IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

FRIDAY, THE 22ND DAY OF MARCH 2024 / 2ND CHAITHRA, 1946

CRL.MC NO. 148 OF 2022

CRIME NO.1/2021 OF VACB, KOZHIKODE, Kozhikode

PETITIONER/S:

DR.ABDUL RASHEED,
AGED 56 YEARS
S/O. POKKERKUTTY, MEDICAL CONSULTANT, GOVT. DISTRICT HOSPITAL, MANANTHAVADI.

BY ADVS.
V.T.RAGHUNATH
MANJU RAJAN

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY DEPUTY SUPERINTENDENT OF POLICE, VIGILANCE AND ANTI CORRUPTION BUREAU, KOZHIKODE, THROUGH THE SPL. PP FOR VIGILANCE, HIGH COURT OF KERALA, ERNAKULAM 682 031.

RAJESH A,SPL GP VIGILANCE,REKHA SR PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22.03.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"C.R."

K. BABU, J

Crl.M.C. No.148 of 2022

Dated this the 22nd day of March, 2024

O R D E R

Petitioner, the accused in FIR No.1/2021 of SCK of VACB, Special Cell, Kozhikode, seeks to quash Annexure-I FIR in these proceedings. The petitioner is alleged to have committed the offences punishable under Section 13(2) r/w Section 13(1)(e) of the Prevention of Corruption Act, 1988, and Section 13(2) r/w Section 13(1)(b) of the Prevention of Corruption (Amendment Act), 2018.

Facts

2. The petitioner is an Assistant Surgeon in the Kerala Health Services. In 2017, while he was working as a Medical Consultant in the Government Taluk Hospital,

Thamarassery in Kozhikode District, one Shri. Noushad filed a complaint before the VACB, Kozhikode, alleging that the petitioner demanded a bribe from him for doing a laparoscopic surgery on his wife. The VACB registered crime No.1/2017/KKD alleging offences punishable under Section 7 and Section 13(2) r/w Section 13(1)(d) of the PC Act. The Vigilance laid a trap. The petitioner was arrested at the time of receiving a sum of Rs.2,000/- from the complainant. The VACB conducted investigation and submitted a final report, dropping all further proceedings against the petitioner. However, the Special Court did not accept the report and ordered further investigation.

3. The VACB registered the present crime V.C.No.1/2021, alleging that the petitioner amassed wealth disproportionate to his known sources of income during the check period from 20.01.2011 to 31.12.2017 based on confidential information. The investigation is

going on. During the investigation, the check period was revised as 01.01.2011 to 03.02.2021.

Submissions

4. The learned counsel for the petitioner made the following submissions:-

(1)The offences alleged in Crime No.1/2021 ought to have been included in FIR No.1/2017 in view of Section 220 of the Cr.P.C.

(2) The investigating agency has not complied with the directions in Clause 54 of the Vigilance and Anti-Corruption Bureau Manual.

(3) There is an inordinate delay in the registration of the Crime.

(4) No preliminary enquiry was conducted before registration of the crime.

5. The learned Special Public Prosecutor made the following submissions:-

(1) The offences in Crime No.1/2017 and Crime No.1/2021 are distinct and different. Hence the question of joinder of charges doesn’t arise.

(2)The non-compliance with any guidelines in the Vigilance and Anti-Corruption Bureau Manual will not affect the credibility of the FIR and the investigation in any way.

(3) Preliminary enquiry is not mandatory for registering a crime if the allegations disclose a cognizable offence.

6. The VACB registered FIR No.1/2017/KKD alleging offences punishable under Sections 7 and 13(1)(d) of the PC Act based on the allegation that the petitioner demanded a bribe from the de facto complainant on 23.01.2017. The VACB arrested the petitioner and seized currency notes from him at the time of receiving the bribe. In the present FIR, the allegation essentially is that during the check period from

01.01.2011 to 03.02.2021, the petitioner had been in possession of pecuniary resources or property disproportionate to his known sources of income for which he could not satisfactorily account for. The learned counsel for the petitioner contended that as the allegations in both the transactions are so connected together as to form the same transaction, the Investigating Agency ought to have included the allegations levelled in Crime No.1/2021 in the investigation in Crime No.1/2017. The learned counsel for the petitioner submitted that the provisions of 220 CrPC are applicable to the facts of the case.

7. The learned Special Public Prosecutor submitted that the allegations levelled in Crime No.1/2021, that is, amassment of pecuniary resources of property disproportionate to petitioner's known sources within the check period from 01.01.2011 to 03.02.2021

cannot be taken as acts so connected to form part of the transactions alleged in crime No.1/2017.

8. The learned Special Public Prosecutor further submitted that as per Section 17 of the PC Act, all officers in the VACB are not authorised to investigate offence under Section 13(1)(e) of the Act, whereas offences under Sections 7 and 13(1)(d) of the Act alleged in Crime No.1/2017 can be investigated by an officer of the rank of Inspector of Police. The learned Special Public Prosecutor submitted that investigation of an offence under Section 13(1)(e) of the Act shall only be done by an Officer authorised by the Superintendent of Police. The learned Public Prosecutor submitted that the scheme of investigation under Section 13(1)(e) of the Act is different from the Scheme of Investigation to be followed in the case of an offence under Section 7 of the PC Act. The application of Section 220 of the Cr.P.C. arises in the case of trial of more offences than one committed by the same

person in one series of acts so connected together as to form the same transaction. In the present case, the question of application of Section 220 Cr.P.C. does not arise as it is only at the stage of investigation.

9. For the convenience of analysis, Section 220 Cr.P.C. is extracted below:-

220. Trial for more than one offence

> (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.
> (2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub- section (2) of section 212 or in sub- section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.
> (3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for

> the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.
> (4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.
> (5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

10. Section 220 Cr.P.C. relates to the joinder of charges of offences committed by the same person. It applies to a case in which different offences or acts are parts of a single transaction. If the offences are committed in the course of the same transaction, they may be tried together. The Section is an enabling provision. It permits the Court to try more than one offence in one trial. The Court may or may not try all the offences together in one trial. If the Court tries the offences separately, it does not commit any illegality. In a

case, the accused has no vested right to seek a joinder of charges and trial of more offences in one trial.

11. The expression “same transaction” is vital for deciding whether the series of acts are so connected together to be tried at one trial.

12. There cannot be a universal formula for the purpose of determining whether two or more acts constitute the same transaction. The commonality of purpose or design and continuity of action manifest that the same or different offences were committed in the course of the same transaction. The proximity of time, unity of place, unity or community of purpose or design and continuity of action make the series of acts alleged against the person constitute the same transaction.

13. In ***Re : Expeditious Trial of Cases Under Se.138 of N.I.Act 1881*** [AIR 2021 SC 1957], a

Constitution Bench of the Supreme Court in paragraph 15 of the judgment observed thus:-

> **"15.** Offences that are committed as part of the same transaction can be tried jointly as per Section 220 of the Code. What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the legislature has deliberately left undefined. We have not come across a single decision of any court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction [*State of A.P.* v. *Cheemalapati Ganeswara Rao*, 1963 SCC OnLine SC 38 : (1964) 3 SCR 297 : AIR 1963 SC 1850] . There is no ambiguity in Section 220 in accordance with which several cheques issued as a part of the same transaction can be the subject-matter of one trial."

14. In ***Mohan Baitha v. State of Bihar*** [(2001) 4 SCC 350], the Supreme Court has considered the scope of Section 220 Cr.P.C. by constructing the meaning of the

expression "same transaction". In ***Mohan Baitha,*** the Supreme Court held thus:-

> "The expression "same transaction" from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria."

15. In ***Anju Chaudhary v. State of U.P***. [(2013) 6 SCC 384], while considering the test to be applied for determining the question whether two ore more acts

constitute the same transaction, the Supreme Court held thus:-

> "43. It is true that law recognizes common trial or a common FIR being registered for one series of acts so connected together as to form the same transaction as contemplated under Section 220 of the Code. There cannot be any straight jacket formula, but this question has to be answered on the facts of each case. This Court in the case of Mohan Baitha v. State of Bihar [(2001) 4 SCC 350], held that the expression 'same transaction' from its very nature is incapable of exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense in the ordinary use of language must decide whether or not in the very facts of a case, it can be held to be one transaction.
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> 44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from

> different circumstances, it will not be possible for the Court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.
>
> 45. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction"."

[emphasis supplied]

16. In ***P. v. State of Uttarakhand and another*** [2022 KHC 6634], the Supreme Court has considered a similar fact situation. In ***P. v. State of Uttarakhand,*** the appellant therein allegedly committed rape on a girl in February 2016. Later, he made a demand for money and refused to marry her when the demand was not met. Later on, he hurled abuses at her and threatened to kill

her. A complaint was filed by the victim, which was forwarded for investigation under Section 156(3) Cr.P.C. The Police submitted a Final Report clubbing both the acts alleging offences under Sections 376, 504 and 506 of IPC. When the question, whether the offences were distinct or not came up, the Supreme Court held that the offences were distinct in nature and those being different offences could be separately charged and tried. Following the decisions in ***Mohan Baitha v. State of Bihar*** (Supra) and ***Anju Chaudhary v. State of U.P***. (Supra), the Supreme Court held that for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action.

17. While analysing the facts in the present case on the touchstone of the principle discussed above, I hold

that there is no continuity of the actions and the community of purpose or design in the acts leading to two different sets of transactions.

18. Therefore, the argument of the learned counsel for the petitioner with the aid of Section 220 Cr.P.C. fails on the following grounds:-

(1) The question of joinder of charges does not arise as the cases are only in the stage of investigation.

(2) The transactions alleged do not come within the meaning of the 'same transaction' as contained in Section 220 Cr.P.C..

(3)The petitioner has no vested right to seek joinder of charges.

19. Now, I turn to the challenge of the FIR and further proceedings on the ground that no preliminary enquiry was conducted before registration of the FIR. The learned counsel for the petitioner contended that the

investigating agency ought to have conducted a preliminary enquiry before registration of the FIR. The learned Special Public Prosecutor submitted that if the allegations disclose a cognizable offence, the competent officer can register FIR and proceed further even without conducting a preliminary enquiry. The learned Special Public Prosecutor relied on ***State of Telangana v. Managipet Alias Mangipet Sarveshwar Reddy*** {(2019) 19 SCC 87] and ***CBI v. Thommandru Hannah Vijayalakshmi*** [AIR 2021 SC 5041] in support of his contention.

20. A Two Judge Bench of the Apex Court in ***State of Telangana v. Managipet Alias Mangipet Sarveshwar Reddy*** held thus:

> "34. Therefore, we hold that the preliminary inquiry warranted in Lalita Kumari is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that

> the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient."

21. A Three Judge Bench of the Apex Court in ***Central Bureau of Investigation v. Thommandru Hannah Vijayalakshmi*** (AIR 2021 SC 5041) : (2021 SCC OnLine SC 93) held thus:

> "Hence, all these decisions do not mandate that a Preliminary Enquiry must be conducted before the registration of an FIR in corruption cases. An FIR will not stand vitiated because a Preliminary Enquiry has not been conducted. The decision in ***Managipet*** (supra) dealt specifically with a case of Disproportionate Assets. In that context, the judgment holds that where relevant information regarding prima facie allegations disclosing a cognizable offence is available, the officer recording the

FIR can proceed against the accused on the basis of the information without conducting a Preliminary Enquiry."

22. Based on the precedents referred above, the conclusion is that where the relevant information regarding prima facie allegations disclosing a cognizable offence is made available, the officer concerned can register FIR and proceed further even without conducting a preliminary enquiry. Therefore, the contention of the learned counsel for the petitioner that the FIR was registered against the petitioner without conducting a preliminary enquiry has no legal base.

23. The learned counsel for the petitioner, relying on Clause 54 of the Vigilance and Anti-Corruption Bureau Manual, submitted that the basic statements containing assets at the beginning of the check period, assets at the end of the check period, assets acquired by the officer and his family during the check period, income of the

suspect officer and his family during the check period, expenditure of the suspect during the check period and likely savings of the suspect during the check period are to be prepared and incorporated in the reports. The Vigilance Manual is not a statute and has not been enacted by the Legislature. It is a set of administrative orders issued for internal guidelines of the Police officials concerned. The instructions in the Manual are only directory. Mere non-compliance with the instructions in the Manual, which are issued only for the guidance of the Detecting or Investigating Officers, would not vitiate the investigation. There may be some cases where non-compliance with the guidelines, which work as safeguards to avoid false implication, causes prejudice to the accused. In the present case, the Investigating Agency is in the process of collecting materials to ascertain whether the petitioner has acquired property disproportionate to his known sources of income. There is nothing to show

that the non-compliance of Clause 54 of the Vigilance and Anti-Corruption Bureau or any other clauses therein would cause prejudice to the petitioner in any way.

24. The learned counsel for the petitioner further contended that the revision of the check period during course of the investigation affects the credibility of the allegations in the FIR. At the time of registration of the FIR, the investigating agency fixed the check period as 20.01.2011 to 31.12.2017. During the course of the investigation, the check period was revised as 01.01.2011 to 03.02.2021.

25. In order to establish that a public servant is in possession of pecuniary resources and property disproportionate to his known sources of income, it is not imperative that the period of reckoning be spread out for the entire stretch of anterior service of the public servant. Regarding the choice of the check period, there can be no general rule or criteria. The choice of the period must

necessarily be determined by the allegations of facts on which the prosecution is founded.

26. However, the period must be such as to enable a true and comprehensive picture of the known sources of income and the pecuniary resources and property in possession of the public servant either by himself or through any other person on his behalf, which are alleged to be so disproportionate. In the present case, the Investigating agency has taken ten years as the check period. A ten-year period cannot be said to be incapable of yielding a true and comprehensive picture.

27. It is the prerogative of the prosecution to select the check period. The period selected shall be a reasonable period of time. It shall not be very small and arbitrarily chosen by the Investigating Officer to project the acquisition of wealth by a public servant. The revised period 2011 to 2021 is only to be treated as a reasonable period. This view is fortified by the decision of the Apex

Court in ***State of Maharashtra v. Pollonji Darabshaw Daruwalla*** [AIR 1988 SC 88] and ***Shibu v. State of Kerala*** [2021 5 KLT 189]. Therefore, the challenge of the petitioner on the ground of revision of the check period during the course of the investigation deserves no merit. The FIR and other materials made available disclose the offences alleged.

28. It is settled by a long course of decisions of the Apex Court that for the purpose of exercising its power under Section 482 Cr.P.C. to quash criminal proceedings, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has been further held that the High Court has no jurisdiction to examine the correctness or otherwise of the allegations {Vide: ***State of West Bengal v. Swapan Kumar Guha***

[(1982) 1 SCC 561], ***Pratibha Rani v. Suraj Kumar*** [(1985) 2 SCC 370]}.

29. In ***State of Kerala v. O.C. Kuttan*** [(1999) 2 SCC 651], the Apex Court held that while exercising the power, it is not possible for the Court to sift the materials or to weigh the materials and then come to the conclusion one way or the other. In ***State of U.P v. O.P.Sharma*** [(1996) 7 SCC 705] a Three Judge Bench of the Apex Court observed that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 Cr.P.C or under Articles 226 and 227 of the Constitution of India, as the case may be, and allow the law to take its own course. This view was reiterated by another Three Judge Bench of the Apex Court in ***Rashmi Kumar v. Mahesh Kumar Bhada*** [(1997) 2 SCC 397], wherein the Apex Court held that such power should be sparingly and cautiously

exercised only when the Court is of the opinion that otherwise there will be gross miscarriage of justice. It is trite that the power of quashing criminal proceedings should be exercised with circumspection and that too, in the rarest of rare cases and it is not justified for this Court in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the Final report or the complaint. A finding on the veracity of a material relied on by the prosecution in a case where the allegations levelled by the prosecution disclose a cognizable offence, is not a consideration for the High Court while exercising its power under Section 482 Cr.P.C. This view is reinforced by the decision of the Apex Court in ***Mahendra K.C. v. State of Karnataka and Ors.*** (AIR 2021 SC 5711).

30. While dealing with the power under Section 482 Cr.P.C to quash the criminal proceedings the Apex Court

in ***M/s.Neeharika Infrastructure Pvt. Ltd v. State of Maharashtra and others*** (AIR 2021 SC 1918) concluded thus in paragraph 23 of the judgment:

> 23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the Accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed Under Section 173 Code of Criminal Procedure, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India, our final conclusions are as under:
>
> (i) xxx xxx xxx xxx
>
> xxx xxx
>
> (xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned

> Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;
> (xiii) xxx xxx xxx
> (xiv) xxx xxx xxx
> (xv) When a prayer for quashing the FIR is made by the alleged Accused and the court when it exercises the power Under Section 482 Code of Criminal Procedure, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;"

31. The petitioner fails to convince that the allegations levelled against him in the prosecution records do not disclose the ingredients of the offences alleged. The correctness or otherwise of the allegations levelled in Annexure – I FIR is a matter to be tested during the course of the investigation.

Therefore, the Crl.M.C. lacks merits, and it stands dismissed.

Sd/-
K.BABU, JUDGE

kkj

APPENDIX OF CRL.MC 148/2022

PETITIONER ANNEXURES

Annexure 1	CERTIFIED COPY OF FIR NO. 01/201 SCK REGISTERED BY VACB.
Annexure A2	TRUE COPY OF INFORMATION DTD. 12.12.2017 FROM MEDICAL OFFICER, TALUK HOSPITAL, THAMARASSERY.
Annexure 3	TRUE COPY OF G.O. (MS) NO. 270/2005/H&7WD DTD. 25.10.2005.
Annexure 4	CHARGE MEMO IN DISCIPLINARY, PROCEEDINGS UNDER RULE 15 OF KCS (CC&A) RULES .
Annexure A7	SEARCH REPORT
Additional Annexure 8	TRUE COPY OF ORDER ISSUED BY THE JOINT SECRETARY HEALTH & FAMILY WELFARE DEPARTMENT DATED 26.12.2022