

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 8<sup>TH</sup> DAY OF JUNE 2021 / 18TH JYAISHTA, 1943

CRL.MC NO. 4692 OF 2019

CRMP 1418/2015 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,,

THIRUVANANTHAPURAM

**PETITIONER/S:**

V.S.ACHUTHANANDAN  
AGED 93 YEARS  
S/O.SANKARAN, VELIKKAKATH VEEDU, PUNNAPPRA,  
ALAPPUZHA, NOW RESIDING AT KOWDIAR HOUSE,  
KOWDIAR.P.O, THIRUVANANTHAPURAM-695033  
BY ADVS.  
S.CHANDRASEKHARAN NAIR  
SRI.RAJU GEORGE (KARUVATTA)  
SRI.S.GOKUL BABU

**RESPONDENT/S:**

- 1 STATE OF KERALA  
REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM, KOCHI-682031
- 2 OOMMEN CHANDY  
FORMER CHIEF MINSTER OF KERALA, KAROTTUVALAKKALIL,  
PUTHUPPALI.P.O, KOTTAYAM-686011
- 3 E.K.BHARATH BHUSHAN,  
RETIRED CHIEF SECRETARY TO GOVERNMENT, RESIDING AT  
FLAT NO.5151, SHOBA CITY, PUZHAKKAL, THRISSUR-680053
- 4 ASHOK KUMAR SINGH  
FORMER MANAGING DIRECTOR, KERALA WATER AUTHORITY, NOW  
RESIDING AS THE DIRECTOR, DEPARTMENT OF FINANCE  
SERVICES, MINISTRY OF FINANCE SERVICE, MINISTRY OF  
FINANCE, GOVERNMENT OF INDIA, NEW DELHI-110001
- 5 T.V.VIJAYA KUMAR  
ADDITIONAL SECRETARY, REVENUE DEPARTMENT, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM-695001
- 6 AVRUTHI MALL MANAGEMENT COMPANY LIMITED,  
REPRESENTED BY ITS MANAGING DIRECTOR, JAIL CHAMBERS,  
3RD FLOOR, SERVICE ROAD, VILA PARLEY, MUMBAI-400057.
- 7 JAYESH SONAJI,  
MANAGING DIRECTOR, AVRUTHI MALL MANAGEMENT COMPANY  
LIMITED, JAI CHAMBERS, 3RD FLOOR, SERVICE ROAD, VILA  
PARLEY,MUMBAI-400057

Cr1.M.C No.4692 of 2019

2

- 8 ARTECH REALTORS LIMITED  
REPRESENTED BY ITS MANAGING DIRECTOR, ARTECH HOUSE,  
VAZHUTHACAUD, SASTHAMANGALAM.P.O, THIRUVANANTHAPURAM-  
695010.
- 9 T.S.ASHOK  
MANAGING DIRECTOR, ARTECH REALTORS LIMITED, ARTECH  
HOUSE, VAZHUTHACAUD, SASTHAMANGALAM.P.O,  
THIRUVANANTHAPURAM-695010

**OTHER PRESENT:**

GP K.B.SONY WITH SPL.PP.VIGILANCE K.RAJESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON

09.03.2021, THE COURT ON 08.06.2021 DELIVERED THE FOLLOWING:

Cr1.M.C No.4692 of 2019

3

ORDER

Dated this the 8<sup>th</sup> day of June, 2021

The challenge in this Criminal Miscellaneous Case is against Annexure A1 order of the Enquiry Commissioner and Special Judge, Thiruvananthapuram dismissing Annexure A2 complaint filed by the petitioner against respondents 2 to 9. The petitioner, a former Chief Minister of the State, had raised the following allegations in his complaint;

The 6<sup>th</sup> respondent Company is in possession of one acre of land at Pattoor, in Thiruvananthapuram. A shopping mall is being constructed in that property by the 8<sup>th</sup> respondent. The sewerage pumping main line of the Kerala Water Authority had been laid diagonally

through the 6<sup>th</sup> respondent's property. During the period 2013-14, while the 2<sup>nd</sup> respondent was the Chief Minister and respondents 3 to 5 were high ranking officials in the Government, the sewerage line was shifted to one side of the 6<sup>th</sup> respondent's property, thereby effectuating construction over a larger area. The land over which the sewerage line was drawn is actually Government land, which had vested with the Water Authority under Section 16 of the Kerala Water Supply and Sewerage Act, 1986. Respondents 6 and 7, by creating false documents, had reduced the property into their possession. By shifting the sewerage line, respondents 2 to 5 had aided respondents 6 to 9 in gaining undue pecuniary advantage. The order authorising shifting of the pipeline was issued by suppressing adverse reports and in violation of the prescribed procedure. The

accused had, by their actions and omissions, committed offences punishable under Section 120B IPC read with Section 13(1) (d) of the Prevention of Corruption Act, 1988.

2. The following facts are not in dispute; Prior to the filing of Annexure A2, another public spirited citizen had filed a complaint before the Lok Ayukta. During the pendency of that complaint, the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau registered Crime No.03 of 2017 at the VACB, SIU-1, Thiruvananthapuram for offences under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and Section 120B of the Indian Penal Code. Some of the accused challenged Annexure A3 FIR and further proceedings before this Court in W.P (C) No. 36735 of 2017 and connected cases. The petitioner herein, who by that time had submitted Annexure A2 complaint, was

also arrayed as a respondent in the writ petitions. This Court, after elaborate consideration of the allegations, found the claim of title by the Water Authority over the 6<sup>th</sup> respondent's land to be unsustainable. It was also held that, even if the allegation that the property in dispute belongs to the Water Authority is accepted, the action of the accused will not attract the provisions of the Prevention of Corruption Act since the 6<sup>th</sup> respondent Company had not gained any pecuniary advantage by the shifting of the sewerage line from one part of its property to another. Based on the findings, it was held that the FIR did not disclose commission of the offences under the Prevention of Corruption Act. Accordingly, Annexure A3 FIR and further proceedings were quashed. The impugned Annexure A1 order is issued in the light of the judgment in

W.P(C)No. 36735 of 2017 and connected cases.

3. The main ground of challenge against Annexure A1 order is the impropriety in rejecting Annexure A2 complaint for the sole reason of this court having quashed Annexure A3 FIR. According to the petitioner, the allegations in Annexure A2 complaint and Annexure A3 FIR are different and in any event, the complaint should not have been rejected without conducting preliminary enquiry. The decision of the Apex Court in Lalita Kumari v State of U.P. [(2014) 2 SCC 1] is pressed into service in support of this proposition.

4. Heard Sri.S. Chandrasekharan Nair, learned Counsel for the petitioner and Smt.K.B.Sony, learned Special Public Prosecutor (Vigilance).

5. A comparison of the averments in Annexure A3 FIR and Annexure A2 complaint reveals that the allegations are substantially the same. The only

difference being that Annexure A2 complaint contains more details, which difference is immaterial in view of the settled legal position that an FIR need not be a compendium of all facts. In such circumstances, the petitioner's prayer, if allowed, will result in the registration of a second FIR on the very same set of facts.

6. The legality in registering a second FIR on the same set of facts was considered by the Apex Court in T.T. Antony v State of Kerala [(2001) 6 SCC 181]. Paragraphs 20 and 27 of the judgment, which are contextually relevant reads as under:

"20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On



receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.

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27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a

*case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution."*

Going by the principle enunciated above, the learned Special Judge was fully justified in rejecting Annexure A2 complaint, since a second FIR based on the very same allegations cannot be registered, more so when the first FIR has been quashed on merits.

7. The contention based on Lalita Kumari is also misplaced, since the question considered by the Constitution Bench was regarding the duty of the police to register FIR on receipt of information regarding commission of cognisable offence/s. The legality or otherwise of

registering a second FIR based on the same set of facts had not arisen for consideration therein. On the question of preliminary enquiry, the conclusion in Lalita Kumari is as under;

*"120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*

- (a) Matrimonial disputes/family disputes*
- (b) Commercial offences*
- (c) Medical negligence cases*
- (d) Corruption cases*
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.*

*The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."*

In my considered opinion the above finding cannot be understood to be a declaration that even in cases where FIR is already registered, preliminary enquiry is bound to be held on a subsequent complaint, containing the very same allegations,

Cr1.M.C No.4692 of 2019

12

being filed.

For reasons aforementioned, the challenge against Annexure A1 fails. Consequently, the Cr1.M.C is dismissed.

Sd/-

V.G.ARUN  
JUDGE

Scl/

**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

ANNEXURE A1	COPY OF THE ORDER DATED 13TH MARCH 2018 IN CRL.M.P.NO.1418/2015 PASSED BY THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM
ANNEXURE A2	COPY OF THE COMPLAINT IN CRIMINAL MP NO.1418/2015 FILED BY THE PETITIONER BEFORE THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANNATHPAURAM
ANNEXURE A3	THE COPY OF THE FIR IIN V.C.3 OF 17/VACB, SUI-1 PREPARED BY THE VIGILANCE AND ANTI CORRUPTION BUREAU, SPECIAL INVESTIGATION UNIT-1, BEFORE THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM
ANNEXURE A4	COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE SUPERINTENDENT DATED 25.5.2015 OF POLICE VIGILANCE VACB, THIRUVANNATHAPURAM.
ANNEXURE A4 (A)	TRUE COPY OF RECEIPT OF THE COMPLAINT ISSUED BY VACB, SRT THIRUVANANTHAPURAM DATED 15.7.2015