



2024:KER:89377

CRL.M.C.NOS.8843 OF 2023
& 5063 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 27TH DAY OF NOVEMBER 2024 / 6TH

AGRAHAYANA, 1946

CRL.MC NO. 8843 OF 2023

AGAINST THE ORDER DATED 13.07.2023 IN CRMP NO.34
OF 2019 OF DISTRICT COURT & SESSIONS COURT, KOTTAYAM

PETITIONER/ACCUSED:

DR. NANDAKUMAR,
AGED 59 YEARS
KALARICKAL, S/O.K.RAMACHANDRAN,
DIRECTOR, INTERNATIONAL AND INTER- UNIVERSITY
CENTER FOR NANO-SCIENCE AND NANO- TECHNOLOGY,
MAHATMA GANDHI UNIVERSITY, KOTTAYAM,
PIN - 686560

BY ADVS.
KALEESWARAM RAJ
P.V.JEEVESH
THULASI K. RAJ
SILPA SREEKUMAR

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
PIN - 682031
- 2 DEEPA P MOHANAN,
AGED 36 YEARS



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RESEARCH SCHOLAR, INTERNATIONAL AND INTER-
UNIVERSITY CENTRE FOR NANO-SCIENCE AND NANO-
TECHNOLOGY, MAHATMA GANDHI UNIVERSITY,
KOTTAYAM, PIN 686560, D/ O P.R. MOHANAN,
PULICKEL HOUSE, CHETTIYAMPARAMBU P.O,
KELEKAM, KANNUR DISTRICT, PIN - 670674

BY ADVS.

Madhusoodanan K.S

M.M.VINOD KUMAR(K/1685/2000)

P.K.RAKESH KUMAR(K/384/2008)

K.S.MIZVER(K/333/2007)

M.J.KIRANKUMAR(K/000201/2017)

SRI. M P PRASANTH, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 05.11.2024 ALONG WITH CRL.MC.5063/2024, THE COURT ON
27.11.2024 PASSED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 27TH DAY OF NOVEMBER 2024 / 6TH

AGRAHAYANA, 1946

CRL.MC NO. 5063 OF 2024

AGAINST THE ORDER DATED 13.07.2023 IN CRMP NO.34
OF 2019 OF DISTRICT COURT & SESSIONS COURT, KOTTAYAM

PETITIONER/COMPLAINANT:

DEEPA P. MOHANAN,
AGED 38 YEARS
RESEARCH SCHOLAR, INTERNATIONAL AND INTER
UNIVERSITY CENTER FOR NANO SCIENCE AND NANO
TECHNOLOGY (IIUCNN) MAHATMA GANDHI UNIVERSITY,
KOTTAYAM, D/O. P.R. MOHANAN, PULICKAL HOUSE,
CHETTIYAMPARAMBU P.O, KELAKAM,
KANNUR, PIN - 670674

BY ADVS.
K.S.MADHUSOODANAN
M.M.VINOD KUMAR
P.K.RAKESH KUMAR
K.S.MIZVER
M.J.KIRANKUMAR

RESPONDENTS/ACCUSED/STATE:

1 DR. NANDAKUMAR
S/O. K. RAMACHANDRAN, KALARICKAL,
FORMER DIRECTOR, INTERNATIONAL AND INTER
UNIVERSITY CENTER FOR NANO SCIENCE AND NANO
TECHNOLOGY (IIUCNN),
MAHATMA GANDHI UNIVERSITY,
KOTTAYAM, PIN - 686560



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2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

BY ADVS.
KALEESWARAM RAJ
THULASI K. RAJ(K/000814/2015)
CHINNU MARIA ANTONY(K/3363/2022)

SRI.M.P.PRASANTH, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 05.11.2024, ALONG WITH Cr1.MC.8843/2023,
THE COURT ON 27.11.2024 PASSED THE FOLLOWING:



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ORDER

Dated this the 27th day of November, 2024

Crl.M.C.No.8843/2023 is at the instance of the accused in Cr.MP No.34/2019 on the files of the Special Court under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, (hereinafter referred to as 'SC/ST (POA) Act, 1989 (Unamended), Kottayam, (Sessions Court) and the prayers are as under:

- "1. Quash the order, dated 13.07.2023, in SC No.390/2023, pending on the files of Court of Session, Kottayam, arising out of Crl.M.P.No.34 of 2019 (Annexure VII), and further proceedings therefrom.*
- 2. Quash Crl.M.P.No.34 of 2019, pending on the files of Court of Session, Kottayam, arising out of crime no.237 of 2016 of Gandhinagar Police Station, Kottayam revenue district, and further proceedings therefrom"*



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2. Similarly, CrI.M.C.No.5063 of 2024 is at the instance of the complainant and the prayer is as under:

“set aside that part of Ann-III order of Court of Session, Kottayam, declining to take cognizance for the offence under Sec.3(1)(x) for the incident on 03.09.2014 and proceed in accordance with law.”

3. Before analysing the facts and the matter in issue, the parties in these matters will be referred hereinafter as “complainant” and “accused” for easy reference.

4. Heard the learned counsel for the accused and the learned counsel appearing for the complainant in both the cases.

5. On scanning the genesis of the case, it could be noticed that on 19.03.2016 (wrongly shown the date as 18.03.2014 in a crime of 2016), crime No.237/2016 was registered by Gandhi Nagar Police, Kottayam, on the basis of a complaint lodged by the complainant herein, who is a



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member of Scheduled Caste community, alleging that the accused herein, who is not either a member of the Scheduled Caste or Scheduled Tribe; and the Director of International and Inter-University Center for Nano-Science and Nano-Technology, Mahatma Gandhi University, insulted and intimidated the complainant, starting from 03/2014 (date is not so legible in A1 in CrI.M.C. No.5063/2024). In the complaint occurrences during August, 2013, 03.09.2014, 10.01.2015, November, 2014, 04.03.2015 and 07.03.2015 were narrated to contend that the accused committed offence punishable under Sections 3(1)(x) of the SC/ST (POA) Act, 1989 (Unamended). As per Annexure A1, in CrI.M.C.No.5063/2024, the police, after investigation, laid charge as 'Further Action Dropped' (FAD). Thereafter, the complainant lodged CrI.M.P.No.1418/2018, against the refer report, originally before the Judicial First Class Magistrate



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Court-I, Ettumanoor and then forwarded the same to the Special Court, Kottayam, wherein, the statement of the complainant was recorded and thereafter the complaint was dismissed for non-prosecution. However, without challenging the said dismissal, the same complainant filed the present complaint vide Crl.M.P.No.34/2019, alleging instances, whereby she was insulted and intimidated by the accused with intent to humiliate her, being a member of the Scheduled Caste Community, within the public view.

6. While assailing the order taking cognizance and issuing summons, the learned counsel appearing for the accused read out the observations of the learned Special Judge in paragraph No.10, relying on the statements recorded as that of CW1 (the complainant herself), CW2 and CW3, holding the view that a mere assertion, even if made in the presence of others, that, slides presented by the



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complainant were plagiarised, the same could not lead to commission of offence under the SC/ST (POA) Act (unamended), unless, the other circumstances appearing on the face of the records *prima facie* show that, the accused had such an intention while making it. The learned counsel for the accused also pointed out that thus as per the order impugned, the learned Special Judge is of the view that as per the statements given by CW1 to CW3, offence under Section 3(1)(x) of the SC/ST (POA) Act (Unamended) is not made out *prima facie*. However, the learned Special Judge gave much emphasis to the statement of CW5. Accordingly, the learned Special Judge found that the allegations raised by the complainant against the accused were *prima facie* made out, supporting chances for CW1 had been abused or humiliated since she was a member of SC/ST Community by the accused and



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finally, cognizance was taken for the offence punishable under Section 3(1)(x) of the SC/ST (POA) Act (Unamended).

7. As discernible from the proceedings of this Court, this Court heard the matter substantially on 06.06.2024 and thereafter adjourned the matter to 18.06.2024 for further hearing as requested by the learned counsel for the complainant. Subsequently the matter got adjourned till 05.11.2024. As on 11.06.2024, the complainant filed Crl.M.C.No.5063/2024 with prayer to set aside part of Annexure A3 order passed by the Special Court, declining to take cognizance for the offence under Section 3(1)(x) of the SC/ST (POA) Act (Unamended) for the incident that occurred on 03.09.2014.

8. The learned counsel for the accused placed decision of the Apex Court in ***Ramesh Chandra Vaishya V. State of Uttar Pradesh and Another*** reported in **2023 SCC**



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OnLine 668 to contend that every insult or intimidation for humiliation to a person, would not amount to an offence under Section 3(1)(x) of the SC/ST (POA) Act (Unamended), such insult or intimidation should be one targeted at the victim because he was a member of a particular scheduled caste or scheduled tribe. Even if the same be directed generally to a person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract section 3(1)(x) unless such words are laced with casteist remarks. In paragraph No.18, the Apex Court, while considering an appeal by Special Leave, made the observation and the same is as under:

“18. That apart, assuming arguendo that the appellant had hurled caste related abuses at the complainant with a view to insult or humiliate him, the same does not advance the case of the complainant any further to bring it within the ambit of section 3(1)(x) of the SC/ST Act.



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xxxx (omitted).

The legislative intent seems to be clear that every insult or intimidation for humiliation to a person would not amount to an offence under section 3(1)(x) of the SC/ST Act unless, of course, such insult or intimidation is targeted at the victim because of he being a member of a particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief (chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by user of abusive or offensive language. Even if the same be directed generally to a person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract section 3(1)(x) unless such words are laced with casteist remarks."

9. Another decision of the Apex Court in **State of Haryana and Others V. Bhajan Lal and Others** reported in **1992 Supp (1) SCC 335**, also has been placed, with reference to paragraph No. 102, while contending that



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reading the allegations in the complaint along with sworn statements recorded as that of CW1 to CW5, *prima facie*, it could not be held that the accused herein intentionally made any comments to insult or humiliate the complainant in any manner. Therefore, the cognizance taken is wrong and the order impugned would require interference.

10. Whereas it is submitted by the learned counsel for the complainant that, reading the statements of CW1 to CW3, it is emphatically made clear that the accused made an allegation that the thesis presented by the complainant was stolen/plagiarised, in the presence of CW2, CW3 and other 50 students. If so, the said overt act, specifically alleged on 03.09.2014 itself, is sufficient to hold *prima facie* that the accused committed offence under Section 3(1)(x) of the SC/ST (POA) Act (Unamended), for which, trial is necessary. He also submitted that by allowing



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Crl.M.C.No.5063/2024, cognizance for the said offence for the occurrence on 03.09.2014 is to be taken.

11. Adverting to the rival arguments put in by the respective counsel, it is relevant to refer Section 3(1)(x) of the SC/ST (POA) Act, 1989 (Unamended) and the same provides as under:

3. Punishments for offences of atrocities.-

(1) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe,-

xxxx (omitted)

xxxx (omitted)

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within public view;"

12. Segregating the ingredients to attract the said offence, the following are necessary, viz., (1) doing an act of insult or intimidation, (2) the same is with intention to humiliate a member of a scheduled caste or a



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scheduled tribe and (3) the act shall be in any place within public view. Here, as pointed out by the learned counsel for the complainant and the accused, five instances of insult are stated in the complaint and now as pointed out by the learned counsel for the complainant, the specific allegation regarding statements made on 03.09.2014 should have to be taken as the plank, by which, offence under Section 3(1)(x) of the SC/ST (POA) Act (Unamended) has been committed by the accused. In this connection, it is relevant to read the statements given by CW1 to CW3.

13. CW1 is none other than the complainant herself. According to her, earlier she filed Crl.M.P.No.1418/2018 and therein, her statement was recorded. Subsequently, the said Crl.M.P. was dismissed for non-prosecution and in the said circumstances, she filed Crl.M.P.No.34/2019 (the present one). According to her, she



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had given sworn statement in Crl.M.P.No.1418/2018 and the said statement is also to be considered as part of the present statement. Anyhow, while giving statement as CW1 in the present Crl.M.P, she did not state anything regarding the occurrence on 03.09.2014. CW2 who had given sworn statement in this matter is one Nithin Chandran who also was pursuing Ph.D. at MG University campus during 2014. According to him, there were presentations every week, and on 03.09.2014, the complainant made her presentation and during the presentation, the accused said that the image presented by the complainant was stolen and it was so said at the Seminar Hall of the Physics Department. In the statement of CW3, the Scientific Officer, who also was doing Ph.D during 2010-2016, gave statement to the effect that the students of Dr.Nandakumar and Sabu Thomas used to make presentations jointly. On 03.09.2014, the complainant made



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her presentation. Then the accused spoke in a manner to suggest that two slides presented by the complainant were stolen/plagiarised.

14. As far as the statement given by CW4, who is none other than Dr.M. Jayakumar, who conducted enquiry acting on the complaint given by the complainant is concerned, it only stated that he conducted an enquiry and filed report. CW5 is C.V.Thomas. According to him, during 2014, he was a Syndicate member of MG University and as on 07.03.2014, when he was entering inside the room of the Pro-Vice-Chancellor, he came to know about a complaint lodged by the complainant before the Pro-Vice-Chancellor, stating that Dr.Nandakumar (accused) and others were denying opportunity to the complainant to study therein. When he was at the room of the Pro-Vice-Chancellor, he telephoned Dr.Nandakumar (accused) and spoke about the



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complaint given by the complainant. When he noticed a change in the face of the Pro-Vice-Chancellor while attending the call, and on completing the telephone call, the Pro-Vice-Chancellor stated that it was said by the accused that favouring a scheduled caste student would affect the discipline of the institution.

15. In paragraph No.4 of the impugned order, the learned Special Judge extracted the statement given by the complainant regarding the occurrence on 03.09.2014 as under:

"4. The sworn statement of the complainant is to the effect that, in the year 2012, while she was presenting thesis in a seminar conducted at the Physics Department, in front of about 50 people, the accused commented that, her report was stolen."

16. Going by the order impugned, as per the first part of paragraph No.10, the learned Special Judge



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found merit in the complaint, relying on the statement of CW5, and found that offence under Section 3(1)(x) of the SC/ST (POA) Act (Unamended) was made out against the accused and accordingly, cognizance was taken for the said offence.

17. Now the crucial question that emerges is, whether the overt acts on 03.09.2014 discernible from the materials considered by this Court, as extracted herein above, would *prima facie* show commission of offence under Section 3(1)(x) of the SC/ST (POA) Act (Unamended)?

18. Superscribing the question posed, as held by the Apex Court in **Ramesh Chandra's** case (supra), the legislative intent seems to be clear that every insult or intimidation for humiliation to a person would not amount to an offence under section 3(1)(x) of the SC/ST (POA) Act (Unamended) unless, of course, such insult or intimidation is



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targeted at the victim because of him being a member of a particular Scheduled Caste or Tribe. If one calls another an idiot (bewaqoof) or a fool (murkh) or a thief (chor) in any place within public view, this would obviously constitute an act intended to insult or humiliate by use of abusive or offensive language. Even if the same be directed generally to a person, who happens to be a Scheduled Caste or Tribe, per se, it may not be sufficient to attract section 3(1)(x) unless such words are laced with casteist remarks. Therefore, it is necessary that before an accused will be subjected to trial for an offence under section 3(1)(x), it is the duty of the court to ascertain as to whether the prosecution materials make out the said offence, *prima facie*, to take cognizance of the same.

19. On reading the impugned order, the learned Special Judge took cognizance for the offence under Section



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3(1)(x) of the SC/ST (POA) Act (Unamended) mainly relying on the evidence of CW5, the Syndicate Member of the University, stating that he met the Pro-Vice Chancellor, when he telephoned the accused on receiving complaint from the complainant, and that after disconnecting the call, the Pro Vice Chancellor told CW5 that it was stated by the accused that favouring a scheduled caste student would spoil the decorum of the institution and that this statement is one indicating *prima facie* casteist intention in the mind of the accused. Without much ado, it is held that the said observation of the learned Special Judge, relying on the statement of CW5 is absolutely wrong. As I have already pointed out, in order to attract an offence under Section 3(1)(x) of the SC/ST (POA) Act (Unamended), doing an act of insult or intimidation with intention to humiliate a member of a scheduled caste or scheduled tribe community, in any place



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within public view is necessary. When the Pro Vice Chancellor informed CW5 that the accused said that favouring a scheduled caste student would spoil the decorum of the institution, in a telephone call to the Pro-Vice-Chancellor, and the only person who heard the same is the Pro Vice Chancellor, CW5's version regarding the same is absolutely hearsay. Most importantly the complainant did not hear the said insult and the same was not made within public view. Therefore, the statement of CW5 by itself would in no way establish an offence under Section 3(1)(x) of the SC/ST (POA) Act (Unamended) since the presence of the victim was not there during the telephone call and the same was not made in a place within public view.

20. The learned counsel appearing for the complainant noticed this as a serious anomaly when this matter was argued at length on 06.06.2024, and accordingly,



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he sought adjournment of the matter and on 11.06.2024 Crl.M.C.No.5063/2024 has been filed with prayer to set aside Annexure 3 order passed by the Special Court declining to take cognizance of offence under Section 3(1)(x) of the SC/ST (POA) Act (Unamended) for the incident that occurred on 03.09.2014.

21. As I have already illustrated, coming to the occurrence on 03.09.2014, in view of the prayer sought for in Crl.M.C.5063/2024, the allegation is that when the complainant made her slide presentation, the accused said that the image presented by the complainant was stolen, and it was so said at the seminar hall of the Physics Department where 50 other students were also present.

22. The crucial question is whether the said statement alone is sufficient to attract offence under Section 3(1)(x) of the SC/ST (POA) Act (Unamended). As held in



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Ramesh Chandra's case (*supra*), if such a comment is made generally to a person, who happens to be a scheduled caste or scheduled tribe community, per se, it may not be sufficient to attract offence under Section 3(1)(x) of the SC/ST (POA) Act (Unamended) as such words are not laced with casteist remarks. Here, the accused did not say anything with casteist remarks in any manner on 03.09.2014. Thus, acting on the statements of CW1 to CW5, it could not be held that the ingredients to attract offence under Section 3(1)(x) of the SC/ST (POA) Act (Unamended) are made out *prima facie* so as to allow the prayer in Crl.M.C.No.5063/2024. Therefore, the learned Special Judge went wrong in taking cognizance for the said offence against the petitioner, for the reasons stated in the order, relying on the statement of CW5 alone. As a sequel thereof, the quashment prayer sought for in Crl.M.C.No.8843/2023 is



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liable to succeed.

In the result, Crl.M.C.No.8843/2023 stands allowed while dismissing the prayer in Crl.M.C.No.5063/2024, and thereby order dated 13.07.2023, in Crl.M.P.No.34/2019 in SC No.390/2023, on the files of the Special Court, Kottayam, arising out of crime No.237 of 2016 of Gandhinagar Police Station, Kottayam revenue district, and further proceedings thereunder stand quashed.

Sd/-
A. BADHARUDEEN
JUDGE

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APPENDIX OF CRL.MC 5063/2024

PETITIONER ANNEXURES

ANNEXURE -I - PHOTOCOPY OF THE REFER REPORT DATED
06-03-2017 SUBMITTED BY DEPUTY
SUPERINTENDENT OF POLICE, DISTRICT
CRIME BRANCH, KOTTAYAM

ANNEXURE -II PHOTOCOPY OF THE COMPLAINT OF THE
PETITIONER DATED 07-01-2019 BEFORE
PRINCIPAL COURT OF SESSION, KOTTAYAM

ANNEXURE III CERTIFIED COPY OF THE ORDER DATED 19-
07-2023 IN CRL.M.P.NO.34/20219 PASSED
BY COURT OF SESSION, KOTTAYAM.

RESPONDENTS ANNEXURES : NIL



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APPENDIX OF CRL.MC 8843/2023

PETITIONER ANNEXURES

- ANNEXURE I** TRUE COPY OF THE COMPLAINT, DATED 24.07.2013, SIGNED BY THE INMATES OF THE HOSTEL.
- ANNEXURE II** TRUE COPY OF THE ENQUIRY REPORT, DATED 21.07.2013, SUBMITTED BY THE ENQUIRY OFFICER AND JOINT REGISTRAR 2 (EXAMS).
- ANNEXURE III** TRUE COPY OF THE JUDGMENT IN WRIT PETITION NO.5325/2016 DATED 02.08.2023
- ANNEXURE IV** TRUE COPY OF THE FINAL REPORT IN CRIME NO.237/2016 OF GANDHINAGAR POLICE STATION.
- ANNEXURE V** TRUE COPY OF THE CRIMINAL MISCELLANEOUS PETITION NO.1418 OF 2018 BEFORE THE JUDICIAL FIRST-CLASS MAGISTRATE COURT-1, ETTUMANOOR.
- ANNEXURE VI** TRUE COPY OF THE PROTEST COMPLAINT, CRIMINAL MISCELLANEOUS PETITION NO. 34/2019, BEFORE THE COURT OF SESSION, KOTTAYAM.
- ANNEXURE VII** TRUE COPY OF THE ORDER, DATED 13.07.2023, BY THE COURT OF SESSION, KOTTAYAM.
- ANNEXURE VIII** TRUE COPY OF THE APPLICATION DATED 19.02.2016 SUBMITTED BY THE 2ND RESPONDENT BEFORE THE INTERNATIONAL AND INTER UNIVERSITY CENTRE FOR NANO-SCIENCE AND NANO-TECHNOLOGY, M.G.UNIVERSITY FOR E GRANTS.

RESPONDENTS ANNEXURES : NIL