

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY, THE 7TH DAY OF JULY 2023 / 16TH ASHADHA, 1945

WP(C) NO. 24302 OF 2022

PETITIONER:

POONGOTTIL PRASAD
AGED 50 YEARS
SO CHAMI CHEERATTAMANNA
PETITIONER PERINTHALMANNA,
MALAPPURAM DISTRICT - 679312.

BY ADV ALBIN A. JOSEPH

RESPONDENTS:

- 1 MELATTUR GRAMA PANCHAYAT
PANCHAYAT OFFICE, MELATTUR MELATTUR P O
MALAPPURAM-679326
REPRESENTED BY ITS SECRETARY.
- 2 THE SECRETARY
MELATTUR GRAMA PANCHAYAT MELATTUR PO
MALAPPURAM-679326.

BY ADVS.
K.J.MANU RAJ
K.VINAYA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07.07.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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C.R.

J U D G M E N T

Dated this the 7th day of July, 2023

The petitioner, who is a small scale Businessman and who obtained licence to possess a shop room of the Melattur Grama Panchayat, is before this Court seeking to direct respondents 1 and 2 to forthwith refund to the petitioner, a sum of ₹1,10,800/- collected from the petitioner as Security Deposit. The petitioner states that he continued to occupy the shop room premises of the Panchayat up to the year 2018. The petitioner had remitted an amount of ₹1,10,800/- as Security Deposit. The Security Deposit has to be repaid on vacating the premises.

2. Though the petitioner vacated the premises and sought refund of the amount, the respondents have not given refund stating that some vigilance proceedings are pending in the matter. The petitioner seeks a writ of mandamus directing respondents

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1 and 2 to refund the amount.

3. Standing Counsel entered appearance on behalf of respondents 1 and 2 and contested the writ petition filing counter affidavit. On behalf of the respondents, it is submitted that the respondents verified the documents and records of the relevant period and found that Exts.P1 to P3 receipts are forged one. It is submitted that the aforementioned amounts were not credited to the account of the Panchayat. One Mr.Muhammed Kasim, who was the then UD Clerk of the Panchayat, has committed several financial irregularities in the respondent-Grama Panchayat and he collected the said amount from the petitioner which was never credited to the account of the Panchayat.

4. Respondents submitted that a vigilance case was filed against the said Mr. Muhammed Kasim which was numbered as C.C. No.60/2016 of the Enquiry Commissioner and Special Judge, Kozhikode. The said Muhammed Kasim was found guilty and he was convicted and sentenced to undergo imprisonment for two

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years and to deposit an amount of ₹50,000/-. Criminal Appeal No.414/2019 filed against the conviction and sentence is pending consideration before this Court.

5. Respondents submitted that since the alleged amounts are not credited to the account of the Panchayat, the Panchayat is not liable to repay any amount. Ext.P9 representation submitted by the petitioner was considered by the Committee and a decision was taken rejecting Ext.P9 representation.

6. I have heard the learned Counsel for the petitioner and the learned Standing Counsel representing the respondents.

7. The fact that the petitioner was given licence to occupy a shop room owned by the Panchayat is not in dispute. Ordinarily, a shop room will be rented out only on receipt of advance cash deposits. The petitioner has produced Exts.P1 to P3 cash receipts in Form No.XXXIII. Exts.P1 to P4 would show that the petitioner had remitted an amount of ₹1,10,800/-. The reason advanced by the respondents in refusing refund is that Exts.P1 to P3

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documents appear to have been forged by the erstwhile UDC of the Panchayat.

8. In the counter affidavit filed by the respondents, it has been specifically stated as follows:

“It is further submitted that the aforesaid amounts are not credited to the account of the Panchayat. In fact, one Mr. Muhammed Kashim who was the then UD Clerk of Panchayat has conducted several financial irregularities in the respondent-Grama Panchayat and he collected the said amount from the petitioner which was never credited to the account of the Panchayat”.

9. Ordinarily, a person is liable for his own wrongful acts and one does not incur any liability for the acts done by others. The principles of Vicarious Liability make certain persons liable for the act of others. The principle would apply when the law presumes that “he who does an act through another is deemed in law to do it himself”. Commonly accepted examples of Vicarious Liability are Liability of Principal and Agent, Liability of Master and Servant and Liability of Partners in each other's tort. The fundamental requirements to apply the principles of Vicarious Liability are that there should be a certain relation between the two

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parties and that the wrongful act should be in such a way that it is connected to the relationship.

10. The law as to Vicarious Liability in Master-Servant relationships is explained in Salmond on Torts, 13th Edition, Page 122-123 as follows:

“But a master as opposed to the employer of an independent contractor, is liable even for acts which he had not authorised, provided they are so connected with acts which he has authorised that they may rightly regarded as modes although improper modes of doing them. In other words, a master is responsible not merely for what he authorises his servant to do, but also for the way in which he does it. If a servant does negligently that which he was authorised to do carefully, or if he does fraudulently that which he was authorised to do honestly or if he does mistakenly that which he was authorised to do correctly, his master will answer for that negligence, fraud or mistake. On the other hand, if the unauthorised and wrongful act of the servant is not so connected with the authorised act as to be a mode of doing it, but is an independent act, the master is not responsible; for in such a case the servant is not acting in the course of his employment, but has gone outside it.”

11. From the pleadings in the writ petition, it is clear that the Upper Division Clerk, employed by the Panchayat who collected the Security Deposit from the petitioner, was authorised to collect Security Deposits and other monetary payments on behalf of the Panchayat. But, the said Upper Division Clerk who had to act

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honestly, had fraudulently desisted from crediting the Security Deposit in the accounts of the Panchayat. Therefore, the principles of Vicarious Liability would indeed apply.

12. The employee involved in this case is servant of a Local Self Government Institution which is a statutory body. The question whether the principles of Vicarious Liability would apply to State is also well settled by law. In **N. Nagendra Rao and Co. v. State of Andhra Pradesh** [AIR 1994 SC 2663], the Hon'ble Apex Court held that in a welfare State, functions of State are not only defence of the Country or administration of justice or maintaining law and order but it extends to regulating and controlling activities of people in almost every sphere. Barring functions such as administration of justice, maintenance of law and order and repression of crime, etc. which are among the primary and inalienable functions of a Constitutional Government, the State cannot claim any immunity. The determination of Vicarious Liability of the State being linked with negligence of its

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officers, if they can be sued personally for which there is no dearth of authority and the law of misfeasance in discharge of public duty having marched ahead, there is no rationale for the proposition that even if the officer is liable, the State cannot be sued.

13. In **State of Maharashtra v. Kanchanmala Vijaysing Shirke** [1995 (5) SCC 659], the Apex Court held that it is the rule that an employer though guilty of no fault himself, is liable for the damage done by the fault or negligence of his servant acting in the course of his employment. In some cases, it can be found that an employee was doing an authorised act in an unauthorised, but, not prohibited way. The employer shall be liable for such act, because the employee was acting within the scope of his employment and, in so acting, did something negligent or wrongful. A master is liable even for acts he has not authorised, provided they are so connected with the acts which he has been so authorised. On the other hand, if the act of the servant is not even remotely connected within the scope of employment and is

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an independent act, the master shall not be responsible because the Servant is not acting in the course of his employment but has gone outside.

14. In the case on hand, it cannot be said that the Upper Division Clerk was not acting in the course of his employment. Acceptance of Security Deposit from the petitioner by the Upper Division Clerk cannot be treated as an independent act.

15. The fact that UD Clerk of the respondent-Panchayat has accepted amounts from the petitioner is, in fact, admitted. The contention of the respondents is that since the said UD Clerk has not deposited the said amounts into the accounts of the Panchayat and has not made entry in the register, the respondents are not liable to refund.

16. In view of the law on Vicarious Liability as discussed above, if any UDC employed by the respondent-Panchayat accepts money and issue the receipts in the course of his employment, the respondents are liable to refund that amount, if

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the amount accepted is refundable. The fact that a vigilance case is pending and action has been taken against the fraudulent activities of the UDC cannot be an excuse to deny the amounts duly deposited by the petitioner on the basis of the receipts issued on behalf of the Panchayat. The Panchayat is vicariously liable.

In the circumstances, the writ petition is allowed. The respondents are directed to refund the amount due to the petitioner within a period of one month.

Sd/-

**N. NAGARESH
JUDGE**

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APPENDIX OF WP(C) 24302/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE PHOTOCOPY OF THE RECEIPT ISSUED BY THE 1ST RESPONDENT ON 26.02.1997.
- Exhibit P2 TRUE PHOTOCOPY OF THE RECEIPT ISSUED BY THE 1ST RESPONDENT DATED 26.02.1997.
- Exhibit P3 TRUE PHOTOCOPY OF THE RECEIPT ISSUED BY THE 1ST RESPONDENT DATED 22.03.1997.
- Exhibit P4 TRUE PHOTOSTAT COPY OF THE STATEMENT WITH REGARD TO THE SHOPPING COMPLEX ISSUED BY THE 1ST RESPONDENT.
- Exhibit P5 COPY OF THE ACKNOWLEDGEMENT RECEIPT GIVEN BY THE 2ND RESPONDENT DATED 07.12.2018.
- Exhibit P6 COPY OF THE ACKNOWLEDGEMENT RECEIPT GIVEN FOR THE REPRESENTATION DATED 02.08.2019.
- Exhibit P7 COPY OF THE ACKNOWLEDGEMENT RECEIPT GIVEN FOR THE REPRESENTATION DATED 04.09.2019.
- Exhibit P8 COPY OF THE ACKNOWLEDGEMENT RECEIPT GIVEN FOR THE REPRESENTATION DATED 15.09.2020.
- Exhibit P9 COPY OF THE DETAILED REPRESENTATION DATED 19.01.2022 FOR THE RETURN OF THE SECURITY AMOUNTS.
- Exhibit P10 TRUE COPY OF JUDGEMENT IN C.C.NO .60/2016 DATED 21/02/2019 OF ENQUIRE COMMISSIONER AND SPECIAL JUDGE , KOZHIKODE.

RESPONDENT EXHIBITS

- Exhibit R2(a) A TRUE COPY OF THE DEPOSIT REGISTER OF THE YEAR 1997 TO 2012