

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

wednesday, the 25th day of November 2020/4th Aagrahayana, 1942

WP(C) No.25793/2020(S)

PETITIONERS

1. SHIBU BABY JOHN, S/O.BABY JOHN, AGED 57 YEARS,  
VAYALIL HOUSE, NEENDAKARA. P.O, KOLLAM-691 582.
2. N.K. PREMACHANDRAN, S/O.N. KRISHNA PILLAI, AGED 60 YEARS,  
MAHESWARI, CANTONMENT. P.O, KOLLAM-691 001.
3. A.A. AZEEZ, S/O.ALLIYAR KUNJU, AGED 79 YEARS,  
KALLIYIL AZHIKATH VEEDU, Umayanalloor. P.O,  
KOLLAM-691 589.

RESPONDENTS

1. STATE OF KERALA,  
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE ADDITIONAL CHIEF SECRETARY,  
HOME DEPARTMENT, GOVERNMENT OF KERALA,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
3. THE DIRECTOR GENERAL OF POLICE & STATE POLICE CHIEF,  
KERALA POLICE, KERALA POLICE HEADQUARTERS, VAZHUTHACAUD,  
THIRUVANANTHAPURAM-695 014.
4. THE DIRECTOR GENERAL OF PROSECUTION,  
OFFICE OF THE DIRECTOR GENERAL OF PROSECUTION,  
HIGH COURT OF KERALA, KOCHI-682 018.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to:

- 1) Stay the operation of Section 118A of the Kerala Police Act, 2011;
- 2) Restrain the respondents from registering any First Information Reports based on Section 118A of the Kerala Police Act, 2011;
- 3) Direct the respondents to submit the details of the cases registered, if any, in the State of Kerala under Section 118A of the Kerala Police Act, 2011 from 21/11/2020, pending the disposal of this writ petition.

This petition again coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 24/11/2020 and upon hearing the arguments of M/S SANTHOSH MATHEW, DIVYA SARA GEORGE, KARTHIKA MARIA, ANIL SEBASTIAN PULICKEL, ARUN THOMAS, JENNIS STEPHEN & VIJAY V. PAUL, Advocates for the petitioners and of SRI.K.K. RAVEENDRANATH, ADDITIONAL ADVOCATE GENERAL, the court passed the following:

P.T.O.

rs.

**S.Manikumar, CJ.**

**&**

**Shaji P.Chaly, J.**

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**W.P.(C)Nos.25793, 25829, 25875,  
25887, 25892, 25897 & 26067 of 2020**  
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**Dated this the 25<sup>th</sup> day of November, 2020**

**S.Manikumar, CJ.**

**ORDER**

On this day, when the matters came up for hearing, Mr.K.K.Ravindranath, learned Additional Advocate General placed a communication of the Secretary to the Government, Home and Vigilance Departments, Government of Kerala, dated 24.11.2020. The letter reads thus:

"24/11/2020

No.11/2020/Home & Vigilance

Dear Adv.Suman Chakravarthy.

Sub. Home Dept. - WP(C)Nos.25793, 25829, 25892, 25897,  
25887, 25875 of 2020 – reg.

Ref. Order dated 24.11.2020 in above WP(C)s

Government have promulgated the Kerala Police (Amendment) Ordinance, 2020 (79 of 2020) inserting a new section 118A in Kerala Police Act, 2011. Apprehensions of its misuse have been emerged from various sections of the society. Taking into consideration these apprehensions, meeting of the Council of Ministers held on 24.11.2020 has decided to recommend the Hon'ble Governor of Kerala to promulgate the Kerala Police

-:2:-

(amendment) withdrawal Ordinance, 2020 w.e.f. 21.11.2020 to withdraw the Kerala Police (Amendment) Ordinance, 2020, notified on 21.11.2020.

Sd/-

SANJAY KAUL  
Secretary to Government  
Home & Vigilance Department  
Government Secretariat, Thiruvananthapuram  
Tel.2333701/2517011

Adv.Suman Chakravarthy,  
Sr. Government Pleader,  
High Court of Kerala  
Ernakulam."

2. Learned Additional Advocate General also invited the attention of this court to Article 213(2)(b) of the Constitution of India which states that an ordinance promulgated under Article 213 can be withdrawn at any time by the Governor.

3. However, Mr.Santhosh Mathew, learned counsel appearing for the petitioners in W.P.(C)No.25793 of 2020 submitted that a procedure is contemplated under Article 213 for withdrawing an ordinance.

4. At this juncture, we are of the view that there is no need to consider as to whether the procedure as contemplated under Article 213 has been followed in letter and spirit or not. We only record the decision of the Council of Ministers to recommend to the Hon'ble Governor of

Kerala to promulgate the Kerala Police (Amendment) withdrawal ordinance, 2020 with effect from 21.11.2020 to withdraw the Kerala Police (Amendment) Ordinance, 2020, notified on 21.11.2020.

Post after three weeks.

SD/- S.MANIKUMAR  
CHIEF JUSTICE

SD/- SHAJI P. CHALY  
JUDGE

vpv

( true copy)

*Suryakrishna*  
25-11-2020  
ASSISTANT REGISTRAR

*✓*  
25-11-2020