

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 4<sup>TH</sup> DAY OF MARCH 2022 / 13<sup>TH</sup> PHALGUNA, 1943

CRL.MC NO. 1303 OF 2020

PETITIONER/:

K.JAYA KUMAR  
AGED 57 YEARS  
S/O. KUTTAN, RESIDING AT EVRA 404, OPPOSITE  
CARMEL SCHOOL, VAZHUTHAKAD, THIRUVANANTHAPURAM,  
PIN-695014.

BY ADVS.  
P.V.VENUGOPAL  
SHRI.SENKUMAR T.P.  
SRI.K.T.SEBASTIAN

RESPONDENTS/STATE/COMPLAINANT/I.O.:

- 1 STATE OF KERALA  
REPRESENTED BY ADDITIONAL CHIEF SECRETARY TO THE  
GOVERNMENT, DEPARTMENT OF VIGILANCE, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001,  
NOTICE TO WHOM MAY BE SERVED ON THE PUBLIC  
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-  
682031.
- 2 DIRECTOR  
VIGILANCE AND ANTI-CORRUPTION BUREAU,  
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.,  
PIN-695001.
- 3 SUPERINTENDENT OF POLICE,  
VIGILANCE AND ANTI CORRUPTION BUREAU,  
SPECIAL INVESTIGATION UNIT -1, POOJAPURA,  
THIRUVANANTHAPURAM-69012.
- 4 ADDL. N.S.SURESH  
S/O.NATARAJAN, AGED 59 YEARS, ARUL NIVAS,  
  
VAZHAYILA, KURAVOOR KONAM, KODAPPANAMKUNNU P.O.

THIRUVANTHAPURAM DISRICT - 695 043.

(IS IMPEADED AS ADDITIONAL R4 AS PER ORDER DATED  
27/10/2021 IN CRL.M.A.1/2021 IN CRL.M.C.303/2020)

BY SPL GOVERNMENT PLEADER SRI.A.RAJESH

**OTHER PRESENT:**

SPL.GP SRI.A RAJESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
23.02.2022, THE COURT ON 4/3/2022 PASSED THE FOLLOWING:

O R D E R

The petitioner herein stands arrayed as the first accused in Annexure A2-FIR in Crime No.VC06//2019 VACB SIU-I Thiruvananthapuram, for offences punishable under section 13(1)(d) read with section 13 (2) and sections 120B, 196,465 & 466 IPC.

2. The petitioner retired from service as Superintendent of Police, (Vigilance and Anti Corruption Bureau) on 31/5/2018. One N.S.Suresh, who is the 4<sup>th</sup> respondent herein and who was a Circle Inspector of Excise, Amaravila, was earlier subjected to vigilance enquiry into allegations of disproportionate asset, by the petitioner in his capacity as the Superintendent of Vigilance. The said Suresh later submitted different complaints against the petitioner herein. He raised 15 specific allegations of misfeasance, act of corruption and misconduct against the petitioner herein in connection with investigations conducted by him. Pursuant to that complaint of Suresh, a preliminary enquiry was conducted as Q.V.48/2016 SIU-I. Poojapura. Among the 15 cases referred in the complaint, the enquiry officer found substance in six allegations. However, it was also noted by the enquiry officer that five among it did not involve in any criminal offence and hence, recommend departmental action. However, allegation No.15 was found to be substantiated and recommended action against the petitioner. Regarding all other allegations, it was found that there was no substance in them.

3. On the basis of the quick verification report produced as Annexure A3, FIR was registered, as mentioned above. The Government granted sanction by

order No. Vig./A1/170/2018-Vig.dated 29/11/2019 and Investigation is progressing. Contending that the petitioner has been sought to be implicated falsely in a corruption case at the instance of the 4th respondent herein, who had initiated it as a retaliation for having given report against him, and further contending that, no offence is made out, petitioner herein has filed this Crl.M.C. It was contended that allegation against him is baseless and the complaint was laid to tarnish his reputation and also to sabotage his chance of getting IPS, since the petitioner herein was in the zone of consideration for conferring IPS for the period 2016 – 2017.

4. Respondent-Vigilance has filed a detailed statement and an additional statement. A reply was also filed by the petitioner to the additional statement.

5. Heard both sides and examined the entire records.

6. It is an admitted fact that ,though 15 allegations were raised, only one case was registered in relation to the 15 allegations. No serious offence was made out in relation to the remaining cases. The crux of the allegations in the present FIR was that, while the petitioner was serving as the Deputy Superintendent of Police , (Vigilance and Anti Corruption Bureau, Special Cell, Thiruvananthapuram, from 14/1/2008to 25/4/2012, exercising the powers as the investigating officer in VC.03/2000/SCT, abused his official position as a public servant and conspired with the second accused Sri. Gopalakrishnan Nair to save him from the above crime. In VC.03/2000/SCT allegations against the said Gopalakrishnan Nair was that he, while functioning as a Government servant, had amassed assets disproportionate to his known source of income. Enquiry conducted by the petitioner herein had

revealed that the second accused had gained Rs.5,48,460/- which was more than 19% of his known source of income. To justify the source, Gopalakrishnan Nair relied on two receipts dated 15/1/1997 for Rs.2,31,930/- and another one dated 25/1/1997 for Rs.3,16,530/- totalling to Rs.5,48,460/-. The bills were purported to be issued by one M/s.Krishna Jewellery, Neyyattinkara to Gopalakrishnan Nair, to evidence that the said Gopalakrishnan Nair had sold few gold ornaments to the said Krishna Jewellery. These documents were produced to justify the excess income. According to the prosecution, the petitioner herein, as the investigating officer, accepted the above two receipts concealing the fact that both were forged documents and without questioning one Venugopal, the partner of Krishna Jewellery who had in fact issued the receipts. Instead of questioning the said Venugopal, another partner was questioned and statement was recorded. It was also alleged that the petitioner conducted investigation in a dubious manner and filed report recommending that no crime was registered against the said Gopalakrishnan Nair.

7. The contention of the petitioner was that the crime was registered without obtaining mandatory sanction under section 17A of the Prevention of Corruption Act. Another contention was that both receipts were produced before him and he did not have any reason to disbelieve it. Parameswaran Nair, a partner of the Jewellery, was questioned who identified the receipts. In the above circumstances, there was no reason for him to suspect the genuineness of the documents and hence did not conduct any scientific examination. If at all, it was a forged one, reliance placed on it, in the above circumstances could only be

considered as an error of judgment and criminal liability can not be cast on the petitioner. It was further contended that, the crime was registered at the instance of the 4<sup>th</sup> respondent, who was enimical towards the petitioner for having filed a report implicating the 4<sup>th</sup> respondent in disproportionate assets case. It was alleged that complaint was laid specifically to spoil the chance of the petitioner being recommended for conferring IPS for 2017-2018 batch.

8. Learned counsel for the petitioner vehemently contended that, sanction was not obtained before proceeding against the petitioner. FIR itself discloses that Government by order VIG-A1/.170/2018-Vig. dated 29/11/2019 had granted sanction to register case under section 13 (1) (d) read with section 13 (2) of I.P.C.1998 and sections 196,465 and 466 and 120B IPC to re-open the case in VC.03/2000/SCT. The Vigilance has a specific case that in the nature of allegation set up, for proceeding against the petitioner, under section 17A prior permission was required. To substantiate this contention, learned counsel for the petitioner relied on the decisions of this court in ***Shankara Bhat and Others v. State of Kerala and Others(2021 (5) KHC 248)*** and ***K.Jayaprakash J and Others v. State of Kerala and Another (2022 (1) KHC 206)***. In both the above cases, this court had specifically held that scope of section 17A was to protect public servants from malicious, vexatious and baseless prosecution. It cannot be considered as a protective shield for corrupt public servants.

9. In Shankara Bhat's case(supra), after referring to the earlier judicial precedents and the spirit of the statute, this Court held that offences like misappropriation of funds, fraud, falsification of accounts, criminal breach of trust,

conspiracy, etc. are not covered by the protection under section 17A. of the Prevention of Corruption Act. Evidently, the allegation against the petitioner in the crime is not one touching on any decision taken by him in the course of discharge of his official function. . Allegations are criminal in nature and hence, I feel that both decisions are applicable to the facts of this case and prima facie, prior approval under section 17A does not bar to be warranted in the present case.

10. The learned Government Pleader, answering the contentions of the petitioner, that on merits no offence was made out as against the petitioner, relied on the decisions reported in ***Dineshbhai Chandubhai Patel v. State of Gujarat and Others (2018 KHC 6001)*** and ***Union of India and Others v. B.R.Bajaj and Others (1994 KHC 773)***. In Dineshbhai's case(supra), the Hon'ble Apex Court reiterating the earlier proposition that whether offence has been disclosed or not, must necessarily depend on the facts of each case and if on consideration of the relevant materials, the court is satisfied that the offence is disclosed, the court will not normally interfere in the investigation. In B.R.Bajaj and Others case (supra),the Apex Court while interfering at the stage of FIR, held that, the FIR did not disclose any offence. On consideration of the entire material on record, it was held that the registration of FIR was only the beginning of an investigation and normally if a cognizable offence is made out, the court shall not interfere in the FIR and the investigation.

11. In the case at hand, it is on record that the petitioner herein , as the investigating officer in QV48/2016/SIU-I had specifically relied both the bills purportedly issued by the jewellery. It was signed by one Venugopal who was a

partner of the Jewelry. The case records indicate that the said Venugopal was neither questioned nor his statement was recorded. On the other hand, another partner was questioned and the statement recorded. In the present investigation, both the above persons were questioned by the VACB. They have asserted that the receipts were not issued by them. The petitioner has no explanation as to why the said Venugopal was not examined by him. He also has no case that the said Venugopal was not available and another person conversant with his signature was questioned. In the absence of a valid explanation as to why a stranger to the receipts was questioned the conduct of the petitioner in accepting the receipts as a proof and recommending closing of the crime raises strong suspicion. Prima facie, this matter needs a detailed investigation.

12. In the above factual scenario, a cognizable offence is made out. Definitely, at this stage this court will not be justified in interfering with the investigation by quashing the FIR. Contentions set up by the petitioner appears to be too premature at this stage. Accordingly, Crl.M.C.is liable to be dismissed.

In the result, Crl.M.C.fails and is dismissed.

Sd/-

**SUNIL THOMAS  
JUDGE**

dpk

**APPENDIX OF CRL.MC 1303/2020**

PETITIONER ANNEXURES

- ANNEXURE A1 TRUE COPY OF REQUEST SEEKING PROSECUTION SANCTION ISSUED BY 2ND RESPONDENT ADDRESSED TO 1ST RESPONDENT.
- ANNEXURE A2 TRUE CERTIFIED COPY OF FIR IN CRIME NO. VC 06/2019 VACB SIU-I DATED 11.12.2019.
- ANNEXURE A3 TRUE COPY OF (Q V 48/2016 SIU-I) DATED 19.09.2019 INDICATING ENQUIRY ON 15 ALLEGATIONS AGAINST PETITIONER.
- ANNEXURE A4 TRUE COPY OA/180/00 746/2019 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH FILED BY 3RD RESPONDENT IO AS 2ND PETITIONER.
- Annexure A7 TRUE COPY OF THE NOTIFICATION DATED 30.09.2021.
- Annexure A8 TRUE COPY OF APPOINT NOTIFICATION DATED 30.09.2021.