

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 12TH DAY OF APRIL 2023 / 22ND CHAITHRA, 1945

WP(CRL.) NO. 227 OF 2023

PETITIONER:

AJI KRISHNAN
AGED 54 YEARS, S/O.C.K.KRISHNAN,
FOUNDER-SECRETARY, HRDS INDIA,
CHANDRANAGAR,
PALAKKAD,
RESIDING AT 3B,
SKYLINE GRACE PALA.P.O,
KOTTAYAM, PIN - 686575

BY ADV SHAJAHAN K.M.

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY PRINCIPAL SECRETARY
CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS,
4TH AND 5TH FLOOR,
HOTEL SAMRAT CHANAKYAPURI,
KAUTILYA MARG
NEW DELHI, PIN - 110021
- 2 PREVENTIVE COMMISSIONER, CUSTOMS
CUSTOMS OFFICE,
CATHOLIC CENTRE, 5TH FLOOR BROADWAY,
ERNAKULAM, PIN - 682031
- 3 MR. PINARAYI VIJAYAN
CHIEF MINISTER,
KERALA GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, PIN - 695001
- 4 DIRECTOR - ENFORCEMENT

- HEADQUARTERS OFFICE
DIRECTORATE OF ENFORCEMENT
PRAVARTHAN BHAVAN, APJ ABDUL KALAM ROAD
NEW DELHI, PIN - 110011
- 5 ADDITIONAL DIRECTOR
ENFORCEMENT DIRECTORATE
KOCHI ZONAL OFFICE, M.G ROAD,
P.T USHA SUB ROAD
ERNAKULAM, PIN - 682011
- 6 SMT. SWAPNA SURESH
401, 4TH FLOOR, A3 HOME
ANUP LAYOUT, MAHADEVAPURAM
HOODI CIRCLE,
BANGALORE, PIN - 560048
- 7 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM PIN - 682031
- BY ADVS.
SRI.S.MANU, DEPUTY SOLICITOR GENERAL OF INDIA
SRI. P.G. JAYASHANKAR, SC
SRI.K.GOPALAKRISHNA KURUP (SR.) ADVOCATE GENERAL
SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR
SHRI.V.MANU, SENIOR G.P.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 22.03.2023, THE COURT ON 12.04.2023 DELIVERED
THE FOLLOWING:

BECHU KURIAN THOMAS, J.

W.P.(CrI) No.227 of 2023

Dated this the 12th day of April, 2023

JUDGMENT

Petitioner seeks for a direction to the Customs and Enforcement Directorate, Government of India to conduct a fair and time bound investigation into allegations of money laundering and illegal gold smuggling, taking into consideration the statements made by the accused with regard to the involvement of high-ranking political functionaries of the State. Petitioner has also sought further directions to monitor the investigation by the said two agencies.

2. According to the petitioner, on 05.07.2020, the Customs and Preventive Commissionerate had seized 30 Kgs of gold from a diplomatic cargo and on preliminary enquiry, the Customs found that the 6th respondent - Ms.Swapna Suresh, had played a major role in gold smuggling activities. According to the petitioner, the 6th respondent had made various revelations in her statement regarding the involvement of several persons,

based upon which, a show-cause notice dated 29.07.2021 was issued to six persons. Petitioner also alleges that even though the show-cause notice mentioned the involvement of persons holding constitutional posts in the State in the illegal export of foreign currency, using diplomats of the Consular General's Office, no serious investigation was conducted into the said allegation. Petitioner further alleges that in the statements of the 6th respondent and another person by name Sri.P.S.Sarith, they had detailed the involvement of Sri.P.Sreeramakrishnan, the then Speaker of the Kerala Legislative Assembly. According to the petitioner, despite these allegations and statements, no investigation was conducted by the Customs, especially into the allegations against Chief Minister Sri. Pinarayi Vijayan and curiously, he was left out of the investigation.

3. Petitioner also alleges that the 6th respondent had, in various press conferences and interviews, apart from her autobiographical book, specifically mentioned the involvement of the Chief Minister of Kerala Sri. Pinarayi Vijayan and his family, as well as that of the former Speaker Sri. P.Sreeramakrishnan and other high ranking officials in the office of the Chief Minister in the gold smuggling, money laundering and other corrupt

activities. Petitioner alleges that the investigation failed to concentrate on the involvement of these personalities. Though the Customs and the Enforcement Directorate had initially proceeded with the investigation, it has come to a standstill, enabling the accused to tamper with the evidence. It is also alleged that the investigating agencies have miserably failed to investigate the role of the persons mentioned. Thus the petitioner has sought a fair, transparent and time-bound investigation.

4. Sri.K.Gopalakrishna Kurup, learned Advocate General, assisted by Sri. P. Narayanan learned Public Prosecutor took up a preliminary objection to the maintainability of the writ petition. In view of the said objection, notice to 3rd and 6th respondents was dispensed with for the time being.

5. Though six reasons were stated as rendering the writ petition not maintainable, they can be categorized as three for the purpose of brevity. They are:

(i) absence of pleadings regarding the credentials, antecedents and other details of the petitioner;

(ii) unsubstantiated allegations have been raised against high constitutional functionaries in the State by producing documents the source of which have not been

mentioned while efficacious, alternative remedies otherwise exist;

(iii) the factual issues in the Writ Petition have already been settled by two judgments of Division Benches of this Court.

6. The preliminary objections to the maintainability were requested to be considered at the threshold. Therefore I heard Sri.K.M.Shajahan, the learned counsel for the petitioner as well as Sri.K.Gopalakrishna Kurup, the learned Advocate General on those questions.

7. One of the main objections is with regard to the failure to reveal material facts in the writ petition, which is alleged by the respondents to be actually a public interest litigation camouflaged as a private litigation.

8. Petitioner was allegedly the employer of Ms.Swapna Suresh (6th respondent), which is evident from Annexure R7(c). This fact has not been mentioned in the writ petition. Further, the petitioner is an accused in a criminal case in which he had approached this Court with a bail application wherein his connection with Ms. Swapna Suresh was mentioned. Since the petitioner failed to reveal his true identity and his connection with the sixth respondent in the writ petition, it is contended that

the writ petition must be dismissed, as he had not come with clean hands.

9. On a perusal of the pleadings in the writ petition, this Court could not identify any reference to the petitioner's identity or his connection with the 6th respondent. In the decision in **State of Jharkhand v. Shiv Shankar Sharma and Others** (2022 SCC OnLine SC 1541), it has been observed that the locus of the person who initiates litigation of public interest is of significance as this important form of litigation can be abused by motivated individuals. It was further observed that non-disclosure of the credentials of the petitioner and the past efforts made for similar reliefs discredits such public interest petitions. After referring to various decisions, the court concluded that the locus of the petitioner is crucial for a proper determination of the lis; its absence can disentitle reliefs claimed in a public interest litigation.

10. Though in the present case, petitioner has not specifically referred to his credentials nor revealed his connection with the 6th respondent, considering the public importance involved in the case and also since a criminal investigation can be triggered by any person, the absence of pleading as to the

credentials of the petitioner, by itself, need not de-suit the petitioner in this case. In **Shiv Shankar Sharma's** case (supra), the writ petitioner's father and the Chief Minister had an old enmity and a personal vendetta, and he was, in fact, one of the witnesses for the prosecution in the case against the father. These facts were suppressed. However, in the present case, the circumstances differ, and the omitted details cannot be treated as material to dismiss the writ petition at the threshold in the peculiar circumstances of this case, though the fact of the petitioner having been an employer of the 6th respondent ought to have been ideally mentioned.

11. Objections regarding the imperfections in the affidavit vis-a-vis the documents filed as required under Rule 174 of the Rules of the High Court of Kerala, 1971 and the availability of alternative remedies are also not sustainable objections in the peculiar circumstances of this case.

12. The objectionable document produced by the petitioner is the show-cause notice issued by the Customs Department. The source from which the petitioner received the said document has not been mentioned either in the pleadings or in the affidavit. In this context, it is relevant to mention that attaining

high levels of probity in public life is essential for the development of a nation. If a document is available in the hands of any person which can throw light into allegations of impairment of such probity, especially that of constitutional functionaries, this Court cannot shut its doors to such documents on the specious plea that the source from which those documents were received has not been revealed.

13. In this context, the observations of the Supreme Court in **Yashwant Sinha and Others V. Central Bureau of Investigation through its Director and Another** [(2019) 6 SCC 1] are relevant. It was observed that "*there can be no dispute that the manner in which evidence is got, namely, that it was procured in an illegal manner would not ordinarily be very significant in itself in regard to the court's decision to act upon the same.*" Thus failure to reveal the source from which a document was procured cannot be a reason for dismissing a writ petition as not maintainable.

14. Also, in **Sakiri Vasu v State of Himachal Pradesh and Others** [(2008) 2 SCC 409], the Supreme Court had held that the constitutional courts must discourage petitions under Article 226 of the Constitution of India to monitor the

investigation or to register a crime. However, the principle of availability of alternative remedies is a rule of discretion. In appropriate cases, this Court can, especially when public interest demands, decide to issue appropriate directions as the circumstances may warrant. The rule of discretion based on the principle of alternative remedy cannot be raised by respondents to throw out a lis at the threshold itself, especially in a case of this nature where allegations of far reaching consequences are made. Of course, the court can base its conclusion on the existence of alternative remedies to dismiss a writ petition. Therefore those two objections are also not sustainable in the present scenario to dismiss the writ petition as not maintainable.

15. Another objection raised is that the fact in issue in this writ petition is covered by two other judgments of this Court and both of them being judgments of the Division Bench, petitioner cannot maintain a fresh writ petition. The aforesaid objection being substantial requires detailed consideration.

16. In the decision in **Kunga Nima Lepcha and Others v. State of Sikkim and Others** [(2010) 4 SCC 513] it was observed that the Court must always be wary of the implication of a direction to register a crime and to conduct an investigation

against a particular person as the consequences could be drastic especially when the person against whom such an order is issued is a high ranking functionary in one of the organs of the State. It was observed in that decision that a direction of far-reaching nature could be misused by the political parties for their vested interests, and therefore, courts must be cautious in issuing directions when high ranking constitutional functionaries are involved. The court further noted that a constitutional court could not be used as a forum for playing political tricks.

17. Further, in **Manohar Lal Sharma v. Union of India and Others** [(2017) 11 SCC 731], the Supreme Court had observed that the court has to be on guard while ordering an investigation against important constitutional functionaries/officers or any person in the absence of some cogent legally cognizable material.

18. With the caution required to be adopted in a case of this nature, especially when allegations are levelled against the incumbent Chief Minister of the State and the former Speaker of the Assembly, it is apposite to take note of the two judgments referred by the learned Advocate General as binding precedents to this lis. In the decision in **Michael Varghese v. Honourable**

Pinarayi Vijayan, Chief Minister of Kerala and Others [(2020) SCC Online Ker 2794] and in **Michael Varghese v. Pinarayi Vijayan and Others** [(2020) 5 KHC 581] this Court dismissed writ petitions seeking directions for setting the criminal law in motion against the Chief Minister of Kerala in relation to the gold smuggling case and other scams. The Division Bench, after exhaustively considering the matter, held that the remedies evolved by writ jurisdiction are of an extraordinary nature, and circumstances did not warrant issuance of directions sought for.

19. The aforesaid two cases relate to and include the very same issue in this lis. Revelations allegedly made by Ms.Swapna Suresh and Sri.P.S.Sarith are the basis of all the writ petitions. After considering the nature of the revelations, a Division Bench of this Court dismissed both those writ petitions.

20. Petitioner claims practically the same relief as in the two writ petitions mentioned above. Those two writ petitions also sought relief of fair and impartial investigation into the allegations of gold smuggling and other scams by the different investigating agencies. Though the writ petitioner herein is different from the earlier writ petitions, that by itself is not a

reason to entertain this writ petition or ignore the two Division Bench judgments of this Court. When a public cause is sought to be agitated by a person, and the same is rejected after detailed consideration, it is not open for another member of the public to agitate the very same issue merely by a change in the name of the petitioner. If another member of the public is aggrieved by such a judgment, his remedy is generally to seek a review of that judgment in accordance with law. Otherwise, there can be a multitude of litigations. The plurality of litigations can even derail the administration of justice. Therefore caution has to be adopted before entertaining such writ petitions. In view of the earlier judgments referred to above, I am of the view that the preliminary objection raised by the learned Advocate General has merit, and the writ petition is liable to be dismissed.

21. Notwithstanding the above, courts must be circumspect before denying relief on the basis of technicalities. The nature of reliefs claimed and the merit of the allegations can also be probed into in appropriate cases. In this context, the observations of the Supreme Court in **National Confederation of Officers Association of Central Public Sector Enterprises and Others v. Union of India and Others** (2022) 4 SCC 764

are relevant.

22. Therefore, notwithstanding the non-maintainability of this writ petition, it is pertinent to mention that the Standing Counsel for the Customs Department had submitted that based upon Ext.P1 show-cause notice, where a reference is made to the involvement of high constitutional functionaries, the Customs had questioned the witnesses and later filed two complaints as C.C. No.1013 of 2021 relating to the issue of gold smuggling and C.C. No.704 of 2022 relating to the issue of illegal import of foreign currency, both before the Additional Chief Judicial Magistrate's Court, (ED) Ernakulam.

23. When the Customs had, pursuant to the show-cause notice, conducted an investigation and filed complaints based on the materials collected, a direction to conduct a further investigation into the involvement of other persons ought not to be indulged in by this Court in the exercise of the Jurisdiction under Article 226 of the Constitution, unless there are exceptional circumstances. Except for assumptions and surmises, no material has been produced by the petitioner to countenance such exceptional circumstances. The complaints already filed are under the Customs Act, and they are pending consideration.

24. As mentioned earlier, there are no materials available to arrive at a conclusion in this writ petition that the decision to proceed only against the persons mentioned in C.C. No.702 of 2022 and C.C. No.1073 of 2021 is based on any wrong conclusion or faulty investigation. Further, there are sufficient provisions under law to add parties in case any offence is revealed later as having been committed by any person. Therefore the first relief claimed by the petitioner does not arise for consideration even on merits.

25. The learned Central Government Counsel had also submitted that, pursuant to the revelation of gold smuggling, a case had been registered as ECIR No.31/2020, and few persons have already been arrested. It was also submitted that prosecution has also been initiated under the Prevention of Money Laundering Act, 2002, as S.C. No.6160 of 2020 on the files of the Special Court. The Central Government Counsel further submitted that another crime has also been registered by the Enforcement Directorate as ECIR No.9/2021 and the investigation is being continued.

26. In view of the launching of the case as S.C. No.6160 of 2020 before the Special Court and the continuing investigation

as ECIR No.9/2021, the relief of fair and just investigation and for monitoring of the investigation cannot arise. Yet again, no materials are available to assume that the investigation is not being conducted properly. Other than assumptions that the investigation is not being conducted properly, petitioner has not produced any material before this Court to arrive at a conclusion that the investigation would proceed contrary to law.

27. On an appreciation of the above circumstances, it is evident that even the very apprehension expressed by the petitioner regarding the non-conduct of a fair and proper investigation is without any basis. The Customs as well as the Enforcement Directorate, have conducted or are conducting proper investigations. There are also no reasons to assume that if the involvement of any person is revealed in the investigation, they will not be proceeded against. For, the dictum "Be you ever so high, the law is above you" applies with equal vigour to all, irrespective of status or position.

In view of the above, the writ petition is dismissed.

Sd/-

BECHU KURIAN THOMAS
JUDGE

vps

APPENDIX OF WP (CRL.) 227/2023

PETITIONER'S/S' EXHIBITS

- EXHIBIT 1 TRUE COPY OF SHOW CAUSE NOTICE NO. 47/2020-21, OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE), COCHIN DATED 29.07.2021
- EXHIBIT 2 TRUE COPY OF THE COMPLAINT FILED UNDER SECTION 137 READ WITH SECTION 135 OF THE CUSTOMS ACT, 1962 FURTHER READ WITH SECTIONS 190(1) (A) AND 200 OF THE CODE OF CRIMINAL PROCEDURE, 1973 BEFORE THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT (ECONOMIC OFFENCE), ERNAKULAM
- EXHIBIT 3 TRUE COPY OF THE ITINERARY OF HHHH SHEIKH DR. SULTAN BIN MUHAMMED AL-QASIMI, EMIR OF SHARJAH TO KERALA FROM 24TH TO 27TH SEPTEMBER 2017
- EXHIBIT P4 VIDEO CLIP OF THE PRESS CONFERENCE CONDUCTED BY SMT.SWAPNA SURESH ON AUGUST 1, 2022
- EXHIBIT P5 TRUE COPY OF THE RELEVANT PAGES OF THE AUTOBIOGRAPHY WRITTEN BY SMT. SWAPNA SURESH NAMED "CHATHIYUDE PADMAVYUHAM" IN MALAYALAM
- EXHIBIT P6 TRUE COPY OF THE LETTER NO.HRDS/STHP/2295/22 DATED 28/10/2022 SUBMITTED BY THE PETITIONER TO SHRI.S.R.BARUA, PRINCIPAL SECRETARY OF CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS, NEW DELHI
- EXHIBIT P7 TRUE COPY OF THE ACTIVITIES OF THE ED BETWEEN 10TH JUNE, 2022 AND 10TH DECEMBER 2022
- EXHIBIT P8 TRUE COPY OF LETTER NO.HRDS/STHP/2169/22, WITHOUT ANNEXURES

DATED 16TH SEPTEMBER, 2022 SENT BY THE
PETITIONER TO 4TH RESPONDENT

RESPONDENT'S/S' EXHIBITS

- ANNEXURE R7 (a) TRUE PHOTOCOPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN GEORGE VATTUKULAM VS STATE OF KERALA AND OTHERS (2020 SCC ONLINE KER 951)
- ANNEXURE R7 (b) TRUE PHOTOCOPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN SREENATH PADMANABHAN VS STATE OF KERALA AND OTHERS (2019 SCC ONLINE KER 22716)
- ANNEXURE R7 (c) TRUE PHOTOCOPY OF THE BAIL APPLICATION NO. 9779 OF 2022 WITH ANNEXURES, OF A COPY OF WHICH WAS SERVED AT THE OFFICE OF THE STATE PUBLIC PROSECUTOR
- ANNEXURE R7 (d) TRUE PHOTOCOPY OF THE ORDER DATED 26.10.2017 OF THE HONOURABLE HIGH COURT OF DELHI IN WRIT PETITION (CRL) NO. 1938/2017
- ANNEXURE R7 (e) TRUE PHOTOCOPY OF THE JUDGMENT DATED 23.05.2018 OF THIS HONOURABLE COURT IN WRIT PETITION (CIVIL) NO. 32894/2017
- ANNEXURE R7 (f) TRUE PHOTOCOPY OF THE JUDGMENT IN KUNGA NIMA LEPCHA AND OTHERS VS. STATE OF SIKKIM AND OTHERS 2010(4) SCC 513
- ANNEXURE R7 (g) TRUE PHOTOCOPY OF THE ORDER OF THE APEX COURT IN COMMON CAUSE (A REGISTERED SOCIETY) AND OTHERS V. UNION OF INDIA AND OTHERS REPORTED IN 2017 KHC 6041 ((2017) 11 SCC 783)
- ANNEXURE R7 (h) TRUE PHOTOCOPY OF THE JUDGMENT OF THE APEX COURT IN CIVIL APPEALS ARISING OUT OF SLPS NUMBERED 10622 AND 10623 OF 2022 (STATE OF JHARKHAND VS. SHIV SHANKAR SHARMA

- ANNEXURE R7 (i) TRUE COPY OF JUDGMENT IN SAKIRI VASU VS. STATE OF UTTAR PRADESH AND OTHERS (2008) 2 SCC 409
- ANNEXURE R7 (j) TRUE COPY OF JUDGMENT IN SUDHIR BHASARRAO TAMBE VS. HEMANT YASHWANT DHAGE AND OTHERS (2016) 6 SCC 277
- ANNEXURE R7 (k) TRUE COPY OF JUDGMENT IN ANANDWARDHAN AND ANOTHER VS. PANDURANG AND OTHERS (2005) 11 SCC 195
- ANNEXURE R7 (l) TRUE COPY OF JUDGMENT IN VINUBHAI HARIBHAI MALAVIYA AND OTHERS VS. STATE OF GUJARAT AND OTHER (2019) 17 SCC 1
- ANNEXURE R7 (m) TRUE PHOTOCOPY OF THE JUDGMENT IN WRIT PETITION (CIVIL) NO. 14316 OF 2020 (MICHAEL VARGHESE VS HONOURABLE PINARAYI VIJAYAN CHIEF MINISTER OF KERALA AND OTHERS REPORTED IN 2020 SCC ONLINE KER 2794)
- ANNEXURE R7 (n) TRUE PHOTOCOPY OF THE JUDGMENT IN WRIT PETITION (CIVIL) NO. 22063 OF 2020 (MICHAEL VARGHESE V. PINARAYI VIJAYAN AND OTHERS REPORTED IN 2020 (5) KHC 581)
- ANNEXURE R7 (o) TRUE PHOTOCOPY OF THE JUDGMENT IN SIDDIQUE VS. DISTRICT COLLECTOR AND OTHERS (2006 KHC 1032)