



2024:KER:31214

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

FRIDAY, THE 19<sup>TH</sup> DAY OF APRIL 2024 / 30TH CHAITHRA, 1946

CRL.REV.PET NO. 580 OF 2022

CRIME NO.01/2010 OF VACB, THIRUVANANTHAPURAM,

Thiruvananthapuram

AGAINST THE ORDER/JUDGMENT DATED 27.06.2022 IN CRMP  
NO.214 OF 2019 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,  
THIRUVANANTHAPURAM

REVISION PETITIONER/S:

B.S JAYAKUMAR  
AGED 64 YEARS  
SUPERINTENDING ENGINEER (RETD), LOCAL SELF  
GOVERNMENT DEPARTMENT, RESIDING AT MANGALYA, T  
C 25/77 (1), THAMPANOR, THIRUVANANTHAPURAM,  
PIN - 695001

BY ADVS.  
P.NANDAKUMAR  
VIVEK VIJAYAKUMAR  
AMRUTHA SANJEEV  
K.G. DEVIPRIYA

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM, PIN - 682031
- 2 THE DEPUTY SUPERINTENDENT OF POLICE  
VIGILANCE AND ANTI CORRUPTION BUREAU, SOUTHERN  
RANGE, THIRUVANANTHAPURAM, PIN - 695010  
BY SRI RAJESH A SPL GOVERNMENT PLEADER  
SMT REKHA SR PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
ADMISSION ON 19.04.2024, ALONG WITH OP(Cr l.).431/2022,  
515/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



CrI.R.P.No.580 &777 of 2022  
& O.P.(CrI) Nos.431 & 515 of 2022

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**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE K. BABU**

**FRIDAY, THE 19<sup>TH</sup> DAY OF APRIL 2024 / 30<sup>TH</sup> CHAITHRA, 1946**

**OP(CRL.) NO. 431 OF 2022**

**CRIME NO.VC 1 / SRT/2010 OF VACB, THIRUVANANTHAPURAM,**

**Thiruvananthapuram**

**AGAINST THE ORDER/JUDGMENT DATED IN CC NO.15 OF 2014 OF  
ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM**

**PETITIONER/S:**

**MANSOOR J  
AGED 73 YEARS  
TOWN PLANNING OFFICER (RETIRED), MUNICIPAL  
CORPORATION (TVM), SON OF JALALUDEEN, RESIDING  
AT PLOT NO.56, T.C. 6 / 1564, PTP NAGAR,  
THIRUVANANTHAPURAM, PIN - 695038  
BY ADV S.ABDUL RAZZAK**

**RESPONDENT/S:**

**STATE OF KERALA  
THROUGH DEPUTY SUPERINTENDENT OF POLICE,  
VIGILANCE AND ANTI CORRUPTION BUREAU, SOUTHERN  
RANGE, THIRUVANANTHAPURAM, PIN - 695033  
BY SRI RAJESH A SPL GOVERNMENT PLEADER  
SMT REKHA SR PUBLIC PROSECUTOR**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON  
19.04.2024, ALONG WITH CrI.Rev.Pet.580/2022 AND CONNECTED  
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



CrI.R.P.No.580 &777 of 2022  
& O.P.(CrI) Nos.431 & 515 of 2022

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**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE K. BABU**

**FRIDAY, THE 19<sup>TH</sup> DAY OF APRIL 2024 / 30<sup>TH</sup> CHAITHRA, 1946**

**OP(CRL.) NO. 515 OF 2022**

**CRIME NO.VC/2010 OF VACB, THIRUVANANTHAPURAM,**

**Thiruvananthapuram**

**AGAINST THE ORDER/JUDGMENT DATED 27.06.2022 IN CMP  
NO.1334 OF 2015 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,  
THIRUVANANTHAPURAM**

**PETITIONER/S:**

**A.ABDUL RASHEED @ DR.A.R.BABU  
AGED 65 YEARS  
MANAGING DIRECTOR, M/S. HEERA CONSTRUCTION  
COMPANY(P) LTD. HEERA PARK, M.P.APPAN ROAD,  
VAZHUTHACADU, THYCAUD P.O, THIRUVANANTHAPURAM,  
PIN - 695014  
BY ADV S.ABDUL RAZZAK**

**RESPONDENT/S:**

**STATE OF KERALA  
THROUGH DEPUTY SUPERINTENDENT OF POLICE,  
DIRECTORATE, VIGILANCE AND ANTICORRUPTION  
BUREAU, SOUTHERN RANGE, PALAYAM,  
THIRUVANANTHAPURAM, PIN - 695033  
BY SRI RAJESH A SPL GOVERNMENT PLEADER  
SMT REKHA SR PUBLIC PROSECUTOR**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON  
19.04.2024, ALONG WITH CrI.Rev.Pet.580/2022 AND CONNECTED  
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



2024:KER:31214

CrI.R.P.No.580 &777 of 2022  
& O.P.(CrI) Nos.431 & 515 of 2022

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**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE K. BABU**

**FRIDAY, THE 19<sup>TH</sup> DAY OF APRIL 2024 / 30<sup>TH</sup> CHAITHRA, 1946**

**CRL.REV.PET NO. 777 OF 2022**

**AGAINST THE ORDER/JUDGMENT DATED 27.06.2022 IN CC NO.15  
OF 2014 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,  
THIRUVANANTHAPURAM**

**REVISION PETITIONER/S:**

**SREELATHA  
AGED 61 YEARS  
T.C 6/1356(2), PTPA 37, MARUTHAMKUZHI,  
THIRUVANTHAPURAM, PIN - 695030  
BY ADVS.  
SIDHARTH A.MENON  
V.AJAKUMAR  
P.PARAMESWARAN NAIR**

**RESPONDENT/S:**

**STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, PIN - 682031  
BY SRI RAJESH A SPL GOVERNMENT PLEADER  
SMT REKHA SR PUBLIC PROSECUTOR**

**THIS CRIMINAL REVISION PETITION HAVING COME UP  
FOR ADMISSION ON 19.04.2024, ALONG WITH  
CrI.Rev.Pet.580/2022 AND CONNECTED CASES, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



Crl.R.P.No.580 &777 of 2022  
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**“C.R.”**

**K. BABU, J**

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**Crl.R.P.Nos. 580 & 777 of 2022**  
**and**  
**O.P.Crl.Nos.431 & 515 of 2022**  
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**Dated this the 19<sup>th</sup> day of April, 2024**

**ORDER /JUDGMENT**

The challenge in the Criminal Revision Petitions and the Original Petitions is to the common order dated 27.06.2022 passed by the Court of the Enquiry Commissioner and Special Judge, Thiruvananthapuram in Crl.M.P.Nos.928/2016, 214/2019, 301/20, 162/20, 67/21, 1334/15 & 739/2016 in C.C.No.15/2014. In the Original Petitions, the petitioners further challenge the order framing charges against them.

2. The Calendar Case arises from FIR No.VC1/2010/SRT registered by the Vigilance and Anti-Corruption Bureau (the VACB), Southern Range, Thiruvananthapuram. There were nine accused in the



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case. They are alleged to have committed offences punishable under Section 13(2) r/w Section 13(1)(d) of the PC Act and Section 120B IPC. Accused No.1 is the petitioner in O.P.(Crl) No.431 of 2022. The petitioner in Crl.R.P.No.580 of 2022 is accused No.2. The petitioner in O.P.(Crl) No.515 of 2022 is accused No.8. Accused No.9 is the petitioner in Crl.R.P.No.777 of 2022.

3. The prosecution case is as follows:-

The first accused was the Town Planning Officer of Thiruvananthapuram Corporation from 2001 to 2004. The second accused succeeded him and served as such from 01.06.2004 to 26.04.2005. Accused No.3 was the Assistant Town Planning Officer during 2002 to 2006. Accused No.4 was the Building Inspector during the said period and was holding charge of Building Inspector, Kuravankonam Circle from 2003 to 2005. Accused No.5 was the Mayor of Thiruvananthapuram Corporation from October 2000 to September 2005. Accused No.6 worked as the Secretary of Thiruvananthapuram Development Authority (TRIDA)



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from 2003 to 2004. Accused No.7 was the Regional Town Planner during 2003 to 2004. These public servants hatched a conspiracy with Accused No.8, the Managing Director of Heera Construction Company Pvt.Ltd and accused No.9, a registered Architect Engineer, and in pursuance of the conspiracy, they dishonestly and fraudulently issued a permit dated 30.06.2004, for the construction of a 14 storied apartment at Kowdiar, violating the detailed Town Planning Scheme (DTPS) and thereby permitted accused No.8 to construct the said building illegally with the intention to obtain pecuniary advantage to the tune of Rs.900,59,340/-.

4. Originally, the case was registered against one T.K. Raveendran, the former Secretary of the Thiruvananthapuram Corporation as well. He died before the submission of the final report.



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5. The specific allegations levelled against each of the accused as discernible from the impugned order are extracted below:-

“Smt. Thankamma Joseph, aged 86/09, W/o late V.V. Joseph IAS (Rtd), executed an agreement with Abdul Rasheed, Managing Director, Heera Construction Company Pvt.Ltd.(A8) at Sub Registrar Officer, Pattom, on 08.10.2003, as per which the latter was made power of attorney to construct a 14 storied building in her 30 cents of land, in survey No.3650/18-2/2-12 of Kowdiar village. As per agreement, A8 has to provide a commercial space of 5000 sq.feet and 2 residential apartments to her in the proposed building. Accordingly, A8 filed an application for permit before the Thiruvananthapuram Corporation on 28.11.2003, for constructing a 14 storied building, with a height of 36.45 meters, covering 68.8% of the plot. Along with the application, the agreement executed with the land owner and a certificate issued by the registered Engineer, Smt.P.Sreelatha (A9), stating that building plan was prepared in accordance with the Building rules and Town Planning Scheme were also enclosed.

5. The Corporation building inspector Sri.S. Raju (A4), after inspecting the site, recommended that the application be placed before the Road Development Committee, as the proposed site fell within the residential zone, as per the master Plan. He





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intentionally suppressed the fact that detailed town planning scheme, for museum-Kowdiar Avenue was applicable to the proposed site. The then Town Planning Officer Sri.J.Mansoor (A1), directed the Building Inspector to obtain approval from RDO, for free surrender of land. After obtaining proceedings dated 22.03.2004 of the RDO, Thiruvananthapuram, A4 again submitted his recommendation to the Town Planning Officer (A1), who also recommended to place the application before the Road Development Committee. The Assistant Town Planning Officer Sri.K.Balagopal (A3), on 02.04.2004, approved the technical note prepared by the Building Inspector (A4), suppressing the violation of DTP Scheme and forwarded it to the Town Planning Officer (A1), who in turn recommended the same.

6. The, then Secretary of Thiruvananthapuram Corporation, Sri. T.K.Raveendran, approved the technical note to place the application before the Road Development Committee. The Road Development Committee, which met on 15.04.2004, was presided over by the Corporation Mayor Prof. J. Chandra (A5) and attended by the Secretary, TRIDA Sri.V.V. Krishnarajan (A6), the Regional Town Planner Sri.A. Vijayachandran(A7) and the Deputy Chief Engineer, PWD Sri. P. Vijayamohan. The Committee accorded sanction to issue permit for the construction of the 14 storied building, subject to



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the approval of the Secretary, TRIDA relating to the land surrendered by the land owner.

7. As per the request of the Town Planning Officer (A1), the Secretary, TRIDA (A6), vide letter dated 24.06.2004, forwarded the details of the 39m<sup>2</sup> land surrendered by the land owner. The Building Inspector (A4) verified the permit application file and recommended issuance of permit, and on the same day (24/6/2004), the Assistant Town Planning Officer (A3), and the Town Planning Officer Sri. B.S. Jayakumar (A2) recommended to issue permit, and as per the directive dated 30.06.2004 of the Corporation Secretary, the Town Planning Officer issued the permit to A8 Sri. Abdul Rasheed, to construct the 14 storied apartment building.

8. As per the DTP Scheme and Zoning regulations, the height of the building was restricted to 7.5 metres, the maximum coverage to 30% of the plot area and as the proposed area (survey No.3650) fell under residential zone, no commercial purpose was permitted. But in the application of A8, permit was requested for constructing a 14 storied building of 36.45 meters height covering 68.8% of the plot, a portion of which was intended for commercial purpose. Thus, the permit application was in violation of DTP Scheme.

9. The Building Inspector, Assistant Town Planning Officer, Town Planning Officer and the Corporation Secretary had suppressed the DTP



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Scheme violations, and placed the permit application and the technical note before the Road Development Committee for issuing permit.

10. As per the Rule 85 of KMBR, the mandatory quorum for the Road Development Committee was 3, including the Convener and the Chairman. But the Convener of the meeting i.e., Thiruvananthapuram Corporation Secretary, did not participate in the Road Development Committee meeting held on 15.04.2004. The illegal committee meeting, presided over by the Mayor (A5), decided to issue permit to A8, in violation of the DTP Scheme.

11. The Senior Town Planner, (Vigilance) of Government of Kerala, had inspected the building, while it was under construction and submitted a report to the Government on 14.02.2005, stating that the permit for the building was issued in violation of the DTP Scheme and Zoning regulations, that the proposed site being in the heritage zone, approval of the Heritage Commission should have been obtained; and that the building was found constructed in violation of Rule 32,39 and 50 of KMBR. Hence the Senior Town Planner recommended to revoke the permit and to stop construction, for further verification by the Chief Town Planner. In pursuance of the report of the Senior Town Planner, the Government vide order dated 18.06.2005, sought explanation from the Corporation officials and members of the Road Development Committee. In the reply furnished by the



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Secretary, Thiruvananthapuram Corporation dated 02.07.2005, he suppressed the fact that the site of the building fell within the DTP Scheme. On the other hand, he tried to cover-up the issuance of permit, by stating that, another 14 storied building, namely "Heera Palace" was already constructed in 1997, very near to the alleged building, as per the permit issued by the Corporation. But he intentionally suppressed the fact that the "Heera Palace building" was situated in survey No.3671, which was outside the DTP Scheme.

12. As per the report of the Chief Town Planner, Thiruvananthapuram, the builder (A8) was eligible to construct a double storied building, with maximum plinth area of 728.46 sq. meter in 30 cents of land comprised in survey No.3650 of Kowdiar Village. But, in pursuance of a criminal conspiracy among the accused, the Corporation officials issued permit to construct a 13 storied building (Heera Velmount Palace) with a plinth area of 5932.20 m<sup>2</sup>, in violation of the building rules and DTP Scheme. It is alleged that A8 had colluded with A9 and other accused, and A9 had issued a certificate to facilitate A8 to obtain pecuniary advantage to a tune of Rs.9,00,59,340/- (Rupees Nine Crore fifty nine thousand three hundred and forty only). The officials of the Corporation committed official misconduct with intention to facilitate A8 obtained the above said amount, by corrupt and illegal means."



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6. The Vigilance and Anti-Corruption Bureau conducted investigation and submitted final report before the Trial Court. The petitioners appeared in response to the summons. They filed applications seeking discharge under Section 239 of Cr.P.C. The learned Special Judge dismissed the applications as per a common order. The said common order is under challenge.

7. The relevant portion of the impugned order is extracted below:-

“44. Point No.1:-

The petitioners in CMP.928/16, CMP.214/2019, CMP.301/2020, CMP.162/2020 and CMP.67/2021 have contended that the order of sanction dated 22.01.2014 and 15.03.2014, issued by the Principal Secretary to Government and the Chief Engineer, to prosecute accused No.6 and accused No.4, are bad in law. Petitioners would contend that initially the Government had declined sanction for prosecution. Later, a final report was also filed, dropping charges. But my learned predecessor refused to accept the refer report and directed the Investigating officer to



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place the entire materials collected in the course of investigation before the authority competent to grant sanction. It was also observed in the order that the persons referred as accused No.1 to 3 and 7 herein, have already retired from service. It seems, based on the directions issued by my learned predecessor, the Investigating agency placed the matter before the competent authority. The competent authority reviewed the earlier order and granted sanction to prosecute accused Nos.4 and 6. Petitioners now contend that there was total non-application of mind while granting sanction, that the sanction was granted by officers, subordinate to the earlier officers who declined sanction and that no further material was produced before the sanctioning authority to review the earlier order declining sanction.

45. The contentions involve mixed question of fact and this court is of the view that the said contentions cannot be considered at this stage of proceedings, when the trial is yet to commence. This aspect was considered by the Hon'ble Aprx Court in ***Prakash Singh Badal and Another v. State of Punjab and others (2007 (1) SCC (1))***. It was held so

*"there is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at threshold*



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*but the latter is a question which has to be raised during trial".*

46. The above position of law was reiterated by our Hon'ble High Court ***P.Sasidharan Nair v. State of Kerala (MANU/KE/2783/2021)***. It is held that

37. Recently, in ***Major.M.C.Ashish Chinappa v. CBI*** (order dated 22.09.2021 in SLP (Crl)No.2576/2019, the Supreme Court has observed as follows:

*"Since the cognizance has already been taken against the petitioner and the trial is in progress, it is open for the petitioner to raise the question of validity of sanction during the course of trial and the trial court is bound to consider the said question at an appropriate stage".*

38. *The validity of a sanction order, if one exists, has to be tested on the touchstone of the prejudice to the accused which is essentially a question of fact and, therefore, should be left to be determined in the course of the trial and not in the exercise of jurisdiction either under section 482 of the Code of Criminal Procedure, 1973 or in a proceeding under Article 226/227 of the Constitution of India (See Director, C.B.I v. Ashok Kumar Aswal: (2015) 16 SCC 163).*

39. *In the instant case, the trial court has already taken cognizance of the offences against the petitioner. It is not a case where there is total absence of sanction but question of validity of sanction is raised. It is a matter which the petitioner has to raise before the trial court at the appropriate stage.*



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47. In the light of the above discussion, I hold that the question regarding validity of sanction need not be addressed at this stage of proceedings.

**48. Point No.2:-**

Both, accused Nos.1 and 2 had worked as Town Planning Officers at Thiruvananthapuram Corporation, at different point of time. A1 worked as Town Planning Officer during 2001-04, while A2 worked as Town Planning Officer from 01.04.2004 to 24.04.2005. Prosecution alleges that, both, A1 and A2 had direct role in recommending issuance of building permit in favour of Heera Constructions Private Limited at Kowdiar.

49. The contention of A1 is that the building permit was issued on 30.06.2004, whereas, his last day as the Town Planning officer was on 02.06.2004. It is further argued that the building was inspected by A2 on 26.04.2004, after he left the office and hence he had no role in the building permit issued in favour of Heera Constructions Private Limited. Accused No.2 on the other hand contends that he took charge as the Town Planning Officer of Thiruvananthapuram Corporation on 06.06.2004. He did not participate in the Road Development Committee meeting held on 15.04.2004. The road development committee had already recommended to grant building permit, before he took charge. He had no role in the





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controversial building permit, issued on the basis of the recommendation of Road Development Committee and as such the charge submitted against him is improper.

50. The rival contentions of A1 and A2 regarding their respective role in the issuance of building permit itself is a question of fact, requiring a factual enquiry.

51. The Prosecution case is that as per the DTSP, the plot where the building was constructed comes within the heritage zone. No building for commercial activities is permissible at this zone. The existing detailed town planning schemes for Museum Kowdiar Avenue, published vide Government Order, GO(MS).128/86/LAD dated 08.07.1986 (Document No.4) is pressed into service, as proof. As per this scheme, Survey No: 3650 of Kowdiar Village falls within residential zone where height of the building is restricted to 7.5 meter and number of floors to two. It is contended that, contrary to the scheme, the ground floor of the building was set part for commercial space. DTSP also restricts the coverage of the building to 30% of the land. In violation of these conditions, Heera Constructions was permitted to construct a 14 storied building utilizing 68.8% of the plot.

52. *Prima facie* proof of the restrictions can be gathered from the DTSP produced along with the final report. Records reveal that, the application for building permit came before witness No:4, V.Santhosh Kumar, who at that time was working at the town planning section of



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Thiruvananthapuram corporation. He forwarded the same to accused No.4, the Building Inspector. The witness states that as per the application the height of the building was 36.45 meters from the road level and that it had coverage of 68.8%. Prosecution places reliance on file No.TP1 55955/03 produced as document No.3, from which it can be seen that accused No.4 after inspecting the plot has reported that the building comes within residential zone and that as per Chapter XI, the application can be forwarded to the Road Development Committee. Accused No.3 had also noted in the file that the application can be placed before the road development, after getting proceedings from RDO that the land has been freely surrendered for Road Development. Subsequently, the application was forwarded to the RDO who passed orders accepting the offer for road surrender.

53. On 01.04.2004, and 02-04-2004, the 3rd and 4th accused recommended that the application be placed before the Road Development Committee. Subsequently, on 03.04.2004, the first accused also recommended that the application can be placed before the Road Development Committee. The Road Development Committee held its meeting on 15.04.2004. The application of Heera Constructions Private Limited was considered and Road Development Committee gave permission for surrender of land, subject to the approval of TRIDA Secretary. On 17.04.2004, the first accused again noted in the file that the proposal was accepted by the Road Development Committee and that to obtain the



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approval of TRIDA Secretary, NOC from Fire and Airport authority is necessary which has to be intimated to Heera Constructions. On 24.06.2004, A4 had noted in the file that TRIDA has already taken possession of the land surrendered for road development. He also noted that NOC of Airport authority was also produced hence building permit can be issued on receiving payment of Rs.29665/-. On 25.06.2004, 3rd accused gave recommendation to issue building permit after accepting the license fee.

54. The role of accused No.2 comes subsequently. On 28.06.2004, he has written in document No.3 note file as follows:-

"The proposal with construction is 13 storied (GS+12 storey) residential flat building. The proposal satisfies the KNBR rule and all mandatory sanctions from fire force, civil aviation department and proceedings of RDO regarding land surrender, proceeding of the TRIDA Secretary are produced. Hence license may be granted subject to the following conditions. 1. Bearing capacity of the soil should be checked and confirmed before the foundation work. 2. Work shall be carried out under the supervision of a qualified structural engineer. 3. The liquid and solid waste disposal system shall be made to the satisfaction of authority concerned. 4. Final NOC of the fire force department shall be observed before occupancy, 5. Rainwater harvesting arrangements, septic tank of sufficient capacity, soak pit etc. of required norms shall be provided".

On 30.06.2004, the then Secretary of the Corporation accepted the proposal and issued building permit.

55. There are sufficient materials to *prima-facie* conclude that the plot in question, comprised in



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survey No.3650, comes within the heritage zone. There are also materials to conclude that the maximum height of the building for which permit can be granted at the heritage zone, is 7.5 meters. The scheme also mandates that building with a maximum of two stories alone can be permitted to be constructed at the heritage zone. Despite these clear-cut guidelines, accused Nos.1 to 4 granted permission to construct a 14 storied apartment, having a55. There are sufficient materials to *prima-facie* conclude that the plot in question, comprised in survey No.3650, comes within the heritage zone. There are also materials to conclude that the maximum height of the building for which permit can be granted at the heritage zone, is 7.5 meters. The scheme also mandates that building with a maximum of two stories alone can be permitted to be constructed at the heritage zone. Despite these clear-cut guidelines, accused Nos.1 to 4 granted permission to construct a 14 storied apartment, having a height of 36.5 meters, which according to the prosecution is in pursuance of a criminal conspiracy..

56. The contention of the accused No.1 that when the building permit was issued he was not in charge of the Town Planning Officer, Thiruvananthapuram Corporation will not hold good, for, there are enough materials to show that he had a role in placing the



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matter before the Road Development Committee. Road Development Committee had no power to relax zoning regulations. At the best it can make some relaxation in the building rules so far as it relates to coverage and floor area ratio, setback, height etc.

57. Site inspection is mandatory before recommending permit. Site inspection was in fact conducted, which would have definitely revealed that the building comes within heritage Zone. Once it is shown that the building comes within the heritage zone, accused Nos. 1 and 3 to 4 ought not to have recommended the matter to be placed before Road Development Committee. They could have rejected the application for building permit then and there, pointing out that the construction of a 14 storied building is not permissible in the area. Having failed to do so and having actively participated in the procedure prior to the Road Development Committee meeting held on 15.04.2004, Al cannot contend that he had no role in the issuance of building permit. The failure of Al to mention in the technical report prepared by him that the site comes within heritage zone, has been stressed even in the order dated 10-12-2007 of the then secretary of Corporation. (Page 524 of file No. TP1/55955/03 [Document No.3]). The said report is produced as Document No:1, which bears the signature of Al and A3. It is noted in the



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report that there is no zonal violation. If a correct report was furnished, the special committee would not have granted permission to surrender land for road development Hence he cannot wash off his hands contenting that he left the office prior to the issuance of permit.

58. Same is the case with accused No.2. Though he had no role in the procedure which took place prior to the Road Development Committee meeting held on 15.04.2004, it was well within his realm to disallow the application for building permit on the ground that the construction of a 14 storied building is not permissible at the plot, subsequently after he took charge.

59. As already pointed out, the Road Development Committee had no role in the relaxation of DTSPS. Hence the contention of A2 that he had only acted on the basis of recommendation of Road Development Committee also will not hold good.

60. In the light of the above discussions, I hold that there are sufficient materials to proceed against A1 and A2, as both of them had decisive roles in processing the application for building permit and in the issuance of building permit in violation of the DTSPS, which can be *prima-facie* regarded as a circumstance, pointing towards their involvement in the criminal conspiracy.



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**68. Point No.4:**

Accused No.9 was the registered Architect Engineer. It was accused No.9, who certified that the application for building permit, is in accordance with DTPS. As already pointed out as per the DTPS the plot in question comes within the heritage zone and as such the maximum height permissible was 7.5 meters. That apart, the maximum stories permissible in the zone were two. Being a registered Architect Engineer, doing professional duty within Thiruvananthapuram Corporation limit, accused No.9 would have been and should have been aware of the zoning regulations under the DTPS. Despite that she has certified that the application for building permit for the construction of a 14 storied building, having a height of 36.5 meters and covering 68% of the plot is in accordance with the DTPS, where as in reality, the said certification was in total disregard of the DTPS. The said circumstance runs heavily against accused No.9. Hence this court is of the view that there are sufficient materials to proceed against accused No.9 to answer the charge of criminal conspiracy involving accused Nos. 1 to 4 public servants and accused No.8 the Manager of Heera Constructions Private Limited.

**69. Point No.5:-**

The contention of the petitioner is that there is no material available on record to frame charges against accused No.8. It is also contended that the prosecution sanction granted in favour of the public servants arrayed as the accused in this case is invalid. I have already come



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to a finding that invalidity of the sanction being a mixed question of fact cannot be agitated at this stage.

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71. It is true that at the direction of the Hon'ble High Court, subsequently accepted by the Apex Court, an occupancy certificate was granted to the building. But the alleged criminal conspiracy involved in the issuance of building permit was not an issue in the said proceedings. Hence I hold that there are sufficient materials to proceed against accused No.8.”

8. The learned counsel for accused No.1 made the following submissions:-

The High Court on multiple occasions upheld the validity of the building permit issued to the builder finding that he had only acted *bona fide*. The charge to implicate accused No.1 with criminal conspiracy to obtain pecuniary advantage for himself and for the builder by corrupt or illegal means is groundless. At the time of issuing permit, the Town Planning Scheme relied on by the prosecution was not in force. The ‘Technical notes’





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submitted by the subordinates of accused No.1 and the endorsement of the same by him were presented before the Special Committee in charge of the subject. Accused No.1 discharged his official duties perfectly in accordance with law.

9. The learned counsel for accused No.2 made the following submissions:-

Accused No.2 joined as Town Planning Officer of the Thiruvananthapuram Corporation only on 05.06.2004 whereas the decision of the Special Committee which recommended issuance of permit was taken on 15.04.2004 itself. There is nothing in the materials placed by the prosecution to implicate accused No.2 in the conspiracy. At the most, the allegation against him can only be treated as irregularity or omission on his part in the discharge of his official duty. The absence of sanction under Section 19 of the Prevention of Corruption Act and Section 197 of the Cr.P.C. is fatal to the prosecution as far as accused No.2 is concerned.



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10. The learned counsel for accused No.8 made the following submissions:-

There are no materials to establish that accused No.8 colluded with the public servants as part of a conspiracy. The competent authority in the Corporation issued permit for the construction after complying with all statutory formalities.

11. The learned counsel for accused No.9 made the following submissions:-

The Town Planning Scheme for Museum-Kowdiar Avenue framed by the Government vide G.O.(MS) No.128/86 LAD dated 03.07.1986 is invalid after the commencement of the 74<sup>th</sup> Constitutional amendment in 1983. Even if it is assumed that the 1986 DTP Scheme was omitted to be noted by the accused it only amounts to an omission to consider an ambiguous scheme, the consequence of which would not attract any offence under the PC Act. The second sanction to prosecute the public servants is not legally valid. The prosecution has



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not placed any material to implicate the architect (accused No.9) in the alleged conspiracy. The findings recorded on the challenge of the validity of the permit issued in favour of the builder obliterates the entire prosecution allegations.

12. The learned Special Government Pleader Sri. A. Rajesh submitted the following:-

The Town Planning Scheme as per G.O.(MS) No.128/86 LAD dated 03.07.1986 was in force and the building permits were issued by the respective local authorities strictly in conformity with the DTP Scheme. The prosecution has placed sufficient materials to establish the conspiracy hatched by the public servants, the builder and the architect. At the time of framing charges, the Court is only required to see whether there is a prima facie case against the accused or whether there is a grave suspicion against them. In the revisional jurisdiction, this Court is only required to ascertain



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whether there is any patent illegality or error in the impugned order.

13. Both sides placed numerous precedents in their arguments. In the latter part of the judgment, I will only refer to the precedents relevant to the subject matter.

14. Sections 239 and 240 of the Code of Criminal Procedure deal with discharge and framing of charge.

15. The obligation to discharge the accused under Section 239 Cr.P.C. arises when “the Magistrate considers the charge against the accused to be groundless.”

16. The primary consideration at the stage of framing charge is the test of the existence of a prima facie case. The probative value of materials on record is not to be gone into at this stage.

17. While considering the nature of evaluation to be made by the Court at the stage of framing charge, the Apex Court in ***Onkar Nath Mishra and others v. State (NCT of Delhi) and another*** [(2008) 2 SCC 561] held that at the stage of framing charge the court is required



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to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. The Supreme Court observed that what needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out.

18. In ***State of Maharashtra v. Som Nath Thapa*** [(1996) 4 SCC 659], the Apex Court observed that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists.

19. In ***State of M.P. v. Mohanlal Soni*** [(2000) 6 SCC 338] the Apex Court held that at the stage of framing charge, the court has to prima facie consider whether



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there is sufficient ground for proceeding against the accused.

20. In ***Sheoraj Singh Ahlawat and others v. State of Uttar Pradesh and another*** [(2013) 11 SCC 476], the Apex Court observed that while framing charges the Court is required to evaluate the materials and documents on record to decide whether the facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. It was further held that the Court cannot speculate into the truthfulness or falsity of the allegations, contradictions and inconsistencies in the statement of witnesses at the stage of discharge.

21. Section 239 envisages a careful and objective consideration of the question whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the



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advantage of the accused, and its breach is not permissible under the law. But, if the Judge, upon considering the records, including the examination, if any, and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the accused. The order for framing of charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge under Section 239, that there is, on the other hand, ground for presuming that he has committed an offence triable under Chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. (See: V.C. **Shukla v. State through CBI** [AIR 1980 SC 962]."

22. In **Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja** [(AIR 1980 SC 52)], the Apex Court stated thus:



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“At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence.”

23. In ***State by Karnataka Lokayukta, Police Station, Bengaluru v. M.R.Hiremath*** [(2019) 7 SCC 515], the Apex Court observed that at the stage of considering an application for discharge, the Court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence.

24. In ***State through Deputy Superintendent of Police v. R. Soundirarasu and Ors.*** (AIR 2022 SC





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4218), while dealing with the scope of Section 239 Cr.P.C. the Apex Court held that the stage of framing charge is not a stage for weighing the pros and cons of all implications of the materials nor for seeking the materials placed by the prosecution.

25. Therefore, the obligation to discharge the accused under Section 239 Cr.P.C. arises when the Magistrate/Special Judge considers the charge against the accused to be groundless, that is, there is no legal evidence or when the facts are such that no offence is made out at all and no detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken.

26. At the stage of framing charges, even a very strong suspicion founded upon materials before the Special Judge, which leads him to form presumptive opinion as to the existence of the factual ingredients



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constituting the offences alleged, may justify the framing of charges.

27. Now, I turn to consider the facts of the case on the touchstone of the principles discussed above. I shall first consider the arguments raised by the counsel for Accused No.9 that the DTP Scheme for Museum-Kowdiar Avenue is invalid in the eye of law after the 74<sup>th</sup> amendment in the Constitution of India. The learned counsel contended that with the insertion of part IX-A in the Constitution the authority to propose Town Planning Scheme is vested with the Municipalities and Municipal Corporations. The crux of the argument is that the DTP Scheme as per G.O.(Ms). No.128/86/LAD ceased to be in force with the insertion of chapter IX-A in the Constitution.

28. The Government of Kerala as per G.O.(MS). No.128/1986/LAD, referred to above, has published a detailed Town Planning scheme for the Museum-Kowdiar Avenue to control the developments that are likely to



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come up on either side of Museum- Kowdiar Avenue and also to preserve the beauty of the avenue and the premises. The Government and Thiruvananthapuram Corporation are strictly following the Town Planning Scheme which is evident from the decision of the Government to cancel the permit issued to the builder which was followed by the Corporation. Admittedly, the Corporation strictly follows the DTP scheme in granting permits for the construction of any building within the area specified in the scheme. Therefore, the contention that the DTP Scheme has no validity is not sustainable.

29. Now, I shall consider the challenge to the impugned order and the charge based on the principle of sanction.

30. It is submitted that once the appropriate authority had declined the sanction, the sanction subsequently accorded is not legally valid. Initially, the competent authority declined to accord sanction to prosecute the public servants. Based on that the



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investigating agency submitted a refer report before the jurisdictional Court. The defacto complainant challenged the refer report before the Special Court. The Court returned the refer report directing the investigating agencies to place the entire records before the competent authority to consider the matter afresh.

31. The competent authority after considering the matter afresh accorded sanction to prosecute the public servants. The investigating agency thereafter submitted the final report against the public servants and the other accused.

32. Relying on ***Chittaranjan Das v. State of Kerala*** [2011 KHC 4567], the learned counsel for accused No.2 submitted that when the sanction was refused while the accused was in service, he cannot be prosecuted later after retirement, eventhough no sanction for prosecution under the PC Act was necessary after the retirement of the public servant. In ***Chittaranjan Das*** (Supra), the Vigilance Department asked the State



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Government to grant sanction while the accused therein was in service. The Government refused to accord sanction to prosecute. The Vigilance sought for reconsideration of the same, but the Government rejected the request reiterating that there was no prima facie case. The Vigilance thereafter waited till the retirement of the accused and submitted final report. In that factual basis, the Supreme Court held that in a case where sanction sought was refused by the competent authority while the public servant was in service, he cannot be prosecuted later after retirement notwithstanding the fact that no sanction for prosecution under the PC Act was necessary after the retirement of the public servant.

33. The facts in the present case are different from the facts considered in ***Chittaranjan Das*** (Supra). In the present case, the competent authority in the Government refused sanction to prosecute the public servant including accused No.2 which compelled the investigating agency



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to submit a refer report before the Trial Court. The Court returned the refer report with a direction to place the entire materials before the sanctioning authority to reconsider the same. The competent authority in the Government reconsidered the materials and found that the public servants had to be prosecuted and accordingly sanction was granted to prosecute them.

34. The learned counsel for the accused relied on ***Bhargavan Pillai v. State of Kerala*** [2004 KHC 655] to contend that the protection of Section 197 Cr.P.C. and Section 19 of the PC Act is available even after the retirement of the public servant as before retirement. A Three-Judge Bench of the Supreme Court in ***Station House Officer, CBI/ACB/Bangalore v. B.A. Sreenivasan and Another*** [2019 KHC 7204] following a series of precedents held that it was not justified to observe that the protection available to a public servant while in service would also be available after his



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retirement (the position would be different after the amendment of the PC Act in 2018).

35. The learned Special Government Pleader further contended that if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in the discharge of his official duties, and therefore, provisions of Section 197 of the Code will not be attracted.

36. In ***Rajib Ranjan and others v. R. Vijayakumar*** [2014 AIR SCW 5924], while interpreting Section 197 Cr.P.C., the Apex Court held that if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanor on his part is not to be treated as an act in discharge of his official duties, and therefore, Section 197 of the Code will not be attracted.

37. Yet another aspect that requires consideration is that the Trial Court has taken cognizance of the



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offences and framed charges against them. With the framing of charges, the trial has already commenced.

38. In the present case, the prosecution alleges that the public servants entered into a criminal conspiracy and committed criminal misconduct for which no sanction under Section 197 is required. It is open for the accused to raise the question of validity of sanction during the trial and the trial Court is bound to consider such a question at an appropriate stage. This view is fortified by the decision of the Apex Court in **Major M.C.Ashish Chinnappa v. CBI** [MANU/SCOR/32662/ 2021].

39. Now, I come to the merit of the other contentions of the accused based on the prosecution materials. Accused No.8 submitted an application for the construction of an apartment complex having 14 floors with a height of 36.45m and coverage of 68.8% of the plot area having an extent of 30 cents of land in Sy.No.3650/18-2/2-12 in Kowdiar Village, a portion of





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which was also intended for commercial purpose, in the name Heera Apartments.

40. As per G.O.M.S/128/08 dated 03.07.1986, the Town Planning Scheme for Museum-Kowdiar Avenue was in force in the area where the construction was proposed. The DTP Scheme placed before the Court would show that Sy.No.3650 of Kowdiar Village (old Madathuvilakom Village) fell within the residential zone of the DTP Scheme. (Page No.28 of the DTP Scheme).

41. On page No.17 of the DTP Scheme, zoning regulation for residential zone is specified by which (a) the height of the building is restricted to 7.5m above the level of the central line of the road, (b) the maximum coverage will be 30% of the plot area and (c) the number of storeys is limited to 3 with a maximum height of 10.5 mts.

42. *Prima facie*, the application submitted by accused No.8 for constructing a 14-storeyed building with a height of 36.45 mts and coverage of 68.8% of the



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plot area, a portion of which is also intended for commercial purposes violates the DTP Scheme. Accused No.1 was the District Planning Officer. The application furnished by accused No.8 was forwarded to accused No.4, the Building Inspector. He inspected the property and reported that as per the master plan the proposed site falls within the residential zone and the application be placed before the Road Development Committee. Accused No.4 intentionally suppressed the facts that the DTP Scheme applies to the plot and recommended placing the application before the Road Development Committee. Charge witnesses 4, 5 and 6 deposed in their statements recorded under Section 161 Cr.P.C. that the existing town planning scheme in the city is printed out in a booklet and available with Building Inspector, Assistant Town Planning Officer and Town Planning Officer. On 01.04.2004, accused No.3 directed accused No.4 to prepare a technical report (note) to be placed before the Road Development Committee (RDC for



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short). Accused No.4 prepared the same and forwarded it to accused No.3. Accused No.3 approved the technical note suppressing the violation of the DTP Scheme and forwarded the same to Accused No.1. Accused No.1 recommended the matter to be forwarded to the Secretary. The Secretary approved the technical note and recommended placing it before the Road Development Committee. In the Technical Report, it was specifically stated that there was no zonal regulation. Accused Nos. 1, 3 and 4 were well aware of the fact that the property comes within the DTP Scheme. They ought not to have recommended placing the matter before the RDC. They should have rejected the application then and there. The Road Development Committee meeting was held on 17.04.2004. Accused No.1 noted in the file as follows:- "the Road Development Committee approved and directed the TRIDA Secretary to inspect the site. The report of TRIDA Secretary be obtained shortly. So informed the party for obtaining the Fire NOC and



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Airport NOC". The report of the TRIDA Secretary regarding surrendering of the land was received only on 24.06.2004. But even before that 'fire NOC' dated 25.05.2004 and 'airport NOC' dated 24.04.2004 were issued. The involvement of accused No.1 in the alleged conspiracy is evident from his hasty decision.

43. Accused No.2 is the Successor-in-office of accused No.1. The learned counsel for accused No.2 submitted that he joined the office only on 02.06.2004. By that time, the Road Development Committee had recommended the issuance of the permit subject to the approval of the Secretary.

44. On 28.06.2004, accused No.2 noted in the concerned file that the proposal for the construction of 13-storeyed residential flat satisfies the KMBR Rules and all mandatory sanctions from the Fire Department, Civil Aviation Department and proceedings of RDO regarding land surrender. The fact that the proposed construction was within the area covered by the DTP Scheme was well



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within the knowledge of accused No.2. He was well aware of the fact the construction of the proposed building was not permissible in the plot suggested. There is clear suppression on the part of accused No.2 that the proposed site comes within the Detailed Town Planning Scheme and Zone Regulations. Thus, the act of accused No.2 is sufficient to create a very grave suspicion against him in the participation of the conspiracy. This is evident from his act of forwarding the file suppressing the fact that the proposed construction was within the DTP zone which resulted in the issuance of the permit on 30.06.2004.

45. Accused No.8 is the Managing Director of Heera Construction Company. On 28.11.2003, he applied for permit before the Thiruvananthapuram Corporation. The prosecution contends that accused No.8 submitted an application knowing fully well that the property is comprised in Survey No.3650 of Kowdiar Village which falls within the residential zone of the DTP



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Scheme. He is the sole beneficiary of the alleged illegal acts done by the public servants.

46. Accused No.9 is a registered Architectural Engineer. She certified in column No.14 of the application for permit furnished by accused No.8 that the building plan is prepared in accordance with the provisions of the Kerala Municipality Building Rules, 1989, Kerala Municipality Act, 1994 and the provisions contained in the sanctioned Town Planning Scheme and Sanctioned Master Plan. In column No.15, she undertook that the building construction/land development would be carried out as per the approved plan and permit in accordance with the rules in force in her supervision. An approved Architectural Engineer is expected to know that the property where the apartment was to be constructed fell within the property covered by the DTP Scheme.

47. The circumstances brought out on record would indicate that accused Nos. 8 and 9 conspired



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together with the other accused in obtaining the building permit knowing fully well that the proposed construction was within the prohibited area.

**The impact of the judgments in W.P.(C) Nos.7443 of 2006 dated 15.03.2006, 12669 dated 22.10.2007, 3804/2007 dated 27.06.2008.**

48. The Senior Town Planner, Government of Kerala had inspected the building while it was under construction. He submitted a report to the Government on 14.02.2005 stating that the permit for the building was issued in violation of the DTP Scheme and Zoning Regulations and as the proposed site was within the heritage zone approval of the Heritage Commission should have been obtained. The Town Planner further reported that the building was found constructed in violation of Rules 32, 39 and 50 of the Kerala Municipality Building Rules. Therefore, the Senior Town Planner recommended revoking the permit and stopping the construction for further verification of the Chief Town



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Planner. Pursuant to the report of the Chief Town Planner, the Government as per order dated 18.06.2005 sought explanation of the Corporation officials and members of the Road Development Committee. The prosecution has placed materials to show that in the reply furnished by the Secretary, Thiruvananthapuram Corporation on 02.07.2005, he had suppressed the fact that the site of the building fell within the DTP Scheme and tried to cover up the issuance of permit by stating that another 14 storeyed building namely Heera Palace was already constructed in 1997 very near to the alleged building as per the permit issued by the Corporation.

49. The above facts indicate that the granting of permit to accused No.8 was illegal and the construction was unauthorised.

50. The de facto complainant filed W.P.(C) No.7443 of 2006 before this Court contending that the Corporation permitted accused No.8 to effect the construction in violation of the DTP Scheme. This Court





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dismissed the Writ Petition with the observation that if the building is constructed not in conformity with the Rules, the petitioner may seek his remedy by way of a civil suit or before the statutory authorities as the case may be.

51. When the Corporation refused to give Occupancy Certificate to accused No.8, he filed W.P.(C) No.12669 of 2007 before this Court.

52. In that Writ Petition, this Court directed the Secretary to apply his mind and take a decision in the matter in accordance with law. Accused No.8, thereafter, filed W.P.(C) No.38047 of 2007 challenging the order of the Secretary cancelling the building permit issued to him.

53. This Court in W.P.(C) No.38047 of 2007 quashed the order cancelling the building permit with the observation that the Special Committee ought to have taken note of the violations at the time of granting the permit. In the Writ Petition referred to above, this



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Court essentially considered the fact that the Corporation itself had given a permit for the construction of the building and the further fact that accused No.8 had completed the construction based on the building permit.

54. The core question of whether there was a criminal conspiracy involved in the issuance of the building permit was not at all in the consideration of this Court in those proceedings. Moreover, the Government and the Corporation in the above-referred litigations always took the stand that the building permit issued by the Corporation was in violation of the DTP Scheme and the relevant rules. It is important to note that the offence was completed with the issuance of the building permit, a period long before the institution of the Writ Petitions before this Court. The fact that a Writ Court quashed the order cancelling the permit to construct a building on a limited ground would not nullify the commission of the criminal offences which facilitated the issuance of the



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permit in violation of the Rules. Therefore, the decisions in the Writ Petitions referred to above have no impact on the criminal prosecution levelled against the accused.

### **Conspiracy**

55. The learned counsel for the petitioners would contend that the prosecution failed to bring out sufficient materials to connect accused Nos.1 to 9 and the other accused who face conspiracy charges.

56. Sections 120-A and 120-B of IPC read thus:

**“120-A - Definition of criminal conspiracy.-** When two or more persons agree to do, or cause to be done,--

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

**120-B. Punishment of criminal conspiracy.-** (1)  
Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or



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upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

57. The essentials of an offence under the above sections are as follows:-

- (i) Existence of a design to commit an offence, punishable with imprisonment;
- (ii) Voluntary concealment of such design by the accused either by act or omission or even by false representation;
- (iii) The accused knew or intended to facilitate the commission of such offence.”

58. In ***Saju v. State of Kerala*** [(2001) 1 SCC 378], it was propounded that to attract Section 120-B IPC, it is to be proved that all the accused had the intention and they had agreed to commit the crime. It was assumed that conspiracy is hatched in private and in secrecy, for



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which direct evidence would not be readily available. It was ruled that it is not necessary that each member to a conspiracy must know all the details of the conspiracy.

59. In ***Ram Narayan Popli v. CBI*** [(2003) 3 SCC 641], the Supreme Court reiterated that the essence of a criminal conspiracy, is the unlawful combination and ordinarily the offence is complete when the combination is framed and that the law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. It was held that the offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. The agreement which is the quintessence of criminal conspiracy can be proved either by direct or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available.



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60. In ***Yash Pal Mittal v. State of Punjab*** [(1977) 4 SCC 540] the Supreme Court held that there may be so many devices and techniques adopted to achieve the common goal of the conspiracy, and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator need not be aware but in which each one of them would be interested. There must be a unity of object or purpose but there may be plurality of means, sometimes even unknown to one another, amongst the conspirators. The only relevant factor is that all means adopted and illegal acts done must be to fulfil the object of the conspiracy. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others, it will not affect the culpability of those others when they are associated with the object of the conspiracy.

61. In ***Rajeevkumar v. State of U.P. and another*** [2017 KHC 6522], the Supreme Court held that in some cases indulges in the illegal act or legal acts by



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illegal acts may inferred from the knowledge itself and that it is extremely difficult to adduce direct evidence to prove criminal conspiracy.

62. In **Rajeevkumar**, the Apex Court further held that the existence of conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused.

63. The prosecution could prima facie establish conspiracy among the accused on the touchstone of the principles discussed above.

64. It is submitted that charges have already been framed against most of the accused and they are awaiting trial. When charges are framed and the accused are awaiting trial, only in exceptional circumstances, where it is convinced that the continuation of the proceedings would result in the abuse of law, the High Court will intervene (vide:- **Supriya Jain v. State of Haryana** [(2023) 7 SCC 711]).



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65. I am of the considered view that this Court is not justified in interfering with the order impugned and the charges framed.

The Crl.R.Ps and the Original Petitions stand dismissed.

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

kkj





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**APPENDIX OF OP(CRL.) 431/2022**

**PETITIONER EXHIBITS**

- Exhibit P1** PHOTOCOPY OF THE REFER REPORT IN VC 1/2010/SRT LODGED BY VACB (VIGILANCE & ANTI-CORRUPTION BUREAU)
- Exhibit P2** PHOTOCOPY OF THE FINAL REPORT / CHARGE SHEET DATED 30.6.2014 WITH THE BRIEF FACTS OF PROSECUTION CASE IN VC 1/2010/SRT LODGED BY VACB (VIGILANCE & ANTI-CORRUPTION BUREAU)
- Exhibit P3** CERTIFIED COPY OF THE COMMON ORDER DATED 27.6.2022 IN CRL.M.P. NO.928/2016 IN C.C. NO.15/2014 OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM
- Exhibit P4** CERTIFIED COPY OF THE CHARGE FRAMED IN C.C. NO.15/2014 ON THE FILE OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM



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**APPENDIX OF OP(CRL.) 515/2022**

**PETITIONER EXHIBITS**

- Exhibit P1** TRUE COPY OF JUDGMENT IN W.P.(C) NO.38047/2007 DATED 27.6.2008 OF THE HON'BLE HIGH COURT
- Exhibit P2** TRUE COPY OF JUDGMENT IN W.A. NO.1740/2007 DATED 14.1.2009 OF THE HON'BLE HIGH COURT
- Exhibit P3** TRUE COPY OF GOVERNMENT LETTER NO.9469/D1/2012/VIG DATED 13.4.2012 REFUSING SANCTION SENT TO THE DIRECTOR, V.A.C.B., THIRUVANANTHAPURAM
- Exhibit P4** TRUE COPY OF REFER REPORT DATED 17.7.2012 OF THE DEPUTY SUPDT. OF POLICE, V.A.C.B., SOUTHERN RANGE, THIRUVANANTHAPURAM SUBMITTED BEFORE THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM.
- Exhibit P5** TRUE COPY OF THE CHARGE SHEET/FINAL REPORT DATED 30.6.2014 IN VC 1/2010/SRT
- Exhibit P6** TRUE COPY OF THE COMMON ORDER DATED 27.6.2022 IN CRL.M.P.1334/2015 OF THE COURT OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM
- Exhibit P7** TRUE COPY OF THE CHARGE IN C.C. NO.15/2014 DATED 27.6.2022 ON THE FILE OF COURT OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM