IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 02ND DAY OF AUGUST 2019 / 11TH SRAVANA, 1941

Bail Appl..No.5055 of 2019

CRIME NO.1104/2018 OF Paravoor Police Station , Kollam

PETITIONER/S:

MOHAMMED SHAMEER ALI
AGED 23 YEARS
S/O.BUSAINA.S, PANAMTHODIYIL, THEKKUMBHAGOM,
PARAVOOR.P.O., KOLLAM-691301.

BY ADV. SRI.M.RAJESH

RESPONDENT/S:

1 STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031.

2 THE SUB INSPECTOR OF POLICE,
PARAVOOR POLICE STATION, KOLLAM (DIS)-691301.

OTHER PRESENT:

SRI.SAIGI JACOB PALATTY, PUBLIC PROSECUTOR
SRI.S.PRASUN, AMICUS CURIAE

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 29.7.2019, THE COURT ON 2.08.2019 PASSED THE FOLLOWING:

ALEXANDER THOMAS, J. **(C.R)**

==========

B.A.No. 5055 of 2019

==========

Dated this the 2nd day of August, 2019

O R D E R

The petitioner has been arrayed as the sole accused in the instant Crime No. 1104/2018 of Paravoor Police Station, which has been registered for offences punishable under Sec. 354 and 354A of the I.P.C. The letter said to have been sent by the lady defacto complainant in this case addressed to the Director General of Police, on 26.11.2018 has been treated as the FI (First Information) statement for registering the above crime. The lady defacto complainant in this case, D[redacted]aged 27 years, is a dental surgeon, who is permanently residing in the State of Chhattisgarh.

2. The gist of the allegations raised in the above crime is that with the intention of subjecting the lady defacto complainant to sexual assault, the petitioner accused aged 23 years, had made friendship with her through Facebook using a false name and invited her to Dubai and consequent to this, she had gone Dubai on 17.5.2018 alone and made her to stay in a Beach Cluster in Dubai till 29th May, 2018 and that she was practically confined there without even taking her outside except on an occasion, and that he had changed her

Facebook profile and that he had assaulted her sexually and humiliated and manhandled her by slapping on her face. Further he has created a false Facebook id in her name and that he had exchanged her phone with him and collected all her personal details and troubling her again and again and that he started contacted her friends to disturb her and that he started blackmailing her for ransom through phone messages and he used to send various messages to her in different numbers and that he started uploading her intimate pictures with him in her Instagram ID, which all her friends could see and her friends have contacted her regarding that and that because of the said acts of the accused, she thought of even committing suicide, but that her uncle, who is in Dubai, and some of her family members had given her support and that he is continuously troubling her by sending messages to many of her friends and sharing her pictures misusing social networking and cell phones and that he is threatening her with dire consequences and that he is spreading false scandals against her without any rhyme or reason and continuously disturbing her life and her profession and that from the abovesaid subsequent conduct of the accused, it is clear that he had deceitful intention from the very beginning of his relationship with her, etc.

3. Sri.M.Rajesh, learned counsel appearing for the petitioner would point out that the abovesaid allegations raised by the lady defacto complainant against the petitioner are false and baseless and that the petitioner accused happened to be her friend through social media and that in March 2017, it was she who informed the petitioner that she will be arriving in Dubai to meet her uncle, who is there and sought his assistance in finding suitable placement in Dubai and that she came to Dubai in May, 2018 and started residing with her uncle. That after some days, she informed the petitioner that it is not safe for her to reside with her uncle as he made some derogatory remarks and had made sexual advances towards her frequently and she wanted the help of the petitioner for suitable accommodation and that he had arranged accommodation for her with certain women nurses in Dubai, who hail from Kerala. Thereafter, the defacto complainant wanted his further help to find out a suitable placement for her as a Dental Surgeon and despite his search, she could not find any suitable placement for her and then she said that she wants to return back to India and she is not having any money and had borrowed Rs. 1.5 lakh from him for her air ticket and other expenses, with the assurance that the said amount would be returned to him immediately after her arrival in India. That with great difficulty, the

petitioner managed to raise money by borrowing from his roommates and friends and gave her the money and later, after she reached back India, there was no sign of returning back of the money and the petitioner was constrained to make frequent telephone calls to her to return back the money, which enraged her and it is only to get over her financial liability that she is making the instant allegations to implicate the petitioner in a false case and scare him away. The victim, who is based in Chhattisgarh State, has given the so-called complaint to the Director General Police, in Chhattisgarh State, which was forwarded to the State Police Chief, Kerala and her letter was treated as FIS in the instant case and that on enquiry, the petitioner could find out that despite frequent notices and summons issued by the investigating officer and other Police authorities, she has not even cared to report before the investigating officer for recording her statement and further that the entire crime has been registered on the basis of a letter said to have been sent by her from Chhattisgarh addressed to the Director General of Police, Kerala. That in such case, even the very registration of a crime is improper, inasmuch as it could happen in many cases that anyone can represent as if he is a third person and can send a letter by post to the Police authorities making allegations of commission of offence by some others and in

such a case, the so-called actual complainant may not be in any manner interested in the complaint and if such letters are treated as the basis for registering FIR and crime, it would lead to mischievous consequence and that in such cases, it is the bounden duty of the Police, after getting such a letter to make an entry in that regard in the general diary (GD) and then conduct some inquiry and the Police could take Sec. 161 statement from the person, who claims to be the sender of the letter, and if the said person confirms that it was he/she, who had sent the letter and also confirms the allegations therein, then crime could be registered, as otherwise registering of crimes for sexual offences mainly on the basis of a letter sent by post, will have its own mischievous consequences. That in the instant case, it is learnt that the lady defacto complainant has not even bothered to various notices and summons issued by the Police and she has not even bothered to give Sec. 161 Cr.P.C. statement confirming the allegations in the abovesaid letter and that therefore the very registration of the crime or at least the further action taken thereon appears to be illegal and improper. That at any rate, even if the abovesaid allegations are assumed to be correct, it does not disclose any serious non-bailable offences and that at any rate, custodial interrogation of the petitioner accused is not necessary for the smooth

and effective conduct of the investigation in respect of the allegations in the instant crime.

4. Further, Sri.M.Rajesh, the learned counsel appearing for the petitioner accused would pertinently contend that a mere reading of the allegations in the abovesaid letter, which has been treated as FIS in the instant crime, would disclose that almost all the alleged incidents therein had happened in Dubai and that, as the abovesaid allegations in the instant crime have happened outside the territorial limits of the Union of India, the mandatory provisions contained in Sec.188 of the Cr.P.C. would regulate the scenario and that by virtue of the proviso appended to the operative portion of Sec.188 of the Cr.P.C. which provides that notwithstanding anything contained in any of the preceding sections of the Chapter in which Sec. 188 is included, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government. In that regard it is pointed out that this Court in the order dated 23.3.2018 in Bail Application No.581/2018 in the case in ***Sanoop v. State of Kerala*** [2018 (2) KLT 338] that in case sanction of the central Government under the operative portion of Sec. 188 Cr.P.C. is not obtained, inquiry and trial of the case is completely barred by virtue of proviso to Sec. 188 of the Cr.P.C. and that though investigation in

such cases is permitted even in the absence of such sanction, judicial proceedings under Sec.161(2) of the Cr.P.C. which deals with remand, consideration of remand, etc. are proceedings which are judicial in nature, where the Magistrate has to act in a judicial capacity and therefore, such judicial proceedings in matters pertaining to remand as envisaged in Sec. 161(2) is part of the "inquiry", which comes within the broad sweep of Sec. 2(g) of Cr.P.C. and the proviso to Sec. 188 of the Cr.P.C. and that therefore, since such "inquiry proceedings" by the Magistrates are barred by virtue of the abovesaid proviso to Sec.188 Cr.P.C., the Magistrates are even barred from taking a decision on a bail application to be considered at the time of remand, consequent to the arrest and that therefore arrest and detention of an accused in such cases, where the offences have been committed outside India, are totally barred, etc. In the case in ***Sanoop v. State of Kerala*** [2018(2) KLT 338], this Court dealt with a matter, where the allegations in the crime are allegedly occurred in Dubai and in view of the abovesaid view, this Court has thus held that the arrest and detention of an accused in such cases where the offence has been committed outside India, is not legally permissible unless the sanction of the Central Government has been obtained as envisaged in the operative portion of Sec.188 of the

Cr.P.C. and on this premise, this Court had directed that anticipatory bail should be granted to the accused therein. The learned counsel for the petitioner would point out that the facts in the present case are almost identical to the facts in the case in ***Sanoop's case*** supra and that this Court may order and declare that other than the formal investigation, the Police authorities have no authority to arrest and detain the petitioner accused in this case, as indisputably, the sanction of the Central Government under Sec. 188 of the Cr.P.C. has not been obtained and that such directions may be issued by this Court as already ordered by this Court in ***Sanoop's case*** supra .

5. Sri.S.Prasun, learned Advocate of this Court has assisted this Court as Amicus Curiae. Sri.Saigi Jacob Palatty, learned Prosecutor appearing for the respondent State, has opposed the plea for anticipatory bail. Sri.S.Prasun, learned Amicus Curiae as well as the learned Prosecutor have pointed out that the decision of this Court in ***Sanoop's case*** supra [2018 (2) KLT 338] does not reflect the correct legal position and is per incuriam as it is against the series of judgments of this Court including that of Single Benches, Division Benches and Full Bench and also against the dictum well settled regarding the scope and ambit of Sec. 188 of the Cr.P.C., by various decisions of the Apex Court and is against the dictum laid down by

Apex Court on the scope and ambit of “inquiry” as per Sec. 2(g) and that of Sec. 188 Cr.P.C. in various decisions as in Ajay Aggarwal v. UIO & Ors. [AIR 1993 SC 1637 = (1993) 3 SCC 609, Thota Venkaterswarlu v. State of A.P (3-Judges Bench) [(2011) 9 SCC 527 = 2011 (3) KLT 909 (SC)], Hardeep Singh & Ors. v. State of Punjab & Ors. (5-Judges Bench) [(2014) 3 SCC 92], etc. In that regard, it is pertinently urged by both the learned Amicus Curiae and the learned Prosecutor that this Court may consider the plea for anticipatory bail independently and may consider whether discretionary relief of anticipatory bail is to be granted in this case, but that even if the plea for anticipatory bail is allowed, this Court may not order and declare that the power of arrest and detention is not available to the Police authorities in cases like this where the offence has been allegedly committed outside India as what is barred under the proviso to Sec. 188 of the Cr.P.C. is only the conduct of inquiry and trial in case, sanction of the Central Government is not obtained and that investigation is not in any manner fettered or hampered by the restriction as per the proviso to Sec. 188 Cr.P.C. on account of the absence of sanction of the Central Government and full freedom and power is conferred on the Police to conduct investigation in such cases and all steps in the investigation process right from the

commencement of the registration of the crime, collection of evidence, questioning of witnesses, arrest of accused persons, custodial interrogation, seizure of document and various other steps upto the conclusion of the investigation process by the filing of the final report, is fully available to the Police authorities for conducting investigation even in offences which are otherwise coming within the ambit of Sec. 188 of the Cr.P.C.

6. In view of the abovesaid legal contentions posed from either side, this Court proposes to consider as preliminary issue as to whether the power of arrest and detention is available to the Police authorities in cases like the present one, where the allegations pertain to commission of offences allegedly committed outside India, where sanction of the Central as per Sec. 188 of the Cr.P.C. has not been obtained.

7. At the outset it may be pertinent to refer some of the relevant provisions of the I.P.C. Sec.3 of the I.P.C, which deals with punishment of offences committed beyond, but which by law may be tried within, India, reads as follows:

> *"Sec.3: Punishment of offences committed beyond, but which by law may be tried within, India. Any person liable, by any Indian law to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India."*

Sec. 4 of the I.P.C. which deals with Extension of Indian Penal Code to extra territorial offences, provides as follows:

> ***"Sec.4:Extension of Code to extra-territorial offences.-*** *The provisions of this Code apply also to any offence committed by -*
>
> *(1) Any citizen of India in any place without and beyond India;*
>
> *(2) Any person on any ship or aircraft registered in India wherever it may be;*
>
> *(3) any person on any place without and beyond India committing offence targeting a computer resource located in India.*
>
> *Explanation.-In this section-*
>
> *(a) the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code;*
>
> *(b) the expression "computer resource" shall have the meaning assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000)."*

8. Sec. 4 of the Code of Criminal Procedure 1973, which deals with trial of offences under the Indian Penal Code and other law, reads as follows:

> ***"Sec.4: Trial of offences under the Indian Penal Code and other laws,*** *(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*
>
> *(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."*

Sec. 2 of the Cr.P.C. deals with definition clauses. Clauses (g) (h) and (i) of Sec.2 which deal with "inquiry" and "investigation" and "judicial proceeding" provide as follows:

> "2. *In this Code, unless the context otherwise requires,*-
>
> (a).....
> xxx xxx xxx
>
> *(g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;*

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

(i) "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath;"

emphasis supplied.

Sec. 188 of the Code of Criminal Procedure provides as follows:

"Sec.188: Offence committed outside India.- When an offence is committed outside India--
(a) by a citizen of India, whether on the high seas or elsewhere; or
(b) by a person, not being such citizen, on any ship or aircraft registered in India,

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

9. A learned Single Judge of this Court (K.T.Thomas, J., as His Lordship then was) in the decision in Remla v. S.P., [1993 (1) KLT 412] dealt with a case, where a complaint was filed by the widow and brother of the deceased before the Police stating that the suspect, one Aji, was said to have murdered the deceased (Sulaiman) at Sharjah and the said complaint/petition was not accepted by the Police, on the ground that the alleged offence was committed outside India. The petitioners therein filed a Writ Petition for directing the Police to prepare FIR and register the crime on the basis of the said complaint and commence investigation. The respondent State took the stand that the action of the Police in refusing to register the crime is correct

inasmuch as the Police authorities in the State cannot investigate into an offence committed beyond the territories of the Union of India. Hon'ble Mr.Justice K.T.Thomas, while rendering the judgment in Remla' case supra, after referring to the provisions contained in Secs. 3, 177 and 188 of the Cr.P.C. as well as the judgments of the Apex Court in the cases as in State of ***West Bengal v. Jugal Kishore (AIR 1969 SC 1171), Nikka Singh v. State*** (AIR 1952 Punj. 186) and ***Narumal v. State of Bombay*** *(MR* 1960 SC 1329), held that the proviso to S.188 casts an obligation to obtain previous sanction of the Central Government to enquire into and try such person and that Sec. 188 has a message that for the pre-inquiry stage, no such sanction is needed. It was held by this Court in Remla's case [1993 (1) KLT 412], as follows:

> *"Section 3 of the Penal Code helps the authorities in India to proceed by treating the offence as one committed within India. No doubt, it is by a fiction that such an assumption is made. But such a fiction was found necessary for practical purposes. S. 3 of the Penal Code was found insufficient for police authorities to investigate into the offence. It was in the aforesaid context that S. 188 has been incorporated in the Procedure Code. No doubt, S. 188 concerns as to how to deal with a person who has committed an offence outside India. Since the proviso casts an obligation to obtain previous sanction of the Central Government to inquire into and try such person, the section has a message that for the pre-inquiry stage, no such sanction is needed. The pre-inquiry stage substantially relates to investigation of the crime. If there is any stage in which an offender can be dealt with before commencement of inquiry, it must be the investigation stage. During such investigation stage, if the person (known or reasonably suspected to be the offender having committed the offence outside India) is not available in India, extradiction proceedings may have to be resorted to."*

10. On the abovesaid basis, this Court in Remla's case supra had directed the Police authorities to conduct investigation into the

offence notwithstanding the fact that the place of occurrence is Sharjah, the person against on whom the allegations of commission of offence is said to be a citizen of India.

11. A Division Bench of this Court comprising of M.Jagannadha Rao, C.J. & K.G.Balakrishnan, J., (as their Lordships then were), in the celebrated case in ***Mohammed v. State of Kerala*** [1994 (1) KLT 464] has dealt with a question as to whether the Police authorities in the State of Kerala can conduct investigation in cases, where the offences have been committed outside India. The complaint therein was that the petitioner therein while working as Manager in the shop of the respondent therein had diverted to his account, large sums of money, which was equivalent to about Rs.90 lakhs. It was alleged that the money acquired by the abovesaid misappropriation was brought to India through various banks to his accounts and some money was allegedly smuggled into India by clandestine methods and that the abovesaid acts amounted to dishonest misappropriation, criminal breach of trust and cheating and the petitioner therein (accused) then contended that since admittedly offence has taken place in a foreign country, the Police authorities in India have no power to conduct investigation. The respondent State then took the stand that under Sec. 188 Cr.P.C. the

Police can, “deal with the offender” and the said words include investigation also and that as such, the investigation does not require the sanction of the Central Government. The Division Bench dealt initially with various aspects regarding the territorial principle, protective or security principle, nationality or citizenship principle and Sec. 4 of the I.P.C. The second point dealt with is the scope and ambit of Sec. 4 of the I.P.C. read with Secs. 4, 188, 2(g) and 2(h) of the Cr.P.C. The decisions reported in ***Empress v. Manganlal*** (ILR 6 Bom. 622), ***Narayaii v. Emperor*** (AIR 1935 Bom. 437), ***Central Bank of India Ltd. v. Ram Narain*** (AIR 1955 SC 36), ***Ajay Aggarwal v. Union of India*** (AIR 1993 SC 1637 = 1993 SCC Cri. 961), ***Delhi Administration v. Ram Singh*** (AIR 1962 SC 63) ***C.I.T. v. Ahmedabhai Umarbhai*** (AIR 1950 SC 134), ***M/s. Frick India Ltd. v. UOI*** (AIR 1990 SC 689) and **Sahebrao v. Suryabhan Ziblazi** (AIR 1948 Nag. 251) were also relied on. While approving the view taken by the learned Single Judge in Remla's case, the Division Bench in Mohammed's case supra [1994 (1) KLT 464] has held that the Police in the State of Kerala can conduct investigation into offences committed abroad and no sanction of the Central Government is necessary for the said purpose. The Division Bench also dealt with the impact of the words ‘dealt with’ appearing

in the main part of the Cr.P.C. and while referring to Sec.4 Cr.P.C, and the words 'deal with', the Division Bench has clearly held that the words 'dealt with' in Sec. 188 Cr.P.C, must be held to include 'investigation' also, and the restriction imposed by the proviso to Sec.188 Cr.P.C. can be only in respect of 'inquiry' and 'trial' and for the purpose of 'investigation' into offences committed abroad, sanction of the Central Government is not necessary. It also held that S. 188 Cr.P.C, is complementary to Sec. 4 IPC and must cover the procedure relating to investigation and also the scope and ambit of the main part of Sec. 188 Cr.P.C. cannot be controlled by the proviso. Holding so, the Division Bench concurred with the view taken in *Remla's* case that the bar as per the proviso to Sec.188 can be only in relation to conduct of inquiry and trial and the said proviso cannot impose any restriction on the powers of the Police to the conduct of investigation into such offences committed outside India and that sanction of the Central Government as per Sec. 188 Cr.P.C. for offences committed outside India would only be required in the matter of inquiry and trial and not for investigation.

12. Later, a learned Single Judge of this Court in the decision in ***Samarudeen v. Asst. Director of Enforcement*** [1995 (1) KLT 468] has held that the view earlier taken by the learned Single

Judge of this Court in ***Remla's case*** supra [1993 (1) KLT 412] and by the Division Bench in ***Mohammed v. State of Kerala*** [1994 (1) KLT 464] are not correct and tenable and has not been rendered after appreciating the relevant provisions in the Cr.P.C. in the correct perspective and it was held in the said case that this Court does not have the jurisdiction to issue the writ as prayed for, both on the ground of want of jurisdiction as the offence was committed outside the territorial limits of this Court and also on the ground that Sec. 188 Cr.P.C. does not clothe the Police with the power to investigate such offences committed outside India.

13. Aggrieved by the dismissal of the said Writ Petition, the unsuccessful writ petitioner therein filed writ appeal before the Division Bench of this Court and the matter was referred for the consideration of the Full Bench of this Court. The Full Bench of this Court [comprising of A.R.Lakshmanan, Ag. C.J. (as His Lordship then was), S.Sankarasubban & C.S.Rajan, JJ.] rendered the judgment of the writ appeal in the case in ***Samaruddin v. Assistant Director of Enforcement*** [1999(2) KLT 794 (FB)], whereby the Full Bench has approved the views rendered by the learned Single Judge of this Court in Remla's case supra [1993 (1) KLT 412] as well as by the Division Bench of this Court in ***Mohammed's case*** supra [1994 (1)

KLT 464] and consequently, held that the view to the contrary taken by the learned Single Judge in the judgment under appeal [1995 (1) KLT 468] is clearly unsustainable and legally wrong and therefore thus set aside the impugned judgment and allowed the writ appeal. The Full Bench held in ***Samaruddin's case*** supra held that it was not right and proper on the part of the learned Single Judge in the judgment under appeal dealt in ***Samarudeen v. Asst. Director of Enforcement*** [1995 (1) KLT 468) to have overlooked in taking a view contrary to the decision already rendered by this Court in Remla's case [1993 (1) KLT 412] and Muhammed case's supra [1994 (1) KLT 464 (DB).].

14. It will be pertinent to refer to paragraphs 24 and 25 of the decision of the Division Bench in Muhammed's case supra [1994 (1) KLT 464], which read as follows:

> *"24. The word 'deal with' in the main part of S.188 Cr.P.C, in our view, used in a wide sense. While the proviso to S.188 Cr.P.C. requires sanction of the Central Government for purposes of 'inquiry' and 'trial', the words 'deal with' in the main part must necessarily include at least 'inquiry' and 'trial'. The words 'deal with' in S.4 of the Cr.P.C., referred to above, as amounting to something other than 'investigation', 'inquiry' and 'trial', therefore, false to the ground in fact, even while construing S.4 Cr.P.C., the Supreme Court has stated in Delhi Administration v. Ram Singh (AIR 1962 SC 63), that the words 'deal with' in that section include not only 'investigation', 'inquiry' and 'trial' but other aspects also. In view of the said decision of the Supreme Court, the words 'dealt with' in S.188 Cr. P.C., must be held to include 'investigation' also, apart from 'inquiry' and 'trial'. For purposes of 'investigation' into offences committed abroad, sanction of the Central Government is not necessary.*
>
> *25. It is true S.188 Cr.P.C., is in Chap.XIII dealing with 'inquiry' and 'trial'. But, that, in our opinion, is not conclusive. On the other hand, S.I88 Cr.P.C is complimentary to S.4 I.P.C. and must cover the procedure*

> *relating to 'investigation' also. Headings of Chapters are external aids and can bje resorted to only if there is any ambiguity in the inacting words. Further, the scope and ambit of the main part of S.188 Cr.P.C., cannot be controlled by the proviso. The words 'dealt with' in the main part cannot be restricted to 'inquiry' and 'trial' used in the proviso."*

15. It was held by the Full Bench in ***Samaruddin's case*** supra that the learned Single Judge ought not to have overlooked and ignored the binding precedents of this Court in Muhammed's case supra and categorically held that the Police can conduct investigation into offences committed outside India and no sanction from the Central Government as per Sec. 188 of the Cr.P.C. is required for such investigation, etc.

16. Later, a learned Single Judge of this Court referred a matter to the consideration of the Division Bench on the issue as to whether the views rendered by the Division Bench in Muhammed case's and by the Full Bench in Sumaruddin's case supra require reconsideration in the light of the observations made by the Apex Court in the case in ***CBI v. State of Rajasthan***, [AIR 1996 SC 2402]. The said matter so referred has been dealt with by the Division Bench in the judgment in ***Muhammed Rafi. v. State of Kerala*** [2009(1) KLT 943]. The Division Bench in ***Muhammed Rafi's case*** supra held that the decision of the Apex Court in ***CBI v. State of Rajasthan*** (AIR 1996 SC 2402] dealt with the contention as to

whether the members of the Delhi Special Police Establishment Act, who are otherwise authorised to exercise the power of investigation, in the offences or offences as prescribed in Sec.3 of the Delhi Special Police Establishment Act within the union territory, can deal with a case where admittedly no notification was issued under the Foreign Exchange Regulation Act, (FERA) authorising a member of the Delhi Special Police Establishment (DSPE) to discharge duties and functions of an officer of the enforcement directorate and the issue was as to whether the officers under the DSPE Act can conduct investigation into an offence under the FERA stated to have been committed outside India, etc. The Apex Court held in ***CBI v. State of Rajasthan*** (AIR 1996 SC 2402) that FERA is a special legislation relating to regulation of foreign exchange and enacted at a point of time later than the DSPE Act and it was held that Secs.4 and 5 of the Cr.P.C. will not come in the aid of investigation of offences under FERA by a member of the Police force or the officer of the DSPE in accordance with the Cr.P.C., etc. Accordingly, the Division Bench of this Court ***Muhammed Rafi's case*** supra [2009 (1) KLT 943] held that the said decision of the Apex Court in ***CBI v. State of Rajasthan*** (AIR 1996 SC 2402) has no bearing on the issue as to the powers of the Police of a State to conduct the investigation in respect

of offences committed outside India, as envisaged in Sec. 188 of the Cr.P.C. The Division Bench in ***Muhammed Rafi's case*** supra has conclusively held and reiterated that the law on the point already declared by the learned Single Judge of this Court in ***Remla v. SP*** [1993 (1) KLT 412] and by the Division Bench in ***Muhammed v. State of Kerala*** [1994 (1) KLT 464] and by the Full Bench of this Court in ***Samaruddin v. Assistant Director & Ors.*** [1999(2) KLT 794 FB] reflect the correct legal position and that the Police officers have the full power to conduct investigation in respect of the offences committed outside India as per Sec. 188 of the Cr.P.C. and the bar in the proviso to Sec. 188 Cr.P.C. is only in respect of "inquiry" and "trial" and not in respect of the investigation of the case and held that the investigation into offences committed outside India as envisaged in Sec.188 of the Cr.P.C. does not require the prior sanction of the Central Government.

17. A Full Bench of the Patna High Court in the case in ***Rabindra Rai v. State of Bihar*** [1984 Crl.L.J. 1412] after referring to the decisions of the Apex Court in ***State of U.P. v. Lakshmi Brahman*** [AIR 1983 SC 4390] and a judgment of the Patna High Court in ***Dalu Gour v. Moheswar Mahato*** [AIR 1948 Patna 25], has held as follows:-

> *"In view of the clear enunciation of the position that an inquiry within the meaning of S. 2(g) of the Code shall deem to have commenced since the submission of the police report, and shall continue till an order of commitment is made under S. 209, it is difficult for this Court to hold that such inquiry shall commence only after a formal order is passed by the Magistrate saying that cognizance has been taken. Once it is held that inquiry commences since the submission of the police report-charge/sheet there should not be any difficulty in holding that the Magistrate has during that period power to remand the accused in terms of sub-sec. (2) of S. 309 of the Code ".*

18. In ***Vijaya Saradhi Vagya v. Deci Sriroopa Madapati*** [2007 Crl.L.J. 636] a learned Single Judge of the Andhra Pradesh High Court held that the word "inquiry" used in the proviso to Sec. 188 Cr.P.C. is confined to the proceeding before the Magistrate prior to trial alone but cannot be extended to investigation by the police and that the bar under the proviso to Sec.188 Cr.P.C. will operate to enquiry before the Magistrate after the police laid the charge-sheet for the offence.

19. After referring to the abovesaid decision of the Full Bench of the Patna High Court and that of the learned Single Judge of the Andhra Pradesh High Court, a learned Single Judge of this Court in the case in ***C.V.Padmarajan v. Government of Kerala & Ors.*** [2009(1) ILR. Ker.36] = 2009 (1) KHC 65 = 2009 (1) KLT Suppl. 1], has held in para 20 thereof that the impugned action therein of the special Judge in applying his judicial mind to the police report and deciding to take cognizance of the offences and issuing process to the

accused under Sec.204 Cr.P.C. will certainly be part of the "inquiry" which is barred unless the prior sanction of the Central Government has been obtanied in terms of Sec.188 of the Cr.P.C. in respect of the offences committed outside India. On this basis, it was held by this Court in ***C.V.Padmarajan's case*** supra that the petitioners therein are well founded in their contentions that the special judge was acting without jurisdiction by holding “inquiry” as per proviso Sec. 188 of the Cr.P.C. without prior sanction of the Central Government as envisaged in the proviso to Sec. 188 of the Cr.P.C. and cognizance taken and summons issued by the special court were thus quashed. Incidentally, it may be relevant to note that this Court in paras 15 and 18 of the judgment in ***C.V.Padmarajan's case*** (see ILR report) has discussed about the judgment of the Apex Court in ***Ajay Aggarwal & Ors. v. UOI & ors.*** [(1993) 3 SCC 609] and has noted in para 18 thereof that the Apex Court in para 27 of the ***Ajay Aggarwal's case*** supra has held that prior sanction of the Central Government as per the proviso to Sec. 188 of the Cr.P.C. is not a condition precedent for taking cognizance of the offence and that if need be, such sanction could be obtained after the trial begins, etc. However, this Court has observed in para 18 of the decision in ***C.V.Padmaraj's case*** supra that a perusal of the facts of the case dealt with by the Apex Court in

Ajay Aggarwal's case supra would make it clear the offences in that case were committed at Chandigarh in India and not outside India and therefore, Sec. 188 of the Cr.P.C. was not attracted and held that it was actually not necessary for the Apex Court to consider and the stage at which the previous sanction of the Central Government as per the proviso to Sec. 188 was to be obtained and that hence the observations of the Apex Court in para 27 in ***Ajay Aggarwal's case*** supra, is only an obiter dictum which cannot be treated as law laid down by the Apex Court within the meaning of Art.141 of the Constitution of India. This Court in para 18 of the ***C.V.Padmarajan's*** case supra has also specifically noted that the Full Bench decision of this Court in ***Samaruddin v. Asst. Director of Enforcement*** [1999 (2) KLT 794] has held after referring to the authorities including ***Ajay Aggarwal's case*** supra that no sanction under the proviso to Sec. 188 Cr.P.C. is needed at the pre-inquiry stage which is the stage of investigation.

20. A 3-Judge Bench of the Apex Court in the case in ***Thota Venkaterswarlu v State of A.P.*** [(2011) 9 SCC 527] has held in para 14 to 16 thereof that the stipulation in the proviso to Sec. 188 of the Cr.P.C. regarding sanction is a fetter which would apply only when the stage of trial is reached and that it clearly indicates that no

sanction is required till the commencement of the trial in respect of offences committed outside India and upto the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Sec. 188 of the Cr.P.C. and that the trial cannot proceed to cognizance stage without such prior sanction. But that the Magistrate is free to proceed against the accused in respect of offences committed in India and would complete the trial and pass judgment therein without being inhibited by the other alleged offences for which sanction is required. But it is also held that in a case, where it discloses not only the offences which are allegedly committed outside India but also offences which are committed within India, then the Magistrate is free to proceed against the accused in respect of the offences which are committed in India and to complete the trial and pass the judgment therein, without being inhibited by the other alleged offences for which alone sanction under the proviso to Sec. 188 of the Cr.P.C. is required. The Apex Court after noting the provisions contained in Sec. 4 of the I.P.C., has also held that offence committed by Indian citizen outside India would also be amenable to the provisions of the Indian Penal Code subject to the other limitations. In para 14 of Thota Venkaterswarlu's case supra [(2011) 9 SCC 527] , the Apex Court has placed reliance of

the abovesaid judgment of the Apex Court in ***Ajay Aggarwal's case*** supra [(1993) 3 SCC 609 = AIR 1993 SC 1637] wherein it was held that sanction under Sec. 188 of the Cr.P.C. is not a condition precedent for taking cognizance of the offence and if need be, it could be obtained before the trial begins. Hence in view of the abovesaid judgment rendered by a 3-Judge Bench of the Apex Court in Thota Venkaterswarlu's case supra [(2011) 9 SCC 527] it is now beyond the pale of any legal controversy that in respect of the offence committed outside India, even cognizance could be taken by the competent criminal court concerned and prior sanction of the Central Government as per the proviso to Sec. 188 of the Cr.P.C. need be obtained only after cognizance has been taken and before the trial actually commences. In other words, the bar in the conduct of "inquiry" by the Magistrate court in relation to offence committed outside India without obtaining sanction of the Central Government as per the proviso to Sec. 188 of the Cr.P.C. would apply only in respect of the "post-cognizance inquiries". Such bar on account of the absence of such sanction would also apply to the actual commencement of the trial, which stage begins with the framing of the charges. Therefore, only "inquiries" within the meaning of Sec. 2(g) which are to be conducted after the taking of cognizance and

before the framing of the charges alone would come within the zone of prohibition of the proviso to Sec. 188 of the Cr.P.C. Therefore, only those inquires within the meaning of Sec. 2(g) of the Cr.P.C. which are to be conducted after cognizance is taken and before the framing of charges and without the sanction of the Central Government as per the proviso to Sec. 188 of the Cr.P.C. would come within the zone of the prohibition as per the said proviso. So, the views expressed by a learned Single Judge of this Court in para 20 in C.V.Padmarajan's case supra, that even taking cognizance in respect of offences committed outside India would require prior sanction of the Central Government as per the proviso to Sec. 188 of the Cr.P.C., will thus stand overruled to that limited extent, in view of the authoritative pronouncement made to the above extent by 3-Judge Bench of the Apex Court in ***Thota Venkaterswarlu's case*** supra, paras 14 to 16.

21. Yet another learned Single Judge of this Court in the final order dated 26.10.2016 in Crl.R.P.No. 77/2016, has also held in para 8 thereof that in view of the decision of the Apex Court in ***Thota Venkaterswarlu's case*** supra [(2011) 9 SCC 527 = 2011 (3) KLT 909 (SC)] and also in the light of the judgment rendered by a learned Single Judge of the ***Abdul Rehiman v. State of Kerala*** [2012 (4)

KLT 901], has held that the rigour of the proviso to Sec. 188 of the Cr.P.C. starts its operation only when the trial stage is reached and no sanction is required till the commencement of the trial.

22. It is also relevant to note that a 5-Judge Bench of the Apex Court in ***Hardeep Singh v. State of Punjab & Ors.*** [(2014) 3 SCC 92 = 2014 (1) KHC 170 (SC)], paragraphs 27 & 39 thereof has categorically held that Sec. 2(g) Cr.P.C. and the case laws discussed therein would clearly envisage "inquiry " is before the actual commencement of the trial and is an act conducted under the Cr.P.C. by the Magistrate or the court and the word, "inquiry" is therefore not an inquiry relating to investigation of the case by the investigating agency, but is an inquiry after the case is brought to the notice of court on the filing of the charge sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry is given to mean something other than actual trial. Hence it become clear that inquiry "as contemplated under Sec. 2(g) of the Cr.P.C" can be taken to mean "inquiry" which is conducted after filing of the charge sheet and not before the same. So it could be argued on the basis of the abovesaid position settled in paragraphs 27 & 39 of ***Hardeep Singh v. State of Punjab & Ors.*** [(2014) 3 SCC 92- 5 Judges Bench] that all "inquiries" held after submission of the final

report/charge sheet, including the "inquiry" by the court in the matter of taking cognisance, will be also barred by the proviso to Sec.188 Cr.P.C. But so long as the above specific legal position in ***Thota Venkaterswarlu's case*** supra [(2011) 9 SCC 527 -3 Judges Bench] is not specifically overruled by the Apex Court, it is only to be held that even taking of cognisance is not barred in such cases.

23. It has also to be borne in mind a 5-Judge Bench of the Apex Court in the celebrated case in ***Lalithakumari v. Government of U.P & Ors.*** [2014 (2) SCC 1 = 2013 (4) KHC 552 (SC)] has held that "inquiry" under Sec. 2(g) of the Cr.P.C. does not include the steps taken by the Police by way of investigation after the registration of the FIR.

24. A learned Single Judge of this Court in the case in ***Brijith K.V. v. State of Kerala***, [2018 KHC 4630 = 2018 (3) KLT SN 27] after referring to the abovesaid judgment in ***Sanoop v. State of Kerala*** [2018 (2) KLT 338 = 2018 (1)] has held that, in view of the legal position declared by the Apex Court in Thota Venkaterswarlu's case supra [(2011) 9 SCC 527] previous sanction of the Central Government as per the proviso to Sec.188 of the Cr.P.C. would be required in respect of the offence committed outside India only before the commencement of the trial and that upto the stage of the taking

cognizance, no previous sanction would be required from the Central Government as per the said proviso to Sec.188 Cr.P.C.

25. In the abovesaid decision in ***Sanoop v. State of Kerala*** [2018 (2) KLT 338], this Court has placed reliance on a judgment of learned Single Judge of the Bombay High Court in the case in ***Nangia.C.P. Assistant Collector of Customs, Bombay v. Omparaksh Aggarwal & Anr.*** [1994 KHC 2496 = 1994 CrlLJ 2160] to take the view that even inquiries at the stage of remand consideration under Sec. 167(2) of the Cr.P.C. would also come within the sweep of the "inquiries" covered by the proviso to Sec. 188 of the Cr.P.C. It is mainly on this basis, that it was held by this Court in ***Sanoop's case*** supra that though investigation by the Police in respect of offences committed outside India is permissible, even without sanction of the Central Government as per the proviso to Sec.188 of the Cr.P.C., since the proceedings by the Magistrate at the remand stage as per Sec. 167(2) of the Cr.P.C., etc. would also be an "inquiry" within the meaning of Sec.2(g) of the Cr.P.C., such remand proceedings would be barred without prior sanction as per proviso to Sec. 188 of the Cr.P.C. and that therefore consequently arrest and detention of the accused in such cases for offences committed outside India will also be hit by the bar under the proviso to Sec. 188 of the

Cr.P.C. In para No.7 of ***Sanoop's case supra*** [2018 (2) KLT 338] reference is made in respect of ***C.V.Padmarajan's case*** supra, wherein this Court has noted C.V.Padmarajan's case supra and thus held that the power of remand is expressly conferred on Magistrate by Sec. 309(2) read with 209 of the Cr.P.C., etc. A reading of para 19 of the ***C.V.Padmarajan's case*** supra (ILR report) would show that a reference was made therein to a judgment of the Full Bench of the Patna High Court in ***Tuneshwar prasad v. State*** [AIR 1978 Patna 225] wherein it was held that the term "inquiry" in Sec. 309(2) of the Cr.P.C. occurs in the context of the exercise of a power to remand the accused, if in custody after cognizance has been taken and that rule of harmonious construction would necessitate to hold that while reading of the Sec. 309(2) in juxtaposition of Sec. 209 of the Cr.P.C. to hold that the proceedings under Sec. 209 of the Cr.P.C. must inevitably be embraced within the term "inquiry" as defined in Sec. 2(g) of the Cr.P.C. A learned Single Judge of the Bombay High Court in ***Nangia's case supra*** [1994 KHC 2496 = 1994 CrlJ 2160] has inter alia held in para 14 thereof that proceedings under Sec.167(2) of the Cr.P.C. is judicial in nature and Magistrate acts in judicial capacity and hence it is part of inquiry, which is covered by Sec. 2(g) and would fall within Sec. 309(1) of the Cr.P.C. At the outset it has to be

borne in mind that the provision made in Sec. 309(2) of the Cr.P.C. is in the context of exercise of power to remand an accused if in custody, after cognizance has been taken. So also, Sec. 209 of the Cr.P.C. deals with commitment of a case to the court of session when an offence is triable exclusively by it. Therefore, there cannot be any doubt that such inquires at the stage of Sec. 209 of the Cr.P.C. (commitment of case to sessions court) and at the stage of Sec. 309(2) of the Cr.P.C. (which deals with remand of an accused if in custody, after cognizance has been taken) are all inquires which are to be conducted at the post cognizance stage. In view of the abovesaid categorical declaration of law made by a 3-Judge Bench of the Apex Court in ***Thota Venkaterswarlu's case*** supra [(2011) 9 SCC 527= 2011 (3) KLT 909 (SC)], it is now beyond the pale of any judicial controversy that in the absence of sanction as per the proviso to Sec. 188 of the Cr.P.C. for offences committed outside India the bar under the said proviso will only operate as against all "post-cognizance inquiries" and of course, for the actual commencement of the trial. Therefore, inquiries which are within the meaning of Sec. 2(g) of the Cr.P.C. which are barred within the zone of the proviso to Sec. 188 of the Cr.P.C. are only post-cognizance inquiries. Assuming for a moment that the remand matters relating to consideration of the remand by

the learned Magistrate under Sec. 161(2) of the Cr.P.C. is also an "inquiry" within the meaning of Sec. 2(g) of the Cr.P.C., such inquiry is obviously long before the cognizance stage and therefore, would not come within the zone of the post-cognizance inquiries, which alone are barred under the proviso to Sec. 188 of the Cr.P.C. Therefore, reliance placed on the views rendered by the learned Single Judge of the Bombay High Court in ***Nangia.C.P's case*** [1994 KHC 2496] more particularly para No.14 thereof, is misplaced in the context of the consideration of the issues regarding the bar arising from the proviso to Sec. 188 of the Cr.P.C. That apart, the decision rendered by the Bombay High Court in Nangia.C.P's case supra is not in any manner connected to the issues relating to the proviso to Sec. 188 of the Cr.P.C. The only question considered therein by the Bombay High Court in that case was as to whether the Magistrate after granting bail, has the power to stay or keep in abeyance the operation of the bail order for a few days or make the same operative from a future day to enable the prosecution to approach the higher court to challenge the grant of bail. It was in that context that the Bombay High Court held that the proceedings under Sec. 167(2) of the Cr.P.C. is judicial as the Magistrate acts in a judicial capacity and it is part of inquiry which is covered by Sec. 2(g) and falls within Sec. 309 of the

Cr.P.C. and that therefore, the bar conferred under Sec. 309 of the Cr.P.C. to postpone or adjourn the commencement of any inquiry would also partake within its fold of the incidental power to stay or keep in abeyance such proceedings for a limited period and therefore it comes within the incidental power to stay or keep in abeyance the operation of the bail order for a few days or to make the bail order operative from a future date to enable the aggrieved party to approach the higher court. Hence it can be seen that the judgment of the learned Single Judge of the Bombay High Court in ***Nangia's case supra*** [1994 KHC 2496] has no bearing in relation to the applicability or otherwise of the proviso to Sec. 188 of the Cr.P.C. in respect of the offences committed outside India.

26. There is yet another important dimension of the case. Sec. 2 of the C.P.C. which deals with definition clauses is qualified with the following expression, "***In this Code, unless the context otherwise requires.-.....***" Therefore, it has to be borne in mind that even the definition of the term "inquiry" as appeared in Sec. 2(g) is qualified by the Parliament with the condition that the said definition clause is so given unless the context otherwise requires and hence a contextual and purposive interpretation is highly imperative.

27. The relevance and necessity for adherence to contextual interpretation in appropriate cases has been underscored by the Apex Court and various High Courts including this Court in a catena of rulings as in ***Vanguard Fire & General Insurance v. Fraser & Ross***, reported in AIR 1960 SC 971, ***National Building Construction Corporation v. Pritam Singh***, reported in AIR 1972 SC 1579 paras 12 to 16, ***Reserve Bank of India v. Peerless General Finance and Investment Company Ltd***., reported in (1987) 1 SCC 424 para 33, ***K.V.Muthu v. Angamuthu Ammal***, reported in (1997) 2 SCC 53, ***Paul Enterprises v. Rajib Chatterjee & Co***., reported in (2009) 3 SCC 709 para 28, ***National Insurance Company v. Kirpal Singh***, reported in (2014) 5 SCC 189 paras 12 to 16, and in Division Bench decisions of this Court in cases as in ***Thomas v. Sahitya Pravarthaka Co-operative Society Ltd***., reported in 2014 (3) KLT 761 paras 7-8, etc. It would also be pertinent to refer to the canons of interpretative construction based on the principle of purposive interpretation or purposive construction. It will be relevant in that regard to refer to the views of Aharon Barak, the eminent jurist and former President of the Supreme Court of Israel, who in his illumating treatise "*Purposive Interpretation in Law*" has pithly put it as follows:

> *"Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language."*

As held by the Apex Court in the judgement in ***Shailesh Dhairyaman v. Mohan Balakrishna Lulla***, reported in (2016) 3 SCC 619 p.641 para 31, that the principle of "*purposive interpretation*" or "*purposive construction*" is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the "*purpose*" behind such a provision. The basic approach is to ascertain what is it designed to accomplish? And to put it otherwise to interpretative process the court is supposed to realise the goal that the legal test is designed to realise, etc.

28. Evaluated in the abovesaid scenario, it is only to be held that even if the proceedings in relation to remand matters under Sec. 167(2) of the Cr.P.C. is otherwise held to be "inquiry" within the meaning of Sec. 2(g) of the Cr.P.C. the term "inquiry" as found in the proviso to Sec. 188 of the Cr.P.C. has to be understood and appreciated in the context of the provision made in Sec. 188 of the Cr.P.C. Therein it has to be borne in mind that it is now well settled by a series of rulings of this Court including Division Bench, Full Bench etc. and the aforecited rulings of the Apex Court in cases as in

Ajay Aggarwal's case supra, Thota Venkaterswarlu's case, etc. By the enactment of provisions as in Secs. 3 and 4 of the I.P.C. and Sec. 188 of the Cr.P.C. that the legislature has permitted the conduct of the investigation of an offence committed by a citizen of India out side India. Therefore, all the steps in the investigation process, from the commencement of the registration of the crime upto the filing of the final report would form an integral part and parcel of the investigation process. Since the investigation is not the subject matter of the bar in the proviso to Sec. 188 of the Cr.P.C., it goes without saying that the power to investigate has to proceed unfettered and unhampered in any manner and in accordance with law. If the interpretation that the matters in relation to remand consideration under Sec.167 of the Cr.P.C. would form part of the inquiry as understood in Sec. 2(g) read with Sec.188 of the Cr.P.C. is accepted, then the inevitable result would be that though the Police can formally investigate the offence committed outside India even without the sanction, they will be totally denuded with the power of arrest, detention, etc. and therefore virtually the entire investigation process would be put to a stand-still and no investigating agency will be able to make any effective progress in the investigation so as to finalise the same in accordance with law and to file the final report.

Therefore, if the said approach is taken, then it will lead to a scenario, whereby the investigating agency would be totally stultified and denuded of its power and no worthwhile investigation could be conducted. Hence a purposive and contextual interpretation that is to be made in the context of the specific provision made in Sec. 188 of the Cr.P.C. is that only those inquiries within the meaning of Sec. 2(g) of the Cr.P.C. which are in the post-cognizance stage, alone would come within the zone of prohibition contained in the proviso to Sec. 188 of the Cr.P.C. The interpretation to the contrary would lead to an irrational and undesirable consequences leading to a situation whereby the investigation agency would be totally deprived and denuded of its substantial and real power of investigation.

29. The upshot of the abovesaid discussion is that the view taken by the learned Single Judge of this Court in ***Sanoop v. State of Kerala*** [2018 (2) KLT 338] that matters relating to remand consideration under Sec. 167(2) Cr.P.C. by the Magistrate in respect of a case involving offence committed outside India without the sanction of the Central Government under the proviso to Sec. 188 of the Cr.P.C. would be barred by the said proviso and that therefore arrest and detention of the accused in such cases is also hit by the bar as per the proviso to Sec. 188 of the Cr.P.C., etc. does not reflect the correct legal

position and is per incuriam as the said decision has not duly taken into account the impact of the various decisions of the aforecited Single Benches, Division Benches and Full Bench of this Court as well as the abovecited rulings of the Apex Court in Ajay Aggarwal's case supra, Thota Venkaterswarlu's case supra, Hardeep Singh's case supra, etc. In that view of the matter it is ordered that the plea made by the petitioner herein that this Court should order and declare that the arrest and detention of the petitioner cannot be done in this case as it is hit by the bar engrafted by the proviso to Sec. 188 of the Cr.P.C., is untenable and unsustainable and cannot be granted and the said plea will stand rejected. It is made clear that the Police authorities will have all the lawful powers to conduct the investigation unhampered and unfettered by any such consideration but in accordance with law and only post cognizance inquiries and commencement of the trial alone are barred as per the said proviso due to the lack of sanction.

30. There is yet another aspect of the matter. It is a matter of common knowledge that such cases involving offences committed outside India will not be very few and there could be many such cases in many States in India and if the view canvassed by the petitioner is accepted, then it would amount to holding that after registration of the FIR, even for arrest of the accused where it is found necessary, would have to wait until the Central Government takes a decision on the

question of sanction as per the proviso to Sec. 188 of the Cr.P.C. , etc. and if such a view is taken it will be placing enormous and unrealistic burdens on the Central Government to take decisions on the question of sanction in each and every case, which may arise in various parts of the country, even before the arrest of the accused is effected in such cases.

31. It has to be borne in mind that the question of sanction in respect of all such cases which arise in any part of the country, be it in the various States or the Union territories, will have to be decided by the Central Government and to place such a heavy burden on the Central Government is impractical and rather imprudent.

32. However, now the merits of the plea for anticipatory bail are to be considered. The petitioner has pointed out that till date the lady defacto complainant has not even bothered to report before the investigating officer to give her Sec. 161 Cr.P.C. statement and all what has been done now is to forward her letter by post to the Police authorities which in turn has been treated as FIS. Sri.Saigi Jacob Palatty, learned Prosecutor would submit on the basis of the instructions of the investigating officer concerned that though the Police authorities have issued various notices/summons to the lady defacto complainant to report before them in order to record Sec. 161 Cr.P.C. statement, so far she has not come forward to do the same and hence the investigating officer has been disabled from proceeding effectively

further with the matter. The said conduct of the lady defacto complainant is only to be viewed seriously by this Court. That apart, from a perusal of the first information statement, it is seen that no allegations of penetrative sexual assault have been made and main allegations are that the petitioner accused had assaulted her and slapped her and has restrained her movement and has misused her social media account and the offences alleged against the petitioner are those as per Sec. 354A and 355A of the Indian Penal Code.

33. After hearing both sides and Sri.S.Prasun, learned Amicus Curiae, and taking into account the facts and circumstances of this case, this Court is persuaded to accept the plea of Sri.M.Rajesh, learned counsel appearing for the petitioner accused that the custodial interrogation of the petitioner is not really warranted or called for effectuating the smooth and effective conduct of the trial.

34. In the light of the abovesaid aspects, following orders and directions are issued:

(1) The petitioner shall personally appear before the Investigating Officer concerned in relation to the abovesaid crime for interrogation purposes without any further delay at any rate, by 9.am. on any day on or before 31.8.2019.

(2) The petitioner will fully co-operate with the Investigating Officer in the above interrogation process.

(3) After completing the above interrogation process, in case the Investigating Officer arrests the petitioner in relation to the abovesaid crime, then he shall be released on bail on his executing a bond for Rs.40,000/- (Rupees forty thousand only) and on furnishing two solvent sureties for the like sum each to the satisfaction of the Investigating Officer concerned.

Further it is ordered that it will be subject to the following conditions:-

(a) *The petitioner shall not involve in any criminal offences of similar nature.*

(b) The petitioner shall fully co-operate with the investigation.

(c) The petitioner shall report before the Investigating Officer as and when required in that connection. In that regard the investigating officer will bear in mind that the petitioner is employed abroad.

(d) The petitioner shall not influence witness or shall not tamper or attempt to tamper evidence in any manner, whatsoever.

(e) The petitioner shall not go anywhere near the residence of the lady defacto complainant until the conclusion of the trial.

If the petitioner violates all or any of the bail conditions, then the jurisdictional court concerned will stand hereby authorised, to consider the plea for cancellation of bail, if required, in accordance with law.

35. Before parting with this case, this Court would place on record its deep sense of appreciation to the learned Advocates who appeared in this case, more particularly, Sri.S.Prasun, the learned Amicus Curiae and Sri.Saigi Jacob Palatty, learned Prosecutor for their valuable service rendered in effectively assisting this Court in resolving the various issues in this case.

With these observations and directions, the above Bail Application stand accordingly disposed of.

Sd/-

sdk+ **ALEXANDER THOMAS, JUDGE**