

CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 11<sup>TH</sup> DAY OF APRIL 2023 / 21ST CHAITHRA, 1945

WP(CRL.) NO. 98 OF 2022

PETITIONER/S:

SURENDRA BABU  
AGED 75 YEARS  
S/O A.PARAMU, CHAITHANYA , N.T.V NAGAR, HOUSE NO 9,  
KADAPPAKADA P.O., KOLLAM , PIN-691 008  
BY ADV D.ANIL KUMAR

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY PRINCIPAL SECRETARY, HOME DEPARTMENT,  
SECRETARIAT, THIRUVANANTHAPURAM-695 001
- 2 ADDITIONAL DIRECTOR GENERAL OF POLICE,  
CRIME BRANCH HEADQUARTERS, THIRUVANANTHAPURAM ,  
PIN-695 036.
- 3 VELLAPPALLY NATESAN,  
S/O KESHAVAN, VELLAPPALLIL HOUSE, KANICHUKULANGARA  
P.O.CHERTHALA, ALAPPUZHA DISTRICT, PIN-688 582  
BY ADVS.  
FOR R1 & R2 BY SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR  
R3 BY SHRI.P.VIJAYA BHANU (SR.ADVOCATE)  
ADV. A.N.RAJAN BABU

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON  
04.04.2023 ALONG WITH WP(Cr1.)426/2021, THE COURT ON 11.04.2023  
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 4<sup>TH</sup> DAY OF APRIL 2023 / 14<sup>TH</sup> CHAITHRA, 1945

WP(CRL.) NO. 426 OF 2021

PETITIONER/ACCUSED:

VELLAPPALLY NATESAN

AGED 84 YEARS

S/O LATE KESAVAN, VELLAPPALLIL HOUSE, KANICHUKULANGARA  
P.O, CHERTHALA, ALAPPUZHA, SECRETARY OF SREE NARAYANA  
TRUST, KOLLAM.

BY ADVS.

SHRI.P.VIJAYA BHANU, SR.ADVOCATE

ADV. A.N.RAJAN BABU

RESPONDENT/S:

1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH  
COURT OF KERALA, ERNAKULAM-682031.

2 ADDITIONAL DIRECTOR GENERAL OF POLICE,  
CRIME BRANCH POLICE HEAD QUARTERS, VAZHUTHAKAD,  
THIRUVANANTHAPURAM-695001.

3 SUPERINTENDENT OF POLICE  
(SHAJI SUGUNAN) SPECIAL CELL, VIGILANCE AND ANTI-  
CORRUPTION BUREAU, THEKKUMOOD, THIRUVANANTHAPURAM-  
695001.

4 P.SURENDRA BABU,  
S/O.PARAMU, 'CHAITHANYA', KADAPPAKADA, KOLLAM, PIN-  
691008.

5 DEEPAK.S, AGED 52 YEARS  
S/O.SURESH BABU, GEETHA SADANAM, KAITHA SOUTH,  
KANNAMANGALAM, MAVELIKKARA, PIN-690106.

BY ADVS.

R1,R2 & R3 BY SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR

R4 BY ADV.D.ANIL KUMAR

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON  
04.04.2023, ALONG WITH WP(Crl.).98/2022, THE COURT ON 11.04.2023

DELIVERED THE FOLLOWING:

**JUDGMENT**

The issues involved in these writ petitions are in relation to the investigation in Crime No 727/2004 of Kollam East Police Station, which is renumbered as Crime No.119/CB/KLM & PTA/2018 of Crime Branch. The petitioner in WP(Crl)No.98/2022 is the defacto complainant, and the petitioner in WP(Crl)No. 426 of 2021 is the accused in the said crime. The offences alleged are under sections 420, 406, 408 and 403 of the Indian Penal Code (IPC). For convenience, the parties are referred to in this writ petition as the defacto complainant and the accused.

2. The crime mentioned above was registered based on a private complaint submitted by the defacto complainant before the Chief Judicial Magistrate Court, Kollam, on 27.09.2004 alleging offences punishable under sections 403, 406, 408 and 420 of IPC. The learned Magistrate referred the same to the Kollam East Police Station for investigation under

section 156(3) of the Code of Criminal Procedure (Cr.PC) and accordingly, the aforesaid crime was registered. Initially, after completing the investigation, a refer report was submitted by the police, which was objected to by the defacto complainant. The learned Magistrate accepted the objections, and a further investigation was ordered. After conducting further investigation, the police filed a supplementary final report stating that the offences were undetected, and this was also objected to by the defacto complainant. Therefore, a further investigation was conducted. Meanwhile, the defacto complainant approached this court by filing WP(C)No. 36361/2016, contending that no proper investigation was being conducted and hence the transfer of investigation to any other agency was sought. The said writ petition was allowed by directing the Crime Branch to constitute a Special Investigation Team and conduct the investigation. Accordingly, a team was

formed, the crime was renumbered as above, and an investigation was conducted. Upon completion thereof, a final report implicating the accused was submitted, upon which cognizance was taken by the Chief Judicial Magistrate, Kollam, as C.C. No 50/2020, which is now pending trial.

3. The prosecution case is as follows; The defacto complainant is a member of the Board of Trustees of Sree Narayana Trust, Kollam(SN Trust). The accused has been the Secretary of the Trust since 1995. It is a Public Trust, running various establishments throughout the State, including various educational institutions. One of its most prominent educational institutions is Sree Narayana College, Kollam. As the year 1997-1998 was the Golden Jubilee year of the said College, the trust decided to celebrate the same. For the said purpose, a committee was formed, and the accused, the Secretary of the SN Trust, was selected as the Convener of the

said committee. A bank account was opened in the Extension Counter of South Indian Bank in SN College, Kollam bearing No 3307, in the name of the accused, showing him as the convener of the Golden Jubilee Celebration Committee. Huge amounts were collected from various sources, such as donations, coupons etc. It is alleged that, in the said account, a total amount of Rs.65,58,107/- was collected, and as on 15.03.1999, the amounts in the said account, along with interest, was Rs.67,24,669/-. Besides the same, an All India Exhibition was conducted as part of the celebrations in the College, for which an exhibition committee (sub-committee) was formed wherein CW6, Prof. Sathyan, was the convener. It was alleged that the accused misappropriated a substantial portion of the said amounts by diverting funds to other channels without any authorisation. The basic allegations are in respect of three transactions, which are as follows;

(i) On 16/12/1997, the accused withdrew by cash an amount of Rs.25,00,000/- by presenting cheque No. 522408 without any authorisation of the committee. The same was later deposited as a Fixed Deposit in the Dhanalakshmi bank, Cherthala, only on 16.06.1998 after adding some amount under the guise of interest. Subsequently, it was diverted on 9.07.1999. The same was deposited in the accounts of the SN Trust, a separate organisation having nothing to do with the Celebration Committee and thereby misappropriating the said amount.

(ii) An amount of Rs 10,00,000/- was withdrawn from the account on 10.09.1998, and after keeping the same, it was deposited in the account of SN Trust on 15.01.2000, i.e after one year and four months.

(iii) By the conduct of the All India Exhibition, the exhibition committee generated an amount of Rs. 35,44,437/- from various sources, out of which an amount of Rs 15,26,777/- was the expenditure incurred



for the conduct of the exhibition. The balance amount was Rs.20,17,660/-. In the meeting of the committee held on 13.07.1999, said amount was handed over to the accused by way of a cheque as per the decision of the committee to utilize the same to construct a Golden Jubilee Library Complex, as the accused informed that the amount of Rs.35,00,000/- available in the account of the Golden Jubilee Celebration Committee was not sufficient for the said purpose.

4. It was also alleged that, in the first meeting of the Committee itself, it was decided that the income generated from the celebrations shall be utilized for the construction of a Golden Jubilee Library Complex in the compound of SN Colege, Kollam. However, without utilizing the same for the said purpose, the accused deceived the members of the Golden Jubilee Celebration Committee.

5. Now, the matter is pending trial. WP(Crl) No. 426/2021 was filed by the accused, explaining the

above mentioned transactions and contending that the same were not misappropriations, warranting any criminal prosecution. It is also pointed out that the statement of CW7, the accountant having the knowledge of the transactions, was incorrectly recorded during the investigation and a complaint was submitted by him in this regard before the 2<sup>nd</sup> respondent. The accused submitted two representations (Ext P14 and P14(a)) before the Additional Director General of Police, Crime Branch (2<sup>nd</sup> respondent in the said writ petition) highlighting the said aspects. He seeks a direction to the 2<sup>nd</sup> respondent to consider the same before the disposal of the CC No.50/2020 on the files of the Chief Judicial Magistrate, Kollam and before framing the charge thereon. Similarly, the accused is also seeking a direction to respondents 2 and 3 to ascertain whether the exhibition committee held a bank account in South Indian Bank, Kollam or any other bank to issue a cheque to the petitioner for

Rs.20,17,166/- and whether the petitioner encashed the cheque said to be issued by Prof. G. Sathyan, (CW6) and failed to account the same. The prayers sought in the said writ petition were opposed by the prosecution as well as the defacto complainant, who is the 4<sup>th</sup> respondent in the said writ petition.

6. The facts which led to the filing of WP(Crl) 98/2022 by the defacto complainant are as follows; Subsequent to the filing of the final report, one B.Radhakrishna Pillai, Deputy Superintendent of Police (Rtd), who was the former member of the Special Investigation Team which conducted the investigation, issued Ext.P6 letter to the Superintendent of the Police, who was the Chief Investigation of Officer, pointing out that, CW6 Prof, G.Sathyan had made a revelation in an article prepared by him and published in souvenir named "Yoganadam" which was published in commemoration of the 25th anniversary of the tenure of the office of

the accused as the General Secretary of the SNDP Yogam and SN Trust. It was pointed out that, in the said article, it was stated that the accused organised the Golden Jubilee Celebrations in a commendable manner and made a profit of Rs. 20,00,000/- to the Yogam by conducting the All India Exhibition. Exhibit P7 in WP(Crl)No.98/2022 is a copy of the said publication. According to the said Radhakrishna Pillai, the said revelation is contrary to his statement in the final report, and it is a new fact as well. Therefore, he requested a further investigation by invoking section 173(8) of the Cr.P.C.

7. Acting upon the said communication, the Chief Investigation Officer submitted Ext.P8 communication before the 2<sup>nd</sup> respondent in the said writ petition, recommending further investigation in the matter. Based on the same, the 2<sup>nd</sup> respondent, as per Ext P9, without any discussion as to the grounds of the

decision, granted permission to take steps for further investigation after reporting the matter to the court. Accordingly, the prosecution submitted an application before the Chief Judicial Magistrate, Kollam, seeking formal permission for further investigation. The formal permission was granted on 01.01.2022, as evidenced by Ext P10 in WP(Crl)No 98/2022. The said order, the decision taken to conduct further investigation and all further proceedings pursuant to it are under challenge in the said writ petition at the instance of the defacto complainant.

8. In response to the contentions raised in WP(CrL) No. 98/2022, the accused and the prosecution filed a counter affidavit and a statement respectively, opposing the prayers and justifying the decision to conduct further investigation.

9. Thus, the crucial points to be considered are (1) whether the further investigation now being

conducted is legally sustainable or not, and (2) whether the directions sought by the accused in WP(C)No.426/2021, i.e. to direct the Additional Director General of Police to consider the aspects highlighted in Exts. P14 and P14(a) and to conduct a further probe to find out whether the Exhibition Committee maintained a bank account and whether CW6 handed over a cheque to the accused or not are to be allowed.

10. Heard Sri D. Anilkumar, the Learned Counsel for the defacto complainant (petitioner in WP(Crl)98/2022 and 4<sup>th</sup> respondent in WP(C)No 426/2021), Learned Senior Counsel Sri.P.Vijayabhanu, instructed by Adv.Sri. Rajan Babu, for the accused(petitioner in WP(Crl)No.426/2021 and the 3<sup>rd</sup> respondent in WP(Crl)No 98/2022) and Sri P.Narayanan, Learned Additional Public prosecutor for the State.

11. As the further investigation is being conducted, I deem it proper to consider the sustainability of the same first. In this regard, it

is to be noted that the learned Additional Public prosecutor submitted that a further investigation has already been conducted, a draft supplementary final report has been prepared, and the same has been submitted before the 2<sup>nd</sup> respondent in WP(Crl) No.98/2022 for approval. However, it is pointed out that the 2nd respondent was not satisfied with the report, so the investigation is being continued. Moreover, as ordered by this court, the copy of the said draft final report has been produced in a sealed cover before this court. However, since the issue to be considered is regarding the sustainability of the decision to conduct further investigation, it was felt that it is not proper to examine the draft final report at this juncture and therefore, this court never opened the same.

12. The power of the investigation officer under section 173(8) of the Cr.P.C to conduct a further investigation is very wide and it can be invoked at

any stage of the proceedings. The said provision reads as follows:

*"Nothing in this section shall be deemed to preclude investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, whereupon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."*

13. The said provision starts with the words *"Nothing in this section shall be deemed to preclude further investigation....."* and the said words in clear terms convey that, the said power is very wide. The position of law in this regard, confirming such wide powers of the investigation officer for further investigation, has been settled as per various decisions of the Honourable Supreme Court including *Vinubhai Haribhai Malaviya & Ors v. State of Gujarat* and another [(2019)17 SCC 1], *Minu Kumari and another v. State of Bihar and Others* [AIR 2006 SC 1937],



Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel and Others [(2017) 4 SCC 177] and Ram Lal Narang v. State (Delhi Admn) [AIR 1979 SC 1791.

14. However, the principles laid down in the said decisions cannot be interpreted to mean that the investigation officer can conduct a further investigation under any circumstances. In other words, merely because the investigation officer is clothed with the power to investigate the matter further, such power cannot be invoked at his whims and fancies. It must be supported by reasons justifiable in law, and in cases where such powers were improperly or maliciously or arbitrarily or with malafide intentions exercised, nothing would preclude this Court from interfering with such proceedings by exercising the powers under Article 226 of the Constitution of India. To be precise, this Court cannot be a mute spectator and endorse the exercise of such powers by the investigation agency when it

was shown that the said power was invoked arbitrarily to give some undue advantage to one of the parties to the prosecution, either the victim or accused, and thus, an abuse of process of law. The exercise of such power must be for protecting the interests of the prosecution and must be to ensure justice for the parties concerned.

15. In **P.Gopalakrishnan @ Dileep v. State of Kerala and others** [2022 (2) KLT Online 1183], this court examined the circumstances under which the order of further investigation can be interfered with. After referring to a large number decisions, including **Kurukshetra University & Anr. v. State of Haryana & Anr.**[1977 KHC 711], **State of Haryana & Ors. v. Ch.Bhajan Lal & Ors.** [1992 KHC 600], **State of A.P v. Golconda Linga Swamy** [2004 KHC 1342] **M/s Neeharika Infrastructure Pvt Ltd v. State of Maharashtra** [2021(2) KLT OnLine 1039(SC), it was observed as follows;

*" 29. A careful reading of the above noted judgment make it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall their investigation and/or*

*prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or where a criminal proceeding is manifestly attended with malafides or where the proceeding is manifestly instituted with an ulterior motive for wreaking vengeance or the High Court is convinced that it is necessary to interfere to prevent abuse of process of Court. The further investigation under section 173(8) of Cr.P.C being the continuation of the earlier investigation, the same parameters which shall be applicable while exercising the powers under Section 482 and/or under Article 226 of the Constitution of India to quash the FIR/registration can be made applicable to quash further investigation as well."*

16. I have carefully scrutinized the materials placed before me, keeping the above principles in mind. While considering the same, the sequence of events which led to the decision to conduct a further investigation is a crucial aspect to be taken note of. In this case, the basis of the said decision was Ext.P6 communication issued by the one Radhakrishna Pillai, a retired DySP and a former member of the investigation team. The interest of such a person in getting the investigation reopened appears to be highly suspicious at first instance. As a member of the Special Investigation Team, he normally would not

be interested in the matters of the investigation once the investigation is complete and the final report is filed. Here, in this case, Ext.P6 communication is issued by him after he retired from service, which is yet another crucial aspect (dubious as well) to be taken note of.

17. Moreover, the reason which prompted him to seek further investigation adds more fuel to the controversy. According to him, CW6, Prof G.Sathyan, the convener of the subcommittee formed for the Exhibition, had published an article in one of the publications of the SNDP Yogam, contrary to the stand he had taken in the statement given to the police during the investigation. As per the statement given to the police, he stated that from the conduct of the exhibition, the committee was having an amount of Rs. 20,17,660/- in their account after deducting the expenses, and this was handed over to the accused for the purpose of utilising it for constructing a

library complex in the compound of SN College, Kollam. However, in the article published in the Souvenir published (Yoganadam-Ext.P7), he stated that, from the exhibition conducted, the accused made a profit of Rs.20,00,000/- for the Yogam. The exact words used by CW6 in the said article, which is on page 174 of the Memorandum of WP(Crl)No.98/2022, read as follows;

*"ഇതിനോടനുബന്ധിച്ചു നടന്ന അഖിലേന്ത്യ പ്രദർശനം 20 ലക്ഷം രൂപയുടെ സാമ്പത്തിക നേട്ടം യോഗത്തിനുണ്ടാക്കി"*

18. Thus, the crucial question that arises for consideration is whether such a statement makes out a sufficient cause for invoking the powers of the investigation officer under section 173(8) of the Cr.P.C. After carefully examining the aforesaid statement, coupled with the circumstances and source from such a request happened to be placed, I find it to be inadequate and it would not warrant a further investigation, for the reasons hereinafter mentioned. First of all, CW6 had already given a statement

before the investigation officer to the effect that an amount of Rs.20,17,660/- has been entrusted to the accused based on a decision taken by the exhibition committee on 13.07.1999. In Ext.P7 article, he stated that by conducting an exhibition, the accused made a profit of Rs.20,00,000/- to Yogam (SNDP Yogam), a different entity. The college where the Golden Jubilee celebration was conducted is run by SN Trust, which is a separate entity. Moreover, the specific allegation of the prosecution is that the amount collected by the accused from the Exhibition Committee was by making the committee members believe that the said amount would be utilised for the construction of a library complex in the SN College, Kollam, but, it was diverted for some other purposes without the authorisation of the exhibition committee members. Therefore, the allegation was mainly regarding the misappropriation of the amount generated by the exhibition committee as profit from

the conduct of the exhibition. Thus, the mere statement of CW6 that the accused made a profit for the Yogam from the conduct of the exhibition would not have any significance as far as the prosecution case is concerned. Further, the said statement cannot be treated as a new fact, warranting further investigation into the matter, because, the fact that the conduct of the exhibition generated a profit of about Rs.20 lakhs is already stated by him in the statement before the investigation officer. Even if it is treated as a discrepancy, at the most, it can be a defence for the accused in the trial and not a material for further investigation.

19. Even if it is assumed for argument sake that the statement in Ext.P7 article is contrary to the prosecution case, the question that would arise is whether it can be treated as a valid ground for invoking the powers under section 173(8) of the Cr.P.C. In my view, the only irresistible conclusion

could be in the negative. As mentioned above, CW6 has already given his statement before the police. If further investigation is ordered whenever the witness takes a stand contrary to the prosecution case through a public statement or otherwise, it would neither be practical to conduct further investigation nor be in the best interest of the prosecution. The veracity of the statement the victim gave to the police can and ought to be examined only during his examination in the trial. Order of further investigation merely because of that reason could be counter productive as this would pave the way for creating opportunities for the accused to influence the witnesses to persuade them to make contrary statements, get the further investigation ordered, thereby escape from the clutches of law, even without facing the trial. Under no circumstances the powers under section 173(8) of the Cr.P.C could be interpreted to create such shortcuts to evade the



process of law.

20. There are certain other aspects which fortify the said view. In this case, besides the statement of CW6, there are several other witnesses in whose presence the transaction of Rs.20,17,660/- took place. It is pertinent to note that the said amount was handed over to the accused in the meeting of the exhibition committee held on 13.07.1999. Some of the committee members were also made as the witnesses in the final report. In Ext.P6 communication issued by the said Radhakrishnan Pillai, the former member of the Special Investigation Team, also refers to such witnesses. Therefore, conducting a further investigation on the said reason of a contrary statement given by only a single witness would undoubtedly complicate the matter further, and under no circumstances can that be in the best interest of the prosecution.

21. However, while making the above observations,

I am conscious of the fact that when referring to "interest of prosecution", it can be the interest of the accused also in certain circumstances. To be precise, after filing the final report, when the investigation officer comes across evidence that would indicate the innocence of the person made as an accused, and such materials suggest the culpability of some other persons, it could be a good ground for invoking the powers. This is because the interests of prosecution would take within its sweep the necessity of the prosecution of the real culprits and thereby ensure that actual culprits are proceeded against and punished. I have considered the materials before me from that perspective also. As far as the allegation of misappropriation of Rs.20,17,660/- entrusted by the exhibition committee is concerned, the explanation of the accused is that the said amount, which is shown as the balance in the account of the exhibition committee included Rs.

20,00,000/- received from the exhibition committee and put in the fixed deposits on 11.01.1999 and 13.07.1999. To substantiate the same, the audited balance sheet of the SN Trust for the year 1998-1999 was also relied on, in which the receipt of the said amount is seen recorded. However, the specific case of the prosecution is that the amount of Rs. 20,17,660/- was handed over to the accused by way of cheque in its meeting held on 13.07.1999, which was after the financial year 1998-1999. Several witnesses have specifically given statements to that effect. Moreover, the statements of the said witnesses, including CWs 1 to 6, were after considering this aspect as well, and they have categorically stated that such entry in the audit statement may not be correct. Thus, it is a matter to be considered in the trial and certainly not a ground for further investigation. Therefore, in this regard also, I do not find any prima facie case warranting further

investigation in the matter.

22. In the statement filed by the Prosecution before this court in response to the averments in WP(Crl) No.98/2022, the explanation offered by them to justify the decision for further investigation included another aspect as well. According to the prosecution, even though CW6 stated that the amount was handed over to the accused on 13.07.1999 by way of cheque, the said cheque was not recovered, and the bank account details of the exhibition committee also could not be collected. Therefore further investigation is required. However, a reading of the final report would indicate that this aspect was investigated explicitly, and CW6 clearly stated that he does not remember the bank details, as the said statement was taken years after the said transaction. Moreover, the other witnesses have also clearly stated about the entrustment of the said amount. Therefore, since an investigation is already

conducted in this regard, there is no meaning in conducting further investigation into that aspect again. In this regard, the contents of Ext.P6 submitted by the former member of SIT, the communication based on which the further investigation was ultimately ordered, are very much relevant. The relevant portion of the said observations on page 4 of Ext.P6 (page 122 of the memorandum of WP(C)No.98/2022) is extracted hereunder;

*".....According to him the whereabouts of this amount is not known to anybody thereafter. As per his statement before you, there was a separate account for the Exhibition Committee in some bank and the above amount was given to the accused by means of a cheque from that account. He further stated that he did not remember in which bank the above said account was being operated. The above version of witness No. 6 was also supported by the other relevant witnesses who had been members of the Golden Jubilee Celebration Committee. It may be noted that though we had made all earnest efforts to find out the account in the name of the Exhibition Committee or any other account in the personal name of witness No.6 wherefrom the above said cheque was issued after depositing the above amount, it was in vain. It was the lapse of a long period of time which was cited by him to be the reason why he could not remember the details of the above mentioned bank account. This was also supported by the other witnesses. Even*

*though we could not find out the said bank account and the details of the alleged cheque, we were not able to discard the oral evidence of witness No. 6 as untrustworthy, as he and the other relevant witnesses were steadfast in their stand. When the other connected circumstances were also taken into account, there was no chance for you to take different view than going by the deposition of the said witnesses. It was mainly on the basis of the above evidence that opinion was formulated to the effect that the said amount was misappropriated by the accused. The culpability was fixed on the accused by considering the strong probabilities and other attending circumstances based on the evidence of witness No. 6 supported by other witnesses. The IO had to proceed with the available evidence as it were otherwise not unbelievable."*

23. From the above, it is evident that a detailed investigation into that aspect was already conducted; therefore, further investigation is not warranted. It is also relevant to note in this regard that, as per Ext.P6, further investigation was recommended by the said Radhakrishna Pillai, mainly because, according to him, another conclusion was possible. From the further orders passed by the authorities concerned for further investigation and the averments in the statement of the prosecution, it appears that the said recommendation in Ext.P6 was accepted as such.

In my view, such a course of action was not proper. The possibility of another conclusion from the materials collected cannot be a reason for invoking the powers under section 173(8) of the Cr.PC. The investigation officer, after evaluation of the materials collected, already formed an opinion as to the culpability of the accused, and a final report implicating him has been filed. Thereafter it is for the court to decide on the further course of action to be taken thereon. In this case, the competent court has already taken cognizance of the offences. Therefore the investigation officer cannot be treated as a person competent to decide on the same (*that too after cognizance of the same has been taken by the court*) by conducting further investigation on the ground that another conclusion was possible. Further, the suggestion made by the said Radhakrishna Pillai as above, is yet another aspect that indicates the dubious manner in which the proposal for further

investigation was mooted.

24. Besides the reasons mentioned above, the sequence of events, right from the inception of this case, also compels this Court to take a stand against further investigation. The defacto complainant has a case that the accused in this case, is a person of high influence and also holds a prominent position in the management of an organisation having substantial influence among the political parties in the State. The crime was initially registered by the Kollam East Police, based on the order passed by the Chief Judicial Magistrate, Kollam, under section 156(3) of the Cr.P.C on the private complaint submitted by the defacto complainant. Initially, a refer report was submitted by the police, which was objected to by the defacto complaint. The learned Magistrate ordered further investigation. The report filed thereafter was to the effect that the offence was undetected. Again further investigation was ordered based on the



objections of the defacto complainant. Later based on the writ petition filed by the defacto complainant, this court found that the investigation conducted by the Kollam East Police was not proper and, therefore, vide judgment produced as Ext P1 in WP(Crl)No. 98/2022, the Crime Branch was directed to conduct the further investigation after constituting a special team. The present final report was submitted accordingly. Now, a request has been placed by a former member of the investigation team, that too after his retirement, for further investigation, citing flimsy reasons. As the said person cannot possibly be interested in further investigation, the bonafides in making such a request is highly suspicious. The authorities concerned took the decision thereon in a very casual manner, without much deliberations on it. When all these aspects are taken into consideration, I find some force in the contention put forward by the learned counsel for the

petitioner that there is a calculated attempt to exonerate the accused, a very influential person, without even a trial. This Court cannot be a party to such mischievous attempts.

25. In support of his contention regarding the arbitrary exercise of the authorities concerned, the learned counsel for the defacto complainant places reliance upon **Smt. S.R.Venkataraman v. Union of India and another [(1979)2 SCC 491]**, wherein after referring to Lord Goddard C.J in **Piling v. Abergele Urban District, [(1950) 1 KB 636]**, observed that *".....where a duty to determine a question is conferred on an authority which state their reasons for the decision, "and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate on the matter"*. In the said decision, a reference was also made to the observations of

Lord Esher M.R. in *The Queen on the Prosecution of Richard Westbrook v. The Vestry of St.Pancras* (1890) 24 QBD 371, 375, which reads as follows: "*If people who have to exercise a public duty by exercising their discretion take into account matters which Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion,*"

26. When considering the facts and circumstances of this case in the light of the above principles, I am left with no other option than to pass an order to interfere with the discretion exercised by the investigation officer. The decision for further investigation was taken based on matters which were not at all relevant or sufficient for invoking the said powers.

27. The next aspect to be considered is with regard to the prayers sought by the accused in WP(Crl)No.426/2021. One of the main prayers is to direct the Additional Director General of Police,

Crime Branch, the 2<sup>nd</sup> respondent, to consider and dispose of Exts.P14 and P14(a) representations. I have carefully gone through the contentions of the said representations. It contains the explanation for the transactions which are the subject matter of the offences alleged against him. It is also contended that the statement of CW7 was not recorded properly, and the said witness had already submitted a complaint in this regard. He also seeks a further probe into the bank account maintained by the exhibition committee, the details of the cheque allegedly handed over by CW6 to him on 13.07.1999. After considering all the relevant aspects, I am of the view that the said prayers cannot be considered. The said prayers are of such a nature that it interferes with the investigation conducted by the police. It is a well settled position of law that, as far as the matters relating to the investigation, the accused has no right to be heard,

and he cannot insist that the investigation should be conducted in a particular manner. In **Sanjiv Rajendra Bhatt v. The Union of India & Ors** [(2016) 1 SCC 1], it was observed that "*The accused has no right with reference to the manner of investigation or mode of prosecution.*"

The investigation is the prerogative of the investigation officer, and the accused has no right to interfere with the said powers. In this case, the investigation officer arrived at the opinion as to the commission of the offences by the accused after recording statements of 55 witnesses and examining several documentary evidence. The explanations attempted to be offered by the accused in Ext. P14 and P14(a) representations, at the most, could be his defence which he can raise during the trial. Under no circumstances he can compel the investigation officer to go through the said aspects, particularly when the final report is submitted, unless the materials relied on by the accused on its simple examination

undoubtedly establish that it was a case of false accusation. In this case, I am unable not find that materials placed by the accused in the said writ petition are of that character. As far as the contentions regarding the statement of CW7 are concerned, the observations made in this judgment in paragraphs above relating to the statement of CW6 are applicable; therefore, the same cannot be treated as a valid ground for a further probe. Thus, the prayer sought by the accused, the petitioner in WP(C) No.426/2021, cannot be entertained.

In such circumstances, the following orders are passed:

**A.** WP(Crl)No.98/2022 is allowed. It is declared that, the decision taken by the 2<sup>nd</sup> respondent to conduct further investigation, as evidenced by Ext.P9, is not legal and proper. In the light of the aforesaid finding, Ext.P10 formal permission granted by the Chief Judicial Magistrate,

Kollam, for further investigation is also set aside. The Chief Judicial Magistrate, Kollam, is directed to conduct the trial of the C.C. No 50/202 based on the final report produced as Ext.P4, as expeditiously as possible.

**B.** WP(Crl) No.426/2021 is dismissed.

However, it is clarified that the observations made in these writ petitions were only for the purpose of determining the question as to the further investigation into the matter. Under no circumstances can the same be treated as observations on the veracity/sustainability of the allegations against the accused. The learned Magistrate shall be empowered to consider all the contentions of the accused, on merits, untrammelled by any of the observations made in this common judgment.

Sd/-

ZIYAD RAHMAN A.A.  
JUDGE

pkk

APPENDIX OF WP (CRL.) 426/2021

## PETITIONER'S EXHIBITS:

Exhibit P1 TRUE COPY OF THE SCHEME OF S.N.TRUSTS.

Exhibit P2 TRUE COPY OF THE RELEVANT PAGE IN AUDIT REPORT AND STATEMENT OF ACCOUNTS FOR THE YEAR ENDED ON 31-3-1999.

Exhibit P3 TRUE COPY OF THE RELEVANT PAGE 88 IN THE LEDGER OF S.N.TRUSTS 11/2/1999

Exhibit P4 TRUE COPY OF THE RELEVANT PAGE OF THE AUDIT REPORT AND STATEMENT OF ACCOUNT UNDER HEAD INVESTMENT AND SECURITIES AT PAGES 96 AND 97 OF THE LEDGER.

Exhibit P5 TRUE COPY OF THE COMPLAINT IN C.M.P. NO.5916/2004 DATED 27-9-2004 FILED BY THE 4TH RESPONDENT BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM.

Exhibit P6 TRUE COPY OF THE SWORN STATEMENT OF 4TH RESPONDENT BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM IN C.M.P.NO.5916/2004 DATED 27-9-2004.

Exhibit P7 TRUE COPY OF THE STATEMENT OF THE COMPLAINANT DATED 20.01.2009 AND ITS TYPED COPY.

Exhibit P7(A) TRUE COPY OF THE STATEMENT OF THE COMPLAINANT AND ITS TYPED COPY.

Exhibit P8 TRUE COPY OF THE RELEVANT PAGES OF THE AUDIT REPORT.

Exhibit P9 TRUE COPY OF THE RELEVANT PART OF FINAL REPORT AND CHARGE SHEET WITH BRIEF FACTS OF THE CASE.

Exhibit P10 TRUE COPY OF THE LETTER DATED 1-7-2020 TO THE 3RD RESPONDENT

Exhibit P11 TRUE COPY OF THE REPLY LETTER DATED 3-7-2020 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

Exhibit P12 TRUE COPY OF THE LETTER DATED 4.7.2020.

Exhibit P13 TRUE COPY OF THE STATEMENT OF SRI.DEEPAK DATED 22-2-2007 AND ITS TYPED COPY.

Exhibit P14 TRUE COPY OF THE PETITION FILED BY ONE DEEPAK BEFORE THE 2ND RESPONDENT DATED 11-8-2020.

Exhibit P14(A) TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT



- Exhibit P15 TRUE COPY OF THE STATEMENT OF PROF.G.SATHYAN RECORDED B INVESTIGATING OFFICER ON 28-2-2011 AND ITS TYPED COPY.
- Exhibit P16 TRUE COPY OF THE STATEMENT OF PRASANNA KUMARI THEN L.D.CLERK RECORDED EARLIER AND ITS TYPED COPY.
- Exhibit P17 TRUE COPY OF THE SUMMONS DATED 13/9/2021 IN C.C.NO.50/2020 FROM THE CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM SENT TO THE PETITIONER FOR HIS APPEARANCE ON 8-12-2021.
- Exhibit P18 TRUE COPY OF THE CRL.M.P 2276/2021 DATED 13/12/2021 IN C.C 50/2020 BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM
- Exhibit P19 TRUE COPY OF THE CRLM.P. 2275/2021 IN C.C. 50/2020 BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM DATED 13/12/2021

APPENDIX OF WP (CRL.) 98/2022

## PETITIONER'S EXHIBITS

Exhibit P1 TRUE COPY OF THE JUDGMENT IN WPC NO  
36361/2016 DATED 27.3.2018

Exhibit P2 TRUE COPY OF THE JUDGMENT IN WPC NO  
36233/2018 DATED 18.3.2019

Exhibit P3 TRUE COPY OF THE JUDGMENT IN OP (CRL) NO  
223/2020 DATED 8.7.2020

Exhibit P4 TRUE COPY OF THE FINAL REPORT SUBMITTED BY  
THE POLICE IN CC NO 50/2020 ON THE FILE OF  
CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM  
(CRIME NO 727/2004 OF KOLLAM EAST POLICE  
STATION

Exhibit P5 TRUE COPY OF THE JUDGMENT IN OP (CRL) NO  
367/2021 DATED 26.10.2021

Exhibit P6 TRUE COPY OF THE LETTER DATED 14.12.2021 SENT  
BY MR. RADHAKRISHNAA PILLAI, A RETIRED DEPUTY  
SUPERINTENDENT OF POLICE TO MR SHAJI SUGUNAN  
SUPERINTENDENT OF POLICE HEAD OF SPECIAL  
INVESTIGATION TEAM

Exhibit P7 TRUE COPY OF THE ENTIRE BOOKLET OF YOGANADAM  
DATED 1.12.2021

Exhibit P8 TRUE COPY OF THE LETTER DATED 16.12.2021  
WRITTEN B MR. SHAJI SUGUNAN TO ADDL D.G.P  
(CRIMES )ALONG WITH TRUE TYPED LEGIBLE COPY

Exhibit P9 TRUE COPY OF THE LETTER DATED 30.12.2021 BY  
ADDL D.G.P (CRIMES) TO SUPERINTENDENT OF  
POLICE CRIME BRANCH KOLLAM AND PATHANAMTHITTA

Exhibit P10 TRUE COPY OF THE PROCEEDINGS NOTED BY CHIEF  
JUDICIAL MAGISTRATE COURT, KOLLAM IN C.C.NO  
50/2020 ON 1.1.2022