

**Bench: K.T. Thomas, R.P. Sethi, S.N. Variava**

L...I..T.....T.....T.....T.....T.....T.....T.....T.J The respondent has been booked for trial along with@@ IHH another accused for offences punishable under Section 120B, 409, 468, 471 and 477 of IPC and Section 13(1)(c) read with Section 13(2) of the Prevention of Corruption Act, 1988. The allegation against the respondent No.1 was that while he was working as the Secretary of Melukavu Grama Panchayat along with another accused, who was the Head Clerk of the Panchayat, committed criminal conspiracy to misappropriate the funds of the Panchayat which was earmarked for construction of waiting sheds, Tribal training centres etc. and misappropriated large amount by creating bogus receipts and bills and thereby committed the above offences. Initially the respondent was placed under suspension and subsequently was allowed to retire from service on attaining superannuation.

The first order dated 31.05.2000 is a composite order by which the petition under Section 482 of Criminal Procedure Code was dismissed on the grounds as stated above. By way of clarification, this order was reversed by the impugned order and the criminal proceeding was quashed for want of proper sanction.

This court in Hari Singh Mann versus Harbhajan Singh Bajwa & Ors. [2001 (1) SCC 169] held that Section 362 of the Criminal Procedure Code mandates that no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or an arithmetical error and that this section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by the court of competent jurisdiction.

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[illegible]

The Section 197 of the Criminal Procedure Code is the corresponding provision for previous sanction of a public servant for prosecution of offences in a criminal trial. The language used in this section is when any person is or was a public servant. This provision was considered by this court in R. Balakrishna Pillai versus State of Kerala & Anr. [1996 (1) SCC 478] and after referring to the report of the Law Commission which suggests an amendment to above section and accordingly it was amended in 1991, the bench observed as follows:

clear We are, therefore, of the opinion that in view of language of sub-section (1) of Section 122 of the Kerala Panchayat Act, sanction is required under the said sub-section only if a person holds the office of President, Executive Authority or any member and not otherwise. As the respondent retired from service no previous sanction for prosecution under this section is required.

