

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

Tuesday, the 18<sup>th</sup> day of January 2022 / 28th Pousha, 1943  
OP(CRL.) NO. 23 OF 2022

SC.NO.118/2018 OF THE ADDITIONAL SPECIAL SESSIONS COURT (SPE/CBI)-III, ERNAKULAM

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PETITIONER/8TH ACCUSED:

P GOPALAKSRISHNAN ALIAS DILEEP

S/O.LATE G.PADMANABHA PILLAI, PADMASAROVARAM,

KOTTARAKADAVIL ROAD, ALUVA, ERNAKULAM DISTRICT- 683 101.

RESPONDENTS/STATE INVESTIGATING OFFICER AND 4TH RESPONDENT IN EXHIBIT P5 PETITION:

1. STATE OF KERALA

REPRESENTED BY THE STATE POLICE CHIEF, POLICE HEADQUARTERS,  
THIRUVANANTHAPURAM - 695 010.

2. THE INVESTIGATING OFFICER IN CRIME NO.297/2017 OF

NEDUMBASSERY POLICE STATION HAVING OFFICE AT POLICE CLUB,  
ALUVA - 683 101.

3. INDO-ASIAN NEWS CHANNEL PVT.LTD.,

REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER  
MR.M.V.NIKESH KUMAR, REPORTER STUDIO COMPLEX, HMT COLONY,  
KALAMASSERY, ERNAKULAM - 683 503.

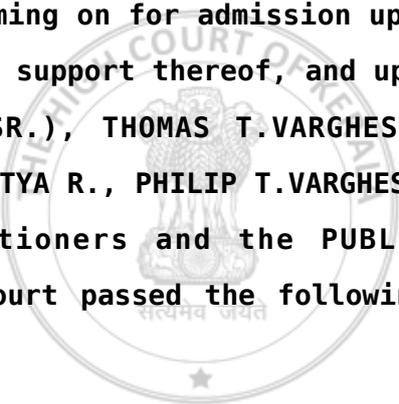
Petition praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to

1. Direct the 1st respondent to ensure strict compliance of Exhibit P3 Order.

2. Issue an order prohibiting publication/broadcast telecast of matters relating to SC.No.118/2018 of the Additional Special Sessions Court (SPE/CBI)III, Ernakulam including those relating to the accused, witnesses, persons likely to be called as witnesses and the Investigating Team till the disposal of the Original Petition: and

3. Direct the 3rd respondent to produce the contents of the entire telecast from 25/12/2021 till date in 'Reporter TV' Channel concerning the matter relating to SC.No.118/2018 of the Additional Special Sessions Court (SPE/CBI)III, Ernakulam and the entire publication about the matter made during the said period in their online portal 'Reporter' before this Hon'ble Court forthwith.

This OP(Criminal) coming on for admission upon perusing the petition and the affidavit filed in support thereof, and upon hearing the arguments of M/S.T.KRISHNANUNNI (SR.), THOMAS T.VARGHESE, ACHU SUBHA ABRAHAM, V.T.LITHA, K.R.MONISHA, NITYA R., PHILIP T.VARGHESE and SUJESH MENON V.B., Advocates for the petitioners and the PUBLIC PROSECUTOR for the respondents 1 & 2, the court passed the following:



**EXHIBIT P3: TRUE COPY OF THE ORDER IN CRL.MP.NO.661/2020 IN SC.NO.118/2018 OF THE ADDITIONAL SPECIAL SESSIONS JUDGE (SPE/CBI)-III, ERNAKULAM DATED 19/03/2020.**



**DR.KAUSER EDAPPAGATH, J.**

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OP(CrI)No.23/2022  
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Dated this, the 18<sup>th</sup> day of January, 2022

**O R D E R**

This original petition has been filed under Article 227 of the Constitution of India seeking the following reliefs:-

*“(i) Direct respondents 1 and 2 to ensure strict and effective compliance of Ext.P3 order and to initiate criminal proceedings against the 3<sup>rd</sup> respondent, their responsible officers and as against all others those who have violated Ext.P3 order and committed criminal offence under Section 228A(3) of the Indian Penal Code relating to SC No.118/2018 of the Additional Special Sessions Court (SPE/CBI)III, Ernakulam.*

*(ii) Issue an order of postponement of publication/ broadcast/telecast of matters relating to the subject matter of SC No.118/2018 of the Additional Special Sessions Court (SPE/CBI) III, Ernakulam including those relating to the accused and witnesses, persons likely to be called as witnesses and the investigating team till the conclusion of the trial.”*

2. Heard Sri.T.Krishnanunni, the learned senior counsel appearing for the petitioner and Sri.T.A.Shaji, the learned Director General of Prosecution representing respondents 1 and 2. Issue notice to the 3<sup>rd</sup> respondent.

3. The petitioner, who is a well known cine artist, is the 8<sup>th</sup>

accused in SC No.118/2018 on the file of the Additional Special Sessions Court (SPE/CBI)-III, Ernakulam. The offence alleged includes S.376D of IPC. As mandated u/s 327(2) of Cr.P.C., the court below ordered in camera trial and the in camera trial is going on. It is submitted that except the investigating officer, all the remaining accused were already examined.

4. S.327 (3) of Cr.P.C provides that when a trial is held in camera, it shall not be lawful for any person to print or publish any matter relating to such proceedings, except with the previous permission of the court. Admittedly, no such permission was issued by the court below.

5. S.228A (3) of IPC says that whoever prints or publishes any matter in relation to any proceedings before a court with respect to offences under Sections 376, 376A, 376B, 376C, 376D or S.376E without the previous permission of such court shall be punishable with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

6. The Apex Court in ***Nipun Saxena and another v. Union of India and Others*** [(2019) 2 SCC 703] has held that matters relating to proceedings falling under the provisions of

S.228A of IPC shall not be printed or published without the permission of the court in terms of S.327(2) of Cr.P.C.

7. On the petition filed by the petitioner herein, the court below as early as on 19<sup>th</sup> March, 2020 passed Ext.P3 order in CrI.M.P.No.661/2020 and specifically directed that nobody shall print or publish the proceedings in connection with SC No.118/2018 except the matters permitted in **Nipun Saxena** (supra). The grievance of the petitioner is that in spite of direction in Ext.P3 order, the media, including the 3<sup>rd</sup> respondent, resorted to publication of matters in gross violation of S.327(3) of Cr.P.C. The petitioner has highlighted certain specific instances in paragraphs 10 and 11 of the original petition. The learned senior counsel for the petitioner submitted that in spite of violation of Ext.P3 order passed by the court below, respondent Nos.1 and 2 did not take any action against the persons who committed the offence punishable u/s 228A(3) of IPC nor have they taken any steps to stop commission of such offence in future.

8. The learned Director General of Prosecution submitted that the original petition itself is not maintainable and the remedy of the petitioner is to approach the court below if there is any

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violation of its order. The Director General of Prosecution further submitted that if there is any violation, the petitioner can very well approach the police machinery and in such an event, definitely action will be taken.

9. The petitioner has highlighted various instances suggesting violation of Ext.P3 order. The instances pointed out by the petitioner cannot easily be brushed aside. The order passed u/s 327(3) of Cr.P.C is to be honoured in its letter and spirit. Hence, the 1<sup>st</sup> respondent shall conduct an enquiry as to the allegations made in this original petition regarding the flagrant violation of Ext.P3 order and file a report at this court within two weeks. Needless to say, if any such allegation is found to be true, appropriate action under law shall also be initiated.

Post after two weeks.

Sd/-

**DR.KAUSER EDAPPAGATH, JUDGE**

Rp