

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 13TH DAY OF APRIL 2023 / 23RD CHAITHRA, 1945

CRL.MC NO. 4861 OF 2022

CRIME NO.1/2020 OF VIGILANCE & ANTI-CORRUPTION BUREAU,
KANNUR

PETITIONER/ACCUSED:

K.M. SHAJI, AGED 51 YEARS
S/O.BEERANKUTTY, KALATHODIKA HOUSE, NEAR A.R.
CAMP, NGO QUARTERS, VENGERRI P.O.,
KOZHICKODE, PIN - 673010
BY ADV BABU S. NAIR

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI, PIN - 682031
- 2 THE DEPUTY SUPERINTENDENT OF POLICE
VIGILANCE AND ANTI CORRUPTION BUREAU, VACB UNIT,
THAVAKKARA, KANNUR, KANNUR DISTRICT, PIN - 670002
BY ADVS.
SR.PUBLIC PROSECUTOR SRI.C.K SURESH.
SRI.GRACIOUS KURIAKOSE, ADDL.DIRECTOR GENERAL OF
PROSECUTION

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 5.04.2023, THE COURT ON 13.04.2023 PASSED THE FOLLOWING:

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O R D E R

Dated this the 13th day of April, 2023

This CrI. M.C. has been filed to quash the entire proceedings in Crime No.1/2020 of Vigilance and Anti-Corruption Bureau (VACB), Kannur.

2. The petitioner is a former member of the Kerala Legislative Assembly representing Azhikode Constituency in Kannur District from 2011 to 2016. He represented the Indian Union Muslim League party. The VACB, Kannur, registered Annexure A FIR against the petitioner on 18/4/2020 under sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act'), alleging that he accepted a bribe of ₹25,00,000/- from the Manager of Azhikode Higher Secondary School, Kannur during 2014-15 as a reward for taking steps to sanction Plus Two Course to the school. The crime was registered following a complaint dated 19/9/2017 preferred by one Kuduvan Padmanabhan, a member of Kannur Block

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Panchayat, to the Chief Minister of Kerala. The Director, VACB, Thiruvananthapuram, ordered to conduct a preliminary enquiry on the complaint. The Deputy Superintendent of Police, VACB, Kannur, conducted a preliminary enquiry and recommended the registration of the crime. As per GO No.41/2020/Vig. dated 17/4/2020, the sanction under section 17 A of the PC Act was accorded to register the case. Consequently, Annexure A FIR was registered.

3. I have heard Sri.Babu S.Nair, the learned counsel for the petitioner and Sri.Gracious Kuriakose, the learned ADGP representing the VACB. Perused the case diary.

4. The learned counsel for the petitioner Sri. Babu S. Nair submitted that the allegations made in Annexure A FIR and the materials collected during the investigation, even if taken at their face value do not prima facie constitute any offence or make out any case against the petitioner. The counsel further submitted that there is absolutely no allegation that the petitioner made a demand for the bribe, and hence the prosecution under sections 7 and 13(1)(d) r/w 13(2) of the PC Act is unsustainable. Reliance

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was placed on the decisions of the Apex Court in ***Shanthamma K. v. State of Telangana*** (2022 KHC 6211), ***Satyanarayana Murthy P. v. District Inspector of Police and Another*** (2015 KHC 4615), ***C.Sukumaran v. State of Kerala*** [(2015) 11 SCC 314], ***Vinod Kumar v. State of Punjab*** [(2015) 3 SCC 220], ***B.Jayaraj v. State of Andhra Pradesh*** [(2014) 13 SCC 55] and ***Neeraj Dutta v. State (Govt. of N.C.T. Of Delhi)*** [2023 KLT OnLine 1212 (SC)]. The learned counsel further submitted that the defacto complainant Sri. Kuduvan Padmanabhan is a local leader of CPI(M), and the very registration of the crime was the result of a political vendetta to finish the political career of the petitioner. Per contra, Sri. Gracious Kuriakose, the learned ADGP, submitted that Annexure A FIR discloses serious allegations of criminal misconduct by the petitioner, and it is impermissible to quash the FIR under section 482 of Cr.P.C. when there are serious triable allegations. The truthfulness and falsity of allegations are questions of fact and matters of evidence to be let at a trial and cannot be prejudged at this stage, submitted the counsel. The learned counsel relied on the decision of the Apex Court in

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Neeharika Infrastructure Pvt. Ltd. (M/s.) v. State of Maharashtra and Others (2021 (3) KHC 25) in support of his submission.

5. The scope and ambit of the power by the High Court under section 482 Cr.P.C. or under Article 226 of the Constitution of India to quash the FIR or final report have been expounded by the Apex Court in a catena of decisions. In ***Kurukshetra University v. State of Haryana*** (1977 KHC 711), the Apex Court observed and held that inherent powers under section 482 Cr.P.C. do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice; that statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. In ***State of Karnataka v. L. Muniswamy and Others*** [(1977) 2 SCC 699], considering the scope of the inherent power of quashing under section 482, the Apex Court held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the

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material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. In **State of West Bengal & Others v. Swapan Kumar Guha & Others** (AIR 1982 SC 949), the three-judge Bench of the Apex Court laid down the following principle:

"21....the condition precedent to the commencement of investigation under S.157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under S.157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on... The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences."

In **Madhavrao Jiwajirao Scindia and Others v. Sambhajirao Chandrojirao Angre and Others** [(1988) 1 SCC 692], it was

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held that while exercising inherent power of quashing under section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where in the opinion of the Court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case, also quash the proceedings. In the celebrated decision ***State of Haryana v. Bhajan Lal*** (1992 KHC 600), the Apex Court considered in detail the scope of the High Court's powers under section 482 Cr.P.C. or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, the Court identified the following cases in which FIR/complaint can be quashed:

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“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a

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specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In **State of A.P v. Golconda Linga Swamy** (2004 KHC 1342), after considering the decision in **Bhajan Lal** (supra) and other decisions on the exercise of inherent powers by the High Court under Section 482 Cr.P.C., it was held that exercise of power under Section 482 of Cr.P.C. is the exception and not the rule. In **Ajay Mitra v. State of Madhya Pradesh & Others** [(2003) 3 SCC 11], the Apex Court held that where the complaint or FIR does not disclose the commission of any cognizable offence against the accused, the same would be liable to be quashed. In **Rukmini Narvekar v. Vijaya Satardekar and Others** (2009 KHC 240), it was observed that the width of the powers of the High Court under S.482 of the Cr.P.C and under Art.226 of the Constitution of India was unlimited and that the High Court could make such orders as may be necessary to prevent abuse of the

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process of any court, or otherwise to secure the ends of justice. It was further observed that under S.482 of the Cr. P.C., the High Court was free to consider even material that may be produced on behalf of the accused to arrive at a decision. In ***Neeharika Infrastructure Pvt. Ltd*** (supra), it was held that when a prayer for quashing the FIR is made by the alleged accused and the Court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose commission of a cognizable offence. It was further observed that the Court is not required to consider on merits whether the allegations make out a cognizable offence or not, and the Court has to permit the investigating agency to investigate the allegations in the FIR.

6. A careful reading of the above-noted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation or trial of criminal cases and should not stall the investigation or prosecution. However, when it is convinced beyond any manner of doubt that FIR or the final report does not disclose the commission of any offence or

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that the allegations contained in the FIR or the final report do not constitute any cognizable offence or that the prosecution is barred by law or where a criminal proceeding is manifestly attended with malafides or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance or that it is necessary to interfere to prevent abuse of the process of the court, the High Court is entitled to quash the FIR or the final report under the exercise of its wholesome power under section 482 of Cr.P.C.

7. As stated already, the crime was registered pursuant to a complaint given by Sri.Kuduvan Padmanabhan to the Chief Minister. Along with the said complaint, a petition submitted by one P.K.Noushad, the former Vice President of Azhikode Panchayat, Indian Union Muslim League Committee, was attached. In that petition, it was alleged that Azhikode school management had approached the Poothapara branch committee of IUML for allotting Plus Two Course to the school. The local leadership of IUML asked them for an amount equivalent to that of the sum demanded by the management for a job position at

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the school. When the party leadership approached the School Manager and asked for the money after the Course was allotted, the petitioner intervened and directed the leaders not to collect funds from the School Manager. Later, it was revealed that the petitioner had taken ₹25,00,000/- equivalent to the amount of one teacher post from the School Manager.

8. The perusal of the case diary would show that 54 material witnesses were questioned, and their statements were recorded. The statement of four witnesses under section 164 of Cr. P.C. was also recorded. 17 documents were seized, including the minutes' book of IUML party, Azhikode Panchayat Committee and the daybook maintained by School Management. Sri. P.V. Padmanabhan, the Manager of the School who allegedly gave money to the petitioner, Smt.Swapna, a teacher of the school, Sri. Kuduvan Padmanabhan, the defacto complainant, Sri.P.K.Noushad, the former Vice President of Azhikode Panchayat, Indian Union Muslim League Committee and some other office bearers of the IUML Poothapara Branch Committee viz. Sri.K.P. Muhammad Haris, Sri.K.K.Musthafa, Sri.Muhammed

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Khasim P.P. and Prof. K.Mahamood, are the material witnesses. I have perused their statements. The manager of the school, Sri. P.V. Padmanabhan clearly stated that he or the school management did not pay even a single Rupee to the petitioner for getting Plus Two Course to the school. He specifically denied the allegation raised by the defacto complainant that the petitioner received ₹25,00,000/- from him as a reward for allotting Plus Two Course to the school. During the investigation, a case projected by the prosecution was that it was not the management but the teacher by the name Swapna, who was initially appointed in the school as a guest teacher in the year 2016, paid the money to the petitioner. When questioned, Smt.Swapna stated that she or her relatives did not pay any amount to the petitioner. The witnesses mentioned above, Sri. P.K.Noushad, Sri. K. P. Muhammad Haris, Sri.K.K.Musthafa, Sri.Muhammed Khasim P.P. and Prof. K.Mahamood only stated that the Manager of the school, Sri. P.V. Padmanabhan told them about the payment made to the petitioner. They or the defacto complainant did not know directly about the payment the Manager allegedly made. The

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Manager, in his statement, denied the allegation that he paid money to the petitioner. Thus, the statement of the above witnesses being hearsay cannot be relied on at all.

9. Annexure G is a copy of the income and expenditure statement ending in March 2014, and Annexure H is a copy of the statement of the income and expenditure ending in March 2015 of the Azhikode Educational Society, which runs the school. In Annexure A FIR, it is stated that those documents reveal that there was an excess of income over the expenditure of ₹35,00,000/- and in the preliminary enquiry, it was revealed that out of the said ₹35,00,000/-, ₹25,00,000/- was given to the petitioner. But the said observation is absolutely without any materials. It is merely an assumption unsupported by any evidence.

10. To attract the offence under section 7 or 13(1)(d) of the PC Act, there should be an allegation that a public servant demanded and accepted illegal gratification. Going by the allegations, admittedly, the demand for a bribe was made by the Indian Union Muslim League Committee. There is absolutely no

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case or allegation that the petitioner has ever made any demand from anybody for doing any act or forbearing to do any official act. The allegation is that the Manager of the school approached the Poothapara Branch Committee of the Indian Union Muslim League to get Plus Two Course to the School, and the demand for a bribe was made by the office bearers of the committee. There is no allegation, either in the complaint given by the defacto complainant or in the FIR or the statement of any of the witnesses, that the petitioner has ever made any demand. It is settled that demand for illegal gratification by the accused is a pre-requisite for constituting an offence under sections 7 and 13(1)(d) of the PC Act {See: **C.Sukumaran** (supra), **Shanthamma K.** (supra), **B.Jayaraj** (supra)}. A three-judge Bench of the Apex Court in **Satyanarayana Murthy P.** (supra) has held that mere acceptance of any amount by a public servant allegedly by way of illegal gratification or recovery thereof, *dehors* the proof of demand, *ipso facto*, is not sufficient to bring home the charge under section 7 or 13(1)(d) of the PC Act. Recently, the Constitution Bench of the Apex Court in **Neeraj**

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Dutta (supra) reiterated that the demand for gratification and acceptance thereof is *sine qua non* for the offence under sections 7 and 13(1)(d) of the PC Act. Therefore, in the absence of even an allegation in Annexure A FIR, or any other material collected during the investigation regarding any demand for illegal gratification made by the petitioner, the offence under section 7 or 13(1)(d) of the PC Act cannot be said to be attracted.

11. For the aforesaid reasons, I conclude that the allegations made in Annexure A FIR and the evidence collected in support of the same, even if believed in toto, do not *prima facie* disclose a cognizable offence or make out a case against the applicant. Hence, no purpose will be served in proceeding with the matter further. Accordingly, all further proceedings against the petitioner pursuant to Annexure A FIR are hereby quashed.

Cr1. M.C. is allowed.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp

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APPENDIX OF CRL.MC 4861/2022

PETITIONER'S ANNEXURES

- Annexure A A TRUE COPY OF THE F.I.R. IN CRIME NO.1/2020 DATE, 18-4-2020 OF THE VACB, KANNUR
- Annexure B A TRUE COPY OF THE LETTER ALONG WITH THE LEGAL OPINION ADDRESSED TO THE DIRECTOR OF VIGILANCE BY THE SUPERINTENDENT OF POLICE, NORTHERN RANGE, KOZHIKKODE DATED, 22-11-2017
- Annexure C A TRUE COPY OF THE LEGAL OPINION GIVEN BY THE ADDITIONAL DIRECTOR OF PROSECUTION (VIGILANCE) DATED, 16-4-2018
- Annexure D A TRUE COPY OF THE STATEMENT GIVEN BY KUDUVAN PADMANABHAN BEFORE THE 2ND RESPONDENT DATED, NIL
- Annexure E A TRUE COPY OF THE STATEMENT GIVEN BY THE MANAGER OF THE SCHOOL, NAMELY P.V. PADMANABHAN DATED, NIL
- Annexure F A TRUE COPY OF THE PRELIMINARY ENQUIRY REPORT DATED, 17-10-2017
- Annexure G TRUE COPY OF THE STATEMENT OF INCOME AND EXPENDITURE ENDING IN MARCH, 2014 OF THE AZHEEDKODE EDUCATIONAL SOCIETY
- Annexure H TRUE COPY OF THE STATEMENT OF INCOME AND EXPENDITURE ENDING IN MARCH, 2015 OF THE AZHEEDKODE EDUCATIONAL SOCIETY