IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 18TH DAY OF NOVEMBER 2022 / 27TH KARTHIKA, 1944

CRL.MC NO. 288 OF 2013

AGAINST THE ORDER IN CMP NO.3798/2012 IN CC NO.850/2011 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT,ERNAKULAM

PETITIONERS/ACCUSED:

1 KURIACHAN CHACKO
MANAGING PARTNER, LIS (REGISTERED),
PALACKAL COURT, M.G. ROAD,
ERNAKULAM.

2 ACHAMMA CHACKO
W/O. P.V. CHACKO,
PALACKAL HOUSE,
NEAR POOVASSERY KADAVU, MANJOOR,
VAIKOM, KOTTAYAM.

3 LINU JOY
W/O. JOY JOHN,
POWATHIL HOUSE,
ASSUMPTION ROAD, CHANGANACHERRY.

4 P.V. CHACKO
S/O. VARKEY,
PALACKAL HOUSE,
NEAR POOVASSERY KADAVU, MANJOOR,
VAIKOM, KOTTAYAM.

5 C.G. RANEESH
S/O. T.N. GIRIJAN,
RAJI NIVAS,
LITTLE FLOWER CHURCH ROAD,
CHAKKALAPPADAM, ELAMKULAM VILLAGE,
KALOOR.

6 VINOD V LUKE
S/O. LUKE,
VALLOMPRAYIL, PERINGATTIMUGAL KARAYIL,
PUTHIYAROAD BHAGOM,
THRIKKAKARA NORTH VILLAGE, ERNAKULAM.

7 SUSEEL JOSEPH
S/O. JOSEPH,
PARAKKADAVIL VEEDU,
NEAR FATHIMAPURAM CHURCH,
CHANGANACHERRY, KOTTAYAM.

BY ADVS.
SRI.M.K.DAMODARAN (SR.)
SRI.O.V.MANIPRASAD
SRI.SAJU J PANICKER

RESPONDENT/COMPLAINANT:

1 STATE OF KERALA
(THE INSPECTOR OF POLICE, ERNAKULAM CENTRAL POLICE STATION, CRIME NO. 672/2006)
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

*2 B.R. REGHUNATH
S/O S.R.BALAKRISHNAN NAIR,
PUSHPAKOM,
POONTHURA P.O, THIRUVANANTHAPURAM

*3 PODIYAN MATHEW
S/O MATHEW,
MUKKOLA P.O, THIRUVANANTHAPURAM

*4 PHILOMINA JOHN,
W/O JOHN MATHAI
T.C 12/272, KUNNUKUZHI P.O,
THIRUVANANTHAPURAM

*5 USHAKUMARI
W/O T.D.SALIM ,
GREESHMAM HOUSE,
MAVELIPURAM, KAKKANADU P.O,
KOCHI -30

*6 A.SASIDHARAN NAIR
S/O. AYYAPPAN PILLAI,
T.C 29/1738, KAIRALI LANE,
THRIUVANANTHAPURAM

***(ADDITIONAL R2 TO R6 ARE IMPLEADED AS PER ORDER DATED 19/10/102022 IN CRL M.A 2/2014 IN CRL.M.C NO.288/2013)**

BY SRI.K.A.NOUSHAD, PUBLIC PROSECUTOR
SRI.D.ANIL KUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07.11.2022, ALONG WITH Crl.MC.1461/2013, THE COURT ON 18.11.2022 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 18TH DAY OF NOVEMBER 2022 / 27TH KARTHIKA, 1944

CRL.MC NO. 1461 OF 2013

AGAINST CC 850/2011 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

PETITIONERS/ACCUSED 8 & 9:

1 JOY JOHN
S/O JOHN POWATHIL
POWATHIL HOUSE,
ASSUMPTION CHURCH ROAD,
KUMBANAD KARA, MADAPPILLY VILLAGE,
CHANGANACHERRY, KOTTAYAM.

2 NEETHA KURIACHAN
W/O.KURIACHAN CHACKO
PALAKKAL HOUSE
G-258, AVENUE ROAD,
PANAMPILLY NAGAR, ERNAKULAM.

BY ADVS.
SRI.M.K.DAMODARAN (SR.)
SRI.O.V.MANIPRASAD
SRI.SAJU J PANICKER

RESPONDENT/STATE/COMPLAINANT:

1 STATE OF KERALA
(THE INSPECTOR OF POLICE, ERNAKULAM CENTRAL POLICE STATION CRIME NO.672/2006)
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

*2 P.U.NOUSHAD

AGED 50 YEARS, S/O LATE UMMER,
RESIDING AT PALLIMATTATHIL HOUSE,
SOUTH CHEMBUMUKKU, WEST KAKKANAD,
ERNAKULAM 682 030

***3** **C.G MARTHANDAN,**
AGED 52 YEARS,S/O LATE GOVINDAN,
RESIDING AT MEGHADOOT,
VIVEKANANDA ROAD, KUNNUMPURAM, EDAPPALLY,
ERNAKULAM 682 041

***4** **K.A BEENA**
AGED 46 YEARS, W/O MARTHANDAM, RESIDING AT MEGHADOOT, VIVEKANANDA ROAD,KUNNUMPURAM, EDAPPALLY, ERNAKULAM 682 041.

***(ADDL R2,R3 AND R4 ARE IMPLEADED AS PER ORDER DTED 16.01.2014 IN CRL.M.A.NO.5364/2013 IN CRL.M.C. NO.1461/13)**

BY ADVS.
SMT.M.K.PUSHPALATHA, PUBLIC PROSECUTOR
SRI.P.S.APPU
SRI.P.N.SUKUMARAN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07.11.2022, ALONG WITH Crl.MC.288/2013, THE COURT ON 18.11.2022 PASSED THE FOLLOWING:

"C.R."

BECHU KURIAN THOMAS, J.

Crl.M.C. No.288 of 2013

&

Crl. M.C No. 1461 of 2013

Dated this the 18th day of November, 2022

ORDER

An innovative idea purportedly for promoting the State lottery through a business model got entangled in a criminal case as a money circulation scheme. While the trial was nearing completion, it was decided to initiate a further investigation. The report filed after the further investigation was accepted by the court. The dispute in this petition, filed under section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.), revolves around the validity and acceptability of the further final report.

2. Petitioners in Crl. M.C No. 288 of 2013 are accused 1 to 7, while the petitioners in Crl. M.C No. 1461 of 2013 are accused 8 and 9 in C.C. No. 850 of 2011 before the Additional Chief Judicial Magistrate Court, Ernakulam. The issues raised in both these cases are identical, and hence they are disposed of together. The facts and documents

referred to in this order are those mentioned in Crl. M.C No.288 of 2013.

3. Petitioners are alleged to have formed a partnership by the name M/s. ‘LIS Ernakulam’ and induced the public to subscribe to a scheme called 'LIS Deepasthambam' under a proposed business model. As per the scheme, a subscriber had to pay Rs.625/- to purchase one unit of the scheme. Out of the above amount, Rs.350/- was to be used to purchase 35 Kerala State lottery tickets, while the balance of Rs.275/- was to be utilized to subscribe to a magazine by the name 'Thrikkalam', which would be a collage of collections of various other articles taken from different publications.

4. The scheme further promised to the subscribers that if the lottery ticket wins any prize upto Rs.5000/-, the promoters of the scheme shall collect the prize and pay it to the winning subscriber and if the prize was above Rs.5,000/-, the subscriber would be handed over the lottery ticket to enable him to collect it directly. It also provided that the commission received from the Government at 28% on the purchase of lottery tickets would also be reimbursed to the subscribers at 25%. Various other stipulations were also provided for in the scheme, including a promise to return to the unit holder double his investment. Due to aggressive publicity and marketing carried out

by the accused, several persons were lured into the scheme and around Rs.500 Crores were allegedly collected by the accused.

5. In the meanwhile, an FIR was suo moto registered as Crime No.672 of 2006 of the Central Police Station, Ernakulam alleging offences under section 420 of the Indian Penal Code and also sections 3, 4, & 5 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (for brevity 'the Prize Chits Act') apart from sections 45LBB, 45S and 58B of the Reserve Bank of India Act,1934 (for short 'the RBI Act').

6. Initially, two writ petitions were filed as W.P.(C) No.12775 of 2006 and W.P.(C) No.13152 of 2006 along with Crl.M.C. No.1377 of 2006. The challenge in the petition under section 482 Cr.P.C was against the registration of the FIR, while the writ petitions sought reliefs commanding the respondents not to harass or interfere with the peaceful conduct of business of the petitioners. By judgment dated 05.07.2006, the Division Bench dismissed all three cases and directed the completion of the investigation in a time-bound manner. Thereafter, the final report was filed on 19.09.2006, alleging offences punishable under section 420 read with section 334 of the IPC, apart from section 4 and section 5 r/w section 2(c), 2(e) and section 3 of the Prize Chits Act and sections 45LBB, 45S and 58B of the RBI Act.

7. The learned Chief Judicial Magistrate, Ernakulam, framed charges against the accused on 14.11.2006 after omitting the offences under the RBI Act, as well as those under section 2(e) r/w section 3 of the Prize Chits Act. While the accused preferred criminal revision petitions before this Court against the order framing charges, State challenged the omission of a few of the offensive sections while framing the charge. All the revision petitions were dismissed by judgment reported in **Kuriachan Chacko v. State of Kerala** (2007 (3) KLT 843). The accused challenged the said order before the Supreme Court. However, the Special Leave Petitions were dismissed by judgment in **Kuriachan Chacko and Others v. State of Kerala** (2008 (8) SCC 708). The Supreme Court affirmed the framing of charges against the accused for the offences mentioned in the preceding paragraph.

8. In the meantime, the trial commenced, and after examining 72 witnesses, prosecution filed an application as CMP No.2733 of 2011 to postpone the trial, claiming that a further investigation had already commenced. The said application was disallowed by the trial court by order dated 25-08-2011, against which Crl.M.C. No.3846 of 2011 was preferred by the State. By judgment dated 15.02.2012, this Court set aside the order of the Chief Judicial Magistrate and granted one

month's time to the Investigating Officer to complete the further investigation and to file the further report.

9. Petitioners again approached the Supreme Court in S.L.P. No.1788 of 2012. The further final report was filed in the meantime. By Annexure A12 order dated 23.07.2012, taking note of the filing of the further investigation report, the Supreme Court observed that it did not find any ground to continue with the matter and dismissed the Special Leave Petition but clarified that the trial court shall proceed uninfluenced by any order passed by the High Court or by the Supreme Court. Annexure A13 is the further final report that was filed. In the initial final report, there were 7 accused. However, in the further final report, two more accused were added as A8 and A9 and also incorporated the offence under section 403 of the IPC as having been committed by the petitioners.

10. The further final report, in short, alleged that the scheme propounded by the petitioners was a money circulation scheme, and they collected large amounts from the public to the extent of Rs.447.63 crores after seducing them with lucrative returns knowing fully well that they will not be able to return the investments to the subscribers. The report also accused the petitioners of diverting the amounts so collected for purchasing properties in the personal names of accused 1 to 4 and 8 & 9 and also investing in other assets and

thereby committing the offences alleged. It was also alleged that after the stoppage of the functioning of 'M/s LIS', the investors were prompted to change their investment to 'another firm by name 'Jyothis', which was under the control of the 8th accused, promising to return the money if the earlier investment is so varied and these were committed with the intention to cheat the investors and to make unlawful gain for the accused.

11. After the further report was submitted, petitioners filed an application before the Chief Judicial Magistrate, requesting the court to reject the final report. By order dated 01.12.2012, the learned Chief Judicial Magistrate dismissed the said application. Petitioners thus challenge Annexure A13 further final report dated 06-03-2012 as well as Annexure A19 order dated 01.12.2012 dismissing the application to reject the further final report.

12. Sri.O.V.Maniprasad, the learned counsel for the petitioners, contended that the further final report reveals a fresh investigation and not a further investigation. It was also contended that the police officer who conducted the further investigation i.e., Assistant Commissioner, Narcotic Cell, Kochi had no jurisdictional authority and could not have conducted the further investigation. The learned counsel also argued that what has been brought out during the further investigation cannot form part of the present case as only

circumstances subsequent to the final report alone have been brought in, which could not have formed part of a further investigation. The learned counsel contended that after examining 72 witnesses, the prosecution realised that there were loopholes and several lacunae in the prosecution case and that further investigation was resorted to only for the purpose of overcoming such lacuna, which is legally impermissible. The learned counsel submitted that an exceptionally brilliant business idea had been destroyed due to the malafides of CW1, who have, till date, evaded entering the witness box and have been pulling the strings from behind, and even the idea of a further investigation was orchestrated, by the said officer, who had some personal axe to grind. It was submitted that, therefore, the further final report ought to have been rejected. Sri.O.V.Maniprasad further argued that the Annexure A19 order of the learned Chief Judicial Magistrate, accepting the further final report, is perverse and is liable to be interfered with.

13. Sri.K.A.Noushad, the learned Public Prosecutor, vehemently argued that all contentions now raised by the petitioners were considered by this Court as well as the Supreme Court in the earlier round of litigation when the accused had challenged the orders permitting further investigation. According to the learned Public Prosecutor, the contentions now raised are only intended to delay and

protract the trial, which the petitioners have successfully done for the last 10 years, and therefore there are no bonafides in the application. The learned Public Prosecutor contended that additional accused A8 and A9 have been added, and further investigation has brought in additional materials which would prove the offence of cheating and those under the Prize Chits Act. It was also submitted that notwithstanding the examination of 72 witnesses, it was wholly within the domain of the Investigating Officer to conduct a further investigation. The learned Public Prosecutor also argued that no prejudice would be caused to the petitioners as they have the opportunity to raise their contentions during the trial. It was finally contended that the inherent powers of the court under section 482 ought to be exercised very sparingly, and this is not a case where the exercise of such power is warranted.

14. Sri.N.Anilkumar, learned counsel appearing on behalf of the additional respondent, contended that petitioners are precluded from challenging the final report since all contentions now advanced were considered earlier and the Supreme Court in a judgment inter partes, had directed the trial to be proceeded with. It was also submitted that the principles of resjudicata and constructive resjudicata will apply and that this petition is only to be dismissed. It was further argued that the money siphoned off from the original scheme was used for starting

a fresh scheme, and hence the offences now added can only be part of the original offence, and therefore the further investigation report is legally justifiable.

15. Petitioners in Crl.M.C. No.288 of 2013 are facing criminal prosecution from the year 2006. At every stage, they have challenged the proceedings on one ground or the other. The question of further investigation was also the subject matter of challenge before this Court at the behest of the State since the learned Chief Judicial Magistrate refused to stay the trial until the conclusion of the further investigation. When the matter reached the Supreme Court, the Special Leave Petition was dismissed after taking note of the filing of the further investigation report. In the initial final report, there were only 7 accused, and in the further final report, two more accused were added as A8 and A9 after incorporating section 403 of the IPC also.

16. Annexure A18 petition was filed by the petitioners requesting to reject the further final report. By Annexure A19 order dated 01.12.2012, the petition was dismissed. It is thereafter that these petitions were filed challenging Annexure A19 order as well as the further final report.

17. For the last almost 10 years, the trial relating to the case has been stalled midway. None had moved this Court to vacate the

interim order. This Court is constrained to observe that it is unfortunate that the trial of a case which relates to the alleged cheating of several crores of rupees has been stalled for 10 years without any effort having been taken by the State to get the matter disposed of or atleast vacate the stay granted.

18. Be that as it may, based on the submissions of the learned Counsel, the following two main issues arise for consideration:

(i) *Whether the Assistant Commissioner of Police, Narcotic Cell Kochi was, competent to conduct the further investigation?*

(ii) *Whether the inclusion of instances subsequent to the filing of the final report in the further final report is invalid?*

Issue No.(i) *Whether the Assistant Commissioner of Police, Narcotic Cell Kochi was, competent to conduct the further investigation?*

19. It is trite law that even after submission of a police report, on completion of investigation under section 173(2) Cr.P.C, the police has a right of 'further' investigation under section 173(8) but not a 'fresh investigation' or a 'reinvestigation'. Further investigation is a continuation of the earlier investigation and not a fresh investigation or reinvestigation. The latter two are those to be started ab initio,

wiping out the earlier investigation altogether. As per section 173(8) Cr.P.C, on completion of further investigation, the investigating agency has to forward to the Magistrate a 'further' report and not a fresh report regarding the 'further' evidence obtained during such investigation. The above propositions can be culled out from the decisions in **State of Bihar and Another v. J.A.C.Saldanha and Others** [(1980) 1 SCC 554], and **K.Chandrasekhar v. State of Kerala and Others** [(1998) 5 SCC 223].

20. While considering the competence of the investigating officer who conducted the further investigation, it is essential to mention that in the order of this Court in Crl.M.C. No.3486 of 2011, the very same question was considered and it was concluded that the investigating officer was competent to conduct the investigation. It was however observed that all these contentions can be taken by the accused at the time of trial. Of course, when the matter was taken up in Special Leave Petition, noticing the filing of the final report, the Supreme Court observed that the trial court can proceed with the matter uninfluenced by the orders passed either by the High Court or the Supreme Court. Since the petitioners have once again taken up the said issue, the same is considered.

21. Sri.Bernard Dev, who was the Assistant Commissioner of Police, Crime Detachment, Ernakulam, had conducted the investigation pursuant to the orders of the Commissioner of Police of Kochi City and had filed the final report. He was, in the meantime, transferred outside the district. Further investigation in the present case was conducted by Sri.Joseph Saju, the Assistant Commissioner of Police, Narcotic Cell, Kochi, under the direction of the Commissioner of Police, Kochi City. The jurisdictional authority of the Assistant Commissioner of Police, Narcotic cell, Kochi City, though is with respect to checking the use and trafficking of narcotic drugs, still extends over the entire territorial limits of Kochi City. Thus the Commissioner of Police of Kochi had authorised one of his subordinates to investigate the offences committed within the district.

22. The crucial words in section 173(8) Cr.PC are 'if the officer in charge of the police station obtains further evidence he shall forward to the Magistrate a further report'. Section 2(o) Cr.P.C defines 'officer in charge of a police station' as including the police officer present at the station house or who is next in rank to such officer but above the rank of Constable or when the State Government so directs, any other police officer so present. The word investigation is defined in section 2(h) as including all proceedings under the Code for the collection of

evidence conducted by a police officer or by any person other than a Magistrate who is authorised by a Magistrate in this behalf. It is evident that going strictly by the terms employed in the statutory provisions referred to above, only the officer-in-charge of the police station alone can conduct an investigation. However, section 36 of Cr.P.C. confers power upon superior officers of the Police to exercise the same powers as that of an officer-in-charge of a police station throughout the local area to which they are appointed.

23. In this context, it is relevant to refer to Chapter IV of the Kerala Police Act, 2011, which deals with the general structure of the police force. Section 14(2) specifies the ascending order of rank in the police force and is as follows:

(d) Sub-Inspector of Police;

(e) Inspector of Police;

(f) Deputy Superintendent of Police;

(g) Superintendent of Police;

(h) Deputy Inspector General of Police;

(i) Inspector General of Police;

(j) Additional Director General of Police;

(k) Director General of Police;

(l) Director General of Police & State Police Chief.

24. In the year 2012, Sub-Inspectors of Police were the Station House Officers. Under section 14 of the Kerala Police Act, the Government is entitled to specify any phrase to denote any police rank as equivalent to any of the above-mentioned ranks. The Assistant Commissioner of Police of Kochi City is equivalent in rank to the Deputy Superintendent of Police as per clause 7(4) of Chapter I of the Kerala Police Manual. It is provided in the said clause that Ernakulam Town is working in the pattern of city police under the control of Commissioner of Police assisted by Assistant Commissioner of Police, Deputy Superintendent of Police, Circle Inspectors, Sub Inspectors, etc. Thus, the Assistant Commissioner of Kochi City, even if he is in the narcotic cell, is a subordinate of the Commissioner of Police of the city and a superior officer of the Station House Officer of the Central Police Station, Kochi.

25. In the instant case, the officer who conducted the further investigation was the Assistant Commissioner of Police, Narcotic cell, Kochi City. The divisions in the police force of a District into narcotic cell or other such divisions are only administrative measures for the purpose of improving the efficiency of the police force of the district. The designation as the officer of the narcotics cell by itself will not divest the investigative powers of the said officer into a crime

provided, he is so directed by his superior officer. As a superior police officer to the Station House Officer, he is entitled to conduct the investigation, especially when the Commissioner of Police authorised and directed him to do so.

26. I am fortified in the above conclusion by the judgment in **R.P.Kapur and Others v. Sardar Pratap Singh Kairon and Others** [(1961) 2 SCR 143]. In the said case, an Additional Inspector General of Police directed a Deputy Superintendent of Police of CID, to investigate into a complaint. It was held that both those officers could exercise powers throughout the local area to which they were appointed. The Supreme Court observed that *"If the police officer concerned thought that the case should be investigated by the C.I.D. even though for a reason which does not appeal to us it cannot be said that the procedure adopted was illegal. …….We are satisfied that the Inspector General of Police, C.I.D., had power to deal with Sethi's complaint and had further power to direct investigation of the same by Sardar Hardayal Singh who as a police officer superior in rank to an officer incharge of a police station could exercise powers of an officer in charge of a police station in respect of the same."*

27. Again, in the decision in **State of Andhra Pradesh v. A.S.Peter** [(2008) 2 SCC 383], the Court dealt with a case where the Additional Director General of Police, CID entrusted further

investigation into a crime to the Inspector of Police, CID of another district. The further final report was challenged in the High Court contending inter alia that further investigation was conducted by a different investigating agency. Though the High Court quashed the proceedings, the Supreme Court reversed the said decision. It was observed that:

> *" It is not correct to contend that the investigation was taken up by a different agency. CID is a part of the investigating authorities of the State. A further investigation was directed by the Additional Director General of Police. Section 36 of the Code of Criminal Procedure, 1973 empowers a police officer, superior in rank to an officer in charge of a police station, to exercise the same powers throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station. It was, therefore, permissible for the higher authority to carry out or direct further investigation in the matter."*

28. In the instant case, the Commissioner of Police, Kochi City is the highest officer of the police in the city. The said superior officer is entitled to confer the power of investigation upon any person subordinate to him and to exercise jurisdiction within the city. As the Commissioner of Police has jurisdiction throughout the city, directing one of his subordinates who also exercises jurisdiction throughout the city, to conduct an investigation or further investigation into a case does not fall foul of any provision of law.

29. Annexure A14, alleged to be an organisational chart of the Kochi City Police produced by the petitioners, is not a document that

can be relied upon for any purpose. It is not an admissible document. Even otherwise, Annexure A14, Annexure A15 and Annexure A16, which are printouts from the internet, though cannot be relied upon, still show that the narcotic cell, Kochi City is a division of the city police and comes under the authority and jurisdiction of the Commissioner of Kochi.

30. In view of the above discussion, I hold that the Assistant Commissioner of Police, Narcotic Cell, Kochi City, was competent and authorised to conduct the further investigation into Crime No.672 of 2006 of the Central Police Station, Ernakulam.

Issue No. (ii) Whether the inclusion of instances and materials subsequent to the filing of the final report in the further final report is invalid*?*

31. Petitioners allege that further investigation has included facts that are subsequent to the final report and such inclusion of subsequent facts is impermissible in law. A perusal of the further final report reveals that though few subsequent events have been brought in as evidence, they are only circumstances that tend to support the fact in issue in the initial final report. The attempt of the investigating officer to probe the alleged subsequent events was only a measure of lending credence to the initial charge that the accused had cheated its

subscribers by misappropriating and diverting, after committing criminal breach of trust, of several crores of rupees collected from them. The diversion of funds collected from the subscribers to purchase properties in the individual names of the accused and in the name of other firms where the accused are partners have also been unearthed during the further investigation. The subsequent materials adduced during further investigation are only consequences of the offences alleged.

32. Though the learned Counsel for the petitioners had relied upon the decision in **Pattu Rajan v. State of Tamil Nadu** [(2019) 4 SCC 771] and argued that a fresh offence cannot be made a part of the pending case or part of the further investigation, I find myself unable to agree that a fresh offence was investigated under the further investigation. The inclusion of accused Nos.8 and 9 is based on the alleged criminal acts committed prior to the final report. Merely because there is a reference to the formation of a new firm, the same is not alleged to be the offence for which the accused are being prosecuted. The circumstance of the formation of the new firm and the promise to return the investments made much earlier is not regarded as an offence but only as a circumstance indicating how the investors were cheated. The offence of cheating and the dishonest

misappropriation of property are alleged to have occurred much earlier when accused 1 to 4, 8 and 9 purchased properties in their individual names using the money invested in M/s. LIS and M/s. LIS Printers & Publishers. Even otherwise, those are all matters to be decided during trial and cannot be appreciated at this stage under section 482 Cr.P.C

33. Apart from the above, adducing more evidence during further investigation, which includes subsequent events, cannot be said to be legally impermissible. As observed in the decision in **T.T.Antony v. State of Kerala and Others** [(2001) 6 SCC 181] that, *"The scheme of Cr.P.C is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 Cr.P.C on the basis of entries in the first information report, on coming to know of the commission of a cognizable offence. On completion of the investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) Cr.P.C. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is a*

obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 Cr.P.C."

34. As long as the evidence collected and the subsequent events point towards the commission of crime for which the report has been filed, the investigating agency will be justified in collecting such materials also and is in fact bound to forward it with the report. Whether such materials are relevant or even admissible or not, are all matters that can be agitated during the trial. Since there is no legal prohibition in the collection of evidence, the admissibility and relevancy of the material collected by the investigating agency need be appreciated during the trial and not at this stage and that too under section 482 of Cr.P.C.

35. The right of the investigating agency to collect all evidence cannot be cribbed, cabined or crippled. The Investigating Officer has to unearth the real truth behind the alleged crime so as to serve the ends of justice. In the said process, if he chances upon or collects materials that are even subsequent to the filing of the initial final report, it cannot be stated as a legal proposition that those materials cannot be included in the further final report or that they are prohibited. Under section 173(8) Cr.P.C, the officer has the power to obtain further evidence, both oral and documentary. The term 'further

evidence' cannot be interpreted restrictively as including only those that were prior in time to the initial final report. Such evidence, if collected and included in the further final report, will be a matter to be appreciated, as mentioned earlier, at the time of trial.

36. Considered in the light of the above discussion, there is no merit in the challenge raised either against Annexure A13 - Further Final report or against Annexure A19 order.

37. However, in view of the long delay and the trial having been stalled for the last nine years, I am of the view that every effort shall be taken by the learned Chief Judicial Magistrate to complete the trial, as expeditiously as possible, at any rate, within a period of ten months from today.

In view of the above, these Crl.M.Cs are dismissed.

Sd/-

BECHU KURIAN THOMAS
JUDGE

vps

APPENDIX OF CRL.MC 288/2013

PETITIONER'S/S' ANNEXURES

Annexure A1	**TRUE COPY OF THE ORDER IN CRL.MC NO.2912/2005**
Annexure A2	**TRUE COPY OF THE JUDGMENT IN WPC NO.33743/2005**
Annexure A3	**TRUE COPIES OF THE LETTER DATED 9.5.2006 AND THE CONTENTS OF FI STATEMENT**
Annexure A4	**TRUE COPY OF THE LETTER DATED 02.05.2006 OF THE COMMISSIONER OF POLICE, KOCHI CITY TO THE CIRCLE INSPECTOR OF POLICE, CENTRAL POLICE STATION, ERNAKULAM**
Annexure A5	**TRUE COPY OF THE JUDGMENT DATED 5.7.2006 IN WPC NO.12775/2006 AND CONNECTED CASES**
Annexure A6	**TRUE COPY OF THE CHARGE SHEET FILED BY THE RESPONDENT ON 19.9.2006**
Annexure A7	**TRUE COPY OF THE COURT CHARGE IN CC NO.19/2006 OF THE CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM**
Annexure A8	**TRUE COPY OF THE ORDER DATED 20.1.2011 IN CRL.M.P NO.229/2011 IN CC NO.219/2006**
Annexure A9	**TRUE COPY OF THE PETITION DATED 03.08.2011 WITH CRL.M.P. NO.2733/2011**
Annexure A10	**TRUE COPY OF THE ORDER DATED 14.7.2011 OF THE COMMISSIONER OF POLICE, KOCHI CITY**
Annexure A11	**TRUE COPY OF THE PETITION DATED 15.7.2011 BY THE ASSISTANT COMMISSIONER OF POLICE, NARCOTIC CELL, KOCHI CITY**
Annexure A12	**TRUE COPY OF THE ORDER DATED 23.7.2012 IN SLP(CRL.) NO.1788/2012 OF THE HON'BLE SUPREME COURT OF INDIA**
Annexure A13	**TRUE COPY OF THE FURTHER FINAL REPORT DATED**

06.03.2012 AND FILED ON 07.03.2012

Annexure A14 TRUE COPY OF THE ORGANIZATIONAL CHART OF KOCHI CITY POLICE DOWNLOADED FROM THE WEBSITE OF KOCHI CITY POLICE

Annexure A15 TRUE COPY OF THE DETAILS OF NARCOTIC CELL OF KOCHI CITY POLICE DOWNLOADED FROM THE WEBSITE OF KOCHI CITY POLICE

Annexure A16 TRUE COPY OF THE DOWNLOAD FROM http://en.wikipedia.org/wiki/

Annexure A17 TRUE COPY OF THE CIRCULAR NO.54/2009 DATED 23.12.2009

Annexure A18 TRUE COPY OF THE PETITION DATED 5.9.2012

Annexure A19 TRUE COPY OF THE ORDER DATED 1.12.2012 IN CMP NO.3798 OF 2012 IN CC 850 OF 2011 OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM

Annexure A20 TRUE COPY OF THE LETTER DATED 01.05.2006 VIDE NO. D2/8413/IGP SZ/06 TO REOPEN CRIME NO. 938/2004 OF CENTRAL POLICE ERNAKULAM

Annexure A21 TRUE COPY OF THE FIR IN CRIME NO. 938/2004 DATED 10.11.2004 OF CENTRAL POLICE ERNAKULAM

Annexure A22 TRUE COPY OF THE SECOND FIR IN CRIME NO. 672/2006 DATED 10.05.2006 OF CENTRAL POLICE ERNAKULAM

Annexure A23 TRUE TYPED COPY OF THE FINAL REPORT IN CRIME NO. 672/2006 DATED 19.09.2006 OF CENTRAL POLICE ERNAKULAM

Annexure A24 TRUE COPY OF THE ORDER OF THE INSPECTOR GENERAL OF POLICE, SOUTH ZONE, DATED 19.05.2006, VIDE NO. D2/8982/06 SZ, CONFIRMING THE INVESTIGATION OFFICER IN CRIME NO. 672/2006 OF CENTRAL POLICE STATION

Annexure A25 TRUE COPY OF THE ORDER OF THE INSPECTOR GENERAL OF POLICE, SOUTH ZONE, VIDE NO.

	D2/8982/IGP SZ/06 DATED 31.05.2006 TRANSFERRING ALL CASES AGAINST LIS TO BERNARD DEV, DYSP, NARCOTIC CELL, IDUKKI
Annexure A26	**TRUE COPY OF THE LETTER FROM BERNARD DEV, DYSP, NARCOTIC CELL, IDUKKI TO COMMISSIONER OF POLICE, KOCHI CITY DATED 22.09.2006 INFORMING THAT THE CD FILE IS RETAINED WITH THE INVESTIGATION TEAM**
Annexure A27	**TRUE COPY OF THE LETTER FROM THE TRANSPORT COMMISSIONER, SRI. T.P.SENKUMAR TO THE CHIEF MINISTER OF KERALA, DATED 24.06.2011**
Annexure A28	**TRUE COPY OF THE ORDER OF THE CJM COURT DATED 25.08.2011 IN CMP NO. 2733/2011 IN CC 219/2006**
Annexure A29	**TRUE COPY OF THE APPLICATION U/S 173(8) CR.P.C. FILED BY THE DEPUTY DIRECTOR OF PROSECUTION, DATED 14.01.2011, BEFORE THE CJM COURT, ERNAKULAM, IN CC NO. 219/2006 IN CRIME NO. 672/2006 OF CENTRAL POLICE STATION**
Annexure A30	**A SUMMARY OF TRIAL IN CC 219/06 REFILED AS CC 850/11**
Annexure A31	**A COMPARISON OF TWO FINAL REPORTS IN CC 850/11 IN CRIME NO. 672/2006 OF CENTRAL POLICE STATION**
Annexure A32	**TRUE TYPED COPY OF THE 161 STATEMENT OF CW2 JOHN CHERIAN**
Annexure A33	**TRUE TYPED COPY OF THE DEPOSITION OF CW2 JOHN CHERIAN AS PW1**
Annexure A34	**TRUE TYPED COPY OF THE 161 STATEMENT OF CW116, MRS. JOICE CHITTY INSPECTOR, ERNAKULAM**
Annexure A35	**TRUE TYPED COPY OF THE DEPOSITION OF CW116 MRS. JOICE CHITTY INSPECTOR, ERNAKULAM, AS PW60**
Annexure A36	**EXTRACT OF THE SUMMARY OF 161 STATEMENT OF**

CW2 IN THE FRESH REPORT

Annexure A37 **EXTRACT OF THE SUMMARY OF 161 STATEMENT OF CW145 IN THE FRESH REPORT**

Annexure A38 **TRUE PHOTOCOPY OF THE FRESH REPORT IN CRIME NO. 672/2006 OF CENTRAL POLICE STATION, ERNAKULAM, FILED BEFORE THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM**

APPENDIX OF CRL.MC 1461/2013

PETITIONER'S/S' ANNEXURES

ANNEXURE A1: TRUE COPY OF THE LETTER DATED 9/5/2006 AND THE CONTENTS OF FI STATEMENT.

ANNEXURE A2: TRUE COPY OF THE FIR IN CRIME NO.672/2006 OF ERNAKULAM CENTRAL POLICE STATION.

ANNEXURE A3: TRUE COPY OF THE FINAL REPORT IN CRIME NO.672/2006.

ANNEXURE A4: TRUE COPY OF THE ORDER DATED 20/01/2011 IN CRL.M.P NO.229/2011 IN CC NO.219/2006.

ANNEXURE A5: TRUE COPY OF THE ORDER DATED 14/07/2011 OF THE COMMISSIONER OF POLICE, KOCHI CITY

ANNEXURE A6: TRUE COPY OF THE PETITION DATED 15/07/2011 BY THE ASSISTANT COMMISSIONER OF POLICE, NARCOTIC CELL, KOCHI CITY.

ANNEXURE A7: TRUE COPY OF THE ORDER DATED 23/07/2012 IN SLP (CRL) NO.1788/2012 OF THE HON'BLE SUPREME COURT OF INDIA.

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ANNEXURE A11: TRUE COPY OF THE DOWNLOAD FROM http://en.wikipedia.org/wiki/

ANNEXURE A12: **TRUE COPY OF THE CIRCULAR NO.54/2009 DATED 23/12/2009.**

ANNEXURE A13: **TRUE COPY OF THE ORDER DATED 01/12/2012 IN CMP NO.3798 OF 2012 IN CC 850 OF 2011 OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM.**

ANNEXURE A14: **TRUE COPY OF THE ORDER DATED 11/01/2013 IN CRL.M.A NO.468/2013.**