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'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

MONDAY, THE 19TH DAY OF JANUARY 2026 / 29TH POUSHA, 1947

CRL.RC NO. 55 OF 2017

SC NO.465 OF 2013 OF ADDITIONAL DISTRICT & SESSIONS COURT-

I, MANJERI MANJERI

CP NO.50 OF 2013 OF JUDICIAL MAGISTRATE OF FIRST CLASS,

MALAPPURAM

THE COURT ON ITS ON MOTION

SUO MOTU PROCEEDINGS ON A COMMUNICATION RECEIVED FROM
THE DISTRICT JUDGE, MANJERI REGARDING WRONG COMMITTAL
IN SC 465/2013 OF ADDITIONAL DISTRICT AND SESSIONS
COURT-I, MANJERI

RESPONDENTS

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

- 2 ABHILASH
S/O. SOMAN, THYKKATTUPARAMB HOUSE, PADUVIL ULPAM,
AZHINHILAM.

BY ADVS.
SRI.BENOJ C AUGUSTIN
SRI.U.M.HASSAN
SMT.P.PARVATHY
SHRI.RAFEEL. V.K.
SRI.SAIJO HASSAN
SRI.VISHNU BHUVANENDRAN
SR. PP-SMT.BINDU O.V.

THIS CRIMINAL REVISION CASE HAVING COME UP FOR ADMISSION
ON 19.01.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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ORDER

Dated : 19th January, 2026

The accused in S.C.465/2013 on the file of the Sessions Judge, Manjeri, facing trial for offence punishable under Section 376 IPC, on the basis of the final report in crime No.244/2011 of Vazhakkad police station, filed this Revision Petition.

2. The prosecution case is that on 25.6.2007, the accused committed rape upon CW1 in the bedroom of a rented house in Kuwait. The police registered the crime on the basis of the statement given by the defacto complainant, conducted an investigation and filed a final report before the Judicial First Class Magistrate Court, Malappuram, and the same was received by the learned Magistrate as C.P.50/2013. After complying with the statutory requirements under Section 209 Cr.P.C, the learned Magistrate committed the case to the Court of Session as per order dated 16.7.2013. The learned Sessions Judge received the file as S.C.465/2013 and made over the same to the Additional Sessions Court-I, Manjeri. Thereafter the learned Additional Sessions Judge, Manjeri framed charge against the accused, read over and explained it to him, to which he pleaded not guilty.



3. On 23.1.2017, when the learned Additional Sessions Judge took up the matter for trial, the learned defence counsel raised the question of jurisdiction of the learned Sessions Judge to try the case in view of Section 188 of Cr.P.C. It was contended that since the offence took place in Kuwait, a foreign country, previous sanction of the Central Government as required under Section 188 Cr.P.C was necessary. It was contended that the cognizance of the offence was taken without such sanction. Since the proceedings are initiated against the accused without obtaining the sanction, it was contended that the entire proceedings are void. In the above circumstances, the learned Sessions Judge sent a report to this Court stating that the committal proceedings before the learned Magistrate and the subsequent proceedings before the Sessions Judge are vitiated. When the matter was placed before the Judge in charge of the District, it was directed to place the matter as Criminal Revision on the judicial side of this Court and the same was approved by the Hon'ble Chief Justice and accordingly this suo motu proceeding was initiated under Section 401 of Cr.P.C.

4. Now the point that arises for consideration is the following :

Whether the committal proceedings before the learned Magistrate and the subsequent proceedings before the



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Sessions Court, Manjeri, are vitiated for want of sanction under Section 188 Cr.P.C ?

5. Heard the learned Senior Public Prosecutor Smt.Bindu O.V. And Sri Benoj C.Augustine, the learned counsel appearing for the 2nd respondent.

6. Section 188 of the Code of Criminal Procedure reads as follows:

“188. Offence committed outside India

When an offence is committed outside India—

1. by a citizen of India, whether on the high seas or elsewhere;

or

2. by a person, not being such citizen, on any ship or aircraft registered in India,

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

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

7. In the decision in **Thota Venkateswarlu v. State of Andhra Pradesh through Principal Secretary and Another** [(2011) 9 SCC 527], the Apex Court held in paragraph 15 as follows:

15. xxxxxx xxxx xxxx The proviso to Section 188, which has been extracted hereinbefore, is a fetter on the powers of the investigating authority to inquire into or try any offence mentioned



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in the earlier part of the Section, except with the previous sanction of the Central Government. The fetters, however, are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of Section 188 is required till commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous sanction of the Central Government would be required before the trial could commence.”

8. In paragraph 16 of the said decision, the Apex Court further held that:-

“16. Accordingly, upto the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188 Cr.P.C. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government.”

9. In the decision in **Nerella Chiranjeevi Arun Kumar v. State of Andhra Pradesh & Another** (SLP.No.3978/2021 decided on 2.8.2021, while upholding the decision in **Thota Venkateswarlu** (supra), the Apex Court reiterated that at the stage of cognizance of an offence, sanction under Section 188 of Cr.P.C is not required, while it is required for commencement of the trial.

10. In the light of the above decisions, it can be seen that at the stage of taking cognizance of an offence, sanction under Section 188 of Cr.P.C is not required, while it is required for commencement of the trial. Therefore, in the instant case, the learned Magistrate was justified



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in committing the case to the court of sessions and the court of sessions is justified in taking cognizance of the offence. However, it is made clear that the trial of the case cannot be commenced without obtaining sanction under Section 188 of Cr.P.C.

The *suo motu* revision is answered accordingly.

Sd/-

C. Pratheep Kumar, Judge

Mrcs/ sou.