2025:KER:71213

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 24TH DAY OF SEPTEMBER 2025/2ND ASWINA, 1947

CRL.MC NO. 3477 OF 2025

CC NO.2 OF 2024 OF COURT OF ENQUIRY COMMISSIONER &

SPECIAL JUDGE, EKM AT MUVATTUPUZHA

PETITIONERS/ACCUSED:

1 P.N.SURESH KUMAR
AGED 62 YEARS
S/O.NEELAKANDA MARAR, (ID NO. 2053), AWC-1,
SHOP-IN-CHARGE, FL-1-7051, KSBC, VELLOORKUNNAM,
MUVATTUPUZHA (RETIRED), RESIDING AT RAJBHAVAN
HOUSE, RANDARKARA, MUVATTUPUZHA,
ERNAKULAM., PIN - 685602

2 SREERAG R.
AGED 45 YEARS
S/O.RAJASEKHARAN, (ID NO. 12111),
AWC-2, FL-1-7051, KSBC, RANDARKARA,
MUVATTUPUZHA, ERNAKULAM, RESIDING AT
EDAMATTATHUKUNNEL (H), TRIKKALATHOOR P.O.,
MULAVOOR VILLAGE, MUVATTUPUZHA TALUK,
ERNAKULAM DISTRICT., PIN - 683557

3 K.J.THOMAS
AGED 63 YEARS
S/O.K.D.JOSEPH, (ID NO. 2563), AWC-1, FL-1-7051,
KSBC, RANDARKARA, MUVATTUPUZHA, ERNAKULAM,
RESIDING AT KANDATHIL HOUSE, PERUMBAVOOR P.O.,
PANDARIMALA, MARADI, MUVATTUPUZHA,
ERNAKULAM DISTRICT., PIN - 683542

4 DEEPUMON K.T
AGED 45 YEARS
S/O.THANKAPPAN, (ID NO. 12101), AWC-2, FL-1-
7051, KSBC, RANDARKARA, MUVATTUPUZHA, ERNAKULAM,
RESIDING AT KOCHUKUNNEL HOUSE, MEMADANGU P.O.,

ARAKKUZHA VILLAGE, MUVATTUPUZHA, ERNAKULAM DISTRICT., PIN – 686672

BY ADV SRI.MATHEW KURIAKOSE

RESPONDENTS/STATE & DE FACTO COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM., PIN – 682031

2 THE WAREHOUSE MANAGER
KERALA STATE BEVERAGES (M&M) CORPORATION LTD. (BEVCO), WAREHOUSE, VENGOLA, PERUMBAVOOR, ERNAKULAM DISTRICT, PIN – 683556

SRI.RAJESH.A, SPECIAL PUBLIC PROSECUTOR, VACB, SMT.REKHA.S SENIOR PUBLIC PROSECUTOR, VACB, SMT. NAVEEN.T,SC FOR KERALA STATE BEV.CO.M . AND M.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17.09.2025, THE COURT ON 24.09.2025 PASSED THE FOLLOWING:

2025:KER:71213

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ORDER

Dated this the 24th day of September, 2025

Accused Nos.1, 2, 5 and 6 in C.C.No. 2/2024, on the files of the Enquiry Commissioner and Special Judge, Muvattupuzha, have preferred this Criminal Miscellaneous Case under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS' for short), seeking the following prayer:

> "to quash Annexure C Final Report in Crime No. 01/2021 CRE of VACB Central Range in Ernakulam District and proceedings in C.C. No. 02/2024 before the Court of the Enquiry Commissioner and Special Judge, Muvattupuzha as against the Petitioners/ Accused Nos. 1,2, 5 & 6."

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor, representing the VACB. Also heard the learned Standing Counsel, representing the 2nd

respondent, the Warehouse Manager, the Kerala state Beverages (M&M) Corporation Limited (BEVCO).

3. As per the final report, the prosecution case is that the 1st accused, Sri. P.N. Suresh Kumar, while working as the Shop-in-Charge and the 2nd accused, Sri. Sreerag.R, the 3rd accused, Sri. Praseed.K.P, the 4th accused, Sri. Mathew Jacob, the 5th accused, Sri. K.J. Thomas and the 6th accused, Sri.Deepumon.K.T while working as staff of FL-01-7051 Muvattupuzha Beverages outlet under Kerala State Beverages Corporation and as such being public servants, abused their official position as public servants, shared a common intention and with dishonest intention, misappropriated the stock of foreign liquor under their control to the tune of Rs.27,92,523/- (Rupees twenty seven lakh ninety two thousand five hundred and twenty three only) and converted for their own use and hence committed criminal

misconduct by corrupt and illegal means and caused wrongful loss of Rs.27,92,523/- to the Govt.Exchequer and corresponding pecuniary gain to the accused persons as they have collective responsibilities upon the entrusted stock of foreign liquor. As the period of commission of offence was in between 01.04.2018 to 30.07.2018, both the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act, 1988' for short) and Prevention of Corruption (Amendment) Act, 2018 (hereinafter referred to as 'PC (Amendment) Act, 2018' for short) w.e.f 26.07.2018 are applicable in this case. But in the case of the 6th accused/Sri.Deepumon, who relieved from the outlet on 20.05.2018, cannot come under the purview of the PC (Amendment) Act, 2018. Therefore, accused Nos.1 to 5 have committed offences punishable under Section 13(1)(c) r/w Section 13(2) of PC Act 1988, Section 13(1)(a) of PC (Amendment) Act, 2018 and Sections 403,409,420 and 34 of

the Indian Penal Code (hereinafter referred to as 'IPC' for short) and the 6th accused has committed offences punishable under Section 13(1)(c) r/w Section 13(2) of the PC Act, 1988 as well as under Sections 403, 409, 420 and 34 of IPC.

4. It is submitted by the learned counsel for the petitioners that, on finding shortage in stock of the foreign liquor to the tune of Rs.27,92,523/- (Rupees twenty seven lakh ninety two thousand five hundred and twenty three only) for the period in between 01.04.2018 to 30.07.2018, acting on the circular produced as Annexure D, dated 20.12.2017, the responsible persons, including the petitioners herein, remitted the amount. According to the learned counsel for the petitioners, the petitioners have remitted the amount due in accordance with Annexure D circular. It is pointed out by the learned counsel for the petitioners further that, it is very common in KSBC outlets to find discrepancies in the

stock/amount due to the voluminous work and the peculiarities in procuring and keeping the stock, sales and accounting; and also due to the delay in stock verification and audit. Therefore, the Corporation issued Circular dated 20.12.2017 and earlier circulars, fixing the proportion in which the amount is to be recovered from the staff. According to the learned counsel for the petitioners, the petitioners did not commit any offences, as alleged by the prosecution, since they remitted the amount on finding the shortage without fail. Therefore, the prosecution as against the petitioners is unwarranted and in such view of the matter, quashment prayer is liable to succeed. The learned counsel for the petitioners fairly submitted further that the legality of Annexure D circular No.KSBC/1A/042/2017-18 dated 20.12.2017 was considered by the Division Bench of this Court in WA No.642/2025 dated 22.08.2025 and the order of the learned Single Judge, setting aside Annexure D order,

was confirmed by the Division Bench and therefore, Annexure D circular is not in force now. According to the learned counsel for the petitioners, even though the remittance was prior to the judgment, the prosecution as against the petitioners would not result in conviction.

5. The learned Standing Counsel appearing for the 2nd respondent also conceded the judgment in WA No.642/2025 and he has placed order of this Court in Crl.M.C.No.5022/2025, on the submission that in the said case also, this Court considered facts similar to the facts dealt in this case while disallowing the quashment. According to the learned Standing Counsel for the 2nd respondent, misappropriation was completed before remittance of the money adjusting the shortage in stock and thereby, the offences alleged are completed, for which the prosecution of the petitioners is necessary. Therefore, the quashment cannot

be considered.

6. Sharing the argument of the learned Standing Counsel for the 2nd respondent, the learned Public Prosecutor placed the case diary as such for perusal of this Court and submitted that mere repayment of the amount alleged to be misappropriated would not efface the criminal case since the ingredients of the offenses were made out and completed prior to repayment.

7. While addressing the rival submissions, as pointed out by the learned counsel for the petitioners, FIR was registered acting on a complaint lodged by one Arun K.M., the Manager, BEVCO, Vengola, Perumbavoor, to the Station House Officer, Muvattupuzha, disclosing the misappropriation of foreign liquor from the shop coming to the tune of Rs.27,92,523/- for the period in between 01.04.2018 and 30.07.2018. Annexure A is the complaint. In Annexure A

complaint, it has been disclosed that Rs.5,17,346/- was paid by Sri.P.N.Sureshkuamar, Sri.K.J.Thomas and Sri.Sreerag.R. Similarly, Sri.Deepumon K.T. paid Rs.3,05,793/-. Annexure A in no way would suggest when these payments were remitted. Annexure A complaint further discloses that a total amount of Rs.8,34,692/- is payable by Sri. Praseed K.P. (Rs. 3,17,346/-) and Sri. Mathew Jacob (Rs. 5,17,346/-).

8. The crucial question to be decided herein is as to whether repayment of the amount of misappropriation or the value of the misappropriation of the articles would efface the criminal prosecution so as to quash the same.

9. According to the learned counsel for the petitioners, delay in stock verification and audit of the stock in BEVCO outlets would result in finding the shortage at a later stage and only on finding the shortage, the opportunity to adjust the shortage would come. Therefore, in the instant

case, on finding the shortage, the petitioners remitted the amount in tune with the ratio fixed as per Annexure D circular. Therefore, it cannot be safely concluded that the petitioners had the intention to commit the crime.

10. On scanning the prosecution allegations, it is confined to the misappropriation of foreign liquor amounting to Rs. 27,92,523/-. The figure would go to show that the foreign liquor found in shortage is a gigantic quantity not a lesser quantity. Therefore, *prima facie,* it cannot be held that the shortage in stock of the foreign liquor occurred because of some unintentional omissions or oversights. When the shortage of foreign liquor is to the tune of Rs.27,92,523/-, a very gigantic quantity, intentional misappropriation of the same is foreseeable with the active participation of the accused persons. To put it otherwise, when a large portion of the stock was misappropriated, it should not happen without any intentional acts of the accused who were the custodian of the stock.

Similarly, the repayment of the amount without any interest for the same was done at a much belated stage and the accused persons enjoyed the benefits of misappropriation in between the period of misappropriation and the remittance of the value for the same. Therefore, the contention raised by the learned counsel for the petitioners, that, it is very common in BEVCO outlets to find discrepancies in the stock/amount due to the voluminous work and the delay in stock verification, cannot be accepted as an explanation for this huge shortage. Thus, in the facts of the case involving misappropriation of huge quantity of foreign liquor, mere repayment of the amount of the misappropriated foreign liquor by the accused persons, on finding the huge misappropriation at a belated stage itself, would not efface their criminal prosecution. Therefore, quashment of a serious case of this nature, merely on the ground that value for misappropriated foreign liquor was repaid, would not sustain as the matter would require framing of charge and trial of the accused persons. In view of the above

finding, quashment sought for in the instant case would not succeed.

In the result, this petition fails and is dismissed accordingly,

Interim order of stay, if any, granted by this Court stands vacated.

Registry is directed to forward a copy of this order to the Special Court forthwith.

Sd/-
A. BADHARUDEEN
JUDGE

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APPENDIX OF CRL.MC 3477/2025

PETITIONER ANNEXURES

ANNEXURE A	**TRUE COPY OF THE FIR AND FIS IN CRIME NO.469/2019 OF MUVATTUPUZHA POLICE STATION**
ANNEXURE B	**CERTIFIED COPY OF THE FIR IN CRIME NO. 01/2021 CRE OF VACB CENTRAL RANGE**
ANNEXURE C	**CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.01/2021 CRE OF VACB CENTRAL RANGE**
ANNEXURE D	**A TRUE COPY OF THE CIRCULAR DATED 20.12.2017 ISSUED BY THE MANAGING DIRECTOR OF THE KERALA STATE BEVERAGES (MANUFACTURING AND MARKETING) CORPORATION LTD**
ANNEXURE E	**TRUE COPY OF THE STATEMENT OF MR. PRINCE K.S. (CW2) IN CRIME NO.01/2021 CRE OF VACB CENTRAL RANGE**
ANNEXURE F	**TRUE COPY OF THE ADDITIONAL STATEMENT DATED 02.03.2022 OF MR.ARUN, THE FIRST INFORMANT IN CRIME NO. 01/2021 CRE OF VACB CENTRAL RANGE**