

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 7TH DAY OF NOVEMBER 2023 / 16TH KARTHIKA, 1945

CRL.MC NO. 2384 OF 2022

**CRIME NO.VC.1/2021 OF VACB, SOUTHERN RANGE,
THIRUVANANTHAPURAM**

PETITIONER/1st ACCUSED:

DIVYA S.S ROSE, AGED 38 YEARS

BY ADV CIBI THOMAS

RESPONDENTS/STATE/COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 2 THE DEPUTY SUPERINTENDENT OF POLICE
VIGILANCE AND ANTI CORRUPTION BEURO (VACB),
SOUTHERN RANGE, VIKAS BHAVAN, PALAYALAM,
THIRUVANANTHAPURAM DT., PIN - 695033
- 3 BIJU C.P, AGED 51 YEARS

BY ADVS.

Sri.Ramesh P-Spl. Government Pleader

Smt.Rekha-Public Prosecutor

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
07.11.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CR**K.BABU, J**

Crl.M.C.No.2384 of 2022

Dated this the 7th day of November, 2023

O R D E R

The petitioner was a Range Officer at Social Forestry Range, Thiruvananthapuram. She seeks to quash the FIR No.V.C.1/2021 of VACB, Southern Range, Thiruvananthapuram, against her. She faces allegations under Section 7 of the Prevention of Corruption Act, 1988.

2. Facts

2.1. Respondent No.3 holds a contract license under the Kerala Forest Department. He was engaged in the contract work of the Forest Department at Attingal in Thiruvananthapuram Range. In 2020, respondent No.3 was awarded the contract for the maintenance of compensatory afforestation at Kerala University Campus, Karyavattam, in lieu of tree felling for the Vizhinjam International Seaport Project. The petitioner, being the Range Officer of the Social Forestry Division, was responsible for passing the bills submitted for the work undertaken by respondent No.3.

2.2. Respondent No.3 filed a complaint before the Vigilance and

Anti-Corruption Bureau on 15.8.2021, alleging the following:

Respondent No.3 completed the work of compensatory afforestation at the Kerala University Campus at Karyavattam. He was entitled to Rs.4,00,000/- towards the work. He completed the job in June 2020. Thereafter, he approached the petitioner for passing the bill. The petitioner demanded Rs.70,000/- as a bribe for clearing the bill. The petitioner instructed respondent No.3 to handover the money to Sri.K.K.Salim, a forester attached to her office. On 11.8.2021, respondent No.3 reached the petitioner's office at PTP Nagar and requested her to clear the bills before Onam. However, the petitioner and Sri.Salim demanded Rs.70,000/- for clearing the bill. He was also instructed to pay a part of the amount to Sri.Ragesh, another officer of the department.

2.3. Based on the complaint preferred by respondent No.3, the above-referred FIR was registered arraying the petitioner as accused No.1 and Sri.Ragesh and Sri.Salim as accused Nos.2 and 3, respectively. On 16.8.2021, the Vigilance Officials, accompanied by respondent No.3, arrived at the Range Forest Office, Thiruvananthapuram at PTP Nagar at 15 hrs. The petitioner was not there. Respondent No.3 contacted the petitioner over the phone. She instructed respondent No.3 to contact

Sri.K.K.Salim. Sri.Biju handed over the 'trap money' of Rs.70,000/- to Sri.K.K.Salim. Sri.Salim was arrested along with the 'trap money'. The Vigilance Officials conducted a phenolphthalein test, which turned positive.

3. SUBMISSIONS

The learned counsel for the petitioner Sri.Cibi Thomas submitted that the petitioner is innocent of all the allegations levelled against her. The petitioner, being the Range Forest Officer, entrusted with the responsibility of supervising the work undertaken by respondent No.3, conducted frequent visits to the plot where the work was done. She found that respondent No.3 had yet to complete the work as agreed. Respondent No.3 entered into agreement No.1/2021 dated 30.4.2021 with the Kerala Forest Department for the completion of maintenance of compensatory afforestation in lieu of tree felling for Vizhinjam International Seaport Project at the Kerala University Campus, Karyavattam. Respondent No.3, based on the agreement, started work on 25.5.2021 after getting a certificate from the petitioner on 24.5.2021. The work done by respondent No.3 was found to be unsatisfactory. The petitioner and other officials entrusted with the responsibility of supervising the work gave repeated instructions. He came with a

measurement book relating to 7 hectares. The work was originally for ten hectares. Therefore, the petitioner issued a communication dated 22.6.2021 to respondent No.3 directing him to complete the work in terms of the agreement. The petitioner had sent a copy of the communication to the Deputy Forest Conservator, Social Forestry, Thiruvananthapuram (Annexure IV). The Deputy Conservator of Forest sent a communication dated 25.6.2021 to respondent No.3 pointing out the defects in the work carried out by him (Annexure V). On receipt of Annexures IV and V communications, respondent No.3 submitted a reply dated 29.6.2021 to the petitioner (Annexure VI). However, he had not chosen to explain why he failed to comply with the specific instructions given to him by way of Annexures IV and V. Thereupon, the petitioner, on 1.7.2021, submitted a report to the Deputy Conservator of Forest (Annexure-VII), wherein it was specifically pointed out that the work done by respondent No.3 was incomplete and quite unsatisfactory. Respondent No.3 had been inimical towards the petitioner due to the strict action taken by her. Respondent No.3 never submitted any bill before the petitioner or any other authority, and he was, in fact, not in a position to submit any bill as he had not complied with the various clauses contained in Annexure-III agreement.

4. The learned counsel for the petitioner contended that there is absolutely nothing to connect the petitioner with the offence alleged. It is submitted that the petitioner had no knowledge regarding the transaction that allegedly took place between respondent No.2 and the other accused. It is submitted that the consistent stand of the petitioner compelling respondent No.3 to comply with the requirements in Annexure-III agreement strictly, infuriated him and therefore, while preferring the first information statement, he raised allegations against the petitioner. The learned counsel for the petitioner further submitted that the prosecution could not establish the alleged communication made by respondent No.3 to the petitioner on the trap day.

5. Sri.A.Rajesh, the learned Special Government Pleader (Vigilance), made the following submissions:

Respondent No.3/defacto complainant has made specific allegations against the petitioner. He specifically alleged that the petitioner had demanded Rs.70,000/- as a bribe for taking steps to clear the bills. The learned Special Government Pleader submitted that on 16.8.2021, the trap day, respondent No.3 had contacted the petitioner over the phone and as per her instructions, he paid money to accused No.3. The learned Special Government Pleader further submitted that the phone

conversation, the petitioner had with respondent No.3, which was recorded in his android mobile phone, points towards her involvement in the matter. The learned Special Government Pleader further submitted that though the forensic analysis did not turn out to be positive since the voice samples collected were insufficient for the examination, it will not help the petitioner in contending that there is nothing to connect her. The learned Special Government Pleader submitted that the call data records of the petitioner would show that a conversation had occurred between the petitioner and respondent No.3.

6. Consideration

The petitioner was the Forest Range Officer of the Social Forestry Division, Thiruvananthapuram. Respondent No.3 is a licenced contractor working under the Forest Department. On 30.4.2021, respondent No.3 entered into an agreement with the Forest Department to complete the compensatory afforestation work at Kerala University Campus, Karyavattam in lieu of tree felling for Vizhinjam International Seaport Project. He started working on 25.5.2021 after getting a certificate from the petitioner. The conditions in the agreement entered into between respondent No.3 and the Forest Department include the following:

- "1. xxxx
2. xxxx
3. After completing the work satisfactorily, the security deposit shall be released to the contractor on production of necessary tax clearance certificate.
4. xxxx
5. xxxx
6. Work should be completed under the supervision and guidance of Forest Officials from time to time.
7. xxxx
8. xxxx
9. xxxx
10. xxxx
11. Payment will be made to the Contractor as per availability of fund on specific request and submission of bills in the format prescribed duly certified by the Range Forest Officer concerned with related Measurement Books provided other conditions specified are adhered to. Payment will be made through crossed cheques, or e-payment only."

7. The petitioner was entrusted with the responsibility to supervise and guide the works to be undertaken.

8. It is the case of the petitioner that respondent No.3 approached her with a measurement book relating to 7 hectares of plot against the original contract for 10 hectares, seeking her approval for submitting the bill. Annexure-IV letter dated 22.6.2021 would show that the petitioner issued a communication to respondent No.3 directing him to complete the work in terms of the agreement. Annexure-V communication shows that the petitioner had sent a copy of Annexure-

IV communication to the Deputy Conservator of Forest on 25.6.2021. Thereupon, the Deputy Conservator of Forest also issued a communication to respondent No.3 to complete the work in terms of the agreement entered into between himself and the Forest Department. It is further seen that on receipt of Annexures IV and V communications, respondent No.3 had submitted a reply on 29.6.2021 (Annexure-VI). In Annexure-VI reply, he had not chosen to respond to the specific instructions given to him as per Annexure-IV. Annexure-VII would reveal that on 1.7.2021, the petitioner had submitted a report to the Deputy Conservator of Forest stating the unsatisfactory and incomplete nature of work executed by respondent No.3.

9. After the petitioner submitted report dated 1.7.2021 before the Deputy Forest Conservator categorically narrating the incomplete and unsatisfactory work executed by respondent No.3 he lodged the first information statement before the Vigilance.

10. The learned counsel for the petitioner contended that if the petitioner had any intention to obtain a bribe from respondent No.3, as he alleged, she would not have resorted to forwarding adverse reports against respondent No.3 to the higher officials.

11. The learned Special Government Pleader, per contra,

contended that on the trap day, respondent No.3 had contacted the petitioner over the phone and as per her instructions, he handed over the money to Sri.K.K.Salim, the forester. The learned Special Government Pleader further submitted that the conversation between respondent No.3 and the petitioner was recorded on the Android mobile phone of respondent No.3.

12. The prosecution relied on the following materials to implicate the petitioner in the crime.

a) Respondent No.3 specifically alleged in the first information statement that the petitioner demanded a bribe.

b) On the trap day, respondent No.3 made a call over the mobile phone to the petitioner.

c) Her voice in the conversation on the trap day was recorded on the mobile phone used by respondent No.3.

13. The investigating officer, during the investigation had, collected the voice samples of the petitioner and respondent No.3 and sent the same for expert examination. During the argument, the learned Special Government Pleader had produced a copy of the result of the examination conducted in the Forensic Science Laboratory. The examination result reads thus:

"1. Voice of the speaker marked as Q1(A) which is segregated from the audio sample record 1629106500010, contained in Item No.1 and specimen voice sample marked as SI to S5 contained in Item No.3 is identical in their acoustic cues and other linguistic and spectrographic features. Hence, it is opined that the voice sample of the speaker marked as Q1(A) is the most probable voice of the person Shri.Biju.C.P whose specimen voice samples marked as SI to S5.

2. Voice of the speaker marked as QI(B) which is segregated from the audio sample record 1629106500010, contained in Item No.1 had too little speech amount and low signal to noise ratio; hence it is not possible to identify the suspected speaker Smt.Divya S.Rose, whose specimen voice samples marked as S6 to S10."

14. The Forensic Science Laboratory concluded that as the speech amount is too little and low signal-to-noise ratio, it is not possible to identify the suspected speaker (petitioner).

15. Now, what survives is the allegation of respondent No.3 that the petitioner had demanded Rs.70,000/- and the 'trap money' was given to Sri.K.K.Salim, the forester, as per her instructions.

16. The learned Special Government Pleader contended that to exercise the power under Section 482 of Cr.P.C to quash the criminal proceedings, the High Court would have to proceed entirely based on the allegations made in the complaint or the documents accompanying the same. The learned Special Government Pleader further contended that the High Court has no jurisdiction to examine the correctness or otherwise of the allegations.

17. I am conscious of the principles enunciated in **M/s. Neeharika Infrastructure Pvt. Ltd. v State of Maharashtra and others** (AIR 2021 SC 1918). The power vested in the High Court under Section 482 of the Code should be used sparingly at the stages of issuing process or committal or framing charges as it would have far-reaching consequences in inasmuch as it would negate the prosecution's case without allowing the prosecution to lead evidence. Such a course is to be taken with caution, care and circumspection. When a prayer for quashing the FIR is made by the accused, the Court when it exercises the power under Section 482 of the Code of Criminal Procedure, only has to consider whether the allegations in the FIR disclose the 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.

18. However, if the High Court is fully satisfied that the materials produced by the accused are such that would lead to the conclusion that his defence is based on sound, reasonable and indubitable facts, or the same would rule out or displace the assertions in the complaint or the materials relied on by the accused would reject

and overrule the veracity of the allegations, the judicial conscience of the High Court would persuade to exercise its power under Section 482 of Cr.P.C and to quash such criminal proceedings to avoid or to prevent the abuse of the process of the court and secure the ends of justice.

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

- (i) Prevent the abuse of the process of the court.
- (ii) Secure the ends of justice.

20. In **Rajiv Thapar and Others v. Madan Lal Kapoor** [(2013) 3 SCC 330], the Apex Court delineated the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of Cr.P.C.:-

Step one: Whether the material relied upon by the accused is sound, reasonable, and indubitable ie. the materials is of sterling and impeccable quality?

Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused ie. the material is sufficient to reject and overrule the factual assertions contained in the complaint ie. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) especially when it is clear that the same would not conclude in the conviction of the accused."

21. The principles enumerated in **Rajiv Thapar** (Supra) are reiterated by the Supreme Court in **Prashant Bharti v. State (NCT of Delhi)** [(2013) 9 SCC 293].

22. I shall now determine whether the parameters as suggested by the Apex Court have been satisfied in the present case for which the factual background is summarised below:-

(i) Respondent No.3 started the work as agreed as per Annexure-III on 25.5.2021.

(ii) The petitioner was the Supervising Officer of the work undertaken by respondent No.3.

(iii) In June 2021, respondent No.3 (the complainant) approached the petitioner, representing that he had completed the work along with the measurement book relating to 7 hectares of plot. In contrast, as per Annexure-III, he had undertaken to complete the work over 10 hectares of plot.

(iv) Annexure-IX copy of the office notes would show that on 21.6.2021, the petitioner had inspected the plantation for field verification and noted that the work was not properly completed.

(v) On 22.6.2021 the petitioner had issued a communication to respondent No.3 directing him to complete the work in terms of the Annexure-III agreement. The copy of the said communication was also forwarded to the Deputy Forest Conservator by the petitioner. The Deputy Forest Conservator also communicated to respondent No.3 on 25.6.2021 to complete the work.

vi) In response to Annexures IV and V communications, respondent No.3 submitted a reply which was found to be not satisfactory, and thereupon, the petitioner, on 1.7.2021, submitted a report before the Deputy Conservator of Forest specifically stating that respondent No.3 had not completed the work as agreed.

23. Thereafter, respondent No.3 preferred a complaint on 15.8.2021 alleging that the petitioner demanded Rs.70,000/- for clearing the bills. The call data records reveal a telephonic conversation between the petitioner and respondent No.3 on the trap day.

24. Now, I shall turn to consider the facts on the touchstone of the principles declared by the Apex Court in **Rajiv Thapar and others v. Madan Lal Kapoor [(2013) 3 SCC 330]** and **Prashant Bharti v. State (NCT of Delhi) [(2013) 9 SCC 293]**.

25. The prosecution case is essentially built upon the allegations that the petitioner, the Supervising Officer of the work undertaken by

respondent No.3 and the officer empowered to recommend payment towards the work undertaken in the last week of June 2021, when approached by respondent No.3, demanded Rs.70,000/- as a bribe and after that, on the trap day when contacted over phone advised respondent No.3 to hand over the money to accused No.2. In support of the prosecution case as pleaded above, the prosecution relies on the following materials:

- (i) The statement dated 15.08.2021 given by respondent No.3 to the Vigilance (the FIS)
- (ii) The alleged telephonic conversation between respondent No.3 and the petitioner.

26. To establish the alleged telephonic conversation, the Vigilance collected the voice samples of the petitioner and respondent No.3 and sent the same for forensic examination. The FSL concluded that as the speech amount is too little and low signal-to-noise ratio, it is impossible to identify the suspected speaker.

27. Given the result of the examination as stated above, the prosecution has no materials to establish that the petitioner had any conversation, as alleged, with respondent No.3 on the trap day.

28. Now, what survives is the allegation of respondent No.3 in

the FIS. It is the case of respondent No.3 that in the last week of June, when he approached the petitioner seeking recommendation for the clearance of the bill for the work undertaken by him, she demanded bribe. The petitioner has placed materials to show that in June 2021, respondent No.3 had not completed the work as undertaken, and the petitioner recorded the same in the office notes after field verification and issued a communication to him on 26.02.2021 dictating him to complete the work in terms of the contract. The petitioner also reported the failure on the part of respondent No.3 to complete the work to the Deputy Forest Conservator, who also communicated to respondent No.3 to complete the work. The stand of respondent No.3, as per Annexures IV and V, was that he had completed the work, but the explanation given by him was rejected by the petitioner on 01.07.2021, and the same was again reported to the Deputy Forest Conservator. A question arises here. If the petitioner had the intention to insist on a bribe from respondent No.3, she would not have taken a tough stand against him and insisted on completing the work in terms of the contract. This could only be the inference of a prudent man.

29. The resultant conclusion is that the petitioner has placed materials, which are of sterling and impeccable quality, to rule out the

assertions contained in the complaint. Those materials are sufficient to reject and overrule the factual assertions in the FIS against the petitioner, the sole material now relied on by the prosecution to rope in the petitioner in the crime. The materials relied on by the petitioner are also sufficient to destroy the factual basis of the accusation against her. The prosecution failed to place any material to refute those materials relied on by the petitioner. Therefore, the proceedings initiated against her would result in the abuse of the process of the Court and would not serve the ends of justice.

30. The FIR in VC No.1/2021 of VACB, Southern Range, Thiruvananthapuram and all further proceedings pursuant to it, as against the petitioner, stand quashed. It is made clear that the observations made in this order are restricted to the petitioner, and the VACB may proceed with the matter qua the other accused persons independently on its own merits, in accordance with the law.

The Crl.M.C is allowed as above.

Sd/-

K.BABU
JUDGE

ab

APPENDIX OF CRL.MC 2384/2022

PETITIONER ANNEXURES

Annexure I	TRUE COPY OF THE FIR IN VC 1/2021 OF VACB, SOUTHERN RANGE, THIRUVANANTHAPURAM
Annexure II	TRUE COPY OF THE GO(RT) NO. 144/2020/F&WLD DATED 26.06.2020
Annexure III	TRUE COPY OF THE AGREEMENT NO. 1.2021 DATED 30.04.2021 ENTERED INTO BETWEEN THE 3RD RESPONDENT AND FOREST DEPARTMENT
Annexure IV	TRUE COPY OF THE COMMUNICATION DATED 22.06.2021 BY THE PETITIONER TO THE CONTRACTOR
Annexure V	TRUE COPY OF THE COMMUNICATION DATED 25.06.2021 SENT BY THE DEPUTY CONSERVATOR OF FOREST TO THE 3RD RESPONDENT
Annexure VI	TRUE COPY OF THE REPLY DATED 29.06.2021 SUBMITTED BY THE CONTRACTOR TO THE PETITIONER
Annexure VII	TRUE COPY OF THE LETTER DATED 01.07.2021 SUBMITTED BY THE PETITIONER BEFORE THE DEPUTY CONSERVATOR OF FOREST, SOCIAL FOREST DIVISION, THIRUVANANTHAPUARM
Annexure VIII	. TRUE COPY OF THE LETTER DATED 01.07.2021 SUBMITTED BY THE CONTRACTOR BEFORE THE SOCIAL FOREST DIVISION, THIRUVANANTHAPUARM
Annexure IX	TRUE COPY OF THE RELEVANT PAGES OF THE PLANTATION JOURNAL IN RESPECT OF THE COMPENSATORY AFORESTATION PROGRAM IN LIEU OF TREES FELLED FOR VIZHINJAM INTERNATIONAL SEA PORT PROJECT AT KARYAVATTAM CAMPUS
Annexure X	TRUE COPY OF THE LETTER DATED 17.08.2021 SUBMITTED BY THE DEPUTY CONSERVATOR OF FOREST BEFORE THE CONSERVATOR OF FOREST
Annexure XI	TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONER UNDER SEC. 41A CR.PC
Annexure XII	TRUE COPY OF THE WRITTEN REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT
RESPONDENTS ANNEXURES:	NIL

