CNR : KLHC010180222026

2026:KER:85977

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

TUESDAY, THE 10TH DAY OF NOVEMBER 2026 / 19TH KARTHIKA, 1948

CRL.MC NO. 1943 OF 2026

CRIME NO.133/2026 OF MANJERI POLICE STATION, MALAPPURAM

PETITIONER/ACCUSED:

SALU P KUMAR, AGED 34 YEARS, D/O PRASANNA KUMAR, PULLURKKALAM HOUSE, PUTHUR, THRISSUR, PIN - 680014

BY ADVS.
SRI.E.ADITHYAN
SHRI.SARATH BABU KOTTAKKAL

RESPONDENT/STATE:

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

2 **SUB INSPECTOR OF POLICE, MANJERI POLICE STATION, KACHERIPPADI, MANJERI, PIN - 676121**

BY ADVS.
SHRI.SUNEESH KUMAR R.
SRI.RAJAN KUDUMBATHIL
SMT.NEERADA S. A.
SHRI.RAJANEESH S.R.
SMT.RIJISHA S.

SMT.MEGHA.K.XAVIER-SR.PP
SRI.K.K.DHEERENDRA KRISHNAN, AMICUS CURIAE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04.11.2026, THE COURT ON 10.11.2026 PASSED THE FOLLOWING:

O R D E R

This petition has been filed by the sole accused in Crime No.133/2026 of Manjeri Police Station, registered alleging commission of offences punishable under Sections 79 and 356(2) of the Bharatiya Nyaya Sanhita ('BNS', for short), seeking an order quashing Annexure A2 notice issued by the investigating officer in the said crime whereby the petitioner was directed to produce her mobile phone for the purpose of the investigation.

2. The prosecution allegation, in brief, is as follows;

The accused is the de facto complainant's brother's wife. On 17.11.2025 and on 30.11.2025, the accused sent voice messages to the WhatsApp number of her brother and her aunt, making highly defamatory remarks against the de facto complainant and also alleging that she is engaged in prostitution, thereby defaming the de facto complainant and also outraging her modesty.

3. In the present petition, it is contended that the notice issued by the investigating officer directing the petitioner/accused to produce her mobile phone amounts to a violation of the constitutional protection against self-incrimination guaranteed under Section 20(3) of the Constitution of India. Hence, the said notice issued by the investigating officer is illegal and is liable to be quashed.

4. I heard Sri. Sarath Babu Kottakkal, the learned counsel appearing for the petitioner, Smt. Megha K. Xavier, the learned Senior Public Prosecutor, as well as Sri. K.K.Dheerendrakrishnan, the learned Amicus Curiae.

5. The learned counsel for the petitioner raised arguments in tune with the averments contained in the petition. According to the learned counsel, the direction in Annexure A2 notice to produce the mobile phone amounts to a violation of the Rule against self-incrimination contained under Article 20(3) of the Constitution of India.

6. The learned Public Prosecutor, on the other hand, submitted that a direction to an accused to produce her/his mobile phone does not infringe any fundamental right. According to the learned Public Prosecutor, such a direction would not amount to testimonial compulsion and would not violate the protection guaranteed under Article 20(3) of the Constitution of India. It was further submitted that, in view of the provision contained under Section 94 of the BNSS, when an officer in charge of a police station considers that the production of any document, electronic communication, including communication devices, is necessary or desirable for the purpose of any investigation, such officer has authority to issue a notice requiring the person in whose possession

such document or thing is believed to be, to produce it. Therefore, the impugned notice issued by the investigating officer is supported by sufficient statutory backing and hence no interference is warranted.

7. The learned Amicus Curiae contended that directing the accused to produce his mobile phone by issuing a summons under Section 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS'), corresponding to Section 91 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.'), would amount to testimonial compulsion and would certainly violate Article 20(3) of the Constitution of India, particularly when the prosecution has a specific case that the mobile phone contains incriminating material against the accused. The learned Amicus pointed out that if the mobile phone of the accused is necessary for the further progress of the investigation in this case, instead of directing the petitioner to produce the same, the police can very well search and seize the same in accordance with law.

8. The crucial question that arises for consideration in this Crl. M.C is whether the accused can be directed to produce his mobile phone allegedly used for the commission of the offence by issuing a summons or written order under Section 94 of the BNSS, which corresponds to Section 91 of the Cr.P.C. While considering the said

question, it is to be noted that Section 94(1) of the BNSS empowers a Court or the officer in charge of a police station to require the production of any document or other thing considered necessary or desirable for the purpose of an investigation, inquiry, trial or other proceedings. However, the power to issue such a summons or notice for facilitating the production of a document or thing is subject to the protection guaranteed under Article 20(3) of the Constitution of India, which declares that no person accused of any offence shall be compelled to be a witness against himself.

9. In **State of Bombay v. Kathi Kalu Oghad**, [AIR 1961 SC 1808], the Hon'ble Supreme Court has clearly distinguished testimonial evidence from physical or medical evidence and held that obtaining physical or medical evidence, which does not involve compelling a person to furnish testimonial evidence, would not attract the constitutional prohibition against testimonial compulsion. Therefore, a direction to undergo a potency test, provide a voice sample or furnish fingerprints, being measures intended to obtain physical or medical evidence rather than testimonial evidence, would not amount to testimonial compulsion and, by itself, would not violate the protection guaranteed under Article 20(3) of the Constitution of India.

10. In **State of Gujarat v. Shyamlal Mohanlal Choksi**, [AIR 1965 SC 1251], the Hon'ble Supreme Court examined whether an accused person could be directed to produce documents under Section 94(1) of the Cr.P.C. The majority held that Section 94(1), on its true construction, did not apply to an accused person. The expression employed in the provision could not be interpreted as authorising the compulsory production of documents by the accused himself. The Court considered the statutory scheme, the consequences of non-compliance with a production order and the constitutional protection against self-incrimination, and concluded that the legislature did not intend to include an accused within the scope of the provision for compelling production. In paragraphs 17, 18 and 19 of the said judgment, it was observed that;

> "*17. It was for the first time by the Constitution under Art.20(3), that a limited protection has been conferred upon a person charged with the commission of an offence against self-incrimination by affording him protection against testimonial compulsion. The fact that in certain provisions like Ss. 161, 175, 342 and 343 of the Code of Criminal Procedure limited protection it the matter of answering questions which might tend to incriminate or expose him to a criminal charge or to penalty or forfeiture has been granted, may indicate that in the interpretation of other provisions of the Code, an assumption that the protection against self-incrimination was implicit has no place.*

18. Failure to comply with an order under S.94 of the Code of Criminal Procedure may undoubtedly expose a person to penal action under S.485 of the Code, and he may be prosecuted under S.175 of the Indian Penal Code. In my judgment, refusal to produce a document or thing on the ground that the protection guaranteed by Art.20(3) would since the enactment of the Constitution be infringed thereby would be a reasonable excuse for non-production within the meaning of S.485 of the Code of Criminal Procedure and an order which is in violation of Art.20(3) requiring the person to produce a document would not be regarded as lawful within the meaning of S.195 of the Indian Penal Code. But, apart from the protection conferred by Art.20(3), there is no reservation which has to be implied in the application of S.94(1).

19. .....Whether in a given case the guarantee of protection against testimonial compulsion under Art.20(3) is infringed by an order of a Court acting in exercise of power conferred by S.94(1) must depend upon the nature of the document ordered to be produced. If by summoning a person who is accused before the Court to produce documents or things he is compelled to be a witness against himself, the summons and all proceedings taken thereon by order of the Court will be void. This protection must undoubtedly be made effective but within the sphere delimited by the judgment of this Court in Kathi Kalu Oghad's case. It needs, however, to be affirmed that the protection against what is called testimonial compulsion

under Art.20(3) is against proceedings in Court; it does not apply to orders which may be made by a police officer in the course of investigation. The Court cannot, therefore, be called upon to consider whether the action of a police officer calling upon a person charged with the commission of an offence to produce a document or thing in his possession infringes the guarantee under Art.20(3) of the Constitution."

11. Likewise, in **V. S. Kuttan Pillai v. Ramakrishnan and Another**, [(1980) 1 SCC 264], the Hon'ble Supreme Court considered the scope of Section 91(1) of the Cr.P.C. in the light of Shyamlal Mohanlal Choksi (cited supra). The Court reiterated that a summons requiring production of a document or thing under Section 91(1) cannot be issued against a person accused of an offence. The Court also considered the distinction between compelling an accused to produce documents and obtaining documents through a search conducted in accordance with the statutory provisions. A search warrant issued under Section 93 of the Cr.P.C. stands on a different footing from a summons requiring the accused personally to produce documents. Consequently, the prohibition against compelled production by an accused does not invalidate the independent statutory powers of search and seizure.

12. Similarly, in **Gopalakrishnan Nayanar v. Sasidharan Nambiar,** [1996 KHC 21], the Hon'ble Division Bench of this Court

considered whether a person against whom allegations of an offence had been made in a complaint could be directed to produce documents under Section 91 of the Cr.P.C. while an inquiry under Section 202 Cr.P.C. was pending. The Court held that a person against whom offences are alleged in a complaint is an accused person notwithstanding the fact that the inquiry contemplated under Section 202 of the Cr.P.C. has not been completed. Therefore, an order under Section 91 Cr.PC. cannot be issued against such a person.

13. In **Kurian v. Joseph and Others**, [2021 (2) KHC 124], this Court considered whether the complainant could invoke Section 91(1) Cr.P.C. to require the accused to produce the original sale deed before the Court. Following Shyamlal Mohanlal Choksi and the Division Bench decision in Gopalakrishnan Nayanar (cited supra), the Court held that a direction under Section 91(1) of the Cr.P.C. could not be issued to an accused for production of an incriminating document. The Court further observed that, where the statutory requirements were satisfied, a general search warrant under Section 93(1)(c) of Cr.PC. could be issued for obtaining the document. The Court referred in this context to V. S. Kuttan Pillai v. Ramakrishnan (cited supra) and Jayadeva Panicker v. Velayudhan, [1986 KLT 1303]. The judgment maintains the distinction between compulsory production by the accused and lawful recovery of documents through

other statutory procedures.

14. In **Rajesh T.K. v. State of Kerala**, [2023 KHC OnLine 9993], this Court examined the validity of notices issued to accused persons under Section 91 of the Cr.P.C. Referring to V. S. Kuttan Pillai (cited supra) and the earlier Hon'ble Supreme Court decisions, this Court reiterated that the expression person in Section 91(1) does not include a person accused of an offence for the purpose of compelling production of documents or things. Compelling an accused to produce documents through such a notice would be contrary to the statutory interpretation adopted by the Hon'ble Supreme Court and the constitutional protection against testimonial self-incrimination. In paragraph 5 of the said judgment, it was observed that;

> "5. *In these cases, the challenge is against the notice issued under S.91 of the Code to the accused. The Apex Court in V. S. Kuttan Pillai v. Ramakrishnan and Others (1980) 1 SCC 264, after referring to the law laid down in Shyamlal Mohanlal v. State of Gujarat (AIR 1965 SC 1251), M. P. Sharma and Others v. Satish Chandra, District Magistrate, Delhi and Others (AIR 1954 SC 300), Swarnalingam Chettiar v. Assistant Inspector of Labour, Karaikudi (AIR 1955 Mad. 716), State of Bombay v. Kathi Kalu Oghad and Others (AIR 1961 SC 1808) have concluded that it is indisputable that the expression "person" in S.91(1) does not take within its sweep a person*

accused of an offense. In other words, a summons issued to an accused person to produce a thing or document considered necessary or desirable for the purpose of an investigation, inquiry or trial would imply compulsion, and the document or thing so produced would be compelled testimony and would be violative of the constitutional immunity against self-incrimination."

15. In view of the authoritative pronouncements of the Hon'ble Supreme Court and this Court, it is evident that Section 94(1) of the BNSS, which corresponds to Section 91(1) of the Cr.P.C., cannot be invoked to compel an accused to produce documents or other things which would incriminate him, for an investigation, inquiry or trial.

16. The principles laid down in Shyamlal and V.S. Kuttan Pillai (cited supra) have consistently been followed by this Court and, therefore, continue to govern the interpretation of Section 94 of the BNSS. It is true that the mere production of a physical object does not invariably amount to testimonial compulsion. However, when the investigating agency seeks to compel the accused to produce his mobile phone, particularly when it is alleged to contain incriminating materials against him, such compulsion would violate the protection guaranteed under Article 20(3) of the Constitution of India. Therefore, I am of the view that the investigating agency cannot

compel the accused to produce the mobile phone by resorting to Section 94 of the BNSS.

In the result, this Crl.M.C. is allowed, and Annexure A2 notice dated 12.02.2026 issued by the Sub Inspector of Police, Manjeri Police Station, Malappuram stands quashed.

Sd/-

JOBIN SEBASTIAN

JUDGE

vdv

APPENDIX OF CRL.MC NO. 1943 OF 2026

PETITIONER ANNEXURES

Annexure A1	**THE TRUE COPY OF THE FIR IN CRIME NO 133 OF 2026 OF THE MANCHERRY POLICE STATION, MALAPPURAM DATED 02.02.2026**
Annexure A2	**THE TRUE PHOTOCOPY OF THE NOTICE DATED 12.02.2026 ISSUED BY THE SUB INSPECTOR OF POLICE, MANCHERRY POLICE STATION, MALAPPURAM**