IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 26TH DAY OF NOVEMBER 2021 / 5TH AGRAHAYANA, 1943

CRL.MC NO. 1981 OF 2017

AGAINST THE ORDER/JUDGMENT IN CC 3370/2016 OF JUDICIAL MAGISTRATE OF FIRST CLASS, VADAKKANCHERRY

PETITIONER/ACCUSED NOS.14 & 15:

1 *ASOKAN,*
S/O.NARAYANAN NAIR, ASOKA MANDIRAM HOUSE,
CHELAMATTOM DESOM, CHELAMATTOM VILLAGE, ERNAKULAM

2 *SOJAN,*
AGED 51 YEARS, S/O.VARUNNI, CHIRAYATHMANJALI HOUSE, MANJAKKAD DESOM, MANJAKKAD VILLAGE, OTTAPALAM TALUK.

BY ADV SRI.C.P.UDAYABHANU

RESPONDENT/COMPLAINANT:

THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

SRI.ARAVIND MATHEW, GOVERNMENT PLEADER FOR RESPONDENT

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10.11.2021, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

O R D E R

The petitioners are the accused Nos.14 and 15 in C.C.No.3370 of 2016 on the file of the Judicial First Class Magistrate Court, Vadakkancherry. The aforesaid case was registered as Crime No.774 of 2012 for the offences punishable under Section 5(a) of the Kerala Rationing Order read with Sections 3(2) (c) (d), 7(i) (a) (ii) and Section 8 of the Essential Commodities Act.

2. The case of the prosecution is as follows:

On 29.12.2012, during a search carried out by the Erumapetty Police in the shop of one Joseph Gregory, who is the 1st accused in the case, certain quantity of sugar packed in sacks, which were supplied to certain ration dealers, were found in his premises. As the aforesaid sugar was procured by the 1st accused in violation of the Kerala Rationing Order, Crime No.774 of 2012 was registered and investigation was conducted. After completing the investigation, Annexure-A1 final report was submitted implicating fifteen accused persons including the

petitioners herein. The 1st petitioner/14th accused was working as Taluk Supply Officer at the time of commission of the offence and before filing the charge sheet, he retired from the service. The 2nd petitioner/15th accused, is another public servant who was implicated in the offence on the allegation that the offences were committed with his connivance. Even though yet another public servant was implicated as 16th accused, as no sanction under section 15A of Essential Commodities Act, to prosecute him was granted by the Secretary, Civil Supplies Department, his name was not included when the charge sheet was filed.

3. The contention of the petitioners is that Annexure-A1 final report is a clear abuse of process of law as the prosecution case has been initiated in violation of the statutory stipulations contained in Section 15(A) of Essential Commodities Act, 1995 and in such circumstances, they seek to quash the proceedings as against them.

3. Heard the learned counsel for the petitioners and the learned Public Prosecutor.

4. The learned counsel for the petitioners contends that as per Section 15(A) of Essential Commodities Act, no court can take cognizance against a public servant for the offences punishable under the Act except with the previous sanction of the State Government. The aforesaid provision reads as follows:

> "15-A. Prosecution of public servants. - Where any person is a public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his duty in pursuance of an order made under Section 3, no court shall take cognizance of such offence except with the previous sanction-
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> (a) of the Central Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union;
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> (b) of the State Government, in the case of a person who is employed or, as the case may be was at the time of commission of the alleged offence employed, in connection with the affairs of the State."

5. It is contended that as per Section 15A(b), it is specifically stipulated that, sanction is required for taking

cognizance against a public servant who was employed at the time of commission of alleged offence. It is contended that, in this case, as regards to the prosecution of 1st petitioner/14th accused is concerned, no sanction was obtained by the Government as required under Section 15A on the ground that the 1st petitioner retired from the service by the time the charge sheet has been submitted. It is to be noted that going by the statutory stipulation as contained in Section 15A(b), even for a public servant who retired subsequently, sanction is a mandatory requirement, if the alleged acts were committed while the said accused was on duty at the time of commission of crime. In this case, admittedly, the 1st petitioner was in the service at the time of commission of offence and hence, in the absence of any sanction as contemplated under Section 15A, the prosecution could not have launched against him. Annexure-A1 clearly indicate that the sanction was obtained only in respect of 2nd petitioner/15th accused and no such sanction has been obtained in the case of the 1st petitioner. The aforesaid finding is fortified by the principles laid down by the Honourable Supreme Court in

R.Balakrishna Pillai v. State of Kerala and Another [(1996) 1 SCC 478]. In the said decision, the Honourable Supreme Court considered a similar issue in the light of section 197 of Cr.P.C, which contain similar stipulation as that of section 15A of the Essential Commodities Act. In the light of the above, entire proceedings initiated against the 1st petitioner is vitiated.

6. Next contention of the learned counsel for the petitioner is with regard to the impropriety in the sanction obtained for prosecuting the 2nd petitioner/15th accused. Annexure-A6 is the order of sanction issued by the Government. The aforesaid order would reveal that absolutely no reasons are stated for according sanction for prosecution. The order is completely silent as to whether appropriate authority has considered the relevant materials before granting sanction for prosecuting him. It is contended that, grant of sanction is not a mere formality, as the same is provided in the statute for ensuring a protection to the public servant from unwanted criminal prosecution in respect of the acts which he carried out during the course of his duties. In such circumstances, the

concerned authority was having a bounden duty to examine the materials unearthed by the investigating officer and a subjective satisfaction ought to have been arrived at by the competent authority before according sanction for prosecution. The aforesaid subjective satisfaction and the grounds on which such satisfaction was arrived at also should be mentioned in the order of sanction. Unfortunately, in this case, no such reasons are stated in Annexure-A6. In such circumstances, the learned counsel for the petitioners contends that the sanction is improper. He placed reliance upon the judgment and observations made by the Honoruable Supreme court in **Jaswant Singh v. State of Punjab [AIR 1985 SC 124]**, wherein it was observed in paragraph No.4 as follows:

> "4.The sanction under the Act is not intended to be nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness; (Basdeo Agarwala v. Emperor 1945 FCR 93 at p 98:(AIR 1945 FC 16 at p 18). (A) The object of the provision for sanctions is that the authority giving the sanction should be able to consider for itself

> tile evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. In Gokulchand Dwarkadas Morarka v. The King 75 Ind App 30 at p 37: (AIR 1948 PC 82 at p 84) (B) the Judicial Committee of the Privy Council also took a similar view when it observed:"

He also places reliance upon observations made by the Honourable Supreme Court in **Maharashtra State Board of Secondary and Higher Secondary Education v. K.S.Gandhi and Others [1991 (2) SCC 716]**, wherein it was observed as follows:

> "21. Thus it is settled law that the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. It also exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. The order when it effects the right of a citizen or a person, irrespective of the fact, whether it is quasi-judicial or administrative fair play requires recording of germane and relevant precise reasons. The

> recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the Appellate jurisdiction of this Court under Article 136 to see whether the authority concerned acted fairly and justly to meet out justice to the aggrieved person. ”

By placing reliance upon the same, it is contended that as the order of sanction does not contain any specific reasons for granting sanction, the same is improper.

7. I find some force in the said contentions. Going by the principles laid down by the Honourable Supreme Court in the aforesaid judgments, the contents of the order should reflect the materials considered by the authority for the purpose of deciding the necessity for granting sanction for prosecution of the public servant. Without highlighting any reason and without any indication as to the documents perused, no order of sanction should be passed. In this case, the order granting sanction was without any such observations and materials.

8. Moreover, The learned Government Pleader has filed a memo producing the communication bearing No.F8-7176/12 dated 05.07.2021 issued by the District Supply Officer, Thrissur addressed to the Civil Supplies Director, Thiruvananthapuram and another communication issued by the District Police Chief, Thrissur City, addressing District Supply Officer, Thrissur District. From both the above documents produced by the learned Government Pleader, it is evident that it was decided not to proceed against the petitioners herein. As the prosecution against the petitioners herein are permissible only on the basis of sanction, the decision now taken by the respondents; not to proceed against them is having some relevance. In the light of the communications produced by the learned Government Pleader, it is evident that the Government is not intending to proceed against the petitioners herein. In such circumstances, further proceedings against the petitioners herein is an abuse of process of law. The chances of successful prosecution as against the petitioners herein are very bleak in the light of the above aspects. In such circumstances, it is only just and proper that

the proceedings against the petitioners herein are to be quashed by invoking powers of this Court under Section 482 Cr.P.C.

Accordingly, Crl.M.C. is allowed and the proceedings as against the petitioners herein alone in C.C.No.3370 of 2016 on the file of the Judicial First Class Magistrate Court, Vadakkanchery are hereby quashed.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

DG/12.11.21

APPENDIX OF CRL.MC 1981/2017

PETITIONER ANNEXURE

ANNEXURE A1	*CERTIFIED COPY OF THE FINAL REPORT TAKEN COGNIZANCE OF BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, VADAKKANCHERRY AS CC NO.3370/2016*
ANNEXURE A2	*TRUE COPY OF THE REPORT OF TRANSFER OF CHARGE ISSUED TO THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT*
ANNEXURE A3	*TRUE COPY OF THE MAHAZAR PREPARED IN THE SHOP OF THE LICENSEE NO.280 DATED 25.10.2012*
ANNEXURE A4	*TRUE COPY OF ORDER SUSPENDING THE LICENSE OF P.K.VIJAYALAKSHMI DATED 27.12.2012*
ANNEXURE A5	*TRUE COPY OF THE GO(RT) NO.131/2016 FNCSB/DATED 28.5.2016*