IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 29TH DAY OF JANUARY 2024 / 9TH MAGHA, 1945

CRL.REV.PET NO. 866 OF 2023

AGAINST THE ORDER CRL.M.P 1414/2015 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

REVISION PETITIONER/COMPLAINANT:

S. MANIMEKHALA
AGED 60 YEARS

RESPONDENTS:

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

2 ANILA MARY GEEVARGHESE

3 K.C.JOSEPH,
FORMER MINISTER FOR CULTURAL AFFAIRS,

4 THAMPAN,
FORMER DIRECTOR, KERALA BHASHA INSTITUTE,
THIRUVANANTHAPURAM, PIN-695001.

BY ADVS.
SRI.MANOJ P.KUNJACHAN
SRI.BECHU KURIAN THOMAS (SR.)
SRI.PAUL JACOB
RAJESH A,SPL GP VIG.REKHA,PP

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 29.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR

K.BABU, J

Crl.R.P No.866 of 2023

Dated this the 29th day of January, 2024

O R D E R

The challenge in this revision petition is to the order dated 24.4.2018 in Crl.M.P.No.1414/2015 passed by the Enquiry Commissioner and Special Judge, Thiruvananthapuram. The complainant challenges the order rejecting his complaint in this proceeding. The complainant filed the afore complaint alleging corruption in the appointment of Smt.Anila Mary Geevarghese (Respondent No.2 in the Crl.R.P) as Assistant Director of the Kerala Bhasha Institute. Apart from Smt.Anila Mary Geevarghese, the persons arrayed as accused in the complaint are Sri.K.C.Joseph, a Former Minister for Cultural Affairs, and Sri.Thampan, Director, the Kerala Bhasha Institute, Thiruvananthapuram. The Special Judge ordered the Director, VACB, to conduct a preliminary enquiry on the allegations levelled in the complaint. The Director of VACB submitted a report wherein disciplinary action alone was recommended against respondent No.2.

2. The learned Special Judge, after perusing the report and the pleadings in the complaint, held that no materials are disclosed in the complaint to proceed further against the persons arrayed as accused therein and rejected the complaint.

3. Heard Sri.B.Renjith Marar, the learned counsel for the petitioner, Sri.Rajesh.A, the learned Special Government Pleader, Smt.Rekha, the learned Senior Public Prosecutor, Sri.Manoj.P.Kunjachan, the learned counsel for respondent No.2 and Sri.Paul Jacob, the learned counsel for respondent No.3.

4. In the complaint filed before the Special Court, the complainant alleged the following:

> i) Respondent No.2 produced a forged certificate obtained from Melinda Books, Thiruvananthapuram, as a testimonial for securing employment as Assistant Director of the Kerala Bhasha Institute.
>
> ii) By appointing respondent No.2 as Assistant Director of the Kerala Bhasha Institute, the Government suffered pecuniary loss.
>
> iii) Respondent No.2 claimed HRA while staying in the Government quarters allotted to her husband.

iv) The appointment of respondent No.2 on deputation was ordered in violation of the existing Rules.

5. The learned counsel for the petitioner submitted that the Special Court ought not to have rejected the complaint at the threshold even without conducting an enquiry under the Code of Criminal Procedure. The learned counsel for respondent No.2 submitted that the complaint discloses no cognizable offences. The learned counsel for respondent No.3 submitted that the complaint contains no allegation against respondent No.3.

6. Respondent No.2 was employed as a lecturer in a private college. She was appointed as Assistant Director of the Kerala Bhasha Institute. One of the qualifications for appointment as Assistant Director by direct recruitment was experience in editing as per the Special Rules for Kerala State Institute of Languages General Service (Academic and Administrative Branches). In the bio-data, respondent No.2 had declared that she had three years of experience in editing at Melinda Books, Thiruvananthapuram. She produced a copy of the certificate dated 15.6.2006 issued by Sri.Sivankutty Nair, the Manager of Melinda Books stating that respondent No.2 had three years of

experience in editing. In the enquiry, the owner of Melinda Books Sri.Shanavas stated that he had not given any experience certificate to respondent No.2. However, he deposed that Sri.Sivankutty Nair was the Manager of Melinda Books from 2004-2007. He identified the signature of his Manager and office seal on the disputed certificate. The allegation of the complainant is that respondent No.2 obtained the certificate under a conspiracy and that the certificate is a forged one. Essentially, the allegation of the complainant is that the certificate produced by respondent No.2 is a product of forgery. As stated above, the owner of Melinda Books identified the signature in the disputed document as that of the Manager of the firm. He also endorsed that the office seal contained in the disputed document was his firm's.

7. While dealing with the term "forgery" within the meaning of Sections 463 and 464 of IPC, this Court in **Shoma G.Madan v. Kerala State and others** (2023 KHC 9333) observed thus:

> "2. .....Sections 463 and 464 of IPC together define "forgery". Sections 463 & 464 of IPC are extracted below:-
>
> "**463. Forgery**.
>
> Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or

to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464 Making a false document.

A person is said to make a false document or false electronic record—

First —Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;
(b) makes or transmits any electronic record or part of any electronic record;
(c) affixes any [electronic signature] on any electronic record;
(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly —Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly —Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.”

3. The foundation of the offences alleged is “forgery”. The definition of “false document” is a part of the definition

of 'forgery'. Both definitions are interlinked to form the offence. On a reading of the ingredients of the offence of forgery, the following are essential:-

(1) Fraudulently signing a document or a part of a document with the intention of causing it to be believed that such document or part of a document was signed by another or under his authority;

(2) Making such a document with the intention to commit fraud or that fraud may be committed.

4. The elements of mens rea, as per the definition, are dishonestly and fraudulently. Section 24 of the Indian Penal Code defines "dishonestly" as follows:-

"24. "Dishonestly"

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

Section 25 Of IPC defines 'fraudulently' as follows:-

"25. "Fraudulently"

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

5. The word "defraud" includes an element of deceit. Deceit is not an ingredient in the definition of the word "dishonestly" while it is an important ingredient in the definition of the word 'fraudulently. The former involves a pecuniary or economic gain or loss, while the latter excludes that element. In the definition of `dishonestly', wrongful gain or wrongful loss is the necessary ingredient. Both need not exist, and and one would be enough. If the expression "fraudulently" involves the element of injury to the person or persons deceived, it would be reasonable to assume that the injury should be something others than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice versa, it need not necessarily be so. To satisfy the definition of "fraudulently" it would be enough if there was a non-economic advantage to the deceiver or a non-economic loss to the deceived, and both need not co-exist. Therefore, the expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than

> economic loss, that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or nonpecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver but no corresponding loss to the deceived, the second condition is satisfied. (Vide: **Dr. Vimla v. The Delhi Administration** (AIR 1963 SC 1572).”

8. The complainant has no case that anybody fraudulently signed the disputed document with the intention of causing it to be believed that such document or part of the document was signed by another or under his authority. Going by the allegations, I hold that the materials do not disclose the offence of forgery.

9. The complainant further alleges that respondent No.2 had caused pecuniary loss to the Government by receiving salary. Admittedly, respondent No.2 was posted on deputation by protecting her salary in the parent department. She did not avail of any other benefits. Therefore, there is no question of any financial loss caused to the State Exchequer.

10. The complainant also alleges that respondent No.2 had claimed HRA while staying at the Government quarters allotted to her husband. The complainant has no case that respondent No.2 was

allotted quarters. HRA could be denied only to the allottee of Government quarters.

11. The further allegation is that as per the Special Rules for the Kerala State Institute of Languages General Service, the minimum age for appointment by direct recruitment is 40 years, and the maximum age is 50 years, whereas respondent No.2 was only 34 years of age at the time of appointment, which is a clear violation of the existing Rules. The learned counsel for respondent No.2 submitted that the Special Rules are applicable only for appointment by direct recruitment. The Government has the power to appoint any person otherwise qualified to the post of Assistant Director on deputation. Admittedly, the appointment of respondent No.2 was made pursuant to a Government Order.

12. The complainant contends that respondent Nos.2 and 4 abused their official position as public servants, leading to corruption.

13. The learned counsel for the petitioner submitted that a particular kind of corruption that has become more rampant of late is nepotism to promote the interests of those near and dear to the public servants. A public servant can be prosecuted under Section 13(1)(d) of the PC Act only if he or she has abused his or her

position as a public servant and obtained any valuable thing or pecuniary advantage for himself or any other person.

14. The allegation against respondent Nos.2 and 4 is that respondent No.2 was posted as Assistant Director of the Kerala Bhasha Institute by giving a go-bye to the Rules laid down. It is to be noted that there are absolutely no allegations against respondent No.3. The question is, can any criminal liability be fastened upon the respondents for the alleged irregularity in the appointment in the absence of a specific allegation in reference to corruption or cheating?

15. In **Raju v. State of Kerala** (2022(1) KLT 585) this Court had occasioned to consider a similar facts situation. In **Raju** (supra) this Court observed thus:

> "73. When a person has worked in a post and when he has received or obtained the salary and allowances as remuneration for his work, it cannot be found that he has obtained any 'pecuniary advantage' within the meaning of S.13(1)(d) of the Act.
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> 74. As far as the appointment of the eighth accused is concerned, the role of the second accused is that he was a member of the Managing Committee who took the decision to appoint the eighth accused as System Analyst. In view of the facts stated earlier relating to the appointment of the eighth accused on temporary basis in the post of System Analyst and the subsequent ratification of such appointment by the

Guruvayoor Devaswom Commissioner, the charge against the second accused in connection with such appointment, for an offence under S.13(1)(d) of the Act, can have no basis.

75. In Dr.Dhananjai Kumar Pandey v. Central Bureau of Investigation (2015(4) KLT OnLine 3515 (Bom.) = 2015 SCC OnLine Bom 5625), the basis of the allegation against the accused that they committed offence under S.13(1)(d) read with 120B of the I.P.C. was that accused 1 to 4 in that case entered into criminal conspiracy and by abusing their official position as public servants, recruited Dr.Dhananjay Kumar Pandey as Scientist by grossly violating and flouting the procedures laid down and thereby showed undue favour to him, who did not have the requisite qualification and experience to hold that post and who was reported to be closely associated/related with the first accused therein, and he was selected by overlooking other suitable/eligible candidates. The Bombay High Court quashed the F.I.R., by stating as follows:

> "The allegations against the present petitioner are that the other accused persons ie accused nos. 1 to 4 have selected the present petitioner for the post of Scientist by giving go by to the procedure laid down. The entire contents of the FIR are relating to the alleged irregularities committed by the accused nos. 1 to 4 while selecting the present petitioner/accused No.5 which do not constitute any offence under the Penal Code, 1860 or Prevention of Corruption Act..... If at all there were irregularities while selecting the present petitioner or his wife Dr.Anju Pandey to the particular post, the concerned Department can look into the matter and see whether really some concession was given to the present petitioner or his wife at the time of their selection. Even assuming for time being, the accused Nos.1 to 4 have not followed the procedure and they have given some concession to the present petitioner even then such act could give rise only to initiate departmental inquiry but in any way no criminal liability can be fasten upon the accused in absence of a specific allegation in reference to the cheating or corruption.”

16. A mere violation of the procedure in appointing a person to a particular post does not always lead to the inference that the appointee and the appointing authority had a dishonest intention in making such appointment.

17. In **Ramesh Chennithala v. State of Kerala** (2018 KHC 716) this Court held as follows:

> "37. It appears that there is a misconception among the officers of the VACB and the Police that loss caused to the Government or the Public Exchequer by a public servant in the discharge of his official functions is a ground for proceeding against him under the P.C Act. This misconception is the result of the wrong understanding of the scope and object of the Prevention of Corruption Act. For a prosecution against a public servant on the allegation of corruption or criminal misconduct as meant and defined under the PC Act, the public servant must have either accepted illegal gratification or undue advantage for himself or any other person for anything done as part of his official functions as a public servant, or he must have dishonestly or fraudulently misappropriated money from public funds, or must have otherwise converted for his own use any property entrusted to him, or under his control as a public servant in the discharge of his official functions, or he must have enriched himself illicitly, or must have acquired pecuniary resources or property disproportionate to his known source of income.
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> 38. There can be instances where some benefit or advantage is caused to a person, or such benefit or advantage is derived by a person by the wrongful acts of a public servant or due to his carelessness in the discharge of his duty or due to malfeasance. In such cases, there may be corresponding loss to the Government or the Public Exchequer also. What matters in such cases, is not whether the public servant has

just caused loss to the Government or the Public Exchequer, but whether there has been any vicious link or nexus between him and the person benefited, and whether the public servant caused such benefit to the other person with the knowledge that his act will or may cause such benefit and cause loss to the Government or the Public Exchequer. In short, what is required for a prosecution is not simply that the Government or any Department of the Government or any Public body has sustained any loss. While proving such loss, the prosecution will have also to prove that a corresponding gain was made by the public servant or somebody else in whom he is interested or with whom he has vicious nexus. Just because some loss was caused to the Government or the Public Exchequer or to any public sector undertaking or corporation or public body, by the discharge of functions of a public servant, he cannot be prosecuted under the P.C Act. In short, mere instances of malfeasance or wrong administration or wrong discharge of functions or dereliction of duty will not cause a prosecution under the P.C Act.

39. The VACB will have to make enquiry into different allegations of corruption or misconduct or malfeasance or misfeasance in public offices. In many instances, such enquiry may reveal carelessness or breach of duty or malfeasance or misfeasance or wrong discharge of duty by public servants. In such instances where the VACB could not detect any instance of corruption or criminal misconduct as defined and meant under the law, the VACB can report the facts to the Government or the concerned authority, and on getting such report, the Government or the concerned authority can initiate disciplinary action against the erring public servant. In all cases of malfeasance or misfeasance or wrong administration, or in all cases of loss caused to the Government by the discharge of duty by public servants, a prosecution under the P.C Act cannot be initiated. If it is only a case of dereliction of duty or wrong administration or malfeasance or misfeasance detected on enquiry, only disciplinary action can be initiated against the erring public servant, and if any public servant has caused any wrongful loss to the Government by the discharge of his official functions improperly or wrongfully, or as the result of wrong administration or malfeasance or misfeasance, no doubt, the

> Government or the appropriate authority can recover the loss from him, and also initiate disciplinary action against him."

18. In the present case, the complaint is silent as to whether the person benefitted and the person who effected the appointment are part of a vicious link. There may be cases of misfeasance or, wrong administration. In all cases of malfeasance or, misfeasance or wrong administration, a prosecution under the Prevention of Corruption Act cannot be initiated. Therefore, I hold that the allegations in the complaint do not disclose any material to initiate a prosecution against the party respondents.

19. **Dismissal and Rejection**

Now, I turn to consider the argument of the learned counsel for the petitioner that the complaint ought not to have been rejected as done. This Court in **Biju Purushothaman v. State of Kerala and Others** (2008(3) KHC 24) has comprehensively elaborated the different options available to a Judicial Magistrate on receipt of a written complaint as follows:

> "9. The legal position can thus be summed up as hereinbelow:
> On receipt of a written complaint, the 5 options available to a Judicial Magistrate who is competent to take cognizance of the case can be summarised as follows:-
> 1) Rejection of complaint

If the complaint on the face of it does not at all make out any offence, then the Magistrate may reject the complaint. This power of rejection at the precognizance stage is inherent in any Magistrate and the said power should not be mistaken for the power of dismissal available to the Magistrate under S.203 CrPC since the latter power of dismissal is one which can be exercised only at the post cognizance stage. (See - Raju Puzhankara v. State of Kerala, 2008 (2) KHC 318 :2008 (1) KLD 612 : 2008(2) KLT 467 - Also see CREF Finance Ltd. v. Sree Shanthi Homes (P) Ltd., 2005 KHC 1409: 2005 (7) SCC 467 2005 (4) KLT SN 72 : 2005(2) KLD 347 : 2005 SCC (Cri) 1697: 2005 (127) Comp Cas 311 : 2005 (7) SCC 467, Govind Mehta v. State of Bihar, 1971 CriLJ 1266 : AIR 1971 SC 1708, Nagraj v. State of Mysore, 1963 (2) SCWR 231: 1964 (1) CriLJ 161 : 1964 (3) SCR 671 : AIR 1964 SC 269.)

2) Where the Magistrate does not reject the complaint at the threshold, the Magistrate may, without taking cognizance of the offence, order an investigation by the police under S.156(3) CrPC and forward the complaint to the officer in charge of the police station concerned provided that the complaint alleges the commission of a cognizable offence. Such a course can be adopted by the Magistrate only at the precognizance stage. (See Dilawar Singh v. State of Delhi, 2007 (3) KHC 940 : 2007 (2) KLD 304 (SC) : JT 2007 (10) SC 585 : AIR 2007 SC 3234 and Suresh Chand Jain v. State of M.P., 2001 KHC 155 : 2001(1) KLT 623 : 2001 (2) SCC 628 : AIR 2001 SC 571.) Even a complaint alleging the commission of offences exclusively triable by a Court of Session can also be so forwarded under S.156(3) CrPC. (See-Tula Ram v Kishore Singh, 1977 KHC 215 : 1977 KLT SN 66 : 1977 SCC (Cri) 621 : 1978 CriLJ 8 : 1978(1) SCR 615 : 1977 (4) SCC 459 : AIR 1977 SC 2401). The Station House Officer ("S.H.O," for short) who receives such a complaint forwarded under S.156(3) CrPC will have to treat the complaint as a First Information Report within the meaning of S.154 CrPC and is bound to register a crime and proceed to conduct an investigation as provided under S.157 CrPC. (See Mohammed Yousuff v. Smt. Afaq Jahan, 2006 KHC 67 : 2006 (1) SCC 627 : 2006 (1) KLJ 380 : JT 2006(1) SC 10 : 2006(1) KLD 425 : 2006 (1) SCC (Cri) 460 : 2006 (2) Guj LR 1742 : 2006 (38) AIC 70 (SC): 2006 CriLJ 788 : 2006 (2) All LJ 8 : AIR 2006 SC 705 : 2006 (1) KLT 939 (SC)). The S.H.O. is obliged

to register a crime whether or not such S.H.O. has the territorial jurisdiction to investigate the offence within the meaning of S. 156(1) Cr.PC. In a case where the S.H.O. has no territorial jurisdiction, the S.H.O. will have to register the crime and then transfer the same to the Police Station having jurisdiction. (See - Madhubala v. Suresh Kumar, 1997 KHC 378 : 1997 (2) KLT 358 : AIR 1997 SC 3104 : 1997 CriLJ 3757 : 1997 (8) SCC 476). This power of the Magistrate under S.156(3) CrPC cannot be exercised by him after taking cognizance. (See-Tula Ram v. Kishore Singh, 1977 KHC 215 : 1977 KLT SN 66 : 1977 (4) SCC 459 : 1977 SCC (Cri) 621 : 1978 CriLJ 8 : 1978(1) SCR 615 : AIR 1977 SC 2401 - Also see George v. Jacob Mathews, 1996 KHC 19 : 1996(1) KLJ 76 : ILR 1996 (1) Ker 836: 1996 (1) KLT 73).

3) Taking cognizance of the offence

Where the Magistrate does not order investigation by the police under S.156(3) CrPC at the precognizance stage and does not reject the complaint at the threshold, then the Magistrate may decide to proceed under Chapter XV CrPC and thereby take cognizance of the offence provided the allegations in the complaint prima facie make out an offence. If after applying his mind to the allegations made in the complaint the Magistrate takes judicial notice of the accusations and decides to proceed under Chapter XV CrPC, he can then be said to have taken cognizance of the offence. But if the Magistrate, instead of proceeding under Chapter XV CrPC takes any other action such as issuing search warrant or ordering investigation under S. 156(3) CrPC then he cannot be said to have taken cognizance of the offence. (See -- D.Lakshminarayana v. V. Narayana, 1976 SCC (Cri) 380: 1976 (3) SCC 252: 1976 CriLJ 1361: 1976 (2) SCWR 16: ILR 1976 Kant 1208 : 1976 Supp SCR 524: AIR 1976 SC 1672; Narsingh Das Tapadia v. Goverdhan Das Partani, 2000 KHC 682: 2000 (2) KLJ 904: 2000(7) SCC 183: AIR 2000 SC 2946: 2000(3) KLT 605 (SC); S.K.Sinha, Chief Enforcement Officer v. Videocon International Limited, 2008 KHC 4247: 2008 (2) SCALE 23: 2008 (1) KLD 363: AIR 2008 SC 1213: 2008 (2) SCC 492).

Where the Magistrate chooses to take cognizance of the offence, he may adopt any of the following alternatives:

a) He shall examine on oath the complainant and the witnesses, if any, present. (See S.200 CrPC). This process is

popularly called "the recording of sworn statements". But the Magistrate need not examine the complainant and the witnesses under S.200 CrPC.

i) if the complaint has been made by a public servant acting or purporting to act in the discharge of his official duties; or

ii) if the complaint has been made by a Court or;

iii) if the complaint is made over for enquiry or trial by another Magistrate under S.192 CrPC after the examination under S.200 CrPC. (See Clauses (a) and (b) of the first proviso and see the 2nd proviso to S.200 CrPC.). Issuing process at the S.200 Stage.

If after examining the complainant and the witnesses or if after perusing the averments in the complaint (in the case of a complaint filed by a public servant or a Court), the Magistrate is of the opinion that there is sufficient ground for proceeding, then he shall, if it is a summons case, issue summons to the accused or if it is a warrant case, issue summons or warrant to the accused. (See S.204(1) CrPC.

Rejection of Complaint

At this stage also it is doubtful whether the Magistrate can dismiss the complaint because a dismissal of the complaint under S.203 CrPC (which appears to be the only enabling provision for dismissal of a complaint on the merits) can only be after considering the result of enquiry or investigation under S.202 CrPC as well. Hence, after the stage of examination under S.200 CrPC but before the stage of enquiry or investigation under S.202 CrPC, the appropriate mode of terminating the proceedings may be by way of rejection of the complaint. (See – CREF Finance Ltd. v. Sree Santhi Homes Pvt. Ltd., 2005 KHC 1409 : 2005 (7) SCC 467 :2005 (4) KLT SN 72 2005 (2) KLD 347 2005 SCC (Cri) 1697 : 2005 (127) Comp Cas 311: AIR 2005 SC 4284 (Para 10) and the discussion at paragraph 8 above).

S.202 inquiry / Investigation

b) If after the stage of S.200 CrPC the Magistrate thinks fit to postpone the issue of process against the accused then he has two options before him. He may--

i) either himself conduct an enquiry, or

ii) direct an investigation by a police officer or any other person as he thinks fit (S.202(1) CrPC

Where the accused is residing at a place beyond the territorial limits of the Magistrate, now after the amendment

of S.202 CrPC by Central Act 25 of 2005 with effect from 23/06/2006, an enquiry by the Magistrate or a direction for investigation under S.202 CrPC is mandatory.

Where the offence alleged in the complaint is one triable exclusively by a Court of Session, the Magistrate cannot direct an investigation under S.202(1) CrPC. (See clause (a) of the proviso to S.202(1) CrPC.). The Magistrate will have to himself conduct an enquiry during the course of which he shall call upon the complainant to produce all his witnesses and examine them on oath. (See the proviso to S.202(2) CrPC. Similarly, in all complaints other than those made by a Court a direction for investigation can be made only after the complainant and the witnesses, if any, present have been examined under S.200 CrPC. (See clause (b) of the proviso to S.202(1) CrPC). In the case of a complaint preferred by a Court, the Magistrate can order investigation under S.202(1) CrPC even without resorting to S.200 CrPC. Under S.202(1) CrPC it is open to the Magistrate to himself conduct an enquiry and/or thereafter order an investigation or vice versa(See the discussion at paragraph 6 above)

The investigation under S.202 CrPC is different from the investigation under Chapter XII of CrPC. The embargo under S.162 CrPC against the use of the statements of persons recorded by the Police, applies only to an investigation under Chapter XII of CrPC as indicated by S.162 itself. The interdict under S.162 CrPC, therefore, does not apply to an investigation under S.202 which provision is located outside Chapter XII CrPC. Hence statements recorded during an investigation under S.202 CrPC can be used to contradict the statement given under S.145 of the Evidence Act, to impeach his credit under S.155(3), to corroborate his testimony under S.157 and to refresh his memory under S.159 of the Evidence Act. (See -- Punya Prasad Sankota and Another v. Balvadra Dahal and Another, 1985 CriLJ 159 (Sikkim).

Issuing process after S.202 enquiry/investigation

4) If after himself conducting an enquiry or directing investigation under S.202(1) CrPC the Magistrate is of the opinion that there is sufficient ground for proceeding, he shall then issue summons or warrant against the accused under S.204(1) CrPC depending on the nature of the case. The distinction between initiation of proceedings under Chapter XIV CrPC and commencement of proceedings under

> Chapter XVI CrPC has to be borne in mind. Proceedings can commence only after their initiation. (See -- S.K.Sinha, Chief Enforcement Officer v. Videocon International Ltd., 2008 KHC 4247: 2008 (2) SCALE 23: 2008 (1) KLD 363: AIR 2008 SC 1213: 2008 (2) SCC 492). Dismissal of complaint after S.202 enquiry/ investigation.
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> 5) If after considering the statements on oath of the complainant and the witnesses if any and the result of the enquiry or investigation if any, under S.202 CrPC the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall then dismiss the complaint after briefly recording his reasons for doing so. (See S.203 CrPC)."

20. As I discussed above, the allegations do not make out any offence in the case on hand. The Special Judge has obtained an enquiry report from the Director of Vigilance. The Special Judge has not proceeded to conduct enquiry or investigation under Section 202 of Cr.P.C. The Special Judge, before the stage of enquiry or investigation under Section 202 of Cr.P.C, found that there is no sufficient ground for proceeding and rejected the complaint. The Special Judge has not proceeded to examine the complainant and the witnesses on oath. Even after the stage of examination under Section 200 Cr.P.C, and before the stage of enquiry or investigation under Section 202 of Cr.P.C, the appropriate mode of terminating the proceedings is by way of rejecting the complaint. There was no material for the Special Judge to take cognizance of the offences

alleged. Therefore, the contention of the learned counsel for the petitioner that the Special Court ought not to have rejected the complaint at the threshold will not stand.

21. Unless the order passed by the Magistrate is perverse, or the view taken by the court is wholly unreasonable or there is nonconsideration of any relevant material or, there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 Cr.P.C is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction. {Vide:

Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke [(2015) 3 SCC 123], **Munna Devi v. State of Rajasthan & Anr** [(2001) 9 SCC 631)] and **Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation** [(2018) 16 SCC 299)]}.

22. I hold that the order impugned is not affected by any patent error of jurisdiction. All the challenges in this revision petition fail. This Court fails to find that the impugned order is untenable in law or grossly erroneous or unreasonable.

The Crl.Revision Petition stands dismissed.

Sd/-
K.BABU
JUDGE

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