REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS……OF 2023
(@ SPECIAL LEAVE PETITION (CRL.) NOS. 2849-2854 OF 2022)

CARDINAL MAR GEORGE ALENCHERRY ...APPELLANT

Versus

STATE OF KERALA & ANR. …RESPONDENTS

WITH
SPECIAL LEAVE PETITION (CRL.) NOS. 1487-1493 OF 2022

EPARCHY OF BATHERY, REP. THROUGH
MOST REV. DR. JOSEPH MAR THOMAS ... PETITIONER

Versus

STATE Of KERALA & ORS. ETC. ... RESPONDENTS

WITH

SPECIAL LEAVE PETITION (CRL.) NO(S). ……. OF 2023
ARISING OUT OF DIARY NO. 7364 OF 2022)

CATHOLIC DIOCESE OF THAMARASSERY … PETITIONER
REP. THROUGH MAR REMEGIOSE INCHANAYIL

Versus

STATE OF KERALA & ORS. ETC. …RESPONDENT(S)

J U D G M E N T

BELA M. TRIVEDI, J.

1. Leave granted in SLP (Crl.) Nos. 2849-2854 of 2022.

2. All these matters are arising out of the impugned common judgment and order dated 12.08.2021 passed by the High Court of Kerala at Ernakulam in Crl. MC No. 8936 of 2019, Crl. MC No. 205 of 2020, Crl. MC No. 1414 of 2020, Crl. MC No. 1409 of 2020, Crl. MC No. 2138 of 2020, Crl. MC No. 2136 of 2020 and Crl. MC No. 9115 of 2019.

3. In the batch of six appeals arising out of SLP (Crl.) Nos. 2849-2854/2022, filed by the appellant Cardinal Mar George Alencherry (original accused) the impugned common order dated 12.08.2021 in its entirety has been assailed, however, in the SLP (Crl.) No. 1487-1493/2022 filed by Eparchy of Bathery (not a party before the High Court), and in the SLP Diary No. 7364/2022 filed by the Catholic Diocese of Thamarassery (not a party before the High Court), this Court vide the order dated 14.02.2022 had granted permission to file the SLPs to the said petitioners to a limited extent in respect of the petitioners' grievances pertaining to paragraphs 17 to 39 of the impugned order. Under the

circumstances, the facts of the appeals filed by the appellant-Cardinal Mar George Alencherry are considered for the sake of convenience.

4. The facts in nutshell, as discernible from the record, giving rise to the present appeals are that: -

(i) The Syro Malabar Church, an Episcopal Institution is headed by the Bishop of Archdiocese, i.e., the appellant – Cardinal Mar George Alencherry (hereinafter referred to as 'the appellant-Archbishop'). The said Archbishop claiming to have an authority over all the spiritual and temporal affairs concerning Syro Malabar Church alienated certain immoveable properties of the Church. The present respondent no. 2 – Mr. Joshy Varghese (original complainant) claiming to be a member and believer of a Roman Catholic Church has filed a complaint under Sections 190 and 200 of Cr.P.C. being Crl. M.P.No. 5003/2018 in the Court of Judicial Magistrate, Ist Class, Kakkanad (hereinafter referred to as the 'Trial Court') on 16th July, 2018, against three accused i.e. (1) the

appellant-Archbishop, (2) Rev Fr. Joshy Puthuva and (3) Saju Varghese alleging commission of the offences punishable under Sections 120B, 406, 409, 418, 420, 423, 465, 467, 468 r/w 34 of IPC.

(ii) It has been alleged in the complaint, *inter alia* that the complainant is the member of the St. Mary's Church, Perumbavoor, one of the churches administered by the Archdiocese of Ernakulam-Angamaly. The appellant took charge of the Archdiocese as its Major Archbishop on 29.05.2011 and he was subsequently ordained as a Cardinal of Syro Malabar Church on 06.01.2012. The said Archdiocese has been administering various educational institutions, orphanages, old age homes, convents, monasteries and hospitals, in addition to 338 churches under it. The said Archdiocese owned assets both movable and immovable worth crores of rupees. The bylaws of Archdiocese which prescribed the procedures for the administration and management of the assets of the Archdiocese were modified on 29.07.2009.

(iii) It has been further alleged that the appellant-Archbishop entered into a criminal conspiracy with accused no. 2 – Rev Fr. Joshy Puthuva, who was the financial officer of the said Archdiocese, during the period from 2012 to 2017 to fraudulently dispose of some of the immovable properties of the Archdiocese, and in furtherance thereof, they alienated certain properties worth crores of rupees to the accused no. 3 - Saju Varghese, as described in the complaint.

(iv) In the said complaint, a sworn statement of the complainant was recorded in view of Section 202 of Cr.P.C. as the appellant and the other two accused in the said complaint were residing beyond the jurisdiction of the Trial Court. One more witness was also summoned and examined in support of the complaint. The complainant also had produced few documents in support of the said complaint.

(v) The Trial Court vide the order dated 2nd April, 2019 took the complaint on file and dismissed the complaint under Section 203 of Cr.P.C. so far as the

offences under Sections 409, 418, 420, 465, 467 and 468 of IPC were concerned, however issued summons against the accused for the offences under Sections 120-B, 406, 423 read with 34 of IPC.

5. The complainant - Joshy Varghese has also filed other five similar complaints against the appellant-Archbishop and others (Annexures A-4 to A-9 in SLP(Civil) Nos.2849-2854 of 2022) in which the trial court had issued the summons by passing separate orders, the details of which are as under:

S. No.	**CrMP No./ Complaint No.**	**Magistrate Court**
1.	CrMP 5005/2018 (CC. No. 1886/2019)	Summons issued to the Petitioner and another on 05.11.2019
2.	CrMP 5013/2018 (CC. No. 51/2020)	Summons issued to the Petitioner and another on 20.01.2020
3.	CrMP 5011/2018 (CC. No. 50/2020)	Summons issued to the Petitioner and another on 20.01.2020
4.	CrMP 5009/2018 (CC. No. 93/2020)	Summons issued to the Petitioner and another on 13.02.2020
5.	CrMP 5015/2018 (CC. No. 94/2020)	Summons issued to the Petitioner and another on 13.02.2020

6. The appellant-Archbishop (accused no.1) and the said Saju Varghese (accused no. 3) being aggrieved by the order dated 02.04.2019 passed by the trial court in Cr.M.P.No. 5003/2018

preferred Criminal Revision Application Nos. 20/2019 and 21/2019 respectively before the Sessions Court, Ernakulam Division (hereinafter referred to as 'the Sessions Court'). The Sessions Court dismissed the said Criminal Revision Petitions, vide the order dated 24.08.2019, against which the appellant-Archbishop preferred Crl.M.C. No.8936 of 2019 and other five petitions before the High Court under Section 482 of Cr.P.C. The original accused no. 3 - Saju Varghese also filed Crl.M.C. No.9115/2019 before the High Court. The High Court vide the impugned order dated 12th August, 2021 dismissed all the seven Crl.M.Cs. The High Court also gave certain directions to the respondent-State Government while dismissing the said petitions. The High Court thereafter posted the matters on 25.10.2021 for the compliance report, and then gave further directions by passing various orders from time to time. Being aggrieved by the same, the present sets of appeals have been filed by the appellants as stated hereinabove.

7. The learned senior advocate Mr. Sidharth Luthra appearing for the appellant-Archbishop submitted following chart, showing details of the properties involved in these appeals.

DETAILS OF PROPERTY

S. No.	Case No.	CrlMC No. (HC)	SLP No. (SC)	Sale Deed Nos.	Area of Land	Re.Sy. No. Place Location of Land

1.	CC. No. 632/19 P4@132	Crl.M.C No. 8936/19 P14 @ 392/V2	SLP No. 2849/22	3373/16	24.40	Re.Sy. No. 548/4 Vazhakala Village Opp. Bharathmatha College (Para 20; Page 141)
2.	CC. No. 1886/19 P5@148	Crl.M.C No. 205/20	SLP No. 2850/22	2720/16 2721/16 2723/16	3.93 3.94 1.93	Re.Sy. No. 509/4 Thrikkakara area in Vazhakala Village Near Karunalayam (Para 37; Page 173)
3.	CC. No. 51/2020 P6@176	Crl.M.C No.1409/ 20	SLP No. 2851/22	1679/17 1680/17 1681/17	1.31 1.36 1.41	Re.Sy. No. 509/4 Thrikkakara area in Vazhakala Village Near Karunalayam (Para 37; Page 198)
4.	CC. No. 50/2020 P7@202	Crl.M.C No. 1414/20	SLP No. 2852/22	2735/16	1.92	Re.Sy. No. 509/4 Thrikkakara area in Vazhakala Village Near Karunalayam (Para 37; Page 222)
5.	CC. No. 93/2020 P8@225	Crl.M.C No. 2136/20	SLP No. 2853/22	2732/16 2733/16 2734/16	1.85 1.83 1.93	Re.Sy. No. 509/4 Thrikkakara area in Vazhakala Village Near Karunalayam (Para 37; Page 254)
6.	CC. No. 94/2020 P9@258	Crl.M.C No. 2138/20	SLP No. 2854/22	2368/17 2369/17 2370/17	1.31 1.21 1.14	Re.Sy. No. 509/4 Thrikkakara area in Vazhakala Village Near Karunalayam (Para 37; Page 1284)

8. According to the learned Senior Advocate Mr. Luthra, the respondent no. 2-Joshy Varghese and others had also filed similar complaints against the appellant and others. The details of the said complaints submitted by Mr. Luthra are as below:-

(i) 03.01.2018: The respondent no. 2 Joshy Varghese, the complainant, had filed a complaint being CMP No. 2/2018 in the Court of Judicial Magistrate, First Class. Maradu, against the appellant and others praying for investigation under Section 156(3) Cr.P.C., alleging criminal conspiracy to sell the plots of lands belonging to the Archdiocese. The Judicial Magistrate, Maradu, Ernakulam before issuing the process in the said complaint directed the respondent no. 2 to examine the witnesses. The respondent no. 2 challenged the said order before the Kerala High Court, which dismissed his petition vide the order dated 22.02.2018. The said complaint was thereafter dismissed by the Magistrate vide the order dated 30.09.2021.

(ii) 12.01.2018: One Paulachan Puthuppara, an Advocate filed a complaint being CMP No. 179/2018 in the court of Chief Judicial Magistrate, Ernakulam against the petitioner and two others alleging criminal conspiracy in respect of the sale of plots of land belonging to the Archdiocese. The

Magistrate, Ernakulam vide the order dated 02.02.2018 dismissed the complaint observing that if complainant was aggrieved, he could resort to an appropriate civil action as may be available under the law.

(iii) 15.01.2018: One Shine Varghese filed a complaint before the P.S. Ernakulam Central, being FIR No. 719/2018, making similar allegations, in which the police filed a closure report, however the complainant Shine Varghese filed a Protest Petition, which is pending under consideration before the concerned court.

(iv) 18.03.2019: One complainant Pappachan filed a complaint being Cr.M.P.No. 820/2019 against the appellant-Archbishop and others in the Court of Judicial Magistrate, First Class, Kakkanad. The said complainant had also filed a complaint before the Ernakulam P.S. on 12.01.2019, however no action was taken. Ultimately FIR No. 818/2019 was registered, however the investigating officer has submitted a closure report in the said complaint.

9. Adverting to the first and foremost submission made by the Learned Senior Counsel Mr. Luthra that the present complaint against the appellant after the dismissal of the earlier complaint by the Court of Maradu, on the same set of facts, filed by the respondent no.2-complainant was not maintainable, it may be noted that the respondent no.2 had earlier filed a complaint being no.2/2018 on 03.01.2018 in the Court of JMFC, Maradu under Section 156(3) and Section 200 Cr.PC, making general allegations with regard to the fraudulent sale of the properties belonging to the Archdiocese by the appellant Archbishop, whereas the instant complaints six in number have been filed by the respondent no.2-complainant in the Trial Court giving specific details about the sale of the properties situated within the jurisdiction of Trial Court at Kakkanad. It is not disputed that the first complaint (C.C. No.2/2018) was dismissed on 30.09.2021 by the concerned court at Maradu without taking cognizance of the complaint as the counsel for the complainant did not appear, whereas in the instant complaints, the summons have been issued by the Trial Court, taking cognizance of the offences under Section 120B, 406, 423 read with Section 34 of IPC on 02.04.2019 and on other dates subsequent thereto, that is prior to the dismissal of the first complaint on 30.09.2021. The respondent no.2 in the counter filed

by him has specifically stated that regarding the first item of property, the complaint was filed before the Court of Maradu (Ernakulam), as the cause of action had arisen within the jurisdiction of Maradu Police Station, whereas with regard to the other properties, seven complaints have been filed before the Court of JMFC, Kakkanad within whose jurisdiction the properties were situated. It is pertinent to note that there was no adverse order passed or cognizance taken by the Court at Maradu and on the contrary the same was dismissed after the Trial Court at Kakkanad issued summons against the appellant and others, taking cognizance of the alleged offences under Section 120B, 406, 423 read with Section 34 of IPC.

10. It cannot be gainsaid that the cognizance is taken of an offence and not of the offender. As such the phrase "taking cognizance" has nowhere been defined in the Cr.PC, however has been interpreted by this Court to mean "become aware of" or "to take notice of judicially". In ***S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and Others***[1], this Court while explaining the scope of the enquiry under Section 202 Cr.PC, observed as under:-

> "19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It

1 (2008) 2 SCC 492

merely means “become aware of” and when used with reference to a court or a Judge, it connotes “to take notice of judicially”. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. “Taking cognizance” does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.

21. Chapter XIV (Sections 190-199) of the Code deals with “Conditions requisite for initiation of proceedings”. Section 190 empowers a Magistrate to take cognizance of an offence in certain circumstances. Sub-section (1) thereof is material and may be quoted in extenso:

“190. *Cognizance of offences by Magistrates*.—(1) Subject to the provisions of this Chapter, any Magistrate of the First Class, and any Magistrate of the Second Class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(*a*) upon receiving a complaint of facts which constitute such offence;

(*b*) upon a police report of such facts;

(*c*) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.”

22. …….

23. Then comes Chapter XVI (Commencement of proceedings before Magistrates). This Chapter will apply only after cognizance of an offence has been taken by a Magistrate under Chapter XIV. Section 204, whereunder process can be issued, is another material provision which reads as under:

“204. *Issue of process*.—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(*a*) a summons case, he shall issue his summons for the attendance of the accused, or

(*b*) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

> (3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.
>
> (4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.
>
> (5) Nothing in this section shall be deemed to affect the provisions of Section 87."
>
> 24. From the above scheme of the Code, in our judgment, it is clear that "Initiation of proceedings", dealt with in Chapter XIV, is different from "Commencement of proceedings" covered by Chapter XVI. For commencement of proceedings, there must be initiation of proceedings. In other words, initiation of proceedings must precede commencement of proceedings. Without initiation of proceedings under Chapter XIV, there cannot be commencement of proceedings before a Magistrate under Chapter XVI. The High Court, in our considered view, was not right in equating initiation of proceedings under Chapter XIV with commencement of proceedings under Chapter XVI."

11. In ***Ramdev Food Products Private Vs. State of Gujarat***[2] while drawing distinction between the provisions contained in Section 156(3) and Section 202(1) of Cr.PC, this Court examined the scheme of the said sections and after discussing various earlier decisions concluded as under:-

> "38. In *Devarapalli Lakshminarayana Reddy* v. *V. Narayana Reddy* [(1976) 3 SCC 252: 1976 SCC (Cri) 380], *National Bank of Oman* v. *Barakara Abdul Aziz* [(2013) 2 SCC 488: (2013) 2 SCC (Cri) 731], *Madhao* v. *State of Maharashtra* [(2013) 5 SCC 615: (2013) 4 SCC (Cri) 141], *Rameshbhai Pandurao Hedau* v. *State of Gujarat* [(2010) 4 SCC 185 : (2010) 2 SCC (Cri) 801] , the scheme of Sections 156(3) and 202 has been discussed. It was observed that power under Section 156(3) can be invoked by the Magistrate before taking cognizance and was in the nature of pre-emptory reminder or intimation to the police to exercise its plenary power of investigation beginning with Section 156 and ending with report or charge-sheet under Section 173. On the other hand, Section 202 applies at post-cognizance stage and the direction for investigation was for the purpose of deciding whether there was sufficient ground to proceed."

12. So far as facts of the present case are concerned, indisputably though the respondent-complainant had filed the first complaint in

2 (2015) 6 SCC 439

the court of JMFC, Maradu seeking prayer to direct investigation to the police under Section 156(3) and 202 of Cr.PC, the said complaint was not prosecuted further. The concerned court had also not directed any investigation either under Section 156(3) or Section 202 of Cr.PC and the said complaint was dismissed for not having been prosecuted further. The Trial Court at Kakkanad, however, before the dismissal of the previous complaint, had already taken cognizance by issuing summons to the appellant and others in the instant six complaint cases filed by the respondent no. 2 - complainant.

13. Though it is true that the respondent no. 2, in the instant complaints should have disclosed the full and correct facts more particularly with regard to the previous complaint filed by him against the appellant and other accused in respect of the alleged fraudulent sale of the properties belonging to Archdiocese, mere non-disclosure of such facts, would not be a ground to set aside the summons issued by the Trial Court after applying its mind and having been *prima facie* satisfied about the commission of the alleged offences under Section 120B, 406 and 423 read with 34 of IPC. From the order dated 2.04.2019 passed in Cr.M.P. No.5003/2018, it is quite discernible that the Trial court after meticulously examining the allegations made in the complaint and

the evidence of the complainant and one witness, had taken the cognizance, with regard to the aforesaid offences only and had not taken cognizance of the other offences alleged under Sections 409, 418, 420, 465, 467 and 468 of IPC which shows proper application of mind by the Trial Court before issuing the summons to the appellant and others.

14. As regards the submission made by learned Senior Counsel, Mr. Luthra that the second complaint at the instance of the respondent no. 2 on the same set of facts against the same accused was not maintainable, it may be noted that the law in this regard is quite well settled since 1962. In case of ***Pramatha Nath Talukdar Vs. Saroj Ranjan Sarkar***[3], it was held with regard to filing of the second complaint that a fresh complaint could be entertained after the dismissal of previous complaint under Section 203 of the Criminal Procedure Code when there was manifest error or manifest miscarriage of justice or when fresh evidence was forthcoming. It was further held that an order of dismissal under Section 203 of the Criminal Procedure Code is no bar to the entertainment of a second complaint on the same facts, but it will be entertained only in exceptional circumstances, e.g. that the previous order was passed on an incomplete record or on a misunderstanding of nature of complaint or it was manifestly

3 AIR 1962 SC 876

absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings have been adduced. The precise observations made in para 48 thereof may be reproduced hereunder :

> "**48.** Under the Code of Criminal Procedure the subject of "complaints to Magistrates" is dealt with in Chapter XVI of the Code of Criminal Procedure. The provisions relevant for the purpose of this case are Sections 200, 202 and 203. Section 200 deals with examination of complainants and Sections 202, 203 and 204 with the powers of the Magistrate in regard to the dismissal of complaint or the issuing of process. The scope and extent of Sections 202 and 203 were laid down in Vadilal Panchal v. Dattatraya Dulaji Gha Digaonkar [Vadilal Panchal v. Dattatraya Dulaji Gha Digaonkar, AIR 1960 SC 1113 : 1960 Cri LJ 1499] . The scope of enquiry under Section 202 is limited to finding out the truth or otherwise of the complaint in order to determine whether process should issue or not and Section 203 lays down what materials are to be considered for the purpose. Under Section 203 of the Criminal Procedure Code the judgment which the Magistrate has to form must be based on the statements of the complainant and of his witnesses and the result of the investigation or enquiry, if any. He must apply his mind to the materials and form his judgment whether or not there is sufficient ground for proceeding. Therefore if he has not misdirected himself as to the scope of the enquiry made under Section 202 of the Criminal Procedure Code, and has judicially applied his mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously. An order of dismissal under Section 203 of the Criminal Procedure Code, is, however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, e.g., where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings, have been adduced. It cannot be said to be in the interests of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into. Allah Ditta v. Karam Bakhsh [Allah Ditta v. Karam Bakhsh, 1930 SCC OnLine Lah 268 : AIR 1930 Lah 879] ; R.N. Choubey v. P. Jain [R.N. Choubey v. P. Jain, 1948 SCC OnLine Pat 85 : AIR 1949 Pat 256] ; Hansabai Sayaji Payagude v. Ananda Ganuji Payagude [Hansabai Sayaji Payagude v. Ananda Ganuji Payagude, 1949 SCC OnLine Bom 99 : AIR 1949 Bom 384] and Doraiswami Ayyar v. T. Subramania Ayyar [Doraiswami Ayyar v. T. Subramania Ayyar, 1917 SCC OnLine Mad 167 : AIR 1918 Mad 484] . In regard to the adducing of new facts for the bringing of a fresh complaint the Special Bench in the judgment under appeal did not accept the view of the Bombay High Court [Hansabai Sayaji Payagude v. Ananda Ganuji Payagude, 1949 SCC OnLine Bom 99 : AIR 1949 Bom 384] or the Patna High Court [R.N. Choubey v. P. Jain, 1948

> SCC OnLine Pat 85 : AIR 1949 Pat 256] in the cases above quoted and adopted the opinion of Maclean, C.J. in Queen Empress v. Dolegobind Dass [Queen Empress v. Dolegobind Dass, 1900 SCC OnLine Cal 229 : ILR (1901) 28 Cal 211] affirmed by a Full Bench in Dwarka Nath Mondul v. Beni Madhab Banerjee [Dwarka Nath Mondul v. Beni Madhab Banerjee, 1901 SCC OnLine Cal 242 : ILR (1901) 28 Cal 652] . It held therefore that a fresh complaint can be entertained where there is manifest error, or manifest miscarriage of justice in the previous order or when fresh evidence is forthcoming."

15. The said observations made in the ***Pramatha Nath Talukdar* (supra)** case were reiterated in various later decisions in case of ***Jatinder Singh and others Vs. Ranjit Kaur***[4], in case of ***Ranvir Singh Vs. State of Haryana and Another***[5], in case of ***Poonam Chand Jain and Another Vs. Fazru***[6], as also in the latest decision in case of ***Samta Naidu and Another Vs. State of Madhya Pradesh and Another***[7]. Thus, having regard to the said legal position, it could not be said that the trial court had committed any error in entertaining the complaints filed by the respondent complainant, when the previous complaint filed by him was pending before the other court, and more particularly when the said court had dismissed the said previous complaint for non-prosecution, without taking cognizance of the alleged offences therein.

16. It was also submitted by the learned Senior Counsel, Mr. Luthra that similar complaints filed by other complainants against the appellant and others making similar allegations were not found to

4 (2001) 2 SCC 570
5 (2009) 9 SCC 642
6 (2010) 2 SCC 631
7 (2020) 5 SCC 378

be of any substance. In the opinion of the Court, there is hardly any substance in the said submission. Apart from the fact that the names of the complainants and of the accused were different in the said complaints, it is difficult to cull out whether all other complaints pertained to the same properties for which the present complaints have been filed. It may also be noted that in one of the complaints filed by the other complainant Shine Varghese, though a closure report was filed by the police, the protest petition has been filed by the said complainant, and that the concerned trial court has reopened the case for hearing.

17. The Sessions Court in the Revision petitions filed by the appellant had also upheld the said orders passed by the trial court issuing summons against the appellant and others after dealing with each and every aspect of the matter including the ingredients of alleged offences for which the summons were issued against the appellant. The High Court in the impugned order has also discussed in detail the submissions made by the counsels for the parties in the petitions filed by the appellant under Section 482 of Cr.P.C. and upheld the order passed by the Sessions Court. In view of the said observations made and *prima facie* findings recorded by the three courts below as regards the alleged

involvement of the appellant in the alleged offences, this Court is not inclined to interfere with the same.

18. No doubt, summoning of an accused is a serious matter and therefore the Magistrate before issuing the summons to the accused is obliged to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face any frivolous complaint, nonetheless one of the objects of Section 202 Cr.P.C. is also to enable the Magistrate to prosecute a person or persons against whom grave allegations are made. Just as it is necessary to curtail vexatious and frivolous complaints against innocent persons, it is equally essential to punish the guilty after conducting a fair trial. In the instant cases, all the three courts below have discussed in detail about the *prima facie* involvement of the appellant in the alleged offences, and therefore it is not necessary for this Court to reiterate the same. Suffice it to say that having carefully examined the record of the complaints in question, we do not find any illegality or infirmity in the orders passed by the trial court issuing summons against the appellant-Archbishop for the alleged offences.

19. So far as SLP (Crl.) 1487-1493 of 2022 filed by Eparchy of Bathery and the Diary No. 7364 of 2022 filed by Catholic Diocese of Thamarassery (hereinafter referred to as the ‘petitioners’) are

concerned, as stated earlier the said petitioners have challenged the observations recorded by the High Court in para 17 to 39 of the impugned judgement, on the ground that the said observations were made behind the back of the petitioners and other Diocese, and that such observations had wide ramifications throughout the state. According to the said petitioners such general observations made in the impugned judgement amounted to nullifying the concluded transactions involving the properties of Catholic Churches including Syro Malabar Catholic Church.

20. In this regard, the learned Senior Counsel Mr. Chander Uday Singh had submitted that the petitioners had nothing to do with the appellant-accused Archbishop, however, the High Court in the proceeding under Section 482 Cr.P.C. filed by him has defined, decided and declared the spiritual, ecclesiastical and temporal powers of the Catholic Church without affording any opportunity of hearing to the affected parties, which is not legally permissible. Mr. Chander Uday Singh has relied upon observations made by this Court in Criminal Appeal arising out of SLP (Crl.) 4567 of 2019 (Anu Kumar Vs. State (UT Administration) and another) to substantiate his submission that High Court could not have ventured to enter into an area which would adversely affect the interest of the third party to the proceedings.

21. It appears to us after having gone through the impugned order passed by the High Court, more particularly the observations made in para 17 to 39 thereof that the said *prima facie* observations were made in response to the submissions made by the learned counsels for the parties relying upon various decisions of this Court as regards the powers and authority of the Archbishop of Archdiocese with regard to the temporal and spiritual affairs of the Churches. Of course, certain observations are omnibus and general in nature but the same being only *prima facie* observations made in the impugned order in the petitions filed by the Appellant-Archbishop under Section 482 of Cr.PC, no finality could be attached to the said observations. Hence, without stretching the matter any further and without expressing any opinion on the said *prima facie* observations made in para 17 to 39 of the impugned order, we deem it appropriate to direct, and accordingly direct the Trial Court to decide the complaints in question filed by the respondent no. 2 against the appellant-Archbishop and others in accordance with law without being influenced by the said observations made by the High Court in the impugned order and that it would be open to the said petitioners to take recourse to the remedies as may be legally permissible, in case the said

observations cause any complications in the transactions already concluded by the Churches to whom the said petitioners represent.

22. In absence of any other and further material on record to support the grievances of the said petitioners, we are not inclined to entertain the said SLPs filed by the petitioners Eparchy of Bathery and Catholic Diocese of Thamarassery, in exercise of our limited jurisdiction under Article 136 of the Constitution of India, more particularly when the said petitioners have failed to make out any case of grave injustice being suffered to them. As stated earlier, the said observations have been made by the High Court in response to the submissions made by the counsels for the parties in the light of the various decisions of this Court, and the said observations being *prima facie* in nature, no finality could be attached to them.

23. Having said that, we are constrained to say something on the subsequent orders passed by the High Court after passing of the impugned order dismissing the petitions filed under Section 482 Cr.PC by the appellant. The High Court after recording its findings in the impugned order about the Criminal Conspiracy allegedly hatched by the appellant and the other accused for fraudulently selling the properties belonging to Archdiocese, further enlarged the scope of the petitions by raising doubts as regards the settlement deed executed by the appellant and others in respect of

the properties as to whether the said settlement deed was with respect to any government land or poramboke land. The High Court while dismissing the petitions filed by the appellant-Archbishop under Section 482 of Cr.PC, further directed the State Government as under:-

> "Hence, it is ordered that the government shall conduct the investigation into the matter through its investigating agencies so as to satisfy itself whether the settlement deed of the year 2007 was executed with respect to any government land or Poramboke Land, and whether it was a government land or a Poramboke land at any point of time and also the non-action/in action on part of the concerned officials who are bound by the provisions of law including Land Conservancy Act, for which, a team of officers possessing adequate knowledge in the civil and criminal laws has to be selected."

24. The High Court did not stop at giving the aforesaid directions but kept on passing the subsequent orders even after the roster was changed. From the application being I.A. No.106695/2022 filed in the present appeals on behalf of the appellant, it appears that the concerned Judge in the High Court retained the case with him for reporting the compliance of the directions given by him in the impugned order, and thereafter vide the order dated 08.02.2022 directed the registry to implead the Union of India as an additional party to the main case-Crl.M.C. No.8936/2019 by observing as under:-

> "6. Since there is no comprehensive law addressing the legal status of unincorporated organization acting under the guise of either religion or charity, it is necessary to hear the Central Government on that issue.
>
> 7. The misuse of government properties/public properties, puramboke lands has become a matter of concern and when it is done by religious bodies or congregational institutions, there will

not be any person to challenge the same before a competent court, especially when such bodies constitute a deciding factor in the election of members to the Assembly and Parliament. This might be the reason why there is massive and large scale encroachment over the government land, public property and puramboke land at the instance of religious and charitable unincorporated bodies. It is also a matter that can be taken note of judicially by this court. I am afraid such misuse and encroachment of puramboke lands are not being properly dealt with. Necessarily, there should be a separate government agency at the central level akin to other central agencies dealing with public matters, investigation etc. to initiate action against encroachment over government and public properties.

8. The Registry is directed to implead the Union of India, represented by Additional Solicitor General of India as an additional party to the main case-Crl.M.C.No.8936/2019 so as to express their view on the issue and to enact a comprehensive law dealing with the abovesaid issue, besides the formation of a central agency.

9. The Officer, who conducted the enquiry shall submit a detailed report addressing all the issues raised and directed by this Court on or before 02/03/2022. Call on 03/03/2022"

25. Thereafter on 03.03.2022, following order was passed by the High Court:

"Assistant Solicitor General of India appeared and wanted time to file reply. No second report or additional report was submitted by the State in spite of the direction issued by this Court. Hence, there will be a direction to the concerned official to appear in person and to show cause why the order of this Court is flouted. Under such circumstances, it is necessary to implead the Central Bureau of Investigation as an additional respondent in the main case. The Registry is directed to implead the Central Bureau of Investigation represented by its Director, New Delhi as additional respondent. There will also be a direction to the Registry to send a copy of the judgment dated 12.08.2021 along with the order dated 08.02.2022 to the Assistant Solicitor General of India for information. Call on 21.03.2022."

26. Again on 10.06.2022, following order was passed by the High Court -

"Several postings have been given to the Central Government and the Assistant Solicitor General of India to take instructions. So far there is no positive response on the part of Assistant Solicitor General and as such, there will be a direction to file an affidavit as to whether they are actually interested in the matter or not.

> There will be a direction to the State Government to address the issue in reference to Article 296 of the Constitution of India and submit a detailed report. As last chance, post on 23-06-2022."

27. From the afore-stated orders, it clearly transpires that the High Court after the dismissal of the petitions filed by the appellant – Archbishop under Article 482 of Cr.P.C., invoked its Suo motu jurisdiction directing the State Government to make detailed inquiry with regard to the execution of sale deed and settlement deed in respect of some of the properties sold out by the appellant, and find out whether the said properties belonged to the Government or were Poramboke land, and whether the said settlement deed was created with the aim to manipulate a document of title over Government land. Thereafter, also the concerned judge retained the matters with him even after the change of roster, and continued to pass the orders one after the other on the issues which were neither the subject matter of the main petitions under Section 482 nor were argued by the concerned advocates for the parties. The concerned judge also assumed his plenary-advisory role by calling upon and advising the State Government to legislate a comprehensive law addressing the issues pertaining to the legal status of unincorporated organisation acting under the guise of religion or

charity. On non-submission of the second report by the State, the High Court directed the concerned officer to appear in person, and directed the Registry to implead CBI as an additional respondent in the main case, though the same was already disposed of.

28. The High Court in its overzealous approach had travelled not only beyond the scope and ambit of Section 482 Cr.P.C and of Article 226 of the Constitution of India, but had crossed all the boundaries of judicial activism and judicial restraint by passing such orders under the guise of doing real and substantial justice.

29. In our opinion, the jurisprudential enthusiasm and wisdom for doing the substantial justice has to be applied by the courts within the permissible limits. The belief of self-righteousness or smugness of the High Court in exercise of its powers of judicial review should not overawe the other authorities discharging their statutory functions. We may not have to remind the High Courts that judicial restraint is a virtue, and the predilections of individual judges, howsoever well intentioned, cannot be permitted to be operated in utter disregard of the well-recognized judicial principles governing uniform application of law. Unwarranted judicial activism may cause uncertainty or confusion not only in the mind of the authorities but also in the mind of the litigants.

30. In that view of the matter, all the subsequent orders passed by the High Court after the passing of the impugned order dated

12.08.2021, being unwarranted deserve to be quashed and set aside, and are accordingly quashed and set aside.

31. In the aforesaid premises and subject to the afore-stated observations/directions, the Criminal Appeal filed by the Appellant-Archbishop, and all the SLPs filed by Eparchy of Bathery and Catholic Diocese of Thamarassery are dismissed.

…….……J.
(DINESH MAHESHWARI)

……..……J.
(BELA M. TRIVEDI)

NEW DELHI
17.03.2023