

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. BABU

MONDAY, THE 22<sup>ND</sup> DAY OF JANUARY 2024 / 2ND MAGHA, 1945

CRL.MC NO. 4431 OF 2022

CRIME NO.2/2022 OF VACB, NORTHERN RANGE, KOZHIKODE

PETITIONER/ACCUSED:

E. PRADEEP KUMAR IES. AGED 57 YEARS

BY ADVS.SMT.SUMATHY DANDAPANY (SR.)  
MILLU DANDAPANI  
RAMEEZ NOOH  
RONIT ZACHARIAH  
GOPIKA P.J.  
FATHIMA K.  
SIRAJ ABDUL SALAM  
ROY THOMAS (MUVATTUPUZHA)

RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY THE  
PUBLIC PROSECUTOR. HIGH COURT OF KERALA,  
ERNAKULAM - 682031.
- 2 SECRETARY, MINISTRY OF HOME AFFAIRS,  
VIGILANCE DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM., PIN - 695001.
- 3 THE SUPERINTENDENT OF POLICE  
VIGILANCE AND ANTI-CORRUPTION BUREAU,  
NORTHERN RANGE, THONDAYAD P.O.,  
KOZHIKODE - 673016.
- 4 POLICE INSPECTOR-1  
VIGILANCE AND ANTI CORRUPTION BUREAU SPECIAL CELL,  
THONDAYAD P.O., KOZHIKODE., PIN - 673016.

RAJESH A,SPL GP VIG;  
REKHA SR PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
22.01.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**ORDER**

The petitioner, the accused in Crime No.2/2022 of Vigilance and Anti-Corruption Bureau, Northern Range, Kozhikode, who faces allegations under Section 7(a) of the Prevention of Corruption (Amendment) Act, 1918, (for short 'the Act') seeks to quash the FIR and all further proceedings.

2. The facts leading to the registration of the case are as follows:-

The petitioner was working as an Additional Principal Chief Conservator of Forest (Social Forestry), Forest Headquarters, Thiruvananthapuram. On 12.4.2021, the petitioner was travelling by his official vehicle bearing registration No.KL-01-BZ-7063 from Kannur to Thiruvananthapuram, after inspecting various nurseries in Kannur District. The Superintendent of Police, VACB, Kozhikode, received secret information that the petitioner had possessed money collected as a bribe from various contractors. The officials of the VACB intercepted the car on the National Highway near KSEB Office, Muttungal, Vatakara.

They searched the vehicle and found a bag containing four envelopes. They seized Rs.85,000/- from the four envelopes. The petitioner could not satisfactorily explain the source of the money that he possessed. The officials of the VACB seized the money. They conducted a preliminary enquiry and thereafter registered the above crime. The VACB is proceeding with the investigation.

3. The crux of the prosecution allegation is that the petitioner, abusing his official position, dishonestly accepted undue advantage from various contractors, who were engaged in the maintenance of the nurseries in Kannur District, for clearing the bills submitted by them with the intention of performing his public duty improperly.

4. Heard the learned Senior Counsel Smt.Sumathy Dandapani appearing for the petitioner and Sri.A.Rajesh, the learned Special Government Pleader (Vigilance).

5. The learned Senior Counsel submitted that there is no evidence to show that the petitioner accepted money as alleged by the prosecution. It is submitted that the witnesses examined by the Investigating Officer did not support the prosecution allegations. There is nothing to show that the petitioner voluntarily accepted money,

knowing it to be a bribe, the learned Senior Counsel submitted. The learned Senior Counsel further submitted that proof of demand for illegal gratification is essential for attracting the offence under Section 7(a) of the Act, and a mere possession or recovery of currency notes is not sufficient to constitute such an offence. The learned Special Government Pleader submitted that the proof of voluntary acceptance of money is sufficient to constitute the offence under Section 7(a). The learned Special Government Pleader also submitted that the investigation is almost in the final stage. The learned Special Government Pleader fairly conceded that the crucial witnesses examined by the prosecution did not support the prosecution case that the contractors handed over money, and the petitioner accepted the same. The learned Special Government Pleader further submitted that the envelopes from where the currency notes were recovered have been sent for analysis at the forensic science laboratory to identify the handwriting on them.

6. The seizure was effected on 12.4.2021 by the Superintendent of Police, VACB, Kozhikode at Vatakara at 17.05 hours. The VACB detected four brown colour covers containing cash from the bag, which was placed on the seat near the petitioner who was

travelling by his official car. In one of the envelopes the detecting officer noticed the writings "**KASARGOD**" in black ink and "**Social Forestry Division Kasargod**" in blue ink on the outer side, and on the inner side of the flap of the cover "**James A K contractor, 20000/-, Kasargod Division**". The detecting officer found cash worth Rs.35,000/- in the cover. In another cover, the detecting officer found the writings "**Thalassery Range**" on the outer side of the cover and found cash worth Rs.25000/-. In the third cover, the detecting officer found Rs.15,000/-. In the fourth cover, on the inner side of the flap, the detecting officer found the writings "**James A K Contractor, 10000/-, Kannur Division**" and he found cash worth Rs.10,000/-. The detecting officer asked the petitioner as to the source of the money. According to the detecting officer, the petitioner could not give reasonable reply. The detecting officer reasonably suspected that the cash found in the bag was bribe money. So, he seized the covers containing the money and the bag in the presence of a Gazatted Officer and independent witnesses after preparing a seizure mahazar at 20:20 hours.

7. Based on the report of the Superintendent of Police, the Director of Vigilance ordered a preliminary enquiry. The Inspector of Police, Vigilance ad Anti Corruption Bureau Special Cell, Kozhikode,

conducted the preliminary enquiry. The Enquiry Officer arrived at the conclusion that it was Sri.A.K.James, a contractor, who handed over the money as demanded by Sri.Ajith K Raman, ACF, Kasargod and Sri.Abdulla Kunhiparambath, Range Officer, Kasaragod, with intend to be given to the petitioner during his visit. The preliminary enquiry officer further concluded that the rest of the money was handed over by Sri.Suresh Babu and Sri.James A.K., two contractors, to Sri.Pradeep G., Assistant Forest Conservator, Kannur and Sri.Arunesh, Range Forest Officer, Thalassery, on their demand for giving the same to the petitioner. Therefore, the VACB registered the above crime and investigated it.

8. The learned Special Government Pleader produced the case diary. I have gone through the case diary. It is seen that the Investigating Officer arrived at the following conclusions:-

(1) The petitioner conducted an inspection at Kannavam Peruva Nursery and Mattool Kandal Nursery under the Kannur Forest Division on 12.4.2021.

(2). Rs.85,000/- was seized from the vehicle by which the petitioner was travelling from Kannur to Kozhikode.

(3). While the petitioner was conducting an inspection at Kannavam

Peruva Nursery and Mattool Kandal Nursery, Sri.Sajan, Forest Conservator, Kozhikode, Sri.Pradeep G, Assistant Forest Conservator, Kannur, Sri.Ajith K Raman, Assistant Forest Conservator, Kasargod, Sri.Arunesh, Range Forest Officer, Thalassery, Sri.Abdulla Kunhiparambath, Forest Range Officer, Kasargod and other forest officers were with him.

(5). After the inspection at Kannavam Peruva Nursery, the petitioner reached the office of the Assistant Conservator's Office at Kannur around 1 p.m. and left there for Mattoor Kandal Nursery for inspection at about 2 p.m.

(6) Sri.Chandran, the then Thalassery Flying Squad Section Forest Officer, Kannur (witness No.11) stated that he was in front of the office of the Assistant Forest Conservator, Kannur, when the petitioner was sitting alone after lunch at the office, and he saw Sri.Pradeep G, AFC, Kannur and Sri.Arunesh, Range Forest Officer, Thalassery, filling cash in brown covers in the corridor of the office, and they later entered the office of the AFC and handed over the covers to the petitioner, who kept them in a bag in his possession. He further stated that Sri.Pradeep, AFC, Kannur (witness No.15) had asked him to collect money from contractor Sasimohan. He further stated that the contractor Sri.Suresh

Babu is the binami of Sri.Arunesh, Range Forest Officer, Thalassery. Sri.Sasimohan (witness No.12), the contractor who was engaged in the contract work under the Social Forestry, Kannur stated that Sri.Arunesh, Range Forest Officer, Thalassery demanded cash from him to be given to the petitioner during his visit. Witness No.13, Sri.James A.K., the contractor who conducted nursery works under social forestry, Kannur stated that he had not given any cash to anyone during the visit of the petitioner. Sri.Suresh Babu, witness No.14, another contractor, also stated that he had also not given any cash to anyone during the visit of the petitioner. Sri.Pradeep G., Sri.Arunesh and Sri.Abdulla Kunhiparambath, witness Nos.15, 16 & 17 respectively, also stated that they had not given any cash to the petitioner during his visit on 12.4.2021.

9. Since the contractors did not reveal the transactions alleged, the Investigating Officer sent the envelopes from which the cash was detected to compare the writings thereon with the admitted writings of the contractors and the forest officers.

10. Section 7 of the Act reads thus:-

**"7. Offence relating to public servant being bribed.—**  
Any public servant who,—  
(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear



or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

*Explanation 1.*—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

*Illustration.*—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

*Explanation 2.*—For the purpose of this section,—

(i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party."

11. To attract the offence under Section 7(a) the prosecution has to establish that the public servant obtained or accepted or attempted to obtain from any person an undue advantage. In order to attract the offence under Section 7(a), the prosecution has to establish that the petitioner voluntarily accepted money, knowing it to be bribe. If there is an offer to pay by the bribe giver without there

being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is definitely a case of acceptance as per Section 7 of the Act, even in the absence of prior demand. On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification, which in turn is received by the public servant, it is a case of obtainment.

12. In the case of acceptance, as mentioned in the first category, the prosecution need not establish demand but in the case of obtainment, the prosecution has to establish prior demand by the public servant. In the present case, on a perusal of the case diary, it is revealed that the prosecution has not collected any credible material to establish that the petitioner accepted the money as bribe from any bribe giver. What the Investigating Officer now intends to collect as further evidence is the result of examination of the writings on the envelopes from which the money was allegedly recovered and the writings of the contractors and some of the forest officials who accompanied him. Even if the result of that examination is positive in the sense that the covers contain writings of the contractors or the forest officials, in the absence of any other credible materials to show

that the contractors handed over the money to the petitioner, it cannot be concluded that the petitioner accepted the money.

13. In the case of acceptance, as per Section 7 of the Act, the prosecution has to establish the offer by the bribe giver and acceptance by the public servant.

14. In the case of obtainment, the offer by the bribe giver and demand by the public servant are to be proved. In other words, there must be an offer which emanates from the bribe giver, which is accepted by the public servant, in the case of acceptance and a prior demand by the public servant when accepted by the bribe giver and in turn, there is a payment made which is received by the public servant, in the case of obtainment. In **Neeraj Dutta v. State (Govt. of N.C.T. of Delhi)**, a Constitution Bench of the Supreme Court held that the presumption of fact in issue as to demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. The presumption under Section 20 of the Act comes into operation only when the foundational facts, as mentioned above are proved. In **Vijayakumar N v. State of Tamil Nadu (2021 KHC**

**6049)** a three-Judge Bench of the Apex Court held that the prosecution has to prove beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe and mere possession or recovery of currency is not sufficient to constitute such an offence. In the present case, the prosecution has not collected any material to establish an offer by the bribe giver and acceptance of the bribe by the petitioner. The result of examination by the Forensic Science Laboratory, in my view, will not in any way improve the case of the prosecution.

15. The question to be considered is whether the prosecution has placed any material to prima facie show that the contractors offered to give bribe to the petitioner and he accepted the same. The legal position is well settled that when a prosecution at the initial stage is sought to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie, establish the offence.

16. In **Manik Taneja v. State of Karnataka (2015 (7) SCC 423)** the Apex Court held that if, in the opinion of the Court, the chances of ultimate conviction are bleak and no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court

may quash the proceedings even though it may be at a preliminary stage. In **State, by the Inspector of Police, Chennai v. S. Selvi and Another (2018 (1) KLD 198 (SC) = (2018) 13 SCC 455)** the Apex Court held that where the materials placed before the Court disclosed grave suspicion against the petitioner which has not been properly explained, the Court will be justified in framing charge and proceed with the trial.

17. In the present case, at the most the prosecution materials give rise to a mere suspicion. No materials are placed by the prosecution, which give rise to a 'grave suspicion' against the petitioner.

18. While exercising the jurisdiction under Section 482 Cr.P.C. the High Court is guided by the following two objectives:-

1. Prevent abuse of the process of court.
2. Secure the ends of justice.

19. The above referred two tests are in favour of the petitioner and against the prosecution. The continuation of the proceedings against the petitioner would necessarily be an abuse of the process of the Court. To secure ends of justice, the FIR and all further proceedings against the petitioner are liable to be quashed. Therefore,

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the FIR No.2/2022 of the Vigilance and Anti-Corruption Bureau,  
Northern Range, Kozhikode, as against the petitioner stands quashed.

The Crl.M.C. is allowed as above.

Sd/-  
**K.BABU**  
**Judge**

TKS

APPENDIX OF CRL.MC 4431/2022

PETITIONER ANNEXURES

- Annexure A** CERTIFIED COPY OF THE PRELIMINARY ENQUIRY REPORT DTD. 28.02.2022 PREPARED BY THE 4TH RESPONDENT
- Annexure B** CERTIFIED COPY OF THE FIR NO. 2/2022/NRK DTD. 30.04.2022 ON THE FILES OF THE VIGILANCE AND ANTI CORRUPTION BUREAU NORTHERN RANGE
- Annexure C** TRUE COPY OF THE G.O. (P)/92/VIG. DTD. 12.05.1992 ISSUED BY THE 2ND RESPONDENT

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