

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.**

Wednesday, the 24th day of May 2023 / 3rd Jyaishta, 1945

OP(CRL.) NO. 391 OF 2023

**(CRIME NO.2/2021/SCK OF VACB, KOZHIKODE, SPECIAL CELL, KOZHIKODE
AND THE PROCEEDINGS PENDING BEFORE THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE,
KOZHIKKODE)**

PETITIONER/ACCUSED:

**K.M. SHAJI, AGED 52 YEARS, S/O.BEERANKUTTY, KALATHODIKA HOUSE, NEAR
A.R. CAMP, NGO QUARTERS, VENGARI P.O., KOZHIKKODE, PIN - 673010**

RESPONDENTS/STATE & COMPLAINANT:

- 1. THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM , PIN - 695001**
- 2. THE SUPERINTENDENT OF POLICE, VIGILANCE AND ANTI CORRUPTION BUREAU, SPECIAL CELL, MAVOOR ROAD, KOZHIKKODE , PIN - 673016**
- 3. ADV. M.R. HARISH, AGED 51 YEARS, S/O.RAJEEVAN, CHEMBARATHI, NEAR R.K. MISSION L.P. SCHOOL, KALLAI P.O., KOZHIKKODE , PIN - 673003**

Petition praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to stay all further proceedings in Crime No.2/2021/SCK of the Vigilance and Anti Corruption Bureau, Kozhikkode and all further proceedings pending before the Enquiry Commissioner and Special Judge, Kozhikkode, pending disposal of the above Original Petition (Criminal).

This Op (criminal) coming on for orders upon perusing the petition and the affidavit filed in support thereof, and upon hearing the arguments of M/S.BABU S. NAIR & SMITHA BABU Advocates for the petitioner, and of GOVERNMENT PLEADER for the respondents 1 & 2, the court passed the following:

ZIYAD RAHMAN A.A., J.

O.P.(Crl.).No.391 of 2023

Dated this the 24th day of May, 2023

ORDER

Admit.

2. Special Public Prosecutor (Vigilance), takes notice for the respondents 1 and 2. Issue notice to the 3rd respondent by speed post.

3. Challenge in this original petition is against registration of Ext.P4 FIR by the 2nd respondent herein alleging offences under Sections 13(2) r/w 13(1)(d) and 13(1)(e) of the Prevention of Corruption Act and 13(2) r/w 13(1)(b) of Prevention of Corruption Act, 1988 (hereinafter referred to as the P>C Act).

4. The specific contention put forward by the learned counsel for the petitioner is that Ext.P4 FIR was registered on the basis of an order passed by the Enquiry Commissioner and Special Judge, Kozhikode, under Section 156(3) of Cr.P.C. upon a private complaint submitted by the 3rd respondent. According to the learned counsel for the petitioner, in the light of the principles laid

down by the Honourable Supreme Court in **Anil Kumar and others v. M.K.Aiyappa & Another [2013(4) KLT 125]**, even for referring a complaint for investigation under Section 156(3), sanction under Section 19 of the P.C.Act is mandatory. It is further pointed out that the necessity of sanction at the pre-cognizance stage was reiterated by this Court in subsequent decisions such as **Muhammed V.A. & Others v. State of Kerala & Others [2019(1) KLT 156]**, **Shailaja v. Vigilance Anti Corruption Bureau [2021(2) KLT 294]** and **Balan v. State of Kerala [2023 (2) KLT 27]**.

5. On the other hand, the learned Special Public Prosecutor opposed the aforesaid contention by pointing out that the aforementioned decisions were rendered in respect of the cases registered prior to the amendment made to the provisions of the P.C.Act in the year 2018 and, therefore, cannot be made applicable to the facts of this case.

6. However, after going through the materials placed on record and the amendments brought in, as per the Act 16 of 2018 of the provisions of the P.C.Act, I am of the *prima facie* view that

the legal position as laid down by the decision referred to above would still continue in force. I could not find any specific provision in the amended Act enabling the Special Judge to invoke the jurisdiction under section 156(3) of the Cr. P.C without the sanction, contrary to the legal proposition laid down in the above mentioned decisions. In this case, admittedly, the learned Special Judge invoked jurisdiction under Section 156 (3) of Cr. P.C, without obtaining any sanction from the Government. As far as the contention put forward by the learned Special Public Prosecutor is concerned, it is a matter to be considered after conducting a detailed hearing. Since I have already found a *prima facie* case in favour of the petitioner, it is only proper to pass an interim order in this case.

Accordingly, it is ordered that further proceedings pursuant to Ext.P4 FIR in Crime No.02/2021/SCK shall stand stayed for a period of three months.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE