
(2010) 05 KL CK 0106
In the High Court Of Kerala
Case No : Criminal R.P. No. 3266 of 2009

Benny, K.V. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 173, 173(2), 173(8)
Penal Code, 1860 (IPC) — Section 109, 120B, 191, 192, 193

Citation : (2010) 05 KL CK 0106

Hon'ble Judges : V.K. Mohanan, J

Bench : Single Bench

Advocate : S. Sreekumar and S. Rajeev, for the Appellant; M. Ajay and Kammappu, Public Prosecutor, for the Respondent

Judgement

V.K. Mohanan, J.—Is there any legal impediment in taking cognizance by a Magistrate upon a private complaint preferred by a person, who is an accused in a crime case pending before Anr. Magistrate Court wherein the Police after investigation filed a report referring the case as "false" u/s 173(2)(i) and (ii) of the Code of Criminal Procedure, 1973 (for short "the Code of Criminal Procedure"), especially when the factual allegation and the materials relied on by the complainant are intrinsically interconnected with that of the referred case which is still pending consideration before that court? This is the vital legal question that arose for consideration in the above three cases.

2. In the above two Criminal Revision Petitions, the challenge is against the order dated 9-10-2009 of the Chief Judicial Magistrate Court, Ernakulam in Cr.M.P. No. 6467 of 2009 by which the learned Chief Judicial Magistrate Court took cognizance of the offences against the accused therein. CrI.R.P. No. 3266 of 2009 is preferred by accused Nos. 2 to 4 in the above CrI.M.P. who are Police Officers holding various posts in the Police Department and CrI.R.P. No. 3282 of 2009 is preferred at the instance of the first accused therein who is a private party. In both the above CrI.Revision Petitions, the second Respondent is the complainant

in CrI.M.P. No. 6467 of 2009.

3. CrI.M.C. No. 134 of 2010 is a petition filed u/s 482 of the Code of Criminal Procedure by the de facto complainant in Crime No. 306 of 2007 of the Thoppumpady Police Station against the order dated 18-12-2009 in CrI.M.P. No. 6468 of 2009 of the Court of Chief Judicial Magistrate, Ernakulam by which the learned Chief Judicial Magistrate had withdrawn Crime No. 306 of 2007 of the Thoppumpady Police Station from the Judicial First Class Magistrate Court I, Kochi to that court. In the above CrI.M.C., the first Respondent is the accused in the above crime, who is also the complainant in CrI.M.P. No. 6467 of 2009 pending before the Chief Judicial Magistrate Court, Ernakulam and also the second Respondent in the above two CrI.R.Ps. As the parties are same, the question of law involved is also same and the facts and circumstances involved in the three cases are interconnected, these cases are heard together and being disposed of by this common judgment.

4. To answer the question involved in these cases, reference to the factual inputs in these cases are absolutely inevitable which I shall state briefly. The second Respondent in the above two CrI.R.Ps. and the first Respondent in the CrI.M.C. is one and the same person, who is the complainant in CrI.M.P. No. 6467 of 2009 pending before the Chief Judicial Magistrate Court, Ernakulam and as the above two revision petitions are filed challenging the order under which cognizance was taken upon the above complaint and therefore, the first Respondent in CrI.M.C. and second Respondent in the two CrI.R.Ps. shall hereinafter be referred as "complainant" only. Though the above CrI.M.C. is filed by the de facto complainant in Crime No. 306 of 2007 of the Thoppumpady Police Station, he is the first accused in the complaint pending before the Chief Judicial Magistrate Court, Ernakulam along with other accused who are Petitioners in CrI.R.P. No. 3266 of 2009 and hence, hereinafter, the Petitioner in CrI.R.P. No. 3282 of 2009 and CrI.M.C. No. 134 of 2010 shall be referred as "the first accused" and the Petitioners in CrI.R.P. No. 3266 of 2009 shall be referred as "the other accused" generally and specially, showing the rank number, wherever necessary.

5. The litigation in these cases originated when a complaint, as CrI.M.P. No. 4079 of 2007 alleging offences punishable under Sections 465, 466, 467, 468, 471 and 420 I.P.C. filed by the first accused against the complainant before the Judicial First Class Magistrate Court II, Kochi. The allegation in the said complaint is that the complainant herein had forged and fabricated documents to transfer 2500 equity shares of distillery company by name Indo - Scottish Brand Private Ltd., Karuvelippady, Kochi into the name of the complainant. It is also alleged that he forged two more documents by forging the signature of one Pandan Krishnan and thereby created forged documents to the effect that the said Pandan Krishnan executed documents in favour of the complainant by appointing the complainant as the Managing Director of the company. The learned Magistrate of the Judicial First Class Magistrate Court II, Kochi transmitted the above complaint u/s 156(3) of the Code of Criminal Procedure and in turn, Crime No. 306 of 2007 was

registered in the Thoppumpady Police Station against the complainant. At that point of time, the other accused were the Police Officers having jurisdiction over the Thoppumpady Police Station. Accordingly, the then Sub Inspector of Police, Thoppumpady Police Station--the second accused registered Crime No. 306/2007 for the offences punishable under Sections 465, 466, 467, 468, 471 and 420 I.P.C. against the complainant. The other accused were working as Circle Inspector of Police, Palluruthi Police Station and the Assistant Commissioner of Police, Mattanchery.

6. According to the complainant, under the guise of the investigation in the above crime, he was illegally detained after clandestinely obtaining search warrant and he was intimidated and threatened and an amount of Rs. 75 lakhs was demanded to be given to the first accused for settling the issue and all this was done in pursuance of a conspiracy hatched by all the accused. According to the complainant, subsequently, he was released on bail and then, he approached the Director General of Police and the Minister for Home Affairs to have a fair and impartial investigation into the complaint preferred by the first accused and the crime registered thereon, by constituting a special team of Police Officers holding high rank. Thus, a Special Team was constituted and they undertook the investigation in Crime No. 306 of 2007 and on completing the investigation, they have filed a report dated 16-4-2008 u/s 173(2)(i) and (ii) of Code of Criminal Procedure referring the case as false in the Court of Judicial First Class Magistrate II, Kochi.

7. In the mean while, the complainant approached the Additional Chief Judicial Magistrate Court, Ernakulam by filing a complaint after obtaining sanction from the State Government against all the accused as CrI.M.P. No. 247 of 2008 alleging the offences punishable under Sections 109, 120B, 191, 192, 193, 195, 199, 200, 201, 342, 347, 465, 466, 468, 469, 471, 473, 474 read with Section 34 I.P.C. The Additional Chief Judicial Magistrate, Ernakulam, after examining the witnesses of the complainant and perusing the documents produced by the complainant, took cognizance of the offences and instituted C.C. No. 1288 of 2008 and issued summons to all the accused under Sections 120B, 342, 347, 465, 466, 468, 469, 471, 473, 474 read with Section 34 I.P.C.

8. Against the said proceedings, the fourth accused--the Assistant Commissioner of Police approached this Court by filing CrI.R.P. No. 1858 of 2008, which was disposed of by this Court as per order dated 31-7-2008 setting aside the impugned order without going into the merits of the case and transferring the above complaint to the Court of the Chief Judicial Magistrate, Ernakulam with liberty to refer the statement of witnesses recorded by the Additional Chief Judicial Magistrate in case he decides to take cognizance of the offences.

9. Against the above order of this Court, the complainant preferred SLP [S.L.P. (CrI.) No. 5734 of 2008] and the Hon''ble Apex Court granted special leave and the appeal was numbered as CrI.A. No. 984 of 2009 which was subsequently disposed of with certain observations by judgment dated 8-5-2009.

10. Thus, on the basis of the order passed by this Court in Crl.R.P. No. 1858 of 2008, the case was transferred to the Court of Chief Judicial Magistrate where the complaint was re-numbered as Crl.M.P. No. 6467 of 2009 and by order dated 27-7-2009, cognizance was taken upon the said Crl.M.P. and C.C. No. 146 of 2009 was instituted for the offences punishable under Sections 120B, 342, 347, 455, 466, 468, 469, 471, 473, 474 read with Section 34 I.P.C.

11. Again challenging the above order of the Chief Judicial Magistrate Court dated 27-7-2009, accused 2 to 4 preferred Crl.M.C. No. 2541 of 2009 and the same was disposed of by order dated 13-8-2009 by this Court quashing the proceedings of taking cognizance, as there was no enquiry u/s 202 Code of Criminal Procedure and with a further direction to the Chief Judicial Magistrate to proceed with the complaint as directed by this Court in the order in Crl.R.P. No. 1858 of 2009, as observed by the Hon"ble Apex Court.

12. Subsequent to the above order of this Court in Crl.M.C. No. 2541 of 2009, in terms of the directions contained in the above three orders, the learned Chief Judicial Magistrate, after examining the complainant and his witnesses, vide order dated 9-10-2009 in Crl.M.P. No. 6467 of 2009 took cognizance and instituted C.C. No. 211 of 2009 for the offences punishable under Sections 120B, 342, 465, 466, 468, 471, 473, 474 read with Section 34 of I.P.C. and issued summons to the accused, which is impugned in the above Crl.R.Ps.

13. It is also relevant to note that the first accused approached this Court by filing Crl.M.C. No. 2901 of 2009 u/s 482 of the Code of Criminal Procedure with a prayer for a direction to dispose of Crl.M.P. No. 6468 of 2009 preferred by the complainant for the transfer of Crime No. 306/2007 from the court of the J.F.C.M. I, Kochi to the Chief Judicial Magistrate Court, Ernakulam. The above Crl.M.C. was disposed of by this Court on 6-10-2009 with a direction to the C.J.M. Court, Ernakulam to pass appropriate orders in Crl.M.P.No.6468 of 2009 expeditiously.

14. In the mean while, the first accused preferred a private complaint as C.M.P. No. 3280 of 2009 in the Judicial First Class Magistrate Court II, Kochi against the complainant and the officers who filed refer report in Crime No. 306 of 2007 of the Thoppumpady Police Station, alleging conspiracy.

15. Thus, while the refer report and C.M.P. No. 3280 of 2009 were pending in the J.F.C.M. Court II, Kochi, the complainant approached this Court by filing W.P. (C) No. 16202 of 2008 for the transfer of the above crime case and while the above writ petition was pending consideration, as per the order of the Chief Judicial Magistrate Court, Ernakulam, the said crime and all other petitions were transferred from the Judicial First Class Magistrate Court II to Judicial First Class Magistrate Court I, Kochi and the said proceedings of transfer of cases have been recorded while disposing of W.P. (C) No. 16202 of 2008.

16. It is also pertinent to note that aggrieved by the refer report filed in Crime No. 306/2007 of the Thoppumpady Police Station, the first accused herein, who is the de facto complainant, has filed a protest complaint as Crl.M.P. No. 739 of

2008. The first accused has also preferred Anr. complaint i.e., Crl.M.P. No. 482 of 2008 in the Judicial First Class Magistrate Court II, Kochi. While those matters are pending, the first accused approached this Court by filing Crl.M.C. No. 3651 of 2008 with a request to issue an order directing the Additional Chief Judicial Magistrate, Ernakulam to send the Case Diary in Crime No. 306 of 2007 to the Court of Judicial First Class Magistrate I at the time of considering the refer report, for a proper and expeditious consideration and disposal of the report in the above crime case. This Court by order dated 24-10-2008 dismissed the said Crl.M.C. with the observation that "If the learned Judicial Magistrate of the First Class I, Kochi, before whom the matter is pending already has a carbon copy, he need call for the records only if he feels the need to peruse the original."

17. It is also pertinent to note that in the mean while, at the instance of the complainant, the learned Chief Judicial Magistrate has issued an order dated 18-12-2009 in Crl.M.P. No. 6468 of 2009 withdrawing the case in Crime No. 306 of 2007 of the Thoppumpadi Police Station from the J.F.C.M. Court I, Kochi to the Court of the C.J.M., Ernakulam. In the said order, it is also observed that the long delay in making the decision upon the refer report will adversely affect the progress of the complaint pending before it.

18. It is the above order now challenged before this Court in the above Crl.M.C.

19. I am aware of the fact that the details stated above are only with respect to the proceedings that started from the filing of the complaint by the first accused against the complainant and the resultant orders which are under challenge in the above three cases. That means the factual matrix, which is the subject-matter of the disputes and the allegations in the above two complaints mainly preferred by the first accused and the complainant, is yet to be referred, which I shall explain now.

20. The first accused--Mr. K.P. Jyothish is the complainant in Crl.M.P. No. 4079 of 2007 on the basis of which Crime No. 306 of 2007 was registered in the Thoppumpady Police Station on receipt of the said complaint u/s 156(3) of the Code of Criminal Procedure. According to him, he is the son of one Mrs. Malini, who is the sister of one Pandan Krishnan who is no more and the said Pandan Krishnan was the holder of 2500 equity shares and the Managing Director of a firm by name Indo Scottish Brand Private Limited (ISBPL), Karuvelippady, Kochi. The said Pandan Krishnan died on 5-11-2000 after executing a Will. Thus, according to the first accused, the said Pandan Krishnan bequeathed all his properties including the shares in the company in favour of the sons of his sister Malini, by name Ajith Kumar, Sreejesh and the first accused, Jyothish. The complainant, against whom the said complaint was filed, is the Finance Director of the said company and though he was approached with a request to hold the meeting of the Board of Directors and to settle the profit and loss account of the company, the same was not considered and nothing was done. Thus, according to the first accused, on his enquiry, he realised that the complainant had fabricated an agreement dated 14-2-2000 by forging the signature of said

Pandan Krishnan and thus, fraudulently transferred 2500 equity shares of the company into his name and he had also created forged documents to the effect that Mr. Pandan Krishnan executed documents in favour of the complainant by appointing him as the Managing Director of the said company. It is the specific case of the first accused that the said Pandan Krishnan was admitted in Srirama Chandra Hospital, Ramachandra Nagar, Porur connected with serious illness and transplanted his kidney and he was treated there as an inpatient from 5-7-1999 to 25-2-2000. It is the further case of the first accused that when the said Pandan Krishnan was admitted in the hospital, he was in a coma stage and nobody was allowed to visit him except the hospital authorities. It is also his case that after the discharge of the said person from the hospital, he continued in the coma stage. According to him, during this period, the said Pandan Krishnan was in an abnormal stage both physically and mentally and was not able to do anything unless helped by Ors. . Therefore, the first accused is more particular in his allegation that on the date shown, in the forged agreement allegedly executed by the said Pandan Krishnan as 14-2-2000, from which date onwards the said Pandan Krishnan was hospitalized and he was in a critical stage, and it was mentally and physically impossible to execute a document by the said Krishnan. Thus, according to the first accused, the complainant with an intention for illegal gain to him, fabricated the said agreement and other documents, by forging the signature of said Pandan Krishnan, for transferring the shares fraudulently into his account approached the Registrar of companies and thereby, he fraudulently transferred all the said 2500 equity shares in his name and expelled the said Pandan Krishnan from the Board of Directors of the company and thereby, the complainant has committed the offences punishable under Sections 465, 466, 467, 468, 471 and 420 I.P.C. In the complaint, the first accused claimed that after the death of the said Pandan Krishnan, the first accused is being his legal heir, became the share holders of the company as per Will dated 18-1-1995 executed by the said Pandan Krishnan and thus, he has the legal right to file the complaint

21. It is the above complaint transmitted to the Thoppumpady Police Station wherein Crime No. 306 of 2007 was registered for the said offences based upon which the complainant was arrested and subsequently, released on bail. At the instance of the complainant, a Special Team was constituted as per the order of the D.G.P. and after investigation by the said Team, a refer report was filed in the Judicial First Class Magistrate Court II, Kochi. While the investigation in the above crime case was pending and before filing the refer report, the accused in the above referred crime, the complainant herein approached the Additional Chief Judicial Magistrate, Ernakulam by filing Anr. complaint i.e., C.M.P. No. 247 of 2008. The main allegation of the complainant in that complaint is that he had previously made certain complaints against one Jacob Thomas I.P.S., who was the Chairman and the Managing Director of Kerala Civil Supplies Corporation, which infuriated the said person, especially, since the same resulted in the C.B.I. investigation against him, and resultantly, a conspiracy was hatched against the

complainant between the accused and some other persons and to accomplish such conspiracy, the first accused preferred the said complaint as C.M.P. No. 4079 of 2007, on the basis of which the above-mentioned crime was registered. Thus, according to the complainant, he preferred the complaint to get redressal of his grievance against the accused persons including the Police Officers, who under the pretence of exercising their authority illegally acted as stooges at the hands of the first accused, for illegal gains to all of them and to wreak private vengeance against the complainant. It is the further case of the complainant that on 16-8-2007, during the early hours of the day, a police party headed by the 2nd accused--Sub Inspector of Police, Thoppumpady surrounded the complainant's residential house with a battalion of Police and forcibly entered into his residence where he is living with his ailing wife and illegally took him into custody from his bed even without permitting him to perform his primary needs. According to him, he was not even informed of the reason for the ransacking and was taken to Thoppumpady Police Station. It is further stated in the complaint that on asking, the second accused told him that he will be made aware of the reason for arrest at the appropriate time. According to the complainant, at about 12 noon, the third accused Sri Lalji came to the Police Station in civil dress with a copy of "Kerala Sabdam", a news magazine wherein an interview with the complainant was published with his photograph on the cover page and told the complainant that a crime has been registered against him on the basis of a complaint received in the Police Station from the Judicial First Class Magistrate Court II, Kochi, in which the allegation is that the complainant has fabricated some documents to the effect of transfer of some shares of one Pandan Krishnan, the uncle of the first accused.

22. In the complaint, the complainant is specific that he was taken to a room in the Police Station and was made to sign on a number of blank papers and printed forms under the threat of producing him before the court for remand in Sub Jail. It is specifically stated in the complaint that the third accused Lalji demanded Rs. 75 lakhs to be handed over to the first accused or to execute documents assuring the payment of the said amount to the first accused. It is also stated in the complaint that if he can arrange the money as aforesaid, he would be sent out of Police Station for procuring the cash, in the company of a Policeman. According to the complainant, he repeatedly attempted to convince the said Lalji about his innocence and he had undertaken and requested time to produce all the authentic documents regarding the valid transfer of shares within a few hours, which were available in his residential house, from where he was taken into illegal custody and the said request was rejected by accused Nos. 2 and 3. It is the further case of the complainant that the second accused insisted him to produce the original of the photocopy of a document shown to the complainant, which is allegedly forwarded to the Police by the Magistrate, along with the complaint against the complainant, filed by the first accused, knowing fully well that the original of the fabricated document is with the first accused himself, as it is a document created by the accused persons as a result of their criminal

conspiracy. According to the complainant, he was deliberately trapped and implicated in the above crime case using the false and fabricated documents with ulterior motives of extorting money from him by wrongfully confining him.

23. The allegation continued in the complaint that the complainant was taken to the court after recording untimely arrest and manipulated the search records in the crime case registered against the complainant as a result of the conspiracy hatched by the accused persons. It is the specific case of the complainant that it was seen from the photocopy of the document shown to the complainant by the second accused that the signatures of the complainant and the Late Pandan Krishnan have been forged and fabricated. It is also stated that he understood that in order to make it appear that the said document was forged and fabricated by the complainant, the accused have put the name of one P.N. Murugesan, a fictitious person as a Notary who authenticated the said document and fabricated a false office seal of the said fictitious Notary Public of Tamil Nadu. According to the complainant, the said document was not produced when the first accused filed the complaint on 12-6-2007. It is further alleged that as a result of the conspiracy, the second accused had preferred a report before the learned Magistrate on 3-8-2007 with utmost mala fide intention and without any materials gathered during his investigation till then, against the complainant fixing him as the accused in the crime and seeking warrant for his arrest and also for the search of his house by mentioning a wrong house number. According to the complainant, he was produced before the Magistrate with a remand report prepared by the second accused falsely alleging that it was disclosed during his investigation that the complainant has created forged and fabricated document, in order to get transferred the shares in his name. According to the complainant, the intention of the second accused was to get an unmerited judicial remand of the accused and thus to translate the scheme of conspiracy of the accused into a reality. According to the complainant, his bail application was vehemently opposed by the A.P.P. as instructed by the accused and the first accused instigated accused Nos. 2, 3 and 4 to engage themselves in a conspiracy with him, in order to put the complainant in jail and to detain him illegally and resultantly the second accused made wilful misrepresentation and concealment of material facts from the records, which he was bound to disclose. According to the complainant, bail was granted to him only after two days of remand and by incorporating certain conditions freezing all the powers of the complainant in the company in which he is the duly approved Managing Director. According to the complainant, the second accused did not take any step during the investigation to peruse, seize and to produce before the court, the Will deed, alleged to be made by Mr. Pandan Krishnan, on the basis of which the first accused claims his right in the company and which is the very basis of his complaint, upon which the crime was registered. According to the complainant, no material was produced before the court to substantiate the request for remand of the complainant. It is also his case that when the complainant was about to be taken to the court for remand by the learned Magistrate, the third accused intimidated

him by threatening that he was going to arrest the complainant's ailing wife also, after making her an accused in the crime. According to the complainant, in order to accomplish the said illegal objects of the accused, hatched out of the conspiracy, the first accused has filed W.P. (C) No. 26131 of 2007 before this Court. According to the complainant, the investigation in Crime No. 306/2007 was entrusted, by the court with the second accused and it was not given to accused Nos. 3 and 4, but they have interfered with the investigation as a result of the conspiracy hatched between the accused. Thus, according to the complainant, the accused have committed the offences punishable under Sections 109, 120B, 191, 192, 193, 195, 199, 200, 201, 342, 347, 465, 466, 468, 469, 471, 473, 474 read with Section 34 I.P.C. Based upon the above complaint, which subsequently stands transferred to the Chief Judicial Magistrate Court, Ernakulam, it is the third occasion, cognizance was being taken against the accused for the above offences vide, order dated 9-10-2009 in CrI.M.P. No. 6467 of 2009 against which the accused in this complaint preferred the above two criminal revision petitions.

24. Thus, the position as on today is that the learned Chief Judicial Magistrate by the impugned order dated 9-10-2009 in CrI.M.P. No. 6467 of 2009 has taken cognizance of the offences upon the above complaint against the accused therein who are the revision Petitioners and summons were ordered against the accused and as per order dated 18-12-2009 in CrI.M.P. No. 6468 of 2009 of the Chief Judicial Magistrate, Ernakulam, Crime No. 306 of 2007 of the Thoppumpadi Police Station which was pending consideration in the Judicial First Class Magistrate Court I has already been withdrawn. Consequently, the protest complaint preferred by the first accused against the refer report as CrI.M.P. No. 739 of 2008 also stands withdrawn to the Chief Judicial Magistrate Court, Ernakulam. It is, at this stage, the above CrI.R.Ps. and above CrI.M.C. are preferred before this Court. In CrI.R.P. 3266 of 2009, the complainant who is the second Respondent in above revision petition filed a counter-affidavit dated 6-2-2010.

25. I have heard Sri S. Sreekumar, learned Counsel appearing for the Petitioners, who are accused Nos. 2 to 4, in CrI.R.P. No. 3266 of 2009 and Sri.S.Rajeev, learned Counsel appearing for the Petitioner in CrI.R.P. No. 3282 of 2009 who is the first accused and who also preferred CrI.M.C. No. 134 of 2010. I have also heard Sri M. Ajay, learned Counsel appearing for the complainant who is shown as Respondent Nos. 2 and 1 respectively in the above CrI.R.Ps. as well as the CrI.M.C. and the learned Public Prosecutor.

26. Learned Counsel appearing for the Petitioners in all the above matters raised identical and similar legal and factual contentions. The main legal contention raised by the learned Counsel is that the court below proceeded on the assumption that when a refer report is filed, the complaint comes to an end and the court below has miserably failed to consider the options that are available to a Magistrate and also to the de facto complainant in case a refer report is filed by the Police after investigation. In order to substantiate the above contention, they

have heavily relied upon the decision reported in *Parameswaran Nair v. Surendran* 2009 (1) KLT 794. Thus, the substance of the submission is that taking cognizance upon the complaint preferred by the complainant is premature when the refer report is still pending for consideration before the concerned Magistrate. Another legal point raised by the counsel is to the effect that even if the complainant has got any grievance against the accused, adequate remedial provisions are incorporated in Section 250 of the Code of Criminal Procedure which is left open to the complainant to invoke at appropriate time. After taking me through the complaint, it is contended by the learned Counsel that the allegations stated in the complaint would not disclose any of the offences alleged against the accused and hence, the said complaint was preferred only to harass the accused and the same is only an abuse of process of court and therefore, the complaint is to be dismissed. It is also the contention of learned Counsel that the complainant has no locus standi to prefer the complaint since the refer report in Crime No. 306 of 2007 was not accepted by the court concerned so far and the same is pending for consideration. It is also the contention of the learned Counsel that instead of filing the present complaint, the complainant ought to have approached the court concerned wherein the crime is pending for getting an order of discharge. An argument was also advanced against the sanction given by the Government u/s 197 of the Code of Criminal Procedure. It is also contended that as no offence was disclosed against the accused, especially against the Police Officers, the intention behind is only to abuse the process of court with oblique motive to demoralise the Police Officials. It is also the case of the counsel that the essential ingredients of offences alleged are not borne out from the factual allegations contained in the complaint. Thus, according to the counsel, the Annexure XII order, which is under challenge in this revision petition, by which cognizance was taken against the accused is perverse, illegal and as a result of non-application of mind.

27. Sri S. Rajeev, learned Counsel appearing for the Appellant in the Crl.M.C. after taking me through the order of the learned Chief Judicial Magistrate by which cognizance is taken, submitted that the learned Magistrate has already held that there is a prima facie case to proceed against the accused on the basis of the complaint preferred by the complainant and there is no meaning rather it is highly arbitrary and illegal on the part of the Chief Judicial Magistrate Court withdrawing Crime No. 306 of 2007 of the Thoppumpady Police Station from the Judicial First Class Magistrate Court I, Kochi, which was initially pending before the Judicial First Class Magistrate Court II, Kochi. In such a situation, if the Petitioner is compelled to participate in the proceedings before the court below connected with Crime No. 306 of 2007 of the Thoppumpadi Police Station, it will be highly prejudicial to the interest of the Petitioner. The learned Counsel submitted that the argument as to whether refer report should be accepted or not was fully heard by the Judicial First Class Magistrate Court I, Kochi and the said fact was overlooked by the learned Chief Judicial Magistrate while withdrawing the crime case. It is also the case of the learned Counsel that

connected matters are also pending before the same court and therefore, the Chief Judicial Magistrate ought not have withdrawn the above crime case. It is also the contention of the learned Counsel that the cause of action in Crime No. 306 of 2007 arose within the territorial jurisdiction of the Judicial First Class Magistrate Court II to which area the Chief Judicial Magistrate has no jurisdiction and the power vested with the C.J.M. of a District is only administrative jurisdiction and therefore, the order of withdrawal of Crime No. 306 of 2007 to the court of the Chief Judicial Magistrate Court is illegal and without jurisdiction. Thus, according to the learned Counsel, the refer report in Crime No. 306 of 2007 and other petitions connected therewith have to be considered either by the Judicial First Class Magistrate Court I or II which is the appropriate and competent court to take cognizance.

28. On the other hand, stoutly resisting the contentions raised by the counsel for the Petitioners, the learned Counsel for the contesting Respondents Mr. M. Ajay submitted that absolutely, there is no illegality in taking cognizance by the learned Chief Judicial Magistrate, on the basis of the complaint preferred by the complainant. According to the learned Counsel, against taking cognizance by the Additional Chief Judicial Magistrate as well as Chief Judicial Magistrate, raising the same contention that the allegations in the complaint do not constitute any offence, the Petitioners have already approached this Court and this Court was not inclined to accept the above contention and rejected the same and therefore, this Court need not consider the said question again in these proceedings. The learned Counsel pointed out that this Court interfered with the order of taking cognizance in the earlier stages, though there was a contention that no offence is disclosed, only on the ground that the procedure contemplated by Section 202 of the Code of Criminal Procedure was not complied with. According to the learned Counsel, considering the facts and circumstances involved in the case, such an interference was not warranted. The learned Counsel repeatedly took me through Annexure VI order of this Court, especially paras 8 and 9, and submitted that this Court did not accept the above contention regarding the non-disclosure of the ingredients of the section and the matter was remanded only for the purpose of conducting Section 202 enquiry. According to the learned Counsel, thus the court below has taken cognizance after Section 202 enquiry and the sworn statement of the complainant and the witnesses already recorded by the Additional Chief Judicial Magistrate have been considered by the Chief Judicial Magistrate, who was given option or discretion, to record their further sworn statements, if necessary in case he decides to take cognizance of the offence. Thus, the learned Counsel submitted that as revealed by Annexure XII order, especially from paras 6 to 9, the learned Magistrate had fully complied with the directions contained in Annexure VI order of this Court in taking cognizance and there is nothing illegal, irregular and improper so as to interfere with the same, by exercising the revisional jurisdiction of this Court.

29. Learned Counsel further submitted that the observation contained in the order whereby cognizance was taken by the Chief Judicial Magistrate is not a

final opinion with respect to the allegations contained in the complaint and according to the learned Counsel, the court below has just expressed its prima facie view for taking cognizance on the basis of materials on record and the same cannot be treated as a finding of guilt. Thus, according to the learned Counsel, the apprehension raised by the learned Counsel for the Petitioner in CrI.M.C. No. 134 of 2010 is without any basis and it is also the contention of the learned Counsel that as far as no decision is taken upon the refer report, it is absolutely proper and legal procedure adopted by the learned Chief Judicial Magistrate in withdrawing Crime No. 306 of 2007 from the Judicial First Class Magistrate Court I to the Chief Judicial Magistrate since the complaint is pending in the court of the Chief Judicial Magistrate whereas the facts and circumstances involved in these two cases are intrinsically interconnected. According to the learned Counsel, the power given to the Chief Judicial Magistrate u/s 410 of the Code of Criminal Procedure is not an administrative jurisdiction. By going through the words contained in the section, it is seen that the Chief Judicial Magistrate Court can withdraw any case from any court and try that case by that court. Thus, according to the learned Counsel, there is no merit in the above CrI.M.C. and the same is also liable to be dismissed.

30. Thus, on sorting out the allegations contained in the complaint and in Crime No. 306 of 2007 of the Thoppumpadi Police Station, the dispute in the above two proceedings can be summarised as follows: In the above crime, the allegation against the complainant herein is that he had forged and fabricated document to transfer 2500 equity shares of distillery by name Indoscottish Brand Pvt. Ltd., Karuvelippadi, Kochi to his name and also forged two more documents by forging the signature of one Pandan Krishnan and thereby created forged documents to the effect that the said Pandan Krishnan executed documents in favour of the complainant by appointing him as the Managing Director of the company. Whereas the allegation in the complaint against the accused is to the effect that in pursuance of a conspiracy hatched between the Petitioners who are the accused in the complaint and as a result of such conspiracy, the signatures of the complainant and the late Pandan Krishnan had been forged and fabricated and in order to make it appear that the said document was forged and fabricated by the complainant, the accused have put the name of one P.N. Murugesan, a fictitious person as a Notary, who allegedly authenticated the document and fabricated a false office seal of the said fictitious Notary Public of Tamil Nadu and in pursuance of the said conspiracy, the first accused had preferred a false complaint before the Magistrate Court and under the guise of the investigation in the above complaint, the complainant has been subjected to harassment and intimidation by the accused and the allegations in the above-mentioned crime and investigation of the crime under the guise of the improper and illegal investigation conducted by the accused are proved as false as per the investigation conducted by the Special Team as evidenced by the refer report filed by the Special Team in the above crime.

31. In the light of the facts and circumstances referred above, it can be seen that

the facts and circumstances and the materials and the distinct allegations in the complaint and the above crime are intrinsically interconnected. But, having regard to the nature of the imputation of the allegations and the parties against whom the allegations are raised, in no way, it can be treated as a case and counter case. Hence, on the basis of the above inputs and the rival pleadings referred above, the question to be considered is, whether there is any legal impediment in taking cognizance by a Magistrate upon the private complaint preferred by the complainant, who is an accused in a crime case pending before Anr. Magistrate Court wherein the Police, after investigation in the said crime filed a report referring the case as "false" u/s 173(2)(i) and (ii) of the Code of Criminal Procedure, especially when the factual allegations and the materials relied on by the complainant are intrinsically interconnected with that of the referred case which is still pending consideration before the court.

32. At the time of hearing the matter, this Court put an open legal question to the counsel for the Petitioners as to whether there is any expressed legal bar in taking cognizance by the learned Chief Judicial Magistrate upon the complaint preferred by the complainant, who is the accused in Crime No. 306 of 2007 of Thoppumpadi Police Station, which is pending consideration before the court. The learned Counsel failed to point out or bring to the notice of this Court any such provisions contained in the Code of Criminal Procedure barring the Magistrate from taking cognizance upon a private complaint under the above factual background. Though I have repeatedly verified the various provisions contained in the Code, I also could not come across such a provision in the Code. In this juncture, it is relevant to note that the law making authority, while enacting the Code, made appropriate provisions to solve any incidental or ancillary problem that may arise on application of the provisions of the Code. For eg., Section 210 is one of such provisions contained in the Code of Criminal Procedure. The title of the said Section specifically indicates the situation for which the said provision is incorporated, which reads as follows:

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.--(1) Where in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for the report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer u/s 173 and no such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if

the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

As per Sub-section (1) of Section 210, if it is brought to the notice of the Magistrate, where an enquiry or trial is going on upon a private complaint, that a police investigation is in progress in relation to the offence which is the subject-matter of the enquiry or trial held by him in a case upon a complaint case, it is incumbent on the Magistrate to stay the proceedings of such enquiry or trial and to call for a report on the matter from the Police Officer conducting the investigation. Sub-sections (2) and (3) of Section 210 further prescribed the procedure to be followed in such cases. But, no such procedural provisions are incorporated in the Code of Criminal Procedure, debarring the Magistrate from taking cognizance upon a private complaint preferred by an accused in a case investigated by the Police and their report referring the crime pending for consideration by the court. Therefore, I am of the firm opinion that in the given facts and circumstances, there is no legal bar for the learned Chief Judicial Magistrate taking cognizance upon the complaint preferred by the complainant, who is the accused in a crime case of which the Police had, after investigation filed a refer report u/s 173(2) of the Code of Criminal Procedure, though the subject-matter of the complaint has some connection or relevance upon the refer report filed by the Police and the further procedure to be adopted by the learned Magistrate.

33. Though the learned Counsel for the Petitioners has not succeeded in pointing out any legal provision, barring the powers of the Magistrate to take cognizance in the given facts and circumstances of the case, the learned Counsel heavily relied upon the decision of this Court in *Parameswaran Nair v. Surendran* reported in 2009 (1) KLT 794 which is a decision rendered relying upon the decisions of the Apex Court reported in *Tula Ram and Others Vs. Kishore Singh, and India Carat Pvt. Ltd. Vs. State of Karnataka and Another*, and submitted that as long as the refer report in the present case is not acted upon by the Magistrate, it is premature for the complainant to approach the court below and therefore, it is illegal, improper and incorrect on the part of the court below taking cognizance at this stage. It is also contended by the learned Counsel that in case the learned Magistrate accepts the refer report as correct and no further proceedings are initiated, the complainant can invoke Section 250 of Code of Criminal Procedure. I am unable to endorse the above two contentions raised by the learned Counsel for the Petitioners to hold that it is illegal on the part of the Magistrate in taking cognizance upon the private complaint preferred by the complainant.

34. The first contention on the basis of the decision in *Parameswaran Nair's* case (cited supra) is not at all relevant in view of the facts and circumstances involved in the present case. It is trite and legal that in case refer report filed by the Special Investigation Team in Crime No. 306 of 2007 of the Thoppumpadi Police

Station is accepted by the Magistrate, the learned Magistrate has got several option and procedures as contemplated by Sections 173, 156, 200, 202 and 203 of Code of Criminal Procedure. But, in the present case, though the refer report was filed by the Special Investigation Team, the same is pending consideration before the Magistrate Court. That does not mean, the accused therein has no right to approach the court by filing a complaint with allegation regarding the falsity of the complaint and the consequent registration of crime and the so-called investigation and the alleged harassment meted out against the accused under the guise of investigation. The above position will be more clear from an answer to a question, in the light of the facts and circumstances involved in the present case. Even if the allegations contained in the complaint on the basis of which Crime No. 306 of 2007 of Thoppumpady Police Station was registered, are accepted as true, not conceded, whether the Police Officers, who undertook the investigation, are justified in subjecting the accused therein to harassment and intimidation and to third degree measures. If those allegations are true, the answer is "no". If that be so, the complaint against such atrocities or harassment can be filed at any time notwithstanding the fact that the Magistrate has not accepted the crime report and the same is pending for consideration and therefore, absolutely, there is no illegality in taking cognizance by the Chief Judicial Magistrate upon the complaint preferred by the complainant who is the accused in the above crime case. In para 6 of the above decision, this Court has held, after referring the decision of the Apex Court cited supra as follows:

6. When a final report is filed after investigation u/s 173(2) of the Code, Magistrate is not bound by the opinion of the Investigating Officer. It is for the Magistrate to decide, on the materials available on the final report, including the documents submitted along with it and the result of the investigation, whether cognizance of the offences is to be taken or not and if it is to be taken whether it is to be taken on all the offences or some of the offences and summons is to be issued to all or some of the accused or whether further investigation is to be ordered. Even when the report of the police officer is to the effect that an offence appears to have been committed by a particular person or persons, the Magistrate has the three options. (1) He may accept the report and take cognizance of the offence and issue process. (2) He may disagree with the report and direct further investigation under Sub-section (3) of Section 156(3) He may disagree with the report and drop the proceedings. Similarly if the report discloses that no offence appears to have been committed, Magistrate has again the three option (1) He may accept the report and drop the proceedings (2) He may disagree with the findings in the report and take the view that there is sufficient ground for proceeding further and take cognizance and issue process (3) He may direct further investigation under Sub-section (3) of Section 156. While deciding to take cognizance on the complaint available before him, Magistrate has to record the statement of the complainant and his witnesses, if any present, as provided u/s 200 of the Code. If on recording the statement, Magistrate finds that a further investigation is necessary, then as provided u/s

202, the Magistrate is competent to direct an investigation to be made by a police officer or by such other person as he thinks fit and on getting the report, Magistrate can dismiss the complaint u/s 203 of the Code if he is of the opinion that there is no sufficient ground for proceeding. He is entitled to issue summons to the accused if he is of the opinion that there is sufficient ground for proceeding further....

In this juncture, it is relevant to note that the second accused herein, who is the de facto complainant in the above crime case has already filed a protest complaint which is also pending for consideration. If that be so, in the light of the above decision, it is left open to the Magistrate to follow any of the procedure pointed out in the above decision.

35. In the light of the above decision and in view of the facts and circumstances involved in the present case, especially the Special Team has already filed a refer report, the Magistrate has again got three options that firstly he can accept the report and drop the proceedings, secondly, if he disagrees with the finding in the refer report, he can take the view that there is sufficient ground for proceeding further and take cognizance and issue process, thirdly, he may direct further investigation under Sub-section (8) of Section 173. If the Magistrate is opted to decide to take cognizance of the complaint available before him, he has to record the statement of the complainant and his witnesses as provided u/s 200 of the Code. On recording the statement, if the Magistrate finds that further investigation is necessary, as provided u/s 202, the Magistrate can direct investigation to be made by a Police Officer or by such other persons as he thinks fit and on getting report, the Magistrate can dismiss the complaint u/s 203 of the Code of Criminal Procedure, if he is of the opinion that there is no sufficient ground for proceeding. According to the Magistrate, if there are materials for proceeding further, he is entitled to issue summons to the accused. But, for adopting any of such provisions and procedure, the pendency of the present complaint and the procedure of taking cognizance and further proceedings therein will, in no way, stand in the way of the learned Magistrate. In other words, the procedure, merits and the final disposal of the complaint are not depending upon the outcome of the consideration of the refer report filed by the Police, especially when the allegations in the complaint case and the crime case cannot be treated as case and counter case. Therefore, it is my considered opinion that there is no illegality or procedural irregularity on the learned Chief Judicial Magistrate in taking cognizance upon the complaint preferred by the complainant on the ground that the refer report filed by the Police is pending for consideration and no decision is taken on such report. Pending consideration of the refer report, the unfettered power for taking cognizance vested with the Magistrate by the Code of Criminal Procedure is not in any way limited or restricted.

36. Another contention raised by the learned Counsel for the Petitioners is on the basis of Section 250 of Code of Criminal Procedure. On a mere reading of Section

250 of Code of Criminal Procedure and sub-sections of Section 250, it can be seen that as indicated by the title to the said Section, it is only a remedial provision for compensation for false accusation without a reasonable cause. In other words, Section 250 of Code of Criminal Procedure is not a penal provision for the offences committed by which it led to the institution of a case upon a complaint or upon an information given to the Police Officer or a Magistrate. In the present complaint, the allegation is that in order to make it appear that the complainant has forged certain documents, the Petitioners/accused have created artificial document by forging the signature of the complainant and the late Pandan Krishnan. It is also the case of the complainant that for the purpose of registering the complaint, false allegations were made and towards substantiating such false allegation, documents were forged and all this was done on the basis of a conspiracy and towards further materialisation of the said conspiracy, the complainant was subjected to harassment and intimidation and third degree measures. If these allegations are proved to the satisfaction of a court of law, the Petitioners/accused have to face penal liabilities as envisaged by the provisions of the Indian Penal Code. Section 250 contemplates only compensation for the false accusation or false information. Therefore, the contention raised by the learned Counsel based upon Section 250 of Code of Criminal Procedure is also not sustainable and the same is liable to be rejected and I do so.

37. Another plea taken by counsel for the Petitioners is to the effect that going by the complaint and the averments contained therein, absolutely no offence is disclosed. According to the counsel, the complainant miserably failed to raise appropriate pleadings and allegations so as to attract the offence mentioned in the complaint and the learned Chief Judicial Magistrate failed to consider the above aspects and hence, according to the learned Counsel, the impugned order is liable to be set aside as there is no proper ground to take cognizance.

38. I have carefully considered the above contentions of the learned Counsel and also perused the materials available on record. At the outset, it is to be noted that though in two courts and through different Presiding Officers, cognizance were taken upon same set of allegations on three occasions. The challenge in these criminal revision petitions is against the taking of cognizance at the third stage by the Chief Judicial Magistrate, Ernakulam. It is also not out of place to consider the fact that though same arguments and grounds are taken in paragraph 9 of Annexure VI order, this Court has held that a Magistrate, taking cognizance of an offence on a private complaint, need only consider the allegations in the private complaint and the statements, if any, of the witnesses on oath. It is further held that "the question as to whether those allegations are true or not is not within the province of the Magistrate at the stage of taking cognizance and this Court will not consider the sufficiency or otherwise of the evidence adduced in support of the allegations in the complaint", (emphasis supplied) Thus, this Court by Annexure VI order, without going into the merits of the case, set aside the order impugned therein and further, in exercise of the

powers of this Court u/s 407 read with Section 482 Code of Criminal Procedure, Annexure IV private complaint was transferred to the Chief Judicial Magistrate, Ernakulam, who was further directed to deal with the same in accordance with law and it was made clear that the sworn statement of the complainant and the witnesses already recorded by the Additional Chief Judicial Magistrate can be considered by the Chief Judicial Magistrate, who shall have the discretion to record their further sworn statements, if necessary, in case he decides to take cognizance of the offence. As far as the Petitioners are concerned, the above judgment became final. It is on the basis of the above direction, the learned Chief Judicial Magistrate, Ernakulam considered the matter afresh and took cognizance upon the private complaint viz., CrI.M.P. No. 6467 of 2009 preferred by the complainant, and cognizance was taken. On a reading of the impugned order, I am of the view that the learned Chief Judicial Magistrate is perfectly legal, correct and regular in taking cognizance upon the complaint and he had applied his mind while passing Annexure VIII order by which cognizance was taken. After Annexure VI order of this Court, the learned Chief Judicial Magistrate examined the complainant as C.W. 1 and two of his witnesses as C.Ws.2 and 3 on 28-8-2009. Thereafter, the learned Magistrate has also examined C.Ws.4, 5 and 6 on 22-9-2009 and thereafter issued the impugned order of taking cognizance viz., Annexure XII on 9-10-2009. On a perusal of the above order, as pointed out earlier, it can be seen that the learned Magistrate has fully complied with the direction contained in Annexure VI order of this Court and he had applied his mind and also satisfied with the correctness and otherwise of the allegations contained in the complaint.

39. Both the counsel for the accused took me through various allegations contained in the complaint and submitted that there is no sufficient material and evidence to support the action of the Magistrate in taking cognizance. Though I am fully aware of the jurisdiction of this Court and the limitation, in analysing the evidence and materials on record, and entering into the finding regarding the sufficiency of the evidence and materials, learned Counsel for the Petitioners very much argued on the above point. Thus, I am constrained to consider the correctness of the order of the court which is under challenge on the basis of those materials. In the impugned order, in paragraph 10, the learned Magistrate has held as follows:

10. From the sworn statement of the complainant and from the records of this case, there is prima facie case to show that the case of the complainant is sustainable. The evidence of C.W.4 will go to show that he conducted the investigation and found the allegations in Cr. 306/07 is totally baseless and he had filed a refer report. Ext.C-1, C-1(a), C-2, C-3, C-3(a) are the case dairies produced in this case. They will go to show that the various steps of investigation taken by C.W. 4. C.W. 5 is the S.P. of Police who supervised the investigation of C.W. 4. His evidence will also go to show that the allegation made in Cr. No. 306/2007 is without basis.

After perusal of the materials referred in paragraph 10 of the impugned order, the learned Magistrate further held in paragraph 11 of the impugned order as follows:

11. From the evidence of the complainant and from the materials produced before court, a prima facie case to proceed against the accused is revealed. Sworn statement will go to show that the accused entered into the criminal conspiracy and fabricated false documents. It also reveals that the false documents were used as original documents. Statements of C.Ws. 1 and 2 will go to show that the complainant was illegally detained. Hence, offence u/s 342 IPC is also revealed. Sworn statement of the complainant and the witnesses show that there is forgery of the documents, forgery for the purpose of cheating. It also shows that the forged documents were used as a genuine one. The sworn statement of the complainant shows that a false seal was manipulated of a Notary who was not existence and the accused were in possession of a documents knowing to be forged. The sanction is also produced. So, prima facie case for offence u/s 120B, 342, 465, 466, 468, 471, 473, 474, r/w. 34 IPC is revealed. Therefore, the complaint is taken on file as CC 211/2009 under Sections 120B, 342, 465, 466, 468, 471, 473, 474, r/w. 34 of IPC.

(emphasis supplied)

On a consideration of statement of C.W. 4 and the refer report filed in Crime No. 306/2007, the Special Team came into a conclusion that it is impossible to assume that the accused in the crime case viz., the complainant herein forged a document creating the liability of Rs. 72 lakhs on his shoulder and towards the late Pandan Krishnan. The Special Team has also concluded that the document, which is allegedly forged by the complainant, was claimed to have been given to the de facto complainant in the crime by the complainant himself, and the said document was given by the complainant to the de facto complainant in the house of the complainant. The Special Team disbelieved the above version. The Special Team has also considered the assertion of the de facto complainant that contained in paragraph 8 of the counter-affidavit filed by him and Ors. in O.P. No. 11534 of 2001 of this Court wherein it is asserted that late Krishnan was actively participating in all his business till his death on 5-11-2000. This was one of the factors that persuaded the Special Team to conclude that the allegation that the complainant had forged document on 14-2-2000 is a false one. The Special Team, on the basis of the materials, has also found that the amount as per the document dated 14-2-2000, was actually paid into the account of the late Pandan Krishnan by way of D.D. and cheques and the same were encashed. It is also the finding of the investigation team that though the de facto complainant has stated that the original of document dated 14-2-2000 was seized by the income tax authorities connected with the raid of the house of the complainant, such allegation was found incorrect and as such, there was no such document. I did not mention the entire materials and conclusion arrived on by the Special Investigation Team. All what I have referred above are only to consider whether

the learned Chief Judicial Magistrate is correct or not in taking cognizance upon the private complaint. I make it clear that the correctness or otherwise of the above finding of the Special Investigation Team and the sufficiency of the same, if proved, to find the guilty of the accused in the complaint, is a matter of evidence and appreciation at the time of trial of the case. In the light of the above facts and circumstances of the case, I have no hesitation to observe that the learned Chief Judicial Magistrate is absolutely correct and legal in taking cognizance as per the impugned order and I am constrained to make such observation only because of the argument raised in this regard on behalf of the Petitioner.

40. While upholding the impugned order of the Annexure XII order issued by the Chief Judicial Magistrate, this Court cannot ignore the fact that the refer report in Crime No. 306 of 2007 of Thoppumpadi Police Station is still pending and the same was not considered finally. Only thereafter, the further course is open to the learned Magistrate as well as the de facto complainant therein. As per order dated 18-12-2009 in CrI.M.A. No. 6468 of 2009, the learned Chief Judicial Magistrate in exercise of his powers u/s 410 of Code of Criminal Procedure has already withdrawn Crime No. 306 of 2007 of Thoppumpadi Police Station from the Judicial First Class Magistrate Court I, Kochi to the Chief Judicial Magistrate Court, Ernakulam. CrI.M.C. No. 134 of 2010 is preferred against the said order. Section 410 of Code of Criminal Procedure gives ample power to any Chief Judicial Magistrate to withdraw any case. Accordingly, any Chief Judicial Magistrate may withdraw any case from, or recall any case which he has already made over to any Magistrate subordinate to him and may inquire into or try such case by the CJM or refer it for enquiry or trial to any other such Magistrate competent to enquire or try the same. In the light of the above specific provision incorporated in the Code of Criminal Procedure, the contention raised by the counsel for the Petitioner in the above CrI.M.C. is devoid of any merit. Having regard to the facts and circumstances and the materials and the allegations contained in both the cases, I have already held that the same are interconnected each other, even though the same cannot be treated as case and counter case. Therefore, the finding of the learned Chief Judicial Magistrate in his order dated 18-12-2009 in CrI.M.P. No. 6468/09 passed u/s 410 of Code of Criminal Procedure that both the cases have to be disposed of by the same judicial mind cannot be held as illegal or irregular and according to me, that is the only legal, proper, correct and possible way to dispense justice effectively. Thus, according to me, the facts and circumstances involved in all the cases demand the disposal of the present complaint and Crime No. 306 of 2007 of Thoppumpadi Police station by a same judicial mind.

41. In this juncture, it is also relevant to note that the first accused already preferred CrI.M.C. No. 3651 of 2008 before this Court for a direction directing the Additional Chief Judicial Magistrate to send the case diary in Crime No. 306 of 2007 to the court of Judicial First Class Magistrate Court I for a speedy disposal of the refer report. While disposing of that CrI.M.C, this Court has held that as

there is already a carbon copy of the Case Dairy in the Judicial First Class Magistrate Court I, Kochi, the said Magistrate need call for the records only if he feels the need to peruse the original of the C.D. While disposing of W.P. (C) No. 16202 of 2008, this Court has acknowledged the order issued by the C.J.M., Ernakulam transferring the said crime and all other petitions pending in the J.F.C.M. Court II to J.F.C.M. Court I, Kochi. Learned Counsel for the Petitioner in the above Cr.M.C. submitted that while taking cognizance upon the complaint preferred by the complainant, the learned Magistrate has already come into a conclusion that there are sufficient materials to hold that there is prima facie case to proceed against the accused and to the effect that sworn statement will go to show that the accused has entered into criminal conspiracy and fabricated false document. Learned Counsel also pointed out that the learned Magistrate has also expressed that the evidence of C.W.4 will go to show that the allegation made in Crime No. 306 of 2007 is without basis. Thus, the contention of the learned Counsel is that if the Petitioners/accused are forced to undergo trial before the learned Magistrate who had expressed his opinion regarding the merit of the case, that will certainly adversely affect the defence and the accused are highly prejudiced. I am quite unable to accept the above contention. The Chief Judicial Magistrate passed Annexure XII order in terms of the order passed by this Court vide Annexure VI judgment. The materials referred by the C.J.M. in the impugned order are the materials collected during Section 202 enquiry. The statement recorded u/s 202 is not an evidence adduced in trial. In the decision reported in Smt. Laxmi Kishore Tonsekar v. State of Maharashtra 1993 Cri.L.J. 2772, it is held that the purpose of Section 202 enquiry is to ascertain the true or falsity of the complaint. In the present case also, as explicit from the impugned order, the learned Chief Judicial Magistrate has just expressed his opinion only to ascertain whether there is prima facie case to proceed against the accused therein. Therefore, the apprehension and contention raised by the learned Counsel is absolutely unwarranted and baseless. Thus, according to me, CrI.M.C. No. 134 of 2010 filed against the above order of the learned Chief Judicial Magistrate is devoid of any merit and is liable to be dismissed.

42. After the disposal of CrI.M.C. No. 3651 of 2008 on 24-10-2008, CrI.M.C. No. 2901 of 2009 had been filed with a prayer to issue an order directing to pass expeditious order in CrI.M.P. No. 6468 of 2009 pending before the C.J.M. Court and by order dated 6-10-2009, the said CrI.M.C. was disposed of directing the Chief Judicial Magistrate Court, Ernakulam to pass appropriate orders in accordance with law in CrI.M.P. No. 6468 of 2009 and the impugned order in CrI.M.C. No. 134 of 2010 was issued on the basis of the above direction. Thus, as on today, besides the complaint upon which cognizance was taken as per the impugned order, CrimeNo.306 of 2007 of Thoppumpadi Police Station and the refer report therein and the protest complaint filed by the de facto complainant in the above crime are also now pending before the Chief Judicial Magistrate Court, Ernakulam. Under the above legal, factual and procedural scenario, I am of the view that the learned Magistrate can be directed to dispose of those

matters pending before it.

43. In this juncture, it is pertinent to note that as I indicated earlier, it is now for the C.J.M. Court, Ernakulam to consider the refer report in Crime No. 306 of 2007 of the Thoppumpadi Police Station and the protest complaint filed therein. I have no doubt that at the time of consideration of the refer report, the learned Magistrate certainly will follow the procedure mentioned in the decision of this Court in Parameswaran Nair's case (cited supra). However, it is to be made clear that the present complaint upon which the impugned order issued by the learned C.J.M. has nothing to do with the further action to be taken in the refer report. But, it is to be noted that the de facto complainant in the above crime has already filed a protest complaint and it is for the learned Magistrate to consider the same in accordance with law. The Apex Court has especially, in the decision in Bhagwant Singh Vs. Commissioner of Police and Another, which is followed in S.K. Rafi v. State of Andhra Pradesh and Anr. (2007) 13 S.C.C. 76, had held that right to get notice at the time of consideration of the refer report is a right upon the informant and he is entitled to have a hearing on the issue. In the present case, as I indicated earlier, the informant already filed a protest complaint. The further consideration of the protest complaint arises only in case the learned Magistrate is opting to accept the refer report and to drop the proceedings. The legal position is that the Magistrate has power to take cognizance u/s 190(1)(b) irrespective of the fact that the police report is in favour of the accused, provided there are sufficient materials in the protest complaint. But, in that case, the Magistrate cannot take cognizance without adopting the procedure contemplated by Chapter XV of the Code of Criminal Procedure. Then also three options are given to the Magistrate as held by this Court in the decision in Parameswaran Nair's case. Thus, it is crystal clear that there is no legal Bar for the C.J.M. Court, Ernakulam in proceeding with the complaint even though he decides either to accept the refer report in Crime No. 306/2007 at Thoppumpadi Police Station or to opt to take other proceedings mentioned in the decisions cited supra or in case he deals with the protest complaint filed by the de facto complainant in the above crime.

44. However, as indicated earlier, it is absolutely inevitable rather the interest of justice demands that both the complaint as well as the refer report and other proceedings, if any thereto, have to be dealt with by the same judicial mind. Therefore, even though these are not cases and counter cases, it is only just and proper to consider the same one after Anr. as in case and counter case.

45. In the light of the above discussions and the materials referred above and the facts and circumstances involved in the case, I am of the view that there is no merit in the above revision petitions and the CrI.M.C. and accordingly, the same are dismissed, upholding the order dated 9-10-2009 in CrI.M.P. No. 6467 of 2009 and the order dated 18-12-2009 in CrI.M.P. No. 6468 of 2009 of the Court of Chief Judicial Magistrate, Ernakulam, but subject to the following directions and observations:

1. The learned Chief Judicial Magistrate is directed to consider the refer report in Crime No. 306 of 2007 of the Thoppumpadi Police Station after hearing the necessary parties therein and the same shall be done expeditiously, at any rate within a period of two months from the date of receipt of a copy of this order and the back records from this Court.

2. It is left open to the Chief Judicial Magistrate, Ernakulam, to withdraw any case or petition connected with Crime No. 306 of 2007 of Thoppumpady Police Station pending in any court, over which the Chief Judicial Magistrate Court has jurisdiction u/s 401 of the Code of Criminal Procedure and to dispose of the same accordingly.

3. After consideration of the refer report, CrI.M.P. No. 6467/2009 now taken on file as C.C. No. 211 of 2009 can be proceeded further and disposed of in accordance with law and on merit and in case, there are any further proceedings on the basis of the disposal of the refer report in Crime No. 306 of 2007 of the Thoppumpadi Police Station, the said proceedings and the proceedings in the complaint shall be enquired into and tried not jointly, but one after Anr. as in case and counter case so as to ensure that both the matter or connected case, if any, be considered and disposed of by same judicial mind or same court.

4. C.C. No. 211 of 2009 and the further proceedings, if any, upon the refer report, shall be disposed of untrammelled by any of the findings and observations contained in this order or in the orders of the Chief Judicial Magistrate which are impugned in these CrI.R.Ps. as well as in the CrI.M.C, as expeditiously as possible.

Subject to the above directions and observations, CrI.R.Ps. 3266 & 3282 of 2009 and CrI.M.C. No. 134 of 2010 are dismissed.