30.12.2017. These images were deleted from the Google photo gallery of PW182 with the assistance of lawyers of accused no.8. The learned Special Public Prosecutor submitted that this evidence is an overwhelming incriminatory evidence against accused no.8. They also contended that the intention of accused no.8 behind filing Ext.C67, Crl.M.P.No.49/2018, before the Judicial First Class Magistrate Court, Angamaly was to create a smoke screen. The learned Special Public Prosecutor also submitted that the examination of contents of visuals on 15.12.2017 by accused no.8 and his lawyers was to ascertain, whether the visuals that had reached accused no.8 earlier were identical to the visuals received by the investigating officer. This act appears to be an attempt to verify the consistency or discrepancies in content, that could either implicate or absolve accused no.8. The prosecution also submitted that it is impossible to prepare the verbatim and also the description of images as found in the phone of PW182 by mere watching the video on 15.12.2017. They also relied on the evidence of PW228 to substantiate this contention. The learned counsel for accused, on the other hand, submitted that a grave, but false

allegation of this nature is raised by the prosecution from their imagination and this contention is not based on any evidence and even contradictory to the evidence available in this case. According to them, though it is claimed that the images were retrieved from the phone of PW182, he was not interrogated about this particular aspect.

828. It is to be noted that, as I pointed out, the learned counsel for accused on 15.01.2018 filed Crl.M.P.No.49/2018 before the Judicial First Class Magistrate Court, Angamaly for a direction to issue cloned copy of Ext.P262 memory card. Before that, admittedly, on 15.12.2017, accused no.8 along with his lawyers verified the contents in the presence of PW228 at the chamber of the learned Magistrate. Another admitted fact is that copy of the memory card was not served to the accused. It is stated that in paragraph no.6 of Ext.C67, that on 15.12.2017, accused no.8 appeared before the committal court, he was furnished with copy of police report dated 22.11.2017. The medical records, FSL reports and the electronic records, which are vital to the prosecution and absolutely essential for the just and fair trial were conspicuously absent in the records served on the petitioner. It is specifically stated in paragraph no.7



that the electronic record in the form of copy of the alleged video footage of the offending act committed by accused no.1 on the body and person of the defacto complainant is a crucial and material record relied on by the prosecution. When the injustice in not serving such a vital piece of evidence relied on by the prosecution was immediately brought to the notice of the committal court, the defence side was allowed to watch the video footage by playing the contents of a pendrive in the laptop made available before the committal court. Headphones were also provided to the counsel and also to the learned Assistant Public Prosecutor, who was also present throughout during these proceedings. In this petition, they have detailed the matters regarding the inspection of visuals. The learned Special Public Prosecutor assailed these proceedings and argued that the inspection of visuals on 15.12.2017 was carried out without any written request submitted to the court for permission to view the visuals and without giving any advance notice to the investigating officer or the learned Special Public Prosecutor. The deliberate omission of such a notice effectively denied the prosecution an opportunity to object. They also gone to the extent of arguing that this clearly reflects the influence

and ability of accused no.8 to orchestrate the proceedings in a manner suited to his interest. What prompted the learned Magistrate to permit such a viewing by accused no.8 and his counsels without any prior intimation to the learned Special Public Prosecutor remains unexplained and unknown to the prosecution. These contentions are found a place in page nos.1168 and 1169 of argument notes filed by the learned Special Public Prosecutor.

829. Before considering the evidence of PW228, Ext.C21 report filed by PW261 before the Judicial First Class Magistrate Court, Angamaly on 11.12.2017 is to be looked into. The present contentions advanced by the learned Special Public Prosecutor is that no notice was given to the learned Special Public Prosecutor and accordingly, denied opportunity for the prosecution to object the inspection of contents on 15.12.2017. This contention is diametrically opposite and contradictory to Ext.C21 report. The supplementary final report was filed on 22.11.2017. In Ext.C21 it is stated that the final report was filed on 22.11.2017. During the course of investigation, the visuals of commission of rape on PW1 copied in a memory card is collected. This memory card



is already produced before the court. If the copy of this memory card containing the nude visuals of PW1 is supplied to the accused persons, that will cause injury, mental agony and trauma to PW1. It is also submitted that there are chances to circulate the visuals through social media. In order to avoid this situation, it is requested to permit the counsels for accused to examine the contents of visuals with the permission of the court. When PW261 was in box, this fact was put to him. He admitted the filing of Ext.C21. But PW261 tried to attribute a different version regarding the contents of Ext.C21. He admitted the filing of report, but he claimed that he requested to permit the accused to inspect the contents with the permission of the trial court during the trial of this case. On hearing this evidence, the learned counsel for accused put another question that he is giving evidence in a manner contradicting the contents of Ext.C21 report. He denied it and stated further that the document is available in the court. A mere perusal of Ext.C21 would show the falsity of the evidence of PW261 in this aspect. It is to be noted that Ext.C21 is filed before the Judicial First Class Magistrate Court. Nothing is stated in Ext.C21 that the request was made for granting

permission to conduct the inspection of visuals only in the trial court during trial. This is yet another instance indicating the way the investigating officer adduced evidence suppressing the actual fact.

830. It is seen that PW261 has given this explanation so as to tally with the contentions of prosecution that the visuals were reached with accused no.8 as claimed by PW222 led to the second further investigation. Moreover, the committal proceedings of the Judicial First Class Magistrate Court, Angamaly in C.P.No.16/2017 would show that on 15.12.2017, accused no.8 appeared before the court, copies were served to him and they were permitted to peruse the contents of pendrive. No objection is seen raised by prosecution against the proceedings took place on 15.12.2017.

831. The case advanced by the learned counsel for accused no.8 is that during this perusal, they have taken down the details of the visuals. They have thereafter prepared it legibly at their office. The copy was given to the accused. When PW182 was in box, the learned Special Public Prosecutor put questions to him about the images. According to him, on 15.12.2017 Advocates Sri B. Raman Pillai, Sri Philip T Varghese and Sri

Sujesh along with accused no.8 inspected the visuals at the Judicial First Class Magistrate Court, Angamaly. On that day evening, he along with accused no.8 went to the office of Adv. B. Raman Pillai. Adv. Philip T Varghese, who prepared the notes during the inspection of the visuals, prepared the details legibly in their presence. According to him, 2-3 hours were taken for preparing those notes. They discussed about the doubts raised about the visuals. Adv. Philip noted down the file names, duration, descriptions and the conversations available in the visuals. After preparing the notes, Adv. Philip read it over to Adv. B. Raman Pillai. The said note was kept with Adv. Philip. Since there will be delay in getting the FSL reports, they prepared the notes on that day itself. PW182 visited Adv. Philip another day. Adv. Philip prepared a note containing the details in English and also the conversations in vernacular language. This was written by DW3 Adv. Ms. Litha. Adv. Philip verified it. A copy was entrusted with PW182 for giving to accused no.8. It was in December itself. He does not remember the exact date when the visuals were given to him. He stated that this was probably happened after a week of inspections of the visuals in the court. Questions were put to him

by the learned Special Public Prosecutor that, he has no direct knowledge about the inspection of visuals and also regarding the preparation of notes by Adv. Philip during the course of such inspection. He admitted that he has no direct knowledge about those facts. He also stated that he was available when the lawyers prepared the final draft. He stated that since the photocopy cannot be obtained, he took a photo of the notes using his mobile phone. His "Honor" phone was used for capturing the visuals. Ext.P468, contents of DD 96/22 was played before the court and PW182 identified the retrieved images as the images which were available in his phone. He also admitted that they also verified the visuals by checking using a vehicle light like MO9 belongs to accused no.15. A question is put to him that, has he deleted those visuals. He replied that he never deleted the visuals intentionally. He also added that he deleted somany files and these files might be included with them. He also stated that DW3 Adv. Ms. Litha wrote the Malayalam version in the images.

832. Coming to the evidence of PW228, the then Assistant Public Prosecutor, who was attached to Judicial First Class Magistrate Court, Angamaly, he admitted that he participated in the proceedings by which

accused no.8 and his lawyers inspected the contents of the visuals at Judicial First Class Magistrate Court, Angamaly. According to him, he had been directed by the learned Magistrate to present during these proceedings and accordingly, he was also available there in his capacity as Assistant Public Prosecutor. He narrated the events which were taken place as part of inspection of contents. According to him, the learned Magistrate gave the laptop of learned Magistrate to him. The pendrive of the visuals was brought through the staff. This was handed over to him. Pendrive was connected to the laptop. The folders were opened. Adv. B. Raman Pillai, Adv. Philip T Varghese and accused no.8 were also present there. He had been asked to show the visuals. Adv. B. Raman Pillai inspected the contents using headset. Thereafter, Adv. Philip also inspected the visuals using headset. Six or eight files were there. He played it two or three times. The voice in one of those clips was not clear and he also used the headset. Advocate B. Raman Pillai verified all files. They have taken one hour for inspection of visuals. A question is put to the Assistant Public Prosecutor by learned Special Public Prosecutor that, whether the lawyers did anything other than the inspection of visuals. He

replied that Adv. Philip was taken down some words. He also stated that Mr. Philip asked him to show the files repeatedly and Adv. Philip verified those files. The pendrive along with the laptop were entrusted with the learned Magistrate. All of them left the chamber together. The learned Special Public Prosecutor during chief examination the images retrieved from the phone of PW182 were shown to the witness. A question is put to him, whether the matters available in these images were copied at the time of inspection of contents. PW228 replied that the files showed him contains file names and details. He also stated that the details of the inspection of each file are seen recorded. He further stated that there is no chance to record these details while inspecting the contents. He changed his version and stated that it is not possible to record the details available in the images. The learned Special Public Prosecutor put a question that what is the reason for his answer. PW228 replied that the images contain the description of visuals, but Mr. Philip asked him for the audio during the inspection. He again stated that these much details were not taken down during the inspection. He again stated that file names were not taken down on 15.12.2017. During cross-examination, he admitted that

he was the Assistant Public Prosecutor appearing in this case before the appointment of learned Special Public Prosecutor. He also admitted that he received notice in the petitions filed by the accused persons. He also admitted that he filed objection before the court. He admitted that he appeared for the State in several occasions in connection with this case. He also admitted that his presence was obtained by the learned Magistrate in his capacity as the Prosecutor representing the State. He further admitted that Ext.C21 report was filed before the court. He admitted that all the files were opened and inspected repeatedly for one hour. He admitted that he has not gone through the notes prepared by Adv. Philip. According to him, on 15.12.2017 only he came to know that the visuals contain female voice also. During re-examination, the learned Special Public Prosecutor elicited through this witness that he is not competent to appear in a case where the Special Public Prosecutor is appointed. But during further cross-examination, he admitted that he appeared for the prosecution in this case, whenever the Special Public Prosecutor is not available.

833. On a perusal of the evidence of PW228, though he stated that the images were not written during the inspection of contents, his evidence lacks clarity. It is to be noted that he earlier deposed that there is no chance for preparing the notes during the examination of contents. He also admitted that the images appears to be containing the details of the inspection of visuals. Then PW228 changed his version that it is impossible to prepare those details. It is to be noted that the reason assigned for this version is that Adv. Philip asked him for the video during the inspection. But, his own evidence will contradict this specific claim that Adv. Philip asked for the audio only. PW228 himself deposed repeatedly that Adv. Philip asked to inspect the contents of visuals repeatedly and accordingly, he viewed it repeatedly. It is also stated they viewed it taking one hour. The claim in re-examination that the datas for preparing the images available in Ext.P468 were not taken down during the inspection of contents is also against his own version. It is seen that he admitted that Adv. Philip had taken down the details during the inspection of the visuals. PW222 has not stated that he verified the script prepared by Adv. Philip while inspecting the contents of the visuals. The

one and only fact noticed by PW228 is that Adv. Philip had taken down the details while verifying the contents. If this be the situation, PW228 is not in a position to say about the matters which were noted by Adv. Philip.

834. The evidence of DW3 is also to be read along with the evidence of PW228. The claim of defence is that after watching the visuals, Adv. Philip prepared a fair copy of the notes prepared by him. Thereafter, the English details were typewritten and Malayalam details were written by DW3, a junior attached to the office of Adv. Philip. The said junior is examined before the court as DW3. When this witness was examined, the learned Special Public Prosecutor objected the examination contending that she is holding vakalat for accused no.8. The learned Special Public Prosecutor also submitted that more competent persons, who have participated in the alleged creation of the original document are still continuing with the vakalat in this case is against the code of conduct. The learned defence counsels replied that DW3 is not holding vakalat for the accused. According to them, she has clear and ample

knowledge about the preparation of the document involved in this case and that was the reason why she is cited as witness.

835. I had considered the objections. It is to be noted that, admittedly, DW3 was not holding vakalat at the time of her examination. It is the claim of the defence that the images found in the phone of PW182 were written by DW3. The contention of the learned Special Public Prosecutor is that more competent persons who participated in the preparation of document is available and hence, DW3 cannot be examined. This contention cannot be accepted considering the nature of contentions that DW3 herself prepared the images. Considering this situation DW3 cannot be treated as a stranger to that document and hence, he is competent to depose about the said document. The learned defence counsel, while making submissions to the objection raised by the learned Special Public Prosecutor contented that the learned Special Public Prosecutor himself had filed joint vakalat for PW1 and it is highly improbable for him to have taken up the engagement as Special Public Prosecutor. They also submitted that the Special Public Prosecutor had been appearing in channel discussions from 2017 February onwards till

he was appointed as Special Public Prosecutor in this case. The learned Special Public Prosecutor submitted that he disclosed the fact of filing Ext.D219 vakalat for PW1 before the Hon'ble High Court in the consent letter to the Government. He also stated that he has no particular interest or animosity to any witnesses. All these matters are in connection with the fairness in conducting this case. This court is not going to answer the said allegation as it is unconnected with the examination of DW3.

836. DW3 deposed that she commenced her practice as a lawyer on 21.05.2006 with Adv. Philip T Varghese. She used to engage in drafting of agreements, plans, written statements and other documents as directed by Adv. Philip. Ext.P670 images were shown to her. She stated that the Malayalam writings in the images were written by her in December 2017. The entire details in the images were typewritten by the typist of their office. She also stated that Advocates Sri B. Raman Pillai, Sri Philip T Varghese along with accused no.8 inspected the contents of visuals at the Judicial First Class Magistrate Court, Angamaly and Adv. Philip prepared the transcript of the visuals. Adv. Philip handed over the said transcript to DW3. She added the Malayalam portions in the fair

transcript. She also stated that the English portions were already available there. The transcript handed over by Adv. Philip was handwritten. After writing the transcript, she returned the original transcript along with the fair transcript to Adv. Philip. PW182 was available there in the office at that time. Adv. Philip obtained a copy of the transcript and handed it over to PW182 for giving to accused no.8. She was cross-examined at length. She reiterated her stand that she wrote the transcript as directed by Adv. Philip. She also stated that the English portions were typewritten by their typist Smt. Liji. The computer used to type those transcript is still available with their office. Some questions were put to her based on the line space. She replied that the line space can be adjusted as per requirement. Another question is put to her, whether she is ready to send her handwriting for forensic examination. She replied that she is even ready to write when she was in the box and her handwriting can be seen and compared. When a suggestion is put to her that Adv. Philip did not prepare any script during the inspection of visuals, she denied it and articulated that she had seen the transcript prepared by Adv. Philip in his own handwriting. Another suggestion is

put to her that the handwriting appears in the images are not of her, but she denied it and reiterated her version regarding the preparation and also regarding the handing over of copy to PW182. According to her, there was no facility for typing Malayalam in their office during that period. Though the learned Special Public Prosecutor tried to discredit DW3, she consistently stated that the Malayalam version in the images were written by her. She had even expressed her readiness to write while adducing evidence before court so as to compare her handwriting. So, it can be concluded that the images contain the handwriting of DW3 and there is no reason to find it otherwise.

837. Another aspect is that the transcript contains the word "ഒശ്ശാ slowly" as stated in Crl.M.P.No.49/2018. As I discussed while considering the description in Ext.P633, this particular word is not actually available in the visuals. This also would probabilise the case of defence that they prepared the transcript during the inspection of visuals. Similarly, the learned defence counsel disputed Ext.P649 FSL report prepared by PW258 contending that she did not compare the narratives available in the image with the actual images. She compared the audio recordings and

the narratives about the audio recordings in the image files. According to them, as the visuals have not been compared with the narration of the visuals in the images, the comparison cannot be held as proper and hence no conclusion is possible with the correct and complete transcript of the visuals. In Ext.P649, PW258 compared voice files with the four image files. It is seen that the narration of the visuals contained in the images are not compared with the images. It is seen further that she received a CD containing 8 numbers of voice files only. These voice files were marked as Q1 to Q8. Q1 to Q8 were compared with the image files, which were marked as Q9 to Q12. The result of examination is shown as the text transcription of clearly audible utterances of Q1 to Q8 and the content of dialogue found in the image files are same. The images retrieved from the phone of PW182 contain the description of visuals also. Those were admittedly not compared with the visuals to see whether the images in the phone of PW182 are the exact replica of the visuals. PW258 clearly deposed before the court that she compared the dialogue in Q9 to Q12. She stated that Q9 to Q12 images were received from Cyber Division in Ext.P668 CD. It is elicited through this witness regarding the differences

between the transcript mentioned in Ext.P649 and the images contained in Ext.P672. It is elicited that in the images marked as Q9 to Q12, the file names are stated in ".mp4", whereas in Q1 to Q8, it is in ".mp3" format. In Ext.P649, PW258 did not mention anything to indicate that there is female voice. She admitted that also. In Q9, after the description regarding Q2 "F" is written in brackets. Based on this, a question is put to her, whether she verified that the said voice is of female or not. She admitted that she didn't confirm it. It is also brought out that there are differences between Q4 and its corresponding image marked as Q10. In Ext.P649 report, the transcription of Q4 contains a word "പിടിക്കരുത്". But, this is absent in Q10 image. Similarly, Q10 image contains the words, "ശ്ശോ", "slowly". But this is absent in Q4 transcript. Similarly, the differences between Q6 and Q11 are also elicited. The very same is in the case of Q12 image and Q7 and Q8. When the differences were put to PW258, she replied that, when spoken language is converted to written language, differences may happen according to the dialect. She herself admitted that in the forwarding note, it is requested to compare Q1 to Q8 with Q9 to Q18 to know whether the dialogues are same. She admitted

that the differences are not mentioned in Ext.P649 report. She also admitted that there is difference in the order of words also. She further admitted that she could not compare the content of images with the content of Q1 to Q8. She again admitted that the finality of examination can be attained only after examining the video files also. Those video files were not furnished to her. She in the first occasion stated that there were internal issues for getting the video file. She changed her version and again deposed that she had been asked to compare the audio files and hence she did not demand for the video files.

838. It is true that vide Ext.P649 the comparison of audio files with the images are done. Even if the differences elicited are discarded, in order to get the exact details about the images, the comparison of video files along with the description of video files are also necessary. Moreover, PW258 had given different versions about the time required for preparing images. The evidence of PW228 also assumes some relevance. As I pointed out earlier, PW228 deposed in chief examination that the images available in the phone of PW182 cannot be prepared while inspecting the contents as Adv. Philip asked him for the audio in

the contents of pendrive. He again stated that the images also contain the description of the visuals. So, it can be seen that, he based on the availability of description of visuals in the images arrived at a conclusion that Adv. Philip did not prepare the transcript at the time of verifying the contents. If this be the situation, the verification of the details regarding the visuals available in the images are also required. Moreover, the evidence of DW3 is also pointing to the preparation as claimed by the defence. Though she may be treated as an interested witness, but her evidence ascertaining her handwriting and also her readiness to furnish handwriting for comparison will outweigh the so-called interestedness.

839. Apart from the evidence of PW258, the evidence of PW192 and PW260 are also to be considered. Ext.P672 is the report prepared by PW260. The nature of examination for Ext.P672 was to provide transcripts of eight video clips present in the memory card in Ext.P603 and also to compare the said transcript with the image files available in the phone of PW182. It is also asked to provide the images of above four image files. Exts.P670 and Ext.P680 reports were prepared by PW192. PW192 examined Ext.P262 memory card and prepared Ext.P263 report.

PW192 deposed before the court that the contents of the image files are same as that of the eight video files in Ext.P262. The learned counsel for accused argued that PW192 intentionally deposed this fact without the support of any materials so as to help the prosecution. It is true that the reports prepared by PW192 do not contain any finding in this regard. He also admitted that he had not been asked to compare these images. In chief examination, PW192 deposed that items 31516 to 31523 of Q4 in DD 96/22 report and item 4048 to 4051 of Q1 in DD 183/22 are one and the same. According to him, hash value is same. The image files were found to be created on 30.12.2017, about 11.38 hours. When a question is put to PW192 regarding the contents of the images, that was objected by the accused claiming that he is incompetent to depose it. It is to be noted that, PW192 prepared the FSL reports after analysing the visuals. So, he is competent to speak about the visuals. Based on the data in Ext.P263 the learned Special Public Prosecutor put questions to him that, whether he could state the image file contains the details of video files. This question is objected by the learned defence counsel stating that Ext.P263 contains only the name of eight video files and time of recording. It does



not contain the details of the contents in the image files. The learned Special Public Prosecutor replied that Ext.P263 contains the file name, time of creation and the images also contain the same details. It is to be noted that Ext.P263 does not contain the details of images. So, he is not competent to mention about the details of the videos other than the file name and related particulars. Moreover, PW192 deposed about the details of file names showing date and time of creation of video files only. According to him, these details appear in the image files are some of the details available in the visuals. He has not stated anything about the description regarding details of visuals available in the images. PW192 also admitted that four image files show the verbatim of the eight video files as well as the description of the visuals in the video files. Further, during cross-examination, a specific question is put to PW192 that, during your forensic analysis in Forensic Science Laboratory, did you compare the eight video files present in Ext.P262 with the contents of the four image files, item nos.4048 to 4051 in Q1 at pages 996 and 997 of "Honor" report of DD 183/22 or these image files found as item nos.31516 to 31523 in pages 93321 and 93322 of report of Q4 of DD

96/22. PW192 answered that, the content present in these image files were not specifically compared with the eight retrieved video files. He added that, but he examined these video files while preparing DD 91/17, ie. Ext.P263. He also stated that it is found that the content present in these image files show the description of eight obscene video files retrieved from the questioned memory card marked Q3 for preparing Ext.P263. Another question is put to him by the learned counsel that, did you at any time do the comparison of video and image files. He replied that, I have not made any forensic comparison of the image files with video files, since it is not requested me while preparing Ext.P263 and Ext.P679. Another question is put to him that, you have not made a forensic analysis of the description contained in image files with the video files to see whether the description in the image files is correct, complete or in the sequence. He answered that, it is not forensically compared, but the visuals as well as audio contents were examined in detail while preparing Ext.P263. He also added that, thus eventhough a forensic examination is not conducted, I can say that the description shown in the image file is the verbatim of eight obscene video files as well

as the description of the visuals in the above eight obscene video files. At the very same time he admitted that, this assertion is not stated in any of the reports as it was not requested in the forwarding note. He further admitted that, he has not made specific forensic comparison of image and video files since it was not requested in the forwarding notes. It is to be noted that pw192 though claimed that the description regarding the videos available in the images are same as that of the videos, he categorically admitted that comparison was not done by him. Moreover, it is to be noted further that the examination of visuals for preparing Ext.P263 was done in 2017 March, the images were retrieved during 2022. The images contain detailed narration regarding the visuals. The narration regarding the visuals of images as seen from Ext.P672 would show that as far as file no.4 is concerned, elaborate details are narrated. Similar is the case of file nos.6 and 8. On a perusal of these details, it is difficult to believe that PW192 could able to correlate the description of videos available in images with the visuals in Ext.P262 even after a gap of five years without examining and comparing it.

840. Another thing to be noticed is that PW192 admitted that Exts.P679 and P680 would show that Q4 of Ext.P680 contains 45454 images. He also admitted that normally it is not easy to verify each and every image files, if it is not specifically instructed in the forwarding note. He further added that, but in this case the file properties of all the four image files are retrieved and some image file was seen in Ext.P679 and Ext.P680. On examining the content, he can very easily identify that it is the verbatim as well as the description of the visuals mentioned in Ext.P263. Even if this version of PW192 is taken into account, it can be seen that he identified the images as the description regarding the visuals involved in this case. But, in this case, considering the nature of allegation raised against the accused that the images were prepared after watching the visuals reached in the hands of accused, a bare identification is not sufficient. A comparison is required to show that the details available in the image files are the replica of the visuals involved in this case. On analyzing the evidence of PW192, he himself admitted that he has not compared the images with the visuals forensically. Moreover, considering the number of image files available in Q4, there will not be any chance to

compare these images alone unless it is requested specifically. Moreover, nothing is mentioned about these image files in Ext.P679 and Ext.P680 reports. Exts.P679 and P680 are prepared according to the forwarding note received in the lab. The nature of examination in the forwarding note was to retrieve all data including deleted. Other questionnaire in the forwarding note also do not contain any special reference with respect to these images. In the absence of any specific query to compare these images, there is no need to make comparison of these images among the total 45484 images available in the phone with the visuals contained in Ext.P262.

841. The case of prosecution that PW182 deleted images also negatived by the evidence of PW192. PW192 deposed that page 93321 to 93322, item No: 31516 to 31523 of Ext.P680 are four image files captured by using Huawei model mobile on 30.12.17 at 11:38 hours and 11:39 hours. He further stated that four of these image files are also found to be stored in Google photos and are found to be deleted. The learned Special Public Prosecutor put a question to PW192 to explain regarding the situation, why the images remained in a different location even after

the deletion from google photos. This question is objected by learned counsel for accused no.8 holding that it is a leading question. The learned Special Public Prosecutor replied that since the witness is an expert, they are bound to explain the details of the image formed in another location of the phone. Though the defence objected it, it is to be noted that prosecution is bound to elicit this fact in order to assist the court in this aspect and hence objection is discarded. PW192 replied that if the mobile phone user has Google account while capturing an image file, it can be stored in the phone memory as well as in the Google account. If the user has given permission to synchronise these two while deleting an image file from Google photo, it will automatically delete the same image from phone memory. If they are not synchronised, separate permission is required, even if the images are deleted from Google photos of image to delete image in the phone memory. In this case, the FSL report would show that these images are available in the phone memory. Considering the evidence of PW192, though the images were deleted from Google memory, no permission is seen given to delete it from phone memory. PW182 also stated that he has not deleted the images intentionally.

842. Ext.P672 would show that the images retrieved from the phone of PW182 were captured on 30.12.2017 from 11:38:35 hours to 11:39:54 hours. Admittedly, the visuals were inspected by the counsels and accused no.8 on 15.12.2017 at the Judicial First Class Magistrate Court, Angamaly in the presence of PW228, then Assistant Public Prosecutor. Though he stated that Adv. Philip did not take down the details of visuals, he admitted that Mr. Philip prepared the description of audio while watching the contents. PW228 has no claim that he verified the note prepared by Adv. Philip. The evidence of DW3 would show that she copied the Malayalam details available in the images as directed by Adv. Philip and also stated that she had seen the note prepared by Adv. Philip. She also stated that the copy of the transcript prepared by her was given to PW182. PW182 also deposed in tune with this. He further stated that he captured the photo of those images. All the evidences discussed above would show that the explanation put forward by the accused regarding the availability of images in the phone of PW182 is tenable and admissible. Moreover, prosecution did not prove the source from where the accused obtained the visuals. In one point of time, they claimed that

accused no.1 handed over the visuals to accused no.8 and in another point of time, they claimed that accused no.15 brought the visuals to the residence of accused no.8. Both these claims also remained unproved for lack of evidence.

843. The learned Special Public Prosecutor in the argument note stated that on 19.12.2019 when accused no.8 and his counsels were permitted to watch the visuals again as per the direction of the Hon'ble Supreme Court in Crl.Appeal.No.1794/2019, they enacted a drama by pretending to take down the transcript in the presence of the trial judge as if they were doing it for the first time even though they had possessed the content atleast as early as on 30.12.2017. They also stated that this exposes the false, belated and unsustainable claim made by accused no.8 and his lawyers that the image files were prepared based on the one hour watching of the video on 15.12.2017. According to them, it further proves that the files were infact prepared using the copy of the memory card handed over by accused no.1 to accused no.8 through Lakshya as confessed by accused no.1. This court had already considered the evidence of PW126, the one and only witness cited by prosecution to

prove the alleged transactions which were taken place in Lakshya on 22.02.2017 in connection with the visit of accused nos.1 and 4. This court has already arrived at a finding that PW126 himself deposed that accused no.4 only came inside Lakshya and nothing is stated about the socalled handing over of memory card. This court has similarly considered the phone call relied on by prosecution between accused no.1 and PW191 as deposed by PW153. Above all, though the prosecution relied on the preparation of notes during the inspection of visuals before this court on 19.12.2019 to resist the claim of accused regarding the preparation of transcript on 30.12.2017, it seems that the prosecution admitted about the preparation of transcript during the inspection of contents on 19.12.2019 also. This inspection was conducted in the presence of the then Special Public Prosecutor PW200 and PW261, the investigating officer. The learned counsel for accused no.8 repeatedly inspected the contents with the assistance of PW192 and PW260. All the arrangements for the inspection of contents were made by prosecution with the assistance of FSL experts. On the basis of the above discussions I hold that the images of description of visuals available in the phone of PW182 is insufficient to

arrive at a conclusion that those were prepared after inspecting the visuals on 15.11.2017 as brought by accused no.15.

844. **Whether the prosecution proved the presence of accused no.8 on 15.11.2017 at his house Padmasarovaram situates at Kottarakadavu, Aluva ?.**

The case of prosecution is that on 14.11.2017 and 15.11.2017, PW222 reached at the residence of accused no.8 situates at Kottarakadavu. The case is that since there was no fruitful and effective discussion on 14.11.2017, PW222 reached there on 15.11.2017 in the morning itself. He left the residence after having dinner. This court has already discussed about his messages to PW182 informing his availability. The learned Special Public Prosecutor had advanced arguments to support the prosecution case under the premises that accused no.8 was available at this particular house throughout on 14.11.2017 and 15.11.2017. The learned defence counsel disputed and denied the presence of accused no.8 at his Kottarakadavu residence during this particular period. According to them, immediately after releasing accused no.8 on bail, he was residing along with the family of PW182 in the residence situates at VIP lane in

Paravur Kavala Junction. It is true that when accused no.8 was in custody, he was released on interim bail for performing religious rituals in connection with the death anniversary of his father. This was performed at this particular residence at Kottarakadavu. The prosecution relied on the photographs retrieved from the mobile phone of accused no.8 tried to establish place as the residence of accused no.8 at Kottarakadavu as claimed by PW222. It is to be noted that PW222 himself deposed that immediately after releasing accused no.8 on bail, on 10.10.2017 he visited accused no.8 at the residence in VIP lane.

845. **The messages allegedly exchanged between PW222, PW132 and PW182:-**

The case of the prosecution is that PW222 was a close associate of accused no.8 and his agents. He was really a caged witness kept under the control of accused no.8 and his associates to carry out their instructions in various illegal activities aimed at manipulating the case in favour of accused no.8 under false promises and with periodical small payments disguising as remuneration for film direction. When PW222 realised the trap set by accused no.8, he decided to reveal the truth and

also put an end to his dream of directing the film "pickpocket" for escaping from his captivity. The prosecution relied on the messages exchanged between PW222 and PW132, PW222 and PW182 to prove his association with accused no.8 and also to prove the alleged illegal activities of accused no.8, and his associates executed through PW222 for getting bail. The prosecution also argued that accused no.8 and his associates after the dismissal of second bail application conducted detailed research to identify persons through whom they could attempt to influence the judges hearing the bail application. As part of this attempt they invited PW222 for meeting accused no.8, who was in Sub Jail, Aluva on 13.09.2017. They paid him Rs.50,000/- and also assured that the works of the film will be commenced within six months of release of accused no.8 from jail. Even after getting bail, they maintained close relationship with PW222. PW222 himself terminated this relationship during the second week of April 2021 after realising the trap of accused no.8 and his associates. The prosecution relying on the messages and tried to prove these aspects.

846. The learned defence counsel, on the other hand, contended that the messages claimed to be produced before this court are not the messages exchanged between the parties as claimed by prosecution. According to the accused, mere perusal of the document itself would show that the document is a strange compilation, and the creation, preservation and the contents of the document will expose duplicity of PW222, his capacity to create false evidence and also his attempt to extract money.

847. It is to be noted that during chief examination of PW222, Annexure -5 of DD74/22 marked as Ext.P678(a) is played before the court. Annexure -5 contains the data retrieved from Q2 Apple make iPhone belongs to PW222. The said phone is marked as Ext.P484. Ext.P484 was seized on the strength of Ext.P485 mahazar prepared by PW261 on 03.01.2022. It is seen that PW222 produced the said phone before the investigating officer on that day by 6.30 p.m at Police Club, Aluva. PW222 deposed that the data in Ext.P485(a) includes the backup copy of chat between himself and PW132 and PW182. According to him, he kept this backup copy since 2017 onwards. Though in the chief

examination, the details of messages were not elicited, the learned counsel for accused elicited the contents of those messages. Relying on the messages they tried to establish that PW222 is not a reliable witness. It is to be noted that the messages allegedly exchanged between PW222 and PW132 is seen in Ext.P678(a) as a PDF document with the title "Total messages of Anoop and Suraj". This was seen under the folder "documents". Similarly, another chat is also seen with the title "Conversation with District Judge Sreekala Sureesh". On a bare perusal of this document would show that the name of PW222 is absent as it appears in the WhatsApp chats normally. The claim of PW222 is that what is available before the court is the backup copy of chats. PW192 is the person who prepared Ext.P678. PW192 deposed that the UFED generated screen shot report of Ext.P484 mobile phone contains 19 screen shots of chat details. During examination PW192 opened the data retrieved from Ext.P484. Documents folder is opened. He also opened PDF file named "Total Messages of Anoop and Suraj". He deposed that this is a complied PDF file prepared by compiling multiple files. He also stated that some of the included files were found to be prepared by

selective export of chats by an application named Copy Trans Contacts. According to him, by using these applications, selective chats can export into documents. He had given the details of files also. Some of the messages were elicited through this witness. PW192 admitted that the creation time of this document is not available. According to him, it shows only the modified date. He also deposed that it is not mentioned in the report that the said file is created in Ext.P484 mobile phone. He further stated that it is not possible to say which mobile phone is used for this particular chat. He also admitted that Ext.P678 report does not contain any reference about the total messages of Anoop and Suraj or the details about it as he has stated in the chief examination. He added that soft copy is enclosed along with the report. According to him, in chief examination, he stated in tune with the questions put to him and hence, he referred to certain portions of the content only. He admitted that the entire fifteen sections of the PDF files are created using Copy Trans Contact application. He also admitted that he is not able to say whether the fifteen different sections in the document were created at different times or at the same time. He again admitted that he cannot say the

software used for compiling multiple PDF files into single file. He admitted that the compilation of these sections to a single PDF file is being commonly done using Windows operating system. He further stated that Copy Trans Contact applications enabling copying, editing and transferring of contents. During his examination the learned counsel for accused elicited that the first page of the first section contains the heading "conversation with Anoop (Dileep) Producer". In the left side of the pages of this section, name and the phone number "Anoop (+9198-95-377775)" is shown. According to him, this name is different from the section heading. He also added that this title may be given by the user and normally, this may not be part of the chat. He also admitted that the the directory reveals that the folder names were created by the user. He also admitted that the drive may be a pendrive in which folders as shown in the Directory may be present. He admitted that in this case a computer was found to be used. According to him, the user can create this document in the computer and then copied into this pendrive or he can create this document directly in the pendrive. Similarly, he deposed that the template shown in page 72 indicates the path in the computer

system in which the App is installed. He also admitted that Normal '.dotm' may be the default template file for Microsoft Word. He also admitted that if the heading of this section had been system created, it could not have shown the present heading. He again admitted that nowhere in this section or anywhere in the 373 pages, the name of the user nor anything indicating the identity of the person is shown as regards the number +9194-96-994181. He further admitted that in page no.156 summary is available after the fifth section. The directory indicates the use of a desktop computer system. He also admitted that merged WhatsApp indicates compiling multiple WhatsApp chats into single form and Copy Trans Contact application can be used for it. According to him, in page 263 unlike the summaries contained before, file name is included. The file name is Suraj (Dileep's Brother-in-law). According to him, the directory is found to be the same; but the folder used is different. In this the total editing time for the document is shown as 12 minutes. Somany facts like the above were elicited through PW192. According to PW192, the third section in page numbers 115 to 117 are not most probably prepared by Copy Trans Contact method. The evidence of

PW192 contradicts and nullify the claim of PW222 that the above is the backup copy of chats.

848. Another aspect to be considered is that the FSL examination of Ext.P484 mobile phone of PW222 did not effect retrieval of data from it. This would clearly show that the materials available before this court termed as the backup copy chats are edited one. As I pointed out, Ext.P484 mobile phone seized by PW261 on the strength of Ext.P485 mahazar, it would show that he examined the mobile phone including the chats at the time of seizure. During examination PW261 admitted that he examined Ext.P484 phone in detail at the time of seizure. He also stated that he examined the WhatsApp chats of PW222 with accused no.8. A question is put to him, whether he examined the WhatsApp chats of PW222 with PW182. According to him, he is not able to recollect. This question is repeated and put to him again. He replied that those were not seen. He also added that these particular chats were not available in the WhatsApp folder, but saved separately. He admitted further that this fact is not stated by PW222. He could get information about this only after receiving FSL report. He further admitted that after receiving FSL

report, he interrogated PW222 about some messages which he treated as important. At the very same time, PW261 admitted that even at that time he has not asked anything about the said special folder created by PW222. But PW222 deposed before court that he informed this to the police. PW261 is duty bound to investigate about this atleast after the receipt of FSL report. Why this particular aspect was not investigated is not seen explained, especially when prosecution placed much reliance on these messages.

849. The evidence of PW222 is that he sent a message to Sri Suresh Sivapuram stating that accused no.8 betrayed him. PW222 added that he shared his grief in connection with the hurdles in commencing the film with Sri Suresh Sivapuram. This message is seen exchanged on 20.10.2017. Sri Suresh Sivapuram sent reply stating that he will have to pay for it. The mobile number 9946755123 is seen in the name of Sri Suresh Sivapuram. PW222 added that he saved his number in the name of district judge Smt. Sreekala Suresh. According to him, the name of Sri Suresh Sivapuram might be saved in any of the social media space or true caller application. He stated that he contacted Smt. Sreekala Suresh

through this number. He admitted that he contacted Sri Suresh and Smt. Sreekala Suresh through WhatsApp. A question is put to him, whether any long conversations with them during 2021. He denied the fact that there was long conversation. He further admitted that they used to contact each other. He also admitted that there were conversations for more than one hour. He contacted Smt. Sreekala Suresh on several occasions. He received a call from the mobile number 9946755123 on 26.12.2021 having a duration of 1698 seconds. This was on the next day of his revelation through media. A question is put to him, whether they asked about the disclosure. He denied it. A suggestion is put to him that ADGP Sri S. Sreejith, PW222 himself and Smt. Sreekala Suresh had taken a decision to disclose the matters and accordingly he made revelation through the channel of Nikeshkumar PW67. He denied it. A question is put to him about the calls to this number in two occasions during November 2021. He replied that he does not remember as there were several calls between them. He also admitted that there was contact between them through WhatsApp also. PW222 explained that their acquaintance commenced since 2004 and they used to share matters

casually. A suggestion is put to him by the learned counsel that Mr Sreejith also contacted him on several occasions through this number. He denied it. He admitted his contacts with Mr Nikesh Kumar and Roshipal also. He also admitted that he has not contacted Smt. Sreekala Suresh after 1698 seconds call on 26.12.2021. According to him, he does not want to trouble her. His CDR would show that S.I Kanjiramkulam also contacted him. The SHO Poovar also contacted him for eleven times in between 05.08.2021 and 06.08.2021. PW222 claimed that he filed some complaints against his relative. PW261 deposed before the court that he came across with the messages sent between PW222 and Smt. Sreekala Suresh and Sri Suresh. But he claimed surreptitiously that this would show the relationship between accused no.8 and PW222 and hence he did not conduct any investigation about these messages. A question is put to him that has he informed about this message to the head of the Special Investigation Team Mr Sreejith IPS. He deposed that he did not inform Mr Sreejith about these matters. At the very same time, he deposed that he discussed these matters with other senior officers of Special Investigation Team. This explanation also appears to be untenable.

Another question is put to him, whether PW222 and Smt. Sreekala Suresh started to send messages and make calls again from 07.05.2021. PW261 replied that he does not come across with this. At the very same time, he admitted that he verified the CDR of PW222. According to him, he verified only the numbers which are relevant for this case. This also cannot be taken as a reasonable explanation, especially in the light of messages available in Ext.P678(a) between PW222, Sri Suresh and Smt. Sreekala Suresh and also considering their relationship with the head of the Special Investigation Team Sri Sreejith IPS. Moreover it is highly unbelievable that the Investigating Officer verified the CDR in a pick and choose manner. If the verification was done in the manner as claimed by him that also to be treated as a one sided and biased verification.

850. PW261 admitted that he has not interrogated PW222 about the messages allegedly sent to PW182 referring the District Judge Sreekala Suresh or the Bishop of Neyyattinkara. PW261 also admitted that he did not interrogate either PW132 or PW182 with respect to these messages. PW132 and PW182 are also competent to say about the messages. PW192 admitted that the documents titled "Total messages of

Anoop and Suraj" has been created using multiple electronic devices applications and tools. He clarified it saying that this complete document is prepared by editing and compiling multiple documents. It is to be noted that this answer is elicited through PW192 during cross examination by putting several questions. Another question is put to him that, has he conducted any forensic analysis to ascertain what all editing has been taken place for the creation of the document and when that has taken place. PW192 deposed that specific analysis is not done as it is not requested in the forwarding note. Another question is put to him specifically that, when you stated in chief examination that forged backdated chats or timestamps cannot be created, is it not correct that it had reference only to chats that had been retrieved as chats itself in the forensic examination ? He replied that it is true with respect to the chats that had been retrieved from mobile devices either by chat capture method or direct retrieval of chats. He also stated that, what I said is that in a mobile phone we cannot artificially create fake chats with earlier date and time. He also admitted that this assertion is not applicable for a document file. The learned defence counsel put another question that,

he has not disclosed this in his chief examination and on the other facts he stated about impossibility to create backdated messages and timestamps in the context of this document. PW192 replied that what he said is the general statement. The evidence of PW192, the one and only witness relied on mainly by prosecution to prove this aspect involved in this case categorically stated that the document titled "Total messages of Anoop and Suraj" is not a system generated one. He also stated repeatedly that this document is a compiled, edited and merged file with the aid of external devices and applications. So, by relying on the evidence of PW192 it can be concluded that this particular chat looses its evidentiary value.

851. When PW182 is in the box, learned Special Public Prosecutor put questions to him referring Ext.P678(a) messages retrieved from Ext.P484 mobile phone. PW182 admitted some of the messages. But, at the very same time, claimed that editing is also effected in the said document. He also stated that the WhatsApp chat will not normally appear in the manner as seen in the documents produced before the court. The title "messages of Anoop and Suraj" would show that the first

message was on 15.08.2017 from PW222 to PW182. Similarly, as far as the message to PW132 is also concerned, it is PW222 who sent message to him on 15.08.2017. On a perusal of the messages, it is seen that PW222 expressed his concern and anguish as accused no.8 is in jail. He also expressed his optimistic thought that accused no.8 will be granted bail while considering his second bail application. He also informed his efforts by offering prayers in the churches, temples and mosques for getting bail to accused no.8. PW222 also sought financial assistance for the building fund of one of such churches. In addition to that, PW222 stated that accused no.8 will return in full strength and charm. According to him, the people have realised about the truth. Not only PW222, his wife also offered prayers in various churches for getting bail to accused no.8.

852. The interesting aspect is that the learned Special Public Prosecutor in argument note, page 1153 stated specifically that after the arrest of accused no.8 on 10.07.2017, PW222 lost all hope in the film project and decided to return home winding up all project activities. Whileso, one of the members of the Special Investigation Team, PW199 Mr. Chrispin Sam called PW222 and enquired about his relationship with

accused no.8. PW222 informed him that he was the Director of accused no.8's upcoming film. PW222 then contacted Mr. Roshan Chittoor, a close associate of accused no.8. Mr. Roshan Chittoor scolded PW222 for making the call. Mr. Roshan Chittoor also alerted him for not disclosing the fact of seeing accused no.1 at the residence of accused no.8 on 26.12.2016. Moreover, the prosecution case is that on 16.04.2017, when PW222 met accused no.8 inside the caravan at the shooting location of the movie "Professor Dinkan", he enquired him and discussed with accused no.8 about the presence of accused no.1 at the residence of accused no.8 on 26.12.2016. It is to be noted that the messages are seen sent from 15.08.2017 offering his assistance for getting bail for accused no.8. In those messages, he expressed his confidence that accused no.8 is innocent. Had a person who came across with the involvement of accused no.8, especially his association with accused no.1 could not have expressed that accused no.8 is innocent. Moreover, in addition to that, PW222 also stated that even the people have realised the truth. These cntentions are are mutually exclusive and contradictory and sufficient enough to show that PW222 is not a reliable person.

853. The messages allegedly sent on the succeeding dates would also show his attempts and initiatives for getting bail. He had gone to the extent of stating that he furnished the bail application of accused no.8 to nearly fifteen advocates, four district judges and one retired High Court Chief Justice. He also have had detailed discussions with them. All of them apprised him that accused no.8 would be released on bail. When before the court, PW222 offered another explanation about these messages, he claimed that he had discussed with one district judge. It is seen that in several messages, PW222 claimed that he had discussion with one district judge, who is the sister of Mr. Sreejith IPS. He also stated in one of the such messages that husband of that district judge intends to inform some important matters. Another message would show that the brother-in-law of Mr. Sreejith IPS contacted him and informed that bail will be granted in the next posting. In the messages, he used the term "Thalassery" to represent this particular district judge. Similarly, he used “ST” to refer the Hon'ble Judge who granted bail to accused no.8. He also used the term “Angamaly” to refer the committal Magistrate. When PW261 was in the box, he admitted about the reference “ST” and

"Angamaly". But, he denied and pretended ignorance about the reference "Thalassery". This denial also would show that PW222 is not a reliable witness. According to PW261, he did not conduct any investigation about this reference. The fact to be considered is that, even on a bare perusal of the entire messages produced before the court, a person can understand easily about this reference "Thalassery". But PW261 pretended ignorance about this reference.

854. Similarly, another claim of PW222 is that he visited accused no.8 at Sub Jail, Aluva as requested by PW182. According to him, he could visit accused no.8 as the permission was obtained by PW132 and PW182. But the messages would show that PW222 claimed to obtain permission from the Office of Chief Minister to visit accused no.8. According to him, two CPM MLAs are his friends. He also claimed that another MLA was his fellow student. He obtained permission through them. Another message would show that PW222 had given detailed counter arguments to show that the prosecution allegations against accused no.8 are fabricated. He also stated about the conditions that would be imposed in the event of granting bail to accused no.8. PW222

sent messages to convince his efforts to track the investigation in favour of accused no.8. According to him, he contacted Mr. Koliakode N. Krishnan Nair to change the investigating team or to make sure that the prosecution supports for granting bail to accused no.8. According to him, Mr. Koliakode N. Krishnan Nair is the person who is the close associate of the Chief Minister. In the message dated 30.08.2017, PW222 claimed that he tried to open a new route through VHP via Chennai. He also claimed that his operation via Trivandrum is likely to be successful. According to him, the intervention of Deputy Chief Minister of Tamil Nadu, Mr. O. Panneerselvam and the intervention of then Kerala Governor also secured. The message would show that, according to PW222, then Kerala Governor, Justice P. Sathasivam helped Mr. Amit Shah, the Union Home Minister to avoid life imprisonment and as part of his gratitude, Mr. Justice P. Sathasivam was given the post of Kerala Governor. He also referred to then Director General of Prosecution Adv. Manjery Sreedharan Nair as the close friend of Governor. PW222 sent messages stating the intervention of Mammootty, Suresh Kumar, Kamal Haasan, Jayaram, Anaavoor Nagappan, Koliakode N. Krishnan Nair,

Mr Saravanan, classmate of son-in-law of the then Deputy Chief Minister of Tamil Nadu Mr. O. Panneerselvam to change the investigating team. He also stated about his intervention for the help of Bishop Neyyattinkara for securing the bail. The message dated 14.09.2017 would show that "Thalassery" will call “Angamaly” after court hours. This message is sent at the time when the statutory bail application of accused no.8 was pending before the Judicial First Class Magistrate Court, Angamaly. He also sent messages claiming that "Thalassery" instructed him about the chances of getting bail. He also informed that he can arrange meeting with PW182 and "Thalassery". In the message dated 17.09.2017, PW222 informed that "Thalassery" had spoken to “ST” and finalised the deal. He also sought confirmation about the judge who will consider the bail application. PW222 also sent images of screen shots of Adv. Philip Mathew, son-in-law of Mr.Justice J.B Koshy, G.P Jayakrishnan, Sub Judge Attingal and District Judge Sreekala Suresh and claimed that he is in regular contact with all of them. He further stated that Bishop will be coming back on 12.09.2017 and the next day he will be with the Bishop and all arrangements have been made. He had also

gone to the extent of claiming that his father-in-law and the Bishop have personal relationship. They have drinks together. His father-in-law will convince the Bishop about the innocence of accused no.8. According to PW222, his father-in-law will inform the Bishop about the plan of PW222 to have movie with accused no.8. He also stated that the Sub Judge Jayakrishnan is the Joint Law Secretary on deputation. In his capacity as Joint Law Secretary, will speak to "Manjery". He also stated that "Attingal" will go to Ernakulam that night and the expenses for that have to be met. Another message would show that the Secretary of Bishop along with Fr. Victor will proceed from Neyyattinkara at 5 a.m on 29.07.2017 to Ernakulam. According to PW222, Bishop will sent his phone through them and instruct 'ST'. He also stated that Bishop told that we will grab it from him. After getting bail to accused no.8 PW222 sent messages in a convincing manner that bail got because of his efforts. He demanded money for paying the persons who assisted to obtain bail. He sent messages referring quotes from Bible claimed to be sent by Bishop on getting information about the bail. He also claimed that 'ST' has granted bail only because of the intervention of "Neyyattinkara" and

the necessity for making payments to them. On 18.10.17, PW222 again sent message claiming that he has informed very little of his efforts did by him for getting bail. According to him, he was compelled to make blind offers to save persons with the sole intention of getting bail. He sent a list of persons to whom the payments are to be made. He claimed that Bishop himself demanded money for himself and also for the judge. The learned Special Public Prosecutor submitted that the family members and associates of accused no.8 sought the assistance of PW222 for the help of Bishop in connection with the bail. He also submitted that PW132 contacted PW222 immediately after getting bail. The messages would show that PW222 could able to convince that he made all efforts to secure bail. Considering this situation the call from PW132 is to be taken as an act of expressing gratitude to a person who helped them during the time of distress.

855. It is to be noted that, as I pointed out, the first message was seen sent by PW222 stating about the efforts for getting bail for accused no.8. The messages produced before this court has nothing to do with the points involved in this case. The messages and the relevant matters

are considered to arrive at a finding regarding the reliability of the evidence of PW222 and his nature. As I pointed out, a person who had clear knowledge about the involvement of accused no.8 in this case and also about his close association with accused no.1 sent messages praising accused no.8 and also claimed that accused no.8 is innocent. He also sent messages claiming his attempts for securing bail to accused no.8. The messages would show that PW222 has close association with the family members of ADGP Sri S. Sreejith. Ext.P632 is the order dated 06.01.2022 issued by the DGP and State Police Chief, Kerala. The subject is shown as strengthening the Special Investigation Team by incorporating additional members for assisting in the investigation of Crime No.297/2017 of Nedumbassery Police Station and ratification of action taken by the investigating officer. In the references, reference no.5 is shown as letter dated 06.01.2022 of ADGP (Crime Branch). It is mentioned in Ext.P632 that, as per the letter read 5th above, the ADGP, Crime Branch has reported that the case is now under trial before the Hon'ble Additional Special Sessions Court, (SPE/CBI - III), Ernakulam and requested to include some additional members in the 'Special

Investigation Team', constituted vide paper read 4th above, for assisting the prosecution of the above case. In the above circumstances, the following Police Officers are hereby additionally included in the 'Special Investigation Team' for conducting the investigation of the case. Mr. S Sreejith IPS, ADGP (Crime Branch) is included in the Special Investigation Team along with three other members. This request is seen made by Mr. S Sreejith IPS himself.

856. It is to be noted that this court has already discussed about the claim of PW222 regarding the circumstances prompted him to file Ext.P633 and its falsity. This messages sent by PW222 to accused no.8 during April, 2021 are also to be looked into in this context. On 09.04.2021 he sent message to accused no.8 informing that the messages should not be treated as simple. He wants to inform him some matters in connection with the case. He is not able to inform it over phone. He is also not in a position to come over to meet accused no.8. He also asked to send either PW132 or PW182 to meet him before 14.04.2021. He also asked to send any other persons associated with accused no.8 closely to his residence. He sent message as a warning that in case nobody is sent

before 14th, that would invite more dangerous situations for accused no.8. According to him, that will go to the extent of cancelling the bail of accused no.8. He asked them to treat the issues seriously. He also sent the location to reach his residence. Thereafter, accused no.8 contacted him. Then PW222 sent another message that he will not speak through phone. He says further that, if Dileep sir comes that is the best because this is only your life ... If there is a problem again in your life no one will be with you sir … Only after that you will know the value of the message sent by Balu .. I am holding your foot ... I have nothing else to say". The messages would further show that accused no.8 sent message to PW222 on 11.04.2021 informing his availability at Trivandrum. On 14.04.2021 another message was sent informing that he spoke to Raphi sir and informed that he was withdrawing from the movie "Pickpocket". The contact was blocked thereafter by accused no.8. Moreover the attachments produced along with Ext.P633 to show the transactions of 09.04.2021 are in a piecemeal manner without disclosing the entire communications. Nothing is revealed by PW222 in Ext.P633 about the

communication on 10.04.2021, 11.04.2021 and 12.04.2021. The video clippings sent on 13.04.2021 would show the attitude of PW222.

857. As I pointed out, PW222 tried to contact several media persons claiming that he has to disclose matters in connection with this case relate with accused no.8. He thereafter filed Ext.P633. He made revelations on 25.12.2021 through media. In the meantime there is communication between the family members of ADGP Mr. S Sreejith and PW222. Registration of crime no.6/2022 was on the basis of complaint by PW261 to ADGP Mr. S Sreejith. This crime was registered on 09.01.2022. The evidence of PW261 that he did not verify the messages and also did not investigate about the reference "Thalassery" and his ignorance is to be considered in the backdrop of these events. Ext.P484 was seized on 03.01.2022 on the strength of Ext.P485 mahazar. This was sent for FSL examination and Ext.P678(a) message were retrieved and report prepared on 05.03.2022. It is hard to believe that PW261 who verified the entire message did not conduct any investigation about the person who is referred to as "Thalassery". As I pointed out, there is clear indication in the message to know about this person. Above

all, the heading of the message produced before this court includes conversation with district judge Smt. Sreekala Suresh. So, it can be seen that the attempt of PW261 is to suppress the actual fact about the reference.

858. PW261 deposed before the court that he did not interrogate either Smt. Sreekala Suresh or Sri Suresh Sivapuram. He also stated that he did not interrogate Saluja, Fr. Shyjudas, Neyyattinkara Bishop, the persons claimed by PW222 in his messages. PW261 also admitted that even though he had seen messages of PW222 stating the influence over the judge who granted bail to accused no.8, no investigation is conducted in this matter. PW261 also admitted that he did not interrogate either PW222 or PW138 and PW182 about these messages contained in Ext.P678(a). The records would show that several statements of PW222 was recorded after Ext.P678(a). Had there been proper investigation the falsity claim of PW222 would have been exposed.

859. The evidence of PW222 would show that he used several mobile phones including the mobile phone of his wife and son. Another mobile phone is also available with him for using at his residence.

Ext.P484 is the mobile phone produced by PW222 before PW261 on 03.01.2022. This was seized on the strength of Ext.P485 mahazar. Ext.P556 is the CDR with respect to 9496994181 for the period from 01.02.2021 to 28.02.2022. Ext.P491 series is the customer application form of this number. Ext.P536 is the CDR of the mobile number 8281450407 used at his residence. Ext.P492 is the customer application form of this number. The tower location of these numbers are not produced. Ext.P490 series customer application form of the land phone number 0471-2264181 is produced. The CDR of this number is not produced. On a perusal of Ext.P536 CDR of 8281450407 would show that the SIM was inserted in a mobile phone with IMEI number 86973702396508. This mobile number is not produced before the court. It is to be noted that Ext.P468 FSL report, the data retrieved from Q2 Vivo phone of accused no.8 would show that PW222 sent voice clips through WhastApp to accused no.8 on 14.11.2021 using this number. It is to be further noted that the message on 14.11.2021 assumes importance as it was seen exchanged just before the filing of Ext.P633 complaint. Moreover, this was sent after accused no.8 blocked his contact. The

details of WhatsApp chats and other communications can be retrieved only on the examination of device. The learned counsel for accused no.8 contended that PW261 did not conduct investigation about the other devices for suppressing the evidence. A question is put to PW261. He admitted that he did not interrogate PW222 about this number or handset. PW222 deposed before the court that he used the mobile phones of his son and wife. The CDRs of these numbers are also assume relevance considering the evidence of PW222 that he used the number of his son Pankaj Krishna to contact accused no.8, PW132 and PW182 through WhatsApp after his number was blocked in April 2021. Ext.P468 would show that PW222 sent voice clips to accused no.8 and PW182 on 07.11.2021 through WhatsApp using this number. So, this number and contacts made through it also assumes relevance. PW222 has no case that the phone in which this particular SIM is used was not available with him. The forensic examination of the handset and also the CDR ought to have been produced before this court in the light of available evidence that PW222 used these numbers for contacting accused no.8 or his associates.

860. Coming to the seizure of Ext.P484, it is seen that though this phone was seized on 03.01.2022, this was produced before the court after a considerable delay. Ext.P678 is the FSL report prepared after examining Ext.P484 phone. Ext.P678(a) contains the datas extracted from this mobile phone. The learned counsel for accused contended that selective extraction of data was conducted by PW192. Admittedly, contacts, WhatsApp messages, etc. have not been extracted from Ext.P484. PW192 deposed that WhatsApp, chats, call logs, contacts, instant messages, native messages, cookies, network usages, wireless networks, searched items, web history, user accounts, passwords, calendar, E-mails, devices, device connectivity etc. could not be extracted as it does not support physical extraction method. According to him, logical extraction method was used. This explanation of PW192 does not find a place in Ext.P678. Similarly, 19 screenshot images were taken from Q2 mobile. The mobile numbers used for creating these chats is not seen. According to him, screen capture method alone is possible for this purpose. But this is also not mentioned in Ext.P678. According to PW192, the timeline information shows that Ext.P484 mobile was used

from 6.3.2011 till 10.12.2020. It is seen that this mobile was seen in several other activities even after 10.12.2020. But, the activities after 10.12.2020 are not available in Ext.P678 report. Similarly, the analysis of Q2 SIM shows only 24 emergency and standard contacts. No user call logs or SMS are seen in it. The contacts reflects in Ext.P586 CDR are not seen in the report. PW192 stated that modern phones do not store SIM contacts/call logs. But, the device support details in the XRY report shows that XRY fully support contacts, calls, calendar, SMS etc. and partially support e-mails. According to PW192, if it is supported fully, complete extraction is possible and partial support means partial data extraction. PW192 assigned reason for this non extraction claiming that it is due to multiple reasons like file type encryption, partition encryption, hiding information etc. But this is also not mentioned in Ext.P678 report. Relying on the XRY report, the learned counsel for accused contended that the location details available would show that Q2 phone appears in Trivandrum and Ernakulam within 2 minutes. Similarly, it is available in Delhi and Chennai within 1 second. PW192 tried to explain this stating that the latitude and longitude represent the location of the device, which

originally created the image. It is to be noted that this explanation contradicts his own claim. He claimed that no individual analyses of these anomalies were made. The evidence of PW192 is that 1316 applications were found installed in Ext.P484. He also admitted that sound-record-effects, call recorder, screen recorder with audio and video, ie. "clean-up 360" installed in Ext.P484 are not mentioned in Ext.P678 report. PW222 deposed that his phone contains 4000 contacts stored in iCloud account and he provided the iCloud ID and password to the investigating officer. But this was not furnished at the time of forwarding the phone for forensic examination. PW192 stated that extraction of iCloud data is possible using UFED only if the cloud account is not protected. In the report nothing is mentioned, whether iCloud of Ext.P484 was protected or not. Similarly, why the said data could not be extracted is also not mentioned. The learned counsel for accused relying on Ext.P680 FSL report of the mobile phone of accused no.8 submitted that it is mentioned in the said report that the data could not be extracted for lack of the iCloud password. Why the iCloud password of Ext.P484 was not furnished is also to be considered. The non examination of datas

stored in iCloud assumes relevance considering the non extraction of data like call log, contacts, chats etc. Moreover, the WhatsApp chats relied on by prosecution allegedly exchanged between PW222, PW138 and PW182 are also not extracted from Ext.P484. No explanation is given by the prosecution about the non examination of Ext.P484 so as to extract the entire datas. The above discussions would show that the messages relied on by prosecution lacks credibility.

861. **The meeting allegedly held between PW222 and accused no.8 on 16.04.2017 at the shooting location of the movie Professor Dinkan.**

The prosecution allegation is that on 16.04.2017 PW222 reached the shooting location of the movie Professor Dinkan and met accused no.8 inside the caravan. According to PW222, he reached at the location in the morning with his family. When he met accused no.8, he discussed with accused no.8 about this case and also about the presence of accused no.1 at the house of accused no.8 on 26.12.2016. It is to be noted that this allegation is made after the revelation of PW222. In Ext.P633 also PW222 stated about this meeting. But the date of meeting is stated as 15.04.2017. The prosecution alleges that when PW222 asked accused no.8 about the

matters in connection with this case, he tried immediately to change the subject of conversation. Accused no.8 informed PW222 about the arrangement with Director Sachi for the proposed movie of PW222. The learned defence counsel, relying on the date mentioned in Ext.P633, argued that since the story itself is a fabricated one, PW222 claimed that he met accused no.8 on 15.04.2017. This was changed while recording his statement u/s.161 Cr.P.C on 01.01.2022 at the instance of PW261. According to them, PW261 had clear knowledge about the non-availability of accused no.8 at Trivandrum on 15.04.2017 and hence the date is changed and this is put to PW222. He stated that it is only a mistake as the incidents were taken place long back.

862. As I pointed out, PW222 deposed that he arrived at the location in the morning with his family. Ext.P279(a) report data retrieved from Q25A mobile phone of accused no.8 would show the messages from PW222 on the evening of 16.04.2017. PW222 sent messages requesting to have a meeting with accused no.8. No reply was issued to this. Item No.2213 in page 7505 of Ext.P279(a) would show that their message read as follows. "Respected sir, Can you give me a meeting in the evening? I

am on my way to Trivandram from Punalur... will be reached within 1 hour.." Give me just 10 minutes...Balu". Another message which is seen as item no.2212 reads as follows. "Sir reached in the location near your, Balu". The above two messages were sent at 18:36:34 hrs. and 18:36:36 hrs. respectively. These messages were admitted by PW222. When these messages were put to PW222, he stated that he went to Punalur after meeting accused no.8. According to him, these messages were sent when he returns from Punalur. It is to be noted that PW222 stated that he met accused no.8 during lunch break. What is the purpose of sending this message seeking the permission to meet accused no.8 again is not explained. Moreover, these messages were elicited and confronted to PW222 during cross-examination and he offered the explanation then only.

863. Further on 17.04.2017 also, PW222 sent messages to accused no.8. Item number 2189 and 2165 in page 753 are the messages. The message sent at 11:32:06 hrs. reads that, "Respected Sir, I am waiting outside of the van, Balu". The next message sent at 16:48:46 hrs. reads that, "Sir may I come inside". In Ext.P633, PW222 stated that he met

accused no.8 on 15.04.2017. But during evidence, he stated that he met accused no.8 on 16.04.2017. When PW222 was confronted with the message dated 17.04.2017, he stated that he met accused no.8 on 17.04.2017 also. This is stated for the first time before the court during cross-examination. In the final report also, prosecution has no case that PW222 met accused no.8 on both 16.04.2017 and 17.04.2017. PW261 admitted before the court that he did not ask PW222 about the meeting allegedly held on 17.04.2017. PW261 did not interrogate about the above stated messages also.

864. Another aspect to be noted is that all these messages would show that PW222 is making request to accused no.8 for having a meeting. The prosecution allegation is that PW222 was longing for the production and release of his movie "Pickpocket" casting accused no.8 in the lead role. The prosecution allegation is that the meeting was to discuss about the said movie with accused no.8. Had this been the situation, it is very difficult to believe that a person who is maintaining a desire to get accused no.8 as lead actor in his movie, asked him about his involvement in a heinous crime and also about his association with accused no.1 when

he got an occasion to meet accused no.8. Moreover, the case of prosecution is that when Mr. Crispin Sam contacted PW222 to enquire about his relationship with accused no.8, he did not disclose the association of accused no.8 with accused no.1. It is unbelievable that a person who did not disclose this association even after the arrest of accused no.8 made enquiries to accused no.8 about his connection with accused no.1 during a meeting arranged in the midst of shooting. Moreover, the nature of messages would show that he is requesting to have a meeting with accused no.8. No reference is there in the messages about his alleged meeting with accused no.8 on 16.04.2017. The claim of PW222 that he made enquiries about the association of accused no.8 with accused no.1 is absent in Ext.P633 petition. PW222 deposed that when he asked about this fact to accused no.8, he contacted Sachi to change the subject. This would show that accused no.8 introduced Sachi to PW222 during the said conversation allegedly held on 16.04.2017. But the messages retrieved from Q25A would show that Sachi was introduced since December 2016. PW222 also admitted that he had discussion with Sachi during December 2016. He sent messages to accused no.8 about the

involvement of Sachi. The message sent by PW222 to accused no.8 on 23.01.2017 would show that, "Dear Respected my great Dileep Sir, I spoke to Sachi three more times through phone. Will sit together on or after 26th of this month. I will let you know once the day confirmed from Sachi. Thank you sir. ... P. Balachandrakumar, Trivandrum." Further, the message sent by PW222 to accused no.8 on 31.01.2017 would show that, "Respected Dileep sir, I met Mr.Sachi at Guruvayoor in the afternoon today and spent 3 hours with him between his busy schedules. Told the story. I think he will call you today and will explain his opinion before you as in detail. Thank you for your kindness. Balu". Moreover, the message dated 15.04.2017 sent by PW222 to accused no.8 show that, "Honourable Dileep Sir, Happy Vishu. Mr.Sachi called me now. He told me that you spoke him about Pick Pocket and myself. Thank you very much for your kindness to me and my dedication". Nothing more. Will wait. Have a nice day. Thanking you .. Yours Balu." All these messages would discredit the evidence of PW222 that accused no.8 introduced the idea for involving Sachi and contacted him during the meeting held on 16.04.2017 so as to change the subject. The above mentioned messages

would clearly show the involvement of Sachi and also the discussions between PW222 and Sachi much before the alleged meeting on 16.04.2017.

865. A photo of accused no.8 with the son of PW222 is produced to prove the alleged meeting on 16.04.2017. It is claimed that this photo was taken using the mobile phone of the son of PW222. The time of the said photo is not mentioned anywhere. The messages sent by PW222 to accused no.8 would show his presence near the location. It is true that PW222 made attempts to meet accused no.8 on 16.04.2017 in connection with his movie. The messages would show that PW222 made requests to have a meeting with accused no.8. These messages were seen sent in the evening. The photo might have been captured in the location. But, mere production of this photo will not help the prosecution to prove the alleged meeting of PW222 with accused no.8 inside the caravan on 16.04.2017 during the lunch break and the discussions claimed to be held there regarding the issues connected with this case. Similarly the evidence of the driver of caravan is also not improve the prosecution.

866. Another aspect to be noted is that the contention advanced by accused no.8 is that on 16.04.2017 during the pooja ceremony of the movie "Professor Dinkan", he met the Director General of Police and informed him about the attempt of a person to contact accused no.8 in connection with this case. The contention of accused no.8 is that he filed Ext.P101 complaint thereafter. The accused contended that prosecution deliberately suppressed the matters in connection with the pooja ceremony of the movie "Professor Dinkan" to suppress the evidence of this meeting with the DGP. It is to be noted that Ext.P233 series is the CDR of the mobile number 9895151111 of accused no.8. The location details for the day 16.04.2017 and 17.04.2017 are not obtained. Similarly, on a perusal of Ext.P210 CDR of PW191 Appunni, it is seen that the details are obtained for a period from 10.04.2017 to 15.04.2017 and 18.04.2017 to 22.04.2017. The details of the dates 16.04.2017 and 17.04.2017 were excluded. According to him, since these details are irrelevant and hence excluded. This explanation is untenable considering the contentions of accused no.8 advanced even in Ext.P742 bail application filed by him before the Hon'ble High Court.

867. The learned Special Public Prosecutor frequently urged that the evidence of PW222 does not require any corroboration as he is a sterling witness. The concept of sterling witness is dealt with by Hon'ble Supreme Court in Deepu v. State (NCT of Delhi) (2012) 8 SCC page 21. It is held that in our considered opinion the sterling witness should be of a very high quality and calibre whose version should therefore be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness the status of the witness would be immaterial and what would be material is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. The witness should be in a position to withstand the cross examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the

sequence of it. On an analysis of the evidence of PW222 I hold that he failed to withstand the criteria held by Hon'ble Supreme Court. I also hold that prosecution failed to prove facts attempted to prove through PW 222 and consequentially point nos. 34 to 40.

868. Point No.41:-

Whether the prosecution proved that accused no.8 opened locker in the name of PW179 on 24.03.2017 in the Federal Bank, Panampilly Nagar branch for keeping the mobile phone used for capturing the visuals or the memory card involved in this case secretly ?

It is alleged in the supplementary final report dated 22.07.2022 that a joint account was opened in the name of accused no.8 and his wife PW179 in the Panampilly Nagar branch of Federal Bank. They have also opened bank locker in the name of PW179 on 24.03.2017. The prosecution alleges that this locker was opened for keeping the mobile phone and memory card involved in this case secretly. In order to prove this aspect PW237, the Manager of the year 2022 was examined before this court. Statement of accounts, account opening form along with KYC certificates are marked through the witness as Ext.P587 series and

Ext.P588. Ext.P590 series are the records in connection with the opening of locker on 24.03.2017. According to him, this locker was visited only on 24.03.2017, the day when the locker was opened. During cross examination it is elicited that he was not the Manager when this particular account as well as locker were opened. He admitted that the date in the account opening form was on 25.01.2017. According to him, the account was opened on 27.01.2017. This particular locker was broke open on 05.04.2022 by the investigating officer. Ext.D118 series reply to the letter issued by accused no.8 on 13.05.2022 are marked through the witness. Admittedly, no notice was given to accused no.8 or PW179 for breaking open the locker. Accused no.8 issued notice to the bank in this regard. It is also brought out that nothing except Rs.5/- was seen in the locker. He also admitted that the records would show that the locker was never operated after 24.03.2017. The defence during the examination of PW237 put a question that this account was opened through one Mr Anoop Kumar, who is a financial consultant. They put questions to this witness that it is a usual practice that celebrities and business magnets will be invited to open account in banks. PW237 submitted that he has no

knowledge whether this particular account was opened in that manner through Mr Anoop Kumar. Though PW237 deposed before the court that a mahazar is prepared in connection with the breaking open of the locker, no such mahazar is produced before the court. PW237 admitted that only Rs.5/- was available in the locker at that time. The learned defence counsel argued that this fact was suppressed by the investigating officer dishonestly.

869. It is true that in the final report it is alleged specifically that this account and locker was opened for keeping the mobile phone or memory card involved in this case secretly. Except PW237 no witness was examined before this court to prove this particular allegation of prosecution. Similarly, why didn't the investigating officer produced the mahazar claimed to be prepared on 05.04.2022 as stated by PW237 is also not explained. Moreover, admittedly, as borne out from records and also from the evidence of PW237, it is seen that nothing except Rs.5/- was seen in the locker. Why that fact is also suppressed is to be looked into. Moreover, what prevented them from giving notice either to accused no.8 or to PW179 for opening the locker is also remain unexplained. How did

the investigating officer arrived at a conclusion that this account and locker opened for the purpose of keeping the memory card and mobile phone is also not proved. Moreover, PW237 admittedly, is incompetent to depose about the circumstances under which this particular account and locker opened by accused no.8 and PW179. PW237 stated about the persons who were available in the bank during the relevant time. Those persons are the competent persons to depose about the circumstances under which this particular account and locker opened by accused no.8 and PW179. The above discussions would show that except a bare allegation, no evidence is available before this court atleast to show the circumstances under which this particular account and locker were allegedly opened and hence, the contention of prosecution that it is opened for keeping the memory card and mobile phone secretly cannot be accepted.

870. **Whether the prosecution proved that accused no.8 created false Whatsapp group with ulterior motives**:

Another claim of prosecution is that accused no.8 created a false WhatsApp group under the caption "ദിലീപിനെ പൂട്ടണം" so as to mislead

the court and also to create the impression among public that he had been arraigned falsely in this case. The said WhatsApp group includes the persons Mr. Ashik Abu, PW34, P67 Mr. Nikesh Kumar, P226 Mr. Pramod Raman, Mr. Baiju Kottarakkara, Mr. Alleppey Ashraf, Liberty Basheer, Venu ..... Adv. T.B. Mini and Smt. B. Sandhya IPS. It is to be noted that Ext.P679(a) report would show that a message available in Q9 phone of PW182. This message is seen forwarded by CW464 Mr. Shon George. Mr. Shon George is not examined before this court. Mr. Shon George is the most competent person to speak about this particular message. PW182 was not interrogated about this aspect. PW226 Mr. Pramod Raman is examined to prove this aspect. According to him, he came to know about this WhatsApp group only when Crime Branch summoned him. He also does not mention anything about the person who created this particular WhatsApp group. PW226 deposed further that he didn't enquire about the origin of the screen shot, but police told him that it was sent by Mr. Shon George to PW182. This screenshot was telecast in Reporter T.V on 16.07.2022 as seen from Ext.D100. PW226 is a person who actively participated in the telecast of matters connected

with this case through media. He also admitted that he posted facebook post in connection with this case. He himself conducted several programs through media about this case. Even if the entire testimony of PW226 is considered, nothing is there to show that accused no.8 created this particular WhatsApp group. Moreover, the person who forwarded the screenshot of this WhatsApp group was not examined, though cited as a witness. So, this court is not in a position to arrive at a conclusion that this WhatsApp group is created with the assistance of accused no.8.

871. **Whether the prosecution proved that whether accused no.8 secrets and destroy electronic record, which he is lawfully compelled to produce as evidence in court in connection with the proceedings of this case?**

In the final report it is alleged that accused no.8 caused disappearance of data from his mobile phone with the IMEI No.3567281838724. It is alleged further that the destruction of data was done with the assistance of PW214. Mobile phones were entrusted with PW214 for removing data. In the argument note, the learned Special Public Prosecutor stated that PW214 was introduced to accused no.8 when he visited the office of senior counsel appearing for accused no.8. It

is stated specifically in page 1260 of the argument note that, on 28.10.2022 Adv. Philip T Varghese called him and requested him to come to Ernakulam with his tools. Accordingly, he and his friend came to Ernakulam on 29.01.2022, took a room at Hotel Avenue Centre and met Adv. Philip T Varghese at his office on the morning of 29.01.2022. He was entrusted with the task of deleting data from two phones of accused no.8 as noted in the checklist given by accused no.8 and his lawyers. It is the case of prosecution that as per the instruction of accused no.8 and his lawyers, PW214 deleted data from the phone of accused no.8 before its production before the court as per the direction of the Hon'ble High Court of Kerala to produce phones.

872. The learned counsel for accused no.8, on the other hand contended that the allegations in the supplementary final report itself is inconsistent and contradictory. They also contended that if PW214 had any role in the matter as alleged, he should also have been made an accused in this case. In the witness memorandum, PW214 is cited as CW423. The point to be proved through this witness stated in the witness memorandum is that, the senior lawyer of accused no.8 is known to

PW214 since 2018. Adv. Philip T Varghese and Adv. Sujesh Menon contacted him in connection with this case. They made enquiries with him about the cyber related matters involved in this case. As far as the deletion of data from the mobile phone of accused no.8 is concerned, the point to be proved is stated as, he had been asked by accused no.8 and Adv. Philip T Varghese to delete the chats of Adv. Sujesh, Adv. Nithya, Adv. Ullas and others from the mobile phone of accused no.8. A room was booked in Hotel Hayatt for this purpose. He deleted those datas. The socalled deleted datas were transferred to the hard disk of PW214. The datas available with his hard disk was copied to another hard disk of the make WD company and handed over to PW261. The charge against accused no.8 is that he deleted conversations related to the commission of offence involved in this case from his mobile phone and his henchmen and thereby causing disappearance of evidence.

873. I have considered the rival contentions. First of all, prosecution has to prove that the data allegedly deleted is connected with this case. That is, the deletion amounts to causing disappearance of the commission of the offence. What is the nature of data allegedly deleted is

not available before this court. The evidence of PW261 is that as per the order of Hon'ble High Court, accused no.8 and his associates surrendered mobile phone in connection with Crime No.6/2022 of Crime Branch, Ernakulam. PW261 obtained the copy of the FSL report. He came across with the fact that the datas were deleted from the mobile phone on 29.01.2022 and 30.01.2022. PW261 further stated that PW214 is the person who aided the deletion of datas. He interrogated PW214. PW214 stated that the so-called deleted data is available with him. He also stated that the said data will be produced by copying in a hard disk. This hard disk produced by PW214 was seized on 25.02.2022 on the strength of mahazar. PW261 stated clearly that data in Q1 and Q3 in FSL report DD 96/2022 marked as Ext.P680 is deleted at Hotel Hayatt. The data from Q2 in Ext.P680 is deleted on 30.01.2022 at Lab systems India Private Ltd., Mumbai. The main witnesses cited for proving this aspect is PW214 and PW216. Admittedly, the hard disk seized by PW261 from PW214 on the strength of Ext.P813 mahazar is not examined forensically. This seizure was effected on 25.02.2022 at 1 a.m at Metro Railway Station premises, Aluva. Why this seizure was effected in this manner is not

explained by prosecution. Moreover, this hard disk not shown to PW214. This hard disk is identified and marked as Ext.P812 through PW261. No independent witness is cited in Ext.P813 mahazar. Why didn't this hard disk examine forensically is not explained by prosecution. As I pointed out, the prosecution case is that Adv. Philip T Varghese specifically called PW214 and asked him to come over to Ernakulam. He reached here along with his friend Mr. Akhil. This Akhil is not examined before this court. No investigation is conducted about his involvement. Admittedly, neither the phones nor the CDR of PW214 is produced before this court.

874. It is the case of the prosecution that the calls were through either WhatsApp or Botin. Even if the calls were made as claimed, this could have been elicited on forensic examination of phones. The tower locations ought to have been proved, at least the locations of PW214. Those are also not produced. Though PW261 deposed that he collected tower location details of PW214, nothing is produced before this court. PW261 further admitted that his phones were not verified also. He admitted that in connection with Crime No.6/2022 police conducted raid

in his house, shop and house of inlaws. He admitted that mobile phones, iPad and iMat were seized and sent for FSL examination. This is also not made available before this court. PW261 stated that the mobile phones and digital devices of PW214 were handed over to the lawyer of accused no.8. Even if this evidence is believed, what prevented the investigating officer from collecting the CDR and location details are not explained.

875. Before analyzing the evidence of PW214, some matters in connection with the manner in which PW214 is treated are to be considered. PW214 is arraigned as accused in Crime No.6/22 of Crime Branch. The case of prosecution is that PW67 Nikesh Kumar stood as an agent of the investigating agency to surrender PW214 in connection with the Crime No.6/22. What is the role of PW67 Nikesh Kumar and why he was acting as an agent for surrendering PW214 is not explained by the prosecution. PW259 admitted that PW214 came to the office of Additional Director General of Police Sri Sreejith IPS. He admitted that he knows the involvement of Mr. Nikesh Kumar in this case. According to him, PW214 went to the office of ADGP at the instance of Mr. Nikesh Kumar. He added that PW214 approached lawyer for filing bail

petitions. The lawyer handed over blank signed papers to Adv. Nireesh Mathew. His lawyer failed to give proper support to him. His lawyer failed to attend his phone calls properly. PW214 thereafter approached Mr. Nikesh Kumar. Mr. Nikesh Kumar talked with ADGP Sreejith and consequentially, PW214 Sai Sankar surrendered. He was helpless. PW259 admitted that he has not interrogated Adv. Nireesh Mathew. When PW261 was in the box, a question is put to him regarding the intervention of Mr. Nikesh Kumar. He denied the intervention on the side of Mr. Nikesh Kumar. PW261 added that the lawyer of PW214 himself misled him and he accordingly surrendered in Crime No.6/22. A specific question is put to him that Mr. Nikesh Kumar was the intermediary between PW214 and ADGP. He was compelled to answer that he came across with this fact at a later stage. Though PW259 claimed that PW214 approached Mr. Nikesh Kumar, PW214 has no such case before this court. Further, Mr. Nikesh Kumar is already examined before this court as PW67. Why he was not recalled and examined is a fact sufficient to generate doubt in this particular matter.

876. Ext.D108 is the writ petition filed by PW214 before the Hon'ble High Court seeking police protection. After the seizure of Ext.P813 hard disk on 25.02.2022, PW214 was taken to the Superintendent of Police Mr Sudarsan housed at Police Academy, Viyyur. PW261 took PW214 to S.P Mr. Sudarsan. PW214 pleaded the matters which were allegedly taken place during this time in Ext.D108. PW261 also admitted about this meeting at Thrissur. PW214 mentioned the details of alleged police harassment faced by him on 25.02.2022 in Ext.D108. PW214 also stated that as on 25.02.2022, Crime Branch was not investigating any case against him. But it is seen from Ext.D88 pendrive that PW259 contacted one Mr. Akhil, a friend of PW214 and stated that, if PW214 does not surrender, new cases will be registered against him on hourly basis. PW259 also admitted about this conversation. Moreover, Ext.D95 series would show that cases pending against PW214 transferred to Crime Branch as the result of letter dated 24.03.2022 of ADGP Crimes. Consequent to this letter, Mr. A.V. George, then City Police Commissioner, Kozhikode, who was involved in the investigation of this case, passed Ext.D95 series order. On 31.03.2022,

Crime No.270/2022 of Nadakkavu Police Station was registered as Crime No.52/2022 of Crime Branch Police Station. Crime No.1493/2015 of Hill Palace Police Station was transferred to Crime Branch and re-registered as Crime No.51/2022 of Crime Branch Police Station. It is to be noted that investigation of this case had already been completed and the case was pending before the court. It is claimed that since PW214 was involved in Crime No.6/2022, the above two cases are transferred to Crime Branch for detailed investigation. No report was given before the court for conducting either further investigation or re-investigation.

877. Ext.D105 is another pendrive contains conversations between PW214 and PW261. It is seen that PW261 coercing him to surrender. PW214 on 08.04.2022 surrendered in Crime No.6/2022. He surrendered before the ADGP Mr. Sreejith. PW214 was arrested and produced before the Judicial Justice Magistrate-I, Aluva and released on bail. According to PW214, his wife was under a mental trauma. His one and only option was to surrender. Immediately after his release on bail, he gave interviews in media. PW214 also deposed that if he was not surrendered, his wife will be made as an accused. As I pointed out, PW214 never stated that he

approached Mr. Nikesh Kumar as claimed by PW259. When this particular aspect is put to PW214 by the learned counsel that the mediator stated him that if he is not surrendered, his wife will be arraigned as accused and arrested, in the first instance, he denied it. But, PW214 corrected it then and there and stated that mediator informed him accordingly. He also stated that he was not interested to give interview to media after his release on bail. Similarly, though PW214 denied the averments in Ext.D108, during cross-examination relying on Ext.D89 pendrive he was compelled to admit the intimidation on the side of PW261. Moreover, as pointed out, Adv. Nireesh Mathew is the competent person to say about the filing of Ext.D108. But Adv. Nireesh Mathew was not interrogated. Though PW214 claimed that his gadgets were entrusted with Adv. Philip T Varghese, except sending Ext.D104 notice, no actions were taken to get back those gadgets after receiving Ext.D104 series reply. Further, PW214 deposed before the court that PW261 contacted him in the year 2019-20 to enquire about a complaint raised by two ladies in Thrissur. According to PW214, when he showed reluctance to answer the queries made by PW261, he was intimidated

referring to the video recovered from the laptop of PW214 in the year 2015 involving PW214 and a lady. PW261 deposed before the court that he questioned PW214 as instructed by ADGP Smt. Sandhya IPS based on a complaint by two ladies. PW261 also admitted about the reference made to PW214 in connection with his past cases Though PW261 claimed that this was in connection with the complaint of two ladies, no material is produced before this court to substantiate this contention.

878. Ext.D108 writ petition was filed by PW214 before the Hon'ble High Court on 11.03.2022. It is stated in the said writ petition that PW261 is known to him since 2014. It is alleged that his wife was harassed and intimidated by PW261 when he was the C.I of Police, Hill Palace Police Station and that led to her suicide. Thereafter, Crime 213/2016 of Thrikkakara Police Station was registered against PW214 and his present wife. PW261 contacted PW214 on 24.02.2022 and he was compelled to come and meet PW261 on that night itself. PW214 reached near Aluva Metro Station that night and he was taken to Police Academy, Viyyoor on 25.02.2022. The Superintendent of Police Mr Sudarsan intimidated him for standing as a witness against accused no.8

and the lawyers of accused no.8. It is further alleged that if he is not willing, he will be arraigned as accused in criminal cases. Though PW261 and Mr Sudarsan are the respondents in Ext.D108, no counter is filed controverting the allegations. Thereafter, Crime Branch conducted search at the residence of PW214 and the business establishment of his wife and inlaws on 13.02.2022. The cases were started to register against PW214. Ext.D88 recorded conversation of PW259 with the friend of PW214 also happened thereafter. PW214 filed Exts.D96, D97 and D98 bail applications before the Hon'ble High Court.

879. The evidence of PW214 is to be evaluated in the above circumstances. PW214 deposed that he never witnessed accused no.8 deleting data from the phone. Ext.D85(c) statement is also to be considered. Ext.D85(c) reads as follows:- അവിടെ വച്ച് ദിലീപ് ഫോണിൽ നിന്ന് data delete ചെയ്യുന്നത് ഞാൻ കണ്ടിരുന്നു എന്ന് പോലീസിൽ മൊഴി കൊടുത്തിരുന്നു. അത് ഞാൻ കളവായി പറഞ്ഞതാണ്. പറയുന്ന സമയത്തുതന്നെ കളവാണെന്ന് അറിയാമായിരുന്നു; പേടിച്ചിട്ട് പറഞ്ഞതാണ്. പോലീസിനെ

പേടിച്ചിട്ട് പറഞ്ഞതാണ്. Even during the evidence of PW214 he clearly reiterated that fact. This would annul the prosecution case that accused no.8 deleted chats from his phones. The learned counsel for accused advanced an argument based on the launching of the phones used by accused no.8 that the prosecution allegation that the evidence relating with the crime is available in those phones is baseless. This fact was put to PW192. He has not denied it. Further, PW214 admitted in Ext.D112 interview that nothing connected with this case had been removed from the phone of accused no.8. He also added that personal and family photos of accused no.8 only removed from his phone. PW192 adduced evidence stating that no signs of formatting or factory reset is seen in these phones.

880. Coming to the chats alleged to have been removed from the phone of accused no.8, it is seen that prosecution alleged that twelve chats of different contacts were deleted by accused no.8 from his phone. PW214 also stated that twelve chats have been deleted from the phone of accused no.8 and those are unconnected to this case. In Ext.D112 interview also he stated that the name saved pertaining to these chats

were seen by him and this fact was revealed to the investigating officers. He also stated in the interview that since those persons are unconnected with this case, he is not supposed to reveal their names. The details of chats deleted are mentioned in Ext.P680 FSL report. When PW261 was in the box, questions were put to him by the defence counsel regarding the investigation conducted by him with respect to these deleted chats. According to PW261, he could trace out the persons who exchanged those chats. He contacted them, but they did not produce the phones. He further stated that some of the persons involved in these chats are abroad and hence, he could not contact them. This would also prove that the chats allegedly deleted from the mobile phone of accused no.8 have no connection with this case.

881. It was alleged that on 29.01.2022 and 30.01.2022 accused no.8 and his associates deleted data from his phone at the office of Senior Adv. B. Raman Pillai. PW214 denied this aspect. Ext.P813 mahazar is to be analysed. Ext.P813 is the mahazar prepared by PW261 on 25.02.2022 at 1.00 a.m for seizing the hard disk at the premises of Metro Railway Station, Aluva. In this mahazar it is stated that accused no.8 and his

associates on 29.01.2022 and 30.01.2022 while deleting documents from the phone of accused no.8 at the office of Adv. B. Raman Pillai. PW214 copied the contents of the mobile phone of accused no.8 to a hard disk possessed by him. The said hard disk along with its data cable were seized on the strength of Ext.P813. It is to be noted that PW214 himself has not stated this fact to PW261. But PW261 deposed before the court that he made such a reference in Ext.P813 on the basis of available evidence collected till that time. At the very same time, PW261 admitted that the statements of PW214 were not recorded at the time of preparing Ext.P813. He admitted that the falsity of the claim of PW214 in this regard was later revealed. PW261 also stated that it is understood later that data was deleted at Hayatt. The learned counsel for accused argued that the alleged data deletion at the office of senior counsel telecast widely in media. A question is put to PW261 that, has he filed any report stating specifically that the assertion in Ext.P813 is later found to be false. He admitted that no such statement is filed. According to him, he stated the real facts in the final report. So, it can be seen that though it is

mentioned in Ext.P813 that data was deleted at the office of the senior counsel, no such deletion was taken place there.

882. Relying on the evidence of PW192, the learned Special Public Prosecutor argued that on 29.01.2022 and 30.01.2022 many suspicious activities are seen in i-Phone 12 marked as Q3 in Ext.P680. The learned counsel for accused no.8 submitted that nothing is stated in Ext.P680 in this regard. According to them, PW192 is giving false assertions in the court as instructed by prosecution. On analysing the evidence of PW192 he admitted that this fact is not stated in Ext.P680. PW192 deposed that in Q2 Vivo phone of accused no.8 large number of files are created within a short period of time and this would cause overwriting of old data. According to him, if the old data was once overwritten that cannot be retrieved. But in the cross examination PW192 admitted that 150 files in Ext.P680 are thumbnail images created within a span of 1 hour and 15 minutes, and that creation will occur through routine watching of files already present in Q2 or browsing the internet. He also admitted that thumbnail files are miniature representations of images automatically generated by the system when a user handles files or views images and

videos including online content. He specifically admitted that these thumbnails occupy very little storage and that their automatic creation could not have caused overwriting of data. When a question is put to PW192 by the learned defence counsel that whether he noticed creation, access, modification or deletion of any files or folders in any of the questioned devices by their users after 31.01.2020, he replied that he did not specifically verify the dates and since the mobile devices are powered on after this date and extraction of data is done in dianemic mode files can be updated after this date. This fact is admittedly not disclosed in Ext.P680. Questions were put to him with respect to Ext.P468 referring item no.6651 in page no.85621 and item no.3011 in page no.66846 that files created, modified, accessed and deleted on 01.02.2022. PW192 admitted that twenty five files showed creation, modification, access and deletion timestamps on 01.02.2022 at around 14:44 hrs. When the attention of PW192 is drawn to this aspect, he had given various explanations such as it could appear only if the phone was accidentally powered on or the user had manually set the phone date to 01.02.2022. He also stated that the user might have deliberately set the date and

carried out activity before submission or remote access might had occurred after the phone was handed over to the court. PW192 deposed that it was impossible to say whether the device was switched on accidentally or intentionally, whether wrong dates settings were used or whether remote access occurred. At the very same time, PW192 stated that there is no chance to switch on the device while it was in the custody of court. But he admitted that he cannot say what happened before 04.02.2022. The phones were admittedly in the custody of PW259 from 22.02.2022 after its surrender before the court. It is also seen that four files in Q2 other than the twenty seven files were seen modified and deleted with date 01.02.2022. Three files show creation and access date as 01.02.2022. Twelve files show the modified date as 01.02.2022. Another three files show the access date on 01.02.2022. When this fact is put to PW192, he deposed that since no request is made in the forwarding note, he has not conducted any examination. The learned defence counsel challenged the authenticity of Ext.P468 hard disk containing Ext.P679 and Ext.P680 reports. According to them, these reports are submitted by FSL to Judicial First Class Magistrate Court – I, Aluva in Crime

No.6/2022 of Crime Branch. According to them Ext.P468 does not contain any endorsement that it is an authentic copy nor how, it was issued. According to them, in chief examination PW192 initially stated that he does not know whether certified copy of the original hard disk furnished to Judicial First Class Magistrate – I , Aluva was furnished or not, he claimed short of memory. The learned defence counsel for accused no.8 argued that but PW192 in the after-lunch session changed his version and submitted that Ext.P468 contains his handwriting and he himself prepared the softcopy. The defence argued that this is stated to support the prosecution case. They also raised contentions challenging Ext.P468(a) certificate issued u/s.65B of the Indian Evidence Act. It is true that PW92 at the first instance was not able to state about the details whether he furnished the copy of the original hard disk, he later identified the hard disk and also stated that it contains his handwriting. Though the learned defence counsel for accused no.8 raised somany challenges against Ext.P468, considering the evidence of PW192 regarding the preparation, this court rejected all those contentions.

883. In the second supplementary final report dated 22.07.2022 in addition to the matter kept open for investigation as stated in the final report filed on 18.04.2017 and supplementary final report filed on 22.11.2017 one more fact is kept open for investigation. It is stated that glimpses of evidence is received during investigation that the advocates of accused no.8 Adv. Philip T Varghese, Adv. Sujesh Menon, Adv. Nithya and Adv. Subha along with PW132 and PW182 caused disappearance of the digital evidence involved in this case after the commission of offence and also during the trial of evidence and the said fact is to be investigated in detail. Similarly, the investigation regarding the phone used to capture the visuals of PW1 is also kept open. In this case it is alleged that the lawyers of accused no.8 took the mobile phones of accused no.8 and his associates to Mumbai for causing disappearance of evidence. It is further alleged that the above lawyers have malicious intentions in this case than their professional interest. They have taken the phones to a lab in Mumbai for tampering the evidence which would show the attempts on the side of accused for influencing the trial court and also for delaying the trial. The defence advanced a contention that the purpose of sending the

phones to lab systems, Mumabi can be seen from Ext.D148 and D149 reply given to the notices issued u/s.91 Cr.P.C to accused no.8 and PW182. The defence further argued that the phones were forwarded to Lab India so as to extract data from the mobile phone in the light of revelations of PW222. They also raised a contention that the allegation of destruction of records in the phone of accused no.8 and others alleged against the four lawyers defending accused no.8 is a clear evidence to the vindictive attitude of PW261 and his capacity to fabricate evidence. It is to be noted that Ext.P652 and P652(a) documents showing the travel details of lawyers are produced before this court. This fact remains admitted and undisputed. Similarly, Ext.P654 to P656 are also produced to prove the handing over of mobile phone to the Mumbai lab. Ext.D91 is proved on the side of defence to substantiate the defence contentions.

884. The evidence of PW216 Yogendra Yadav, who is the Director, Lab Systems India Private Ltd at Mumbai is to be analysed. According to him, they were working in the field of digital forensic and provide services in the same field. He stated that he had provided their services recently to lawyers from Kerala. During August 2021 he received

call from one Mr. Vincent from Income Tax Department. Mr Vincent has knowledge about their services. Mr Vincent enquired whether the services will be given to corporate also and he inturn expressed his readiness. Mr. Vincent further informed that some lawyers want to know opinion about some forensic reports. Two lawyers Adv. Philip and Adv. Sujesh came to meet him along with Mr Vincent and showed various forensic report. They gave their opinion. In the year 2022, he received call from his partner informing that Adv. Philip will send mobile phones for examination. The phones were received in the office on 17.01.2022 through their office assistant Mr Vikas Yadav. The phones were received through courier service in the residential address of Mr Vikas Yadav. Their senior most forensic examiner Mr Sachin was assigned with the task. Since they require the pattern log for opening one of the Samsung mobile phones he contacted Adv. Philip and Adv. Philip in turn sent it to his Whats-app. He examined the phones using UFED and created mirror image. Content of the mirror image was extracted and saved on the work station, ie., High End Computer. Since the contents were in vernacular language and also they were unaware about the requirement they

contacted the lawyers. They informed about their arrival and reached there on last Sunday of January. Two male lawyers and two female lawyers came there by 9.30 morning. The mobile phones were given to the lawyers. They sat together. He along with Mr Sachin showed the mirror image content to the lawyers as per their request referring the contents in the mobile phones. They started to copy the contents along with mirror image to an external hard disk at around 1.00 p.m. Since the copying process takes time, they together went for lunch. They came back at around 3 p.m and by that time copying was over. They handed over the hard disks to the lawyers. The mirror image was kept in the work station. The hard disk is marked through this witness as Ext.P468. The learned counsel for defence raised objection for marking on the ground that this witness is not cited to prove or speak about the contents of hard disk. The learned Special Public Prosecutor replied that he is the person who prepared the hard disk and hence, he is competent to prove it. It is seen that the fact that PW216 prepared the mirror image remains undisputed and hence the objection is overruled. He also stated that they can retrieve the deleted data using UFED. According to him, even if the

data is deleted from the phone, it can be seen from the contents of mirror image obtained on analysis using UFED. According to him, if the data is overwritten that cannot be retrieved.

885. In the cross examination at the instance of learned defence counsel for accused no.8, it is brought out that Ext.D91 is the copy of e-mail sent by Mr. Venkitesh to Adv. Philip on 06.01.2022. Ext.D91 refers to the mail from Adv. Philip to Mr Venkitesh on the same day. The discussions between them on the previous day can also be seen from Ext.D91. PW216 deposed that they have retrieved the contents of chats, call recordings and SMS made using the examined devices with mobile numbers 9496994181 and 9447656670 in the name of PW222. According to PW216, those were retrieved as per the specific request in Ext.D91. According to him, there was discussion between them and the lawyers visited them. The advocates informed them that they are in hurry to return back as the phones are to be produced before the Hon'ble High Court as directed by the Hon'ble High Court. He deposed that Lab System India Pvt. Ltd. is a reputed firm. The agencies like CBI and Income Tax approached them considering their efficiency and experience.

He also stated that their service was availed of in connection with the trial of Tharun Thejpal Case and it is mentioned specifically in the judgment passed before August 2021. Sundays are holidays for the lab, but it was opened on the last Sunday of January as per the request made by Adv. Philip to Mr. Venkitesh. He replied negatively to a specific question put to him that whether any of the advocates asked him to delete or manipulate any data. He also stated about the visit of PW259, the investigating officer of Crime No.6/2022 and the seizure effected by him. He also stated that his statement was recorded, but Ext.P468 was not shown to him. According to him, when the investigating officer asked him whether anything was modified or deleted, he informed him that they have not done anything in that manner. He had also given the details of software used for the extraction of data. The learned Special Public Prosecutor in the reexamination put a question to PW216 that whether the manipulation if any made after their examination can be detected in a subsequent FSL examination, he replied in the affirmative. PW259 and PW261 also deposed about the matters which were taken place in the Lab Systems, Mumabi.

886. Ext.D148 and D149 would show that the purpose of sending the phones to Lab Systems is stated to the investigating officer. Ext.D91 would show the e-mails sent by Adv. Philip T Varghese on 06.01.2022 at 10.20 a.m from the mail ID tpvargheseadv@gmail.com. to Venkat at Lab Systems. In Ext.D91 reference is made regarding the discussion made over phone on the previous day. It is also stated that one person by name Balachandrakumar has been brought-in by the investigation team at the time when the trial was reaching its end to make statement in a television channel against Mr. Dileep. Mr. Balachandrakumar is a person who is known to Mr. Dileep since 2014. He had been in contact with Mr. Dileep, his brother Mr Sivakumar and his brother-in-law Mr Suraj since then. The phone numbers of Mr. Balachandrakumar are mentioned in Ext.D91. It is also stated that the mobile phones of accused no.8, PW132 and PW182 will courier to the lab. It is specifically requested to recover from these three phones and give reports regarding all the contacts and communications between the three phones and the two mobile numbers stated above. It is likely that the reports will have to be produced and proved during trial of the case. So, certification u/s.65B would be

necessary for the extracted contents from the phones. Whats-app, call recordings, voice notes etc. are likely to be there. So, on a plain reading of Ext.D91, the purpose of sending the mobile phones can be seen. The reply received from Mr. Venketesh can also be seen from Ext.D91. PW261 admitted the contents when Ext.D91 is put to him. The evidence of PW216 is also to be read conjointly with Ext.D91. PW216 had given detailed narration about the purpose of visit in the chief examination itself. This remained unchallenged also. Though PW261 deposed before the court that PW216 stated that the lawyers deleted the data, but he was constrained to admit the content of Ext.D91 showing the purpose of visit of lawyers. It is argued by learned defence counsel that since the Hon'ble High Court vide Ext.P830 order dated 29.02.2022 directed that the phones to be surrendered before the Registrar, Hon'ble High Court by 10 a.m on 31.01.2022, the lawyers of accused no.8 went to the office of Lab Systems at Mumbai on 30.01.2022 and returned on that day itself so as to produce the mobile phones before the Hon'ble High Court within the time prescribed. According to the learned defence counsel, this journey is made use of to circulate false propaganda. It is urged by the prosecution

that the lawyers deleted data while they were at Lab Systems India, Mumbai. The evidence of PW216 would clearly show that it is a false assertion. It is to be noted that in the chief examination itself PW216 narrated in detail about the matters which were transpired in the lab. Not even a suggestion is put to this witness by the learned Special Public Prosecutor that the lawyers deleted data. On the other hand, in the cross examination it is elicited through this witness specifically that no deletion or manipulation of data was taken place. Thereafter, Ext.P468 is examined before the State Forensic Laboratory by PW192. I have already discussed the evidence of PW192 and the reports prepared by him. Moreover, no activity is reported in the phones after 07.01.2022 till sending these to Lab Systems, Mumabi. Ext.P680 would show that the last activity was on 07.01.2022 at 00:32:49 hrs. On an evaluation of the evidence of PW214, the witness relied on by the prosecution to prove the alleged deletion of data from the mobile phone of accused no.8, it is seen that he specifically stated that he has not seen accused no.8 deleting data from the mobile phone. Though PW215 and PW233 were examined to prove the activities at Hayatt Regency, prosecution could not bringforth

any evidence to substantiate its case. The evidence of PW192 and PW216 would also show that no deletion of data as stated by the prosecution has been taken place from the mobile phone of accused no.8. On the basis of the above discussions, I hold that prosecution failed to prove that accused no.8 deleted data connected with this case from his mobile phone and thereby caused disappearance of evidence. The point no.41 is decided accordingly.

887. **Point no.42:-**

Impact of non examination of the alleged conspiracy involved in the capture of visuals of PW1 revealed by accused no.1 during the course of commission of offence.

It is already found that the prosecution failed to prove the quotation of accused no.8, and his conspiracy with accused no.1 to humiliate and sexually assault and capture the nude video of PW1. In view of that finding the next question to be addressed regarding the purpose for which this crime is committed. In the final report filed on 18.04.2017 it is stated that accused no.1 to accused no.6 with a common intention to kidnapp PW1 for capturing her nude visuals hatched criminal conspiracy so as to extract money by intimidating her that the visuals would be circulated.

The definite version of PW1 in her First Information Statement is that there is a quotation of a lady for capturing the nude video of PW1. As this court discussed repeatedly hereinbefore, Ext.P1 F.I Statement contains the allegation of conspiracy. In page 4 of F.I Statement, it is stated by PW1 that, "പുറകിൽ എന്നോടൊപ്പം ഇരുന്ന ആൾ "എനിക്ക് ഒരു quotation ഉണ്ട് X'ന്റെ naked video എടുത്തു കൊടുക്കണം അല്ലെങ്കിൽ എനിക്ക് പ്രശ്നം ആണ്. സഹകരിക്കുകയാണെങ്കിൽ 2-3 മിനിറ്റ് നീളമുള്ള video എടുത്തശേഷം എത്തേണ്ട സ്ഥലത്ത് കൊണ്ടുചെന്നു വിടാം അല്ലെങ്കിൽ DD Retreat flat-ൽ ഒരുപാട് ആളുകൾ ഉണ്ട് അവിടെ കൊണ്ടു ആക്കും അവർ എന്താ ചെയ്യുക എന്ന് പറയുവാൻ പറ്റില്ല എന്നും; injection നല്കി മയക്കാനാണ് അവർ എന്റെ അടുത്ത് പറഞ്ഞിരിക്കുന്നത്"". So, it can be seen that in the F.I Statement itself the alleged quotation for capturing the nude visuals is stated by PW1 as informed by accused no.1. Moreover, the involvement of other persons can also be seen from Ext.P1. It is also stated in the F.I Statement that accused no.1 told her that the recorded visuals will be reached to the persons who entrusted him the quotation. Accused no.1 also informed her that those persons will contact on the next day after 10

a.m. They will discuss about the further dealings. Accused no.1 further demanded for her mobile number.

888. Ext.P117 is the statement of PW1 recorded u/s.164 of Cr.P.C on 18.02.2017. PW1 stated that when she asked about the persons involved, accused no.1 replied that on getting the identity she could understand the person who sent him. She replied that she has no idea about it. She also stated that accused no.1 informed her about the quotation to capture her nude visuals. PW1 stated further that accused no.1 informed her that the quotation is at the instance of a lady. Then PW1 enquired about the person who gave the quotation. Accused no.1 told her that she knows it and further stated that she knows well about her enemies. So, it can be seen that from the very inception PW1 stated about the quotation as revealed from accused no.1. Admittedly, during the course of first investigation led to the filing of final report on 18.04.2017, no investigation is conducted about this aspect. In the said final report filed by PW202 it is stated that accused nos.1 to 6 with an intention to grab money hatched criminal conspiracy and as part of that conspiracy recorded the nude visuals and intimidated her stating that

they would circulate the visuals. Nothing is mentioned whether PW202 or the Special Investigation Team conducted investigation about the alleged quotation at the instance of a lady as stated by PW1 in Ext.P1 and Ext.P117. As I pointed out, the further investigation is only kept open for conducting investigation about the mobile phone which is allegedly used to capture the visuals.

889. PW202 while in box deposed that on the basis of the materials collected he laid final report against accused nos.1 to 7. He also stated that the fact of investigation to be conducted to trace out the mobile phone alone is mentioned in the final report. As part of this investigation he recorded the statement of PW6 on 21.04.2017. The learned Special Public Prosecutor put a question to this witness that, was there any direction to conduct investigation on 21.04.2017 PW202 deposed that the statement of PW6 contains reference about the involvement of accused no.8. He directed his Asst. Sub Inspector of Police to investigate this. He received Ext.P101 on 01.05.2017. He recorded the statement of PW176 on 02.05.2017. He seized Ext.P122 from PW176 on 04.05.2017. On 16.05.2017 he filed report to I.G.

(Crimes) informing that the investigation is required regarding the information collected so far. He filed Ext.P452 before the court on 18.05.2017. According to him, in Ext.P452 he stated that investigation is to be conducted to know the involvement of more persons in the conspiracy. A question is put to him by the learned Special Public Prosecutor that, has he conducted investigation about the conspiracy after the filing of final report on 17.04.2017. He replied that he mentioned about the evidence collected so far in the final report. He categorically stated that in the said final report he mentioned that the visuals were recorded to grab money from PW1 by blackmailing her. He also stated that he could not collect any evidence to see whether any other objectives were there in the commission of the offences. In Ext.P452 report, what PW202 stated is regarding the investigations to be conducted for tracing out the mobile phone and also to file separate supplementary final report against Adv. Pradeesh Chacko. It is true that it is also stated in Ext.P452 that the involvement of others in the criminal conspiracy is to be investigated further. But nothing is mentioned about the receipt of Ext.P101 and also the interrogation of PW176. Similarly, Ext.P452 is

silent about the receipt of information from PW6 regarding the involvement of accused no.8 in this case and the consequential investigation by PW202 through the Asst. Sub Inspector of Police. PW202 deposed that he tried to contact PW1 for informing about the filing of final report, but she was not available. She contacted PW6 for this purpose and then PW6 made enquiry about the involvement of accused no.8 and that prompted the further investigation. It is to be noted that either PW1 or PW6 did not state anything about the involvement of accused no.8 though they were interrogated several times as part of investigation leading to the final report on 18.04.2017. Prosecution advanced a case that PW1 was afraid of to state this fact. This explanation seems to be untenable. The entire police team including higher officials were in the SIT. So there is no reason for any fear or inhibition in revealing the involvement of accused no.8. Moreover PW1 herself given interview against accused no.8 in 2015. Atleast this could have been brought to the notice of SIT. Moreover both the reasons claimed by PW202 for the commencement of further investigation are not mentioned in Ext.P452. As I pointed out, what he stated is in tune with

the statement in the final report filed on 18.04.2017 about the investigation to be conducted for tracing out the mobile phone. Even if the explanations of PW202 along with Ext.P452 are considered, no justification will be given regarding the non investigation of the alleged quotation at the instance of a lady for capturing the visuals of PW1 as stated by accused no.1.

890. It is to be noted that in the first supplementary final report filed on 22.11.2017 prosecution alleged that the quotation was at the instance of accused no.8. They further alleged that accused no.8 hatched criminal conspiracy with accused no.1 as part of this quotation. In the first supplementary final report also the reasons stated by PW202 for commencing the further investigation that the information from PW6 and Ext.P122 are reiterated by PW261. PW261 also stated that the conspiracy between accused nos.1 and 8 is in addition to the conspiracy between accused nos.1 to 6 for grabbing money from PW1. Nothing is mentioned ruling out the conspiracy at the instance of a lady disclosed by accused no.1. In Ext.P122 letter accused no.1 raised claims which are contradictory in nature.

891. In this context, the involvement and association of some ladies with accused no.1 even during the time of alleged commission of offence and the non investigation about these facts are to be considered. Ext.P265(b) is the Annexure-13, DVD contains the SIM details of accused no.1 of mobile number 9562263445. This would show that there were incoming messages on 17.02.2017 till 15:44:21 hrs. from one Smt. Sreelakshmi using mobile number 8129866550. Further, Ext.P90 series of CDR of mobile number 9562263445 shows that there were six calls between accused no.1 and Smt. Sreelakshmi on 17.02.2017 from 18:22:08 hrs. to 19:59:55 hrs.. Apart from this seven incoming messages from the number of Smt. Sreelakshmi 8129866550 to the mobile number of accused no.1 9562263445 are seen on 17.02.2017 between 21:03:06 hrs. and 21:56:51 hrs., Ext.P263 FSL report would show that video clippings involved in this case were captured on 17.02.2017 between 22:30:55 hrs. and 22:48:40 hrs. As per Ext.P90 series the last message between accused no.1 and Smt. Sreelakshmi was at 21:56:51 hrs. on 17.02.2017, that is nearly half an hour before the recording of the visuals. Moreover, the calls and messages were seen made when accused no.1 allegedly

proceeded to Karukutty with MO12 and also while travelling with PW1 in MO9. The CDR of mobile number of Smt. Sreelakshmi 8129866550 is not produced. Similarly, the location details are also not produced. She was not cited as a witness. She being the person who contacted accused no.1 immediately before the alleged commission of offence, chance for the revelation of the mission in which accused no.1 has been engaged at that time and therefore, she would have been the competent person to say about the alleged incident. Moreover, the case of prosecution is that both of them were maintaining thick relationship. She would also have been known about the alleged association of accused no.1 with accused no.8. Why she was not cited as a witness is a fact that cast doubt in the prosecution case especially considering the claim of accused no.1 that the visuals were captured as part of quotation at the instance of a lady.

892. Ext.P419 is the seizure mahazar prepared by PW202 on 02.03.2017 in connection with the seizure of mobile phone of Smt. Sreelakshmi. It is mentioned specifically in the mahazar that she contacted accused no.1 immediately before the incident and hence, the phone was seized. This phone was forwarded for FSL examination vide

Ext.P432 forwarding note. The SIM cards in the phone are marked as Ext.P266 and Ext.P266(a). Ext.P265 is the FSL report. Ext.P265(a) is the DVD containing the data retrieved from the mobile phone. The prosecution did not bring it to evidence claiming that it would affect the privacy. It is to be noted that the directions in Crl.Appeal.No.1794/2019 regarding Ext.P262 memory card is equally applicable with respect to this particular evidence also. Prosecution suppressed the contents claiming that the visuals would affect the privacy. No report to that effect is filed. Moreover, the FSL report would show that Smt. Sreelakshmi used another mobile number 8606918218. The CDR and location details of this number are also not produced before the court. This report would further show that she saved the numbers 7763465227 and 9488034333 as the contact numbers of accused no.1. The CDR and location details of these numbers are also not produced. Ext.P265(a) report shows that Smt. Sreelakshmi has contact with PW232 Vishnu, PW129 Sobhana and sister of accused no.1. No material is available before this court to see, whether the investigating officers interrogated Smt. Sreelakshmi. Similarly, no reason is forthcoming for not citing her as a witness also. Ext.P265(a)

shows outgoing calls from the number of Smt. Sreelakshmi to the mobile number of accused no.1 9447676363 on 24.02.2017 between 19:21:44 hrs. and 19:23:19 hrs.. These calls were made after the arrest of accused no.1 on 23.02.2017.

893. Another aspect is that PW198 conducted search at the residence of one Smt. Shiny who is the co-accused of accused no.1 in crime no.372/2017 of Kottayam West Police Station. PW198 seized the laptop on the strength of Ext.P326 search list. This search was conducted on 28.02.2017 at 1 p.m. at the rented residence of Smt. Shiny Thomas. In Ext.P326 it is stated clearly that Smt. Shiny Thomas is supposed to have relationship with accused persons. When PW261 was in box, questions were put to him about this Smt. Shiny Thomas. PW261 replied that he heard of about Smt. Shiny Thomas, but no further details are known to him. Similarly, questions were put to him about the contacts between accused no.1 and Smt. Sreelakshmi even after his arrest. He pretended ignorance. PW261 also admitted that almost all the messages during the period of alleged commission of offence from accused no.1 were to Smt. Sreelakshmi. PW261 admitted that the contents of all these messages

were not extracted in Ext.P265. The evidence of PW232 Vishnu, the cousin of accused no.1 is that he had spoken to Smt. Sreelakshmi. PW232 also deposed that he had been asked by accused no.1 to drop Smt. Sreelakshmi at the residence of accused no.1. Want of her interrogation and failure to bring in evidence the report of the Forensic Science Laboratory on examination of her mobile phone and omission to cite her as a witness despite the statement of PW1 in her First Information Statement that accused no.1 told about a quotation by a lady is casting serious doubt about the case that the humiliation of accused no.1 was on a quotation of accused no.8.

894. The data retrieved from Q14 in Ext.P265(a) would show outgoing and incoming calls from one Mr. Kevin Thomas on 18.02.2017 between 12:07:23 hrs. and 12:58:21 hrs. Similarly, the data extracted from MO69 mobile phone of accused no.1 seized from the house of PW24 Antony Selvom in Annexure -12 DVD of Ext.P265(a) would show that there were 32 calls between Sri Kevin Thomas and accused no.1 using the mobile numbers 9746727293 and 9447676363. The first contact was at 20:28:03 hrs. and the last was at 22:33:34 hrs.. PW192 deposed

about this. Ext.P201 is the CDR of mobile number 9447676363 of accused no.1. These calls are not seen in Ext.P201. When questions were put to PW261 about this aspect, he admitted after verifying Ext.P265(a) datas that 32 calls are seen. He also stated about the duration of the calls. According to him, he noticed the details of these calls only while tendering the evidence. He admitted that these calls are not reflected in Ext.P201. He tried to give an explanation that if the recipient number is on roaming, call duration will be reflected in the CDR even if it is not connected. He also stated that had these calls been connected, that should have been reflected in the CDR even if it is not connected. He also stated specifically that the number of accused no.1 was on roaming at that time. But, the evidence of PW20 contradict this evidence of PW261. PW20 Adv. E.C. Poulose deposed that accused nos.1, 3 and 4 visited him at his residence in Angamaly on 18.02.17 at about 9 hrs.. It is the case of prosecution that they reached at the residence of Adv. E.C. Poulose during the course of journey from Haripad. The evidence regarding this journey including the evidence of the driver of the taxi car was already discussed by this court. Considering the prosecution

allegations, these calls were seen made during the course of this journey. The evidence of PW20 discredits the claim of PW261 that accused no.1 was in roaming mode at that time and that is the reason for not reflecting those calls in the CDR. Another aspect to be noted is that Smt. Sreelakshmi also saved the number of Kevin Thomas 9746727293 as "Kevin Kuttu" as seen from Ext.P265(a). The conversation between accused no.1 and PW261 recorded by PW261 in secret on 10.03.2017 when accused no.1 was taken to jail on expiry of custody period revealed from Ext.D168 also contains a reference about Mr. Kevin. Accused no.1 suggested that Mr Kevin can be sent to Adv. Pradeesh Chacko to obtain the mobile phone used for capturing the visuals involved in this case. He was also not interrogated.

895. Ext.P265(a) would show the contacts between Smt. Sreelakshmi and PW261 and also with the then Rural S.P Mr A.V George. Somany calls were seen between them. Though PW261 deposed before the court that accused no.1 and Smt. Sreelakshmi were lovers, no report is filed before the court stating about the details of investigation.

896. Another aspect is that Ext.P138 series visiting cards were seized from C1 Cell on the strength of Ext.P137 search list on 22.06.2017. 9895112533 is the number of one Mr. T.J. Sebastian. This number is seen in the visiting cards seized from C1 Cell. Ext.P201 CDR would show that calls were made to the number of T.J Sebastian before and after the incident. Ext.P230 series customer application and ID proof of this number are produced. Except this no investigation is also seen conducted about this contact.

897. Similarly, the case of prosecution relying on the voice clips produced by PW222 is that accused no.8 stated that he saved a lady from prosecution and as a result thereof he is facing prosecution. This would also show the involvement of lady in the alleged commission of offence. No investigation is seen conducted about this involvement also.

898. As I pointed out, accused no.1 during the course of the commission of the offence stated that the visuals are being captured as part of quotation entrusted to him by a lady. No investigation is conducted about this aspect as part of any investigations atleast to rule out the involvement of lady or to see that the claim of accused no.1 was a

false one. Accused no.8 was made as an accused on the strength of the alleged letter written by accused no.1 while he was in jail. It is seen that accused no.1 who claimed at the first instance that the quotation was at the instance of a lady, thereafter changed his version and alleged that the quotation was at the instance of accused no.8. If this be the situation, prosecution is bound to conduct investigation about the socalled involvement of lady claimed by accused no.1 during the commission of offence. In this context, considering the fact that prosecution failed to prove the conspiracy between accused no.1 & accused no.8. The suppression of matters in connection with Smt. Sreelakshmi, Smt. Shiny Thomas and Sri Kevin Thomas assumes relevance and the prosecution ought to have been ruled out the involvement of the above persons in the commission of offence. The point is decided accordingly.

899. Point no.43:-

Whether the change in hash value of Ext.P262 memory card affected the evidentiary value of the memory card and consequentially the trial of this case ?

Ext.P262 is the memory card involved in this case containing the visuals of attack on PW1. As this court discussed and pointed out hereinbefore while considering several points, the memory card is produced before the Judicial First Class Magistrate, Aluva, who was holding the charge of the Judicial First Class Magistrate Court, Angamaly on 20.02.2017 by PW20 as it was entrusted with him by accused no.1. On that day itself, PW201 collected it from the court. The said memory card was thereafter forwarded for FSL examination. Ext.P263 report was also prepared by PW192. The visuals of Ext.P262 memory card was also copied to Ext.P263(a) pendrive appended with Ext.P263 report. Both Exts.P262 memory card and P263(a) pendrive are in the custody of the court since then. PW192 at the time of Ext.P263 report prepared another pendrive containing the visuals of Ext.P262 and that was given to the investigating officer. Ext.P263(b) report is also prepared by PW192 as per the clarification sought for by the investigating officer. PW192 is examined before the court before the second further investigation. In Ext.P263, Ext.P262 is marked as Q3. In page no.7 of Ext.P263, the details regarding analysis is mentioned. It is mentioned that

The questioned item marked Q3 is a Micro SD memory card of 8GB capacity. The questioned memory card was analyzed using Forensic Write Blockers FRED. A forensic image of memory card was prepared using Cyber Check Software and the suspect device details are given in Annexure – 2. The MD-5 Hash Value of the memory card generated by the Cyber Check software is "8189-566D-62C8-CFIB-7E29-9324-2899-824B". The data present in the questioned memory card was analysed using 'ENCASE' software. On examination, picture/video files were retrieved from the questioned memory card marked Q3. Many picture/video files were found to be in the deleted form. Therefore, detailed examination of un-allocated space was made by using Forensic Data Carving Software for retrieving deleted picture/video files. Most of the retrieved picture/video files are obscene in nature and soft copy of the retrieved picture/video files is enclosed in a folder named data retrieved from Q3 in a pendrive. The eight video files involved in this case are retrieved from Q3. The file properties are also mentioned in the report along with the thumbnail view. The video files are found to be recorded on 17.02.2017 between 22:30:55 hrs to 22:48:40 hrs. It is also stated that

the file properties of the video recordings show that the files are recorded on 17.02.2017 and are created in the questioned memory card Q3 on 18.02.2017 from 9:18 hrs to 9:20 hrs.

900. As I pointed out, Ext.P263(b) is the report dated 07.04.2017 as the result of clarification sought by the investigating officer for the purpose of investigation. The clarification sought for was that, whether the images/videos retrieved from the memory card marked as Q3 is in any way tampered, morphed or edited. If so, give details and another query was that, can the instrument from which the data was transferred to the memory card be identified? If so, give details.

901. It is reported that on analysis, signs of morphing/editing/ tampering could not be found in the retrieved video recordings. It is further reported that it has not been possible to express any opinion about the device from which the video recordings are transferred to the questioned memory card. In Ext.P263, annexure- 2 contains the device details of Ext.P262 memory card. Admittedly, nothing is mentioned in Ext.P263 regarding the modalities and precautions to be followed while considering or playing the memory card before the court either as part of

enquiry or trial. No directions are also available in Ext.P263 regarding the procedure to be followed so as to keep the hash value of Ext.P262 recorded in Ext.P263 intact throughout. Above all nothing is stated that the hash value will be changed if it is used without write blocker. The memory card as well as pendrive were in the custody of committal court till committal. The memory card as well as the pendrive were forwarded to the Sessions Court along with other records in pursuance to the committal of the case to the Sessions Court. Both the memory card and pendrive were in the custody of the Sessions Court along with other records involved in this case as there is no request or submission either from the side of prosecution or from investigating officer to keep the memory card and the pendrive in safe custody. It is to be noted that somany electronic gadgets including several memory cards, pendrives and mobile phones were involved in this case and those were produced before the Sessions Court in the ordinary course. All these items were handled with as per the existing procedures. Thereafter, as per the direction of Hon'ble High Court, this case was transferred to the court of Special Judge (SPE/CBI)-III, Ernakulam for trial and disposal. The entire

records including the memory card and pendrive containing the visuals of PW1 were transferred to that court. On receipt of the records, that court kept the memory card and pendrive containing the visuals of PW1 in the treasury chest.

902. In the meantime, accused no.8 approached the Hon'ble Supreme Court challenging the order of Hon'ble High Court in Crl.M.C.No.1663/2018. The Hon'ble Supreme Court vide judgment in Crl.Appeal.No.1794/2019 permitted the accused to inspect the contents of memory card in lieu of service of copy to the accused as provided in the Cr.P.C. The Hon'ble Supreme Court also issued guidelines to protect the privacy of PW1 also. Pursuance to the judgment of the Hon'ble Supreme Court, accused nos.1, 2, 3, 4, 5, 6, 8 and 9 filed petitions before the court seeking permission to inspect the contents of the memory card in the presence of their counsels. Accused no.8 also prayed to permit them to inspect the contents in the presence of IT experts also. This court vide order dated 17.12.2019 permitted all the accused persons to inspect the contents jointly. Since the eighth accused prayed to have secret discussions during the inspection of contents with his IT expert and

lawyers, this court ordered that if any such discussions are required or to formulate any secret questions, arrangements can be made for that on the very same day. Since the Prosecutor and investigating officer is integral part of criminal trial, their presence also included. The prosecution is directed to make necessary arrangements for inspection. The inspection is scheduled on 19.12.2019 at 11.30 a.m as agreed by both sides. The accused is directed to furnish the details of persons who are intending to inspect the contents on or before 18.12.2019 so as to enable the prosecution to arrange the facilities. Prosecution is further directed to bring an expert to record the hash value and also handle with related matters in connection with the inspection. The inspection of the memory card was conducted as ordered as on 19.12.2019. The accused persons, their counsels, the learned Special Public Prosecutor, PW261, PW200 Manju, civil police officer Mr Binu were attended the inspection. Prosecution has made all arrangements for the inspection. The windowpanes and all other similarly placed places were covered before inspection so as to avoid any kind of leakages of visuals during inspection. Metal detector examination was also conducted to avoid the

chance of bringing any device for recording the visuals during inspection. The visuals were inspected by all of them. IT experts suggested by accused no.8 also inspected the visuals along with them. The senior counsel for accused no.8 was engaged before the Hon'ble High Court and the senior counsel inspected the visuals in the afternoon session. All the precautions were taken during that time also. PW192 and PW260 were arranged by the prosecution as FSL experts for inspecting the contents.

903. Thereafter, counsel for accused no.8 filed petition before the court to obtain the clone copy of Ext.P262 so as to enable them to forward it for further expert examination as directed by Hon'ble Supreme Court in Crl.Appeal No.1794/2019. This court forwarded Ext.P262 on 09.01.2020 to Forensic Science Laboratory through special messenger for preparing clone copy of memory card and report. The said memory card was reached in the lab on 10.01.2020 and examined on 10.01.2020 itself. PW192 obtained the clone copy and prepared Ext.P675 report for preparing the clone copy. It is reported that, Disk to Disk copy of the questioned memory card is prepared by forensic duplicator TD2u in a 8 GB capacity memory card. Nothing else is mentioned in Ext.P675 report.

The very same PW192 prepared Ext.P677 report on 29.01.2020 and forwarded it to the trail court. This report is also prepared in continuation to the letter issued by this court dated 09.01.2020 for obtaining the clone copy of the memory card. The Reference No.D.20/2020 dated 09.01.2020 is specifically mentioned in the report. The date of receipt is also noted as 10.01.2020. The purpose of reference is also noted as for preparing clone copy of memory card and report. Date of examination is noted as 10.01.2020. The nature of examination as requested in forwarding note is stated as, to prepare a clone copy of the questioned memory card. In the analysis portion the MD5 Hash Value of the memory card generated by the Forensic duplicator TD2u is stated. It is stated further that the suspect device details are enclosed in Annexure–1. In the file properties the date of last access was shown as on 13.12.2018. In the results of examination it is stated that (1) Disk to Disk (cloned copy) of the questioned memory card marked Q3 is prepared by forensic duplicator TD2u in a 8 GB capacity sterile memory card and is enclosed along with the report No:DD8/20/b2-380/FSL/20 dated 10.01.2020; (2) The file properties of the video files recorded on

17.2.17 were retrieved and is enclosed in the report. Except these two results, on a reading of Ext.P675 and Ext.P677 nobody other than the expert is not able to know about the change in hash value. It is true that the last access date is shown as 13.12.2018, but, nothing is mentioned that the hash value of memory card is changed from the hash value noted in Ext.P263 report. In this report also, no modalities for operating the memory card is stated.

904. It is to be noted further that, as I pointed out, in the order dated 17.12.2019 permitting the accused to inspect the contents of Ext.P262, this court specifically directed the scientific experts to record the hash value. Neither the experts nor the Prosecutor nor the investigating officer inform the court about any change in hash value at the time of that inspection. As I pointed out, Crl.Appeal.No.1794/2019 filed by accused no.8 before the Hon'ble Supreme Court challenging the order of Hon'ble High Court in Crl.M.C. No.1663/2018 and consequentially the order in Crl.M.P 49/18. The prayer of the accused was to supply the copy of memory card involved in this case. The Hon'ble Supreme Court, considering the submissions of both sides, held that

"instead of allowing the prayer sought by the appellant in toto, it may be desirable to mould the relief by permitting the appellant to seek second expert opinion from an independent agency such as the Central Forensic Science Laboratory (CFSL), on all matters which the appellant may be advised. In that, the appellant can formulate queries with the help of an expert of his choice, for being posed to the stated agency. That shall be confidential and not allowed to be accessed by any other agency or person not associated with the CFSL. Similarly, the forensic report prepared by the CFSL, after analyzing the cloned copy of the subject memory card/pen-drive, shall be kept confidential and shall not be allowed to be accessed by any other agency or person except the concerned accused or his authorized representative until the conclusion of the trial. We are inclined to say so because the State FSL has already submitted its forensic report in relation to the same memory card at the instance of the investigating agency. Needless to mention that the appellant before us or the other accused cannot and are not claiming any expertise, much less, capability of undertaking forensic analysis of the cloned copy of the contents of the memory card/pen-drive. They may

have to eventually depend on some expert agency. In our opinion, the accused, who are interested in reassuring themselves about the genuineness and credibility of the contents of the memory card in question or that of the pen-drive produced before the trial Court by the prosecution on which the prosecution would rely during the trial, are free to take opinion of an independent expert agency, such as the CFSL on such matters as they may be advised, which information can be used by them to confront the prosecution witnesses including the forensic report of the State FSL relied upon by the prosecution forming part of the police report."

905. As per the above direction of Hon'ble Supreme Court, the accused filed a petition and accordingly, this court forwarded Ext.P262 for obtaining cloned copy so as to forward it to CFSL, Chandigarh. Admittedly, Exts.P675 and P677 are prepared as part of these proceedings for obtaining cloned copy at the instance of accused no.8. It is to be noted that the accused is kept open to challenge the genuineness and credibility of the contents of the memory card or pendrive and they are also free to take opinion from an expert agency on such matters. It is

further held that these informations can be used to confront the prosecution witnesses including the FSL report of the State Forensic Science Laboratory. Considering the direction, this court maintained confidentiality in the above proceedings. The copies of the queries, the report from Central Forensic Science Laboratory and the reports prepared to obtain cloned copy as part of these proceedings are maintained confidential till this date as directed by the Hon'ble Supreme Court.

906. PW192 was examined before this court during 2021. His examination was extended for 35 days. PW260 also attended the court for assisting PW192. Though the learned defence counsel objected this, this court permitted her to assist PW192 considering the volumeness of gadgets examined in this case and also considering the nature of report. As I pointed out, on 29.12.2021, PW261 filed report before this court stating the commencement of further investigation. As part of further investigation, PW260 examined Q3 again from 07.07.2022 to 11.07.2022. The nature of examination as requested were to report whether any folder or files in the memory card are accessed after 18.02.2017 and also to

furnish a copy of file properties and all files and folders. It is further asked to compare the file properties of various files retrieved from memory card as per Exts.P263 and P677. It is also requested to give the details and the reason for change in the file properties. There is direction to provide hash value of eight video files of sexual assault as per Exts.P263 and P677 and furnish the reason, if there is any change in hash value of respective video files. It is further requested to provide the reason for change in hash value of the questioned memory card as per Ext.P677 from Ext.P263. PW260 analyzed the Q3 and prepared forensic image on 07.07.2022. She also examined the forensic image of the memory card prepared on 01.03.2017. In the report, it is reported that on 09.01.2018 at 21:58 hours, the questioned memory card is connected to a computer having Windows operating system. It is further reported that, on 13.12.2018 at 22:58 hrs the questioned memory card is used in a mobile device having Android operating system. The forensic image prepared on 07.07.2022 show that the memory card was used in a Vivo make mobile phone having Android operating system and Jio network application on 19.07.2021, 12:19 hrs to 19.07.2021, 12:54 hrs.

907. Though PW260 reported about the change in hash value of the memory card, she specifically reported that the individual MD-5 hash values of eight video files generated by "Encase" software remains the same in all forensic images taken on 01.03.2017 enclosed in Table-2 of Ext.P673, 10.01.2020 enclosed in Table-4 and 07.07.2022 enclosed in Table – 6. So, the reports prepared in the State Forensic Science Laboratory after analysing Ext.P262 memory card from 03.03.2017 till 07.07.2022 resulting Ext.P263, Ext.P263(b), Ext.P673, Ext.P675 and Ext.P677 would specifically and clearly show that the MD-5 hash values of eight video files with respect to the visual of sexual attack on PW1 remains the same without any change and is still having the same hash value at the time of obtaining forensic image at the first instance on 01.03.2017 itself. So, it can be concluded without any ambiguity and doubt on the basis of FSL reports that the images/videos files of sexual attack on PW1 remain untampered, edited and untouched as in the condition when it was produced before the court. The change in hash value and related matters are to be discussed in the light of above examinations.

908. The examination of PW192 was commenced on 20.10.2021 and lasted till 11.12.2021. Ext.P262 memory card, Ext.P263 report of analysis Ext.P263(a) pendrive and Ext.P263(b) report prepared in connection with the clarification sought for by the investigating officer with respect to Ext.P262 were marked and proved through this witness during his examination before the second further investigation. While marking Ext.P262, the learned counsel for accused no.8 objected the marking on the ground that PW192 is not competent to prove the contents. The learned Special Public Prosecutor replied that he is the one and only person competent to prove the contents of the memory card. I had considered the rival contentions. It is to be noted that though PW20 produced the memory card before this court, and PW202 collected it from the court, PW192 as stated by learned Special Public Prosecutor examined the contents of this memory card and he is competent to identify the memory card. Hence, the objection raised by learned counsel for accused no.8 is turned down. During the examination, he had given details of the contents of Ext.P262 and also about the nature of analysis. PW192 during his examination on 20.10.2021 specifically deposed that

these video clippings are stored in the memory card in a folder name "MY". The file created and file accessed date are found to be 18.02.2017. He again articulated that nobody accessed this after 18.02.2017. During the course of examination, PW192 examined the contents extensively. All the eight files were opened and played before the court using the laptop provided by the prosecution. The prosecution also elicited the details of conversations available in the files. PW192 also deposed that he received another forwarding note for further examination of video files retrieved from Q3 memory card as well as to compare the dress materials already forwarded to Forensic Science Laboratory. He stated that he had been directed to verify whether the video clippings retrieved from Q3 are anyway tampered, morphed or edited, and if so give details. On 21.10.2021, Ext.P263(b) report is also proved through this witness. He categorically stated that, on analysis, signs of morphing, editing and tampering could not be found in the retrieved video recording. Even during this evidence PW192 did not mention anything about Exts.P675 and P677 reports prepared on 10.01.2020 and 29.01.2020 and also about the change in hash value of Ext.P262. The prosecution also did not elicit

anything about these reports and also about the change in hash value during the first phase of examination of PW192. As I pointed out, PW260 was available before the court throughout for assisting PW192. PW261 investigating officer was also present before the court during the examination of PW192. This would show that the prosecution, PW192 and the Investigating Officer had clear knowledge about the direction of Hon'ble Supreme Court to keep the confidentiality of the reports prepared in connection with the obtaining of clone copy. Moreover PW192 categorically stated that the reports are confidential. He was extensively cross-examined. In the re-examination, the learned Special Public Prosecutor put a question to him regarding the inspection of contents after the FSL examination and PW192 deposed that if somebody views the device after examination, the hash value will change if it connected without Write Blockers. It is to be noted that even after specific direction to note down the hash value while inspecting the contents on 19.12.2019, PW192 who assisted the inspection in his capacity as an expert reported nothing regarding the change in hash value. Similarly, even perusing Exts.P675 and P677, the reports prepared

for obtaining clone copy a layman cannot get anything indicating the change in hash value. As I pointed out, except the fact of preparing cloned copy and also the enclosure of file properties of the video files, nothing is mentioned in these reports to show that the hash value of Ext.P262 was changed.

909. PW192 was recalled after the second further investigation. His examination was again commenced on 01.11.2023. Exts.P675 and P677 reports were marked through this witness. These are reports prepared on 10.01.2020 and 29.01.2020 respectively in connection with the preparation of clone copy so as to comply the judgment of Hon'ble Supreme Court in Crl.Appeal.No.1794/2019. The marking of Exts.P675 and P677 is objected by the learned counsel for the appellant. They specifically contended that the reports were prepared in compliance with the direction of Hon'ble Supreme Court in Crl.Appeal.No.1794/2019 dated 29.11.2019. According to the learned counsel, there is a specific direction to keep the matters in connection with the second opinion from any agency at the instance of accused confidential and these reports form part of those proceedings. The learned Special Public Prosecutor replied

that the judgment only stipulates that the queries submitted by accused no.8 to be examined by CFSL and the reports prepared based on such queries are to be kept confidential so as to enable the defence. The reports prepared in connection with the making of clone copy are not directed to keep confidential.

910. I have considered the rival conditions. As I pointed out hereinbefore, the Hon'ble Supreme Court specifically held that the accused is at liberty to challenge the genuineness and credibility of the contents of the memory card or that of pendrive during the trial. So, it is seen that the accused were permitted to challenge the contents and related matters. The clone copies obtained as part of those proceedings. Hence, the entire proceedings exercised for complying the direction of the Hon'ble Supreme Court are to be maintained confidential. This court kept both Exts.P675 and P677 confidential, so as to comply the direction of the Hon'ble Supreme Court. Moreover, the proceedings on 19.12.2019 in connection with the inspection of the contents were also confidential. PW192 himself admitted before the court that since the reports are confidential, the copies were not furnished to the investigating officer. He

also stated that he informed the matter in detail to the Director, FSL. The Director, FSL instructed him in writing to issue copy of the report to the investigating officer. He has informed about the confidentiality of the report to the Director. If this be the situation, the contention of learned Special Public Prosecutor that the reports are not confidential cannot be accepted. But at the very same time the contention of learned counsel for accused that the document is a confidential one and hence, cannot be accepted in evidence is also be discarded. The basic principle of law is that "the admissibility of a document depends solely on its relevance to the case, not on the legality or impropriety of how it was obtained. The evidence even if obtained from a bad source is admissible if it is relevant to the facts in issue and it does not violate specific constitutional or statutory prohibitions. The relevancy of the document is the primary test. The doctrine of fruit of a poisonous tree has no application in Indian scenario. The Indian court generally follow the common law principle that, it matters not how you got it, if you steel it even, it would be admissible in evidence. Considering this legal position, I hold that the objection raised by the learned counsel for accused based on the

confidentiality cannot be accepted. These two reports are relevant for the proper adjudication of matters involved in this case.

911. As I pointed out, PW192 was interrogated again as part of second further investigation conducted by PW261 following the disclosure of PW222. The evidence of PW192 is that on 25.01.2022, as directed by the Director, FSL, copy of Exts.P675 and P677 excluding Annexure – 2 CD and copy of the letter to Director FSL from the court were issued to the investigating officer. Ext.P676(a) is the inventory prepared by PW261 on 25.01.2022 for seizing Exts.P675 and P677 from PW192. The date and time of seizure is shown as 25.01.2022 at 16:30 hours. The documents were seen produced by Dr. Sunil S.P., Joint Director, FSL, Trivandrum (PW192). These documents were produced before the court on the strength of Ext.P676(b). The documents were produced on 22.07.2022 along with the supplementary final report. The point sought to be proved is stated as to prove the change in hash value of the memory card containing the visuals of PW1. Though the documents were seized on 25.01.2022, these documents were produced before the court after a considerable delay of almost six months. Ext.C18

is the letter issued by the Director, Forensic Science Laboratory, Trivandrum to the Special Judge, Special Court (SPE/CBI)-III, Ernakulam on 25.01.2022 informing the issuance of copy of reports to the investigating officer on 25.01.2022. It is stated in Ext.C18 that the investigating officer issued notice u/s.91 Cr.P.C. to the Director, FSL for copy of FSL reports DD8/20 and DD8(A)/20 dated 10.01.2020 and 29.01.2020 respectively. The report were already sent to the court on 10.01.2020 and 29.01.2020. It is to be noted that going by the evidence of PW192, he stated that he informed the Director about the confidentiality of the report. He also deposed that since the reports are confidential, copies were not furnished to the investigating officer, deviating from the normal rule. Had this been the situation, the issuance of copies of reports to the investigating officer without taking prior permission of the court violating the confidentiality is improper and illegal. The FSL authorities ought to have been obtained prior permission from the court as they know about the confidentiality. That was not done. It is to be noted that Ext.P676(a) contains the signature of PW192 as the person produced these documents. Nothing can be seen from Ext.P676(a) that the

documents were produced as directed by the Director, FSL. During cross-examination, the learned counsel for accused put a question to PW192 that whether his statement was recorded by the investigating officer on 25.01.2022 and he replied that he does not remember. PW192 also admitted before the court that not even a whisper is available in the mahazar regarding the involvement of the Director, Forensic Science Laboratory. He had gone to the extent of stating that FSL Director had given written direction for issuing the copies. No such communication is produced before the court. PW192 in one point of time denied his statement to the investigating officer. According to him, he had not given any statement to the investigating officer.

912. Another fact to be considered is that in Ext.P676(a) the place of seizure is shown as the office of the Joint Director, FSL, Trivandrum. Except Ext.C18, no evidence is before the court to show the involvement of Director as stated by PW192. When the learned counsel put questions to PW192 referring the place of seizure mentioned in Ext.P676(a), PW192 replied that no such office is available at FSL, Trivandrum. Another question is put to him referring Ext.P676(a) that the place of seizure

mentioned in Ext.P676(a) is incorrect. He replied that the place shown is incorrect. PW192 deposed that the written direction from the Director to hand over the documents to the investigating officer is available in the file. He also stated that he had given written information to the Director that the matter should be informed to the court before issuing copies. He further stated that he has recorded in the file that this matter may inform the court. When a question is put to him that, didn't you inform the court, he replied that we can't directly inform the court. Director FSL is informing the matters to the court normally. PW192 adduced evidence in a manner that he has no role in furnishing the copies of Ext.P675 and P676 to the investigating officer on 25.01.2022. According to him, he obeyed the direction of Director, FSL. The evidence would further show that he was very particular about the confidentiality of these documents and even informed about the confidentiality in writing to the Director, FSL, despite this direction copies were issued. But this is against Ext.P676(a).

913. The evidence of PW261 regarding the seizure of Exts.P675 to P677 is also to be considered. When PW261 is in box, he stated that the

allegation of prosecution is that though the fact regarding the change in hash value of Ext.P262 was informed the court on 10.01.2020 at the time of preparing Ext.P675 itself, the court did not convey this information either to the prosecuting agency or to the investigating officer. PW261 further stated that he came across with this information regarding the change in hash value of Ext.P268 only on 25.01.2022. A suggestion is put to him by the learned counsel for accused that this was informed him on 10.01.2020 by PW192, but he denied it. Questions were put to him referring to W.P (Crl) No.445 of 2022 pending before the Hon'ble High Court. He admitted that he is arraigned as respondent no.5 in the above petition. He filed statement. PW261 admitted that in his statement he submitted no objection for granting relief in W.P (Crl) No.445 of 2022. He also admitted that in para no.13 of page 11 of the above petition it is stated that, on 10.1.2020, the joint Director of SFSL Trivandrum called the investigating officer and informed that hash value memory card is seen changed. He also admitted that in his statement he stated specifically that, the facts stated by the petitioner in Para 1 to 14 of the writ petition reflects the details of the case and therefore, the respondents are not

repeating the same in this statement. Writ petition, W.P (Crl) No.445 of 2022 was filed by PW1. The prayer in the said writ petition was to conduct investigation about the alleged access to the memory card while it was in the custody of court. In paragraph no.5 of the writ petition, the details regarding the reasons for the change in hash value are narrated. It is further alleged that though the reports were received on 29.01.2020, this court kept the reports in a secret manner. A suggestion is put to PW261 by the learned counsel for accused that he had clear knowledge about Exts.P675 and P677 on 10.01.2020 itself and he issued notice to the Director on 25.01.2022 as part of a drama. He denied it. In the chief examination of PW261, stated that on 25.01.2022 he recorded the statement of PW192. Thereafter, he had given notice as per law and accordingly, seized Exts.P675 to P679 on the strength of Ext.P676(a) inventory mahazar. It is to be noted that the copy of the notice issued to the FSL is not produced before the court. This court put a question to PW261 as court question, whether the copy is available with him. He showed the copy. It is to be noted that neither in the chief examination, nor in the cross-examination, PW261 stated anything about the situation

warranting him to record the statement of PW192 on 25.01.2022 leading to the seizure of Exts.P675 to P677.

914. Another fact to be noticed is that PW261 claimed that he had no knowledge about the change in hash value till 25.01.2022. It is true that the copies of these reports were not furnished to the investigating officer as these reports were prepared in pursuance to the judgment of the Hon'ble Supreme Court in Crl.Appeal No.1794/2019. Ext.P676 is the letter issued by this court to the Director, FSL, Trivandrum on 09.01.202 for preparing the clone copy of Ext.P262. PW261 arranged the police constable attached to the Nedumbassery Police Station and jeep for taking the memory card to FSL and also to produce it back before the court. Ext.P262 along with Ext.P675 reports were produced back before the court on 10.01.2020 and this court endorsed the receipt on that day at 10.15 p.m. from CPO 11977 Sinoj Francis, civil police officer of Nedumbassery Police Station. As PW261 deposed regarding the receipt of Ext.P263 from the S.H.O. Nedumbassery on 28.01.2022, whenever this court issued communications to S.H.O. Nedumbassery, all those communications were complied by PW261 in his capacity as the head of

Special Investigation Team. It is brought out in evidence that Special Investigation Team is still functioning in connection with this case. Considering the evidentiary value and also the privacy, PW261 arranged police jeep for taking the cloned copy of Ext.P262. Similarly, for collecting Ext.P675 also PW261 arranged another police constable Mr. Jaijo Antony, CPO13283 of Nedumbassery Police Station. Ext.P677 was received by the court on 30.01.2020 at 4.50 p.m. Similarly, the arrangements for sending cloned copy at the instance of accused no.8 to Central Forensic Science Laboratory, Chandigarh was also made by PW261 in his capacity as the investigating officer. Even otherwise, the usual practice of sending the reports from FSL is that they will intimate the court from where the objects were forwarded for examination that the report is ready. The court in-turn give communication to the investigating officers attached to the police station concerned to make arrangement for collecting the report and the objects. The very same practice is adopted in this case also. So, it can be seen that PW261 had clear knowledge atleast about the preparation of two reports in connection with the making of clone copy on 10.01.2020. Further in the notice u/s.91 of

Cr.P.C issued for getting these reports PW261 mentioned clearly about the number of reports and this would also prove his knowledge about these reports. As I pointed out, PW192, PW260 and PW261 were available before the court during the examination of PW192. His examination was conducted after Ext.P675 and Ext.P677. PW192 admitted that PW261 contacted him on several occasions in connection with this case. It is very difficult to believe in the above circumstances that PW261 came across with the change in hash value and also regarding Exts.P673 and P675 only on 25.01.2022.

915. Further, the evidence of PW192 about this particular aspect also assumes relevance. As I pointed out, PW192 was recalled and examined before this court on 01.11.2023 mainly to prove Exts.P673 and P675 reports and related matters. He maintained a stand that he did not inform the change in hash value and also about the report to the investigating officer as the court directed him to keep the confidentiality. He claimed that while preparing Ext.P675 it is observed that hash value of the memory card is not matching with its hash value previously taken in the FSL for forensic examination. I informed this matter to the

Presiding Officer on 10.01.2020 itself using his mobile phone. The Hon'ble court informed him that you have to forward the cloned copy today itself and its report. It is further informed that the Presiding Officer discussed this matter with senior officers and they have the opinion to collect a separate report including the hash value. On hearing this, this court put a question that, how could you obtain the contact number of the Presiding Officer. He replied that he does not remember who supplied the contact number. This court again put another question to him that, what prompted him to inform the change in hash value personally to the Presiding Officer rather than reporting it in the report. According to him while examining a digital gadget, if any irregularity is noticed, it is their responsibility to inform the matter to the court as per standard procedure. The witness corrected and stated that this is the normal procedure. PW192 is a senior officer attached with the FSL. The above evidence would expose the extent of his interestedness and biased inclinatin to support the prosecution without any basis. Admittedly, Ext.P262 was examined in the lab on 10.01.2020 for taking the clone copy and Ext.P675 was prepared on that day itself. The testimony of PW192

itself is sufficient to discredit his claims. He has no case that he contacted the Presiding Officer more than once. His own version is that he informed the court about the change in hash value over phone and the Presiding Officer asked him to forward the copy today along with the report. He claimed that the Presiding Officer has discussed this matter with senior officers and they have the opinion to collect a separate report including the hash value and accordingly, Ext.P677 was prepared. Interestingly, PW192 himself has no case that before this alleged phone call, the Presiding Officer or anybody had information about the change in hash value paving the occasion to discuss this fact already with the senior officers. It is to be noted that in Ext.P676 letter this court has specifically directed that, as per the judgment in Crl.Appeal.No.1794/2019 (Arising out of SLP(Crl.) No.10189/2018) of the Hon'ble Supreme court of India, you are directed to take a clone copy of the memory card in the sealed and intact packet and return to this court both memory card and the clone copy on the same day. Ext.P675 report was prepared in tune with Ext.P676 letter of this court so as to comply with the direction of Hon'ble Supreme Court. Moreover, in Ext.P677 report also the reference is shown

as Ext.P676 letter dated 09.01.2020. The date of receipt is also shown as 10.01.2020 through Sri Sinoj Francis CPO 11977, who was deputed by this court to take Ext.P262 to the lab. So, it is seen from these reports that these two reports were prepared in tune with the direction in Ext.P676. Suppressing all these material evidence, PW192, a public servant claimed that he prepared these two reports separately as per the direction of the Presiding Officer over phone. No separate direction is issued to prepare Ext.P.677.

916. Further, coming to the falsity of the alleged phone call from PW192 to the Presiding Officer, when this court put a question that from where he obtained the phone number, he submitted that he does not remember. Moreover, he had gone to the extent of stating that whenever irregularities are noticed, it is their responsibility to inform the court as per standard procedure. Thereafter, he himself changed that it is a normal procedure. It is to be noted that whenever examination is required at the instance of FSL, the court will issue forwarding note along with the objects. All the communications between the court and lab should have been in writing. There is no room for any telephonic conversation

between the Presiding Officer and the person who is examining the objects. The claim that bringing the irregularities to the notice of Presiding Officer is a normal procedure appears to be highly abnormal and unusual as it is against the existing practices for the communication between two public offices. PW192 has no case that he had any personal or prior acquaintance with the Presiding Officer. He again stated that the report was not given to the investigating officer as it was directed from the court itself. No such direction is there in Ext.P676 letter.

917. During cross-examination it is elicited that the investigating officer contacted him on several occasions to clear his doubts. It is specifically stated that Mr. Baiju Poulose contacted him to clear doubts. PW192 admitted that normally forensic experts are not contacting court directly. He stated further that, but there are certain situations where the experts will contact court for various purposes. What are those situations and purposes are not stated by PW192. But, he stated further that those situatins will be informed to the Director. He further claimed that he brought the change in hash value to the notice of the Director, FSL and the Director, FSL in turn asked him to communicate this matter to the

court. Moreover, when question was put to him about the person through whom Ext.P677 was forwarded to the court, he claimed ignorance. The above evidence of PW192 would show that he had stated untrue facts crossing the limits to support the prosecution blindly.

918. The evidence of PW261 is that he recorded the statement of PW192 u/s.161 of Cr.P.C and thereafter, the reports were seized from the lab. But PW192 in one point of time pretended ignorance about the recording of his statement and in another point of time denied the recording of such statement also. It is to be noted that he admitted that the explanations offered by him during chief examination for preparing two reports and also the story of contacting the Presiding Officer personally over phone are not stated to the investigating officer. In this juncture, the averments in W.P (Crl) No.445 of 2022 assumes relevance. As I pointed out, PW261 himself was constrained to admit the averments of PW1 in W.P (Crl) No.445 of 2022 filed before the Hon'ble High Court that on 10.01.2020 itself PW190 informed PW261 about the change in hash value over phone. The Hon'ble High Court in the judgment in W.P (Crl) No.445 of 2022 dated 07.12.2023 mentioned this contention in the

judgment that on 10.01.2020, the Joint Director of the State Forensic Science Laboratory, Thiruvananthapuram called the Investigating Officer and informed him that the hash value of the memory card had changed. This averment in the petition would further show the highhandedness of PW192 and PW261 in suppressing the fact that PW261 had clear knowledge about the change in hash value of the memory card and also regarding the reports as informed by PW192. Moreover, this communication is admitted by PW261 in his statement filed before the Hon'ble High Court also. PW261 admitted that fact during evidence. As I pointed out, no reason is assigned for collecting the records from FSL on 25.01.2022 and also for recording the statement of PW192 on that day.

919. It is to be noted that the second further investigation was commenced by PW261 after the revelation of PW222 on 25.12.2021. One of the main allegations raised against accused no.8 is that accused no.15 brought the visuals to his residence in a tablet computer and accused no.8 and his associates watched the visuals involved in this case on 15.11.2017 in his presence. The prosecution also alleges that the memory card was entrusted with accused no.8 by accused no.1 during his visit to Laksyah

on 22.02.2017, immediately before his arrest. But, the evidence produced before the court would show that during the second further investigation, allegations are raised to the effect that the visuals of the memory card, which is in the custody of court had been leaked and that affected the evidentiary value of it. It is to be noted that PW192, who examined the memory card and prepared reports, himself appeared in media and participated in discussions, indulging that the visuals had been leaked from court. A question is put to him that, has he had occasion to give interviews to various news channels regarding the FSL reports claimed to be highly confidential by him. He emphatically denied it and stated that he had not given any interview about FSL report in any channel. He stated further that he had not participated in any interview in connection with this. A question is put to him, whether PW67 Nikesh Kumar and CW390 Roshipal were known to him. He stated that Mr. Nikesh Kumar is known to him as a channel reporter. He further stated that he had not even heard about CW390 Mr. Roshipal. He again stated that he had not seen him also. According to him, he had not given any interview to Mr. Nikesh and Mr Roshipal about this case. A suggestion is put to him that

this statement of PW192 is false. He denied it. Whileso, Ext.D145 pendrive is played and showed to him. It contains two folders with name "കോടതിയുടെ കസ്റ്റഡിയിലിരിക്കെ ദൃശ്യങ്ങൾ കണ്ടത് രാത്രി പത്ത് മണിക്ക് ഡോ എസ്. പി. സുനിൽ" and "നടിയെ ആക്രമിച്ച കേസിൽ ദൃശ്യങ്ങൾ ചോർന്നിട്ടുണ്ടാകാം ഡോ :എസ്. പി.സുനിൽ". The marking of the said pendrive is objected by the learned Special Public Prosecutor stating that the certificate u/s.65B was not produced.

920. DW2 is examined on the side of defence to prove the certificates u/s.65B of Indian Evidence Act issued to the pendrives and other gadgets produced and marked on their side, containing the telecast of the news regarding this case. DW2 deposed that he is a B.Tech graduate. As requested by accused no.8, he downloaded the videos and news items published in YouTube. He did it accordingly. He downloaded those visuals and saved it in his computer. He copied those visuals to pendrive whenever it was requested. He issued certificates u/s.65B of the Indian Evidence Act for each pendrives. Ext.D145(a) is the Section 65B certificate issued for Ext.D145. Though the learned Special Public Prosecutor objected the marking of the certificate holding that he is not

qualified, the grounds for disqualification is not stated. As we all know, the videos available in the YouTube is a video available in a public platform. All can access it. DW2 deposed that he downloaded and saved it in his computer and copied it to pendrive and issued Section 65B certificate for that. The pendrives produced before the court are stated to be containing the visuals available in this particular platform. If this be the situation, Section 65B certificate issued by DW2 is to be accepted. The video available in Ext.D145 was played and the attention of PW192 was drawn. He admitted that the persons participated in the discussion were Mr. Nikesh Kumar and he himself. He was compelled to admit this. He stated that they contacted him through mobile phone and stated him that the obscene video files were leaked and are now tampered. He clarified that in FSL report they have not mentioned that the video files are leaked. He also stated that they have included individual hash value of these videos files and they observed that all the eight video files are not tampered. It is to be noted that, though in different contexts, the evidence of PW192 will also prove clearly that the individual hash value of the video files remain intact and the visuals are not tampered, he

further deposed that he had given answers to the channel people to clarify and clear the wrong statements made by the channel. Thereafter, the learned counsel for accused put another question to him that, was there any occasion to give any interview to Mr. Roshipal and any other persons. He claimed ignorance. He reiterated that Mr. Roshipal is not known to him. The second folder of Ext.D145 is played before the court. This contains the interview of PW192 with Mr. Roshipal. Even after verifying the visuals, PW192 stated that, that person is known to him. He has no idea about the details of the reporter. He had taken earnest attempts to deny his association with Mr. Roshipal. He was compelled to admit that the interview was almost for half an hour. Moreover, he admitted that the mike shows the logo of the Reporter T.V. On the next day of examination, on 17.11.2023, PW192 admitted that he received a call from PW67 Nikesh Kumar on the day of interview. He claimed that he does not know the person who contacted him on that day morning. Considering the ignorance pretended by PW192, the visuals in the first folder of Ext.D145 was played. PW67 Nikesh Kumar asserted that "Dr. Sunil ഞാൻ താങ്കളോട് രാവിലെ സംസാരിച്ചിരുന്നു. ഒന്നു കൂടി ആ കാര്യത്തിൽ

വ്യക്തത വരുത്തുവാൻ വേണ്ടിയാണ്." This would show that Mr. Nikesh Kumar contacted PW192 on that day morning about the matters related to Ext.P262. The video would further show that Mr. Nikesh Kumar stated that he asked about the access on 09.01.2018 and 13.12.2018 mentioned in the FSL reports. The interview would show that PW192 had actively participated in the discussion with PW67 about the result of examination of Ext.P262. PW192 admitted that as he had knowledge of the fact that his examination as prosecution witness was in connection with the in-camera trial of this case at the time of giving Ext.D145 interviews. He admitted that he had knowledge that the trial is in-camera trail. PW192, a senior officer knows very well about the purpose of in-camera trail and also the directions of Hon'ble Supreme Court to keep the privacy of PW1. PW192 participated in discussion with media persons immediately after his retirement from service and that also affects his trustworthiness.

921. The evidence of PW261 regarding the examination of contents of visuals of attack on PW1 is also to be considered. PW192, PW202 and PW261 admitted that PW192 prepared a pendrive during his

examination of Ext.P262 on 03.03.2017 containing the visuals of attack on PW1. According to him, one pendrive was given to the court and the other was given to the investigating officer. PW202 admitted that he handed over this pendrive to PW261. PW261 admitted the receipt of the said pendrive. According to him, the pendrive is in safe custody. A question is put to him by the learned counsel for accused that, he has inspected and verified the contents of pendrive as part of verification of the statement of witnesses. PW261 replied that he has not inspected and verified the contents during investigation. He had gone to the extent of stating that he came to know about the details of visuals from the members of Special Investigation Team. The members of Special Investigation Team convinced him about the details of visuals. Another question is put to him about the officers, who informed him regarding these visuals. He stated that it was PW202. But nothing is recorded in the case diary about this fact. He also stated that PW202 gave the details on 23.05.2017 while interrogating accused no.1 in jail. It is very astonishing to hear that an investigating officer who conducted the investigation for a long period, especially regarding the matters alleging the copying of

visuals and also the alleged leakage of visuals from the memory card, did not inspect and verify the visuals as part of the investigation. Another question is put to him that several reports filed by PW261 would show that he had inspected the visuals and accordingly, those reports were prepared. He replied that he convinced from the information furnished to him by other about the contents and accordingly, those reports were prepared. He again reiterated that he had not inspected the visuals. He came across with the details during investigation. He again stated that he got the details of visuals from PW1 also. Ext.C9 report is shown to the witness. He admitted that he had made reference in Ext.C9 about the contents of the visuals. Referring Ext.P710, question is put to him about the statement regarding the visuals. He explained that all these matters were stated on the basis of information received from PW1 and PW202. In page no.8 of Ext.P710, investigating officer stated specifically about the details of visuals involved in the memory card. This would show that he verified the contents of the visuals. According to PW261, he did not inspect the visuals considering the importance of visuals. He repeatedly

reiterated that he got the details of visuals from PW1 and PW202 as he did not inspect the contents.

922. PW261 changed his version that he did not inspect the visuals at a subsequent day. In page no.1953 of the deposition of PW261 contains his contradictory version regarding the inspection of contents of visuals. He stated that on receiving the copy of Crl.M.P No.49/18 on 15.01.2018, he opened the pendrive and inspected the contents of visuals. He stated further that he came to understand that the details as mentioned in Crl.M.P No.49/18 can only be mentioned if the visuals were inspected in a studio atmosphere only. He filed reply to Crl.M.P No.49/18 stating these facts. He admitted that the averments in the objection would show that it was prepared after inspecting the contents of visuals. This version is contradictory to his own earlier version that he never inspected the contents of visuals as part of investigation. Further, during re-examination, the learned Special Public Prosecutor put a question to him that why did he stated he never inspected the contents. PW261 had given a new version that the visuals handed over by PW202 were not inspected by him till the completion of his investigation on

22.11.2017. He verified the contents for the first time on 15.01.2018 after getting copy of petition in Crl.MP No.49/18. He again stated that during 2021 when the examination of PW192 was going on, he verified the contents again in connection with the petitions filed at that time. According to him, after October 2021, he did not inspect the contents during his second further investigation commenced on 29.12.2021. On hearing this, this court put a question that, has he forgot to mention these matters during his earlier examination. He replied that he failed to give the details. During further cross examination, he admitted that he has not stated anything during chief examination about the receipt of the pendrive from PW202. He admitted that no report is filed before the court stating that he inspected the contents of visuals contained in the pendrive. It is seen that PW261, a person who had narrated each and every details claimed that he omitted to mention the details about the inspection of the contents is highly unbelievable. Moreover, he himself deposed that proceedings were prepared by him in connection with the inspection of the contents in the pendrive. No such proceedings are also produced before this court. It seems that as in the case of Ext.P171 and

Ext.P156 registers kept in jail and Police Club, Aluva respectively, PW261 attempted to skip away from the responsibility by giving false evidence. Moreover PW261 ought to have been returned the pendrive to the court along with the final report considering the privacy and he is not expected to verify as and when required claimed by him. Nothing is stated about the manner in which the pendrive is kept with SIT.

923. Another fact to be considered along with the above aspect is the attempts on the side of PW261 to interrogate the court staff of the District and Sessions Court, Ernakulam and the Special Court (SPE/CBI)-III, Ernakulam. Exts.C56 to C61 are to be considered in connection with this aspect. Ext.C56 was filed on 29.03.2022 seeking permission to interrogate the Sheristadar, the officer who is the custodian of these documents and other officials, if required. This application was filed before the Special Court (SPE/CBI)-III, Ernakulam. It is stated in the report that on verification of the mobile phone of accused no.8, it contains the documents involved in this case with the signature of Presiding Officer. The interrogation is for investigating about the situations under which the documents are found available in the mobile

phone of accused no.8. On receipt of this request, the investigating officer is directed to furnish the details of the document said to have found in the mobile and its relevancy in the investigation of this case. This direction was issued on 30.03.2022. Till 12.04.2022 no details as directed by the court were not furnished by the investigating officer. The court again issued direction directing to furnish the details on or before 18.04.2022. Exts.C56 to C61 include the directions issued by the court. After Ext.C60 show cause, on 12.04.2022, PW261 filed report. In Ext.C60 dated 12.04.2022, this court issued show cause to PW261 as it is brought to the notice of the court that the petition filed by the investigating officer seeking permission to interrogate the court staff with the original signature of Presiding Officer is being telecast in media, despite the direction to keep the confidentiality of the investigation. As reply to Ext.C60 show cause, PW261 filed reply that he filed petitions seeking permission to interrogate the court staff before the District and Sessions Court and Special Court (SPE/CBI)-III, Ernakulam. According to him, he had given the scanned copy of these petitions to the office of Advocate General in connection with the Crl.M.C.No.803/22 filed by accused no.8.

According to him, he was not the exclusive custodian of those documents. According to him, this document was circulated in the media on 02.04.2022. According to him, those petitions were not furnished to the media with his knowledge or consent and he has not committed any mistake. Moreover, in reply to Exts.C57 and C58, PW261 produced the document which was allegedly found in the phone of accused no.8. On a perusal of the document, it is seen that the document is the copy of 'A' diary. Admittedly, 'A' diary is a public document accessible to all public including advocates, clerks and parties to the case. Another aspect is that the portion of 'A' diary dated 07.01.2020 contains the proceedings directing accused no.8 to remit the expenses to send the memory card to Central Forensic Science Lab, Chandigarh. This document is branded as the document found in the phone of accused no.8 connected with the investigation of this case. Ext.D205 pendrive is produced before the court by accused. It contains the videos of telecast in various medias regarding the alleged availability of documents with the signature of Presiding Officer in the mobile phone of accused no.8. This contains the discussions participating even the Special Public Prosecutor Mr. Ajakumar alleging

that court documents are found in the mobile phone of accused no.8 and hence, the investigation is extended to the court staff. This court as well as the CBI court, on getting the request from PW261 to interrogate the court staff permitted him to proceed in accordance with law. Though somany propagandas including discussions in media as seen from the telecast produced before the court in pendrives are made, no court staff was interrogated by PW261 as part of investigation. Why didn't he seek the permission to interrogate the staff after claiming that the documents of this case are found in the mobile phone of accused no.8 is not explained so far. As I stated in the beginning, all these matters are to be considered in total in connection with the disclosure of PW222 that the visuals are available with accused no.8 and all of them watched it on 15.11.2017 in his presence. The Investigating Officer also claimed that confidential documents are found in the mobile phone of accused no.8 and the attempt was to put the blame on the court that the visuals are leaked from the court. Further, it is to be noted that this is the reason why PW261 without any reason or circumstance obtained the copies of Exts.P673 and P675, violating the confidentiality from FSL on 25.01.2022

claiming that he had come across with the change in hash value only on that day. Moreover, the person who claimed ignorance about the reports specifically sought the copies of report no. DD 8A/20 in his notice to the Director, FSL. This also contradicts his claim that he had no knowledge about the details till 25.01.2022.

924. When PW192 was in the box, questions were put to him, whether he complied with the direction of the trial court dated 17.12.2019 to record the hash value of Ext.P262 during the inspection on 19.12.2019. He pretended ignorance. He also stated that PW261 did not inform him about this. According to him, he was under the impression that his presence is obtained for playing the video. PW261, on the other hand deposed before the court that he informed this direction to PW192. He further stated that he did not know about the outcome. The examination of reports would show that hash value was changed before the said inspection on 19.12.2019. This ought to have been noticed by PW192 and PW261, who made the arrangements for playing Ext.P262 on 19.12.2019. This also generates doubt regarding the claim of PW261 that he had no knowledge about the change in hash value till 25.01.2022. When PW202

filed forwarding note resulting Ext.P263(b) report, there was a specific query to find out the device from which the video recordings were transferred to Ext.P262. PW192 specifically reported in Ext.P263(b) that it has not been possible to express any opinion about the device from which the video recordings were transferred to the questioned memory card. This fact is reiterated by PW192 during his evidence also. In Ext.P673 report prepared by PW260 on 11.07.2022, it is reported that on 18.02.2017 at about 9.13 hours, the questioned memory card marked Q3 (Ext.P262) is used in Xiaomi make mobile device having Android operating system Qualcomm processor. The learned counsel for accused argued that, the evidence of PW260 and Ext.P673 cannot be relied on in the light of findings in Ext.P263(b) and evidence of PW192. It is to be noted that when this particular aspect was put to PW260, she deposed that during the examination on 11.07.2022, more advanced technology was used and that led to the findings regarding the use in Xiaomi make mobile. It is true that the reason for arriving such a conclusion is stated by PW260 is that new folders/files were seen created on 18.02.2017 indicating that the memory card was used in Xiaomi make mobile. But,

it is to be noted that nothing is mentioned in Ext.P263 or P263(b) about these folders. But the explanation offered by PW260 has to be taken into account regarding the detection of new data. The learned defence counsel also argued that no query was available in the forwarding note to identify the device and despite the said fact, PW260 gave an opinion. The learned counsel for accused further argued that this was stated as instructed by the prosecution.

925. Table-1 of Ext.P673 would show the file properties/metadata of the newly created folders/files. It is reported that on 18.02.2017, seventy seven folders/files were created. Though the fact that Redmi is the subsidiary branch of Xiaomi, PW260 deposed this fact during her evidence. But, at the very same time, in Ext.P263, the full file path of the eight video files was shown as "C\MY\VID 20170217 223055. MP4 is shown with respect to file created on 18.02.2017 at 9:19:59 hours. Similarly, all other seven files are also included "C\MY\VID". As far as Ext.P673 is concerned, the file path is not mentioned. "C\MY" refers to a folder named "MY" located in the Root Directory of the "C:" drive on a Windows computer. PW260 admitted before the court that the file

property full file path shows the complete location of a file within a device including drive, directories and file name. She admitted that the file properties of the eight video files are shown in Table 2 of Ext.P673. In Ext.P263 it is shown, in the Table in page no.8. She admitted that the file property full path is not included in Ext.P673. She further admitted that there is no reason for such omission. She again deposed that it is not required in the forwarding note. Another question is put to her that the details regarding the logical size and the hash value of the eight video files shown in Table-2 of Ext.P673 had not been disclosed in any of the earlier reports. She stated that she is not able to answer as the reports were prepared by PW192. She admitted that 'C' indicates a drive name. Another question is put to her that the commencement of file path that 'C' drive indicates that Ext.P262 was connected to a computer with Windows operating system when these files were transferred to Ext.P262. PW260 replied that since the report was prepared by PW192, she is not able to answer this. The learned defence counsel put another question that she was evading the answer so as to enable the prosecution to create explanation in tune with the prosecution case, but she denied it. Again

another question is put to her that, isn't it correct if the eight videos had been recorded in 'Xiaomi' mobile and had been transferred to Q3 memory card without any modification, the full path of the files would not have started with the letter 'C'. She replied that she has not stated that the videos were recorded using 'Xiaomi' mobile. Again, the learned counsel for accused put question that, if the eight videos had been directly transferred from mobile phone to Q3 memory card without any modification on the pathway of the files will not start with the letter 'C'. PW260 stated that she need the mobile device to answer the said question. The above answers would show that PW260 evaded the question regarding the connecting of Ext.P262 memory card to a computer system when these files were transferred. She claimed that PW192 is competent to answer this aspect. As I pointed out, PW260 assisted PW192 throughout the court whenever he present before the court in connection with this case. PW260 actively participated in all these matters relate to Ext.P262. Moreover, she herself admitted that she also relied on Ext.P263 prepared by PW192 for preparing Ext.P673. Further, PW260 is adducing evidence in her capacity as expert in Cyber

Forensic. She is bound to answer the question which is related with the technical aspects. Questions were put to PW260 that, isn't it correct that the full path of eight video files shown in Ext.P263 starting with 'C' followed by a back slash (\) indicates that these eight files were transferred to Ext.P262 using a computer system having Microsoft Windows operating system. This question was objected by learned Special Public Prosecutor stating that Ext.P263 report was prepared by PW192 and not by this witness. According to him, PW192 is competent to depose about the report. The learned counsel for accused claimed that PW260 is also working in the SFSL where Ext.P263 is prepared. They also stated that she is being examined as an expert. As I pointed out, PW260 herself relied on Ext.P263 in her capacity as expert and hence, she is competent to answer the question. The objection of learned Special Public Prosecutor is rejected. PW260 also reiterated her answer that it can only be answered by PW192. The question put to her is based on the file path and it is to be treated as a general aspect with respect to this subject. PW260 ought to have been answered this in her capacity as an expert. Again, question is put to her that no mobile phone will have a 'C' drive.

She admitted that the root directory of the mobile phone is forward slash data, forward slash data directory. Relying on this, the learned counsel for accused argued that the files were copied from another device and not from a mobile phone. Though PW260 stated that the mobile phone was seen used in a Xiaomi make mobile on 18.02.2017 at 9.30 hours, she failed to clarify the aspect regarding the full file path available in Ext.P263 indicating the use of a system with Microsoft Windows operating system. Moreover, she herself admitted that she is not able to state that the videos were recorded using Xiaomi mobile phone. PW260 admitted that vide Ext.P673(b) forwarding note she had been requested to furnish file properties of all files and folders. PW260 claimed that she has had the file system metadata analysis of the file system present in the memory card. All the important file attributes which were required for this analysis is generated. It contains only six. Though she obtained several file properties, she selected the file properties of six files. She further claimed that all the file properties required for this examination were generated. Based on this, the learned counsel for accused argued that selective reporting and deliberate omission of metadata by PW260

amounts to suppression of vital information to conceal possible data manipulations that would have got exposed. But PW260 answered that for arriving opinion for this case, six file properties relied on by her are enough.

926. Another aspect to be noticed is that Exts.P263 and P263(b) did not disclose existence of files or folders in the memory card except the eight video recordings of the visuals involved in this case. But, in Ext.P673 report, it is stated that Ext.P262 contains 5645 number of files/folders. PW260 herself examined the forensic image relied on for preparing Ext.P263 and arrived at a finding that it contains 5645 numbers of folders/files. PW192 deposed that he omitted the said fact as it was not asked in the forwarding note. It is to be noted that the court asked to examine Ext.P262 to know about the contents. He ought to have been mentioned about the files/folders. The non-mentioning assumes relevance. Similarly, the creation of seventy seven number of folders/files on 18.02.2017 is also not reported in Ext.P263, Ext.P263(b), Ext.P675 and Ext.P677. Nothing is there in Exts.P675 and Ext.P677 regarding the creation of folders/files in Ext.P262 on 09.01.2018 and 13.12.2018. PW260

also stated that neither Ext.P675 nor Ext.P677 contain details such as the creation or last access of any files/folders in Ext.P262 on 09.01.2018 though it is stated that the last access date was on 13.12.2018. She further admitted that though in Ext.P677 change in hash value is noted, that was not explained. In Table -1 of Ext.P673 a folder named 'MY' is seen created at 09:20:01 hrs on 18.2.2017. This was seen created at a time between the creation of eight video files. This fact is not reported in Ext.P263. As I pointed out hereinbefore, though questions were put to PW260 about the "C\MY" drive, she claimed that PW192 is competent to answer those questions. It is to be noted further that on 18.02.2017 at 13:16:50 hours also a folder com.miui.analytics is brought to the notice of PW260. When questions were put to PW260 about this aspect she stated that this might be happened because the user had removed Ext.P262 from the Xiaomi phone and re-inserted at 13:16:50 hrs. She also stated that another possibility is that the charge of the phone might have drained out or the user had switched off and switched on the phone around that time. She admitted that since this aspect was not asked, this is not found a place in Ext.P673. Another aspect is that Ext.P673 would show that

thirty two files/folders were created in Ext.P262 on 19.07.2021 between 12:19:12 hrs and 12:20:56 hrs. It would further show that two more files were created at 12:54:13 hrs. This would show a time gap of about 34 minutes between these two activities. But PW260 deposed that Ext.P262 was placed in a Vivo device and that the generation of system files during this period would reflect continuous device activity. In Table 5 it is reported that on 19.07.2021, 12:19 hrs to 12:54 hrs on 19.07.2021, the questioned memory card marked Q3 is used in a Vivo make mobile phone having Android operating system and Jio network application. But, when she was in the box admitted that two files created at 12:54:13 hrs was after a time gap about 34 minutes. When questions were put to her regarding the gap, PW260 replied that in order to find out the reason for the time gap, the exact model of the phone is required. On what basis PW260 claimed that there was continuous activity is not mentioned anywhere in the report.

927. Ext.D216 series statement of facts of the Director, Forensic Science Laboratory dated 30.05.2022 is produced by learned counsel for accused. Relying on Ext.D216, the learned counsel argued that

prosecution intentionally suppressed this report. According to them, this report is suppressed to withheld the circumstances led to its preparation, irregularities and contradictions appear in the evidence of PW192, PW260 and PW261 regarding their examination, the authenticity of FSL reports available before this court and hence, suppressed. The learned Special Public Prosecutor submitted that the prosecution produced all material evidence in connection with Ext.P262 and nothing is withheld from this court. Admittedly, Ext.D216 report is filed by Dr. Pradeep, then Director FSL(in-charge) on 30.05.2022 before the Hon'ble High Court of Kerala in W.P (Crl) No.445/2022. Ext.D216 series contains a memo which would show that Senior Government Pleader stated that when W.P (Crl) No.445/2022 came up for hearing on 27.05.2022, this court directed the respondents to file a detailed statement in this regard. As directed by this court, the statement of facts received from the Director, Forensic Science Laboratory, Trivandrum dated 30.05.2022 is produced herewith for the perusal of this court. In the statement of facts attached along with the above memo signed by the Director, it is stated that in the above Writ Petition, the Hon'ble High Court on 28.05.2022

pronounced an order directing the Director, Forensic Science Laboratory to provide documents/inputs concerned of the above Writ Petition. The Director stated about the examination of Ext.P262 on 01.03.2017. It is further stated on 10.01.2020, the above memory card was again received in State Forensic Science Laboratory to prepare clone copy. The preparation and issuance of Ext.P675 report dated 10.01.2020 is stated. In Ext.D216 report, it is further stated that forensic images of Ext.P262 were prepared on 01.03.2017 and 10.01.2020. In the report, it is specifically stated that the MD5 hash value of the questioned memory card is changed while receiving the same in the second time. Moreover, the retrieved eight video clippings were found to be accessed on 13.12.2018. It is further stated that even though MD5 hash value of the memory card is changed, the individual hash value of the video recordings are found to be same. The important aspect which is seen from this report is that the Director stated that on detailed examination, it is also seen that the memory card was accessed on 09.01.2018 and 13.12.2018. The forensic image of the questioned memory card was last taken in State Forensic Science Laboratory on 10.01.2020. The present

file properties of the files in the questioned memory card as on the date of filing the said report can be verified only after taking forensic image of the same. So, it is seen that as on 30.05.2022, the forensic images prepared on 01.03.2017 and 10.01.2020 only were available in the State Forensic Science Laboratory. Ext.P675 and Ext.P677 were prepared based on the forensic image prepared on 10.01.2020. Though in Ext.D216 it is stated that memory card was accessed on 09.01.2018, this fact is not stated in Ext.P675 or Ext.P677. The last access date mentioned in Ext.P677 was on 13.12.2018 only. Nothing is mentioned in Ext.D216 that the forensic image was again examined for preparing Ext.D216. Even if it is presumed that the forensic image was examined for preparing Ext.D216, the other question to be considered is that, why didn't the fact of access on 09.01.2018 is not stated in Ext.P677 prepared exclusively regarding the change in hash value. Though it is claimed in Ext.D216, memo of Senior Government Pleader that the direction from Hon'ble High Court was on 27.05.2022, in the report of Director it is stated that the Hon'ble High Court on 28.05.2022 pronounced an order directing the Director, FSL to provide documents or inputs. No such order is available before this court.

The learned defence counsel submitted that since there is no such order, this document is suppressed by prosecution. They also stated that this petition was filed by PW1 on 23.05.2022 and the case was again adjourned to 25.02.2022. According to them, the case was again adjourned to 30.05.2022. The learned counsel for accused submitted that there was no posting of W.P (Crl) No.445/2022 on 27.05.2022 for issuing any kind of direction as claimed. The learned counsel for accused submitted that this report is filed at the instance of PW261 to go along with the interim relief sought for by PW1 that the report of further examination should not be submitted on or before 30.05.2022, the time limit fixed by the Hon'ble High Court. It is to be noted that except Ext.D216, no material is available before this court showing the situation or circumstances leading to the preparation of Ext.D216 report. In that report, it was stated that the last access to the memory card was on 13.12.2018. It is further stated regarding the filing of OP (Crl) No.257/22 and also about Ext.P673 prepared by PW260 after her examination from 07.07.2022 till 11.07.2022. When PW192 was in box, specific questions were put to him referring the question posed to him by PW67 Nikesh

Kumar in Ext.D145 interview. PW67 asked question referring the access on 09.01.2018 and 13.12.2018. This interview was on 02.06.2022. PW192 deposed before the court that, it is asked so by Mr. Nikesh Kumar, but he has neither admitted nor denied it is from FSL Report. He stated that he denied that the video files were not leaked. There is no FSL Report as on 02.06.2022 stating the access on 13.12.2018. Next question is put to him that, who prepared the report filed before the Hon'ble High Court. PW192 replied that the Director submitted the statement after conducting discussion with Cyber wing. I was one among the Cyber wing. Deepa, Gopika, Suresh, Shaji etc. were the other people. To a question put to him that is there any mention regarding any of these names except Deepa in the reports filed before the court in connection with the examination of memory card, he replied that the report was not prepared by me. According to him, he was the Joint Director holding the charge of Cyber Division. PW260 was the Head of Cyber Division. Another question is put to him that, whether he himself and PW260 prepared Ext.D216 jointly. The learned Special Public Prosecutor objected the question on the ground that the document is not available. The learned counsel for

accused submitted that the prosecution suppressed the document deliberately.

928. Ext.D216 is proved through PW261. Even otherwise, PW192 has no case that he has no knowledge about Ext.D216. He categorically stated about the details of Ext.D216. He has no case that he is incompetent to state about Ext.D216. Hence, the objection of learned Special Public Prosecutor cannot be accepted. But PW260 deposed before the court that she is the HOD of Cyber Division from 2018 onwards. She had gone through the records of this case only when she received the forwarding note on 07.07.2022. Further PW260 stated before the court that forensic images can be decoded with the help of forensic tools and can copy the content to any other devices. She added that the access can only done legally. The further examinations or re-examination can only be with the sanction of the court. She also deposed that if the examination or re-examination is done otherwise, that amounts to an illegal act. So the evidence contradicts the evidence of PW192 regarding the preparation of Ext.D 216. PW192 clarified that Ext.D216 is not an FSL Report. According to him, it is a statement given by the Director FSL after

discussion with Cyber Division. He also stated that the Director FSL is not a Cyber expert. The Director FSL collected information from Cyber Division and submitted the report. PW192 deposed that he has not seen Ext.D216 filed by the Director. A specific question is put to him that, has he got any occasion to see any report stating that there was access on 09.01.2018 or the time of access and the time of access on 13.12.2018 as on 30.05.2022. According to PW192, while preparing Ext.D216, the Director FSL collected all the reports related to this matter. The Director filed report after verification of all those reports. PW192 again deposed that, while verifying the draft report as well as the discussion with the Director for preparing Ext.D216, he came across with the information.

929. It is to be noted that, as I pointed out, Exts.P675 and Ext.P677 are the reports available as on 30.05.2022 verifying the forensic image prepared on 10.01.2020. The claim of PW192 is that the Director FSL collected all reports available and prepared Ext.D216. PW192 also has no case that Ext.D216 was prepared after examining the forensic image in the lab. The access date on 09.01.2018 was mentioned for the first time in Ext.D216. What is the source of such information is not

stated by PW192, especially when his own report is relied on for preparing the said statement. Referring Ext.D145 interview, a question is put to PW192 that, whether he is known about the nature of this trial. He replied that he was aware of the fact that the trial is an in-camera trial. He added that the memory card referred to in the interview as well as the memory card regarding which he gave evidence are one and same. According to him, this is the reason why he has not given the details of analysis made on 30.05.2022. On this analysis they observe that the memory card was accessed on 09.01.2018 at 21:58 hrs and 13.12.2018 at 22:58 hrs. According to him, this information was given to the Director FSL on 30.05.2022. On the basis of the findings Director FSL gave statement of facts to the office of Advocate General. This evidence is dialetically opposite to the evidence of PW192 himself. He also added that on 30.05.2022, the Director FSL asked to analyse the forensic image and report the details of access. This explanation and the alleged examination of image on 30.05.2022 is seen added by PW192 on a subsequent date of examination after denying the examination of image on 30.05.2022 during his examination on previous days.

930. As I pointed out though it is claimed that Ext.D216 is filed as per the direction of the Hon'ble High Court, no order of the Hon'ble High Court is made available before this court to show that the Forensic Science Laboratory was directed to examine the forensic image. Coming to the evidence of PW260, what she stated is that, none of the Forensic Science Laboratory reports prior to Ext.P673 mentioned about the creation of folders/files on 09.01.2018 and 13.12.2018. She stated that there was a report given by the Director, State Forensic Science Laboratory in which the date of access is mentioned. Another question is put to her regarding the preparation of forensic image at the time of Ext.D216. PW260 replied that Ext.D216 was prepared by the Director based on the file note written by the former Joint Director PW192. She also stated that forensic images were in the custody of PW192 and he prepared file notes on the basis of those images. According to PW260, the Director FSL who filed Ext.D216 is not an expert in Cyber Forensic. His expertise is in polygraph. PW192 prepared the said report. This evidence is also totally in conflict with the evidence tendered by PW192. She further stated that PW192 prepared the file notes as HOD. As HOD of

Cyber Division, she forwarded the file. When question is put to PW260 about the direction of Hon'ble High Court as stated in Ext.D216, she claimed that she does not know the contents of the report. Another suggestion is put to this witness by learned counsel that Ext.D216 report was filed with ulterior motives pursuant to collective decisions of high ranking police officials, high-ranking officials of FSL and the prosecution to file a report supporting the claims of PW1 in W.P (Crl) No.445/2022. The learned Special Public Prosecutor objected the question contending that accused no.8 has no connection with W.P (Crl) No.445/2022. It is also submitted that the judgment of the Hon'ble High Court attained finality. The learned counsel for accused submitted that this objection is irrelevant and baseless. It is to be noted that the question put to PW260 is not with respect to the judgment of the Hon'ble High Court, but with respect to Ext.D216. PW260 has no case that she has no knowledge about the said document. Hence the accused has every right to challenge it based on the available material, especially when no material is produced by prosecution regarding the order of Hon'ble High Court directing to file report as claimed by prosecution. When PW261 investigating officer

is in box, specific questions were put to him regarding the orders of Hon'ble High Court dated 27.05.2022 or 28.05.2022 mentioned in Ext.D216, he admitted that no such order of Hon'ble High Court is available. PW261 added that there was direction to get instruction. When the learned counsel for accused put question to him that there was no posting on these days, he denied it. According to him, there is reference in Ext.D216 about the direction on 28.05.2022. Another question is put to PW261 that this answer is made only on a perusal of Ext.D216. PW261 replied that case diary would show that there was direction from Hon'ble High Court on 25.05.2022. So, as per the version of PW261, the direction of Hon'ble High Court was issued on 25.05.2022. But, at the very same time, he admitted that no such order is available in the case diary. Even if the evidence of PW192 is taken into account that he examined the image on 30.05.2022 for preparing Ext.D216, the fact remains unanswered is that why didn't the access on 13.01.2018 found a place in Ext.P677. Moreover, PW260, who is the head of Cyber Division stated that Ext.D216 was prepared by PW192 based on the file note. The non-production of order from Hon'ble High Court directing the examination

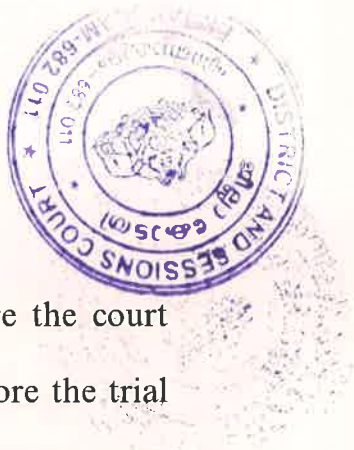
of forensic image and also contradictory versions regarding the direction from Hon'ble High Court for the so-called examination of forensic image create doubt in the safe custody of forensic image in the lab. It is to be noted that no examination will normally be conducted in the State Forensic Science Laboratory without any written direction from any of the courts.

931. Another fact to be considered is that, even in Ext.D216, the time of access either on 09.01.2018 or on 13.12.2018 is not stated. If this be the situation, how could PW67 Mr. Nikesh Kumar able to put question to PW192 referring the time of access and PW192 answered about the time of access. In one point of time PW192 deposed that he has not seen the signed report prepared by the Director as he was busy with his retirement and charge handing over. But PW260 claimed that this was prepared by PW192. As I pointed out, PW260 further claimed that the Director is not an expert in Cyber Forensic. If this be the situation, the evidence regarding the authorship of Ext.D216 is also contradictory in nature. PW260 deposed that the custodian of the forensic images during 2017 and 2020 was PW192. She admitted that she has no direct

knowledge about the keeping and handling of forensic images during this period. PW260 further deposed that no sterile medium was supplied by the court and forensic image created on 07.07.2022 was stored on an internal FSL hard disk. She further added that sterile media will be routinely cleared out after transfer unless supplied along with the forwarding note. According to PW260, in 2020, forensic images were transferred to an internal hard disk by PW192. But the evidence of PW192 is that the forensic images created on 01.03.2017 and 10.01.2020 were retained in the FSL workstation.

932. PW260 deposed before the court that full Encase extraction reports used for examining the images of 01.03.2017, 10.01.2020 and 07.07.2022 are not produced in court. She admitted that she produced the report based on the requisition made in the forwarding note. PW260 deposed that the file property last accessed and the file property last modified give separate and distinct details. But, all the operating system will not update both. A question is put to PW260 that, when Q3 memory card was examined using Encase, the time of last access as well as the date and time of last modification of the files was ascertainable. She replied

that whatever time stamps generated by the Encase software is appended in the report based on the nature of examination requested. She admitted that in this case the last access date has already furnished. If a specific request for the last modified time and date, the same will provide. Another question is put to her regarding the requirement of the time of last access and last modified details of a file for ascertaining whether there is any manipulation in the file especially in its file name after the file creation. PW260 replied that manipulation can be studied in other ways if the operating system creates a default name along with date through forensic software. The simultaneous occurrence of creation, access and modification has to be studied in detail depending on the event. She further stated that the Encase generated report is essential. She has given the report based on the requisition. This answers would show that the entire Encase extraction report is not produced before the court. These facts regarding the preservation of forensic images are also to be read along with the examination of image claimed to be done on 30.05.2022 for preparing Ext.D216. Since this being the first report, which showed the access on 09.01.2018 other than the access on 13.12.2018 mentioned



in Ext.P677, Ext.D216 ought to have been produced before the court atleast at the time of the request of investigating officer before the trial court while forwarding Ext.P262 to the SFSL in compliance with the direction of Hon'ble High Court in the judgment dated 05.07.2022 in OP (Crl) No.257/22. Why this report is not produced before the court is a fact to be considered seriously.

933. The evidence of PW260 would show that the entire Encase extraction report obtained on examination of Ext.P262 is not produced. The Hon'ble High Court of Kerala in the decision **Shinoj v State of Kerala (2025 (6) KHC Short Note 23)** held that, "redacted portions of digital evidence cannot be admissible in evidence even if they are supported by a certificate u/s.65B of Indian Evidence Act". It is further held that, "while it may be permissible for a person relying on a document to mark specific portions of it, a document must be produced in its entirety for proper admissibility". Admittedly, in this case, the Encase extraction report is the basis for examination of PW260. When questions were put to her regarding the non-production of entire extraction reports, PW260 replied that she produced it as per the

requisition contained in the forwarding note. It is true that her analysis and result in the report can be confined to the request made in the forwarding note, but that does not absolve her from the liability for producing the entire extraction report, especially when the generation of such reports are made automatically without any manual intervention.

934. Another aspect to be noted is that though PW260 in Ext.P673 report stated that on 18.02.2017 about 9.13 hours, Ext.P262 is used in a Xiaomi make mobile device, she admitted that she had not analyzed location metadata of the video files involved in this case or any other files created or accessed on 18.02.2017. PW260 stated that this fact was not requested to analyze in the forwarding note. PW260 herself deposed that she used advanced tools for examining the images as well as Ext.P262 for preparing Ext.P673 report. As far as the finding regarding the use of Ext.P262 in a Xiaomi phone, that fact is also not sought to be examined. PW260 deposed that she reported it for the sake of completion. PW260 has no case that location metadata was not available. As far as this case is concerned, the location metadata, especially when the visuals were allegedly transferred to Ext.P262 is very important.

Ext.P673 reports would show that on examination of Ext.P262 the memory card was seen accessed on 09.01.2018, 13.12.2018 and 19.07.2021, after it was accessed on 18.02.2017. PW260 claimed that she examined the forensic images dated 01.03.2017 and 10.01.2020. When PW260 was in the box, the learned counsel for accused put a question that did her analysis of Ext.P262 and forensic images reveal existence of files/folders, created/accessed on any dates other than 09.01.2018, 13.12.2018, and 19.07.2021. She replied that she had been asked to state the reason for change of hash value by comparing the forensic images taken on 01.03.2017 to the forensic image taken on 10.01.2020. But she was constrained to answer that when she analyzed the forensic image dated 01.03.2017, she noticed creation/access of files after 18.02.2017. Question is again put to her regarding those details. Ext.P673(a) CD is played before the court and PW260 verified it taking half an hour time. She answered that the creation/access dates are 28.4.37, 11.09.2019, 31.12.18, 10.1.2018 and 2.3.2017. According to her, since these dates have no significance in finding the reason for change in hash value, those are not stated in Ext.P673 printed report. She clarified that these dates came

in Ext.P262 in 2017 itself because the memory card was inserted in a system/mobile device having dates not sync with the real time. According to her, since it was not requested, that was not reported. She also stated that, the time stamp regarding these dates are the time correspond to the system/mobile device time, which the user may set. She also added that these dates have no significance in changing the hash value of Ex.P262. It is also brought out that there are 109 entries in Ext. P673(a) with the file created dates 26.12.2016 and last access date 01.01.2015. According to PW260, in order to answer the requisition made by the court, she specifically analysed the eight video files and the reason for change in hash value. No other files were specifically analysed. She also added that there were only seven days to complete the process and it was not asked in the requisition also.

935. As I pointed out, the questionnaire was to verify whether any folder or files in the memory card are accessed after 18.02.2017 and further to compare the file properties of various files retrieved from Ext.P262 as per Ext.P263 and Ext.P677. Further, she had been asked to report if any file properties/metadata are changed, give the details and the

reason for change in the file properties/metadata. From this it can be seen that the request of analysis was not confined to the eight video files only. The paucity of time cannot be taken as a ground for not examining the matters sought for. The complete examination of memory card is required considering the nature of requisition to see whether the memory card is accessed after 18.02.2017. Moreover, Ext.P262 contains not only the eight files, but 5645 files. She also admitted that in the forensic image created on 01.03.2017 the date of last access was seen on 10.01.2018, a future date. Though PW260 stated that file was accessed on a system, which has no sync with the real time, nothing is mentioned in this regard in Ext.P673 report. PW260 is duty-bound to clarify these matters in her report, especially when these dates connected with the last creation, modification, and access dates of files.

936. Ext.D125 series pendrive is produced before this court by the accused. Section 65A certificate is issued for this pendrive by DW2. Since the visuals are taken from public platform, DW2 is competent to issue certificate and he also deposed about the circumstances under which he downloaded the videos. Ext.D125 series contain the telecast in Reporter

T.V with respect to the alleged access on Ext.P262 and also about the FSL reports prepared in connection with this. One of the telecast would even show the visual of Ext.P673 report on 13.07.2022. They transmitted Ext.P673 with the signature of PW260. The interesting aspect is that PW261 received the copy of report on 11.07.2022. The transmission of the report was on 13.07.2022 immediately after the receipt of this report by the investigating officer. When this fact was put to PW260, she denied and categorically deposed that she never handed over the copies to media or anybody other than the court. When PW261 was in the box, he deposed that Ext.P673 was filed in Crl.M.C.No.803/22 pending before the Hon'ble High Court. According to him, he alone is not the person having the possession of Ext.P673 report.

937. I do not want to spend much time to fasten the liability of leaking the report. But, Ext.D125 series telecast made in TV channels, especially through Reporter T.V, would show that the reports and the evidence involved in this case collected during second further investigation were discussed and even brought to the notice for the first time styled as breaking news on daily basis. PW67 who anchored the

discussions was examined as a witness in this case and he knows very well that the trial of this case is an in-camera trial. Further, the involvement of the learned Special Public Prosecutor Adv. Sri Ajakumar can also be seen from the discussions. He is also actively participated in the discussions as a spokesperson of prosecution or PW1. All of the participants were seen raised several allegations against the court alleging that records of this case were leaked. They also discussed extensively about the alleged access of memory card in a manner putting the judicial system under the shadow of doubt. This court is not expected to spend much time or rather to burden this judgment discussing the entire telecast in a detailed manner. This court is constrained to refer Ext.D125 series as part of the analysis of evidence of PW192 based on his interview telecast in the Reporter TV with respect to the alleged leakage of visuals from the custody of court and also considering the request from PW261 to interrogate the court staff. Apart from the fact that the trial is an in-camera trial, this court vide order dated 19.03.2020 in Crl.M.P.No.661/2020 prohibited the printing and publication of the proceedings in connection with the case except the matters permitted as per the judgment of the Hon'ble Supreme

Court in Nipun Saxena & Another vs Union of India & Others reported in (2019) 2 SCC 703.

938. Despite the propaganda and the anomalies brought out in the examination of Ext.P262 including the matters centered around Ext.D216 series, it is to be noted that both PW192 and PW260 never deposed that the visuals in Ext.P262 are accessed, tampered or attended after 18.02.2017. As I pointed out, it is made clear in Ext.P673 report, wherein the access to Ext.P262 on 09.01.2018, 13.12.2018, and 19.07.2021 are reported; it is reported specifically and unambiguously that the individual MD-5 hash values of eight video files generated by "Encase" software remains the same in all forensic images taken on 01.03.2017, 10.01.2020 and 07.07.2022. Further in the argument note filed by learned Special Public Prosecutor at the last day of hearing it is stated clearly that the visuals are not leaked from this court and the evidentiary value of P262 memory card remains intact. Hence, this court can clearly arrive at a finding that the evidentiary value of Ext.P262 memory card is not affected in any way and also that the visuals remained intact and privacy of PW1 is never compromised. The point no.43 is discussed accordingly.

939. **The non-detection of mobile phone allegedly used to capture the visuals of attack on PW1 and the findings of investigation with respect to the said phone.**

The supplementary final report filed on 22.07.2022 is the last report filed in this case u/s. 173(2) of Cr.P.C. In page 31 of the said final report, two facts are kept open for further investigation. One of such facts is the investigation to be conducted for tracing out the mobile phone allegedly used by accused no.1 to capture the visuals of PW1. The very same fact is stated in page 73 of first supplementary final report filed on 22.11.2017. In page 69 of final report filed on 18.04.2017 also it is stated that the Redmi mobile phone allegedly used by accused no.1 to record the visuals of sexual assault on PW1 was entrusted with Adv. Pradeesh Chacko on 23.02.2017 at his office situates at Amulya Street, Ernakulam. This fact is revealed in investigation and notice was issued to Adv. Pradeesh Chacko. He filed petition before the Hon'ble High Court alleging harassment on the side of police. Adv. Pradeesh Chacko appeared before the investigating officer as directed by the Hon'ble High Court. He was interrogated. Search was conducted at his residence and

office on the basis of search memorandum obtained from the court. But, the mobile phone could not be traced out. Hence, it is stated in the first final report itself that investigation will be conducted to trace out the mobile phone and also to file separate final report against Adv. Pradeesh Chacko. So, on a verification of all the final reports, the investigating officer stated that the investigation is still going on to trace out the mobile phone allegedly used to capture the visuals. Unlike the supplementary final reports, it is stated in the final report filed on 18.04.2017 that the mobile phone is entrusted with Adv. Pradeesh Chacko and final report has to be filed against him. In the final report dated 22.11.2017, Adv. Pradeesh Chacko is arraigned as accused no.11. Another advocate Mr. Raju Joseph is also arraigned as accused no.12. In the said supplementary final report, the case of prosecution is that on 23.02.2017, accused no.1 reached at the office of accused no.11 by 8.30 pm. He entrusted a bag and also the mobile phone used for capturing the visuals of PW1 to accused no.11 Adv. Pradeesh Chacko. Adv. Pradeesh Chacko on that day till 1 p.m harboured accused nos.1 and 4 in his office with clear knowledge of their involvement in this case. Accused no.11 intentionally suppressed the

mobile phone with memory card and thereby not produced it before the investigating officer. Accused no.11 assisted accused no.1 and also caused disappearance of evidence. Accused no.11 thereafter entrusted this mobile phone along with memory card inserted in the phone to accused no.12 and also informed him that this particular mobile phone was used by accused no.1 for capturing the visuals of PW1. Accused no.12 in-turn did not produce it before the investigating officer and claimed that he destroyed the mobile phone. Accused no.12 further kept the memory card in his possession secretly for about four and a half months, and accordingly both accused nos.11 and 12 caused disappearance of evidence. So, it can be seen that in the first final report, the prosecution claimed that memory card was entrusted with Adv. Pradeesh Chacko with a condition that it has to be returned as and when demanded. In the first supplementary final report, the involvement of accused no.12, another advocate Mr. Raju Joseph is also mentioned as revealed in the investigation. Both of them arraigned as accused nos.11 and 12. But, in the very same final report, the details of investigation conducted by the

investigating officer regarding the causing disappearance of evidence by accused no.12 by destructing mobile phone is also mentioned.

940. PW1 deposed before the court that accused no.1 used a white colour mobile phone to record the visuals. This evidence of PW1 in the chief examination was challenged by the accused in cross-examination. The evidence of PW1 in cross-examination is that, "White colour ലുള്ള smart phone ആണെന്ന് ഞാൻ Police നോട് Ext.P1 സമയത്ത് പറഞ്ഞിരുന്നോ എന്ന് അറിയില്ല; പക്ഷേ ഞാൻ ഈ വിവരം police ൽ പറഞ്ഞിരുന്നു. White colour phone എന്നല്ലാതെ മറ്റ് features police ൽ പറഞ്ഞിരുന്നില്ല. എനിക്ക് ശ്രദ്ധിക്കാൻ കഴിഞ്ഞിരുന്നില്ല. വെള്ള നീല colour ഓട് കൂടിയ cover ഉള്ള phone ആണ് എന്ന് പറഞ്ഞിരുന്നോ? അത് ഓർക്കുന്നില്ല; വെള്ള കളറിലുള്ള phone എന്ന് പറഞ്ഞു." The evidence of PW1 would show that the colour of phone is white. It is true that the alleged incident was happened inside a vehicle during night. PW1 was subjected to rape and we cannot expect that the victim should notice the details of the gadgets.

941. PW17 is examined on the side of prosecution to prove the transmission of visuals from mobile phone to Ext.P262 on 18.02.2017. His evidence is to the effect that accused no.1 showed him the visuals in a Samsung phone. He also deposed that accused no.1 showed the visuals in a big size phone, which looked like Samsung, but it was not Samsung phone. During cross-examination, he deposed that he saw the visuals in a phone with blue colour back cover. He also stated that it was in a black colour phone with a blue colour cover. He also stated that he does not remember whether it was a Samsung phone. In Ext.P191, the statement of PW17 recorded u/s. 164 of Cr.P.C on 08.03.2017, he stated clearly that the visuals were showed to him in a Samsung phone of big size. PW17 allegedly participated in the transmission of visuals actively. He had every opportunity to see the phone. Moreover, the visuals were claimed to be transferred on 18.02.2017 morning.

942. Another witness cited by prosecution to prove the aspect of phone used by accused no.1 is PW26, Vishnuraj. The fact elicited through this witness is that he ordered a Redmi phone for accused no.1. He claimed that he booked a phone grey in colour for accused no.1. PW25,

another person claimed to be participated in this transaction, deposed before the court that he, while working as delivery person for Flipkart, delivered a Redmi 3 phone to PW26. He also stated that the phone was grey in colour. At the very same time, he admitted that he did not see the phone. On an analysis of the above evidence, it is seen that all the witnesses had given contradictory versions regarding the colour of phone. Both PW17, PW25 and PW26 also adduced evidence stating that the phone was of different brand.

943. The above evidence is to be considered along with the testimonies of FSL experts. Coming to the aspect, evidence regarding the phone which is used for capturing the visuals, Ext.P263(b) report is to be looked into. In Ext.P263(b) dated 07.04.2017, PW192 reported that it has not been possible to express any opinion about the device from which the video recordings are transferred to the questioned memory card marked Q3. But, in Ext.P673, PW260 reported that on 18.02.2017, Ext.P262 memory card was seen used in a Xiaomi make mobile phone. PW192 deposed before the court that the device used to capture the visuals could not be identified. He also stated that, whether the mobile phone was used

or not can also be identified. PW260 deposed that, though it is seen that Ext.P262 was used in a Xiaomi make mobile phone on 18.02.2017, she is not in a position to say whether the visuals were captured using the very same mobile phone.

944. During the course of investigation, attempts were made to find out the mobile phone. Searches were conducted at various places for the mobile phone on the basis of alleged confession of accused no.1. On 25.02.2017, PW261 conducted search at the residence of CW165 Pratheesh Kumar. Mr. Pratheesh Kumar is claimed to be the friend of accused no.1. Ext.P399 is the search list prepared in connection with this search. In Ext.P399, it is recorded that the mobile phone used by accused no.1 to capture the visuals is hidden at the residence of CW165. But, nothing could be traced out in this search. Another search was conducted on 28.02.2017 near to Goshree Bridge between 10 a.m to 12 p.m, claimed to be based on the confession of accused no.1. Ext.D81 is the mahazar prepared in connection with this search. On that day, another search was also conducted at Vyttila in a compound wherein old cars are kept. The basis of this search is also claimed to be the confession of accused no.1

that the mobile phone is hidden in the dashboard of a car. Similarly, a search was conducted at the drainage near to St. Rita's School, Thammanam near to Gold Souk. Here also the basis for search is the alleged confession of accused no.1 that the mobile phone was thrown in the drainage. Though searches were conducted, no mahazars were prepared with respect to these two searches. When PW261 was in the box, questions were put to him about these searches. PW261 stated that he was not the investigating officer at that time. Ext.D161 is a pendrive containing the visuals telecast through media on 28.02.2017. The attention of PW261 was drawn to the visuals and confronted. Then PW261 was compelled to admit his involvement in the search conducted at St. Rita's School, Thammanam near to Gold Souk. Ext.P444 is the search list prepared in connection with the search conducted at the residence of Adv. Pradeesh Chacko. This search was conducted on 21.03.2017 from 9.15 a.m till 11.30 a.m. The purpose of search is shown that the mobile phone used for capturing the visuals would be kept at the residence of Adv. Pradeesh Chacko. This search was conducted by PW202. PW261 also accompanied him. As I pointed out, in the final

report filed on 18.04.2017, the prosecution case is that accused no.1 on 23.02.2017, entrusted the mobile phone used to capture the visuals to Adv Pradeesh Chacko. Similarly, as I discussed before, in the supplementary final report dated 22.11.2017, the involvement of Adv. Pradeesh Chacko and Adv. Raju Joseph are mentioned along with much more details. Ext.P281 is the memory card produced by Adv. Raju Joseph. It does not contain any visuals of this case. The recovery was effected by PW261 on the basis of information received to PW160 from a believable source. Ext.P723 is the seizure mahazar prepared on 17.07.2017 at 11.15 p.m in connection with the seizure of Ext.P281.

945. On going through Ext.P723 mahazar, it is seen that PW261 prepared the seizure mahazar on 16.07.2017 at 11.15 p.m on production of a Sandisk 8GB memory card by Adv. Raju Joseph. In the mahazar, it is recorded that PW160 Mr. Ananthalal, who was the Circle Inspector of Police, Central Police Station, Ernakulam, on 16.07.2017 by noon, contacted PW261, investigating officer over phone and informed that he received a reliable information that the memory card containing the visuals of attack against PW1 is available with Adv. Raju Joseph. PW261

on getting this information directed PW160 Ananthalal to trace out the memory card from Adv. Raju Joseph. It is stated further that the time which would be taken to reach there by PW261 will definitely affect the evidence collection and hence he authorized PW160 to interrogate and trace out the memory card. PW160 interrogated Adv. Raju Joseph. He informed that Adv. Pradeesh Chacko absconded for the last three days. He on 16.07.2017 searched out a memory card from the ceiling of the office room of the Adv. Pradeesh Chacko and it is kept with him. He also informed his readiness to hand over the said memory card. PW160 thereafter along with Adv. Raju Joseph and memory card reached at Police Club, Aluva at 7.30 p.m. PW261 interrogated Adv. Raju Joseph and his statement was recorded. Thereafter, PW261 examined the contents of memory card produced by Adv. Raju Joseph. He seized it and accordingly, Ext.P723 is prepared. The description of the memory card is also detailed in the said mahazar. He verified it. He had seen the photos. He also stated that the visuals involved in this case could not be traced out in the primary examination. Hence, he seized the memory card for scientific examination.

946. It is to be noted that PW261 himself stated in the mahazar that he verified the memory card by directly inserted it in his laptop. During evidence, he admitted that he has not used any Write Blockers as part of this verification. Further, PW261 on 19.07.2017 prepared another mahazar claimed to be verification mahazar. According to PW261, a DVD is received from FSL along with Ext.P280 report. The DVD is marked as Ext.P280(a). He verified it and prepared Ext.P726. PW261 in the mahazar, it is reported that except the photo of accused no.5 Mr. Salim, neither the videos nor the photos are connected with this case. PW261 verified it and arrived at this conclusion on 19.07.2017 much before the filing of second supplementary final report on 22.11.2017. Even after this, PW261 in the said supplementary final report asserted that Adv. Raju Joseph kept secretly the memory card received from Adv. Pradeesh Chacko for about four and half months.

947. As I pointed out, it is assertively stated in the said final report that Adv. Pradeesh Chacko, while entrusting the memory card and phone to Adv. Raju Joseph stated that this phone is used for recording the visuals of PW1. Adv. Raju Joseph destroyed the said mobile phone. Even

after Ext.P280 FSL reports with respect to Ext.P281 memory card and Ext.P726 mahazar prepared by PW261, why did he mention in the final report that the memory card and phone with Adv. Raju Joseph is used to capture the visuals of attack on PW1. Moreover, Ext.P739 mahazar would also expose more matters of this kind. Ext.P739 is the mahazar prepared for an Esteem car bearing registration number TN-69-J-9169. It is alleged that this car was used by Adv. Raju Joseph to destroy the mobile phone. This mahazar was prepared on 02.08.2017 at 3.30 p.m. in the presence of witnesses. Ext.P740 mahazar is also to be read along with these documents. Ext.P740 is also prepared on 02.08.2017 at 6.30 p.m in the presence of witnesses. This mahazar is also prepared by PW261. This mahazar is termed as verification mahazar. It is asserted in the said mahazar that the mobile phone entrusted with Adv. Raju Joseph by Adv. Pradeesh Chacko was destroyed by Mr. Raju Joseph by sitting in his car. The premises where this destruction was effected is verified and the details are mentioned in Ext.P740. Admittedly, these two mahazars were also prepared much before the supplementary final report by PW261 on 22.11.2017. The interesting aspect to be noted is that even after all these

DISTRICT AND SESSIONS COURT ERNAKULAM-682 011

investigations, what is mentioned in the said final report is that further investigation regarding the mobile phone, which is allegedly used to capture the visuals of PW1 by accused no.1 is going on. The above mentioned records would show that PW261 arrived at a clear finding during his investigation that the said mobile phone entrusted by accused no.1 to Adv. Pradeesh Chacko and handed over to Adv. Raju Joseph was destructed by him. If this be the situation, how can further investigation be conducted about such a phone.

948. The allegations raised against advocates Mr. Pradeesh Chacko and Mr. Raju Joseph, who were arraigned as accused nos.11 and 12, is that they caused disappearance of evidence by not producing the mobile phone used by accused no.1 to capture the visuals. They also withheld the memory card involved in this case. The evidence of PW261 before the court regarding the search at St. Rita's School, Thammanam is also to be considered. When questions were put to him about this aspect, he stated that he was not the investigating officer at that time. He also stated that he does not remember, whether he was present there or not. Thereafter, Ext.D161 pen-drive was shown to him. On seeing the visuals,

he changed his version and deposed that he conducted search for collecting the shirt of accused no.1. He also stated that the news telecast in Ext.D161 reporting that the search was for the phone is a false one. When PW261 was in box, he also admitted about the investigations made by him with respect to the allegation against advocates Mr. Pradeesh Chacko and Mr. Raju Joseph. He also admitted about his assertions in the final report. PW261 gave another version that he could understand that the information from accused no.12 regarding the mobile phone is incorrect. But, he admitted that he has not given any report before this court. This evidence of PW261 is not reliable. He himself mentioned all these matters in the first supplementary final report prepared by him. Had this information been false, what prompted him to incorporate these matters in the final report as the result of his investigation is not explained. Moreover, the one and only reason for arraigning advocates Mr. Pradeesh Chacko and Mr. Raju Joseph as accused is also this particular allegation.

949. The findings of Crl.Rev.Petitions 828/2018 and 829/2018 dated 05.12.2018 is also to be considered. These criminal revision

petitions were filed by advocates Mr. Pradeesh Chacko and Mr. Raju Joseph challenging the dismissal of their discharge petition by this court. The Hon'ble High Court while allowing the discharge petitions specifically held in paragraph no.23 onwards that, the definite case of the prosecution is that the mobile phone which was used to record the incident of rape was entrusted to the 11th accused by the first accused and the 11th accused in turn entrusted it to the 12th accused and the 12th accused broke it up and threw off the pieces into the backwaters of Kochi. The only evidence the prosecution proposes to adduce to prove that the 12th accused destroyed the mobile phone is the mahazar prepared by the investigating officer describing the spot at which the 12th accused allegedly threw off the pieces of the mobile phone. This mahazar will not prove the prosecution case that the accused broke up the mobile phone and threw the broken pieces into the backwaters. In the final report it is shown that attempt is still being made to recover the mobile phone. This is inconsistent with the prosecution case that it was destroyed. The Hon'ble High Court also discussed about the contents of Ext.P281 memory card claimed to be produced by Mr Raju Joseph. It is further

held that the said memory card has no evidentiary value as far as the case against these persons are concerned. The Hon'ble High Court set aside the order of this court dismissing the petitions filed u/s.227 of Cr.P.C by accused nos.11 and 12. Both of them were discharged by the Hon'ble High Court.

950. This order attained finality as the prosecution did not proceed to challenge the order discharging both of them. As I pointed out, even in the second supplementary final report filed by PW261 on 22.07.2022 also, it is claimed that the investigation about the mobile phone, which is allegedly used to capture the visuals of PW1, is being carried on. Further, as I pointed out herein before, the description including the colour of the mobile phone allegedly used to capture the visuals deposed by the witnesses who claimed to witness the said phone are also contradictory in nature. In Ext.D189, report filed by the learned Special Public Prosecutor on 03.03.2018 in the bail application filed by accused no.1, it is averred that the mobile phone allegedly used to capture the visuals of PW1 could not be traced out so far. This report is also filed much after filing the second supplementary final report on 22.11.2017.

The averments in Ext.D189 is also contradictory to the averments in the final report that accused nos.11 and 12 destroyed the mobile phone used by accused no.1 to capture the visuals of PW1.

951. Above all these aspects, the evidence of PW261 will show the non-availability of accused no.15 either at the residence in VIP lane or at the residence in Kottarakadavu. PW261 in his chief examination itself narrated the details of investigation in chronological order. As far as the investigation dated 12.11.2017 is concerned, he deposed before the court that he served notice to accused no.8 for appearing before the investigating officer. He had deposed the investigations conducted on 12.11.2017 and 13.11.2017. Further, he clearly narrated about the investigation took place on 15.11.2017 also. According to him, on 15.11.2017, Ext.P791 mahazar was prepared on 15.11.2017. Ext.P792 series documents were collected on 15.11.2017 on the strength of Ext.P791. After this, he deposed that he interrogated accused no.8 who appeared in response to the notice served on him. This evidence contradicts the evidence of PW222 regarding the presence of accused no.8 at his residence throughout from morning till he left the residence after

dinner. PW222 has not stated anything about this absence. This ought to have been stated especially when this absence was for the interrogation of this case. PW222 deposed even about the temporary absence of accused no.8 from their company at the time when one of the lady friends along with her brother arrived there for inviting marriage. PW222 deposed that accused no.8 left their company for joining with them and returned after a gap of half an hour. If PW222 is so particular to depose about this fact, as I mentioned, the absence of accused no.8 in connection with the interrogation ought to have been noticed and stated by him. Moreover, though PW261 deposed that he interrogated accused no.8 on 15.11.2017, the details of the time of interrogation are not mentioned. When PW261 was in the box, he had clear knowledge about the prosecution allegation on the basis of revelation of PW222 regarding the incidents which were taken place on 15.11.2017. Even otherwise while considering the evidence of PW222 regarding the incidents allegedly held on 15.11.2017, the time is also very relevant. According to him, PW246 arrived there, engaged in conversation with accused no.8 and on hearing the reference "clips" he started to record the voice clips produced by him. Similarly,

the arrival of accused no.15 with the tablet containing visuals is also very serious and grave. Considering the nature of allegations, the time of interrogation of accused no.15 and his availability for interrogation also assumes relevance. So, the evidence of PW261 itself would show the absence of accused no.8 from his residence on 15.11.2017 as part of interrogation and that will shake the evidence of PW222 that accused no.8 was available there on 15.11.2017 throughout from morning onwards till night and consequentially the veracity and credibility of incidents allegedly took place there on 15.11.2017.

952. **Point no.44:-**

Whether the prosecution proved the charges levelled against accused no.9?

In the supplementary final report dated 22.11.2017 it is stated that accused no.9 assisted accused no.1 for keeping the mobile phone used in jail secretly and also for charging it. He was released from the District Jail on 13.06.2017 and the said mobile phone was seized from him. This court has already discussed in detail about the recovery of MO87 phone and Ext.P46 SIM card. Similarly, this court also discussed about the

search in connection with the said seizure. Admittedly, Crime No.751/2017 of Infopark police station is registered against accused no.9 and other accused persons for using mobile phone in the jail. That case is pending before this court as S.C.No.607/2019. The learned Special Public Prosecutor advanced argument based on the recovery of MO87 phone from the residence of accused no.9, that the fact disclosed by accused no.9 was found to be true through the discovery of the concealment of MO87. According to him, this is based on 'theory of confirmation by subsequent acts'. I have already mentioned hereinbefore about the allegation in the final report. The learned Special Public Prosecutor submitted further that accused no.9 by providing assistance for screening the mobile phone participated in the conspiracy with accused nos.1 and 10 and by giving this aid, he abetted accused no.1 to extort money from accused no.8. This court after considering the materials and also hearing the learned Special Public Prosecutor and counsel appearing for accused framed charge against accused no.9 that accused nos.1, 9 and 10 agreed to do the illegal act by procuring money from accused no.8 punishable u/s.120B r/w Section 506 of Indian Penal Code and also accused no.9

abetted accused no.1 to criminally intimidate accused no.8 to obtain money and committed the offence u/s.109 r/w Section 506 of Indian Penal Code. The learned Special Public Prosecutor argued that the mobile phone secretly kept in the jail with accused nos.1 and 10 is used to contact accused no.8 or his associates for getting money from accused no.8. The learned counsel for accused no.9, on the other hand, argued that no evidence is available before the court to show that accused no.9 participated in the conspiracy with accused nos.1 and 10. The learned Special Public Prosecutor replied that by keeping the mobile phone illegally inside the jail, he agreed with accused no.1 to do an illegal act defined u/s.120A of IPC. Similarly, the learned Special Public Prosecutor also submitted that he aided accused no.1 by keeping the mobile phone secretly inside the jail and also facilitated to charge the said mobile phone and accordingly, abetted the accused persons for contacting accused no.8 and his associates.

953. The evidence available in the court would show that admittedly, accused no.9 did not participate in any of the discussions allegedly held inside C1 Cell between accused no.1, PW121 and PW176.

After the release of PW176 from jail, the conspiracy was attempted to execute through PW176 and accordingly, a mobile phone is brought to the jail. Prosecution has no case that accused no.9 had knowledge about the purpose for which this mobile phone is brought to the jail. Similarly, prosecution has no case that the mode in which this mobile phone is brought to the jail is known to accused no.9. PW135 Jinson himself claimed that he used to charge this particular mobile phone before his release. He also stated that he used the facility available in the office of jail for charging this mobile phone. Admittedly, PW135 is not made as an accused along with accused no.9 in this case. The only evidence available before this court regarding the entrustment of phone with accused no.9 is the oral testimony of PW121 Vipinlal apart from the alleged seizure effected at the residence of accused no.9.

954. As I pointed out, no witnesses examined on the side of prosecution to prove the alleged incidents took place inside the jail, stated that accused no.9 kept the mobile phone with him after knowing the matters for which this mobile phone is allegedly brought to the jail. He is made as accused in S.C.No.607/2019 pending before this court for using

the mobile phone illegally inside the jail. A question is put to PW76 that accused no.9 was not available in C1 Cell, where the alleged conspiracy to secure money from accused no.8 was hatched. No investigation is seen conducted about the charger, which is allegedly used to charge the mobile phone. Though he allegedly used mobile phone inside the jail, no evidence is available before the court to connect accused no.9 to the commission of conspiracy alleged against him. It is to be noted that, as I pointed out, even the prosecution has no case that accused no.9 took part in any of the alleged conspiracies hatched inside the jail for collecting money from accused no.8. So, for the mere reason that he allegedly kept the mobile phone secretly in jail, it cannot be stated that he participated in the conspiracy with accused no.1 for criminally intimidating accused no.8 for collecting money. The secret use of mobile phone inside the jail is to be considered separately, especially when another case is registered and pending for consideration. Moreover, the fact that why didn't PW135, he also did the similar acts alleged against accused no.9 is made an accused in this case is also to be considered. PW135 is also made as an accused in S.C.No.607/2019. Whether accused no.9 illegally used mobile phone

inside the jail is a fact to be considered in S.C.NO.607/2019. Since S.C.NO.607/2019 is pending consideration, this court is not expected to arrive at a finding in the alleged use of mobile phone inside the jail. As far as the alleged conspiracy with accused no.1 and also the alleged abetment levelled against accused no.9, no evidence is there to hold that accused no.9 hatched conspiracy with accused nos.1 and 10 or any other persons to extort money from accused no.8. Similarly, as I pointed out, the prosecution case is that since accused no.9 aided accused no.1 for keeping the mobile phone, he abetted accused no.1 for committing the offence u/s.506 IPC. This fact is also depends on the finding, whether accused no.9 used and kept the mobile phone inside the jail, which is a point to be decided in S.C.No.607/2019. Moreover, prosecution failed to prove the charge u/s.506 of the IPC levelled against accused no.1. On the basis of evidence available before this court, I hold that prosecution miserably failed to prove the charge levelled against accused no.9. Point no.44 is decided against prosecution.

Fiat Justitia Ruat Caelum

955. The learned Special Public Prosecutor submitted that accused no.8 made attempts to influence the judges who dealt with this case in various stages, particularly, the judge of the trial court. The learned counsel for accused no.8, on the other hand, vehemently argued that the prosecution as well as the investigating team made all endeavors to malign the judicial system, especially the trial judge personally. They also raised allegations against the learned Special Public Prosecutor and also the investigating officers that they are biased. This court left all these matters unattended following the legal maxim "**Fiat Justitia Ruat Caelum**".

956. **Point no.45:-**

Offences proved/not proved:- The discussion on the previous points leads to the following conclusions:-

1. Accused nos.1 and 2 on 17.02.2017 hatched criminal conspiracy and accused no.2 left with MO9 to bring PW1 to Ernakulam and as part of the conspiracy, accused no.1 hatched criminal conspiracy with accused nos.3 to 6 and thereby accused nos.1, 3 and 4 proceeded in MO12 to Karukutty, waited there, chased MO9 wherein PW1 was travelling to Ernakulam, created fake accident, all accused nos.1 to 6 entered into MO9 at different times, wrongfully confined PW1, abducted

her to force her to illicit intercourse, outraged her modesty, disrobed her, assaulted her to confine wrongfully, subjected her to gang rape and recorded the visuals of the said rape and on 18.02.2017 transmitted and showed the visuals to others without the consent of PW1. The act of the accused nos.1 to 6 amounts to offences punishable u/s.120(B), r/w Sections 342, 354, 354(B), 357 and 376(D) of the Indian Penal Code and Section 66(E) and 67(A) of the Information Technology (Amendment) Act, 2008 accused nos.1 to 6 are found guilty for the offences punishable u/s.120(B), r/w Sections 342, 354, 354(B), 357 and 376(D) of the Indian Penal Code and Section 66(E) and 67(A) of the Information Technology (Amendment) Act, 2008 and they are convicted thereunder.

2. Accused nos.2 to 6 are found guilty of the offences punishable u/s.109, r/w Sections 342, 354, 354(B), 357, 366 and 376(D) of the Indian Penal Code and they are convicted thereunder.

3. Accused nos.1 to 6 wrongfully confined PW1 and are found guilty of the offence punishable u/s.342 of the Indian Penal Code and they are convicted thereunder.

4. Accused nos.1 and 3 to 6 outraged the modesty of PW1 and are found guilty of the offence punishable u/s.354 of the Indian Penal Code and they are convicted thereunder.

5. Accused no.1 disrobed PW1 and compelled her to be naked and is found guilty of the offence punishable u/s.354(B) of the Indian Penal Code and he is convicted thereunder.

6. Accused nos.1 to 6 are found guilty of the offence punishable u/s.357 of the Indian Penal Code and they are convicted thereunder.

7. Accused nos.1 to 6 are found guilty of the offence punishable u/s.366 of the Indian Penal Code and they are convicted thereunder.

8. Accused nos.1 to 6 are found guilty of the offence punishable u/s.376(D) of the Indian Penal Code and they are convicted thereunder.

9. Accused no.1 is found guilty of the offence punishable u/s. 66(E) of the Information Technology (Amendment) Act, 2008 and he is convicted thereunder.

10. Accused no.1 is found guilty of the offence punishable u/s. 67(A) of the Information Technology (Amendment) Act, 2008 and he is convicted thereunder.

11. Accused no.2 on 17.02.2017 destroyed the SIM card of his mobile phone used for the commission of offence with an intention to cause disappearance of evidence. The act of accused no.2 amounts to an offence punishable u/s.201 of the Indian Penal Code and he is convicted thereunder.

12. Accused no.7 is found not guilty of the offence punishable u/s.212 of the Indian Penal Code and he is acquitted u/s.235 of Cr.P.C.

13. Accused no.8 is found not guilty of the offence punishable u/s.120(B), r/w Sections 342, 354, 354(B), 357 and 376(D) of the Indian Penal Code and Section 66(E) and 67(A) of the Information Technology (Amendment) Act, 2008 and he is acquitted u/s.235 of Cr.P.C.

14. Accused no.8 is found not guilty of the offence punishable u/s.201 and 204 of the Indian Penal Code and he is acquitted u/s.235 of Cr.P.C.

15. Accused no.1 is found not guilty of the offence punishable u/s.506 of the Indian Penal Code and he is acquitted u/s.235 of Cr.P.C.

16. Accused nos.1 and 9 are found not guilty of the offence punishable u/s.120(B), r/w Section 506 of the Indian Penal Code and he is acquitted u/s.235 of Cr.P.C.

17. Accused no.9 is found not guilty of the offence punishable u/s.109 r/w Section 506 of the Indian Penal Code and he is acquitted u/s.235 of Cr.P.C.

18. Accused no.15 is found not guilty of the offence punishable u/s.201 of the Indian Penal Code and he is acquitted u/s.235 of Cr.P.C. Bail bonds of accused nos.7, 8 and 10 are cancelled and they are set at liberty.

19. Accused no.9 is in judicial custody in this case. He shall be released forthwith if his detention is not required in connection with any other case. Since the offences are grave in nature and perpetrated against a woman, accused are not entitled to get the benevolence of the Probation of Offenders Act.

20. The accused who are convicted shall be heard on the question of sentence to be imposed on them. Bail bonds of accused nos.1 to 6 are cancelled and they are remanded to judicial custody.

Dictated to the confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 8th day of December, 2025.

Sd/-
Honey M.Varghese
SESSIONS JUDGE

12/12/2025.

Heard.

957. **Point No. 46:- Sentence and submission by the accused.**

The convicted accused were heard by the court to ascertain the details to be considered in deciding the sentence to be imposed on them. The facts revealed by them are as follows:

A1 is now aged 37 years. He has submitted that his mother is alone and nobody is to look after her.

A2 has submitted that he is innocent and never committed any offence. He had already undergone imprisonment for 5 ½ years without committing any offence. No criminal antecedents are pending against him. His parents are aged and he is one and only person to look after them.

A3 submitted that he has no connection with any of the accused persons. He never committed any offence intentionally. He has wife and daughter and son aged 9 years and 21/2 years respectively. He is the one and only person to take care of them. He also pleaded for the leniency of this court.

A4 prayed to impose minimum punishment. He also submitted that he belongs to Thalassery and he has to be sent to prison at Kannur.

A5 submitted that he is innocent in this case. He is having wife and daughter aged one years. He is the one and only person to look after them.

A6 submitted that he is innocent. According to him, he was on the way to his room after his job on that particular day.

958. **Sentence -submissions by the counsel for the accused.**

Learned counsel for A1 submitted that he is a youngster. He also submitted that he is one and only person available to take care of his mother who is a widow. He also submitted that though the allegations are grave, this case cannot be treated a a brutal case as that of Nirbhaya case and hence, maximum punishment provided u/s. 376(D) is not warranted.

959. The learned counsel for A2 reiterated the contentions that he is innocent. Relying on the decision of Hon'ble Supreme Court in Navas @ Mula Navas Vs. State of Kerala 2024 SCC Online SC 315@ Mula Navas, learned counsel submitted that this court has to consider the relevant factors such as motive for which the offence was committed, whether the offence was committed when the convict was on bail in another case, nature of the

offence, relationship between the offender and the victim, criminal antecedents , age of the convict , probability of the reformation of convict, socio economic condition of the accused, position of the family of the accused while awarding the sentence.

960. The learned counsel for A3 submitted that even the evidence of PW1 is sufficient to show the role of A3 in the alleged commission of the offence and would fortify the submissions made by A3. He also submitted that considering the family background of the A3, he deserve leniency.

961. The learned counsel for A4 submitted that the mitigating facts including the chance of reformation , age of the convict etc are to be considered. He also submitted that applying the above yardsticks, the accused deserves for the minimum punishment provided for.

962. The learned counsel for the accused 5 and 6 also submitted that the evidence available before this court would show that the accused 5 and 6 have no involvement in the commission of offence. He also submitted that while awarding sentence court has to consider different rationals.

963. The learned Public Prosecutor relying on the decision of the Hon'ble SC in DEO Naren Mandal Vs. State of UP MANU /SC/0690/2004

argued that in criminal cases, awarding of sentence is not a mere formality. Where the statute has given, the court choices of sentence with maximum and minimum limit presented then the discretion is vested with the court. This discretion cannot be exercised arbitrarily or whimsically. It will have to be exercised taking into consideration gravity of the offence, manner in which it has committed, age, sex of the accused. In other words sentence to be awarded will have to be considered in the background of the fact on each case and the court while doing so, should bear in mind the principle of proportionality. The sentence awarded should be neither excessively harsh not ridiculously low. The learned Public Prosecutor also relied on the decision of the **Hon'ble Supreme Court in Purushottam Dasharat Borate and others Vs. State of Maharastra MANU /SC/D583/2015** argued that while awarding the sentence court has to consider the aggravating circumstances such as the gravity of the offence, the offence was committed outrageously while involving inhumane treatment and torture of the victim etc. The learned Public Prosecutor also submitted that PW1 who was on the way to the house of her friend was subjected to the commission of offence in a heinous manner. She was in a helpless situation. According to him, while awarding

the sentence, the court has to consider the society at large bear in mind the purpose of punishment.

964. **Sentence -discussions.**

965. I have considered the above contention. This case has created a sensation . But, the court should bear in mind that the sensational nature of the case does not make any impact on the mind of the court while awarding the sentence. Each of the court while awarding the sentence has to be balanced justice for society and the offender by considering the crimes aggravated history, chances for reformation, potential of the accused. This court has to consider the fact that the acts of the accused persons amount to blow to the supreme dignity of woman, the act violated her right to safety and created fear, humiliation , pushing her into shame and helplessness. It also caused psychological trauma causing mental distress. She was subjected to the attack while she was travelling to the house of her friend without anticipating any untoward incident. This fact is also to be considered. But at the same time, this court has to consider mitigating circumstances including the age of the accused , their family condition and also the fact that no criminal antecedents are pending against them except A1.

966. All the accused are below 40 years. The Hon'ble Supreme Court in Mukesh and another Vs. State for NCT of Delhi and others AIR 2017 SC 2161 (popularly known as Nirbhaya case) held that the crime against woman intentionally affects woman's self esteem, dignity but also degrades the pace of societal development. It is also held the need of sensitizing public at large on gender justice. Considering above mentioned circumstance I find that the mitigating circumstances stated herein before, are to taken note of and there is no circumstance in exist warranting the maximum punishment.

In the result, A1 to A6 are sentenced to undergo Rigorous Imprisonment for a term of 20 years and also to pay a fine of Rs. 50,000/- each for the offence punishable u/s. 376(D) of IPC and in default of payment of fine to undergo RI for a period of one year for the offence u/s. 376(D) of IPC.

A1 to A6 are sentenced to under go Rigorous Imprisonment for a term of 20 years and also to pay a fine of Rs. 50,000/- each and in default of payment of fine to under go Rigorous Imprisonment for a period of one year for the offence punishable u/s. 120(B) r/w sec. 342, 354, 355(b), 357, 376(D) of IPC and section 66(E) and 67(A) of IT Act.

In the view of the sentence awarded above, no separate sentence is imposed on A2 to A6 for the offence punishable u/s. 109, r/w. Sec. 342, 354, 354(b), 357, 366 and 376(D) of IPC.

A1 to A6 are sentenced to undergo SI for a term of one year for the offence punishable u/s. 342 of IPC.

In view of the sentence awarded for the offence u/s. 376(D) of IPC, no separate sentence is imposed against A1 , and A3 to A6 for the offence punishable u/s. 354 of IPC.

In view of the sentence imposed u/s. 376 (D) of IPC, no separate sentence is imposed on A1 for the offence punishable u/s. 354 (B) of IPC.

A1 to A6 are sentenced to imprisonment for a period of one year for the offence u/s. 357 of IPC.

A1 to A6 are sentenced to undergo Rigorous Imprisonment for a period of 10 years and shall also be liable to pay a fine of Rs. 25,000/- and in default of payment of fine to undergo RI for a period of 6 months for the offence u/s. 366 of IPC.

A1 is sentenced to undergo imprisonment for a period of 3 years and with a fine of Rs. 1 lakh and in default of payment of fine to undergo

Imprisonment for a period of 6 months for the offence punishable u/s. 66E of IT Act, 2000.

A1 is sentenced to undergo Rigorous Imprisonment for 5 years and also to pay a fine of Rs. 1 lakh and in default of payment of fine, to undergo RI for a period of 6 months for the offence punishable u/s. 67 A of IT Act,2000.

A2 is sentenced to undergo Rigorous Imprisonment for a 3 years and also to pay a fine of Rs. 25,000/- and in default of payment of fine to undergo RI for a period of 6 months for the offence punishable u/s. 201 of IPC.

The substantive sentence of imprisonment awarded shall run concurrently.

If the fine is realised, Rs. 5 lakhs shall be paid to PW1 u/s.357(1) of CrPC. The accused are entitled for set off u/s. 428 of CR.P.C.

MO8 gold ring shall be returned to PW1. The custody of the MO9 XUV is made absolute.

The materials containing explicit contents shall be sent to the State Forensic Science Laboratory for permanent destruction. The State Forensic Science laboratory shall file a detailed destruction report. This report shall be retained as permanent record and the details shall be entered in the

register maintained for recording the details of the items containing the sexually explicit contents.

The pen drive contains the visuals of attack of PW1 kept with the Investigating officer shall be dealt with due diligence keeping in mind the privacy of PW1. All other materials objects shall be disposed of in accordance with law.

The order of disposal of mentioned herein before shall be effected after the expiry of the appeal period or the disposal of appeal if any filed.

Dictated to the Confidential Assistant, transcribed and typed by him, corrected by me and pronounced in open court on this the 12th day of December, 2025.

Sd/-

Honey M.Varghese
Sessions Judge.

APPENDIX:-

Witnesses on the side of Prosecution

PW1	30.01.2020	X
PW2	05.02.2020	Naveen Nagarajan
PW3	05.02.2020	Pramod Kumar
PW4	06.02.2020	Monica Lal
PW5	06.02.2020	Paul Michael Lal @ Lal

PW6	06.02.2020	Jayadevan Balachandran
PW7	07.02.2020	Remya S. Unni @ Remya Nambisan
PW8	07.02.2020	Sujith
PW9	07.02.2020	Rahul S. Unni
PW10	12.02.2020	Asha Vinod
PW11	12.02.2020	Sumitha Charish
PW12	12.02.2020	Nelson @ Nelson Das
PW13	13.02.2020	Mathew @ Divish
PW14	13.02.2020	Manitha.M
PW15	14.02.2020	Sajan Jose
PW16	14.02.2020	Subin George
PW17	14.02.2020	Manu.M
PW18	19.02.2020	Rajesh A.R
PW19	19.02.2020	Sameer A.S
PW20	19.02.2020	Adv: E. C. Poulose
PW21	20.02.2020	Aneesh Khan
PW22	20.02.2020	Giridharan.S
PW23	20.02.2020	Sasikumar M.P
PW24	20.02.2020	Anthony Selvam
PW25	26.02.2020	Subin P.K
PW26	26.02.2020	Vishnu Raj N.
PW27	26.02.2020	Vishnu Sasidharan
PW28	26.02.2020	Dinesh
PW29	26.02.2020	Shaju M.D.
PW30	26.02.2020	Aneesh.M.A
PW31	26.02.2020	Ranjith V.D.

PW32	26.02.2020	Santhosh K.L.
PW33	26.02.2020	Thomas N. P. @ Saneesh
PW34	27.02.2020, 21.02.2023, 22.02.2023	Manju Warrier
PW35	28.02.2020	Geethu Mohandas
PW36	04.03.2020	Reemi Tomy
PW37	04.03.2020	Dixon Poduthas
PW38	05.03.2020	A. Babu Chandran @ Edavela Babu
PW39	09.03.2020	Kunchacko Boban
PW40	09.03.2020	Bindu Panicker
PW41	13.03.2020	Blessy Jean
PW42	17.08.2020-19.08.2020	P. T. Thomas
PW43	27.08.2020 03.09.2020	Vasudevan V.
PW44	09.09.2020	Jeevan Nassar @ Nasser
PW45	09.09.2020	Manoj Kumar @ Manoj Karanthoor
PW46	15.09.2020	M. Mukesh @ Mukesh Babu
PW47	15.09.2020	Anoop V.
PW48	16.09.2020	Purushothaman @ Rajan
PW49	16.09.2020	Salim C. M.
PW50	17.09.2020 07.03.2023	Dr. C.M. Hyderali
PW51	17.09.2020	Rekhitha Arun
PW52	17.09.2020	K.M. Sidhique
PW53	18.09.2020	C. K.Sasikumar
PW54	18.09.2020	Tony Earnest Montho

PW55	18.09.2020	Nazeer A.A.
PW56	22.09.2020	Anoop Kumar C.
PW57	22.09.2020	Sanjeevi J.
PW58	23.09.2020	Sunesh N.S.
PW59	23.09.2020 24.09.2020	Bithil P.B.
PW60	24.09.2020	Joji T.P.
PW61	24.09.2020	Anoop P.A.
PW62	24.09.2020	B. Abhilash
PW63	25.09.2020	Sreekumar M. B.
PW64	25.09.2020	Jeesan Thampy
PW65	25.09.2020	Shine C.C.
PW66	29.09.2020	Ruby Baby
PW67	30.09.2020	M.V. Nikesh Kumar
PW68	30.09.2020	Sanuj V.A.
PW69	30.09.2020	Anto Joseph
PW70	08.10.2020	George Vellanikkaran
PW71	08.10.2020	Tom Joy George
PW72	08.10.2020	Joseph P. T.
PW73	08.10.2020	Rasheed A.M.
PW74	09.10.2020	Anas A. C.
PW75	09.10.2020	Shihab.N.M.
PW76	09.10.2020	Sivadasan
PW77	14.10.2020	Viswanathan. T.N.
PW78	14.10.2020	Ali C. U.
PW79	14.10.2020	Rinshad.A.R.
PW80	14.10.2020	Sarat Babu

PW81	22.01.2021	Riya Midhun
PW82	22.01.2021	Mithun Pallikkara
PW83	16.02.2021	Eldho.K.M.
PW84	16.02.2021	AbdulAssis
PW85	16.02.2021	Sneha Babu.S.
PW86	16.02.2021	Eldhose K. V.
PW87	17.02.2021	Sarath Kumar.R.
PW88	17.02.2021	Sumesh.N.G.
PW89	17.02.2021	Noushad
PW90	17.02.2021	Rahul.K.R.
PW91	18.02.2021	Marshal D'cunho
PW92	18.02.2021	S.Dhanushkodi
PW93	18.02.2021	Sarana Priyan
PW94	18.02.2021	Swami Kannu
PW95	20.02.2021	Manish
PW96	20.02.2021	Jaslin Jacob
PW97	20.02.2021	M. Kamala Kannan
PW98	20.02.2021	Cyril George
PW99	22.02.2021 21.12.2022	Augustine Joseph
PW100	22.02.2021 27.02.2021 14.12.2022	Surya Surendran
PW101	23.02.2021	Shyji K. K.
PW102	23.02.2021	Rajeev K. K.
PW103	23.02.2021	V. N. Kumari Beena
PW104	23.02.2021	P. P. Udaya Kumar

PW105	24.02.2021	P. N. Sivan
PW106	24.02.2021	Sheena Joseph
PW107	24.02.2021	Sreeja.S., Junior Superintendent, JFCM-II, Aluva
PW108	25.02.2021	Dr. Remya Raveendran
PW109	25.02.2021	Sheela Kurian.M.
PW110	25.02.2021	Dr.Milan Raju
PW111	26.02.2021	Dr. Manoj Augustine
PW112	26.02.2021	Dr. Suraj.S.
PW113	26.02.2021	Dr. Biju.V.
PW114	26.02.2021	Dr. Rajesh.V.R.
PW115	03.03.2021 15.03.2023	Annie Varghese
PW116	04.03.2021	A. Asok Kumar
PW117	05.03.2021	Sasikumar P. K.
PW118	05.03.2021	M.Sruthy
PW119	05.03.2021	Imran Khan.R.
PW120	05.03.2021	Sujith M.
PW121	08.03.2021 09.03.2021 10.03.2021 15.03.2021 16.03.2021	Vipinlal B. L.
PW122	17.03.2021	Guno Narayana Pagui
PW123	17.03.2021	Sameer Naik
PW124	18.03.2021	Muthu
PW125	18.03.2021	Sabitha
PW126	18.03.2021	Sagar Vincent

	27.01.2023	
PW127	19.03.2021	M. Renjith
PW128	19.03.2021	Suneer V. S.
PW129	20.03.2021 08.02.2023	Sobhana Surendran
PW130	20.03.2021	Jamsith G.
PW131	24.03.2021	Remya Shyju
PW132	24.03.2021 22.06.2023 30.06.2023 04.07.2023 05.07.2023 11.07.2023 13.07.2023	Suraj T. N.
PW133	25.03.2021	Saravanan.C.
PW134	26.03.2021	Roshni Jinson
PW135	26.03.2021 27.03.2021 20.01.2023	Jinson Alias
PW136	27.03.2021	Jayakumar V.
PW137	27.03.2021	Rejin Mohan
PW138	31.03.2021	Anilkumar S. S.
PW139	09.04.2021	Antony Shan
PW140	09.04.2021	Manish Thomas
PW141	12.04.2021	Shibu Daniel
PW142	12.04.2021	Joji Thomas
PW143	12.04.2021	Elsa Catherine George
PW144	12.04.2021	Sreejith K. S.
PW145	13.04.2021	K. M. Vikraman



PW146	13.04.2021	Lijo Philip
PW147	13.04.2021	Shaji.K.P.
PW148	13.04.2021	Shiras Ameen.C.I.
PW149	16.04.2021	Arun Lal
PW150	16.04.2021	K.P. Aboobacker Sidhik
PW151	16.04.2021	Manoj K.T.
PW152	16.04.2021	Raju V.
PW153	17.04.2021	Sanil P. Mathew
PW154	21.04.2021 04.01.2023	Mary Sherin.P.N.
PW155	21.04.2021	S. Aparna
PW156	22.04.2021	Vijayakumar. C.K.
PW157	23.04.2021	Sreekanth.S.
PW158	26.04.2021	P. J. Salim
PW159	26.04.2021 30.04.2021 04.05.2021	George Chacko
PW160	28.04.2021	A. Ananthalal
PW161	30.04.2021	Babu Sebastian
PW162	06.05.2021	Sandeep Krishna V
PW163	06.05.2021	Raghunathan. S.
PW164	06.05.2021	Anup A. B.
PW165	28.06.2021 29.06.2021 30.06.2021 05.07.2021 06.07.2021	Aneesh P. K.
PW166	07.07.2021	Nancy Lal

PW167	08.07.2021	Dr. Bhavia A. V.
PW168	12.07.2021	Sherly Joseph
PW169	12.07.2021	Muhammed Shani.M.Z.
PW170	13.07.2021	Subitha Chirakkal
PW171	13.07.2021	Sajeev S.
PW172	13.07.2021	Reno Francis Xavier
PW173	14.07.2021	S.Senthil Kumar
PW174	14.07.2021	R.Saravanan
PW175	22.07.2021 23.07.2021 27.07.2021 06.12.2022	Sajeev P. K.
PW176	30.07.2021 02.08.2021 to 06.08.2021	Vishnu Aravind
PW177	09.08.2021	Vineeth Aravind
PW178	09.08.2021 10.08.2021	Mahesh Kumar.K.M.
PW179	10.08.2021 to 13.08.2021 18.08.2021 31.08.2021	Kavya Madhavan
PW180	12.08.2021	Haris M. M.
PW181	03.09.2021 06.09.2021 to 09.09.2021	Nadirsha
PW182	09.09.2021 10.09.2021 14.09.2021 15.09.2021	Sivakumar.P.

	14.07.2023 19.07.2023 20.07.2023 21.07.2023 24.07.2023 25.07.2023 26.07.2023 27.07.2023 31.07.2023 02.08.2023 08.08.2023 09.08.2023	
PW183	10.09.2021	K. V. Sreevidhya
PW184	17.09.2021	Vineeth T. J.
PW185	22.09.2021 23.09.2021 28.09.2021 06.12.2022 20.12.2022	K. Vasudevan
PW186	28.09.2021	Shahin Komath
PW187	30.09.2021	Gullu
PW188	30.09.2021	Bushara Begum
PW189	01.10.2021	Priyanka S.
PW190	01.10.2021	N. Seshadrinadhan
PW191	05.10.2021 to 08.10.2021 11.10.2021 12.10.2021 16.10.2021 18.10.2021 20.10.2021	Sunil Raj @Appunni

PW192	20.10.2021 to 23.10.2021 01.11.2021 to 03.11.2021 05.11.2021 10.11.2021 12.11.2021 01.11.2023 to 03.11.2023 07.11.2023 08.11.2023 10.11.2023 14.11.2023 to 17.11.2023 22.11.2023 23.11.2023 28.11.2023 30.11.2023 01.12.2023 05.12.2023 to 08.12.2023 12.12.2023 to 15.12.2023 20.12.2023	Dr. Sunil. S.P.
PW193	16.11.2021	Antony
PW194	17.11.2021	G. S. Hari
PW195	18.11.2021	M. Benoy
PW196	19.11.2021	Vishal Johnson
PW197	23.11.2021 24.11.2021	Radhamani P.K.
PW198	26.11.2021	S. Jayakrishnan
PW199	30.11.2021	Chrispin Sam

	09.03.2023	
PW200	30.11.2021	Manju N.M.
PW201	03.12.2021	Muhammed Rias
PW202	07.12.2021 to 14.12.2021 16.12.2021 17.12.2021 21.12.2021 24.12.2021 29.12.2021	Babukumar. K.G
PW203	22.01.2022	Usha
PW204	22.01.2022	Nileesha
PW205	25.01.2022	K. Sathyamurthy
PW206	05.02.2022	Prathibha
PW207	07.02.2022	Suresh D.
PW 208	10.11.2022	Sajith.A.K.
PW 209	10.11.2022	Linto Antony
PW 210	11.11.2022	Pradeep R
PW 211	11.11.2022	Veena B.G
PW 212	11.11.2022	Micah Philip
PW 213	11.11.2022 & 17.11.2022	Renju Renjimar
PW 214	15.11.2022 16.11.2022 30.11.2022 22.12.2022 24.12.2022 30.12.2022 12.01.2023	Sai Sankar

	13.01.2023 17.01.2023 18.01.2023	
PW 215	17.11.2022	Varun Joseph
PW216	18.11.2022	YogendraYadhav
PW217	18.11.2022	G.Vikraman Nair
PW218	18.11.2022	B.SureshBabu
PW219	22.11.2022	Sarya K.B
PW220	22.11.2022	Jyothi.D
PW221	22.11.2022	Joseph John A.M.
PW222	23.11.2022 24.11.2022 25.11.2022 07.12.2022 08.12.2022 15.12.2022 16.12.2022 17.12.2022 16.03.2023 17.03.2023 21.03.2023 22.03.2023 23.03.2023 28.03.2023 29.03.2023 30.03.2023 04.04.2023 05.04.2023 11.04.2023 12.04.2023 24.04.2023 25.04.2023 27.04.2023	P.Balachandra Kumar.

	28.04.2023 02.05.2023 03.05.2023 04.05.2023 09.05.2023 to 12.05.2023 06.06.2023 to 09.06.2023 13.06.2023 to 15.06.2023	
PW223	30.11.2022	Sreekumar T.R
PW224	01.12.2022	J.Muhammed Shafi
PW225	01.12.2022	Varghese Thomas
PW226	02.12.2022	Pramod Raman
PW227	02.12.2022	Aji Shankar
PW228	19.01.2023	Prasoon Benny. A.
PW229	31.01.2023	Kavitha S.
PW230	31.01.2023	Somya V.
PW231	31.01.2023	Sisukumar. M.
PW232	03.02.2023	Vishnu V.S
PW233	09.02.2023	Sumit Sengupta
PW234	09.02.2023	Anish K.Ealias
PW235	10.02.2023	Rajitha Jaimon
PW236	10.02.2023	K.G.Biju
PW237	10.02.2023	Brijit Joseph E.J.
PW238	15.02.2023	Vinodhini.J.R.
PW239	15.02.2023	Jayakrishnan J.S.
PW240	23.02.2023	Dr.Rajaanath Basheer
PW241	23.02.2023	Ejas. S.

PW242	24.02.2023 01.03.2023 02.03.2023	Dasan.V.G.
PW243	02.03.2023	Ullas Babu
PW244	03.03.2023	Dhaneesh.C.D.
PW245	03.03.2023	Arun Prakash
PW 246	07.03.2023	Byju B.R
PW 247	08.03.2023	I.G.Dinesan
PW 248	09.03.2023	Shibu.C.C.
PW 249	09.03.2023	Harisankar G.S
PW 250	14.03.2023	Shyamala Madhavan
PW 251	14.03.2023	Madhavan.P.
PW 252	17.05.2023	Soofi T.M
PW 253	23.05.2023	P.M. Baiju
PW254	26.05.2023	Subash .R
PW255	31.05.2023 02.06.2023	Jeesha K.S
PW256	12.07.2023	Bindu.I.R
PW257	10.08.2023 11.08.2023 16.08.2023 17.08.2023	Balaram.M.K.
PW258	16.08.2023 to 18.08.2023 24.08.2023 07.09.2023 08.09.2023	Rahila.R
PW259	22.08.2023 28.12.2023	Mohanachandran M.P.

	to 30.12.2023 03.01.2024	
PW260	05.09.2023, 12.09.2023 20.09.2023, 26.09.2023 27.09.2023, 28.09.2023 04.10.2023 to 06.10.2023 10.10.2023 to 12.10.2023 18.10.2023, 19.10.2023 27.10.2023, 28.10.2023	Deepa A.S
PW261	04.01.2024, 05.01.2024 09.01.2024 to 12.01.2024 18.01.2024, 19.01.2024 23.01.2024 to 25.01.2024 30.01.2024 to 02.02.2024 07.02.2024 to 09.02.2024 13.02.2024 to 15.02.2024 20.02.2024 to 23.02.2024 12.03.2024, 13.03.2024 19.03.2024 to	Baiju Poulose.M.

	21.03.2024 26.03.2024, 27.03.2024 02.04.2024 to 04.04.2024 09.04.2024, 11.04.2024 12.04.2024 17.04.2024 to 20.04.2024 22.04.2024, 29.04.2024 30.04.2024, 02.05.2024 03.05.2024 07.05.2024 to 10.05.2024 13.05.2024 to 15.05.2024 21.05.2024, 24.05.2024 29.05.2024, 30.05.2024 04.06.2024, 07.06.2024 11.06.2024 to 15.06.2024 19.06.2024 to 21.06.2024 26.06.2024 to 28.06.2024 02.07.2024 to 05.07.2024 09.07.2024 to 12.07.2024	

	17.07.2024 to 19.07.2024 23.07.2024 to 26.07.2024 29.07.2024 to 31.07.2024 06.08.2024 to 10.08.2024 21.08.2024 to 23.08.2024 27.08.2024, 29.08.2024 02.09.2024 to 04.09.2024 07.09.2024, 09.09.2024 10.09.2024	

Witnesses on the side of Defence :-

DW1	05.12.2024	Sidaarth Bharathan
DW2	05.12.2024	Goutham Byju
DW3	06.12.2024	Litha.V.T.

Exhibits on the side of Prosecution

1.	P1	18.02.2017	First Information Statement
2.	P1(a)	18.02.2017	First Information Report in Cr.No:297/17 Nedumbassery Police Station
3.	P2	19.02.2017	Mahazar for MO4

4.	P3	19.02.2017	Scene Mahazar (Kottayi to Kunnumpuram, Kakkanad)
5.	P4	18.02.2017	Mahazar for MO9
6.	P5	04.03.2017	Scene Mahazar for bathroom in the out house of PW5
7.	P6	02.11.2015	Rent agreement executed between Stephen.V.T. and PW12
8.	P6(a)	03.10.2016	Endorsement on the reverse side of Ext.P6
9.	P7	11.03.2017	Scene Mahazar for rented house of PW12
10.	P8	20.02.2017	Memo filed before the JFCM-II, Aluva by PW20.
11.	P9	18.02.2017	Vakalath executed by A1
12.	P10	20.02.2017	Inventory prepared by PW107
13.	P11	28.02.2017	Petition filed as Crl.M.P.124/17 before the JFCM, Angamaly
14.	P12	28.02.2017	Vakalath for A4 in Crime No.297/17 of Nedumbassery P.S. before JFCM Angamaly
15.	P13 series	18.02.2017 15.02.2017	Mobile purchase bill dtd.18.02.17 & Sales bill dt.15.02.17(2 Nos) of MO65
16.	P14	14.06.2006	Registration Certificate of MO66
17.	P15 series	14.06.2006 27.10.2016	Tax receipt & copy of Insurance Certificate of MO 66
18.	P16	-	Sale letter of MO66
19.	P17	18.02.2017	Gold Pledge form of Popular Finance Ltd.

20.	P17(a)	-	Gold loan voucher No.3033 of Popular Finance
21.	P17(b)	-	Self Attested copy of Driving Licence of A3
22.	P17(c)	18.02.2017	Customer copy of gold pledging voucher No. 0411195
23.	P18	26.02.2017	Search list in the house of PW24
24.	P19	10.06.2016	Invoice for purchase of Redmi note mobile phone from flipkart of PW27
25.	P20 series	-	Registration Certificate, Insurance Certificate, Tax Receipts and Goods Carriage permit of MO12
26.	P21	24.07.2014	Certified copy of OP(Div) No.1447/14 of Family Court, Ernakulam
27.	P22	31.01.2015	Certified copy of decree in OP(Div) No.1447/14 of Family Court, Ernakulam
28.	P23	05.06.2014	Certified copy of decree in OP No.1081/14 of Family Court, Ernakulam
29.	P24	24.07.2014	Certified copy of Order in OP No.1081/14 of Family Court, Ernakulam
30.	P24(a)	29.06.2017	Form 15 of Ext.P21 to P24
31.	P25	29.07.2017	Relevant portion of 161 statement of CW30 (PW38)
32.	P25(a)	29.07.2017	Relevant portion of 161 statement of CW30 (PW38)
33.	P25(b)	29.07.2017	Relevant portion of 161 statement of CW30 (PW38)

34.	P25(c)	29.07.2017	Relevant portion of 161 statement of CW30(PW38)
35.	P25(d)	29.07.2017	Relevant portion of 161 statement of CW30 (PW38)
36.	P25(e)	29.07.2017	Relevant portion of 161 statement of CW30 (PW38)
37.	P26	25.09.2017	Bond for return of property MO79 executed before JFCM Court, Angamaly
38.	P27	17.07.2017	Relevant portion of 161 statement of CW12 (PW40)
39.	P27(a)	17.07.2017	Relevant portion of 161 statement of CW12 (PW40)
40.	P27(b)	17.07.2017	Relevant portion of 161 statement of CW12 (PW40)
41.	P27(c)	17.07.2017	Relevant portion of 161 statement of CW12 (PW40)
42.	P27(d)	17.07.2017	Relevant portion of 161 statement of CW12 (PW40)
43.	P27(e)	17.07.2017	Relevant portion of 161 statement of CW12 (PW40)
44.	P27(f)	17.07.2017	Relevant portion of 161 statement of CW12 (PW40)
45.	P28 series	-	RC particulars, Insurance Certificate of MO9
46.	P29	19.02.2017	Seizure mahazar for MO12 and MO82
47.	P30	26.10.2017	Relevant portion of 161 of statement of CW77 (PW49)
48.	P30(a)	26.10.2017	Relevant portion of 161 of statement of CW77 (PW49)

49.	P31	-	IP register (Admin) of Anwar Memorial Hospital, Aluva.
50.	P32series	-	IP, OP Chart along with documents (9 Nos) of Anwar Memorial Hospital, Aluva.
51.	P32(a)	02.10.2017	Seizure mahazar for Ext.P32 series and Ext.P31.
52.	P32(b)	02.10.2017	Form 15 document Ext.P32 series and Ext.P31.
53.	P33	-	Staff Leave Book of Anwar Memorial Hospital, Aluva.
54.	P33(a)	-	Page No.38 of Exbt.P33
55.	P33(b)	26.10.2017	Seizure mahazar for Ext.P33
56.	P33(c)	27.10.2017	Form 15 for Ext.P33 as per Ext.P33(b)
57.	P34	-	Staff duty book of Anwar Memorial Hospital, Aluva
58.	P35	01.10.2017	Relevant portion of 161 statement of CW76 (PW50)
59.	P36	21.10.2017	Relevant portion of 161 statement of CW32 (PW51)
60.	P36(a)	21.10.2017	Relevant portion of 161 statement of CW32 (PW 51)
61.	P37	06.07.2017	Relevant portion of 161 statement of CW13 (PW 52)
62.	P37(a)	06.07.2017	Relevant portion of 161 statement of CW13 (PW 52)
63.	P37(b)	06.07.2017	Relevant portion of 161 statement of CW13 (PW 52)
64.	P38	17.12.2015	File copy of news paper of Deccan Chronicle for December - 2015

65.	P38(a) Series	17.12.2015.	Newspaper and supplement tabloid
66.	P38(b)	-	Kychit for Ext.P38
67.	P38(c)	17.11.2017	Seizure mahazar for Ext.P38
68.	P39	-	DVD of "News night" programme in Reporter channel on 26.06.2017
69.	P39(a)	03.11.2017	Certificate issued u/s.65(B) of Evidence Act by PW54 for Ext.P39
70.	P39(b)	03.11.2017	Seizure mahazar for Ext.P39
71.	P39(c)	03.11.2017	Form 15 for Ext.P39
72.	P40 series	-	Email communications, Copy of stay room bills, Subsidiary ledger copy & 65(B) certificates of Hotel Abad Plaza, M.G. Road, Ernakulam
73.	P41series	31.03.2013 & 08.04.2013	Room bill (2 Nos) for room No.410 of Hotel Abad Plaza, M.G. Road, Ernakulam and S.65(B) certificate
74.	P41(a)	08.07.2017	Seizure mahazar for Ext.P41 series
75.	P41(b)	08.07.2017	Form 15 for Ext.P41 series
76.	P42	12.07.2017	Scene Mahazar for room No.410 of Abad Plaza.
77.	P42(a)	12.07.2017	Relevant portion of Ext.P42 mahazar extract of confessions of A11
78.	P43	12.08.2017	Relevant portion of 161 statement of CW46 (PW65)
79.	P43(a)	12.08.2017	Relevant portion of 161 statement of CW46 (PW65)
80.	P43(b)	12.08.2017	Relevant portion of 161 statement of CW46 (PW65)

81.	P43(c)	12.08.2017	Relevant portion of 161 statement of CW46 (PW65)
82.	P44	08.07.2017	Relevant portion of 161 statement of CW195 (PW66)
83.	P44 (a)	08.07.2017	Relevant portion of 161 statement of CW195 (PW66)
84.	P45	23.06.2017	Search list for the House of C.K. Omana in Pathanamthitta District
85.	P46	-	Tata Docomo SIM Card of MO87
86.	P47 series	-	Guest bill, Cash receipt of Hotel Merlin International, Thrissur and invitation letter for the Betrothal Ceremony of Daughter of PW71
87.	P48	-	Photo Album in respect of Betrothal Ceremony of daughter of PW71
88.	P49 series	-	Customer application form and ID proof for Mobile No.9995945878 (same as Ext.P769 series)
89.	P50	26.08.2017	Relevant portion of 161 statement of CW57 (PW 81)
90.	P50(a)	26.08.2017	Relevant portion of 161 statement of CW57(PW 81)
91.	P50(b)	26.08.2017	Relevant portion of 161 statement of CW57(PW 81)
92.	P50(c)	26.08.2017	Relevant portion of 161 statement of CW57(PW 81)
93.	P51	26.08.2017	Relevant portion of 161 statement of CW33(PW 82)
94.	P51(a)	-	Relevant portion of 161 statement of CW33(PW 82)

95.	P52	-	Black and red color 8GB Sandisk pendrive
96.	P52(a)	-	Wrapping paper of pendrive signed by witness & others
97.	P52(b)	22.02.2017	Seizure Mahazar for Ext.P52
98.	P52(c)	22.02.2017	Sec.65B Certificate for Ext.P52
99.	P53	02.03.2017	Sec.65B Certificate for Ext.P53(a)
100.	P53(a)	-	CD containing CCTV footage from Vettuvelil Fuels, Thammanam
101.	P54	-	CD containing CCTV footage of Yasin International furniture, Thaikavu, Vennala Road
102.	P54(a)	03.03.2017	Sec.65B Certificate for Ext.P54
103.	P55	-	DVD containing CCTV footage of Dream Stones & Tiles, Elavoor, Angamaly
104.	P55(a)	03.03.2017	Sec.65B Certificate for Ext.P55
105.	P56	24.02.2017	Seizure Mahazar for MO66
106.	P57	22.02.2017	Seizure Mahazar for MO88
107.	P58	22.02.2017	Seizure Mahazar for MO89
108.	P59	25.02.2017	Search list for the house of Stephen in Ruby Line, Thammanam
109.	P60 series	-	RC & Insurance certificate for MO58
110.	P61 series	-	Copy of customer application form & ID proof for Mob No.8807339249
111.	P61(a)	04.10.2017	Covering letter for Ext.P61 series

112.	P61(b)	28.10.2023	S.65B certificate in respect of printout Ext.P61series
113.	P62	-	Copy of CDR of Mobile No.8807339249 from 10.04.2017 to 14.04.2017
114.	P62(a)	-	Sec.65B Certificate for Ext.P62
115.	P62(b)	04.10.2017	Covering letter for Ext.P62
116.	P62(c)	08.07.2017	Form 15 for Ext.D15
117.	P63 series	-	Copy of application form along with ID proof for Mob No. 8089800544
118.	P63(a)	-	CDR for the Mob No.8089800544 from 15.02.2017 to 12.08.2017
119.	P63(b)	-	Sec.65B Certificate for Ext.P63(a)
120.	P63(c)	19.10.2017	Covering letter for Ext.P63 series, Ext.P63(a) and P63(b)
121.	P63(d)	25.10.2017	Seizure mahazar for Ext.P63 series, P63(a), P63(b) & P63(c)
122.	P63(e)	26.10.2017	Form 15 for Ext.P63 series, Ext.P63(a), (b) & (c)
123.	P64	25.06.2017	Seizure Mahazar for MO90
124.	P64(a)	25.06.2017	Authorization given to PW198
125.	P64(b)	25.06.2017	Property list of MO90 and 91(T.244/2017)
126.	P64(c)	25.06.2017	Covering letter for Ext.P64 and P64(d)
127.	P64(d)	25.06.2017	Report of PW198 regarding MO90 and 91
128.	P65	10.03.2017	Seizure Mahazar for MO24 series and

			MO25
129.	P66 series	-	Copy of Customer Application Form and ID proof of Mobile No. 9567000000
130.	P67 series	-	Copy of CDR from 20.09.2016 to 21.09.2016 of Mobile No.9567000000 along with Sec.65B Certificate
131.	P67(a)	26.9.2017	Seizure mahazar for Ext.P67 series
132.	P67(b)	26.9.2017	Form 15 for Ext.P67 series
133.	P68 series	-	Copy of CDR from 10.04.2017 to 15.04.2017 of Mobile No.9567000000 along with Sec.65B Certificate
134.	P69 series	-	Copy of CDR from 12.11.2016 to 14.11.2016 of Mobile No.9567000000 along with Sec.65B Certificate
135.	P70 series	-	Copy of CDR from 16.02.2017 to 19.02.2017 of Mobile No.9567000000 along with Sec.65B Certificate
136.	P71 series	-	Copy of CDR from 21.02.2017 to 24.02.2017 of Mobile No.9567000000 along with Sec.65B Certificate
137.	P72 series	-	Copy of CDR as on 28.03.2017 of Mobile No.9567000000 along with Sec.65B Certificate
138.	P73 series	-	Copy of CDR from 18.04.2017 to 22.04.2017 of Mobile No.9567000000 along with Sec.65B Certificate
139.	P74 series	19.01.2024	Copy of Customer application form & ID proof of Mobile No.8606700107(same as Ext.P767 series)
140.	P75 series	-	Copy of CDR from 10.04.2017 to 14.04.2017 of Mobile No.8606700107

			along with Sec.65B Certificate
141.	P75(a)	27.9.2017	Seizure mahazar for Ext.P75series
142.	P75(b)	27.9.2017	Form 15 for Ext.P75 series
143.	P76 series	-	Copy of Customer Application Form and ID proof of Mob. No. 8606166888.
144.	P76(a) series	-	Copy of CAF & ID proof of Mob No. 9847432786 (same as Ext.P84 series)
145.	P76(b)	27.09.2017	Seizure mahazar for Ext.P76 series and Ext.P76(a) series
146.	P76(c)	02.10.2017	Form 15 for Ext.P76 series & P76(a) series
147.	P77 series	-	Copy of CDR from 17.02.2017 to 18.02.2017 along with Sec.65B Certificate of Mobile No.8066166888
148.	P77(a)	28.09.2017	Seizure mahazar for Ext.P77series
149.	P77(b)	02.10.2017	Form 15 for Ext.P77 series
150.	P78 series	-	Copy of Customer Application Form & ID proof of Mobile No.9072333088
151.	P78(a)	21.10.2017	Seizure mahazar for Ext.P78 series and P79series
152.	P78(b)	21.10.2017	Form 15 for Ext.P78 series and P79 series
153.	P79 series	-	Copy of CDR from 15.02.2017 to 25.02.2017 along with Sec.65B Certificate of Mob.No. 9072333088
154.	P80 series	-	Copy of Customer application & ID proof of Mobile No.9656303333
155.	P81 series	-	Copy of CDR from 06.03.2017 to 10.03.2017 along with Sec.65B

			Certificate of Mobile No.9656303333
156.	P82 series	-	Copy of Customer Application Form & ID proof of Mobile No.9061986297
157.	P83 series	-	Copy of Customer Application Form & ID proof of Mobile No.8089411171
158.	P83(a)	21.10.2017	Seizure mahazar for Ext.P83 series
159.	P83(b)	21.10.2017	Form 15 for Ext.P83 series
160.	P84 series	-	Copy of Customer Application Form & ID proof of Mobile No.9847432786 (same as Ext.P76(a) series)
161.	P85 series	-	Copy of CDR from 10.04.2017 to 11.04.2017 along with Sec.65B Certificate of Mob. No. 9847432786
162.	P86 series	-	Details of Decoded Cell IDs location certificate of CDR issued by Nodal officer, Idea Cellular Ltd with covering letter
163.	P86(a)	21.11.2017	Seizure mahazar for Ext.P86 series
164.	P87 series	-	Details of Decoded Cell IDs of CDR issued by Nodal officer, Idea Cellular Ltd with covering letter
165.	P87(a)	21.11.2017	Seizure mahazar for Ext.P87series
166.	P88 series	-	CDR of Mobile No.9061986297 for the period from 10.02.2017 to 25.02.2017 and Sec.65B Certificate
167.	P89 series	-	Copy of Customer application & ID proof of Mobile No.9562263445
168.	P89(a)	05.12.2023	S.65B certificate in respect of Ext.P 89 series
169.	P90	-	CDR of Mob.No. 9562263445 from

	series		10.02.2017 to 25.02.2017 with Sec.65B Certificate
170.	P91 series	-	Copy of Customer Application Form & ID proof of Mobile No.9961304777
171.	P92 series	-	CDR of Mob.No. 9961304777 from 10.02.2017 to 25.02.2017 and Sec.65B Certificate
172.	P93 series	-	Copy of Customer Application Form & ID proof of Mobile No.9947586390
173.	P94 series	-	CDR from 16.02.2017 to 27.02.2017 along with Sec.65B Certificate
174.	P95 series	-	CDR of Mob. No. 9995945878 from 15.02.2017 to 18.02.2017 along with Sec.65B Certificate
175.	P96 series	20.03.2017	Details of Decoded Cell IDs with covering letter of Idea Cellular Limited by PW100
176.	P97series	20.03.2017	Decoded Cell IDs Certificate with covering letter by PW100
177.	P98 series	-	Copy of Account opening form, Statement of accounts for the period from 08.01.2015 to 17.07.2017, Pay slips and (D3&9) withdrawal slips and cheques, Form 60 in Account No.33792010038670 of Union Bank of India, Perumbavoor and Sec.65B certificate (Doc No.569) of PW129
178.	P99	-	RC particulars of BMW car bearing No.KL-07-BT-111
179.	P99(a)	03.10.2017	Form 15 for Ext.P99
180.	P100	-	RC particulars of BMW car bearing

			No.KL-07-BQ 5445
181.	P100(a)	02.11.2017	Form 15 for Ext.P100
182.	P101	20.04.2017	Complaint filed by A8 before the Director General of Police, Kerala
183.	P101(a)	24.06.2017	Copy of Ext.P101
184.	P101(b)	24.06.2017	Form 15 for Ext.P101(a)
185.	P101(c)	11.07.2017	Seizure mahazar for Ext.P101,P101(d) and P101(e)
186.	P101(d)	-	Photocopy of supplementary documents in Ext.P101
187.	P101(e)	-	Mobile phone Screen shot in Ext.P101
188.	P101(f)	11.07.2017	Form 15 for Ext.P101,P101(d) & P101(e)
189.	P102	04.04.2017	Consolidated Site Plan prepared by PW104
190.	P102(a)	-	Site Plan No.1A prepared by PW104
191.	P102(b)	-	Site Plan No.1B prepared by PW104
192.	P102(c)	-	Site Plan No.2 prepared by PW104
193.	P102(d)	-	Site Plan No.3 prepared by PW104
194.	P102(e)	-	Site Plan No.4 prepared by PW104
195.	P102(f)	-	Site Plan No.5A prepared by PW104
196.	P102(g)	-	Site Plan No.5B prepared by PW104
197.	P103	02.03.2017	Inspection report of MO12
198.	P104	02.03.2017	Inspection report of MO9
199.	P105	02.03.2017	Inspection report of MO79
200.	P106	02.03.2017	Inspection report of MO89

201.	P107	02.03.2017	Inspection report of MO88
202.	P108	02.03.2017	Inspection report of MO66
203.	P109 series	15.07.2017	Petition along with Inventory of MO92 series filed by A8 before JFCM Court, Angamaly
204.	P109(a)	08.09.2017	Seizure mahazar for MO92 series
205.	P109(b)	08.09.2017	Property list for MO92series (T.331/17)
206.	P109(c)	08.09.2017	Form 15 for Ext.P109(a) series
207.	P110	27.02.2017	Certificates of collection of blood samples for DNA analysis from the body of PW1.
208.	P111	-	Certified copy of proceedings sheet dated 30.03.2017 & 12.04.2017 in CC.No.2150/16 of JFCM-VIII, Ernakualm
209.	P112	-	Certified copy of final report in Cr.No.1158/16 of Kadavanthara Police Station
210.	P112(a)	26.09.2017	Form 15 for Ext.P111 & Ext.P112
211.	P113	18.02.2017	Certificate of medical examination of PW1
212.	P114	19.02.2017	Certificate of examination of potency of A2
213.	P115	24.02.2017	Certificate of examination of potency of A1
214.	P116	24.02.2017	Certificate of examination of potency of A4
215.	P117	18.02.2017	164 Cr.P.C. statement of CW1/PW1
216.	P118	06.11.2017	Site plan prepared for room No.410 of Abad Plaza Hotel, M. G. Road,

			Ernakulam
217.	P118(a)	11.11.2017	Form 15 for Ext.P118
218.	P119	26.09.2017	Sec.164 Cr.P.C. statement of CW182/PW80
219.	P120	17.08.2017	Sec.164 Cr.P.C. statement of CW36/PW73
220.	P121	06.11.2017	Sec.164 Cr.P.C. statement of CW182/PW80
221.	P122	12.04.2017	Letter written by PW121
222.	P123 series	-	Specimen writings of PW121(26 Nos.)
223.	P124 series	-	Admitted writings of PW121 (3 Nos.)
224.	P125	10.08.2017	Scene mahazar for room of Avelina Guest House, Goa
225.	P125(a)	23.08.2017	Covering letter for Ext.P125
226.	P126	10.08.2017	Seizure mahazar for P126(a)
227.	P126(a)	-	Photocopy of ID proof of PW45 and Albey.P.A.
228.	P126(b)	10.08.2017	Form 15 for Ext.P126(a)
229.	P127	-	Tourist Register for the year 2016-17 of Avelina Guest House, Goa
230.	P127(a)	-	Page No.16 of Ext.P127
231.	P127(b)	10.08.2017	Kychit for Ext.P127
232.	P127(c)	23.08.2017	Covering letter for Ext.P126 & 127(b)
233.	P128	25.08.2017	Relevant portion of 161 statement of CW192 (PW125)
234.	P129	01.07.2017	Sec.65(B) Certificate for DVR issued by

			PW126
235.	P130	01.07.2017	Kychit for the Attendance Register of Laksyah
236.	P131	26.08.2017	Relevant portion of 161 statement of CW181 (PW126)
237.	P132	-	Relevant portion of 161 statement of CW42/ (PW128)
238.	P132(a)	26.07.2017	Relevant portion of 161 statement of CW42 (PW128)
239.	P132 (b)	-	Relevant portion of 161 statement of CW42 (PW128)
240.	P132 (c)	-	Relevant portion of 161 statement of CW42 (PW128)
241.	P132(d)	-	Relevant portion of 161 statement of CW42 (PW128)
242.	P133	01.07.2017	Seizure mahazar for attendance register of Laksyah
243.	P134	-	Visiting card of Laksyah.
244.	P134(a)	28.08.2017	Seizure mahazar for Ext.P134
245.	P134(b)	28.08.2017	Form 15 for Ext.P134
246.	P135	02.08.2017	Relevant portion of 161 statement of CW193 (PW132)
247.	P136 series	-	Copy of Customer Application Form & ID proof of Mobile No.9961839911 (PW135)
248.	P136(a)	24.10.2017	Seizure mahazar for Ext.P136 series
249.	P136(b)	25.10.2017	Form 15 for Ext.P136 series
250.	P137	22.06.2017	Search list of Block 'C' cell-I of District Jail, Kakkanad

251.	P138 series	-	Visiting Cards of Advocates (3 Nos.)
252.	P139 series	26.09.2017	Copy of CDR from 01.1.17 to 4.1.17 & Sec.65B Certificate of Mobile No.9360799223
253.	P139(a)	27.09.2017	Seizure mahazar for Ext.P139 series
254.	P139(b)	27.09.2017	Form 15 for Ext.P139 series
255.	P140 series	-	Certified copy of Customer Application Form, ID proof & Sec.65B Certificate of Mobile No.9360799223
256.	P140(a)	13.10.2017	Seizure mahazar for Ext.P140 series
257.	P140(b)	14.10.2017	Form 15 for Ext.P140 series
258.	P141	-	Seizure mahazar for MO93 - MO113
259.	P142 series	-	Copy of Customer Application Form and ID proof of Mobile No.9447676363
260.	P142(a) series.	-	Original Customer Application Form of Mob. No. 9447676363 and ID proof
261.	P143	19.09.2017	Sec.164 statement of CW190/PW124
262.	P144	17.10.2017	Sec.164 statement of CW78/PW131
263.	P145	06.11.2017	Sec.164 statement of CW85/PW8
264.	P146	30.06.2017	Sec.164 statement of CW188/PW135
265.	P147	04.07.2017	Seizure mahazar for Ext.P148
266.	P147(a)	04.07.2017	Covering letter for Ext.P147
267.	P147(b)	04.07.2017	Property list No.3 T.252/17 for Ext.P148 and P151

268.	P147(c)	-	Form 15 for Ext.P149 & Ext.P152
269.	P148	-	Pendrive (Sandisk) contains CCTV footage of C1 cell, District Jail, Kakkanad
270.	P149	04.07.2017	Sec.65B Certificate for Ext.P148
271.	P150	04.07.2017	Seizure mahazar for Ext.P151
272.	P151	-	16 GB Sandisk pendrive contains CCTV footage of Coin Box, District Jail
273.	P152	04.07.2017	Sec.65B Certificate for Ext.P151
274.	P153	-	DVD containing CC TV footage in District Jail, Kakkanad
275.	P153(a)	20.10.2017	Seizure mahazar for Ext.P153
276.	P153(b)	20.10.2017	Form 15 for Ext.P153
277.	P154	-	Duty book of Ernakulam Rural PHQ for the period from 31.10.2016 to 09.05.2017
278.	P154 (a)	30.08.2017	Kychit for returning Ext.P154
279.	P154 (b)	30.08.2017	Seizure Mahazar for Ext.P154
280.	P155	08.07.2017	Seizure Mahazar for Ext.D15
281.	P155(a)	08.07.2017	Covering letter for forwarding Ext.P155 seizure mahazar to court
282.	P156	-	Guard duty book of Police Club, Ernakulam.
283.	P156(a)	22.09.2017	Seizure mahazar for Ext.P156
284.	P156(b)	22.09.2017	Form 15 for Ext.P156

285.	P157	18.02.2017	Mahazar for swabs and things collected from victim
286.	P158	18.02.2017	Seizure Mahazar for MO1 to 3
287.	P159	18.02.2017	Seizure Mahazar for MOs 114 to 118
288.	P160	-	Copy of customer application form and ID proof for the Mobile No.9947748801
289.	P160(a) series.	-	Original Customer Application Form of Mob.No.9947748801
290.	P161	18.02.2017	Report of articles collected from MO9
291.	P162	19.02.2017	Report of articles collected from MO12
292.	P163	01.11.2017	FSL Report No. 94/17 dated 01.11.2017 regarding the examination of letter written by CW227/ PW121
293.	P163(a)	01.11.2017	Reasons for report of Ext.P163
294.	P164	-	DVD containing 2 voice clips by A8 to State Police Chief's phone
295.	P164 (a)	06.11.2017	Sec.65B certificate for Ext.P164
296.	P164(b)	06.11.2017	Seizure mahazar for Ext.P164
297.	P164(c)	06.11.2017	Form 15 for Ext.P164
298.	P164(d)	-	S. 65 B certificate in respect of Ext.P164 dated 04.12.2023
299.	P165	-	Remand prisoners register Vol-11 of District Jail Kakkanad
300.	P165(a)	-	Page No.32 of Remand prisoners register -Vol-11 of District Jail, Kakkanad



301.	P165(b)	-	Page No.36 of Remand prisoners register -Vol-11 of District Jail, Kakkanad
302.	P165(c)	-	Page No.179 of Remand prisoners register -Vol-11 of District Jail, Kakkanad
303.	P166	-	Remand prisoners register -Vol-12 of District Jail, Kakkanad
304.	P166(a)	-	Page No.46 of Remand prisoners register -Vol-12 of District Jail, Kakkanad
305.	P167	-	Convict Register of District Jail, Kakkanad for the period from 13.03.2016 to 03.05.2019
306.	P167(a)	-	Page No.118 of Convict Register of District Jail, Kakkanad
307.	P168	-	Under Trial Prisoners Register Vol-9 of District Jail, Kakkanad
308.	P168(a)	-	Relevant page of Under Trial Prisoners Register
309.	P169	-	Prisoners register of District Jail, Kakkanad
310.	P170	30.08.2017	Kychit for return Ext.P165 to P169
311.	P171	-	Interview register for the period from 11.01.2017 to 17.07.2017 of District Jail, Kakkanad
312.	P172 series	10.04.2017	Attested copy of application with copy of ID proof submitted by PW172 to visit PW121

313.	P172(a)	28.09.2017	Form 15 for Ext.P172 series
314.	P172(a) series	10.04.2017	Original application with copy of ID proof of PW172 to visit PW121
315.	P173	06.07.2017	Kychit for Ext.P171
316.	P174	-	Phone book for the year 2016-2017 of District Jail, Kakkanad
317.	P175	05.07.2017	Kychit for return of Ext.P174
318.	P176 series	16.09.2017	164 statement and memorandum in respect of A7
319.	P177	02.09.2017	164 statement of CW181/PW126
320.	P178	06.10.2017	164 statement of CW45/PW130
321.	P179	25.08.2017	164 statement of CW227/PW121
322.	P180	-	Attested copy of Customer Application Form of BSNL Mobile No.8547990855
323.	P181	20.02.2017	Potency examination certificate in respect of A6
324.	P182	20.02.2017	Potency examination certificate in respect of A5
325.	P183	22.02.2017	Potency Certificate in respect of A3
326.	P184	28.07.2017	Letter issued by PW168 for handing over Ext.P184(a) series to P184(f)
327.	P184(a) Series	-	Print out of guest check in form (2Nos.) of Hotel Arcadia Regency, Alappuzha
328.	P184(b)	-	Details of check in and check out of visitors of Hotel Arcadia Regency, Alappuzha

329.	P184(c) series	-	Form 16A under the provision of Income Tax Act in respect of PW182
330.	P184(d) series	-	Consolidated Bill details issued to M/s.Priyanjali Films
331.	P184(e)	-	Bill for occupation of room No.207 by A8 from 27.01.2013 to 04.02.2013
332.	P184 (f)	02.08.2017	Sec.65B Certificate for Ext.P184(a) to 184(e)
333.	P184(g)	02.08.2017	Form 15 for Ext.P184(f)
334.	P185	05.10.2017	164 statement of CW18/PW36
335.	P186	15.07.2017	164 statement of CW54/PW58
336.	P187	19.07.2017	164 statement of CW50/PW129
337.	P188	08.03.2017	164 statement of CW96/PW156
338.	P189	08.03.2017	164 statement of Asha Vinod
339.	P190	08.03.2017	164 statement of CW99/PW11
340.	P191	08.03.2017	164 statement of CW104/ PW17
341.	P192	09.03.2017	164 statement of CW102/PW13
342.	P193	09.03.2017	164 statement of CW117/ PW24
343.	P194	21.07.2017	164 statement of CW21/PW48
344.	P195	21.07.2017	164 statement of CW61/PW43
345.	P196 series	-	Memorandum of Test Identification Parade Appendix (3 Nos) and charts (5 Nos)

346.	P197	25.02.2017	Report of Test Identification Parade conducted by JFCM-I, Aluva
347.	P198	-	Classmate note book used as trip sheet for the Caravan Vehicle No.TN-10-AE-4118
348.	P198(a) series	-	Page No.84 to 88 of Me Note book
349.	P199	25.07.2017	Kychit for vehicle & R. C. Book of TN 10-AE-4118
350.	P200	-	CDR for the period from 12.11.2016 to 14.11.2016 of the Mobile No. 9447676363
351.	P200(a)	22.07.2017	Certificate issued u/s.65B of Evidence Act for Ext.P200
352.	P200(b)	10.11.2017	Seizure mahazar for Ext.P200 and P200(a)
353.	P200(c)	10.11.2017	Form 15 for Ext.P200 and P200(a)
354.	P201	-	CDR for the period from 10.02.2017 to 25.02.2017 of the Mobile No. 9447676363
355.	P201(a)	27.02.2017	Certificate issued u/s.65B of Evidence Act for Ext.P201
356.	P202	22.09.2017	CDR for the period from 20.09.2016 to 21.09.2016 of the Mobile No.9387874777
357.	P202(a)	22.09.2017	Certificate issued u/s.65B of Evidence Act for Ext.P202
358.	P202(b)	11.11.2017	Seizure mahazar for the period from 20.9.2016 to 21.9.2016 for Ext.P202 and

			P202(a)
359.	P202(c)	11.11.2017	Form 15 for Ext.P202, P202(a) and P203series
360.	P203 series	-	Copy of Customer Application Form and copy of ID proof of Mobile No: 9387874777 of A1
361.	P203(a) series.	-	Original Customer Application Form of A1
362.	P204	-	CDR for the period from 01.01.2017 to 14.01.2017 of the Mobile No. 91 9443164109
363.	P204(a)	22.09.2017	Sec.65(B) Certificate issued for Ext.P 204
364.	P204(b)	24.10.2017	Seizure mahazar for Ext. P204, P204(a)
365.	P204(c)	25.10.2017	Form 15 of Ext.P204, P204(a)
366.	P205	-	Call data record for the period from 10.02.2017 to 25.02.2017 for the Mobile No: 9443164109
367.	P205(a)	27.02.2017	Sec.65 B Certificate issued for Ext.P205
368.	P205(b)	26.02.2017	Letter of request for Ext.P205, 205(a), 206(a) series issued by DPC, Aluva
369.	P206 series	-	Copy of Customer Application Form and ID proof for the Mobile No: 9443164109
370.	P206(a) series.	-	Original Customer Application Form & I.D. proof for the Mobile No: 9443164109
371.	P207	-	Call data records of the Mobile No:

			9446001430 for the period from 17.02.2017 to 18.02.2017
372.	P207(a)	22.09.2017	Sec.65(B) Certificate issued for Ext.P207
373.	P207(b)	24.10.2017	Seizure mahazar for Exts.P207, P207(a), P208 series and P208(a) series
374.	P207(c)	25.10.2017	Form 15 for Ext.P207, 207(a), P208 seriesP208(a) series
375.	P208 series	-	Copy of Customer Application Form and ID proof of Mob. No. 9446001430
376.	P208(a) series.	-	Original Customer Application and copy of ID proof of Mob. No. 9446001430
377.	P209	-	Call data record for the period from 15.02.2017 to 28.02.2017 and 01.03.2017 to 08.08.2017 of the Mobile No: 8547990855
378.	P209(a)	-	Sec.65(B) Certificate for Ext.P180 and P209
379.	P209(b)	18.11.2017	Seizure mahazar for Ext.P180, P209 and P209(a)
380.	P209(c)	18.11.2017	Form 15 for Ext.P180, P209 and P209(a)
381.	P210 series	-	CDR of the Mobile No: 9961020306 for the period from 12.11.2016 to 14.11.2016, 16.02.2017 to 19.02.2017, 21.02.2017 to 24.02.2017, 28.03.2017, 10.04.2017 to 15.04.2017 and 18.04.2017 to 22.04.2017(6 Nos)
382.	P210(a)	22.07.2017	Certificate issued u/s.65(B) for Ext.P210

			series
383.	P210(b)	13.11.2017	Seizure mahazar of Ext.P210series, P210(a),P211 series, P211(a) series
384.	P210(c)	16.11.2017	Form 15 for Ext.P210 series, 210(a), 211 series, P211(a) series
385.	P211 series	-	Copy of Customer Application Form and ID proof for the Mobile No: 9961020306
386.	P211(a) series.	-	Original Customer Application Form and copy of ID proof of Mobile No: 9961020306
387.	P212 series	-	CDR of the Mobile No: 9446351111 for the period from 01.09.2016 to 28.02.2017 and 01.03.2017 to 10.07.2017
388.	P212 (a)	10.10.2017	Sec.65B Certificate issued for Ext.P212 series
389.	P212(b)	18.11.2017	Seizure mahazar for Ext.P212 series,P 212(a),P 213 series, and P213(a)series
390.	P212(c)	18.11.2017	Form 15 for P212 series, P212(a), P213series and P213(a) series
391.	P213 series	-	Copy of Customer Application Form and ID proof of Mob.No.9446351111
392.	P213(a) series.	-	Original Customer Application Form of Mob. No. 9446351111
393.	P214 series	-	Copy of Customer Application Form and copy of ID proof for the Mobile No: 9645307437
394.	P215	20.05.2017	Rent agreement dated 20.05.2017 executed between PW177 and Ajith Kumar C.G.

395.	P216	08.07.2017	Seizure Mahazar dated 08.07.2017 for MO85 Mobile Phone
396.	P216(a)	08.07.2017	Covering letter for Ext.P216
397.	P216(b)	08.07.2017	Property List (T 275/17)
398.	P217	25.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW34 (PW179)
399.	P217(a)	25.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW34 (PW179)
400.	P217(b)	25.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW34 (PW179)
401.	P217(c)	25.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW34 (PW179)
402.	P217(d)	25.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW34 (PW179)
403.	P217(e)	25.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW34 (PW179)
404.	P217(f)	25.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW34 (PW179)
405.	P217(g)	25.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW34 (PW179)
406.	P217(h)	25.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW34 (PW179)
407.	P217(i)	25.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW34 (PW179)
408.	P217(j)	25.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW34 (PW179)
409.	P217(k)	25.07.2017	Relevant portion of 161 Cr.P.C.

			statement given by CW34 (PW179)
410.	P217(l)	25.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW34 (PW179)
411.	P217(m)	25.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW34 (PW179)
412.	P218	29.06.2017	Search list of premises of Block C in District Jail, Kakkanad
413.	P219	28.06.2017	Relevant portion of 161 Cr.P.C. statement dated 28.06.2017 given by CW43(PW181)
414.	P219(a)	28.06.2017	Relevant portion of 161 Cr.P.C. statement dated 28.06.2017 given by CW43(PW181)
415.	P219(b)	28.06.2017	Relevant portion of 161 Cr.P.C. statement dated 28.06.2017 given by CW43(PW181)
416.	P219(c)	28.06.2017	Relevant portion of 161 Cr.P.C. statement dated 28.06.2017 given by CW43(PW181)
417.	P219(d)	28.06.2017	Relevant portion of 161 Cr.P.C. statement dated 28.06.2017 given by CW43(PW181)
418.	P220	22.09.2017	Relevant portion of 161 Cr.P.C. statement given by CW43(PW181) on 22.09.2017
419.	P220(a)	22.09.2017	Relevant portion of 161 Cr.P.C. statement given by CW43(PW181) on 22.09.2017
420.	P220(b)	22.09.2017	Relevant portion of 161 Cr.P.C.

			statement given by CW43(PW181) on 22.09.2017
421.	P221	03.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW 22 (PW182)
422.	P221(a)	03.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW 22 (PW182)
423.	P221(b)	03.07.2017	Relevant portion of 161 Cr.P.C. statement given by PW 22 (PW182)
424.	P221(c)	03.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW 22 (PW182)
425.	P221(d)	03.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW 22 (PW182).
426.	P221(e)	03.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW 22 (PW182)
427.	P221(f)	03.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW22 (PW182).
428.	P221(g)	03.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW22 (PW182)
429.	P221(h)	03.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW22 (PW182).
430.	P221(i)	03.07.2017	Relevant portion of 161 Cr.P.C. statement given by CW22 (PW182)
431.	P222	07.04.2017	Chemical examination report B1/1963/FSL/2017-FSL TVM (DNA)
432.	P223	06.07.2017	Seizure Mahazar for Ext.P171
433.	P223(a)	06.07.2017	Covering report of Ext.P223
434.	P224	05.07.2017	Seizure Mahazar for Ext.P174

435.	P224(a)	05.07.2017	Covering letter forwarded to court for Ext.P224
436.	P225	30.08.2017	Seizure Mahazar for Ext.P169
437.	P226	-	Seizure Mahazar for Ext.P165 to P168
438.	P227	14.07.2017	Seizure Mahazar for Ext.P228 series
439.	P227(a)	14.07.2017	Covering letter forwarded to court for Ext.P227
440.	P228 series	-	Gate Registers (3 Nos)
441.	P229 series	01.09.2014	Copy of Customer Application Form and Copy of ID proof of Mob.No. 9037107812
442.	P229(a)	27.02.2017	Covering letter issued to District Police Chief Rural for Ext.P229 series
443.	P229(b)	09.03.2017	Form 15 for Ext.P229 series & P230 series for the period from 01.01.2017 to 04.01.2017(Same as Ext.P433 series)
444.	P230 series	-	Call data records of Mobile No.9037107812 from 01.01.2017 to 04.01.2017 and 10.02.2017 to 25.02.2017
445.	P230(a)series	27.02.2017	Sec.65B certificate for Ext.P230 series (2Nos.)
446.	P230(b)	20.09.2017	Seizure mahazar for Ext.P230 series
447.	P230(c)	20.09.2017	Form 15 for covering letter from Bharti Airtel for Ext. P230 series
448.	P231 series	13.03.2017	Details of decoded cell IDs of Bharti Airtel

449.	P231(a)	17.11.2017	Details of decoded cell IDs of Bharti Airtel
450.	P232 series	-	Copy of Customer Application Form of the Mobile No:9895151111 and ID proof
451.	P232(a)	20.09.2017	Seizure mahazar for CDR of Mob. No. 9895151111 on 20.9.16 and 21.9.16 and Ext.P232 series
452.	P232(b)	21.09.2017	Form 15 for Ext.P232 series and CDR of Mob.No.9895151111 on 20.9.16 and 21.9.16
453.	P233 series	-	Call details report of Mobile No:9895151111for the period from 01.09.2016 to 30.11.2016, 01.12.2016 to 31.03.2017 and 01.04.2017 to 30.06.2017(3set)
454.	P233(a)	15.09.2017	Sec.65B certificate for Ext.P233 series
455.	P233(b)	20.09.2017	Seizure mahazar for Ext.P233 series and P233(a)
456.	P233(c)	20.09.2017	Form 15 for Ext.P233 series & 233(a)
457.	P234 series	-	Copy of Customer Application Form and ID Proof for Mob.No.9846130322
458.	P235 series	-	Call data report of Mobile No:9846130322 for the period from 01.01.2017 to 04.01.2017 and certificate issued u/s.65B of Evidence Act
459.	P235(a)	03.10.2017	Seizure mahazar for Ext.P235series
460.	P235(b)	03.10.2017	Form 15 for Ext.P235 series

461.	P236 series	-	Call data report of Mobile No:9846130322 for the period from 10.02.2017 to 25.02.2017 and S.65B Certificate.
462.	P237 series	14.03.2017 04.11.2017	Details of decoded cell IDs of Vodafone Mobile Services Ltd. dated 14.03.2017 and 04.11.2017(2 set)
463.	P237(a)	16.11.2017	Seizure mahazar for Ext.P237series
464.	P237(b)	21.03.2017	Form 15 for Ext.P237series
465.	P238 series	-	Call data report of Mobile No:9645307437 for the period from 10.04.2017 to 14.04.2017 and S.65B Certificate.
466.	P238(a)	10.11.2017	Seizure mahazar for Ext.P238 series
467.	P238(b)	10.11.2017	Form 15 for Ext.P238 series
468.	P239 series	-	Customer Application Form and copy of ID Card for the Mobile No:9843485556
469.	P240 series	-	Call data report and S.65B certificate of Mobile No:9843485556 for the period from 16.02.2017 to 27.02.2017
470.	P241 series	-	Customer Application Form and copy of ID proof for the Mobile No:8489181741
471.	P242 series	-	Call data reports and certificate issued u/s.65B for the Mobile No:8489181741 for the period from 10.02.2017 to 25.02.2017.

472.	P243	-	Tourist Register of the La Alegro Hotel,Goa for the period from September 2016 to December 2017
473.	P243(a)	-	Page No. 24 entry No. 54 in P243 register
474.	P244	10.08.2017	Scene Mahazar Room LA Alegro Guest House Goa
475.	P244(a)	23.08.2017	Covering letter forwarded for Ext.P244
476.	P245	10.08.2017	Seizure Mahazar for Ext.P243.
477.	P245(a)	23.08.2017	Covering letter for Ext.P245
478.	P245(b)	-	Copy of PAN card of A1 GLWPS 4232K
479.	P245(c)	10.08.2017	Form 15 for P245(b)
480.	P246	10.08.2017	Kychit for Ext.P243.
481.	P247 series	21.02.2017	Forwarding Note dated 18.02.2017 and Covering letter D.No. 299 dated 21.02.2017.
482.	P248 series	25.02.2017 24.02.2017	Forwarding Note dated 24.02.2017 for items in T.65/17, 69/17 and 77/17 and Covering letter D.No. 320/17 dated 25.02.2017
483.	P249 series	28.02.2017	Forwarding Note dated 28.02.2017 and Covering letter D.No. 331 dated 28.02.2017.
484.	P250 series	07.03.2017.	Forwarding Note dated 06.03.2017 and Covering letter D.No. 368/17 dated 07.03.2017
485.	P251	05.04.2017	Forensic Science Lab report No.

			B1/1963/FSL/2017 TVM as per Ext.P247,P249 & P250
486.	P251(a)	-	Covering letter No:B1-1963/FSL/2017 dated 05.04.2017 of Forensic Science Laboratory.
487.	P252	04.03.2017	Requisition for Chemical Examination issued by PW113.
488.	P253	28.09.2017	164 statement of CW228/PW165
489.	P254	25.10.2017	Order in Crl.M.P. No.3155/17 of CJM, Ernakulam regarding the pardon to PW165
490.	P255	25.10.2017	Statement u/s 306 Cr.PC of PW165 in Crl.MP No.3155/17 of C.J.M., Ernakulam.
491.	P256	25.09.2017	Statement u/s 306 Cr.PC of PW121 in Crl.MP 2686/17 of C.J.M., Ernakulam
492.	P257	28.09.2017	Order in Crl.M.P.2686/17 of CJM, Ernakulam regarding pardon to PW121
493.	P258	05.07.2017	Relevant portion of 161 statement of PW191
494.	P258(a)	05.07.2017	Relevant portion of 161 statement of PW191
495.	P258(b)	05.07.2017	Relevant portion of 161 statement of PW191
496.	P258(c)	05.07.2017	Relevant portion of 161 statement of PW191
497.	P258(d)	05.07.2017	Relevant portion of 161 statement of PW191

498.	P258(e)	05.07.2017	Relevant portion of 161 statement of PW191
499.	P258(f)	05.07.2017	Relevant portion of 161 statement of PW191
500.	P258(g)	05.07.2017	Relevant portion of 161 statement of PW191
501.	P258(h)	05.07.2017	Relevant portion of 161 statement of PW191
502.	P258(i)	05.07.2017	Relevant portion of 161 statement of PW191
503.	P259	31.07.2017	Relevant portion of 161 statement of PW191
504.	P259(a)	31.07.2017	Relevant portion of 161 statement of PW191
505.	P260	28.06.2017	Relevant portion of 161 statement of PW191
506.	P260(a)	28.06.2017	Relevant portion of 161 statement of PW191
507.	P260(b)	28.06.2017	Relevant portion of 161 statement of PW191
508.	P260(c)	28.06.2017	Relevant portion of 161 statement of PW191
509.	P260(d)	28.06.2017	Relevant portion of 161 statement of PW191
510.	P260(e)	28.06.2017	Relevant portion of 161 statement of PW191
511.	P260(f)	28.06.2017	Relevant portion of 161 statement of PW191

512.	P260(g)	28.06.2017	Relevant portion of 161 statement of PW191
513.	P260(h)	28.06.2017	Relevant portion of 161 statement of PW191
514.	P260(i)	28.06.2017	Relevant portion of 161 statement of PW191
515.	P260(j)	28.06.2017	Relevant portion of 161 statement of PW191
516.	P260(k)	28.06.2017	Relevant portion of 161 statement of PW191
517.	P260(l)	28.06.2017	Relevant portion of 161 statement of PW191
518.	P260(m)	28.06.2017	Relevant portion of 161 statement of PW191
519.	P260(n)	28.06.2017	Relevant portion of 161 statement of PW191
520.	P260(o)	28.06.2017	Relevant portion of 161 statement of PW191
521.	P260(p)	28.06.2017	Relevant portion of 161 statement of PW191
522.	P260(q)	28.06.2017	Relevant portion of 161 statement of PW191
523.	P260(r)	28.06.2017	Relevant portion of 161 statement of PW191
524.	P260(s)	28.06.2017	Relevant portion of 161 statement of PW191
525.	P260(t)	28.06.2017	Relevant portion of 161 statement of PW191

526.	P260(u)	28.06.2017	Relevant portion of 161 statement of PW191
527.	P260(v)	28.06.2017	Relevant portion of 161 statement of PW191
528.	P261	-	Q2M Memory Card in Ext. P263
529.	P262	-	Q3 8GB San Disk Memory Card in Ext. P263(b)
530.	P263	03.03.2017	Cyber Forensic Analysis Report No:DD 91/17 of SFSL, Tvpm
531.	P263(a)	-	Annexure III Pen Drive in Exbt P263
532.	P263(b)	07.04.2017	Cyber Forensic Analysis Report No:DD 115/17 of SFSL, TVPM
533.	P264	-	Airtel SIM Card in MO128.
534.	P265	07.04.2017	Cyber Forensic Analysis Report No:DD 108/17 of SFSL, TVPM
535.	P265(a)	-	Annexure 12 DVD in Ext.P265.
536.	P265(b)	-	Annexure 13 DVD in Ext.P265.
537.	P266 series	-	SIM BSNL and IDEA SIM Cards in MO130.
538.	P266(a)	-	Q14 San Disk 8 GB Memory Card in Ext.P265.
539.	P267	-	Q40 SIM Card of Vodafone Mobile No:8991430001 in Ext.P265.
540.	P268	-	Q4 Vodafone SIM Card as per Ext.P269.
541.	P269	09.11.2017	Cyber Forensic Analysis Report No:DD 120/17 of SFSL, TVPM

542.	P269(a)	-	Annexure 5 Pendrive (64 GB)-1 of Ext.P269
543.	P269(b)	-	Annexure 6 Pendrive (64 GB)-1 of Ext.P269
544.	P270	-	Vodafone SIM Card in MO 90
545.	P271	-	Vodafone SIM Card in MO 91
546.	P272	-	BSNL SIM Card in MO 125
547.	P273	-	SIM Card in MO131
548.	P274	-	SIM Card in MO132
549.	P275	-	Q224 San Disk 8 GB Pendrive contains audio files of A8
550.	P276	-	JIO SIM found in MO125series (Mi 5) Mobile phone
551.	P277	-	Airtel SIM found in MO92series Mobile phone
552.	P278	-	3G SIM Card found in MO92.
553.	P279	09.11.2017	Cyber Forensic report No: DD 442/17 of SFSL, TVPM
554.	P279(a)	-	Annexure -V Hard disk – I in Ext.P279
555.	P280	18.07.2017.	Cyber Forensic Report No: DD 339/17 of SFSL, TVPM
556.	P280(a)	-	Annexure -II DVD -1 No. in Ext.P280
557.	P281	-	Q1 8GB Memory Card (San Disk) seized from Adv. Raju Joseph
558.	P282	07.09.2017	Cyber Forensic Analysis Report No: DD 351/17 of SFSL, TVPM

559.	P282 (a)	-	Annexure - I DVD-1 in Ext.P282
560.	P283	11.08.2017	Cyber Forensic Analysis Report No: DD 352/17 of SFSL, TVPM
561.	P284	-	Cyber Forensic Analysis Report on Picture File (Face book) in respect of A1
562.	P284(a)	02.10.2017	Form 15 for Ext. P284
563.	P285	-	Tata Docomo SIM Card found in MO89.
564.	P286	07.09.2017	Cyber Forensic Analysis Report No: DD 372/17 of SFSL, TVPM
565.	P286(a)	-	Annexure - I DVD-1 in Ext.P286
566.	P287	07.09.2017	Cyber Forensic Analysis Report No: DD 398/17 of SFSL, TVPM
567.	P287(a) series	-	Annexure I,II &III-DVDs(3 Nos) in Exbt P287
568.	P288	19.02.2017.	Seizure Mahazar for articles from A5 at the time of arrest
569.	P289	19.02.2017	Seizure Mahazar for articles from A6 at the time of arrest
570.	P290	21.02.2017	Seizure Mahazar for Hair collected from MO12 & MO9
571.	P291	24.02.2017	Seizure Mahazar for Blood Samples of A1
572.	P292	24.02.2017	Seizure Mahazar for Body Hair of A4
573.	P293	27.02.2017	Search warrant of house of A7 issued by JFCM, Mattannur.
574.	P294	02.03.2017	Seizure Mahazar for CD contains in CCTV footage, Vettuveli Fuels,

			Thammanam
575.	P295	02.03.2017	Seizure Mahazar for Ext.P296
576.	P296	-	CD contains in CCTV footage (Kerala Bakery).
577.	P296(a)	02.03.2017	S.65 B Certificate of Ext.P296
578.	P297	02.03.2017	Seizure Mahazar for Ext.P298
579.	P298	-	CD contains in CCTV footage (Brindavan Hotel).
580.	P298(a)	02/03/2017	S.65 B certificate of P298
581.	P299	03.03.2017	Seizure Mahazar for CD contains in CCTV footage, Yasin Furniture at Vennala
582.	P300	03.03.2017	Seizure Mahazar for Ext.P300(a)
583.	P300(a)	-	8 GB Pendrive contains in CCTV footage K.R. Bakes Chittethukara
584.	P300(b)	03.03.2017	S.65 B Certificate of P300(a)
585.	P301	-	Toll Ticket
586.	P302	06.03.2017	Seizure Mahazar for CDR Ext. P205, 205(a) & 205(b)
587.	P303	06.03.2017	Seizure Mahazar for Ext. P142 series, P142(a) series, P201 and P201(a)
588.	P304	08.03.2017	Seizure Mahazar for Ext. P241 series and P242 series
589.	P305	08.03.2017	Seizure Mahazar for Ext. P234 series & P236 series
590.	P306	09.03.2017	Seizure Mahazar for Ext. P229 series, P229(a) & P229(b)

591.	P307	09.03.2017	Seizure Mahazar for CDR of Mob No.9567547056
592.	P308	13.03.2017	Seizure Mahazar for Ext. P239 series & P240 series
593.	P309	13.03.2017	Seizure Mahazar for Ext.P89 series and 90 series
594.	P310	13.03.2017	Seizure Mahazar for Ext. P91 series & P92 series
595.	P311	13.03.2017	Seizure Mahazar for Ext.P82series & P88 series
596.	P312	13.03.2017	Seizure Mahazar for Ext. P93 series & P94 series
597.	P313	15.03.2017	Seizure Mahazar for Ext. P49 series & P95 series
598.	P314	20.03.2017	Seizure Mahazar for Ext.P231series and P231(a)
599.	P315	21.03.2017	Seizure Mahazar for Cell ID details (Vodafone)
600.	P316	22.03.2017	Seizure Mahazar for Ext.P96 series
601.	P317	22.03.2017	Seizure Mahazar for Ext.P97series
602.	P318	01.07.2017	Seizure Mahazar for Ext.P66 series, P68, P69, P70,P71, P72, P73
603.	P318(a)	01.07.2017	Covering letter of Ext.P318
604.	P318(b) series	01.07.2017	Form 15 for Ext.P66 series, P68, P69, P70,P71, P72, P73 as per Ext.P318
605.	P319	01.07.2017	Seizure Mahazar for Ext.P84 series & P85 series

606.	P319(a)	01.07.2017	Covering letter of Ext.P319
607.	P319(b) series	01.07.2017	Form 15 for Ext. P84 series & P85 series
608.	P320 series	-	Copy of CAF along with copy of ID Proof for Mobile No.9895112533
609.	P321	03.07.2017	Seizure Mahazar for CAF, ID Card of Mobile (No.9895112533, 9645307437, 8606700107)
610.	P321(a)	03.07.2017	Covering letter for Ext.P321
611.	P321(b)	03.07.2017	Form15 of Ext.P320series
612.	P321(c)	03.07.2017	Form15 of Ext.P214 series
613.	P321(d)	03.07.2017	Form 15 of Ext.P74 series (same as Ext.P770)
614.	P322	17.07.2017	Seizure Mahazar for Ext.P98 series
615.	P322(a)	-	Covering letter for Ext.P322
616.	P322(b)	15.07.2017	Authorization given to PW196 by PW261
617.	P322(c)	-	Form 15 for Ext.P98 series
618.	P323	15.07.2017	Seizure Mahazar for BMW Car
619.	P323(a)	15.07.2017	Covering letter of Ext. P323 mahazar
620.	P323(b)	13.07.2017	Authorization given to PW196 by I.O.
621.	P324	17.07.2017	Seizure Mahazar of Vehicle Sale agreement
622.	P325	15.07.2017	Kychit of BMW Car
623.	P325(a)	30.06.2017	Authorization issued by I.O. to PW196
624.	P326	28.02.2017	Search list for House of K.G. Sivadasan Nair

625.	P327	03.03.2017	Search list for House of Akbar
626.	P328	04.03.2017	Search list for house of Thankamma (W/o Babu)
627.	P329	01.07.2017	Seizure Mahazar for DVR from Laksyah
628.	P329(a)	30.06.2017	Authorization given by I.O. to PW198 on 30.6.2017
629.	P329(b)	01.07.2017	Covering letter for Ext.P133, P329 & P130
630.	P329(c)	-	Property list T. 252/17 List II (DVR property list)
631.	P330	11.07.2017	Seizure mahazar for Rent agreement.
632.	P330(a)	11.07.2017	Covering report forwarded to court (Ext.P330 seizure mahazar)
633.	P330(b)	11.07.2017	Form 15 for Ext.P215
634.	P331	14.07.2017	Kychit for Gate Register.
635.	P332	25.07.2017	Seizure mahazar for Vehicle No. TN 10 AE 4118
636.	P333	25.07.2017	Seizure mahazar for Ext.P198
637.	P333(a)	28.07.2017	Form 15 for Ext.P198
638.	P333(b)	02.08.2017	Covering letter forwarded Ext.P332 & P333
639.	P334	27.07.2017	Seizure mahazar for guest entry register of Angel King Tourist home (Ext.P335)
640.	P334(a)	02.08.2017	Covering letter forwarded Ext.P334
641.	P335	-	Guest Entry Register of Angel King Tourist home
642.	P335(a)	27.07.2017	Form 15 for Ext.P335

643.	P336	02.08.2017	Seizure mahazar for occupancy details of Arcadia Regency
644.	P336(a)	07.08.2017	Covering letter forwarded to court (seizure mahazar of documents for rented rooms)
645.	P336(b)	02.08.2017	Form 15 for Ext.P184 to 184(e)
646.	P337	21.03.2017	Search list of Office of Pradheesh Chacko
647.	P338	27.02.2017	Seizure mahazar for CCTV footage of Paliakkara Toll Plaza
648.	P338(a)	-	CD for CCTV footage of Paliakkara Toll
649.	P339	01.03.2017	Search list for rented house of Dwaraiswamy
650.	P340	03.07.2017	Seizure mahazar for mobile phone
651.	P340(a)	03.07.2017	Covering letter forwarding Ext.P340
652.	P340(b)	03.07.2017	Property list No. T.252/17
653.	P341	05.07.2017	Inventory mahazar for Ext.P341(a)
654.	P341(a)	12.11.2016	Receipt issued by Trichur Tennis Trust.
655.	P341(b)	05.07.2017	Covering letter of Ext.P341
656.	P341(c)	05.07.2017	Form 15 of Ext.P341(a)
657.	P342	01.08.2017	Seizure Mahazar for Ext.P47 series
658.	P342(a)	05.08.2017	Covering letter forwarded Ext.P342
659.	P342(b)	07.08.2017	Form 15 for Ext.P47 series
660.	P343	02.08.2017	Seizure mahazar of wedding album.
661.	P343(a)	30.06.2017	Authorization given by I.O. to PW201 on 30.6.17
662.	P343(b)	02.08.2017	Covering letter for Ext.P343 mahazar

663.	P343(c)	02.08.2017	Form15 for Ext.P48 as per Ext.P343 mahazar
664.	P344	18.02.2017	Order No:57/CAMP/2017/ER
665.	P345	18.02.2017	Property list (T66/17)
666.	P346	18.02.2017	Property list (T69/17)
667.	P347 series	18.07.2017	Custody memo, Inspection memo, Arrest memo of A2
668.	P348	19.02.2017	Address report of A2
669.	P349	20.02.2017	Forwarding Note (T69/17)
670.	P350	18.02.2017	Property list (T65/17)
671.	P351	19.02.2017	Property list (T79/17) List No.VIII
672.	P352 series	19.02.2017	Inspection Memo, Custody Memo, Arrest Memo of A5
673.	P353	19.02.2017	Property list (T76/17) List No.III
674.	P354 series	18.02.2017	Railway Tickets (2 Nos)
675.	P355	19.02.2017	Form No.15 for Ext.P354
676.	P356 series	19.02.2017	Custody memo, Arrest memo, Inspection memo of A6
677.	P357	19.02.2017	Property list (T76/17)List No.II
678.	P358	19.02.2017	Address report of A1,A5 & A6
679.	P359	19.02.2017	Report of DySP Aluva stating correction in number of accused.
680.	P360	19.02.2017	Order No.5/Camp/1GP/CB CID
681.	P361	20.02.2017	Seizure mahazar for MO26 to MO64 series

682.	P362 series	20.02.2017	Property list (T78/17 and Form 15)
683.	P363	2 0.02.2017	Forwarding Note (T78/17)
684.	P364	22.02.2017	Property list No.T79/17-List No.V
685.	P365 series	21.02.2017	Arrest memo, Custody memo, Inspection memo of A3.
686.	P366	21.02.2017	Seizure mahazar for personal belongings of A3
687.	P367 series	21.02.2017	Form 15 and Property list (T83/17)List No.II
688.	P368	22.02.2017	Seizure mahazar for dresses of A3
689.	P369	21.02.2017	Address report of A3
690.	P370	22.02.2017	Seizure mahazar for records of vehicle No.KL 35 E 8223
691.	P371 series	22.02.2017	Form 15 dated 22.07.2017 and property list T76/17 List No.I
692.	P372	22.02.2017	Seizure mahazar for bill of mobile phone.
693.	P373	22.02.2017	Form 15 of Ext.P13 series
694.	P374	22.02.2017	Seizure mahazar for Power Bank and Mobile phone.
695.	P375	22.02.2017	Property list (T79/17)
696.	P376 series	22.02.2017	Property list List No.IV (T79/17) and Form 15 of Ext.P52
697.	P377	24.02.2017	Property list (T79/17) List No.I
698.	P378	23.02.2017	Seizure Mahazar for Gold loan voucher
699.	P379	23.02.2017	Form 15 of Ext.P17, P17(a), P17(b) &

			P17(c)
700.	P380	23.02.2017	Seizure mahazar for purse and mobile phone of A4
701.	P381 series	24.02.2017	Form 15 and Property list (T79/17)List No.VIII
702.	P382	23.02.2017	Seizure mahazar for Vehicle records KL 60 A 9338
703.	P383	23.02.2017	Form 15 dated 23.02.2017 for Ext.P20 series.
704.	P384 series	23.02.2017	Inspection memo, Arrest memo, Custody memo of A1.
705.	P385	23.02.2017	Seizure mahazar for dresses of A1
706.	P386	23.02.2017	Property list (T79/17) List No.X
707.	P387 series	23.02.2017	Arrest memo, Custody memo, Inspection memo of A4
708.	P388	23.02.2017	Seizure mahazar for dresses recovered from A4
709.	P389	23.02.2017	Property list (T79/17) List No.XI
710.	P390	23.02.2017	Seizure mahazar for Helmet, Bag etc.
711.	P391	23.02.2017	Property list (T79/17) List No.VI
712.	P392	24.02.2017	Property list (T79/17) List No.VII
713.	P393 series	24.02.2017	Property list (T77/17) 2 Nos.
714.	P394	24.02.2017	Property list (T93/17) List No.VIII
715.	P395 series	24.02.2017	Copy of Vehicle Records of TN 04 R 1496.

716.	P396	24.02.2017	Form 15 for Ext.P395
717.	P397	24.02.2017	Address report of A4.
718.	P398	25.02.2017	Property list (T87/17) List No.I
719.	P399	25.02.2017	Search list of House of Beena Yugin at Vyttila Ponnurunni
720.	P400	25.02.2017	Property list (T87/17) List No.II
721.	P401	26.02.2017	Property list for T87/17 List No.III and Form15
722.	P402	26.02.2017	Seizure mahazar records in TN 04 R 1496 Motor Cycle
723.	P403	26.02.2017	Form 15 for Ext.P14, P15 series & P16
724.	P404	26.02.2017	Scene mahazar Vellayani High way road, Mannuthi
725.	P405	26.02.2017	Scene mahazar Karukutti Adlux convention centre, Karukutti
726.	P406	26.02.2017	Seizure mahazar for Exbt.P6
727.	P407	26.02.2017	Form 15 for Ext.P6 and P6(a)
728.	P408 series	27.02.2017	Arrest memo, Custody memo, Inspection memo of A7
729.	P409	27.02.2017	Seizure mahazar - Mobile phone of A7
730.	P410	27.02.2017	Property list (T83/17) List No.I
731.	P411	24.02.2017	Address report of Accused(A7)
732.	P412	27.02.2017	Section Addition Report.
733.	P413	27.02.2017	Seizure mahazar for blood sample of PW1

734.	P414	27.02.2017	Property list (T81/17)
735.	P415	27.02.2017	Property list (T86/17)
736.	P416	28.02.2017	Search list for house of Manmadan at Ambalappuzha
737.	P417	28.02.2017	Property list (T90/17) List No.II
738.	P418	13.03.2017	Forwarding Note dated 09.03.2017 and covering letter dated 13.03.2017 (T79/17, T90/17, T93/17)
739.	P419	02.03.2017	Seizure mahazar for mobile phone of Sree Lakshmi
740.	P420	02.03.2017	Property list (T87/17)
741.	P421	02.03.2017	Seizure mahazar for Invoice of Mobile phone of A1
742.	P422	02.03.2017	Form 15 for Ext.P19
743.	P423 series	02.03.2017	Property list for T93/17 - List No.V and Form 15 for Ext.P53
744.	P424 series	02.03.2017	Property list for T93/17- List No.VI and Form 15 for Ext.P296
745.	P425 series	02.03.2017	Property list for T93/17 -List No.IV and Form 15 for Ext.P298(a)
746.	P426	03.03.2017	Seizure mahazar (CD including CCTV footage, Dreamz Stones Tiles)
747.	P427 series	03.03.2017	Property list for T93/17 - List No.II and Form 15 for Ext.P55
748.	P428 series	03.03.2017	Property list for T93/17 - List No.VII and Form 15 for Ext.P54(a)
749.	P429	03.03.2017	Property list for T93/17 - List No.III and

	series		Form 15 for Ext.P300(b)
750.	P430	04.03.2017	Seizure mahazar for sample hair of A1
751.	P431	04.03.2017	Property list for T91/17
752.	P432	04.03.2017	Forwarding Note dated 02.03.2017 and covering letter dated 04.03.2017 (T76/17,T78/17, T79/17, T83/17,T87/17).
753.	P433 series	-	Form 15 (16 Nos.)[Same as Ext.P229(b)]
754.	P434	08.03.2017	Seizure mahazar CD containing voice of A1
755.	P435	08.03.2017	Property list for T94/17
756.	P436	09.03.2017	Forwarding Note dated 08.03.2017 & covering letter dated 09.03.2017(T94/17)
757.	P437	-	CD for voice sample of A1
758.	P438	05.04.2017	Cyber Forensic Analysis report No:B1-2560/ FSL2017
759.	P438(a)	-	CD along with Ext.P438
760.	P439	09.03.2017	Forwarding Note dated 08.03.2017 covering letter dated 09.03.2017
761.	P440	09.03.2017	Form 15 of Ext.P103 to P108
762.	P441 series	10.03.2017	Form 15 and Property list for T100/17
763.	P442	08.03.2017	Finger Print Report No. 22/2017/SOC/-SDFPB/ EKM
764.	P443 series	-	Form 15 for Ext.P161, P162 & P236 series
765.	P444	21.03.2017	Search Report and search list – Pratheesh

			Chacko (H)
766.	P445	03.04.2017	Seizure mahazar for MO 58
767.	P446	03.04.2017	Form 15 for Ext.P60 series as per Ext.P445
768.	P447	15.04.2017	Report regarding the Revised serial number of the accused in the crime
769.	P448	15.04.2017	Section Addition report
770.	P449	04.05.2017	Seizure mahazar for Ext.P122 letter
771.	P450	04.05.2017	Form 15 for Ext.P122
772.	P451	12.05.2017	Correction Report regarding rank of Accused
773.	P452	18.05.2017	Report regarding further investigation
774.	P453	-	Customer Application Form and I.D card of Nileesha for phone number 9567547056
775.	P454	-	Copy of Customer Application Form of coin box No.0484-2428132 of District Jail, Kakkanad
776.	P455	-	Certificate issued u/s 65 B of Indian Evidence Act. (9 Nos.)
777.	P456	04.02.2017	Finger Print Report No. 22/SOC/2017/SDFPB/ EKM
778.	P457	07.05.2018	Letter of A1 addressed to A8 dated 07.05.2018
779.	P457(a)	07.05.2018	Copy of letter addressed to A8 by A1 dated 07.05.2018
780.	P457(b)	07.05.2018	Photocopy of copy of letter produced by A1's mother

781.	P 457(c)	06.01.2022	Form 15 for Ext.P457(a) & P457(b)
782.	P457(d)	29.01.2022	Seizure mahazar for letter of A1 dated 29.01.22
783.	P457(e)	29.01.2022	Form 15 for the letter of A1 dated 29.1.2022
784.	P458	04.02.2022	Seizure mahazar for Ext.P459
785.	P459	-	CD Sona Gold containing conversation of PW135 and A1
786.	P459(a)	04.02.2022	Form 15 of Ext.P459
787.	P460	04.05.2022	Original petition submitted by CW181 (PW126) before State Police Chief.
788.	P460(a)	13.06.2022	Form 15 of mahazar of Ext.P460
789.	P461	13.06.2022	Inventory mahazar of Ext.P460
790.	P462	14.03.2018	Patient registration form of Aster Medicity (PW179)
791.	P462 (a)	07.05.2022	Form 15 of Ext.P462
792.	P463	06.05.2022	Inventory mahazar of Ext.P462
793.	P464	17.03.2022	Copy of Tax invoice Final Bill issued to PW 214 during the period of 29.01.2022 to 31.01.2022 by Grand Hyatt, Kochi.
794.	P465	-	Copy of Aadhar Card No.742313983322 of PW214
795.	P466	18.03.2022	S.65B Certificate for Ext.P464
796.	P 467	18.03.2022	Inventory mahazar regarding Ext.P464,465,466
797.	P467(a)	18.03.2022	Form 15 of Ext.P464, 465, 466 as per

			mahazar Ext.P467 dated 18.3.22
798.	P 468	-	Hard disc contains mirror images of DD96 & DD183
799.	P468(a)	29.04.2022	S. 65 certificate in respect of Annexure I hard disc Ext.P468
800.	P 469	17.06.2015 17.06.2015 11.06.2015 15.07.2015	(a)Form of KFCC reg. Bearing No.KFCC/137/15 (b) Request for registration (c) Consent letter of PW222 (d) Indemnity Bond
801.	P470	-	Receipt Book from Chamber of Commerce
802.	P470(a)	-	Carbon copy of receipt No.3081 of Ext.P470
803.	P470(b)	17.06.2015	Receipt No.3081of KFCC for Rs.570/- towards registration of Pick Pocket movie.
804.	P471	17.02.2022	Inventory Mahazar of Ext.P469 series, P470 series
805.	P471(a)	-	Form 15 for receipt book Ext.P470, 470(a) & P469 series as per P 471 mahazar dated 26.2.2022
806.	P472	-	Jail interview register of Sub Jail, Aluva during the period from 09.03.2016 to 20.09.2017.
807.	P472(a)	13.09.2017	Entry details in Page No.132
808.	P473	13.09.2017	Jail visit application of PW222
809.	P473(a)	-	Copy of Aadhar card of PW222
810.	P474	06.01.2022	Seizure mahazar of Ext.P472

811.	P474(a)	06.01.2022	Form 15 for Interview register and application of PW222 as per Ext.P474 mahazar dated 06.1.2022
812.	P475series	29.01.2022	Account statement of A/c No.10040-2000-29738 of Federal Bank, Ernakulam North Branch from 01.01.2015 to 31.12.2016, S.65B certificate of Ext.P475(a), certificate issued as per Bankers Book Evidence Act
813.	P475(a)	10.02.2022	Form 15 for Ext.P475
814.	P476 series	27.09.2007 01.10.2007 02.10.2007 09.10.2007 01.11.2011	Copy of Current account opening form Copy of Authorisation letter Copy of BSNL bill of Mob.No.9447185077 Copy of request for third party authorisation Copy of passport of PW182 Copy of Pan card of PW182 Copy of Pan card of A8 Copy of Passport of A8 Copy of rent agreement
815.	P477	31.10.2015	Cheque No.620746 for Rs.1,00,000/- of Federal bank North branch, Ernakulam.
816.	P478	-	Occupation register for the period from 07.06.2017 to 30.03.2018 of Guest House, Aluva
817.	P478(a)	-	Entry No.68 in Page No.61 of Ext.P478
818.	P479	-	Carbon copy of cash bill book (31.10.17 to 26.11.17) of Guest House, Aluva
819.	P479(a)	11.04.2017	Carbon copy of bill No.P23764 in

			Ext.P479
820.	P480	-	Staff attendance register of Guest House, Aluva for the year 2017
821.	P480(a)	-	Page No.27 of Ext.P480
822.	P481	05.01.2022	Seizure mahazar of Ext.P478, 479
823.	P481(a)	05.01.2022	Form 15 for occupation Register, cash bill book and attendance register (Ext.P478, 479, 480) as per Ext.P481 mahazar
824.	P482	01.04.2022	Seizure mahazar of Vehicle No. KL 41 A 6399 Swift Car
825.	P482(a)	01.04.2022	Kychit for Ext. P482
826.	P483	12.01.2022	164 statement of PW222
827.	P484	-	Apple i phone 7 plus
828.	P484(a)	-	Airtel simcard inserted in Ext.P484
829.	P485	03.01.2022	Seizure mahazar of Ext.P484
830.	P485(a)	03.01.2022	Form 15 for I Phone & Sim card as per Ext.P485 dated 3.1.2022
831.	P486	-	HP 8 GB Pendrive produced by PW222 containing transfer of recorded voices, images and videos.
832.	P487	03.01.2022	Seizure mahazar for Ext.P486
833.	P487(a)	03.01.2022	Form 15 of Exbt.P486
834.	P488	-	S.65B certificate for Ext.P486
835.	P488(a)	-	Form 15 for Ext.P488

836.	P489	-	Compact Disc of verbatim produced by PW222
837.	P 489(a)	29.05.2023	S.65 B certificate of Ext.P489
838.	P489(b)	25.05.2022	Form 15 for Ext.P489
839.	P490 series	19.05.2022	Copy of Customer Application form of 0471-2264181,Coy of ID proof of brother of PW222. Copy of election ID card BRP 1375476 (same as Ext.P.531 series)
840.	P491 series	12.02.2019	Copy of customer application form (9496994181) Copy of ID proof of PW222
841.	P492	27.09.2017	Copy of Customer Application Form (8281450407)
842.	P493 series	14.10.2019 11.06.2020	(a)Samsung service centre receipt (b) Samsung service centre receipt
843.	P493(a)	-	Form 15 of P493 series as per Ext.P494 mahazar
844.	P494	17.03.2022	Inventory mahazar of Ext.P493 series
845.	P495	06.05.2022	S.65B certificate of Ext.P493 series
846.	P496 series	26.02.2022	(a) Ownership certificate of H.No.XXVI/32 of Aluva Municipality. (b)Ownership certificate of H.No.IX/116 of Aluva Municipality.
847.	P496(a)	28.02.2022	Form 15 of Ext.P496 series
848.	P497	02.04.2022	Seizure mahazar of Ext.P498 & P499
849.	P497(a)	02.04.2022	Form 15 for CD, digital log sheet as per Ext.P497 seizure mahazar

850.	P498	02.04.2022	Digital recording log sheet of Chithranjali Studio
851.	P499	-	CD contains voice of PW135
852.	P499(a)	-	Label of Ext.P499 with signature of PW225
853.	P500	-	Outer cover of Ext.P499 & P499(a)
854.	P501	-	CD contains voice of A15
855.	P501(a)	-	Cover of Ext.P501
856.	P502	-	CD contains voice of PW132
857.	P502(a)	-	Cover of Ext.P502
858.	P503	-	CD contains voice of PW182
859.	P503(a)	-	Cover of Ext.P503
860.	P504	-	CD contains voice of A8
861.	P504(a)	-	Cover of Ext.P504.
862.	P505	-	Label of cover contains Ext.P501, 501(a), 502, 502(a), 503, 503(a), P504, 504(a).
863.	P506	-	Label for Ext.P501 to Ext.P 504(a).
864.	P507	25.02.2022	Digital recording- Log sheet of Chithranjali studio
865.	P508	-	CD contains voice of A1
866.	P508(a)	-	Bubbled Envelope contains Ext.P508
867.	P509	-	Cover with label of Ext.P508, P508(a)

868.	P510	08.03.2022	Digital recording - Log sheet No.4876 of Chitranjali Studio
869.	P511	-	CD contains voice of PW125
870.	P511(a)	-	Envelope of Ext.P511
871.	P512	-	CD contains voice of PW132
872.	P512(a)	-	Bubbled envelope of Ext.P512
873.	P513	-	CD contains voice of PW182
874.	P513(a)	-	Cover contains Ext.P513.
875.	P514	-	CD contains voice of PW50
876.	P514(a)	-	Cover contains Ext.P514.
877.	P515	-	Label of Cover containing CDs with voice sample of PW125, PW132, PW182 and PW50
878.	P516	22.06.2022	Digital recordings -Log sheet No.4957 of Chitranjali studio
879.	P517	-	CD contains voice of A8
880.	P517(a)	-	Bubbled envelope contains Ext.P517
881.	P518	-	Cover of Ext.P517
882.	P519	25.06.2022	Digital recording- Log sheet No.4961 of Chithranjali Studio
883.	P520	18.07.2022	S.65B certificate for the CD containing voice samples (PW225)
884.	P520(a)	-	Form 15 for Ext.P520
885.	P521	-	Copy of Customer Application Form of

			Mobile No.9020129212 (PW135)
886.	P522	-	Voice, video and message Call report of Mobile No. 9020129212, dated 31.12.2021.
887.	P523	14.06.2022	S.65B certificate of Ext.P521 & 522 by PW227
888.	P523(a)	15.07.2022	Inventory mahazar for Ext.P521, 522, 523 dated 15.07.2022
889.	P523(b)	15.07.2022	Form 15 for Ext.P521, 522, 523 dated 15.07.2022
890.	P524series	-	CAF of Mob.No.9886623838,Copy of ID proof
891.	P525	24.05.2022	S.65B certificate of Ext.P524series
892.	P526	-	Call Details Record as on 31.12.2021 of Mob.No.9886623838
893.	P527	24.05.2022	Covering letter addressed to I.O. dated 24.05.2022
894.	P527(a)	16.07.2022	Inventory mahazar for Ext.P524 series to P527 dated 16.07.2022
895.	P527(b)	16.07.2022	Form 15 dated 16.07.2022 for Ext.P524 to 527 and P527(a) mahazar
896.	P528 series	-	CDR of 9895377775 from 01.09.2017 to 31.10.2017 with S.65B certificate dated 18.09.2018
897.	P529	18.09.2018	Covering letter address to I.O. dated 18.09.2018
898.	P529(a)	20.07.2022	Form 15 for Ext.P528 series & P529
899.	P530 series	-	Customer Application Form of (Ext.P528 series) Mobile No.9895377775, Copy of ID proof

900.	P531 series	-	Customer Application Form of 0471-2264181 and Copy of ID proof (same as Ext.P490 series)
901.	P532	21.06.2022	Covering letter for Ext.P490 series
902.	P532(a)	16.07.2022	Inventory mahazar for Ext.P490 series, P531series & P532
903.	P532(b)	-	Form 15 for Ext.490 series, P531series & P532 dated 16.07.2022
904.	P533 series	03.09.2021	CDR 9447176736 as on 03.09.2021 CDR 9447176736 as on 30.01.2022
905.	P534 series	01.08.2015	Customer Application Form of Mobile No.94471-76736, Copy of ID proof
906.	P535	12.07.2022	S.65B certificate of Ext.P534 series
907.	P535(a)	16.07.2022	Inventory mahazar for Ext.P533 series, P534 series and P535
908.	P535(b)	16.07.2022	Form 15 of Ext.P533series, P534 series and P535
909.	P536	-	CDR from 01.12.2020 to 20.07.2022 of Mobile No. 8281450407
910.	P537	22.07.2022	S.65B certificate of Ext.P536.
911.	P537(a)	26.07.2022	Inventory mahazar for Ext.P536, P537, P492
912.	P538	-	CD contains CDR of Mobile No.9072501111 and 9961306443 (From 01.07.2021 to 20.07.2022)
913.	P538(a)	29.07.2022	Covering letter for Ext.P538, P539, Ext.P540 series and P541 series
914.	P539	29.07.2022	S.65B certificate of Ext.P538, 538(a),

			540 series & P541 series
915.	P540 series	-	Copy of Customer Application Form of Mob. No.9072501111 and Copy of ID proof
916.	P541 series	-	Copy of Customer Application Form of Mob. No.9961306643, and Copy of ID proof
917.	P541(a)	08.08.2022	Inventory mahazar for Ext.P538, 538(a), 539, 540 series and 541 series
918.	P 541(b)	-	Form 15 for P538, 538(a), 539, 540 series and 541 series
919.	P542	18.05.2022	Covering letter No.VIL/CDR/830/2022
920.	P542 (a)	13.07.2022	Inventory mahazar for Ext.P542 letter dated 13.07.2022
921.	P542(b)	13.07.2022	Form 15 for P542 document as per Ext.P542(a) mahazar
922.	P543	-	CDR of Mobile No.9656474030-CDR from 01.09.2017 to 31.10.2017
923.	P544	-	Customer Application Form of Mobile No. 847976450 (PW128)
924.	P545	-	S.65B certificate for Ext.P543
925.	P546 series	-	CAF of Mobile No.9846081214 and copy of ID Card
926.	P547	-	Re verification prepaid customer application of Mobile No.8943770582
927.	P548	18.05.2022	S.65B certificate of Ext.P546 series and P547
928.	P548(a)	13.07.2022	Inventory mahazar for Ext.P546 series, P547, P548 (a), P548 (b)

929.	P548(b)	13.07.2022	Form 15 for Ext.P546 series, Ext.P547 and P548
930.	P549	-	CD contains CDR of Mobile Nos.9895377775, 9633011755 and 9895955055
931.	P549(a)	26.05.2022	S.65 B certificate of Ext.P549
932.	P550	-	Tower decoded location 53 Nos
933.	P550(a)	28.06.2022	Inventory mahazar for Ext.P550
934.	P550(b)	28.06.2022	Form 15 for Ext.P 550
935.	P551 Series	-	Customer Application Form of Jayalakshmi- mob No.9895955055, Copy of ID proof
936.	P552	11.07.2022	Tower decoded location 21 Nos.
937.	P552(a)	16.07.2022	Inventory mahazar of Ext.P552
938.	P552(b)	-	Form 15 of P552 & covering letter
939.	P553 Series	-	Customer Application Form of Mobile No.96333011755, Copy of ID proof
940.	P554 series	-	Customer Application Form of Mobile No.9995676722, Copy of ID proof
941.	P555	22.07.2022	S.65B certificate for Ext.P554 series
942.	P555(a)	26.07.2022	Inventory mahazar for Ext.P554 series & P555
943.	P555(b)	26.07.2022	Form 15 for Ext.P554 series & P555
944.	P556	-	CD contains CDR of Mobile No.9496994181(From 01.02.2021 to 28.02.2022)

945.	P557	24.05.2022	S.65B certificate of Ext.P556
946.	P558	24.05.2022	Covering letter of Ext.P491 series
947.	P558(a)	-	Inventory mahazar for P556, 557, 558, 491 series, 531 series dated 20.07.2022
948.	P558(b)	-	Form 15 for Ext.P491 series, 556, 557, 558 dated 15.07.2022
949.	P559	-	CD contains CDR of Mobile Nos.9895163742, -9562171900 and 9846081214 from 03.09.2021 to 31.01.2022
950.	P560 series	-	Customer Application Form of Mobile No. 9846081214, Copy of ID proof
951.	P561 series	-	Customer Application Form of Mobile No. 9895163742 with copy of ID proof
952.	P562	-	CAF of Mobile No.9562171900
953.	P563	-	S.65B certificate of Ext.P559, P560 series, P561 series and P562
954.	P564	16.06.2022	Covering letter for Ext.P559 to P563
955.	P564(a)	-	Inventory mahazar for Ext.P559, 560 series, 561 series, 562, 563 and 564 dated 17.07.2022
956.	P564(b)	-	Form 15 for Ext.P559, 560 series, 561 series, 562, 563 and 564 dated 17.07.2022
957.	P565	-	CDR from 1/07/17 to 25/09/17 (Mob.9847976450)
958.	P566	-	Customer Application Form of Mobile No. 9847976450

959.	P567	-	S.65B certificate for Ext.P565 CDR
960.	P568	-	Covering letter for Ext.P565, P566 and P567
961.	P568(a)	-	Form 15 for Ext.P543, 544, 545 and P565 to 568 dated 20.07.2022
962.	P569	-	Customer Application Form of Mobile No.9447120002
963.	P570	-	Customer Application Form of Mobile No. 9947120002
964.	P571	-	S.65B certificate for Ext.P569 and P570
965.	P572	-	Covering letter for Ext.P569, P570 and P571
966.	P572(a)	13.10.2022	Form 15 for Ext.P569 to 572
967.	P573	30.09.2022	RFSL analysis report No.AS102/2022 B1-2697/2022/RFSL/EKM, regarding letter of A1(P457)
968.	P573(a)	-	Forwarding note of Ext.P573 report dated 07.07.2022
969.	P574 series	-	Specimen writings-24 Nos.
970.	P575	07.05.2022	S.65 B Certificate for Ext.P459
971.	P576	13.01.2022	Search list of Padmasarovaram House, VIP Lane Paravoor Kavala in Cr.297/17 of Nedumbassery PS
972.	P576(a)	-	Covering letter for search list Ext.P576 dated 13.01.2022
973.	P576(b)	-	Correction report regarding house number of Padmasarovaram CH7 of Ext.P576 dated 10.06.2022

974.	P577	-	Certified copy of search list of Padmasarovaram House, VIP Lane Paravoor Kavala in Cr.6/CB/ EKM/D/22 of Crime branch
975.	P577(a)	-	Form 15 for Ext.P577,P579(a) & P579(b)
976.	P578	-	Search list of Padmasarovaram House, Kottarakadavu in Cr.297/17 of Nedumbassery P.S.
977.	P578(a)	-	Covering letter for search list Ext.P578 dated 13.01.2022
978.	P579	13.01.2022	Certified copy of search list of Padmasarovaram House, Kottarakadavu in Cr.6/CB/EKM/D/22 of Crime branch
979.	P579 (a)	-	Certified copy of item No.1 as per Ext.P579 search list (16 pages)
980.	P579(b)	-	Certified copy of item No.2 as per Ext.P579 search list (2 pages)
981.	P580	-	Diary of A1 seized from Cell No.10 of Sub Jail, Ernakulam
982.	P581	-	Postal Card of A1 seized from Sub Jail, Ernakulam
983.	P582	-	Search list of cell No.10 in Sub-jail, Ernakulam
984.	P582(a)	12.01.2022	Form 15 for Ext.P580 & P581
985.	P583	-	Printout of Wi-Fi connectivity details of Saisankar at Hyatt from 29.01.2022 to 31.01.2022
986.	P583(a)	-	Certificate of Wi-Fi usage at Grand Hyatt

987.	P583(b)	18.03.2022	S.65 B certificate for Ext.P583
988.	P583(c)	18.03.2022	Form 15 of Ext. P583 ,P583(a) & P583(b) as per P584 mahazar
989.	P584	-	Inventory Mahazar for Wi-Fi connectivity details of Hyatt.
990.	P585	06.01.2022	Seizure Mahazar of Ext.P457(a)
991.	P586	05.03.2022	Vehicle particulars of KL-41-A-6399 Maruti Swift Car
992.	P586(a)	-	S.65B certificate for Ext.P586 dated 05.03.2022
993.	P586(b)	-	Form 15 for Ext.P586 dated 70.03.2022
994.	P587 series	-	Account opening form of Federal Bank along with documents of Dileep and Kavya.
995.	P588	-	Statement of account issued for the period from 01.01.2017 to 31.12.2018 of Federal Bank, Panampally Branch.
996.	P589	-	Certificate under bankers book of evidence issued by PW237.
997.	P590 series	-	Request for safe deposit locker, agreement and ledger copy of operation of locker.
998.	P590(a)	-	Form 15 for Ext.P587, 588, 589, 590 series dated 20.07.2022
999.	P591	-	Statement of account of Sheeba for the period from 01.01.2015 to 31.12.2020 of Federal bank, Poovar Branch.
1000.	P591(a)	-	Certificate issued under Banker's Book of evidence act issued by PW238.

1001.	P591(b)	15.03.2022	Form 15 of Ext.P591 &P591(a)
1002.	P592	-	Statement of account of PW222 from 01.01.2015 to 31.12.2020 of South Indian Bank, Peroorkada.
1003.	P592(a)	-	Certificate issued under Banker's Book of evidence act issued by PW239.
1004.	P592(b)	-	Letter issued by witness PW239 to PW261
1005.	P592(c)	15.03.2022	Form 15 of Ext.P592, 592(a) & 592(b)
1006.	P593	-	Discharge Summary of PW222 from Al Arif Hospital, Trivandrum.
1007.	P593(a)	15.03.2022	Form 15 of Ext.P593
1008.	P594, 594(a) to (l)	17.01.2022	Relevant Portion of 161 statement of PW242/CW389
1009.	P595, 595(a) to (i)	16.04.2022	Relevant Portion of 161 statement of PW242/CW389
1010.	P596	-	Samsung mobile phone of PW242 marked as Q3 in DD 74/22
1011.	P597	-	Jio sim card in Ext.P596
1012.	P598	-	Airtel sim card in Ext.P596
1013.	P599	-	Memory card in Ext.P596
1014.	P600	15.01.2022	Seizure Mahazar for Ext.P596
1015.	P600(a)	15.01.2022	Form 15 for Ext.P596 to P599
1016.	P601	-	CD containing voice sample of PW243

1017.	P601(a)	-	Label on cover in which CD was handed over to I.O. of Ext.P601
1018.	P601(b)	-	Cover put on Ext.P601
1019.	P602	18.07.2022	Digital recording -Log sheet of Chitranjali Studio
1020.	P603	18.07.2022	S.65 B certificate for Ext.P601.
1021.	P603(a)	-	Form 15 of Ext.P603
1022.	P604	20.06.2022	Relevant Portion of 161 statement of CW76(PW50)
1023.	P605 P605(a) to (h)	07.05.2022	Relevant Portion of 161 statement of CW427(PW 246)
1024.	P606 P606(a) to (d)	07.05.2022	Relevant Portion of 161 statement of CW439(PW 247)
1025.	P607	-	Sand disc pendrive contains interview of PW222 dated 25.12.2021.
1026.	P607(a)	17.03.2022	Form 15 of Ext.P607
1027.	P608	17.03.2022	Seizure Mahazar for Ext.P607
1028.	P609	14.06.2022	S.65B Certificate of Ext.P607
1029.	P609(a)	-	Form 15 of Ext.P609
1030.	P610	15.06.2022	Relevant Portion of 161 statement of CW23 (PW250)
1031.	P611	15.06.2022	Relevant Portion of 161 statement of (CW40) PW251

1032.	P612	24.01.2022	164 statement of CW50/PW129
1033.	P613	10.02.2022	Search warrant for search of Flat DD Platinum Tower 1.
1034.	P614	16.02.2022	Search list as per Ext.P613
1035.	P614(a)	16.02.2022	Authorization to conduct search as per Ext.P613
1036.	P615	09.02.2022	Proceedings of ADGP Order No.T9/28733/ 2017/ PHQ
1037.	P615(a)	20.07.2022	Form 15 for Ext.P615
1038.	P616	10.02.2022	Search warrant for search of Mether Dover Court flat, Ekm.
1039.	P617	-	Search list as per Ext.P616
1040.	P617(a)	17.02.2022	Authorization as per Ext.P616
1041.	P618	19.02.2022	Scene Mahazar for Room No.1603 details from Hotel Holiday Inn.
1042.	P619	25.02.2022	Seizure Mahazar for Ext.P501 to P507
1043.	P619(a)	25.02.2022	Form 15 for Ext.P501 to P506
1044.	P620	24.01.2021	Malayala Manorama News paper
1045.	P620(a)	06.03.2022	Inventory mahazar for Ext.P620
1046.	P620(b)	06.03.2022	Form 15 of Ext.P620
1047.	P621	08.03.2022	Seizure Mahazar for Ext.P508 to P510
1048.	P621(a)	15.03.2022	Form 15 of Ext.P508 to P510

1049.	P622	22.06.2022	Seizure Mahazar for Ext.P511 to P516
1050.	P622(a)	22.06.2022	Form 15 of Ext.P511 to P516
1051.	P623	25.06.2022	Seizure Mahazar for Ext.P 517 to P519
1052.	P623(a)	25.06.2022	Form 15 of Ext.P 517 to P519
1053.	P624	04.07.2022	Authorisation letter for collection of specimen handwriting of A1 issued to PW252 by I.O.
1054.	P625	05.07.2022	Inventory Mahazar for Ext.P574 series
1055.	P625(a)	05.07.2022	Form 15 for specimen standard writings and Authorization letter dated 04.07.2022
1056.	P626	06.07.2022	Inventory Mahazar for Ext.P476 series
1057.	P626(a)	-	Form 15 for Ext.P476 series & 477 series dated 06.07.2024
1058.	P627	18.07.2022	Seizure Mahazar for Ext.P601
1059.	P627(a)	20.07.2022	Form 15 for Ext.P601, P601(a) and P602
1060.	P628	-	5 Verbatim statements prepared by PW252
1061.	P628(a)	-	Verbatim statement of Telephonic conversation between Advocate Philip, PW132 and PW125
1062.	P628(b)	-	Verbatim statement of conversation between Advocate Philip, PW182 and A8.
1063.	P628(c)	-	Verbatim statement of voice note - PW243

1064.	P628(d)	-	Verbatim statement of voice note - PW243
1065.	P628(e)	-	Verbatim statement of voice note - PW243
1066.	P628(f) series	04.07.2022 & 19.07.2022	Form 15 for Ext.P628(a) to P628(e) (5 Nos.)
1067.	P629	25.05.2022	Seizure Mahazar for CD 'VERBATIM" produced by PW222
1068.	P630	23.01.2022	Press release by Neyyattinkara Bishop
1069.	P630(a)	15.03.2022	Form 15 for Ext.P630
1070.	P631	05.03.2022	Inventory Mahazar for Ext.P630
1071.	P632	06.01.2022	Proceedings of DGP, Tvpm Order No. T9 / 28733 / 2017 / PHQ dated 06.01.2022 on constitution of Special Investigation Team
1072.	P632(a)	06.01.2022	Form 15 for Ext.P632
1073.	P633 series	25.11.2022	Petition filed by PW222 through CMO portal with annexures
1074.	P634	13.06.2022	S.65 B certificate for Ext.P633 series
1075.	P635	17.03.2022	Inventory Mahazar for Ext.P633 series
1076.	P635(a)	17.03.2022	Form 15 for Ext.P633 series
1077.	P636	24.09.2022	Cyber Forensic Analysis Report No.PHY – 199 / 22 / B1-8268 /FSL / 2022 regarding Voice sample of PW243
1078.	P636(a)	19.07.2022	Forwarding note of Ext.P636

1079.	P637, 637(a) to (k)	19.04.2022	Relevant Portions of 161 statement of CW193/PW132
1080.	P638	17.03.2022	Inventory Mahazar for Ext.P639 series
1081.	P639 series(2 in nos)	20.11.2021 & 25.11.2021	Print out of the e-mail sent by PW256 to PW222
1082.	P639(a)		Form 15 for Ext.P639 series
1083.	P640	12.06.2023	Sec. 65 B certificate for Ext.P639 series
1084.	P641,641(a to p)	19.04.2022	Relevant Portion of 161 statement of CW22 (PW182)
1085.	P642	31.01.2022	164 Statement of CW389(PW 242)
1086.	P643	14.02.2022	164 Statement of CW394(PW 208)
1087.	P644	27.05.2022	164 Statement of CW181(PW126)
1088.	P645	27.06.2022	SFSL Examination Report No.PHY/51/22/B2-980/FSL/2022 (Examination of Audio files in the pendrive produced by PW222 for preparation of Transcripts of 29 voice clips)
1089.	P646	22.08.2022	SFSL Examination Report No.PHY-75/22/B1-3231/FSL/2022 (Letter D 81/22 of SPE/CBI dt 24.03.22) 32 queries to compare the voices of A8 /PW182/ PW132 & A15 with audio files seized from PW222 Ext. P486 Pendrive (24 voice clips)

1090.	P646(a)	24.3.2022	Forwarding note for 2 pendrive
1091.	P647	17.08.2022	SFSL Examination Report No.PHY-106/22/B1-4714/FSL/2022 Results of Audio examination & Report of voice sample of PW135 and A1)
1092.	P647(a)	13.04.2022	Forwarding note of Ext.P647 FSL report
1093.	P647(b)	-	Verbatim statement & audio recording between PW135 and A1
1094.	P647(c)	13.04.2022	Form 15 for Ext.P647(b)
1095.	P648	26.09.2022	SFSL Examination Report No.PHY-179/22/B1-7573/FSL/2022 (Results of voice sample comparison of PW182/ PW132/PW125 / PW50)
1096.	P648(a)	04.07.2022	Forwarding note for Ext.P648
1097.	P648(b) series	04.07.2022	Verbatim Statement of voice of PW50 and PW132 and conversation between Adv.Philip and PW182
1098.	P648(c) series	04.07.2022	Form 15 for Ext.P648(b) series (2 nos.)
1099.	P649	30.07.2022	SFSL Examination Report No.PHY-186/22/B1-7683/FSL/2022 -Results of Audio examination & report of 8 video files in Memory card as per Ext.P438 Report dt 05.04.2017 with 4 image files of Transcript of visuals from PW182's phone (DD 96-22-Q4)
1100.	P650	09.01.2022	Certified copy of FIR 6/CB/EKM/2022 of JFCMC I, Aluva

1101.	P650(a)	09.01.2022	Application of I.O. to ADGP, Crime Branch
1102.	P650(b)	29.04.2022	Form 15 for Ext.P650 and 650(a)
1103.	P651	24.02.2022	Certified copy of Seizure Mahazar in Cr.No. 6/22/CB/Ekm
1104.	P651(a)	-	Certified copy of DTDC Courier receipt from Philip T Varghese dt 12.01.2022 produced in Cr 6/22/CB/Ekm
1105.	P652 series	-	Travel details of advocates to Bombay (25 pages)
1106.	P652(a)	06.04.2022	Certified Copy of Form 15 of Ext.P652 series
1107.	P653	14.03.2022	Sec. 65 B Certificate for Ext.P652series
1108.	P654	06.03.2022	Form 15 for Ext.P651(a)
1109.	P655	-	Copy of DTDC shipment acknowledgment in Cr 6/CB/EKM/D/22
1110.	P656	08.03.2022	Certified copy of Form 15 for Ext.P655
1111.	P656(a)	16.05.2022	Form 15 for Ext.P651(a), 652, 652(a), 653, 654, 655 series and 656
1112.	P657	26.02.2022	Certified copy of Form 15 produced in Cr.6/CB/ EKM/D/22.
1113.	P658	30.03.2022	Certified copy of Forwarding Note to SFSL, TVM in Cr. 6/22/CB/Ekm - for examination of External hard disk seized from Lab Systems Mumbai dt. 30.03.22
1114.	P659	10.01.2022	Certified copy of BA No 248/2022 of High Court of Kerala

1115.	P659(a)	-	Form 15 of Ext.P659 to P666
1116.	P660	20.01.2022	Certified copy of the statement filed by the S.P Crime Branch, Ernakulam in BA No 248/2022
1117.	P661	22.01.2022	Certified copy of reply filed by the petitioner to the Statement in B.A No. 248/2022
1118.	P662 series	13.01.2022	Certified copy of Crl.M.A No. 1/2022 in BA No. 248/2022 with Annexures.
1119.	P663	28.01.2022	Certified copy of Crl. M.A No. 2/2022 in B.A No. 248/2022
1120.	P664	29.01.2022	Certified copy of objection in Crl.M.A No.2/2022 in BA No. 248/2022.
1121.	P665	31.01.2022	Certified copy of the memo filed by the the counsel for the petitioners in B.A No. 248/2022
1122.	P666	07.02.2022	Certified copy of final order in B.A. No.248/2022
1123.	P667	30.03.2022	Certified copy of Forwarding Note To SFSL, TVM in Cr. 6/22/CB/Ekm - for examination of 6 mobile phones dt. 30.03.22
1124.	P667(a)	-	Form 15 for Ext.P651,657,658, 667
1125.	P668	-	CD containing 4 image files containing transcript of 8 video files extracted from Q4 mobile (PW182) of DD 96/22 internally forwarded by cyber division to physics division.
1126.	P668(a)	12.07.2022	Sec. 65 B Certificate issued by PW260 for Ext. P668.

1127.	P669	-	CD containing 29 audio files received from cyber division for preparing transcript in Ext.P645 report.
1128.	P670	-	CD containing 4 audio files extracted from DD 183-22
1129.	P670(a)	11.07.2022	Sec.65 B certificate for Ext.P670.
1130.	P671	11.07.2022	Certified copy of SFSL Examination Report No. DD-454/22/B2-6232/FSL/22 produced in Cr.CR/CB/EKM/D/22.
1131.	P671(a)	-	Annexure-2 pendrive in Exbt.P671
1132.	P671(b)	-	Sec.65 B certificate for Annexure 2 pendrive in DD 454/22.
1133.	P671(c)	20.07.2022	Form 15 for Ext.P671.
1134.	P671(d)	13.10.2022	Form 15 for P671(a) &(b)
1135.	P672	12.07.2022	SFSL Examination Report No.DD-532/22/B2-7669/FSL/22.
1136.	P672(a)	19.02.2022	Annexure 2 CD containing Location metadata of 4 image files with transcript of visuals found in Honor phone of PW182 marked as Q4 in DD-96/22
1137.	P672(b)	30.05.2022	Forwarding note of Ext.P672
1138.	P673	11.07.2022	SFSL Examination Report No.DD-523/22/B2-7575/FSL/22 Examination of Memory card.
1139.	P673(a)	-	Annexure-2 CD in Ext.P673
1140.	P673(b)	01.07.2022	Forwarding note of Ext.P673

1141.	P673(c)	29.12.2023	S. 65 B certificate for Ext.P 673(b)
1142.	P674	16.07.2022	Cyber Forensic Analysis Report No. DD-542/ 22/B2-7906/FSL/22
1143.	P674(a)	-	Annexure-1 of Ext.P674
1144.	P674(b)	16.07.2022	S.65 B certificate for Ext.P674 and P674(a) containing cloned copy/mirror image as on 01.03.2017
1145.	P674(c)	14.07.2022	Forwarding note of Ext.P674
1146.	P675	10.01.2020	SFSL Examination Report No. DD-08-20/B2-380/FSL/2020
1147.	P676	09.01.2020	Letter No. D-20/20 dated 09.01.2020 addressed to SFSL, Thiruvananthapuram
1148.	P676(a)	25.01.2022	Inventory mahazar for Ext.P675 and P676
1149.	P676(b)	25.01.2022	Form 15 for Ext.P675 and P676
1150.	P677	29.01.2020	SFSL Examination Report No. DD-08A-20/ B2/380/FSL/2020
1151.	P678	05.03.2022	SFSL Examination Report No. DD-74/22/B2-980/FSL/2022
1152.	P678(a)	-	Annexure – I Pendrive attached with Ext.P678
1153.	P679	19.03.2022	Certified copy of SFSL Examination Report No. DD183/22/B2-2280 FSL/22 dated 19.03.2022 produced in Cr.6/CB/EKM/D/22.
1154.	P679(a)	02.06.2022	Form 15 for Ext.P679 & P680

1155.	P679(b)	10.06.2022	Seizure mahazar for Ext.P679 & P680.
1156.	P680	19.02.2022	Certified copy of SFSL Examination Report No. DD 96/2022/ B2-1266/FSL/2022 produced in Cr.6/CB/EKM/D/22.
1157.	P681	27.02.2017	Scene mahazar for travelling A1 and A4 from Wagamon Thodupuzha route.
1158.	P682	27.02.2017	Scene mahazar of Wagamon area during the absconding period of A1 and A4.
1159.	P682 (a)	27.02.2017	Confession portion in Ext.P682 of A1
1160.	P683	27.02.2017	Scene mahazar of a building near Kolenchery Medical College.
1161.	P683(a)	-	Relevant portion of statement of A1 in Ext.P683.
1162.	P684	28.02.2017	Seizure mahazar for Ext.P684
1163.	P685	21.02.2017	Carbon copy of bill No.931E of Amrithapuri Agencies, Edappally.
1164.	P686	28.02.2017	Form 15 for Ext.P685.
1165.	P687	19.05.2017	Report of I.O. regarding change of investigation.
1166.	P688	30.05.2017 18.05.2017	Copy of proceedings No. D1(a)-28868/2017/E of District Police Chief, EKM Rural.
1167.	P689	03.06.2017	Authorization given to Smt. Manju
1168.	P690	22.06.2017	Form 15 dated 22.6.2017 for Ext. P138 series
1169.	P691	23.06.2017	Arrest memo dated 23.6.2017 of A9.

1170.	P691(a)	23.06.2017	Inspection memo of A9
1171.	P691(b)	23.06.2017	Custody memo of A9
1172.	P692	24.06.2017	Remand report of A9
1173.	P693	24.06.2017	Address report of A9 dated 24.6.2017
1174.	P694	24.06.2017	Name correction report of A9.
1175.	P695	-	Seizure Mahazar for mobile phone & Sim card
1176.	P695(a)	23.06.2017	Confession portion of A9 in Ext.P695.
1177.	P696	22.06.2017	Search memorandum to search the house of A9.
1178.	P697	23.06.2017	Property list T. 231/17
1179.	P698	24.06.2017	Arrest memo of A10
1180.	P698(a)	24.6.2017	Custody memo of A10
1181.	P698(b)	24.6.2019	Inspection memo of A10
1182.	P699	24.06.2017	Address report of A10
1183.	P700	24.06.2017	Remand report of A10
1184.	P701	24.06.2017	Section inclusion report
1185.	P702	27.06.2017	Address report of A13
1186.	P703	29.06.2017	Seizure mahazar for Pendrive
1187.	P704	29.06.2017	Property list No.T.247/17
1188.	P705	30.06.2017	Authorization given by I.O. to PW199

1189.	P706	01.07.2017	Seizure mahazar for CAF, copy of ID proof and CDR of Mob. No. 9895151111.
1190.	P707	01.07.2017	Form15 for Ext.P706 mahazar
1191.	P708	10.07.2017	Arrest memo of A8
1192.	P708(a)	10.07.2017	Inspection memo of A8
1193.	P708(b)	10.07.2017	Custody memo of A18
1194.	P709	10.07.2017	Address report of A8
1195.	P710	11.07.2017	Remand report of A8
1196.	P711	12.07.2017	Scene mahazar of Thodupuzha Santhigiri college
1197.	P711(a)	-	Relevant portion of Ext.P711 mahazar
1198.	P712	12.07.2017	Scene mahazar of Thoppumpady Cift junction
1199.	P712(a)	-	Relevant portion of Ext.P712 mahazar
1200.	P713	13.07.2017	Scene Mahazar for Thrissur Joy Palace parking area
1201.	P713(a)	-	Relevant portion Ext.P713 mahazar
1202.	P714	13.07.2017	Scene mahazar of rooms in Garuda hotel, Thrissur.
1203.	P714(a)	13.07.2017	Relevant portion of Ext.P714
1204.	P715	13.07.2017	Scene mahazar of Thrissur Pukunnam Puzhakkal Tennis Academy.
1205.	P715(a)	13.07.2017	Relevant portion of extract of confessions in Ext.P715 mahazar

1206.	P716	13.07.2017	Scene mahazar of Kinattingal Tennis Indoor Stadium
1207.	P717	14.07.2017	Forwarding note of DVR with hard disc (T252/17)
1208.	P718	14.07.2017	Forwarding note of 'Letv' mobile phone.
1209.	P719	15.07.2017	Search memorandum to search Padmasarovaram house, Kottarakkadavu, Aluva
1210.	P720	15.07.2017	Search list as per Ext. P719
1211.	P721	15.07.2017	Property list T 304/17 for MO 131 & 132
1212.	P722	15.07.2017	Authorization given to PW199
1213.	P723	17.07.2017	Seizure mahazar for Ext.P281 produced at Aluva Police Club.
1214.	P723(a)	16.07.2017	Properly list T. 261/17 for Ext.P281
1215.	P724	17.07.2017	Forwarding note of Ext.P281 memory card
1216.	P725	16.07.2017	Certified copy of bail application No.5098/17 of High Court of Kerala with Annexures
1217.	P726	-	Scene mahazar for contents in DVD received from SFSL
1218.	P727	20.07.2017	Arrest memo of Pradheesh Chacko
1219.	P728	20.07.2017	Address report of Pradheesh Chacko
1220.	P729	17.07.2017	Certified copy of F.I Statement Cr.2035/17 of Central PS against A1
1221.	P729(a)	17.07.2017	Carbon copy of F.I.Report Cr.2035/17

			of Central PS against A1
1222.	P729(b)	03.10.2017	Form 15 for Ext.P729, 729(a)
1223.	P730	26.07.2017	Arrest memo of PW121
1224.	P730(a)	28.07.2017	Remand report of PW121
1225.	P731	28.06.2017	Certified copy of FIR in Cr. 751/17 of Infopark PS
1226.	P731(a)	03.10.2017	Form 15 for Ext.P731
1227.	P732	29.07.2017	Seizure mahazar for Ext.P123 series (26 letter)
1228.	P732(a)	29.07.2017	Form 15 for Ext.P123 series
1229.	P732(b)	18.08.2017	Standard requisition form for Ext.P122 & P123
1230.	P733	18.08.2017	Seizure mahazar for Ext.P124 series
1231.	P733(a)	29.07.2017	Form 15 for Ext.P124 series
1232.	P734	31.07.2017	Seizure mahazar for M.O.125 series (mobile phones)
1233.	P734(a)	01.08.2017	Property list T. 289/17 for M.O. 125 series
1234.	P735	31.07.2017	Report of I.O. after police custody of PW121
1235.	P736	03.11.2017	Seizure mahazar for Ext.D18 & D18(a)
1236.	P736(a)	03.11.2017	Form 15 for Ext. D18 series
1237.	P737	02.08.2017	Arrest memo of A12
1238.	P738	02.08.2017	Address report of A12

1239.	P739	02.08.2017	Seizure mahazar for RC particulars of Maruti Esteem Car (TN 69 J 9169)
1240.	P739(a)	02.08.2017	Property list T.293/17
1241.	P739(b)	02.08.2017	Form 15 as per Ext.P739 mahazar
1242.	P740	02.08.2017	Scene mahazar of Puthuvype beach
1243.	P741	05.08.2017	Seizure mahazar for MO83
1244.	P741(a)	02.08.2017	Property list for MO83 (T294/17)
1245.	P742 series	-	Certified copy of B.A. 5788/17 before Hon'ble High court of Kerala
1246.	P743	12.08.2017	Seizure mahazar for Ext.P40 series
1247.	P743(a)	12.08.2017	Form 15 for Ext.P40 series
1248.	P744	12.08.2017	Seizure mahazar for MO123 & MO124
1249.	P744(a)	12.08.2017	Property list (T303/17) for MO 123 & MO124
1250.	P744(b)	14.08.2017	Forwarding note for MO123 & MO124
1251.	P745	12.08.2017	Search memorandum of house of PW165 at Narakkal
1252.	P746	12.08.2017	Search list as per Ext.P745
1253.	P747	19.08.2017	Forwarding note of DVR(T. 252/17)
1254.	P748	21.08.2017	Seizure mahazar for ring of PW1
1255.	P748(a)	21.08.2017	Property list T. 345/17 for gold ring.
1256.	P749	25.08.2017	Scene mahazar of District Police training centre.

1257.	P750	26.08.2017	Seizure mahazar for photograph of A4.
1258.	P750(a)	-	Photograph of A4
1259.	P750(b)	26.08.2017	Form 15 for Ext. P750(a)
1260.	P751 series	23.08.2017	Property release bond for TN 69 J 9169 (T.293/17)
1261.	P752	14.07.2017	Forwarding note for registers from District jail, Kakkanad, simcards, memory cards and mobile phones.
1262.	P753 series	03.03.2017	Certified copy of seizure mahazar and vehicle particulars of KL 46 D 6155 Motor Cycle in Cr.374/14 of Kidangoor P.S.
1263.	P754	26.09.2017	Form 15 for Ext.P753 series
1264.	P755	09.09.2017	Arrest memo of A14 (PW165)
1265.	P756	09.09.2017	Bail bond of A14 (PW165)
1266.	P757	09.09.2017	Address report of A14 (PW165)
1267.	P758	-	Authorization given to PW198
1268.	P759	18.04.2017	Certified copy of Remand Extension application of A1 in Cr. 9/12 of Aroor P. S.
1269.	P759(a)	11.09.2017	Form 15 for Ext.P759
1270.	P760	18.09.2017	Details of escort duty for prisoners to JFCM, Maradu on 12.04.2017
1271.	P760(a)	26.09.2017	Form 15 for Ext. P760.
1272.	Ext.P761	18.09.2017	Ownership certificate of building No.VII/355 BA10 of Thrikkakkara

			Municipality (Laksyah)
1273.	P761(a)	16.10.2017	Form 15 for Ext. P761
1274.	P762	26.09.2017	Scene mahazar for DVD in DD 351/17 FSL report
1275.	P763	27.09.2017	Seizure mahazar for Ext.P763(a) series
1276.	P763(a) series	23.09.2017	Customer Information Form with copy of ID proof of 9645307437
1277.	P763(b)	27.09.2017	Form 15 for Ext.P763(a) series
1278.	P764	09.06.2017	Details of visitors and calls by prisoners No. A1, A4 and PW121 furnished by Supdt., Sub jail, Ernakulam.
1279.	P764(a)	03.10.2017	Form 15 for Ext. P764.
1280.	P765	03.10.2017	Correction report regarding correction in the name of Nodal officers.
1281.	P766	04.10.2017	Seizure mahazar for CAF & ID proof of Mob: 8606700107, 9061986297, 9995945878.
1282.	P767 series	-	CAF & ID proof of Mob.No.8606700107 (same as Ext.P74 series)
1283.	P768 series	-	CAF & ID proof of Mob.No. 9061986297 (same as Ext.P82)
1284.	P769 series	-	CAF and ID proof of Mob. No. 9995945878 (same as Ext.P49 series)
1285.	P770	04.10.2017	Form 15 for document as per Ext.P766 mahazar (same as Ext.P321(d))
1286.	P771	07.10.2017	Seizure mahazar for Ext.P80 series and Ext.P81 series

1287.	P771(a)	07.10.2017	Form 15 for Ext.P 80 series, P81 series dated 07.10.2017
1288.	P772	07.10.2017	Seizure mahazar for Ext.P34
1289.	P772(a)	16.10.2017	Form 15 for Ext.P34
1290.	P773	-	A/c statement for the period from 8.1.2015 to 9.10.2017 of UBI, Perumbavoor in respect of PW129
1291.	P773(a)	10.10.2017	Form 15 for Ext.P773
1292.	P774	13.10.2017	Seizure mahazar for Ext.P775 series
1293.	P775 series	14.10.2017	CAF & ID proof of Mobile No. 9037107812.
1294.	P776	14.10.2017	Form 15 for Ext.P775 series
1295.	P777	13.10.2017	Seizure mahazar for Ext.P61 series, P61(a), P62, P62(a) and P62(b)
1296.	P777(a)	14.10.2017	Form 15 for P61 series & 62 series document as per Ext.P777 mahazar
1297.	P778	13.10.2017	Seizure mahazar for Ext.P779 series
1298.	P779 series	14.10.2017	CAF & ID proof of mobile No. 9846130322 dated 14.10.2017
1299.	P779(a)	14.10.2017	Form 15 for Ext.P779 series
1300.	P780	13.10.2017	Kychit for KL 35 E 8223 TATA ACE Vehicle
1301.	P781	16.10.2017	Seizure mahazar for Ext.P782
1302.	P782	10.04.2017	DVD contain TV interview uploaded in Youtube produced dated 26.6.17Report Channel News TV dated 10.4.2017

1303.	P782(a)	16.10.2017	Form 15 for Ext.P782
1304.	P783	10.10.2017	Remand extension application of PW121
1305.	P784	24.10.2017	Seizure mahazar for Ext.P160 series & P454 series
1306.	P784(a)	25.10.2017	Form 15 for Ext.P160 & P454 series
1307.	Ext.P784(b)	04.11.2017	Correction report with regard to P784 mahazar
1308.	P785	26.10.2017	Seizure mahazar for attendance register of Anwar Hospital, Aluva
1309.	P785(a)	26.10.2017	Kychit for Attendance register of Anware hospital
1310.	P786	16.04.2013	Wound certificate cum discharge certificate of Shameer of Medical Trust Hospital, Ernakulam
1311.	P786(a)	02.11.2017	Form 15 for Ext.P786
1312.	P787 series	-	True copy rent agreement, consent letter, affidavit and Licence of Laksyah
1313.	P787(a)	03.11.2017	Form 15 for Ext.P787 series
1314.	P788	09.11.2017	Seizure mahazar for Ext.P789
1315.	P789series	-	Photograph (2 Nos.) in Kerala Chronicle daily paper cutting
1316.	P789(a)	09.11.2017	Form 15 for Ext.P789 series
1317.	P790	02.11.2017	Ownership certificate of Abad Plaza Hotel issued by Corporation of Cochin
1318.	P790(a)	09.11.2017	Form 15 for Ext.P790

1319.	P791	-	Seizure mahazar for Ext.P792series
1320.	P792 series	-	Printout of online News channel news related with PW1(7 items)
1321.	P792(a)	-	Form 15 for Ext.P792series
1322.	P793	18.11.2017	Copy of letter No. 391/CAMP/2017 of DPC, Ekm, Rural
1323.	P794	20.11.2017	Seizure mahazar for Ext.P795
1324.	P795	14.11.2017	Decoded cell IDs Tata Tele service
1325.	P795(a)	20.11.2017	Form 15 for Ext.P795
1326.	P796	20.11.2017	Section alteration report
1327.	P797	21.11.2017	Section addition report
1328.	P798	22.11.2017	Correction report of rank numbers of accused
1329.	P799 series	10.04.2017	Verbatim statement of PW176 and PW181, PW176 and PW191 etc (7 Nos)
1330.	P800	07.01.2022	Copy of order No.T9/28733/17 PHQ of State Police Chief, Tvpm.
1331.	P800(a)	07.01.2022	Form 15 for Ext.P800
1332.	P801	13.01.2022	Authorization issued to PW253 to conduct search at Padmasarovaram house, VIP Lane, Aluva
1333.	P801(a)	13.01.2022	Form 15 for Ext.P801
1334.	P802	13.01.2022	Search list for office of Grand Productions
1335.	P802(a)	-	Form 15 for Ext.P470(b) as per

			Ext.P820 mahazar
1336.	P803 series	-	Vouchers & bills of Priyanjali Production (8 Nos)
1337.	P804 series	-	Vouchers & bills of Priyanjali Production of Sound Thomma movie
1338.	P805	27.01.2022	Forwarding note of Ext.P596 to P599 and Ext.P484, P484(a), P486
1339.	P806	05.02.2022	Seizure mahazar for Ext.P807
1340.	P807	-	Oppo Phone (T 6/22) as per Ext. P806
1341.	P807(a)	05.02.2022	Form 15 for Ext.P807
1342.	P808	09.02.2022	Inventory mahazar for Ext.P809 series
1343.	P809 series	-	Certificate of Registration of House boat dated 29.3.2021 and Certificate of Survey dated 9.9.2020
1344.	P810	09.02.2022	Form 15 for Ext.P809 series
1345.	P811	12.02.2022	Search list of building in Alfiya Nagar, Thrikkakkara North Village
1346.	P812	-	Hard disc and cable (T8/22)
1347.	P812(a)	15.03.2022	Form 15 of Ext.P812
1348.	P812(b)	16.04.2022	S.65B certificate issued by PW214 in respect of Ext.P812 Hard disk
1349.	P812(c)	-	Form 15 for Ext.P812(b)
1350.	P813	25.02.2022	Seizure mahazar for Ext.P812
1351.	P814	16.05.2022	Arrest memo of A15

1352.	P815	16.05.2022	Arrest report of A15
1353.	P815(a)	16.05.2022	Accused address report (A15)
1354.	P816	16.05.2022	Report of I.O. for producing further investigation orders of Hon'ble High Court of Kerala
1355.	P817	10.06.2022	Section Addition report added Sec. 204 IPC
1356.	P818	20.07.2022	Form 15 for Ext.P 468(a), P 495, P575, P586(a) & P634
1357.	P819	14.06.2022	Seizure mahazar for Ext.P820 & P820(a)
1358.	P820	-	CD containing image of screen shot produced by Fr. Victor
1359.	P820(a)	14.06.2022	S. 65B certificate for Ext.P820
1360.	P820(b)	14.06.2022	Form 15 for Ext. P820 & P820(a)
1361.	P821 series	24.11.2020	F.I.R. & F.I.S in Cr. No. 883/2020 of Peechi Police Station
1362.	P822 series	26.09.2020	F.I.R. & F.I.S in Cr. No. 619/2020 of Bekal Police Station
1363.	P823	18.07.2022	Form 15 for Ext.P821 series and P822series
1364.	P824	16.07.2022	Inventory mahazar for Ext.P530, P551series, P553 series, P549, P549(a) and D103
1365.	P824(a)	16.07.2022	Form 15 for Ext. P530, P551series, P553 series, P549, P549(a) D103
1366.	P825	20.07.2022	Inventory mahazar of S.65 B certificate, CAF & CDR of Mob.No. 8289829508
1367.	P826	20.07.2022	Inventory mahazar for CAF and ID

			proof of Mob. No. 9067658822 and 6238253146
1368.	P827	20.07.2022	Screen shot of Whatsapp chats
1369.	P827(a)	20.07.2022	Form 15 for Ext.P827
1370.	P828	19.05.2018	Copy of order No. U2-31977/17/PHQ
1371.	P828(a)	20.07.2022	Form 15 for Ext.P828
1372.	P828(b)	19.11.2017	Proceedings of State Police Chief No. D7/66426/ 17 PHQ.
1373.	P828(c)	16.11.2017	Attested copy of letter No.388/CAMP/17
1374.	P829	29.05.2023	S. 65 B certificate of PW261 regarding print out of petition filed by PW222
1375.	P830	09.01.2022	Copy of Order in B.A. 248/2022 of Hon'ble High Court of Kerala
1376.	P831 series (9 Nos.)	19.12.2023	S. 65 B certificate issued by PW192 with regard to Ext.P678 , P263, P265, P269, P280, P282, P286, P287 & P279
1377.	P832 series (5 Nos.)	-	S. 65 B certificate with regard to Ext.P 468(a) dated 12.02.2023 S. 65 B certificate with regard to Ext.P668(a) dated 04.12.2023 S. 65 B certificate with regard to Ext.P670(a) dated 04.12.2023 S. 65 B certificate with regard to Ext.P671(b) dated 04.12.2023 S. 65 B certificate with regard to Ext.P674(b) dated 04.12.2023
1378.	P833	12.12.2023	S. 65 B certificate with regard to

			Ext.P438(a) dated 12.12.2023
1379.	P834	05.12.2024	CD contains JB Junction programme
1380.	P835	06.1.2024	Certified copy of M.A. 13/2022 in Crl. M.C. 803/22 filed before Hon'ble High Court of Kerala

Exhibits on the side of Defence

1.	D1	14.10.2017	Relevant portion of 161 statement of CW3(PW6)
2.	D2	19.02.2017	Relevant portion of 161 statement of CW3(PW6)
3.	D3	25.02.2017	Relevant portion of 161 statement of CW102(PW13)
4.	D3(a)	25.02.2017	Relevant portion of 161 statement of CW102(PW13)
5.	D4	01.08.2017	Relevant portion of 161 statement of CW14(PW35)
6.	D5	20.02.2017	Relevant portion of 161 statement of CW9(PW41)
7.	D6	19.02.2017	Relevant portion of 161 statement of CW1(PW1)
8.	D7	03.06.2017	Relevant portion of 161 statement of CW1(PW1)

9.	D8	21.04.2017	Relevant portion of 161 statement of CW3(PW6)
10.	D9	18.02.2017	Relevant portion of 161 statement of CW64(PW45)
11.	D10	01.07.2017	Relevant portion of 161 statement of CW21(PW48)
12.	D11	12.08.2017	Relevant portion of 161 statement of CW28(PW56)
13.	D12	-	Selfie Photograph of PW59 taken with A8
14.	D13	03.07.2017	Relevant portion of 161 statement of CW52(PW59)
15.	D14	16.10.2017	Relevant portion of 161 statement of CW178(PW78)
16.	D15	-	CDR for the Mob. No.8807339249 for the period from 09.04.2017 to 22.04.2017.
17.	D16	21.11.2017	Relevant portion of 161 statement of CW238(PW 91)
18.	D17	10.03.2017	Relevant portion of 161 statement of CW163(PW 98)
19.	D18 series	01.03.2017	Complaint of A8 along with contents forwarded to DCP Kochi city along with covering letter.
20.	D18(a)	-	CD containing telecast in Mathrubhumi channel

21.	D19 series	-	Certified copy of CDR and Sec.65B Certificate of Mobile No.9847159155
22.	D20 series	-	Certified copy of Customer application form and ID proof for Mobile No.9847159155
23.	D21 series	-	Certified copy of CDR of Mobile No.9847580905
24.	D22 series	-	Certified copy of Customer application form and ID proof for Mobile No.9847580905.
25.	D23	26.09.2017	Relevant portion of 161 statement of CW258(PW109)
26.	D24	18.02.2017	Requisition letter for Chemical examination in respect of PW1
27.	D25	-	Certified copy of Final report and FIR and statements in Cr.No.244/16 of Kainadi Police Station, Alappuzha.
28.	D25(a)	22.12.2017	Certified copy of judgment in CC.01/17 of JFCM, Ramankary.
29.	D26	06.08.2016	Certified copy of Final report in Cr.2449/16 of Changanassery P.S.
30.	D26(a)	06.07.2018	Certified copy of Judgment in CC.2221/16 of JFCM-I, Changanassery
31.	D27	27.08.2016	Final report in Cr.No.1121/16 of Kottayam West Police Station
32.	D27(a) series	-	Certified copy of judgment dated 20.09.2017 in C.C. 1359/16 of JFCM-III, Kottayam and Judgment dated 28.04.2018 in Crl.A.204/17 of Addl. Sessions Court-V, Kottayam.

33.	D28	31.08.2016	Final report in Cr. No.1158/16 of Kadavanthra Police Station
34.	D28(a)	26.02.2018	Certified copy of Judgment in CC.2150/16 of JFCM-VIII, Ernakulam
35.	D29 series	-	FIR and Final report in Cr. No.801/11 of Thrikkodithanam Police Station.
36.	D29(a)	06.07.2018	Certified copy of Judgment in CC.1023/16 of JFCM-I, Changanassery
37.	D30	25.07.2017	Relevant portion of 161 statement of CW50(PW129)
38.	D30(a)	25.07.2017	Relevant portion of 161 statement of CW50(PW129)
39.	D31	06.08.2017	Relevant portion of 161 statement of CW45(PW130)
40.	D31(a)	-	Relevant portion of 161 statement of CW45 (PW130)
41.	D32	25.02.2017	Relevant portion of 161 statement of CW5(PW2)
42.	D33	27.05.2017	Relevant portion of 161 statement of CW188(PW135)
43.	D34	05.02.2018	Report of PW141 submitted to CJM, Ernakulam
44.	D35	20.09.2017	Statement u/s 164 Cr.PC of PW232
45.	D36	22.06.2017	Relevant portion of Sec.161 statement of CW196(PW 153)

46.	D37 series	17.07.2017	Certified copy of Final report and Connected papers in Cr. No.2035/17 of Central Police Station, Ernakulam
47.	D38	31.07.2015	Final report and connected records in Cr. No.374/14 of Kidangoor Police Station
48.	D39 series	-	Certified copy of Form 15, Copy of Aadhaar Card, Application Form for Interview and relevant pages of Interview Register in Cr.751/17 of Infopark P.S.
49.	D40	-	Phone Book of District Jail, Kakkanad from 30.12.2016 to 24.06.2017
50.	D41	21.10.2017	Statement given by Mency Joseph u/s.164 of Cr.P.C.
51.	D42	12.08.2017	Relevant portion of 161statement given by (CW228) PW165
52.	D42 (a)	12.08.2017	Relevant portion of 161statement given by (CW228) PW165
53.	D42 (b)	12.08.2017	Relevant portion of 161statement given by (CW228)PW165
54.	D42 (c)	12.08.2017	Relevant portion of 161statement given by (CW228) PW165
55.	D43, D43(a), (b)	20.02.2017	Relevant portion of 161 statement given by CW7(PW166)
56.	D44	24.06.2017	Relevant portion of 161statement dated 24.06.2017 of CW360(PW176)

57.	D45	02.05.2017	Relevant portion of 161statement dated 02.05.2017 of CW360(PW176)
58.	D45(a)	02.05.2017	Relevant portion of 161statement dated 02.05.2017 of CW360(PW176)
59.	D45(b)	02.05.2017	Relevant portion of 161statement dated 02.05.2017 of CW360(PW176)
60.	D45(c)	02.05.2017	Relevant portion of 161statement dated 02.05.2017 of CW360(PW176)
61.	D45(d)	02.05.2017	Relevant portion of 161statement dated 02.05.2017 of CW360(PW176)
62.	D45(e)	02.05.2017	Relevant portion of 161statement dated 02.05.2017 of CW360(PW176)
63.	D45(f)	02.05.2017	Relevant portion of 161statement dated 02.05.2017 of CW360(PW176)
64.	D45(g)	02.05.2017	Relevant portion of 161statement dated 02.05.2017 of CW360(PW176)
65.	D45(h)	02.05.2017	Relevant portion of 161statement dated 02.05.2017 of CW360(PW176)
66.	D46	31.01.2019	Certified copy of Vakkalath filed by A1, A3 and A5 in CC.1760/18 of JFCM, Kakkanad
67.	D47	29.06.2017	Relevant portion of 161 Cr.P.C. statement given by CW187(PW178)
68.	D47(a)	29.06.2017	Relevant portion of 161 Cr.P.C. statement given by CW187(PW178)
69.	D48	25.07.2017	Relevant portion of 161statement given by CW34(PW179)

70.	D49	28.06.2017	Relevant portion of 161 Cr.P.C. statement given by CW43(PW181)
71.	D49(a)	28.06.2017	Relevant portion of 161 Cr.P.C. statement given by CW43(PW181)
72.	D49(b)	28.06.2017	Relevant portion of 161 Cr.P.C. statement given by CW43(PW181)
73.	D50	22.09.2017	Relevant portion of 161 Cr.P.C. statement given by CW43(PW181)
74.	Ext.D51	21.02.2017	Report of MO s collected from Mo12 and MO9 by PW183
75.	Ext.D52	10.08.2017	Relevant portion of 161 statement of PW187
76.	Ext.D53	03.10.2017	Report of PW189 in respect of Ext.P253
77.	Ext.D54	15.09.2017	Request for declaring as approver in respect of PW121
78.	Ext.D55	27.09.2017	Memo issued by CJM,Ernakulam (PW190) to PW261
79.	Ext.D56	04.10.2017	Request for declaring as approver in respect of PW165
80.	Ext.D57	28.06.2017	Relevant portion of 161 Statement of CW29(PW191) dated 28.06.2017
81.	Ext.D57 (a)	28.06.2017	Relevant portion of 161 Statement of PW191 dated 28.06.2017
82.	Ext.D58	05.07.2017	Relevant portion of 161 Statement of PW191

83.	Ext.D58 (a)	05.07.2017	Relevant portion of 161 Statement of PW191
84.	Ext.D58 (b)	05.07.2017	Relevant portion of 161 Statement of PW191
85.	Ext.D58 (c)	05.07.2017	Relevant portion of 161 Statement of PW191
86.	Ext.D59	03.04.2017	Sec.65(B) Certificate for Ext.P438(a)
87.	Ext.D60	-	8 GB Memory Card San disk (MO124)
88.	Ext.D61	-	SIM Card used in MO123
89.	Ext.D62	-	SIM Card used in MO123
90.	Ext.D63	-	SIM Card used in MO124
91.	Ext.D64	-	SIM Card used in MO124
92.	Ext.D65	-	4 GB Transcend Pendrive of Ext.P265-Q51
93.	Ext.D66	12.03.2017	Relevant portion of 161 Statement of CW346(PW195)
94.	Ext.D66 (a)	12.03.2017	Relevant portion of 161 Statement of CW346(PW195)
95.	Ext.D66 (b)	12.03.2017	Relevant portion of 161 Statement of CW346(PW195)
96.	Ext.D67	12.03.2017	Relevant portion of 161 Statement of CW348(PW197)
97.	Ext.D68	04.07.2017	Certified copy of Scene Mahazar in Cr.No.751/17 of Infopark P.S.

98.	Ext.D69	04.07.2017	Certified copy of Seizure in Cr.No.751/17 of Infopark P.S.
99.	Ext.D70 series	-	Certified copy of CDR & S.65B Certificate of Mob. No. 8807339249
100.	Ext.D71	01.11.2017	Certified copy of Scene Mahazar in Cr.No.751/17 of Infopark P.S.
101.	Ext.D72	28.06.2017	Certified copy of Final report in Cr.No.751/17 of Infopark P.S.
102.	Ext.D73	-	Certified copy of Forwarding Note in Cr.No.751/17 of Infopark P.S.
103.	Ext.D74	03.07.2017	Certified copy of 161 statement u/s Cr.P.C. of PW153 in Cr. 751/2017 of Infopark Police Station
104.	Ext.D74 (a)	03.07.2017	Relevant portion of Ext.D74
105.	Ext.D75 series	05.07.2017 07.07.2017	Certified copy of Custody applications in Cr.No.751/17 of Infopark P.S.
106.	Ext.D76	27.02.2017	Certified copy of Remand report of A7
107.	D77	13.03.2017	Seizure mahazar for CD(Voice-I)
108.	D78	13.03.2017	Seizure mahazar for CD (Voice-II)
109.	D79 Series.	13.03.2017	Property list(T 111/17)-List I & II
110.	D80	18.02.2017	Form 15 for documents seized from A1's house

111.	D81	28.02.2017	Scene mahazar for river side near Goshree Bridge
112.	D82	10.04.2017	Certified copy of Judgment dated 10-04-17 in W.P.(C) No.10354/17
113.	D 83	29.01.2022	Relevant portion of 161 statement of CW394(PW208)
114.	D 84	04.02.2022	Relevant portion of 161 statement of CW399(PW 209)
115.	D 85	25.02.2022	Relevant portion of 161 statement of CW423/PW214
116.	D 85(a) to (i)	25.02.2022	Relevant portion of 161 statement CW423/PW214
117.	D 86	02.12.2020	Certified copy of order in BA 7718/2020 of Hon'ble High court of Kerala
118.	D 87series	-	Certified copy of BA 7718/2020 of Hon'ble High court of Kerala,Certified copy of Bail Application in Crl.MC 2107/2020, Certified copy of FIR in Cr. 251/2020 of Perumbavoor Police Station, Certified copy of FIS in Cr.251/2020 of Perumbavoor Police Station.
119.	D 88	-	Pendrive contain voice clip of conversation with a Police officer and friend of PW214
120.	D 88(a)	04.12.2024	S. 65 B certificate with respect to Ext. D88
121.	D 89	-	Pendrive contains recording of video visuals of 'Editors hour' through reporter TV
122.	D 89(a)	04.12.2024	S. 65 B certificate with respect to Ext. D89

123.	D 90	-	Pendrive contains voice of PW213 telecasted in Koumudi TV.
124.	D90(a)	04.12.2024	S. 65 B certificate for Ext. D90 dated 04.12.2024
125.	D 91	06.01.2022	Reply e-mail to Venketesan.S sent by Sri.Philip T.Varghese with S.65B certificate
126.	D92	25.01.2022	Relevant portion of 161 statement of CW419(PW223)
127.	D93 series	-	(a) Certified copy of complaint submitted before Hill Palace Police Station in Cr.1493/15. (b) FIR in Crime 1493/2015 of Hill Palace Police Station. (c) FIS in Crime 1493/2015 of Hill Palace Police Station. (d) Seizure mahazar in Cr.1493/2015 of Hill Palace Police Station.
128.	D94	14.09.2016	Certified copy of Final report in Cr.1493/2015 of Hill Palace Police Station.
129.	D95 series	30.03.2022	(a) Certified copy of FIR in Cr.51/22 of Crime Branch Police Station(b) Certified copy of Proceedings No.T6-10403/2022 of PHQ, Thiruvananthapuram.
130.	D95(a)	-	Proceedings of the State Police Chief – Police Head Quarters, Thiruvananthapuram

131.	D96 series	29.03.2022 17.03.2022 14.03.2022 15.03.2022 22.03.2022 07.01.2020	Certified copy of Bail application in BA 2707/22 before Hon'ble High Court of Kerala. Certified copy of true copy of FIR in Cr.270/22 of Nadakkavu Police Station. Certified copy of true copy of Order in WP(C)8411/22 Certified copy of notice issued by Superintendent of police, Crime Branch Certified copy of true photocopy of email containing reply to the Supdt. of Police, Crime Branch Certified copy of true copy of Order in B.A 2372/22 True copy of Plaint in O.S.8/2020 True copy of FIR in Cr.903/20 of Nadakkavu
132.	D97 series	23.03.2022 17.10.2021 05.11.2021 22.11.2021	Certified copy of Bail Application No.2465/22 of Hon'ble High Court of Kerala True copy of FIR in Cr.1334/2021 of Thrikkakara Police Station True copy of Order in Bail Application No.8329/21 of Hon'ble High Court of Kerala True copy of Order in Crl.M.C No.2358/21 of District Court, Ernakulam

133.	D98 series	21.03.2022 15.03.2022 - 14.03.2022 09.03.2022 02.12.2020	Certified Copy of Bail Application in BA 2372/22 filed before Hon'ble High Court of Kerala Certified copy of true copy of Notice No.D1-187/CB/EKM/22 Certified copy of true copy of reply mail True copy of Order in WP(c)8411/22. True copy of petition in WP(c)8411/22 True copy of Order in Bail Application No.7718/2020 of Hon'ble High Court of Kerala
134.	D99	22.03.2022	Certified copy of Order in Bail Application No.2372/22
135.	D100	16.07.2022	Pendrive containing Telephonic interview with PW226 in Reporter TV
136.	D 100(a)	04.12.2024	S. 65 B certificate with respect to Ext. D100
137.	D 101	-	Sandisc Pendrive contains News – Free speech in media one channel
138.	D 101(a)	04.12.2024	S. 65 B certificate with respect to Ext. D101
139.	D102	-	Pendrive containing telecast of free speech - Media one channel
140.	D102(a)	04.12.2024	S. 65 B certificate with respect to Ext. D102
141.	D103	26.05.2024	Covering letter of Ext.P549 and P549(a), P530, P530(a), P551series, P553series
142.	D104 series	-	(a)Letter addressed to Adv.Philip T.Varghese issued by PW214 (b)Brown colour envelope

143.	D105	-	Sandisc pendrive contains mobile phone conversation with PW214 and Investigation Officer.
144.	D 106 series	-	O/c reply notice dated 29.04.2022 of D104 series & Postal acknowledgment receipt
145.	D 107	-	A/d card received by PW214.
146.	D 108	-	Certified copy of WP(C) No.8411/2022 of Hon'ble High Court of Kerala.
147.	D109 series	-	Certified copy of I.A.No.1/22 in WP(C) No.8411/2022 of Hon'ble High Court of Kerala.
148.	D110	14.03.2022	Interim order in WP(C) No.8411/2022 of Hon'ble High Court of Kerala.
149.	D111	09.06.2022	Copy of the order in WP(C) No.8411/2022 of Hon'ble High Court of Kerala.
150.	D112	08.04.2023	Pendrive containing interview in 24 News Varthamazha
151.	D112(a)	-	S. 65 B certificate with respect to Ext. D112
152.	D113 series	-	Certified copy of FIR, FIS in Crime No. 213/2016 of Thrikkakkara P.S. and Crl.MP 511/2016
153.	D114	07.02.2019	Certified copy of charge sheet Final report in Cr. No.213/2016 of Thrikkakkara P.S
154.	D115	-	Pendrive containing recorded conversation between PW214 and Sudheer
155.	D116 series	-	Certified copy of writ petition in WP(C) 9187/2022 along with documents

156.	D117	-	Judgment in WP(C) 9187/2022 of Hon'ble High Court of Kerala.
157.	D118 Series	01.07.2022	Letter issued by Federal bank along with documents on request of A8.
158.	D119 D119(a)	08.04.2022	Relevant Portions of 161 statement of CW11(PW34)
159.	D120	-	Pendrive - Keraleeyam എനിക്ക് അന്നേ മനസിലായി ഇവൻ ആണ് പ്രതി എന്ന് Adv.Ajakumar Exclusive interview – part-1
160.	D120(a)	04.12.2024	S. 65 B certificate with respect to Ext. D120
161.	D121	19.02.2017	Pendrive - Kairali TV PW34 says 'It is a Criminal Conspiracy' At the Marine Drive Protest Meet
162.	D121(a)	04.12.2024	S. 65 B certificate for Ext. D121
163.	D122	23.02.2017	Pendrive - Wide home work behind actress abduction case, says PW34 Manorama News
164.	D122(a)	04.12.2024	S. 65 B certificate for Ext. D122
165.	D123	23.02.2017	Pendrive - PW34 response on A1 arrested from Kochi court premises – Asianet news dtd. 23.02.2017.
166.	D123(a)	04.12.2024	S. 65 B certificate with respect to Ext. D123
167.	D124	07.05.2022	Portion of 161 statement of CW427(PW 246) dt. 07.05.2022

168.	D 125	-	Pendrive containing 14 files telecast in Reporter TV
169.	D125(a)	04.12.2024	S. 65 B certificate with respect to Ext. D125
170.	D 126	01.02.2022	Pendrive containing interview of PW222 with Baiju Kottarakara in News Globe.
171.	D126(a)	04.12.2024	S. 65 B certificate for Ext. D126
172.	D 127	03.02.2022	Pendrive containing interview - Reporter TV dt 03.02.2023
173.	D 127(a)	04.12.2024	S. 65 B certificate for Ext. D127
174.	D 128 D128(a) D128(b) D128(c)	01.01.2022	Relevant portions of 161 statement of CW367(PW222)
175.	D 129	27.12.2021	Pendrive containing Reporter TV interview
176.	D 129(a)	04.12.2024	S. 65 B certificate for Ext. D129
177.	D 130	04.01.2022	Pendrive containing Navakerala News TV interview
178.	D 130(a)	04.12.2024	S. 65 B certificate for Ext. D130
179.	D 131	05.01.2022	Pendrive containing Reporter TV interview
180.	D131(a)	04.12.2024	S. 65 B certificate for Ext. D131
181.	D 132	28.01.2022	Pendrive containing Reporter TV interview

182.	D 132(a)	04.12.2024	S. 65 B certificate for Ext. D132
183.	D 133	24.04.2022	Pendrive containing Reporter TV interview
184.	D133(a)	04.12.2024	S. 65 B certificate for Ext. D133
185.	D 134	03.1.2022	161statement of CW367(PW222)
186.	D 135	31.03.2022	Inventory Mahazar -Sample Hand writing of A1
187.	D 136 D136(a) D136(b) D136(c)	-	Pendrive containing Audio file Audio_12_01_2015_ 09_49_54.m4a sent by PW222 to PW132 by email dt 01.12.2015 Printout of email with audio clip sent by PW222 to PW132 on 01.12.2015. Sec. 65 B certificate for Ext.D136(a) Sec 65 B certificate for Ext.D136
188.	D 137	-	Pendrive containing interview with PW222 in Media One TV Live on 26.12.2021.
189.	D137(a)	-	S. 65 B certificate for Ext. D137
190.	D 138	09.01.2022	Pendrive contain telecast on 09.01.2022 in Reporter TV
191.	D 138(a)	04.12.2024	S. 65 B certificate for Ext. D138
192.	D 139	16.01.2022	Pendrive containing interview with PW222 News 18 Kerala on 16.01.2022

193.	D139(a)	04.12.2024	S. 65 B certificate with respect to Ext. D139
194.	D 140	19.04.2022	Relevant Portion of161 statement of PW132/CW193
195.	D 141	-	Certified copy of WP Crl No.346/2022 before Hon'ble High Court of Kerala
196.	D 142	22.12.2022	Certified copy of the order in WP Crl 346/2022 of Hon'ble High Court of Kerala
197.	D 143	06.05.2022	Certified copy of Judgment in W.A. 566/22 of Hon'ble High Court of Kerala
198.	D 144	09.08.2017	Certified copy of Judgment in WP(C) No. 26168/2017 of Hon'ble High Court of Kerala
199.	D145	02.06.2022	Sandisc pendrive containing reporter TV Telecast programme
200.	D145(a)	04.12.2024	S. 65 B certificate for Ext. D145
201.	D146	05.03.2022	Original S. 65 B certificate issued by PW192 in report No. DD74/22
202.	D147	13.01.2022	Certified copy of section alteration report in Cr. No. 6/CB/EKM/D/22
203.	D148 series	-	Notice u/s 91 Cr.P.C. to A8 to produce Mobile phone dated 25.01.2022 & reply of A8 dated 26.01.2022
204.	D149 series	-	Notice U/s 91 Cr.P.C. to PW182 dated 25.01.2022 & reply of PW182 dated 26.01.2022

205.	D150 series	26.01.2022 25.01.2022	Notice u/s 91 Cr.P.C. to Krishnaprasad dated 25.01.2022 & reply dated 26.01.2022
206.	D151	09.05.2022	Notice dated 09.05.2022 issued by PW259 to PW179
207.	D152	14.01.2022	Certified copy of property list (T22/22) dated 14.01.2022
208.	D153	10.02.2022	Letter D.No.384/CB/EKM/22 addressed to A8 dated 10.02.2022
209.	D154	18.03.2022	Report in CMP 505/22
210.	D155 series	17.03.2022	3 Reports of search in Cr.No.6/CB/EKM/D/22
211.	D156	-	Certified copy of Crl. M.C. 1106/22 before Hon'ble High Court of Kerala
212.	D157	-	A statement filed by R2 in Crl.MC 1106/22 before Hon'ble High Court of Kerala
213.	D158	-	Certified copy of reply to the statement filed by petitioner in Crl. MC 1106/2022 before Hon'ble High Court of Kerala
214.	D159	04.01.2022	Property list T.22/22 of JFCM-I, Aluva in Cr. 6/22/CB dated 04.01.2022
215.	D160	30.06.2017	Pendrive containing Malayala Manorama Telecast dated 30.06.2017
216.	D160(a)	04.12.2024	S. 65 B certificate for Ext. D160
217.	D161		Pendrive containing telecast in Malayala Manorama(A1)

218.	D161(a)	04.12.2024	S. 65 B certificate for Ext. D161
219.	D162	24.03.2017	Certified copy of CMP 240/2017(Complaint filed by A1) dated 24.03.2017
220.	D163	24.03.2017	Certified copy of Petition (MC 9/2017)
221.	D164	24.03.2017	Certified copy of CMP 241/2017(Complaint filed by A1)
222.	D165	28.03.2017	Certified copy of report filed by Investigating Officer in CMP 241/17 dated 28.03.2017
223.	D 166	12.07.2017	Pendrive containing news telecast dated 12.07.2017 Kairali TV
224.	D 166(a)	04.12.2024	S. 65 B certificate for Ext. D166
225.	D167	13.07.2017	Pendrive - Telecast in Manorama News dated 13.07.2017
226.	D167(a)	04.12.2024	S. 65 B certificate for Ext. D167
227.	D168	-	Volume I CD containing statement of A1
228.	D169	-	Volume II CD containing statement of A1 dt. 10.03.2017
229.	D170	-	Pendrive containing news report in Mathrubhoomi News
230.	D 170(a)	04.12.2024	S. 65 B certificate for Ext. D170
231.	D171		Pendrive contain news report in Asianet News
232.	D 171(a)	04.12.2024	S. 65 B certificate for Ext. D171

233.	D172	08.09.2017	Report DFSL No. DFS/EE/2017/CF/458
234.	D173	07.07.2017	Pendrive containing telecast dated 07.07.2017 in Aisanet News
235.	D 173(a)	04.12.2024	S. 65 B certificate for Ext. D173
236.	D174 series	-	Certified copy of FIR, FIS, Remand Report and Custody application in Crime 1056/2023 of Kunnathunadu Police Station.
237.	D175 series	-	Certified copy of FIR, FIS, Remand report in Crime 650/2023 of Edathala Police Station.
238.	D176 series	-	Certified copy of FIR, FIS, Remand report in Crime 2010/2023 of Thrikkakara Police Station dated 22.10.2023.
239.	D177 series	-	Certified copy of FIR, FIS, Remand report in Crime 2510/2023 of Thrikkakara Police Station dated 26.12.2023.
240.	D178 series	-	Certified copy of FIR, FIS, Remand report in Crime 88/2024 of Thrikkakara Police Station dated 18.01.2024.
241.	D 179 series	-	Certified copy of FIR, FIS and charge sheet in Crime 548/2021 of Cheranelloor Police Station dated 09.07.2021. Custody memo in Crime 548/2021 of Cheranelloor Police Station

242.	D 180 series	-	Certified copy of FIR, FIS in Crime 10/2022 of Elamakkara Police Station dated 06.01.2022 Certified copy of Remand report, Custody memo in Crime 10/2022 of Elamakkara Police Station
243.	D 181 series	-	Certified copy of FIR, FIS, Charge sheet in Crime 11/2022 of Elamakkara Police Station dated 05.01.2022

244.	D 182 series (20 Nos.)	-	Certified copy of Final Report in Crime 1934/2007 of Ernakulam Central Police Station dated 09.12.2007 Certified copy of Final Report in Crime 2139/2011 of Kalamassery Police Station dated 09.11.2011 Certified copy of Final Report in Crime 1925/2011 of Thrikkakara Police Station dated 09.11.2011 Certified copy of Final Report in Crime 2294/2011 of Hill Palace Police Station dated 09.11.2011 Certified copy of Final Report in Crime 1668/2013 of Kalamassery Police Station dated 20.08.2013 Certified copy of FIR in Crime 570/2014 of Ernakulam Town South Police Station dated 19.04.2014 Certified copy of Final Report in Crime 633/2014 of Thrikkakara Police Station dated 13.05.2014 Certified copy of Final Report in Crime 616/2014 of Eloor Police Station dated 28.05.2014 Certified copy of Final Report in Crime 801/2014 of Thrikkakara Police Station dated 14.06.2014 Certified copy of Final Report in Crime 1335/2014 of Thrikkakara Police Station dated 14.10.2014 Certified copy of Final Report in Crime 1336/2014 of Thrikkakara Police Station dated 14.10.2014 Certified copy of Final Report in Crime 163/2015 of Eloor Police Station dated 12.03.2015 Certified copy of Final Report in Crime 691/2015 of Kalamassery Police Station dated 13.05.2015 Certified copy of Final Report in Crime 755/2015 of Kalamassery Police Station dated 29.05.2015 Certified copy of Final Report in Crime 410/2015 of Eloor Police Station dated 13.06.2015 Certified copy of Final Report in Crime 608/2015 of Maradu Police Station dated 23.06.2015 Certified copy of Final Report in Crime 1095/2015 of Thrikkakara Police Station dated 11.09.2015 Certified copy of Final Report in Crime 1348/2015 of Hill Palace Police Station dated 14.09.2015 Certified copy of Final Report in Crime 1649/2015 of Thrikkakara Police Station Certified copy of Final Report in Crime 505/2015 of Chottanikara Police Station dated 15.09.2015

245.	D183 series (4 Nos)	-	Certified copy of Remand report in Crime 755/2015 of Kalamassery Police Station Certified copy of Remand report in Crime 691/2015 of Kalamassery Police Station Certified copy of Remand report in Crime 1668/2013 of Kalamassery Police Station Certified copy of Remand report in Crime 2139/2013 of Kalamassery Police Station
246.	D 184	29.01.2016	Certified copy of Remand report in Crime 172/2014 of Kalamassery Police Station dated 29.01.2016
247.	D 185	17.02.2022	Certified copy of Order in CMP338/22 of JFCM -II, Aluva dated 17.02.2022
248.	D186	07.04.2022	Certified copy of Order in CMP 1161/22 of JFCM -II, Aluva
249.	D187	04.07.2017	Report filed by Investigating Officer along with Ext.P329 mahazar
250.	D188	20.11.2017	Certified copy of statement filed by Investigating Officer in Crl.M.A. 12642/17 in B.A 6616/17 dated 20.11.2017 of Hon'ble High Court of Kerala.
251.	D189	03.03.2018	Certified copy of Report in MC 433/18
252.	D 190	28.02.2018	Certified copy of bail application of A1 (MC 433/18)
253.	D 191	22.03.2011	Certified copy of Charge sheet in Cr. 615/11 of Cheranelloor Police Station



254.	D 192	13.08.2014	Certified copy of Judgment in SC 178/13 of Addl. Sessions Court-VII, Ernakulam dated 13.08.2014
255.	D193		Certified copy of B diary proceedings in SC 178/13 of Addl. Sessions Court – VII, Ernakulam
256.	D194		Certified copy of petition CMP 985/17 JFCM, Angamaly
257.	D195	01.12.2017	Objection in CMP 985/2017
258.	D 196	17.01.2018	Certified copy of order dated 17.01.2018 in CMP 985/17 JFCM, Angamaly
259.	D197	30.03.2022	Certified copy of deposition of PW8/CW12 in SC 78/2016 dated 30.03.2022
260.	D198	29.04.2022	Certified Copy of judgment in SC 78/16 of Addl. Sessions Court-VI, Ernakulam dated 29.04.2022
261.	D199	20.01.2022	Pendrive containing interview of PW261 in Goodness TV
262.	D 199(a)	-	S. 65 B certificate for Ext. D199
263.	D200	05.08.2017	Authorization to PW198
264.	D201	04.11.2017	Letter No. D1(A)/47333/2017 of District Police Chief, Ernakulam Rural
265.	D202	13.04.2022	Forwarding note of specimen writing of A1(S1 to S11) dated 13.04.2022
266.	D203	10.06.2022	Notice u/s. 91 Cr.P.C. issued to PW132

267.	D204	13.06.2022	Reply to Ext. D203
268.	D205	-	Pendrive containing Mathrubhoomi news telecast dated 31.03.22 Reporter TV – Telecast dated 25.04.2022 Reporter TV – Telecast dated 26.04.2022
269.	D205(a)	04.12.2024	S. 65 B certificate with respect to Ext. D205
270.	D206	-	Copy of Crl. M.A. 17/22 in Crl. M.C. 803/22 of Hon'ble High Court of Kerala
271.	D207 series	-	Certified copy of FIR, Charge sheet in Crime 220/2006 of Kodanad Police Station dated 11.10.2006
272.	D 208 series	-	Certified copy of FIR,FIS, Seizure mahazar, Final report in Crime No.398/2008 of Ambalamedu Police Station
273.	D209	05.06.2013	Certified copy of judgment in CC 643/2008 of JFCM, Kalamassery
274.	D210 series	11.02.2016	Certified copy of FIR and Charge sheet in Crime 179/2016 of Kalamassery Police Station dated 11.02.2016
275.	D211	30.10.2018	Certified copy of judgment in CC 127/2016 dated 30.10.2018 of JFCM, Kalamassery
276.	D212	16.04.2017	Certified copy of charge sheet in Cr.No.749/2017 of Aluva East Police Station
277.	D213	25.02.2017	Certified copy of custody return report in Crime 495/2017 of Central Police Station, Ernakulam filed before C.J.M., Ernakulam

278.	D214	28.01.2019	Certified copy of Judgment in C.C. 130/2017 dated 28.01.2019 of CJM, Ernakulam
279.	D215 series	05.06.2014	Certified copy of order in I.A. 2092/2014 in OP 1081/14 of Family Court, Ernakulam and Affidavit filed by A8
280.	D216	31.05.2022	Certified copy of memo filed by Public Prosecutor in WP Crl. No. 445/2022
281.	D217	07.06.2022	Certified copy of judgment in WP(C) 15523/2022 dated 07.06.2022 of Hon'ble High Court of Kerala
282.	D218	21.11.2022	Certified copy of Judgment in CC (Crl) 1/22 of Hon'ble High Court of Kerala
283.	D219 series	29.06.2022	Certified copy of Joint Vakalathnama of victim in OP (Crl)257/2022 filed before Hon'ble High Court of Kerala
284.	D220 series	18.01.2022	Certified copy of Orders in OP(Crl) 23/22 dated 18.01.2022 and dated 08.02.2022 of Hon'ble High Court of Kerala
285.	D221 series	-	Certified copy of FIR in Cr. 2/2022 of Cyber Crime Police Station dated 28.01.2022 Certified copy of FIR in Cr. 3/2022 of Cyber Crime Police Station dated 28.01.2022 Certified copy of FIR in Cr. 4/2022 of Cyber Crime Police Station dated 28.01.2022 Certified copy of FIR in Cr. 5/2022 of Cyber Crime Police Station dated 28.01.2022 Certified copy of FIR in Cr. 6/2022 of Cyber Crime Police Station dated 28.01.2022

Court Exhibits Marked

1.	C1	10.03.2017	Crl. M.P.203/17 filed by PW20 before JFCM Angamaly
2.	C2 series	-	Vakkalath & Bail application (Crl.M.P.641/17) before the Magistrate Court, Angamaly by PW121
3.	C3	20.09.2017	Crl.M.P.747/17 of JFCM, Angamaly
4.	C3(a)	22.11.2017	Report filed By Investigating Officer in Ext.C3
5.	C4	21.01.2021	Crl.MP 147/2021 filed before Addl. Sessions Court-III, Ernakulam
6.	C5	22.02.2017	Remand report of A3
7.	C6	19.02.2017	Remand Report of A2
8.	C7	20.02.2017	Remand Report of A1, A5 and A6
9.	C8	24.02.2017	Crl. M.P. 123/17 with affidavit filed before JFCM Angamaly.
10.	C9 series	03.03.2017	Custody application for A2 and Affidavit.
11.	C10 series		Remand extension report (10 Nos.)
12.	C11	20.04.2017	Report in Crl.M.P. 240/17
13.	C11(a)	17.08.2017	Fair order in CMP 240/17 of JFCM, Angamaly
14.	C12	28.03.2017	Report in Crl.M.C. 9/17
15.	C13	18.02.2017	Remand report of A1 to A6
16.	C14	28.02.2017	Custody Application of A7
17.	C15	04.03.2017	Custody Application of A1 and A4
18.	C16	27.04.2017	Objection report in Crl. M.P. 296/17

19.	C16(a)	27.04.2017	CMP 296/17 of JFCM, Angamaly
20.	C17	18.06.2022	Letter No.B1-165122-RFSL, Ernakulam regarding requisition for admitted standard writings of A1
21.	C18	25.01.2022	Letter No. B2-380/FSL/2020 issued by Director FSL to CBI Court
22.	C19	30.05.2017	Report in Crl.M.P. 396/17, JFCM, Angamaly
23.	C20	17.05.2022	Permission granted by JFCM, Angamaly to interrogate A1 and A4
24.	C21	11.12.2017	Application of I.O. regarding inspection of visuals.
25.	C22	15.07.2017	Report filed by Investigating Officer on 15.07.2017 in CMP 526/17 before JFCM, Angamaly
26.	C23	16.09.2017	Report filed by Investigating Officer on 16.09.2017 in Crl.M P 715/17 before JFCM, Angamaly
27.	C24	19.05.2017	Office copy of memo issued to Investigating Officer in CMP 240/2017
28.	C24(a)	23.05.2017	Reply to C24 memo
29.	C25	20.07.2017	Objection filed by Investigating Officer before JFCM, Angamaly in CMP 558/17
30.	C 25(a)	18.07.2017	CMP 558/17, JFCM, Angamaly
31.	C26	07.09.2017	Request for interrogating A1 by Investigating Officer
32.	C27	08.10.2017	Request for interrogating A5 by Investigating Officer
33.	C28	26.09.2017	Request for interrogating A1 by Investigating Officer
34.	C29	10.03.2017	Report of Investigating Officer after returning

			police custody of A1 & A4
35.	C29(a)	-	Medical certificate dated 06.03.2017 of A1 & A4
36.	C29(b)	-	Medical certificate dated 08.03.2017 of A1 & A4
37.	C29(c) series	-	Medical certificate dated 10.03.2017 of A1 & A4
38.	C30	21.04.2017	Bail Objection of A1 in CMP 282/17
39.	C31	05.08.2017	Application filed by Investigating Officer for interrogating A2
40.	C32	18.07.2017	Copy of permission order (No. A4-4940/17 dated 18.07.2017 of C.J.M., Ernakulam) for taking 164 statement of PW43
41.	C33	07.11.2017	Statement recorded u/s. 360(4) Cr.P.C. of PW165
42.	C34	28.07.2017	Custody application of PW121
43.	C 35	11.08.2017	Remand extension application of PW121
44.	C36	24.08.2017	Remand extension application of PW121
45.	C37	30.08.2017	Remand extension application of PW121
46.	C38	17.05.2017	Crl.MP 364/17 Jail interrogation application of A1
47.	C39	17.05.2017	Order in Crl.MP 364/17 of JFCM, Angamaly
48.	C40	01.11.2017	Statement u/s. 306(4) Cr.P.C. by J.F.C.M., Angamaly
49.	C 41	09.01.2020	Witness summons to PW121
50.	C41(a)	-	Report of Ext.C41
51.	C42	25.09.2020	Original witness summons to PW121
52.	C42(a)	25.09.2020	Report of Ext.C42
53.	C43	11.01.2021	Witness summons to PW121
54.	C43(a)	20.01.2021	Report of Ext.C43
55.	C44	21.01.2021	Report of witness warrant to PW121

56.	C45	20.01.2021	Non bailable warrant against PW121
57.	C 45(a)	23.01.2021	Report of Ext.C45
58.	C46	29.07.2021	Report of C46(a)
59.	C 46(a)	28.07.2021	Non bailable warrant to PW176
60.	C 47	08.07.2021	Witness summons to PW176
61.	C 47(a)	16.07.2021	Report of Ext.C47
62.	C 48	27.07.2021	Bailable warrant to PW176
63.	C 48(a)	28.07.2021	Report to Ext.C48
64.	C 49	29.07.2021	Non bailable warrant against PW176
65.	C 49(a)	30.07.2021	Report of Ext.C49
66.	C 50	14.07.2017	Bail objection report against PW176
67.	C 51	21.11.2017	True copy of order in Crl. MA. 12642/17 in B.A 6616/17 of Hon'ble High court of Kerala
68.	C 52	05.06.2017	CMP 420/17 of J.F.C.M., Angamaly
69.	C53	-	Pendrive containing copy of video footage downloaded from You-tube
70.	C 54 series	-	CMP691/17, JFCM, Angamaly with written submission
71.	C 55	28.01.2022	Report regarding extension of time to complete further investigation
72.	C 56	29.03.2022	Application to interrogate court staff filed by Investigating Officer
73.	C57	30.03.2022	Proceedings dated 30.03.2022 in Ext.C56
74.	C58	12.04.2022	Show cause notice to Investigating Officer
75.	C 59	19.04.2022	Proceedings dated 19.04.2022 regarding Ext.C56
76.	C60	06.04.2022	Show cause notice to Investigating Officer
77.	C61	12.04.2022	Reply to Ext.C60
78.	C 62	11.01.2022	Application for search warrant of Grand

			production unit
79.	C 63 series	-	CMP 228/2017 filed by Sub Inspector of Police Kunnukara on 20.05.2017 in Crl M.C. 662/2017 FIR in Crime 662/2017 of Kunnukara Police Station Copy of petition in CMP 827/2017 filed before JFCM, Kunnamkulam dated 09.03.2017 Order in CMP 228/2017 in Cr.297/2017 Nedumbassery Police Station dated 21.03.2017, JFCM, Angamaly
80.	C 64	-	CMP 256/2017 dated 31.03.2017 filed before JFCM, Angamaly (A2)
81.	C65	06.05.2017	Jail interrogation application No.CMP 326/2017 of A1
82.	C 66	-	Permission for Ext.C65 issued by JFCM, Angamaly
83.	C67	15.01.2018	CMP 49/2018 filed by A8 before JFCM, Angamaly
84.	C 68	15.01.2018	CMP 50/2018 filed by A8 before JFCM, Angamaly

Material objects marked

1.	MO1	-	Round neck Baniyan of PW1 T/69/17– List II – Item No.I
2.	MO 2	-	Loose pant of PW1 T-/69/17 – List II – Item No.II
3.	MO3 series	-	Inner wears (Bra & panties) - T-/69/17 – List II – Item No.III & IV
4.	MO4	-	White & Gold coloured stud of PW1 – T-79/17 – List VIII – Item No.1

5.	MO5	-	Full Sleeve black, white and red designed Shirt worn by A1– T-79/17 – List 7 – Item No.8
6.	MO6	-	Black track suit pant of A1 – T-79/17 – List VI – Item No.2
7.	MO7 series	-	Black and green coloured chappals of A1 – T-79/17 – List VI – Item No.7
8.	MO8	-	Gold ring with yellow stone of PW1 (T/345/17)
9.	MO9	-	Mahindra XUV Vehicle bearing No.KL-39-F-5744 (T/65/17-List I- Item No.1)
10.	MO10	-	White, blue Color Towel (T65/17-List I- Item No.5)
11.	MO11	-	Gold coloured round shape single stud (T65/17-List I-Item No.6)
12.	MO12	-	Delivery Van bearing No.KL-60-9338.((T65/17-List II-Item No.I)
13.	MO13	-	Brown colour purse of A4 (T/79/17-List III-Item No.1)
14.	MO14	-	Black colour Mobile phone with writing W-tech (T/79/17-List III-Item No.9).
15.	MO15	-	Passport size photograph of A4 as per Ext.P381series
16.	MO16	-	Pan Card No.AQWPV1791M as per Ext.P381series
17.	MO17	-	Aadhar Card No.6884 9029 6853 as per Ext.P381series
18.	MO18	-	Gold loan receipt No. GL8858 from Alangad Service Co-operative Bank, Thiruvallur Branch as per Ext.P381series
19.	MO19	-	Visiting Card of Amrita Bakers & Cools as per Ext.P381series
20.	MO20	-	Federal Bank FED Card No.5044811251225865 as per Ext.P381series

21.	MO21	-	Mobile SIM Card red paper slip (Toned piece) as per Ext.P381series
22.	MO22	-	Black colour Mobile phone (Nokia)-(T-79/17-List II- Item No.2).
23.	MO23	-	Copper coloured Power bank model 68 - (T-79/17-List II- Item No.I)
24.	MO24 series	-	Three Keys in one chain – (T/100/17).
25.	MO25	-	Paper slip given by A1as per Ext.P441series
26.	MO26	-	Passport of A4 as per Ext.P362 series
27.	MO27	-	Micromax AQ5000 MODEL DUAL SIM CAMERA mobile phone. (T-78/17-Item-I) as per Ext.P362 series
28.	MO28	-	Purse (red color)(T-78/17 Item-II)as per Ext.P362 series
29.	MO29	-	Driving license of A1 (Duplicate copy) as per Ext.P362 series
30.	MO30	-	Driving license of Aslam Muhammed as per Ext.P362 series
31.	MO31	-	SIB MAESTRO Card No.5048170606016224253 as per Ext.P362 series
32.	MO32	-	Pan Card No.GLWPS4232K of A1 as per Ext.P362 series
33.	MO33	-	SBI ATM Card No. 4591620018493710 of A1 as per Ext.P362 series
34.	MO34	-	Visiting Card of S. K. Printers as per Ext.P362 series
35.	MO35	-	Visiting Card of Manappuram Finance Ltd. as per Ext.P362 series
36.	MO36	-	Visiting Card of Code Sense Motors as per Ext.P362 series

37.	MO37	-	SIM Card cover of BSNL 3G Nano Usim as per Ext.P362 series
38.	MO38	-	Hero Good Life Card No.10089 15890002670 as per Ext.P362 series
39.	MO39	-	Visiting Card of Aiswarya Rooms & Cabs as per Ext.P362 series
40.	MO40	-	Visiting Card of R-Me Service Centre as per Ext.P362 series
41.	MO41	-	Orga Event & Tours (Visiting Card) as per Ext.P362 series
42.	MO42	-	Visiting Card of Hotel Royal Inn as per Ext.P362 series
43.	MO43	-	Visiting Card of Makara jyothi parking as per Ext.P362 series
44.	MO44	-	Visiting Card of Adv. E. C. Poulose & Bobby Rapheal as per Ext.P362 series
45.	MO45	-	Mini Calendar of Manapppuram Gold loan as per Ext.P362 series
46.	MO46 series	-	Vijaya Photo studio cover with 5 passport size photos of A1 as per Ext.P362 series
47.	MO47 series	-	Currency & Coins(Old Currency Not for Rs.500/-) (T78/17-Item 3-8)
48.	MO48	-	Key named as Silica (T78/17-Item 9)
49.	MO49	-	SIM Card of Idea 4G No. 899197262021907382 HLRZ (T78/17-Item 10)
50.	MO50	-	Yellow coloured SIM Card Slot (T78/17-Item 11)
51.	MO51	-	Bus ticket for ₹7/- of Puthenkavilamma bus as per Ext.P362 series
52.	MO52	-	TR-5 receipt issued by Chengamanad police station as per Ext.P362 series

53.	MO53	-	Torned receipt for ₹300/- issued by Shamsu Tourist Home, Cochin as per Ext.P362 series
54.	MO54	-	White paper slip writing with Vytilla-Mulanthuruthy with Santhigiri College as per Ext.P362 series
55.	MO55	-	Receipt for ₹10,000/- of SML Finance as per Ext.P362 series
56.	MO56	-	Copy of Driving license of A1as per Ext.P362 series
57.	MO57	-	Receipt for ₹2,000/- issued by BSNL dated 09.01.2017 as per Ext.P362 series
58.	MO58	-	Summons to Accused issued by JFCM, Kunnumpuram dated 12.02.2016 as per Ext.P362 series
59.	MO59	-	Customer ID Slip of Manappuram Finance Ltd, Vazhakkala dated 10.02.2017 as per Ext.P362 series
60.	MO60	-	Agreement regarding Vehicle No.KL-7-BX 2065 Pleasure Scooter dated 16.11.2015 as per Ext.P362 series
61.	MO61	-	Bill for ₹300/- issued from PKV Transports & Agency dated 14.02.2017 as per Ext.P362 series
62.	MO62	-	Receipt for ₹2,500/- issued by Airtel in favour of A1 dated 13.07.2016 as per Ext.P362 series
63.	MO63	-	Service slip for vehicle issued by Focus Bi Wheelers, Nettoor as per Ext.P362 series
64.	MO64 series	-	Consent letter & receipt issued from Muthoot Finance Ltd dated 29.08.2016as per Ext.P362 series
65.	MO65	-	Star Matrix model Mobile phone made by Ziox Company (T79/17- List -8-Item 15)
66.	MO66	-	Black Motor Cycle bearing No.TN-4-R 1496 (T93/17- List -8-Item 1)

67.	MO67	-	Black & white photo (T87/17- List -3-Item 1)
68.	MO68	-	Passport size colour photo(T87/17- List -3-Item 2)
69.	MO69	-	Samsung Company Duos model black mobile phone(T87/17- List -III-Item 3)
70.	MO70	-	White colour Tab (Slice Brand)(T87/17- List -III-Item 4)
71.	MO71	-	SIM Card of BSNL No. 8991803114451136130(T87/17- List -III-Item 5)
72.	MO72	-	Vodafone SIM Card No. 8991430003BL293992703 (T87/17- List -III-Item 5)
73.	MO73	-	Key for the bike (T87/17- List -III-Item 6)
74.	MO74	-	Blue colour full sleeve shirt (T87/17- List -III-Item 7)
75.	MO75	-	SSLC Book of A7 as per Ext.P410 series
76.	MO76 series	-	National Trade Certificate & ITI Certificate of A7 as per Ext.P410 series
77.	MO77 series	-	Certificates & Connected records of A7as per Ext.P410 series
78.	MO78	-	Driving license of PW24 as per Ext.P410 series
79.	MO79	-	Tata Ace vehicle bearing No.KL 35-E-8223(T-76/17 List I-Item 1)
80.	MO80	-	Ladies Comb – (T 65/17-List I-Item 2).
81.	MO81series	-	Car floor mats (5 Nos) (T 65/17-List I-Item 7)
82.	MO82	-	Kavi Mundu (T 65/17-List II-Item 2)
83.	MO83	-	Oppo brand white and gold colour mobile phone (T 294/17-Item No.1)
84.	MO84	-	Biege colour Mobile phone (T 252/17-List I)
85.	MO85	-	Micromax branded smart phone (T 275/17-Item- I)

86.	MO86	-	White color Samsung mobile phone (T 231/17-Item- III)
87.	MO87	-	Orange color 'FORME' phone (T 231/17-Item- I)
88.	MO88	-	Pleasure scooter Chase No. bearing No.KL-07-BF 2538(T 79/17-List I- Item 2).
89.	MO89	-	Hero Honda black color passion motor cycle bearing No.KL-04-M 5492 (T 79/17-List I- Item 1).
90.	MO90	-	Mobile phone in black color made in brand Lemon (T 244/17-Item- I).
91.	MO91	-	Black and white color Karbon mobile phone (T 244/17-Item- II).
92.	MO92 series	-	Samsung S6 & S7 mobile phones (2 Nos) (T 331/17-Item- I&II).
93.	MO93	-	Red and black Bag (T 79/17- List-7-Item- I)
94.	MO94 series	-	Red colour puma shoes (1 pair) (T 79/17- List-7-Item- II)
95.	MO95 series	-	Wood land pro-planet shoes (1 pair) (T 79/17- List-7-Item- 3)
96.	MO96 series	-	Socks (1 pair) made by puma (T 79/17- List-7-Item-4)
97.	MO97	-	Bed sheet in light yellow & Red colour (T 79/17-List-7-Item- 5)
98.	MO98	-	White double mundu (T 79/17- List-7-Item- 6)
99.	MO99	-	Blue green & white color check shirt in the brand Allen Solly (T 79/17- List-7-Item- 7)
100.	MO100	-	Black color Jacket (T 79/17- List-7-Item- 9)
101.	MO101 series	-	Power adapter BELKIN compnay + ELPLUS power adaper (T 79/17- List-7-Item- I 10 & 11)
102.	MO102	-	Cigarette lighters (3 Nos) (T 79/17- List-7-Item- 12)

	series		
103.	MO103	-	Plastic Bag with red, yellow, green white lines (T 79/17- List-7-Item- 13)
104.	MO104	-	White cover containing post card size photo of a lady (T 79/17- List-7-Item- 14)
105.	MO105	-	Cover of Vodafone Company noted Mobile No.8489181715 (T 79/17- List-7-Item- 16)
106.	MO106	-	Sandisk 8 GB Memory card (T 79/17- List-7-Item- 17)
107.	MO107	-	Nano model SIM Card of Idea Cellular Company (T 79/17- List-7-Item- 18)
108.	MO108	-	Medium model SIM Card of Idea Cellular Company (T 79/17- List-7-Item- 19)
109.	MO109	-	Medium size SIM Card of Airtel Company (T 79/17- List-7-Item- 20)
110.	MO110	-	Medium type SIM Card of BSNL Company (T 79/17- List-7-Item- 21)
111.	MO111 series	-	Frame of SIM Card storage (2 Nos) (T 79/17- List-7-Item- 22)
112.	MO112	-	White colour Memory Card reader with writing 'AKASAKI' (T 79/17- List-7-Item- 23)
113.	MO113	-	Samsung SD adapter and Sandisk 1GB Memory Card in a plastic box (T 79/17- List-7-Item- 24)
114.	MO113 series	-	Paper pieces obtained from MO93 bag (2 Nos) (T 79/17- List-7-Item- 24)
115.	MO114	-	Black color Nokia Mobile phone without sim (T 69/17- List-I-Item- 1)
116.	MO115	-	Maroon Color purse (T 69/17- List-I-Item- 2)
117.	MO116	-	ATM Card of South Indian Bank (T 69/17- List-I-Item- 3)

118.	MO117	-	Laminated copy of Driving License of A2 (T 69/17-List-I-Item- 4)
119.	MO118 series	-	Currency notes 100x6 & 20x1 (T 69/17- List-I-Item-5& 6)
120.	MO119	-	Red and black color bag (T 79/17- List-6-Item- 1)
121.	MO120	-	White color track suit pants (T 79/17- List-6-Item-3)
122.	MO121	-	Black color Jacket (T 79/17- List-6-Item- 4)
123.	MO122 series	-	Red and silver color Vistar brand helmet and helmet without visor in the brand Rocker (T 79/17-List-6-Item- 5&6)
124.	MO123	-	'Nokia' Mobile feature phone (Black colour) (T 303/17- Item- 1)
125.	MO124	-	'Honor' smart phone golden colour (T 303/17-Item-2)
126.	MO125 series	-	Samsung make Golden colour phone and Black colour Redmi make mobile phone (T 289/17-Item-1&2)
127.	MO126	-	Black colour Samsung Mobile Phone (T 76/17-List-3-Item- 5)
128.	MO127	-	Black colour Nokia Mobile Phone(T 76/17-List-3-Item- 6)
129.	MO128	-	Nokia Mobile Phone (IMEI No.358323035672991) (T 83/17-List-2-Item- 3)
130.	MO129	-	Lava Mobile Phone(T 83/17-List-2-Item- 2)
131.	MO130	-	White colour VIVO Mobile Phone (T 87/17-List-4-Item- 1)
132.	MO131	-	Samsung white colour mobile phone(T 304/17-Item-1)

133.	MO132	-	Apple i phone black colour (T 304/17-Item- 2)
134.	MO133	-	Black colour Bag(T 76/17- List 3)
135.	MO134 series	-	Shirt, Over Coat, Jeans (T 76/17- List 3-Item2,3 & 4)
136.	MO135	-	Brown colour Purse (T 76/17- List 3-Item 8)
137.	MO136	-	SBI ATM Card No.5103720032535872 (T 76/17- List 3-Item 10)
138.	MO137 series	-	SIM Cards (2 Nos.) Reliance and BSNL (T 76/17- List 3-Item 11&12)
139.	MO138	-	Black Colour T-Shirt (T 76/17- List 2-Item 1)
140.	MO139	-	Jeans blue colour (T 76/17- List 2-Item 2)
141.	MO140	-	White colour Belt (T 76/17- List 2-Item 3)
142.	MO141 series	-	Cream colour Pant & full sleeve with cream and blue stripes Shirt (2 Nos) (T 79/17- List 5-Item 1&2)
143.	MO 142	-	Black Micromax Mobile phone (T 83/17- List 1-Item 1)

Id/-

SESSIONS JUDGE

Typed by:Sheeja
comp. by :Rajani

// True Copy //
(By Order)
SUPERINTENDENT

Sessions Case No. 118 of 2018

Judgment dated --- 12 .12.2025



// True Copy //
(By Order)

SHERISTADAR