

W.P.(C) No. 22063/2020

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'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 23RD DAY OF OCTOBER 2020 / 1ST KARTHIKA, 1942

WP(C).No.22063 OF 2020(S)

PETITIONER/S:

MICHAEL VARGHESE
S/O. VARGHESE,
JOURNALIST, CHANGADAKARI, ALAPPUZHA,
CHERTHALA – 688 531.
BY ADVS.
SRI.MATHEWS J.NEDUMPARA
SHRI. ABDUL JABBARUDEEN.M
SMT. MARIA NEDUMPARA
SHRI.KORAH JOY
SMT.RAVEENA K.R.

RESPONDENT/S:

- 1 HON'BLE SHRI. PINARAYI VIJAYAN
CHIEF MINISTER OF KERALA,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM – 695 001.
- 2 SRI. M. SHIVASHANKARAN, IAS,
FORMER PRINCIPAL SECRETARY TO THE CHIEF
MINISTER OF KERALA & SECRETARY TO THE GOVERNMENT
OF KERALA, DEPARTMENT OF INFORMATION TECHNOLOGY,
RESIDING AT DEVADARSANA KRA 53 PJ 20709,
KATTU ROAD, POOJAPPURA,
THIRUVANANTHAPURAM – 695 012.
- 3 STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,

THIRUVANANTHAPRUAM – 695 001.

- 4 THE SECRETARY IN THE DEPARTMENT OF INFORMATION TECHNOLOGY, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPRUAM – 695 001.
- 5 SWAPNA SURESH, IN JUDICIAL CUSTODY AT WOMEN PRISON, THIRUVANANTHAPRUAM VIZHINJAM ROAD, ATTAKKULANGARA, THIRUVANANTHAPRUAM – 695 023.
- 6 CHIEF EXECUTIVE OFFICER, LIFE MISSION, GOVERNMENT OF KERALA, 2ND FLOOR, P T C TOWER, SS KOVIL ROAD, THAMAPANOOR, THIRUVANANTHAPRUAM – 695 001.
- 7 MR. SANTHOSH EAPEN, MANAGING DIRECTOR, 2ND FLOOR, BUILDING, NO.52-3274 B UNITAC ARCADE, OPPOSITE DECATHLON, NH BYEPASS, THYKODAM, VYTTILA, KOCHI, KERALA – 682 019.
- 8 SRI. ANIL AKKARA, MLA, AKKARAPATTEKYAL VEETIL, PURANATTUKARA VILLAGE, THRISSUR TALUK – 680 551.
- 9 SUPERINTENDENT OF POLICE, CENTRAL BUREAU OF INVESTIGATION, KATHRIKKADAVU P.O., KALOOR, KOCHI – 682 017.
- 10 COMMISSIONER OF CUSTOMS, (INVESTIGATING INTO SMUGGLING AND OTHER SCAMS) INDIRA GANDHI ROAD, WILLINDON ISLAND, KOCHI – 682 009.
- 11 THE SECRETARY TO GOVERNMENT, MINISTRY OF EXTERNAL AFFAIRS, NEW DELHI – 110 001.
- 12 SECRETARY TO THE GOVERNMENT OF INDIA, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, NEW DELHI – 110 001.
- 13 DIRECTOR,

- 14 NATIONAL INVESTIGATION AGENCY,NIA BUILDING,
OPP. LODHI ROAD, CGO COMPLEX,NEW DELHI – 110 003.
DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION,
LODHI ROAD, JAWAHARLAL STADIUM MARG,
NEW DELHI – 110 003.
- 15 DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPRUAM – 695 010.
- 16 DIRECTOR,
VIGILANCE AND ANTI CORRUPTION BUREAU,
VIKAS BHAVAN, LAW COLLEGE ROAD, PALAYAM P.O.,
THIRUVANANTHAPRUAM – 695 033.
- 17 UNION OF INDIA,
REPERSENTED BY ITS HOME SECRETARY,
SOUTH BLOCK,
NEW DELHI – 110 001.
- 18 THE ADDITIONAL DIRECTOR GENERAL OF POLICE,
CRIME BRANCH, POLICE HEAD QUARTERS,
VAZHUTHACAUD, THIRUVANANTHAPRUAM – 695 010.
- 19 PRICE WATER HOUSE CO-OPERATIVE PVT. LIMITED (PWC),
THE MILLENIA TOWERE D,
1 & 2 MURPHY ROAD ULSOOR,
BANGALORE 560 008,
KARNATAKA, INDIA,
REPRESENTED BY ITS DIRECTOR.

R1 BY SRI.P.NARAYANAN, SPL.GOVERNMENT PLEADER
R3 &VR4 BY SRI. C.P. SUDHAKARA PRASAD, ADVOCATE
GENERAL
R3 & R4 BY SUMAN CHAKRAVARTHY, SP. GOVERNEMNT
PLEADER
R3 BY SRI.V.MANU, SENIOR GOVT. PLEADER
R10 BY SREELAL WARRIER
R9 & R14 BY SRI. SASTHAMANGALAM AJITHKUMAR, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-10-2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated this the 23rd day of October, 2020.

JUDGMENT

SHAJI P. CHALY,J.

The writ petition is a public interest litigation filed by a journalist. According to the petitioner, the instant writ petition is the third petition filed by him in the nature of a public interest litigation filed under Article 226 of the Constitution of India seeking remedies in the nature of a writ of mandamus and in particular, registration of an FIR and thereby, to set the criminal law in motion against the first respondent i.e., Sri. Pinarayi Vijayan, the Chief Minister of Kerala and the second respondent, Sri. M. Shivashankaran, Former Principal Secretary to the Chief Minister of Kerala, for various offences allegedly committed by them in the scams, which are in the public domain like, sprinklr, gold smuggling, red crescent-Life Mission etc.

2. According to the petitioner, respondent Nos. 1 to 19 are arrayed, since they are proper parties to the writ petition and are involved in the scams, as specified above.

3. The sum and substance of the contentions raised by the

petitioner are in respect of an alleged gold smuggling activity of some of the respondents in the writ petition and the consequential registration of cases by the Customs, Directorate of Revenue Intelligence, State Vigilance and the Central Bureau of Investigation.

4. The contention of the petitioner is that only a court of competent jurisdiction conducting a trial under due process of law can only identify the role of the parties alleged to be involved in the aforesaid scams. It is contended by the petitioner that he is not stating that the Chief Minister be prosecuted, but the police and other investigating agencies, upon a just fair and impartial inquiry, to find enough materials to prosecute the case.

5. It is also the submission of the petitioner that the real accused involved in the multiple scams, and in particular, the Life Mission Scam, should not be immune from investigation and prosecution, because of the high constitutional office/power enjoyed by such person, which according to the petitioner, is a real danger, unless this Court is not entertaining the instant writ petition and passing appropriate orders.

6. It is the specific contention of the petitioner that the first respondent and others, are making an attempt to misuse the

processes of law to scuttle registration of an FIR and in that process, the services of the office of the learned Senior Government Pleader of the High Court is misused.

7. It is submitted that the attempt is to interfere with the impartial and effective investigation into the siphoning of about Rs.4.5 crores as commission on a project of Red Crescent, claimed to be a humanitarian body based in the United Arab Emirates. It is submitted that earlier, the petitioner had approached this Court, when the Sprinklr scam, a scam of wide international ramifications and far reaching implications, took place in the State of Kerala. It is also pointed out that the gold was smuggled using diplomatic channels and the people in higher echelons are involved and therefore, the apprehensions that the political executive at the higher level of the State, including the Chief Minister is either actively involved or at least aware of the scams involving the Principal Secretary, Sri. M. Shivashankaran, Ms. Swapna Suresh and others and therefore, no meaningful investigation will be conducted by the police, and in particular the Vigilance and Anti-Corruption Bureau, which is under the administration and control of the Chief Minister of Kerala. It is also submitted that the State Administration is neck-deep in corruption,

even to the extent of collecting funds in the name of the philanthropic purpose by the State and its agencies from abroad. As in the instant case, namely, the Life Mission scam funds are being swallowed by Shri. M. Shivashankaran, the former Principal Secretary to the Chief Minister and power brokers like Swapna Suresh, Sarith, and Sandeep Nair, who could perpetuate all these scams only because of their close connections with the political executive of the State. It is further submitted that Shri. M. Shivashankaran, though only a bureaucrat, is believed to be the eyes and ears of the Chief Minister commanded unlimited power but bound to ensure that the rule of law will prevail and criminal law will be set in motion and the political executive does not succeed in preventing the investigation against themselves did not act in accordance with law and it was accordingly that this public interest litigation is filed by the writ petitioner. The aforesaid circumstances put forth by the writ petitioner basically revolve around CrI.M.C. No. 4375 of 2020 pending before a learned single Judge of this Court for quashing a complaint and consequential crime registered by the Central Bureau of Investigation instituted against the Chief Executive Officer of "Life Mission" a state Government project, by a Member of the Kerala Legislative Assembly belonging to the Opposition and accordingly, utilized the services of a Government Pleader of this

Court to file such a petition without the Chief Minister himself invoking the jurisdiction of this Court as a person aggrieved.

8. Anyhow, it is admitted by the writ petitioner that earlier writ petition filed by the petitioner is dismissed by this Division Bench as per judgment dated 22.07.2020 in respect of the scams namely Sprinklr, BevQ App scam, e-mobility consultancy scam, gold smuggling scam etc. It is further stated that Shri. Anil Akkara, Member of Legislative Assembly representing Wadakkanchery Constituency, lodged a complaint dated 20.09.2020 before the 9th respondent i.e., the Superintendent of Police, Central Bureau of Investigation, Cochin, alleging that out of the Rs.20 crores contributed by Red crescent, a humanitarian agency based in the United Arab Emirates for construction of homes for the victims of the Kerala floods as well as for a health care centre, Rs.4.5 crores was misappropriated by the office bearers of Life Mission, including its Chairman, Vice Chairman, former CEO, present CEO, the earlier officers of the UAE consulate, namely Swapna Suresh, Sarith and their ally Sandeep Nair and the Managing Director of Unitac and Sain Ventures, Mr. Santhosh Eapen.

9. It is admitted that the CBI has registered a crime on 24.09.2020 acting on the said complaint. According to the petitioner,

the questions which arise for consideration in the instant writ petition are, the obligation of the State Police to set the criminal law in motion, no matter who is involved and the fact that the accusation is against the Chief Minister himself and his cabinet colleagues and the bureaucrats are, no reason, not to register a crime against them and set the criminal law in motion. A copy of the earlier writ petition filed by the petitioner as W.P.(C) No. 14316 of 2020 is produced as Ext.P1. According to the petitioner, the Chief Minister ought to have been genuinely concerned about the prevention of corruption and the investigation of crimes and prosecution of offenders and welcomed the step of the CBI and extended his unstinting support to complete the investigation. However, the Chief Minister himself was instrumental for the institution of CrI.M.C No. 4375 of 2020 seeking to quash the complaint filed by the MLA as against him and the various office bearers of Life Mission and the earlier officers of the UAE consulate. It is also the case of the petitioner that it is manifest from the sweeping nature of the prayers sought for in CrI.M.C. No. 4375 of 2020 instituted by the Chief Executive Officer, Life Mission that the same is at the behest of the Chief Minister and it was accordingly that in the aforesaid CrI.M.C, the Chief Executive Officer seeks to quash Annexures A and C, the complaint and FIR therein, and all further

proceedings as against the third accused. It is also the contention that the learned Government Pleader exceeded all his limits in seeking to quash the complaint and the FIR when the officials of the State are included in the complaint and the FIR. So also, it is submitted that nothing would be stranger and more illegal and unconstitutional than the State Government preferring an application through a Senior Government Pleader invoking Section 482 of Cr.P.C to quash the very complaint of the MLA. A copy of CrI.M.C No. 4375 of 2020 is produced as Ext.P2. Relying upon the same, it is submitted that the CrI. M.C is not supported by an affidavit and therefore, the application can only be considered as a statement made by the Senior Government Pleader and as such a petition is not maintainable under law.

10. The sum and substance of the contention advanced is that CrI.M.C is signed by the Senior Government Pleader and since the Chief Executive Officer of Life Mission has not authenticated the petition by affixing his signature, much less swear in an affidavit in support of the averments made in the CrI.M.C., the petition is not maintainable under law. Other contentions are also raised with respect to the alleged scams. However, in spite of the writ petition running to 37 pages, nowhere it is stated, what are the issues involved in the

scams and how the persons arrayed as parties are related to the said scams. Repeated allegations are made that the said persons are involved in the scams and therefore, the investigation is insisted upon. Anyhow, it is admitted that the Central Bureau of Investigation has registered a crime on the basis of the complaint filed by the MLA, Wadakkanchery Constituency.

11. The sum and substance of the contention advanced by the petitioner is that CrI.M.C. No. 4375 of 2020 is a gross abuse of process of law and that the Government Pleader was used as a subterfuge to quash the complaint and the crime against the Chairman of the "Life Mission" namely the Chief Minister and others. According to the petitioner, the Chief Minister, instead of seeking to quash the proceedings, has made the learned Government Pleader to file a CrI.M.C for and on behalf of the C.E.O of the said organisation, which is nothing but a gross abuse of process of law. It is also submitted that the said action on the part of the State Government is unconstitutional and is violative of the fundamental rights guaranteed particularly under Article 14 of the Constitution of India, which renders penal law equally applicable to all. However, it is significant to note that on 12.10.2020, the petitioner has filed CrI.M.A. No. 4 of 2020 in CrI. M.C.

No. 4375 of 2020 to implead himself, which was heard and adjourned for orders. However, according to the petitioner, even if a hearing being afforded to the petitioner in that proceedings, it will have only a limited impact and it is, therefore, imperative that the orders in the said Crl.M.C. is passed subject to the orders to be passed in the instant writ petition or are clubbed together and heard, notwithstanding the fact that it was heard by a learned Single Judge and reserved for orders. With the above pleadings, the following reliefs are sought for by the petitioner.

- a) Declare that the Chief Executive Officer, Life Mission, petitioner in Crl.M.C No. 4375 of 2020 instituted through the Senior Government Pleader has no jurisdiction to seek the quashing of Annexure A complaint thereof, namely complaint dated 20.09.2020 of Shri. Anil Akkara, MLA, to the Superintendent of Police, CBI, Cochin, seeking registration of a crime as against “the earlier officers of the UAE consulate, namely Swapna Suresh, Sarith and their ally Sandeep Nair and the Managing Director of Unitac and Sain Ventures-Mr. Santhosh Eapen,” and that to do so amounts to gross violation of law and the constitution.
- b) Declare that the Chief Executive Officer, Life Mission, petitioner in Crl.M.C No. 4375 of 2020 instituted through the Senior Government Pleader has no jurisdiction to seek the quashing of Annexure C FIR thereof, wherein Shri. Santhosh Eapen and M/s. Sain Ventures are the only entities named as accused and “all further proceedings as against the third accused” (sic) for the word ‘stay’ is missing), and that Chief Executive Officer, in

instituting the said CrI.M.C. seeking the said relief, has acted contrary to law and the constitution.

- c) Declare that the first respondent, Shri. Pinarayi Vijayan and others against whom Shri. Anil Akkra has sought registration of a crime and investigation of the Life Mission scam are not entitled to seek quashing of the said complaint by instituting CrI.M.C No. 4375 of 2020 through the Chief Executive Officer, Life Mission, and that in doing so he has acted illegally and in violation of the Constitution and it is incumbent upon him to institute an application with himself as the petitioner, averring his innocence and seek relief, and the cause of action he has resorted to is a subterfuge to put it mildly.
- d) Declare that the State Government is seeking to quash the complaint as against Ms. Swapna Suresh, Mr. Sarith, Sandeep Nair, Mr. Santhosh Eapen, and the Chief Minister and other office bearers of Life Mission through the Government Pleader, has acted in violation of its duty to investigate crimes and prosecute the offenders and such a violation of the Constitution and laws by the Government, renders it imperative that the Life Mission Scam, SprinklR and that the various other scams in which Sri. M. Shivshankaran, the Principal Secretary to the Chief Minister and others are involved, and in which the Chief Minister is suspected to be involved, is investigated by the CBI and further to order such investigation by issuing a writ in the nature of mandamus or any other appropriate writ or order.

12. A preliminary objection is filed with respect to the maintainability of the writ petition by the learned Senior Government Pleader. The prime objection raised is that there is no public interest

involved in the writ petition filed in relation to the maintainability of CrI.M.C No. 4375 of 2020. It is also submitted that in the writ petition, the *locus standi* of the Chief Executive Officer of the Life Mission to institute CrI.M.C No. 4375 of 2020 is challenged; however, such a collateral challenge against the institution of CrI.M.C is not maintainable in a writ petition and further that the petitioner has got himself impleaded in CrI.M.C and therefore, the writ petition seeking the reliefs as specified above is thoroughly misconceived and not maintainable in law. It is also contended that the petitioner, in effect, is seeking injunction against a third party from taking recourse to law, which is, *per se*, not maintainable by virtue of Section 41(b) and (d) of the Specific Relief Act. Even though the petitioner has contended that CrI.M.C is not supported by an affidavit, going by the Rules in Chapter XIII of the Rules of the High Court of Kerala, dealing with criminal cases, there is no requirement for filing an affidavit verifying the pleadings in a criminal proceeding. That apart, it is submitted that the Chief Executive Officer of the Life Mission, being the master of the *lis* instituted by him, has explained his *locus standi* in the CrI. M.C and therefore, if the petitioner is of the view that the CEO, Life Mission is not having *locus standi* to institute the CrI.M.C., it is for him to agitate the same in that proceedings and he cannot scuttle the proceedings by

way of a collateral challenge. The sum and substance of the contention advanced is that the grievance raised by the petitioner in the writ petition is the subject matter of consideration in the CrI.M.C and therefore, the petitioner is not entitled to get any reliefs. It is also the case in the preliminary objection that except bald averments, there are no cogent supporting materials produced by the petitioner and the averments in the writ petition are the outcome of hearsay and therefore, seeks dismissal of the writ petition.

13. We have heard Sri. Mathews J Nedumpara, learned counsel for the petitioner and the learned Advocate General Sri Sudhakaran Prasad appeared for the State of Kerala, and perused the pleadings and documents on record.

14. Mr. Mathews J. Nedumpara, learned counsel for the writ petitioner has addressed arguments based on the contentions advanced and recorded as above. The thrust of the contention is that CrI.M.C. NO. 4375 of 2020 filed through a Senior Government Pleader to quash an FIR registered by the Central Bureau of Investigation is an abuse of process of court and illegal and unconstitutional. The learned Government Pleader has been subterfuged to quash the complaint as against the Chairman of the Life Mission namely, the Chief Minister and

the other Government officials involved. It is also submitted that the Chief Minister and other officials against whom complaint dated 20.09.2020 was made are entitled to seek quashing of the same and they are entitled to succeed also, if they could convince the learned single Judge. However, the attempt was made by the Chief Minister to quash the complaint by filing the Crl. M.C through the Chief Executive Officer of the Life Mission, which is a gross abuse of law. It is also submitted that this Court, by virtue of the powers vested under Article 226 of the Constitution of India, is to declare that Crl.M.C. No. 4375 of 2020 instituted through the Senior Government Pleader is illegal and unconstitutional. It is the further contention of the learned counsel for the petitioner that the petitioner is not requiring this Court to interfere with the proceedings pending before the learned single Judge, but only seeking to declare that the proceedings in Crl.M.C No. 4375 of 2020 instituted through the Senior Government Pleader, who is bound to protect the public law, is illegal and unconstitutional, and therefore, even if the declaratory reliefs as are sought for are granted, that will not interfere in any manner with the power exercised by the learned single Judge under Section 482 of the Code of Criminal Procedure.

15. It is also submitted that the Crl.M.C is filed by the

Government Pleader and it is not signed by the CEO of the Life Mission and therefore, it can never be termed as a petition filed by the CEO of Life Mission and further that the pleadings put forth are not supported by any affidavit and there is no authenticity to the submissions made in the Crl.M.C. It is also submitted that if the political executive engages in any rampant corruption which is what the numerous scams would manifest, then the sanctity of the federal structure or sovereign of the State Executive cannot be allowed to be used as a shield against the criminal law being set in motion, and since all are equal before law, penal laws are equally applicable to the mighty and the wealthy as it does with the common people. Therefore, the sum and substance of the submissions made is that if the Chief Minister and his former Principal Secretary are involved in corruption and have committed serious criminal offences, they shall also be subjected to investigation as in the case of common people.

16. On the other hand, learned Advocate General has submitted that the writ petition itself is not maintainable under law, since exercising the power under writ jurisdiction no declaration as is sought for by the writ petitioner can be granted. It is also submitted that the writ petitioner has filed a petition in Crl.M.C No. 4375 of 2020 which is

pending consideration before the learned single Judge, in which the jurisdictional aspects with respect to the filing of a petition through the Government Pleader is raised, which is a subject matter to be considered by the learned single Judge and therefore, a Public Interest Litigation cannot be filed to sabotage the proceedings pending before the learned single Judge. It is also pointed out that there is no requirement of filing any petition supported by an affidavit under Section 482 of the Code of Criminal Procedure, since in the proceedings of criminal cases before the High Court dealt with under Chapter XIII of the Kerala High Court Rules, there is no requirement/procedure for making any affidavit along with the petition for quashing the proceedings. Anyhow, it is submitted that the said aspect was raised by the writ petitioner in the I.A seeking to participate in the proceedings in CrI.M.C and therefore, the same cannot be raised by the writ petitioner in a Public Interest Litigation.

17. Moreover, it is submitted that there is no public interest involved in a writ petition filed, since the subject matter of CrI.M.C is filed by the CEO of Life Mission on the basis of the right vested in him under Section 482 of the Code of Criminal Procedure. Moreover, it is submitted that the proceedings in a CrIMC are guided by the provisions

of the Code of Criminal Procedure and the Kerala High Court Rules, which action is not susceptible to challenge in a writ petition under Article 226 of the Constitution of INdia and thus the attempt of the petitioner is to get over the consideration of the proceedings pending before the learned single Judge in CrI.M.C No. 4375 of 2020.

18. We have evaluated the rival submissions made across the Bar and perused the pleadings and materials on record. The submissions made above would make it clear that the Central Bureau of Investigation has registered crime No. RC 5(A)/2020/ACB/CBI/Cochin against the C.E.O of the Life Mission, a scheme launched by the Government of Kerala as per G.O.(P) No. 41/2016/P&EAD dated 28.09.2016 apparently aimed at overall development of the State. While the said project was functioning, certain issues arose in respect of the funds made available by one voluntary humanitarian organisation, namely Emirates Red Crescent affiliated to the international Federation of the red-cross and the red crescent societies.

19. Anyhow, we are not inclined to go into the intricacies of the receipt of the fund by any organisation in the State of Kerala or delve deep into the issues, since it is a subject matter under consideration

before the learned single Judge in CrI.M.C No. 4375 of 2020 and W.P. (C) No. 20668 of 2020. The case projected by the petitioner is that the Life Mission, programme of the State Government, is headed by the Chief Minister of Kerala as the Chairman and therefore, engagement of the Senior Government Pleader to file the CrI.M.C before a learned single Judge is unconstitutional and illegal, since the State Government is duty bound to protect the interest of the State in regard to the corruption, and the allegation of misuse of funds made against the said organization.

20. Apparently, after hearing the Central Bureau of Investigation and others in the CrI.M.C and the writ petition specified above, an interim order of stay is granted by the learned single Judge in CrI.M.A. No. 1 of 2020 in CrI.M.C. No. 4375 of 2020 of all further proceedings in RC No. 05(A)/2020/ACB/CBI/Cochin as against the petitioner in the CrIMC i.e., the Chief Executive Officer of the Life Mission for a period of two months. But, the prayer for interim direction in W.P.(C) No. 20668 of 2020 filed by one Santhosh Eapen who is apparently a contractor engaged to carry out the construction activities of Life Mission was rejected. In order to understand whether the writ jurisdiction under Article 226 of the Constitution can be exercised to interfere with the

proceedings pending before a learned single Judge, it is always better to understand the manner in which the writ jurisdiction can be invoked by a constitutional court. It is trite and settled that the prerogative writs under Article 226 of the Constitution of India are to be distinguished and categorized as a separate class by itself from other orders issued by the court. A writ is not issued as a matter of right, but it is issued only if the writ court finds that the discretion is to be exercised in order to set right any executive action employed in violation of the fundamental rights and for such other purposes interfering with the rights of the citizens guaranteed under the Constitution of India and the laws. It is also issued only under any extraordinary circumstances to render assistance to the citizens and redress their grievances. Writs are always issued by the Constitutional courts for, guiding the authorities, and correcting them by directing the forbearance from doing any act prohibited under the Constitution of India. It is also issued for enforcement of various rights of the citizens or to compel the statutory authorities to discharge their duties and to act within their powers or authority conferred under any law. To put it precisely, here, in the instant writ petition, the writ petitioner has sought for a writ of mandamus for declaratory reliefs in respect of a jurisdictional aspect to institute the proceeding under section 482 of

the Code of Criminal Procedure, and also for issuing a direction for conducting CBI enquiry in the scams mentioned in the writ petition. A writ of mandamus is always issued on failure of an administrative authority to perform its functions/duties or when there is wrongful exercise of power and thus, ensuring to keep such administrative authority under the control in order to follow the rule of law prevailing in the country. The settled principles of law in the matter of exercise of writ jurisdiction by now is very clear and specific that the writ in the nature prescribed under Article 226 of the Constitution of India is expected to be issued by the High Court in any case, which require interference due to the gravity of the situations when the subordinate Tribunal, authorities under law and other public authorities act absolutely without jurisdiction and does any act in violation of the principles of the natural justice and such other acts of the authorities resulting in manifest injustice.

21. True, by applying the principles of the unlimited jurisdiction available to a High Court in India, being a court of record, it need not confine itself to issue a writ as prescribed under Article 226 of the Constitution of India but, empowered to issue such orders to ensure and protect the fundamental and statutory rights available to the

citizens. But, according to us, such power cannot be without any limit and boundaries. The question, therefore, is whether the High Court could issue a writ of mandamus in the nature sought for and whether if any such directions are issued, it would interfere with the power exercised by the learned single Judge. With the cost of writ petition, it is made clear that the power of a learned single Judge is regulated by Section 3 of the Kerala High Court Act, 1958, wherein as per sub-Section (3), the single Judge is vested with power to exercise original jurisdiction under any law for the time being in force, apart from exercise of other powers under the Code of Criminal Procedure and the Code of Civil Procedure. So also, as per clause 10 (iii) of Section 3 a single Judge is vested with powers to consider petitions under Article 226 of the Constitution of India except where such power relates to the issue of a writ of the nature of the Habeas Corpus. We are also of the view when powers to be exercised by the Judges are clearly delineated in the Kerala High Court Act, 1958 interference with such powers of a learned single Judge is basically deprecated and therefore, a writ petition filed with the intention of such interference collatorily cannot be sustained under law. Said so, a writ of mandamus, which is a discretionary remedy under Article 226 of the Constitution of India or normally and ordinarily used to regulate administrative, ministerial and

statutory actions of the authorities, cannot be applied to correct or regulate the power exercised by a learned single Judge functioning in accordance with law.

22. Therefore, we are of the opinion that ordinarily a writ court would not interfere on the judicial side in a matter pending before a learned single Judge. It is also with the intention of regulating the powers of the Judges of the High Court, the High Court Act, 1958 and the Rules, 1971 are framed and therefore, going by the scheme of the Act and Rules also, the reliefs sought for by the writ petitioner is unsustainable. To put it otherwise, mandamus literally means 'a command' and it is normally issued only in favour of a person who establishes a legal right in himself and it is always issued against a person who have a legal duty to perform or act himself in accordance with any provisions of a statute and it is normally discharge of a public duty by virtue of the powers conferred under any specific law. It is true, if there is no law provided to alleviate grievances of any person or of a class of persons, then a writ court would be justified in issuing any writ order or direction to alleviate the grievances of such persons. Which thus means, under such circumstances a writ court is expected to reach to redress the grievances. However, the writ petitioner, in the

instant case, not only could not point out any such aspects, but it is clear from the discussion of law made above, the situations are guided by appropriate and relevant laws under various statutes.

23. Basically while issuing any writs or orders in contemplation of Article 226 of the Constitution of India, a writ court shall always be duty conscious and mindful of the laws in vogue to be applied to the issues raised/involved. In order to enable the courts, Tribunals and other authorities to proceed in accordance with law, a dedicated and systematic procedure is followed by the courts, and the courts and the *quasi* judicial authorities are expected to exercise the powers in accordance with the procedure prescribed under law. We do not think, a writ court is an exception to such basic and fundamental principles under the Constitution, the laws under statutes, and the principles of law evolved by Judge made laws. Thinking so, in the matter of civil and criminal matters, we are aptly and systematically guided by the Code of Criminal Procedure and the Civil Procedure Code and to some extent, the Rules thereto. The procedure before this Court is regulated by the Kerala High Court Act, 1958 and the Kerala High Court Rules, 1971. The writ petitioner is seeking to make certain declarations in respect of the pending proceedings in Crl.M.C No. 4375 of 2020. True,

a prayer is also sought for a direction to the Central Bureau of Investigation to register a crime and proceed with the investigation in respect of the allegations made by the writ petitioner in regard to the scams specified above. The proceedings in Crl.M.C. No. 4375 of 2020 is initiated by the petitioner therein, namely the Chief Executive Officer of the Life Mission, a project of the Government of Kerala by virtue of the rights conferred on him under Section 482 of the Code of Criminal Procedure, which is an inherent power vested with the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of the process of any court or otherwise to secure the ends of justice. True, such power is exercised by the High Court sparingly, carefully and with caution with an intention to translate the true spirit of Section 482 Cr.P.C.

24. Anyhow, we are of the opinion that those are all matters to be considered by the learned single Judge while considering the subject issue on its merit. Therefore, we do not think that the declaratory reliefs sought for by the writ petitioner, which would interfere with the proceedings in Crl.M.C No. 4375 of 2020 and the power enjoyed by the learned Single Judge, are reliefs which could be granted by this Court exercising the power of the writ jurisdiction

under Article 226 of the Constitution of India. The rest of the aspects raised by the writ petitioner with respect to the non-filing of the affidavit along with the petition under Section 482 are all matters to be considered by the learned single Judge while considering the issues with respect to the maintainability of the petition as raised by the writ petitioner in the Miscellaneous Application filed in CrI.M.C No. 4375 of 2020.

25. We are of the considered opinion that the writ petitioner, having invoked the jurisdiction of the learned single Judge by filing an impleading petition, is at liberty to invoke a parallel remedy by instituting a Public Interest writ petition. We are also of the opinion that a Public Interest Litigation is always filed as a class action to protect the interest of the public at large. So also, public interest litigations are filed in order to protect the interest of the poor and downtrodden, who basically have no access to justice or had been denied justice and remaining unattended by the authorities. However, the attempt now made by the writ petitioner in this Public Interest Litigation is seeking to interfere with the proceedings pending before a learned single Judge invoking the powers under Section 482 of the Cr.P.C. We are afraid, whether any public interest is involved at all in

the instant writ petition. The Code of Criminal Procedure prescribes the procedure in respect of consideration of such an application, and rights of any affected person to challenge the orders in accordance with law. We do not think, merely because the scams alleged by the petitioner may have some public interest, that public interest cannot be brought into play for the purpose of interfering with the jurisdiction exercised by a learned single Judge in accordance with the provisions of the Code of Criminal Procedure, as also in accordance with the power exercised under the Constitution of India.

26. Even though the learned counsel for the petitioner submitted that the petitioner is not attempting to stall or scuttle the proceedings pending before the learned single Judge, we are of the considered opinion that declaratory reliefs sought for by the petitioner make it clear that the proceedings are attempted to be interfered with in a circuitous manner. Which thus means, if any declaratory reliefs as is sought for by the writ petitioner is granted, it would have a deleterious effect of interfering with the proceedings of the learned single Judge. Anyhow, the issue with respect to the authority of a Government Pleader to file a petition under Section 482 Cr.P.C was raised by the petitioner in the Miscellaneous Application filed for

getting himself impleaded and participated in the proceedings which is a jurisdictional aspect to be considered by the learned single Judge in accordance with law. Therefore, we have no hesitation to hold that the petitioner has not made out any case to interfere with the pending proceedings before the learned single Judge in any manner, whatsoever, by filing a writ petition under Article 226 of the constitution of India, and that too in a public interest writ petition. As we have pointed out earlier, the power conferred under Article 226 of the Constitution of India cannot be stretched or elongated to that extent of interference in a proceeding of a learned single Judge functioning in accordance with the powers conferred under the Constitution of India and the laws, and thus, we are clear in our mind that no writ can be issued as is sought for by the writ petitioner.

27. Fundamentally speaking, there is no such procedure of interference by a writ court in a Public Interest Litigation seeking intervention in a pending proceedings before the learned single Judge. The Code of Criminal Procedure as well as the Kerala High Court Act, and the Rules of the High Court enables a writ court to function only in accordance with the powers conferred thereunder and the constitution and the laws and not abrogative to law. This is more so when an

aggrieved person is left with a right and liberty to take up the matter before any appellate legal forum and so is the case of the writ petitioner. We are also of the opinion that the declaratory reliefs sought for by the writ petitioner are quite strange and beyond the comprehension of a normal legal concept.

28. Learned Advocate General has invited our attention also to a judgment of a 7 Member Constitution Bench of the Apex Court in ***Naresh Shridhar Mirajkar and Ors. vs. State of Maharashtra and Ors.*** [AIR 1967 SC 1], in which the issue considered was the freedom of speech and expression on the basis of the grievance of journalists *vis-a-vis* a judicial order passed by a High Court in proceedings *inter partes* and the character of the judicial order whether passed in a matter directly in issue between the parties or is passed incidentally to make the adjudication of the dispute between the parties fair and effective, and it was held therein that judicial orders passed by the High Court or in relation to proceedings pending before it are not amenable to be corrected by issuing a writ of certiorari under Article 32(2) of the Constitution of India and submitted that the facts and circumstances involved in the case are akin to the subject matter of issues raised by the petitioner in the instant writ petition. Paragraphs

37 to 39 and 60 and 65 are relevant to the context and they read thus:

“37. The next question which calls for our decision is: does the impugned order contravene the fundamental right of the petitioners under Art. 19(1) ? In dealing with this question, it is essential to bear in mind the object with which the impugned order has been passed. As we have already indicated, the impugned order has been passed, because the learned Judge was satisfied that the interests of justice required that Mr. Goda should not be exposed to the risk of excessive publicity of the evidence that he would give in court. This order was passed by the learned Judge after the hearing arguments from both the parties to the suit. Thus, there is no doubt that the learned Judge was satisfied that in order to be able to do justice between the parties before him, it was essential to grant Mr. Goda's request for prohibiting the publication of his testimony in the newspapers from day to day. The question is : can it be said that an order which has been passed directly and solely for the purpose of assisting the discovery of truth and for doing justice between the parties, infringes the fundamental rights of the petitioners under Art. 19(1) ?

38. The argument that the impugned order affects the fundamental rights of the petitioners under Art. 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. When a Judge deals with matters brought before him for his adjudication, he first decides questions of facts on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Art. 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by court or in relation to a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Art. 19(1).

39. The impugned order is, in a sense, an order of a collateral nature; it has no direct relation with the decision of the dispute which had been brought before the Court in the proceedings between the parties. The learned Judge however, thought that in order that he should be able to do full justice between the parties it was necessary to pass the impugned order. Thus, though the order in a sense is collateral to the proceedings which were pending before the Court, it was directly connected with the said proceedings inasmuch as the learned Judge found that he could not do justice between the parties and decide the matter satisfactorily unless the publication of Mr. Goda's evidence was prohibited pending the trial. The order is not collateral in the sense that the jurisdiction of the Judge to pass that order can be challenged otherwise than by a proceeding in appeal. Just as an order passed by the Court on the merits of the dispute before it can be challenged only in appeal and cannot be said to contravene the fundamental rights of the litigants before the Court, so could the impugned order be challenged in appeal under Art. 136 of the Constitution, but it cannot be said to affect the fundamental rights of the petitioners. The character of the judicial order remains the same whether it is passed in a matter directly in issue between the parties, or is passed incidentally to make the adjudication of the dispute between the parties

fair and effective. On this view of the matter, it seems to us that the whole attack against the impugned order based on the assumption that it infringes the petitioners' fundamental rights under Art. 19(1), must fail.

60. There is yet another aspect of this matter to which it is necessary to refer. The High Court is a superior Court of Record and under Art. 215, shall have all powers of such a Court of Record including the power to punish contempt of itself. One distinguishing characteristic of such superior courts is that they are entitled to consider questions of their jurisdiction raised before them. This question fell to be considered by this Court in Special Reference No. 1 of 1964 (1965) 1 S.C.R. 413 at p 499. In that case, it was urged before this Court that in granting bail to Keshav Singh, the High Court had exceeded its jurisdiction and as such, the order was a nullity. Rejecting this argument, this Court observed that in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction. That is why this Court did not accede to the proposition that in passing the order for interim bail, the High Court can be said to have exceeded its jurisdiction with the result that the order in question was null and void. In support of this view, this

Court cited a passage from Halsbury's Laws of England where it is observed that

“prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular Court.” (Halsbury's Laws of England, Vol. 9, p. 349).

If the decision of a superior Court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by a superior Court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of this Court.

65. We are, therefore, satisfied that so far as the jurisdiction of this Court to issue writs of certiorari is concerned, it is impossible to accept the argument of the petitioners that judicial orders passed by High Courts in or in relation to proceedings pending before them, are amenable to be corrected by exercise of the said jurisdiction. We have no doubt that it would be unreasonable to attempt to rationalise the assumption of jurisdiction by this Court under Art. 32 to correct such

judicial orders on the fanciful hypothesis that High Courts may pass extravagant orders in or in relation to matters pending before them and that a remedy by way of a writ of certiorari should, therefore, be sought for and be deemed to be included within the scope of Art. 32. The words used in Art. 32 are no doubt wide; but having regard to the considerations which we have set out in the course of this judgment, we are satisfied that the impugned order cannot be brought within the scope of this Court's jurisdiction to issue a writ of certiorari under Art. 32; to hold otherwise would be repugnant to the well-organised limitations within which the jurisdiction to issue writs of certiorari can be exercised and inconsistent with the uniform trend of this Court's decision in relation to the said point. ”

29. Though Mr Nedumpara submitted that the afore-quoted judgment may not have any bearing since the consideration therein was in respect of a writ of certiorari, we are of the clear opinion that it squarely applies to the case at hand because the fundamental question considered was in respect of the power enjoyed by a writ court *vis-a-vis* an order passed by the High Court. Taking into account all the above aspects, we are of the considered opinion that the issues raised by the writ petitioner invoking the jurisdiction of this Court under Article 226 of the Constitution of India is not a matter to be considered under the public law remedy, since the petitioner could not establish any violation of his fundamental rights conferred under Part

III of the Constitution of India, much less the interest of public. To put it otherwise, the jurisdiction under Article 226 of the Constitution of India cannot be exercised by the writ court to regulate and control the proceedings pending before a learned single Judge of this Court exercising the power also under Article 226 of the Constitution of India. We are of the definite opinion that there is no enabling or guiding provision pointed out by the learned counsel for the petitioner to seek declaratory reliefs in a pending proceeding before the learned single Judge of this Court.

30. The learned counsel for the petitioner has also failed to point out any law enabling this Court to exercise the power of writ jurisdiction to interfere with the pending proceedings before a learned single Judge by granting declaratory reliefs with respect to the jurisdictional and maintainability aspect of the proceedings. Therefore, we are of the considered opinion that the petitioner has failed to make out any case so as to secure the declaratory reliefs.

31. The fourth relief sought for by the petitioner as extracted above is to order investigation into the scams by the Central Bureau of Investigation. Apparently, as we have pointed out above, on the basis of the complaint filed by a Member of Legislative Assembly, the

Central Bureau of Investigation, Cochin Unit, has registered a crime against the C.E.O of the Life Mission and others in regard to the receipt of the amounts from a foreign country and the investigation is under process subject to the orders passed in the CrIMC. On going through the interim order passed by the learned single Judge in CrI. M.A. No. 1 of 2020 in CrI.M.C. NO. 4375 of 2020, we understand that only the proceeding initiated against the Chief Executive Officer of the Life Mission, was stayed for a period of two months. Therefore, the reliefs sought for by the petitioner to order CBI investigation into the scam in question also cannot be sustained at all, since an investigation into the incident alleged by the petitioner is already launched by the CBI.

Taking into account all the above aspects, we are also of the considered opinion that the writ petition is not maintainable under law and therefore, the same is dismissed.

**S. MANIKUMAR,
CHIEF JUSTICE.**

**SHAJI P. CHALY,
JUDGE.**

Rv

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 A COPY OF THE EARLIER WPC 14316/2020 INSTITUTED BY THE PETITIONER IN RELATION TO THE GOLD SMUGGLING AND OTHER SCAMS.

EXHIBIT P2 A COPY OF CRL. M.C. NO.4375/2020 FILED BY THE CHIEF EXECUTIVE OFFICER, LIFE MISSION, IN THE HIGH COURT OF KERALA INVOKING SECTION 482 OF THE CR.PC SEEKING TO QUASH THE COMPLAINT AT THE HANDS OF SRI. ANIL AKKARA.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P.S to Judge.