

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. BABU

WEDNESDAY, THE 17<sup>TH</sup> DAY OF JANUARY 2024 / 27<sup>TH</sup> POUSHA, 1945

CRL.MC NO. 1071 OF 2022

V.C. NO.1/2015 OF VACB, KASARAGOD

AGAINST THE ORDER/JUDGMENT IN CC 12/2021 OF COURT OF ENQUIRY  
COMMNR. & SPECIAL JUDGE, KANNUR AT THALASSERY

PETITIONERS/1ST AND 2ND ACCUSED:

1 C.SURENDRANATH,



2 HARI ACHUTHA VARRIER,



BY ADVS.  
ATHUL SHAJI  
ANWIN JOHN ANTONY

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

1 STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM  
(REPRESENTING THE DEPUTY SUPERINTENDENT OF POLICE,  
VIGILANCE AND ANTI CORRUPTION BUREAU, KASARAGOD)

2 K.C. MOHANAN,



BY ADV  
SRI.RAJESH A SPL GOVERNMENT PLEADER (VIGILANCE)  
SMT.REKHA PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
17.01.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**'C.R'**

**K.BABU, J.**

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**Criminal.M.C No.1071 of 2022**  
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Dated this the 17<sup>th</sup> day of January, 2024

**ORDER**

The petitioners, accused Nos.1 and 2, respectively, in C.C No.12/2021 on the file of the Court of the Enquiry Commissioner and Special Judge, Thalassery, seek to quash the FIR, the Final Report and all further proceedings against them in V.C No.1/2015 registered by the Vigilance and Anti-Corruption Bureau, Kasaragod.

**Facts leading to the registration of the Crime**

2. Petitioner No.1 was a Port Conservator at Kasaragod. Petitioner No.2 was the Deputy Director of Ports. As per order No.C3-6009-09-DP dated 17.08.2013 of the Director of Ports, the Port Officer, Kozhikode, announced the tender of Manual dredging and sale of port sand for the years 2013 and 2014 of various port zones within Kasaragod district fixing the tender date as 03.09.2013. The Director of Ports constituted a tender assessment team headed by the petitioners and other officials. The Government had issued revised guidelines for manual dredging and sale of port sand for

2014 vide GO(MS) No.54/2013/F&PD. The tender process was carried out in an open tender manner in the presence of the representatives of the Co-operative Societies. Various Co-operative Societies submitted the tender.

2.1. After technical evaluation, twelve societies were short-listed. The bids submitted by six societies were rejected as they failed to enclose the required documents and file proper tender forms. Out of the twelve qualified societies, four societies namely Kasaragod Taluk Poozhithozhilali Kshema Sahakarana Sangham, Kasaragod Hollow Bricks Nirmana Vyavasaya Kshema Sahakarana Sangham, Manjeswaram Poozhithozhilali Kshema Sahakarana Sangham and Port Manual Dredging Workers Kshema Sahakarana Sangham had submitted certificates from the registrar without furnishing the list of employees engaged in manual dredging, which was a prerequisite in the tender. On the date of tender, the tender assessment team verified the list of employees of the above four societies with the employee register kept in the port office. The tender forms submitted by these societies without required documents should have been rejected in the preliminary process itself, as done in the case of six other societies. However, the

tender team accepted the tenders submitted by the above-mentioned societies without having sufficient documents. The representatives of the above four societies were asked to go outside the tender hall, and later, they were recalled to participate in the tender and allotted different port zones for manual dredging. In the process of the allotment, the tender committee showed some undue favour in favour of these four Co-operative Societies.

2.3. The petitioners, with dishonest intention, committed criminal misconduct and entered into a criminal conspiracy with accused Nos.3, 4 and 5, who were the representatives of the societies that participated in the tender and allotted manual dredging of sand in port zones to three ineligible societies represented by accused Nos.3, 4 and 5 by violating the tender procedures and thereby obtained undue advantage by illegal means.

3. The VACB conducted the investigation and submitted the final report against the petitioners and others alleging offences punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Section 120-B read with Section 34 of IPC.

4. Heard the learned counsel for the petitioners and the learned Special Government Pleader (Vigilance).

5. The learned counsel for the petitioners made the following submissions:

5.1. The allegation of the prosecution that the four Co-operative Societies mentioned above did not have the required qualifications to participate in the tender is baseless.

5.2. There is no material to show that the petitioners obtained any pecuniary advantage or caused any pecuniary loss to the Government. There is also no material to show that any person obtained any pecuniary advantage consequent to the abuse of the position of the petitioners as public servants.

5.3. There was no competition in the matter of rates in the tender as the rate of sand was the same for all societies.

5.4. Even if it is assumed that the above-mentioned four societies were permitted to participate in the tender without the required qualification, there is nothing to show that any person, including the petitioners, obtained any pecuniary advantage. At the most, it could be seen that there was irregularity in the tender process.

5.5. The prosecution failed to collect any material to establish any vicious link or nexus between the petitioners and the Co-operative Societies involved.

6. The learned Special Government Pleader submitted the following:

6.1. The prosecution placed materials to establish that the Co-operative Societies involved in the case were permitted to participate in the tender though, they were not qualified to participate. The representatives of the Co-operative Societies were initially not permitted to participate in the tender process, but they were recalled thereafter and allotted tender in their favour, which shows the element of conspiracy among the petitioners and the other accused.

7. The crux of the prosecution allegation is that four Co-operative Societies, which did not meet the required parameters to participate in the tender, were allowed to participate in the tender process. The prosecution alleges that this is an irregularity committed by the tender committee led by the petitioners under a conspiracy in which the petitioners maintained an illegal nexus with the representatives of the Co-operative societies for the selection

of manual dredging during 2013-2014 under Kasaragod Port office. The prosecution alleges that the above-mentioned Co-operative societies did not meet the required parameters to participate in the tender. It is alleged that the societies did not provide manual dredging as one of their main objectives and that the employee register was not produced along with the tender documents.

8. The petitioners produced Bye-Laws of the Co-operative Societies (Anxs.V to VII), wherein it is evident that one of the objectives of the formation of the societies was manual dredging by the members of the Co-operative Societies to earn their main livelihood.

9. It may be true that the representatives of the societies did not produce the required documents at the time of participation in the tender. It may also be true that the representatives were initially sent out of the tender hall and later recalled to participate in the tender. Annexures-IV Minutes would show that though the certificates produced by the above-mentioned Co-operative Societies did not contain a certification that the members of those societies were engaged in manual dredging, on verification of the list of employees submitted by the societies, the committee was

convinced that the employees were engaged in manual dredging and therefore those societies were treated as technically qualified.

10. Some of the Co-operative Societies that were on the low ranking in technical criteria were not allotted any zones, as seen from the minutes. The committee fixed the material selling price as Rs.897/- and the amount to be paid to the Government as Rs.457/- per metric tonne for manual dredging. The rates fixed for all the societies were found to be the same. The question of whether the petitioners committed the offences alleged is to be ascertained based on the above facts.

11. They are alleged to have committed the offence under Section 13(1)(d) read with Section 13(2) of the PC Act. Section 13(1)(d) of the PC Act reads thus:

**"13. Criminal misconduct by a public servant.—** (1) A public servant is said to commit the offence of criminal misconduct,—

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or



- (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or"

12. A reading of Section 13(1)(d) of the PC Act would reveal that a public servant can be prosecuted only if he has abused his position as a public servant and obtained for himself or any other person any valuable thing or pecuniary advantage. The intention of the legislation is not to punish a public servant for erroneous decision, but to punish for corruption. To fall within the four corners of sub-clause (ii) of Clause (d) of sub-section (1) of Section 13 of the PC Act, the decision/conduct of the public servant must be dishonest, amounting to corruption.

13. To attract the term 'abuse' as contained in Section 13(1)(d) of the PC Act, the prosecution has to establish that the official concerned used his position for something it is not intended. The sum and substance of the discussion is that dishonest intention is the gist of the offence under Section 13(1)(d) of the PC Act.

14. The prosecution allegations, at the most, point to certain irregularities committed in the tender process. The prosecution also alleges conspiracy among the petitioners and the other accused.

15. It is trite that conspiracy need not be yet necessarily proved by direct evidence. It is also capable of being proved by circumstances pointing out the existence of a conspiracy to commit an unlawful act.

16. In **Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra (AIR 1965 SC 682)** a three-Judge Bench of the Apex Court held that the offence of conspiracy can be established either by direct evidence or by circumstantial evidence and the section will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired to commit an offence or an actionable wrong, that is to say, there should be prima facie evidence that a person was a party to that conspiracy.

17. In **State of M.P. v. Sheetla Sahai [(2009) 8 SCC 617]**, the Apex Court has held as follows:-

“Criminal conspiracy is an independent offence. It is punishable separately. Prosecution, therefore, for the purpose of bringing the charge of criminal conspiracy read with the aforementioned provisions of the Prevention of Corruption Act was required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of bringing a criminal misconduct on the part of an accused.”

18. In **Zakia Ahsan Jafri v. State of Gujarat (AIR 2022 SC 3050)**,

the Apex Court held that every act of commission and omission would not result in hatching criminal conspiracy unless the acts have been done deliberately and there is meeting of minds of all concerned.

19. Dishonest intention is *sine qua non* to attract the offence punishable under Section 13(1)(d) of the Act. Mere conduct and action of the accused contrary to rules and departmental norms would not amount to criminal misconduct by a public servant.

20. A fundamental principle of criminal jurisprudence with regard to the liability of an accused is the element of *mens rea*. On the principles of *actus reus* and *mens rea*, the learned author Sri.Glanville Williams in the 'Textbook of Criminal Law' [Third Edition, Dennis.J.Baker, page 95] comments thus:

“The mere commission of a criminal act (or bringing about the state of affairs that the law provides against) is not enough to constitute a crime, at any rate in the case of the more serious crimes. These generally require, in addition, some element of wrongful intent or other fault. Increasing insistence upon this fault element was the mark of advancing civilization.”

21. On the principles of Criminal Liability, the learned author Sri.K.D. Gaur in his book Criminal Law [Lexis Nexis, Butterworths, page 37] explains thus:

“Criminal guilt would attach to a man for violations of criminal

law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, *actus non facit reum, nisi mens sit rea*. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable, it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called actus reus and mens rea respectively.”

22. Dishonest intention is the crux of the offence under Section 13(1)(d) of the PC Act. The question of whether violation of the rules and departmental norms would amount to the offence under Section 13(1)(d) of the PC Act was considered by the Apex Court in **C.K.Jaffer Sharief v. State [2013 (1) SCC 205]**. The Apex Court held thus:

“If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundance it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant.”

23. In **M. Narayanan Nambiar v. State of Kerala (AIR 1963 SC 1116)**, while dealing with Section 5 of the 1947 Act, the Apex Court held that dishonest intention is the gist of the offence.

24. In the present case, the prosecution records reveal only a violation of the rules and departmental norms or procedural norms

for the tender process. The prosecution failed to produce any material to show that the petitioners, with dishonest intention, committed any acts.

25. It is also important to note that there is absolutely no allegation in the prosecution case that the petitioners obtained any pecuniary advantage. The prosecution allegations would point to some of the Co-operative Societies being enriched though they were not qualified to participate in the tender. The members of all the Co-operative Societies are labourers engaged in manual dredging, which is hard labour. The societies were formed with the intent to make a livelihood for the labourers who belong to the marginalised communities. Most of the alleged enrichment or the alleged pecuniary gain is in the form of their wage, or in other words, they earned the money for their subsistence. There is nothing to show that the amount due to the Government was not paid. There are no materials to show that the Co-operative Societies unlawfully obtained money by employing the labourers. The income earned by the labourers by putting in their hard work at any rate cannot be treated as pecuniary advantage within the mischief of Section 13 of the PC Act.

26. The FIR and the Final Report do not disclose the offences alleged. There is not even a suspicion of the commission of any offences by the petitioners. Allowing the proceedings to continue would be an abuse of the process of the Court, or the ends of justice require that the proceedings ought to be quashed.

27. On the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent power under Section 482 Cr.P.C., the Apex Court in **State of Haryana and Others v. Bhajan Lal and Others (1992 Supp. (1) 335)** held thus:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the

Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

28. The present case is fully covered by category (3), as enumerated in **State of Haryana** (supra). I am of the view that, the criminal proceedings consequent to the registration of the crime as against the petitioners are liable to be quashed.

In the result, the Crl.M.C. is allowed. The Final Report in V.C No.1/2015 filed by the Vigilance and Anti-Corruption Bureau, Kasaragod and all further proceedings in C.C No.12/2021 on the file

of the Court of the Enquiry Commissioner and Special Judge,  
Thalassery against the petitioners are hereby quashed.

**Sd/-  
K.BABU,  
JUDGE**

KAS



**APPENDIX OF CRL.MC 1071/2022**

PETITIONER ANNEXURES

Annexure-I	TRUE COPY OF THE FIR IN V.C.NO.01/2015 ON THE FILE OF VACB, KASARGOD DATED 05.01.2015.
Annexure-II	TRUE COPY OF G.O. (MS) 17/2010/F&PD DATED 18.03.2010.
Annexure-III	TRUE COPY OF G.O. (MS) 29/2012/F&PD DATED 13.04.2012.
Annexure-IV	TRUE COPY OF THE MINUTES OF THE TENDER OPENING MEETING HELD ON 03.09.2013.
Annexure-V	TRUE COPY OF THE BYE-LAWS OF KASARAGOD TALUK POOZHI THOZHILALI KSEMA SAHAKARANA SANGHAM.
Annexure-VI	TRUE COPY OF THE BYE-LAWS OF HOLLOW BRICKS NIRMANA VYAVASAYA KSEMA SAHKARANA SANGAM.
Annexure-VII	TRUE COPY OF THE BYE-LAWS OF PORT MANUAL DREDGING WORKERS KSEMA SAHAKARANA SANGHAM.
Annexure-VIII	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN CRL.M.C 772 OF 2021 DATED 01.02.2022.
Annexure-IX	TRUE COPY OF THE FINAL REPORT IN V.C.NO.01/2015 ON THE FILE OF VACB, KASARGOD DATED 27.03.2021 ALONG WITH 161 STATEMENTS, MAHASSARS AND DOCUMENTS