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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 27TH DAY OF AUGUST 2021 / 5TH BHADRA, 1943

CRL.MC NO. 7542 OF 2018

AGAINST THE ORDER/JUDGMENT IN CMP 220/2018 OF COURT OF ENQUIRY

COMMNR. & SPECIAL JUDGE, KANNUR AT THALASSERY.

PETITIONER/RESPONDENT NO.2:

SHANKARA BHAT,
AGED 57 YEARS
S/O T. ISWARA BHAT,
YELKANA HIRAMANA HOUSE,
SHENI P.O,
PERIA (VIA),
KASARAGOD DISTRICT.

BY ADVS.
M.SASINDRAN
SRI.SATHEESHAN ALAKKADAN

RESPONDENT/COMPLAINANT & STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM - 682031.
- 2 THE VIGILANCE DIRECTOR,
PREVENTION OF CORRUPTION AND ANTI CORRUPTION BUREAU,
THIRUVANANTHAPURAM 695001
- 3 THE DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI CORRUPTION BUREAU,
KASARAGOD 671121
- 4 E.K. MUHAMMED KUNJHI
AGED 47 YEARS
S/O. MOIDEEN KUNJHI, SHAHANAZ MANZIL P.O., ERNAD 673632

BY ADVS.

Crl.M.C Nos.7542/2018 & others 2

OTHER PRESENT:

SPL.GP SRI.A.RAJESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24.08.2021, ALONG WITH Crl.MC.3960/2019, AND CONNECTED CASES, THE COURT ON THE 27/8/2021 DELIVERED THE FOLLOWING:

Crl.M.C Nos.7542/2018 & others 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 27TH DAY OF AUGUST 2021 / 5TH BHADRA, 1943

CRL.MC NO. 3960 OF 2019

(FIR NO.01/2018 OF VACB ERNAKULAM UNIT)

PETITIONER/2ND ACCUSED

MANOJ.K.M
AGED 43 YEARS
S/O A.G.MURALIDHARAN, ASST ENGINEER PWD ROADS
KALAMASSERY SECTION NOW WORKING AS ASST ENGINEER
NATIONAL HIGH WAY SUB DIVISION KOZHIKODE.

BY ADV S.CHANDRASEKHARAN NAIR

RESPONDENT/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682 031.
- 2 SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI CORRUPTION BUREAU, SPECIAL CELL,
ERNAKULAM UNIT.-682017

BY SPL. GOVERNMENT PLEADER SRI.A.RAJESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
24.08.2021, ALONG WITH Crl.MC.7542/2018 AND CONNECTED CASES, THE
COURT ON 27/8/2021 DELIVERED THE FOLLOWING:

Crl.M.C Nos.7542/2018 & others 4

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 27TH DAY OF AUGUST 2021 / 5TH BHADRA, 1943

CRL.MC NO. 5833 OF 2019

(VC NO.01/2018 VACB ERNAKULAM UNIT)

PETITIONER/PETITIONER:

LATHA MANKESH,
AGED 49 YEARS
W/O.PRAKASH.C.V. ASST EXECUTIVE ENGINEER PWD ROADS,
ALUVA, ERNAKULAM.

BY ADVS.
S.CHANDRASEKHARAN NAIR
SRI.RAJU GEORGE (KARUVATTA)
SRI.S.GOKUL BABU
SRI.S.JAYANT
SMT.AMALA.J.RAJ

RESPONDENTS/RESPONDENT:

- 1 STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.
- 2 SUPERINTENDENT OF POLICE
VIGILANCE AND ANTI CORRUPTION BUREAU, SPECIAL CELL,
ERNAKULAM UNIT.

BY SPL. GOVT.PLEADER SRI.A.RAJESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
24.08.2021, ALONG WITH Crl.MC.7542/2018 AND CONNECTED CASES, THE
COURT ON 27/8/2021 DELIVERED THE FOLLOWING:

Crl.M.C Nos.7542/2018 & others 5

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 27TH DAY OF AUGUST 2021 / 5TH BHADRA, 1943

CRL.MC NO. 6212 OF 2019

(FIR NO.01/2018 OF VACB ERNAKULAM UNIT)

PETITIONER/3RD ACCUSED:

SAJEEVKUMAR C.K.
AGED 45 YEARS
S/O. KARUNAKARAN, OVERSEER GRADE 3, ROADS SECTION,
ALUVA, NOW WORKING AS DRAFTSMAN GRADE I, PWD ROADS
CENTRAL CIRCLE, ALUVA, RESIDING AT CHEMBAKAPARAMBIL
HOUSE, B. M. NAGAR ROAD, EDAPPALLY P. O., PIN - 682024,
ERNAKULAM DISTRICT.

BY ADVS.
S.CHANDRASEKHARAN NAIR
SRI.RAJU GEORGE (KARUVATTA)
SRI.S.GOKUL BABU
SMT.AMALA.J.RAJ

RESPONDENT/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI - 682 031.
- 2 SUPERINTENDENT OF POLICE
VIGILANCE AND ANTI CORRUPTION BUREAU, SPECIAL CELL,
ERNAKULAM UNIT, KOCHI - 682018.

BY SPL. GOVERNMENT PLEADER SRI.A.RAJESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
24.08.2021, ALONG WITH Crl.MC.7542/2018 AND CONNECTED CASES, THE
COURT ON 27/8/2021 DELIVERED THE FOLLOWING:

Crl.M.C Nos.7542/2018 & others 6

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 27TH DAY OF AUGUST 2021 / 5TH BHADRA, 1943

CRL.MC NO. 464 OF 2020

(FIR NO.01/2018 VACB ERNAKULAM UNIT

PETITIONER/ACCUSED NO.9:

RINU ELIZABATH CHACKO
AGED 49 YEARS
FORMER DEPUTY EXECUTIVE ENGINEER, PWD ROADS, ERNAKULAM,
NOW WORKING AS ASSISTANT EXECUTIVE ENGINEER, PWD
BRIDGES SUBDIVISION, PALAKKAD, PIN-678 001.

BY ADV REENA ABRAHAM

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN-682 031.
- 2 SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI CORRUPTION BUREAU, SPECIAL CELL,
ERNAKULAM-682 017.

BY SPL.GOV.T.PLEADER A.RAJESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
24.08.2021, ALONG WITH Crl.MC.7542/2018 AND CONNECTED CASES, THE
COURT ON 27/8/2021 DELIVERED THE FOLLOWING:

Crl.M.C Nos.7542/2018 & others 7

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 27TH DAY OF AUGUST 2021 / 5TH BHADRA, 1943

CRL.MC NO. 8308 OF 2018

AGAINST THE ORDER/JUDGMENT IN CMP 220/2018 OF COURT OF ENQUIRY

COMMNR. & SPECIAL JUDGE, KANNUR AT THALASSERY,

PETITIONERS/ACCUSED:

- 1 BUJANG,
AGED 57 YEARS
S/O.MANE POOJAY, BENYA HOUSE, MUGU P.O.
- 2 BATTU RAI,
AGED 65 YEARS
S/O.DERANNE RAI, BENYA HOUSE, MUGU P.O.
- 3 SHASHI KUMAR.C.H,
AGED 42 YEARS
S/O.CHOWAKANU, ARIYAPADI, AYIRAPADI P.O.
- 4 PRASAD RAI,
FORMER DIRECTOR, MUGU CO-OPERATIVE BANK P.O., MUGU.
- 5 ABOOBACKER,
AGED 57 YEARS
S/O.ABBAS HAJI, CHEVA HOUSE, MUGU P.O.
- 6 REVATHI.B,
AGED 40 YEARS
W/O.RAVI KUMAR, MUNDITHADKA.
- 7 NARAYANA.S,
AGED 46 YEARS
S/O.SUBHASHI, SANTHI NILAYE, JALU MOLE HOME, MUGU P.O.
- 8 APPANNA.P.,
AGED 65 YEARS
S/O.THIMMAPPE PATALI, MUGU, PALLA HOUSE, MUGU P.O.
- 9 C.UMANATH BANDARI,
AGED 57 YEARS

Crl.M.C Nos.7542/2018 & others 8

S/O.KINHANNA BHANDARI, MUGU CHEVA HOUSE, MUGU.

BY ADVS.
A.T.ANILKUMAR
SMT.V.SHYLAJA

RESPONDENTS/DEFACTO COMPLAINANT:

- 1 STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM- 682031.
- 2 VIGILANCE DIRECTOR,
PREVENTION OF CORRUPTION AND ANTI CORRUPTION BUREAU,
THIRUVANANTHAPURAM- 695001.
- 3 THE DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI CORRUPTION BUREAU, KASARGOD- 671121.
- 4 E.K.MUHAMMED KUNJHI,
AGED 47 YEARS
S/O.MAIDEEN KUNJHI, SHAHANAZ MANZIL P.O., ERNAD-
673632.

BY SPL GOVERNMENT PLEADER A.RAJESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
24.08.2021, ALONG WITH Crl.MC.7542/2018 AND CONNECTED CASES, THE
COURT ON 27/8/2021 DELIVERED THE FOLLOWING:

COMMON ORDER

[Crl.MC Nos.7542/2018, 3960/2019, 5833/2019, 6212/2019, 464/2020, 8308/2018]

In all the Crl.M.Cs, the respective petitioners stand arrayed as accused in different crimes, registered against each of them, under the provisions of Prevention of Corruption Act,1988. They challenge the prosecution proceedings launched against them.

2. Crl.M.C.No.7542/2019 is filed by the Secretary of Mughu Service Co-operative Bank, Kasaragod. Crl.M.C.No..8308/2018 is filed by the Director Board Members of the above Co-operative Bank. The petitioner in Crl.M.C No.7542/2018 is the second accused and the petitioners in Crl.M.C.No.8308/2018 are the accused Nos. 5 to 10 and 12 to 14 in a complaint filed before the Enquiry Commissioner and the Special Judge, Thalassery, under section 190 of the Code of Criminal Procedure, alleging commission of offences punishable under section 13(1)(c)(i) and 13(1)(d)(ii) read with section 13(2) of the Prevention of Corruption Act 1988. The petitioners in all the other Crl.M.Cs are respectively accused Nos.1,3, 8 and 9 in FIR No.1/2018 of VACB Ernakulam unit, for offences punishable under sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act 1988 and Sections 201, 204, 464, 465,471 and section 120B of IPC.

3. In the complaint laid against the petitioners in Crl.M.C.Nos.7542/2018 and Crl.MC.8308/2018, the defacto complainant alleged that officers and the

Director Board members of the Co-operative bank, had committed financial irregularities. A quick verification was ordered by the special judge. Relying on the report submitted by the Vigilance, the court by an order dated 17/9/2018 directed the Vigilance to register a crime and to conduct investigation. By the above order, it was held that the offences alleged against the accused was one for misappropriation and was not relatable to any recommendation made or decision taken by the public servant in discharge of his official function and hence the previous approval under section 17A of the Prevention of the Corruption (Amendment) Act 2018 was not required. This order is under challenge in the above Crl.M.Cs at the instance of the accused, inter alia, on the ground that section 17A was applicable to the facts of the case and the court below was not justified in dispensing with the approval under section 17A of the amended Prevention of Corruption Act.

4. In the remaining Crl.M.Cs, FIR was laid pursuant to a complaint filed by a public interest litigant, before the Vigilance and Special Court, alleging misappropriation of funds. VC No.1/2018 was registered by the VACB, Ernakulam Unit, for the offences mentioned above and the investigation is progressing. The above proceeding is challenged by the accused contending that previous approval under section 17A of the Prevention of Corruption Act, 2018 was not obtained and hence the prosecution was bad. It was also contended that the allegations of fraud and financial irregularities raised in

the private complaint were false and proceedings were launched with malafide motives. It was further contended that, there was no material to establish the alleged offences attributed to the accused.

5. Essentially, the question that arises in all the cases is whether section 17A of the Prevention of Corruption Act, 2018 is an omnibus pre requisite, applicable to every investigation, enquiry or inquiry. The specific contention of the accused was that, section 17A was intended to prevent misuse of the provisions of the Prevention of Corruption Act, by using it against honest officers and hence, a proceeding launched sans such statutory requirement was bad.

6.The question whether sanction under section 197 Cr.P.C.is a mandatory requirement preceding every action taken by the authority has been the subject matter for consideration in a catena of decisions. Section 197 of the Cr.P.C.provides that, no court shall take cognizance of an offence involving a public servant who was accused of an offence alleged to have been committed by him, while acting or purporting to act in discharge of his official duty, except with the previous sanction of the concerned competent authority. The question whether every act done by the public servant called for a protection under section 197 of the Cr.P.C.was the subject matter of those decisions.

7. One of the earliest decisions of the Supreme Court on this point was in ***Baijnath Gupta & Ors v.State of Madhya Pradesh (AIR 1966 SC 220)***.

The question that came up before the Supreme Court was, whether a public servant charged with offences punishable under section 477A read with sections 109 and 409 IPC required previous sanction from the competent authority, as contemplated under section 197 of Cr.P.C.,1898. Supreme Court referred to two earlier decisions in **Hori Ram Singh v. Emperor (AIR 1939 SC 43)** as well the decision reported in **H.B.Gill & Another v. the King(AIR 1948 PC 128)**. In the latter case, the accused was charged under section 161 of IPC with taking bribes and under section 120B IPC with criminal conspiracy. On the question whether sanction was necessary under section 197(1) Cr.P.C., it was held by the judicial committee that, there was no difference in the scope of that section and the one under section 270 of the Government of India Act, 1935. In Hori Ram's case (supra), it was held that a public servant can be said to act or purported to act in discharge of his official duty, if it was such as to lie within the scope of his official duty. Thus act of a judge receiving bribe, though the judgment which he delivers may be an official act, taking bribe does not become an official act, it was held. It was also held that Government Medical officer does not act or purport to act as a public servant, in picking the pocket of a patient whom he was examining, though examination itself may be such an act. The court laid down the crucial test to determine whether a public servant, acts or purports to act in official capacity by holding that, if challenged, he can reasonably claim that, what he did was, by virtue of his office.

8. This view was approved in **R.W Mathams v. State of West Bengal (1954 AIR 455)**, wherein it was held that it was not every offence committed by public servant that required sanction or prosecution. Under section 197(1) of the Code of Criminal Procedure, it was not every act done by him while he was actually engaged in the performance of the official duties; that, but if the act complained of, was directly concerned with his official duty and, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that was important and if it falls within the scope and ambit of his official duties, protection contemplated under section 197 of Cr.P.C. will be attracted.

9. In **S.B.Saha & Others v. M.S.Kochar (AIR 1979 SC 1841)**, a three judges Bench of the Supreme Court had occasion to consider the question whether in the case of alleged offences under criminal conspiracy and breach of trust, sanction under section 197(1) of the Criminal Conspiracy was required. Supreme Court held that the words “any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty” employed in section 197 (1) are capable of a narrow as well as wide interpretation. It was the quality of the act that was important and if it falls within the scope and range of “official duties”, the protection contemplated under section 197 Cr.P.C. will be attracted. It was held that for prosecuting public servant for dishonest misappropriation or conversion of goods, which they had seized, sanction was not essential. In **Harihar**

Prasad v. State of Bihar (1972 3 SCC 89) it was held that sanction under section 197 Cr.P.C. for prosecution of offence under section 409 IPC, was not necessary. In **Om Prakash Gupta v. State of U.P. (1957 SCR 423)**, it was held that public servant committing criminal breach of trust does not normally act so, in his capacity as a public servant. In **Prakash Singh Badal & another v. State of M.P.(AIR 2007 SC 1274)**, Supreme court had occasion to consider the scope and ambit of expression “official duty” that appears in section 197 of the Cr.P.C. It was held that section 197 extends only to those acts or omissions done by the public servant while discharging the official duty. It was held that on facts, if it was prima facie found that the act or omission for which the accused was charged, had reasonable connection with the discharge of his duty, then it must be held to be official, to which, applicability of section 197 Cr.P.C. cannot be disputed.

10. In **State of U.P. v. Paras Singh(2009 (6) SCC 372)**, the question that arose was whether sanction was required for prosecution of a public servant charged with sections 409 and 468 of IPC. It was held that, the use of expression “official duty” implies that, act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duties. Court relied on the decision of the Supreme Court in **Matajog Dobey v. H.C.Bhari (AIR 1956 SC 44)**, wherein it was held that the offence alleged to have been committed by the accused must have something to do or must be related in some manner with the discharge

of official duty. There must be a reasonable connection between the act and the discharge of the official duty. The act must bear such relation to duty that the accused could lay a reasonable claim but not a pretended or fanciful claim that he did it in the course of performance of his duty. In **Shambhoonath Mishra v. State of U.P. & others (AIR 1997 SC 2102)**, the question that arose was whether the prosecution of an accused charged with offences of fabrication of records and misappropriation of public fund needs sanction under section 197(1) of the Cr.P.C. It was held that, it was not an act done in discharge of his official duty and fabrication of record and misappropriation of funds do not form part of his duty. Hence, sanction was not required. Same issue was considered by the Supreme Court in **Rajib Ranjan & Others v. R.Vijayakumar (2015 (1) SCC 513)**, wherein it was held that even while discharging the official duties, if a public servant enters into criminal conspiracy or indulges in criminal misconduct, such misdemeanor on his part is not to be treated as an act in discharge of his official duties and therefore, the provisions of section 197 Cr.P.C.will not be attracted.

11. The question, whether the prosecution of a public servant charged with an offence under IPC for breach of trust needs sanction, was the subject matter of consideration in **Punjab State Warehousing Corporation v. Bhushan Chander & another (AIR 2016 SC 3104)**. In **State of Kerala v. V.Padmanabhan Nair (AIR 1999 SC 2405)** the question was whether prosecution for charges under section 406 IPC read with section

120B of IPC requires sanction. It was held that prior sanction was not required for prosecution. The same position was reiterated in **Dr.Subramanian Swamy v. Director CBI and another (AIR 2014 SC 2140)**. In **Manju Surana v.Sunil Arora (2018 2 KLT 315)** the question whether sanction for prosecution of the public servant within section 197 of Cr.P.C. on an allegation of corruption was required before setting in motion even the investigating process under section 156(3) of the Code of Criminal Procedure,1973 was referred to a larger Bench and is pending .

12.The above decisions consistently laid down a clear division between those acts which constitute an offence and those acts, though done while discharging the official duties of the public servant, does not ipso facto constitute an act done or purported to be done in discharge of his official duties, as contemplated under section 197 (1) Cr.P.C. The law laid down seems to be consistent that if a criminal offence is committed by a public servant, which is unconnected with his duty, sanction under section 197 of Cr.P.C.was not required, since it undoubtedly does not form part of his official duty or purported to be done, in discharge of his official duty.

13. In the back ground of the law laid down in that context, the contention, whether prior approval as contemplated under section 17A introduced by 2018 Amendment to the Prevention of Corruption Act is required in respect of every act which form subject matter of prosecution has to be considered. In this context, it is essential to refer to the exact words

employed by the statute which reads as follows;

“S.17A No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties without previous approval.”.

Under section 17A, which was inserted by Act 16 of 2018, and which came into force with effect from 26/7/2018, the previous approval by the concerned authorities is essential. The crucial question that arises for consideration in these proceedings is whether previous approval from the competent authority need to be obtained for every enquiry, inquiry or investigation, into every offence committed by the public servant. The crux of the issue is whether the above provision is an omnibus, all pervasive pre requisite for every enquiry or inquiry or investigation into every act done by the public servant in discharge of his official functions.

14. No doubt, Section 197(1) Cr.P.C. and Section 17A of the P.C. Act operate in two different fields and in distinct situations. Apparently, it has nothing in common at all. However, consistent principle laid down by the decisions referred to supra, in relation to any offence committed by a public servant while “acting or purporting to act in discharge of his official duty” can be profitably adverted to answer the legal issue involved in relation to section 17A of the P.C. Act. The decisions referred to supra are based on the principle that the commission of crimes by a public servant which had no connection

with his official duty, cannot be considered as one within the scope of section 197 Cr.P.C. Extending the principle to S.17A of P.C.Act, it can be said that offences like misappropriation, falsification of accounts, cheating, criminal breach of trust, receiving bribes, etc. are beyond the scope of the provision.

15. Statutorily, cases involving arrest of person on the spot on charge of accepting or attempting to accept any undue advantage for himself or any other person, has been exempted from the purview of the above previous approval. This is justifiably so, since swift and prompt action is liable to be taken, while apprehending a person who is stated to have demanded and received bribe and the arresting officer cannot wait for previous approval.

16. While considering the scope of the section 17A of PC Act, the issue has to be analysed in the background of the views expressed at the time of drafting of the enactment. This is referred to analyse the background in which section 17A was sought to be introduced and also to analyse whether it covers every enquiry, inquiry or investigation. The Law Commission of India in its 254th report had referred to the scope of section 17A(1) of the Prevention of Corruption Amendment Bill dated 2013. After referring to the proposed section 17 A(1), the Law Commission in Chapter 7, at para 7.1.2., opined that the proposed section 17A(1) introduced a limited requirement of previous approval to prosecute persons, who are or were alleged to have been public servants at the time of the alleged offence. It was held that this was in line with the provisions of Section 197 Cr.P.C. and the scheme of

section 14 of the Lokpal Act. It was opined that the proviso to proposed to section 17 A(1) was similar to clause 2 of the repealed section 6A of the Delhi Special Police Establishment Act, 1946, which provided that in certain factual scenario, no sanction previous approval would be necessary. However, the proviso to the proposed section 17A(1) was narrower than section 6A of the Delhi Special Police Establishment Act, requiring that even if a person is caught on the spot while accepting illegal gratification., it would have to be shown by the prosecution that it was intended that such acceptance was consequential to a relevant public function or activity being performed.

17. In the proviso to the proposed section 17A (1), it was provided that the taking of bribe must have been with the intention that a relevant public function or activities shall be performed improperly, either by himself or by another public servant. It was held by the law commission that the above provision imposed a duty on the prosecution not only to show that the bribe or illegal remuneration/consideration was obtained, that it was in consequence of a relevant public function or that duty shall be performed improperly, either by himself or any public servant. Hence, it was suggested that the above part in the proviso shall be omitted. Except that, no other suggestion was made by the Law Commission, in relation to section 17A. The above report does not throw any light as to the scope and ambit of section 17A of PC Act, except that it was in line with Section 197 Cr.P.C.

18. The select committee of Rajya Sabha, on the Prevention of Corruption Act Amendment Bill 2017, in its report submitted on 12/8/2017 had referred to the scope of section 17A PC Act. It seems that several objections were raised regarding the above provision. Report reveals that CBI had opposed the provision, holding that it may cause unnecessary delay in investigation. All other authorities/representatives generally supported the above amendment, with few suggestions regarding the authority competent for granting sanction. Accordingly, the committee agreed with the amendment as proposed by the Government and recommended that clause 12, for insertion of section 17 A in the PC Act 1988, be effected.

19. Section 17A PC Act has to be analysed in the above background. The most crucial part of section 17A provides that previous approval is required in relation to enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act “where the alleged offence is relatable to any recommendation made or decision taken by such public servant”. It seems that the above part of the section is the most crucial part of the section, since it imposes a rider on the otherwise absolute power under section 17A that enquiry, inquiry or investigation into every act needed prior approval. It is clear that it is not that every offence alleged to have been committed by the public servant under the Act that needed prior approval. Prior approval under section 17A was required only where the alleged offence was relatable to “any recommendation made or

decision taken by the public servant". This seems to be the heart and soul of the above section. It is clear that the Parliament has consciously used the above words. If the intention of the Parliament was to impose a pre condition that every enquiry, inquiry or investigation into every allegation of offence against a public servant required prior sanction, the words "where the alleged offence is relatable to any recommendation made or decision taken by the public servant" ought not have been there. If the above words are omitted, it would have meant that no police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act in discharge of his official function or duties without the previous approval of the competent authority. In other words, if the intention of the statute was to cover every enquiry, investigation or inquiry, the words "where alleged offence is relatable to any recommendation made or decision taken by the public servant" were unnecessary, since even without those words it would have conveyed the intention. Hence, it is clear that the intention of the Parliament was not to insist for previous approval in relation to enquiry, inquiry or investigation only in relation to every offence committed by the public servant.

20. This seems to be in pari materia with section 197 Cr.P.C. and also in tune with the scope of the law laid down by the Supreme Court in its various decisions referred to earlier, while discussing the scope of section 197(1), Cr.P.C. If section 17A is interpreted as intending to cover every investigation,

enquiry or inquiry into any offence allegedly committed by a public servant, then it would have run counter to the spirit of all the above decisions. A contra view that section 17A covers every offence, would have resulted in a dichotomy, by which prosecution of a public officer for offences under IPC and Prevention of Corruption Act may not require sanction under section 197 (1) Cr.P.C. IPC for offences not relating to acts done in discharge of the official duty or purported to be official duty, whereas previous approval, which is a more rigorous provision, would be required in relation to inquiry or investigation against every other offence done by him. Hence, an interpretation in tune with the entire decisions of the Supreme Court under section 197(1) Cr.P.C., will have to be adopted, which will be in consonance with object of section 17A of PC Act.

21. In **Dr. Subramanyam Swami v. Centre for Public Interest Litigation (AIR 2014 SC 2140)**, a Constitution Bench of the Supreme Court had occasion to consider the Constitutional validity of section 6A of the Delhi's Special Police Establishment Act (25 of 1946), which provided for requirement of approval from the Central Government for investigations/enquiry, if the accused was in the level of joint secretary or above. The provision was held to be discriminatory, by reason of classification made between corrupt public officers on the basis of the status and to that extent, section 6A of 1946 Act and section 26C of 2003 Act were held to be invalid. One criticism raised against section 17A of the PC Act

was that it was introduced to overcome the decision rendered in Dr.Subramanyam Swami's case. As mentioned earlier, it is pertinent to note that legislature has specifically employed the words to restrict the scope of section 17A of PC Act. The scope of the words "relatable to any recommendation made or decision taken" has got its own significance. which, according to me, has great relevance in relation to the restriction imposed under the Prevention of Corruption Act. It could not be expected that the Parliament wanted to impose spokes at three different levels , one under section 17A of PC Act, the second one by 197 Cr.P.C. and thereafter under section 19 of the PC Act and thereby paralyzing every investigation, enquiry or inquiry as against the public servant. Such an interpretation would have defeated the very purpose and object of the very statute, the Prevention of Corruption Act, which was weeding out corruption from the public domain.

22. The object of the Prevention of Corruption Act is to protect honest and upright public officers and to ensure that they are unnecessarily not dragged into litigation. It is also intended to ensure that the officers are insulated and protected against unnecessary litigation. Such a protection enable the officers to take prompt and bold decisions on files and the administrative machinery will move forward. Otherwise the officers would be reluctant to make any official recommendation or to take any decision on files, apprehending false accusation of corruption. In this context, it has to

be noted that scope of section 17A is specifically confined to “any recommendation made or decision taken by public servant” which alone falls within the protection under section 17A. Definitely, the case of offences like misappropriation of funds, fraud, falsification of accounts, criminal breach of trust, conspiracy , etc. cannot be covered by the protection under section 17A. Definitely, they do not involve any decision or recommendation at all. Such acts cannot be considered as one done in discharge of his official functions and duties as contemplated under section 17A. Hence, it cannot, by any stretch of imagination, be held that investigation into any of the offences as mentioned above also needs prior approval, under section 17A. Such an interpretation alone can be in consonance with the section as interpreted by the various decisions. In other words, the scope of section 17A is only confined to investigation, inquiry or enquiry into any offence which is relatable to any decision taken or recommendation made by the authority. This purposive interpretation seems to be in consonance with the scope of section 17A.

23. An identical view was taken by a single judge of Delhi High Court in ***Devendra Kumar v. CBI & others (W.P.(Criminal) No. 3247/2018 and connected matters)***. In that, the scope of section 17A PC Act was under consideration. The complainant alleged that he was being harassed by the investigating officer and that the investigation officer demanded huge amount from him for not charging a case against him. On the question whether the

prosecution of the police officer required sanction, it was held by the Delhi High Court that the alleged promise to the complainant to ultimately give him relief cannot be said to be one done in discharge of the official function or duties of the public servant. It was held that the bar to enquiry or inquiry or investigation under section 17A of the PC Act is apropos such alleged offence as may be relatable to any recommendation made or decision taken by a public servant in discharge of his official function or duties. In the present case, there was no recommendation or decision on record by public servant in discharge of his official functions. It was only such acts done in discharge of the official functions that would have become the subject matter for seeking approval of the employer. It was held that a public servant cannot possibly be left to be under constant apprehension that bona fide decisions taken by him would be open to enquiry, inquiry or investigation on the complaint of a stranger. Section 17A, as it reads, and the legislative intent can only be to protect a public servant in the bona fide discharge of official functions or duties. However, when the act of a public servant is ex facie criminal or constitutes an offence, prior approval of the Government would not be necessary, it was held.

24. The legal principles involved has been correctly appreciated by the Delhi High Court. It was reiterated that the scope of section 17A was that an approval under section 17A for conducting any enquiry, inquiry or investigation was warranted only when the act done by the accused, which he

was charged of ,was relatable to a decision taken or recommendation made. If the offence was not relatable to any such decision or recommendation, prior approval under section 17A was not required. Hence, any commission of offence or allegation of acts of public servant which is ex facie criminal or constitute an offence or even demanding illegal consideration or receiving of it either to routinely move the file or to keep the file pending, without any decision being taken therein, will not fall within the scope of section 17A. Hence prior approval under section 17A is not warranted in such cases.

25. The reasonable conclusion that can be arrived at regarding the scope of section 17A is that prior approval under section 17A for conducting any enquiry, inquiry or investigation is required only when the offence alleged is relatable to a decision taken or recommendation made by the public authority and it involves a debatable or suspicious or doubtful recommendation made or decision taken by the authority. Acts, which are ex facie criminal or constitute an offence do not require approval under section 17A of P.C.Act.This legal proposition, seems to be clear from the statute and is in consonance with the spirit of the Prevention of Corruption Act and also in consonance with the legal principles laid down in relation to section 197 Cr.P.C.

26. Applying the above legal principles, I am of the firm opinion that in the cases at hand, which involve allegation of falsification of accounts, breach of trust and misappropriation of funds or acts which are exfacie criminal, no

Crl.M.C Nos.7542/2018 & others 27

prior approval under section 17A of Prevention of Corruption Act is required. Hence, all the Crl.M.Cs. are without any merit and are liable to be dismissed. However, it is made clear that except this issue, all other issues touching on the merit, are left open to be raised and considered at the appropriate stage.

In the result, all the Crl.M.Cs stand dismissed.

Sd/-
SUNIL THOMAS
Judge

dpk

APPENDIX OF CRL.MC 3960/2019

PETITIONER ANNEXURE

- ANNEXURE A1 COPY OF THE FIR IN VC NO 1/2018 OF VACB ERNAKULAM UNIT
- ANNEXURE A2 COPY OF COMPLAINT FILED BY P.K.AJAYAKUAR BEFORE VIGILANCE ENQUIRY COMMISSIOENR AND SPECIAL JUDGE MUVATTUPUZHA
- ANNEXURE A3 COPY OF THE ORDER DATED 8.1.2018 IN CMP NO 2178/2017 PASSED BY THE COURT OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE) MUVATTUPUZHA
- ANNEXURE A4 COPY OF PRELIMINARY ENQUIRY REPORT BEARING NO PE 02/18 EKM/PWD SUBMITTED BY INSPECTOR OF POLICE-111, VACB ERNAKULAM UNIT

RESPONDENT ANNEXURE

- ANNEXURE-A4 : SURVEY REPORT BEARING NO.3/2016 OF USEFUL EARTH GIVEN BY ASSISTANT EXECUTIVE ENGINEER, ROAD SUBDIVISION ALUVA TO EXECUTIVE ENGINEER, ROAD DIVISION, ERNAKULAM.
- ANNEXURE-4 (A) : SURVEY REPORT BEARING NO.7/2016 OF USEFUL EARTH GIVEN BY ASSISTANT EXECUTIVE ENGINEER, ROAD SUBDIVISION ALUVA TO EXECUTIVE ENGINEER, ROAD DIVISION, ERNAKULAM.
- ANNEXURE-4 (B) : SURVEY REPORT BEARING NO.8/2016 OF USEFUL EARTH GIVEN BY ASSISTANT EXECUTIVE ENGINEER, ROAD SUBDIVISION ALUVA TO EXECUTIVE ENGINEER, ROAD DIVISION, ERNAKULAM.
- ANNEXURE-4 (C) : SURVEY REPORT BEARING NO.9/2016 OF USEFUL EARTH GIVEN BY ASSISTANT EXECUTIVE ENGINEER, ROAD SUBDIVISION ALUVA TO EXECUTIVE ENGINEER, ROAD DIVISION, ERNAKULAM.
- ANNEXURE A4 (D) : SURVEY REPORT BEARING NO.10/2016 OF USEFUL EARTH GIVEN BY ASSISTANT EXECUTIVE ENGINEER, ROAD SUBDIVISION ALUVA TO EXECUTIVE ENGINEER, ROAD DIVISION, ERNAKULAM.

Cr1.M.C Nos.7542/2018 & others 29

- ANNEXURE A4 (E) : SURVEY REPORT BEARING NO.11/2016 OF USEFUL EARTH GIVEN BY ASSISTANT EXECUTIVE ENGINEER, ROAD SUBDIVISION ALUVA TO EXECUTIVE ENGINEER, ROAD DIVISION, ERNAKULAM.
- ANNEXURE A4 (F) : SURVEY REPORT BEARING NO.12/2016 OF USEFUL EARTH GIVEN BY ASSISTANT EXECUTIVE ENGINEER, ROAD SUBDIVISION ALUVA TO EXECUTIVE ENGINEER, ROAD DIVISION, ERNAKULAM.
- ANNEXURE A4 (G) : SURVEY REPORT BEARING NO.13/2016 OF USEFUL EARTH GIVEN BY ASSISTANT EXECUTIVE ENGINEER, ROAD SUBDIVISION ALUVA TO EXECUTIVE ENGINEER, ROAD DIVISION, ERNAKULAM.
- ANNEXURE A5 : COPY OF ORDER NO.700/EB3/2015 DATED 16/09/2015 OF PROCEEDINGS OF CHIEF ENGINEER PWD ROADS BRIDGES AND ADMINISTRATION THIRUVANANTHAPURAM.
- ANNEXURE A6 : THE COPY OF THE REVISE E3STIMATE ORDER NO.CE/R & B/EKM/11013 DATED 15/10/2016
- ANNEXURE A6 (A) : THE COPY OF THE REVISE E3STIMATE ORDER NO.CE/R & B/EKM/11014 DATED 15/10/2016
- ANNEXURE A6 (B) : THE COPY OF THE REVISE E3STIMATE ORDER NO.CE/R & B/EKM/11015 DATED 15/10/2016
- ANNEXURE A6 (C) : THE COPY OF THE REVISE E3STIMATE ORDER NO.CE/R & B/EKM/11016 DATED 15/10/2016
- ANNEXURE A6 (D) : THE COPY OF THE REVISE E3STIMATE ORDER NO.CE/R & B/EKM/11017 DATED 15/10/2016

APPENDIX OF CRL.MC 5833/2019

PETITIONER ANNEXURE

- ANNEXURE A1 TRUE COPY OF FIR IN VC NO.1/2018 DATED 02.08.2018 OF VACB ERNAKULAM UNIT
- ANNEXURE A2 TRUE COPY OF COMPLAINT FILED AS CMP NO.2178/2017 BEFORE THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, MUVATTUPUZHA (VIGILANCE)
- ANNEXURE A3 TRUE COPY OF ORDER DATED 08.1.2018 IN CMP NO.2178/2017 PASSED BY THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE), MUVATTUPUZHA.
- ANNEXURE A4 TRUE COPY OF THE PRELIMINARY ENQUIRY REPORT PE.02/18/EKM/PWD SUBMITTED BY INSPECTOR OF POLICE-III, VACB ERNAKULAM UNIT
- ANNEXURE A5 TRUE COPY OF THE RESOLUTION PASSED BY THE KUNNUMKARA GRAMA PANCHAYATH
- ANNEXURE A6 TRUE COPY OF THE ORDER NO.700/EB3/2015 DATED 16.09.2015 OF PROCEEDINGS OF CHIEF ENGINEER PWD ROADS BRIDGES AND ADMINISTRATION THIRUVANANTHAPURAM
- ANNEXURE A7 TRUE COPY OF THE REVISE ESTIMATE ORDER NO.CE/R&B/EKM/11013 DATED 15.10.2016 ISSUED BY THE CHIEF ENGINEER, PWD ROADS AND BRIDGES, THIRUVANANTHAPURAM
- ANNEXURE A8 TRUE COPY OF THE REVISE ESTIMATE ORDER NO.CE/R&B/EKM/11014 DATED 15.10.2016 ISSUED BY THE CHIEF ENGINEER, PWD ROADS AND BRIDGES, THIRUVANANTHAPURAM.
- ANNEXURE A9 TRUE COPY OF THE REVISE ESTIMATE ORDER NO.CE/R&B/EKM/11015 DATED 15.10.2016 ISSUED BY THE CHIEF ENGINEER, PWD ROADS AND BRIDGES, THIRUVANANTHAPURAM.
- ANNEXURE A10 TRUE COPY OF THE REVISE ESTIMATE ORDER NO.CE/R&B/EKM/11016 DATED 15.10.2016 ISSUED BY THE CHIEF ENGINEER, PWD ROADS AND BRIDGES,

Cr1.M.C Nos.7542/2018 & others 31

THIRUVANANTHAPURAM.

ANNEXURE A11

TRUE COPY OF THE REVISE ESTIMATE ORDER
NO.CE/R&B/EKM/11017 DATED 15.10.2016 ISSUED
BY THE CHIEF ENGINEER, PWD ROADS AND BRIDGES,
THIRUVANANTHAPURAM.

APPENDIX OF CRL.MC 6212/2019

PETITIONER ANNEXURE

- ANNEXURE A1 CERTIFIED COPY OF FIR IN VC NO.1/2018 DATED 02.08.2018 OF VACB ERNAKULAM UNIT
- ANNEXURE A2 TRUE COPY OF COMPLAINT FILED AS CMP NO.2178/2017 BEFORE THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, MUVATTUPUZHA (VIGILANCE)
- ANNEXURE A3 TRUE COPY OF ORDER DATED 08.01.2018 IN CMP NO.2178/2017 PASSED BY THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE), MUVATTUPUZHA
- ANNEXURE A4 TRUE COPY OF THE PRELIMINARY ENQUIRY REPORT PE.02/18/EKM/PWD SUBMITTED BY INSPECTOR OF POLICE - III, VACB, ERNAKULAM UNIT
- ANNEXURE A5 TRUE COPY OF THE LETTER NO.A3/45/2012 DATED 25.10.2018 SENT BY THE ASSISTANT EXECUTIVE ENGINEER, PWD ROADS DIVISION.
- ANNEXURE A6 TRUE COPY OF THE RESOLUTION PASSED BY THE KUNNUMKARA GRAMA PANCHAYATH
- ANNEXURE A7 TRUE COPY OF THE RELEVANT PAGES OF THE PWD MANUAL REVISED EDITION 2012

APPENDIX OF CRL.MC 464/2020

PETITIONER ANNEXURE

- ANNEXURE A1 THE FIR NO 1/2018 DATED 2.8.2018
- ANNEXURE A2 THE COPY OF COMPLAINT FILED AS CMP NO 2178/2017
- ANNEXURE A3 COPY OF THE ORDER DATED 8.10.2018 IN CMP NO 2178/2017 PASSED BY THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGELANCE) MUVATTUPUZHA
- ANNEXURE A4 COPY OF THE PRELIMINARY ENQUIRY REPORT PE 02/18/EKM/PWD SUBMITTED BY INSPECTOR OF POLICE III, VACB ERNAKULAM UNIT.
- ANNEXURE A5 TRUE COPY OF THE REPORT OF TRANSFER OF CHARGE DATED 31.3.2015
- ANNEXURE A6 TRUE COPY OF THE REPORT OF TRANSFER OF CHARGE DATED 24.4.2015
- ANNEXURE A7 TRUE COPY OF THE ORDER DATED 1.10.2019 ISSUED BY THE JOINT SECRETARY PUBLIC WORKS (F) DEPARTMENT

APPENDIX OF CRL.MC 8308/2018

PETITIONER ANNEXURE

- ANNEXURE A1 THE TRUE COPY OF THE BYELAW OF THE MUGHU SERVICE CO-OPERATIVE BANK, MUGU-KASARGOD.
- ANNEXURE A2 TRUE COPY OF THE FIR.
- ANNEXURE A2 (A) TRUE COPY OF THE COMPLAINT FILED BY THE 4TH RESPONDENT BEFORE THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THALASSERY AS CMP NO.220/18.
- ANNEXURE A3 TRUE COPY OF THE REPORT DATED 30.08.2018 SUBMITTED BY THE 3RD RESPONDENT BEFORE THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THALASSERY.
- ANNEXURE A4 TRUE COPY OF THE ORDER DATED 17.09.2018 IN CMP NO.220/18 ON THE FILES OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THALASSERY.

APPENDIX OF CRL.MC 7542/2018

PETITIONER ANNEXURE

- ANNEXURE A1 A TRUE COPY OF THE BYE LAW OF MUGHU SERVICE
CO-OPERATIVE BANK, MUGHU KASARAGOD
- ANNEXURE II A TRUE COPY OF THE FIR
- ANNEXURE II (A) A TRUE COPY OF THE COMPLAINT FILED BY THE 4TH
RESPONDENT BEFORE THE ENQUIRY COMMISSIONER
AND SPECIAL JUDGE, THALASSERY AS C.M.P. NO.
220 OF 2018
- ANNEXURE III A TRUE COPY OF THE REPORT DATED 30.8.2018
SUBMITTED BY THE 3RD RESPONDENT BEFORE THE
ENQUIRY COMMISSIONER AND SPECIAL JUDGE,
THALASSERY.
- ANNEXURE AIV A TRUE COPY OF THE ORDER DATED 17.9.2018 IN
C.M.P. NO. 220 OF 2018 ON THE FILES OF
ENQUIRY COMMISSIONER AND SPECIAL JUDGE,
THALASSERY