

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 17TH DAY OF JANUARY 2023 / 27TH POUSHA, 1944

CRL.MC NO. 407 OF 2023

**AGAINST THE ORDER DATED 18.11.2022 IN VC 16/2016 OF COURT OF
ENQUIRY COMMISSIONER & SPECIAL JUDGE, EKM AT MUVATTUPUZHA**

PETITIONERS/ACCUSED:

- 1 M. M. ABDUL AZEEZ,
AGED 50 YEARS,
S/O. MUHAMMED, MANNAPPILLY, KAIPPURIKKARA,
MARAMPILLY. P.O., ALUVA, ERNAKULAM, PIN - 683105
- 2 K.M. MUSTAFA KAMAL,
S/O.K.P. MUHAMMAD, KADAYAN KOTTIL HOUSE, AIRAPURAM
VILLAGE, KUNNATHUNADU, ERNAKULAM, PIN - 683556
- 3 SREEJITH. A. R
AGED 43 YEARS
S/O. RAMAKRISHNAN, AMBRAMADATHIL HOUSE, NEAR
VALAMBOOR MAHADEVA TEMPLE, MAZHUVANNUR VILLAGE,
ERNAKULAM, PIN - 686669

BY ADVS.
SRI.K.K.DHEERENDRAKRISHNAN
SMT.N.P.ASHA

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

BY ADV PUBLIC PROSECUTOR
SRI.RAJESH A,SPL.GP VIGILANCE
SMT.REKHA, GP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
17.01.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CR

K.BABU, J.

CrI.M.C.No. 407 of 2023

Dated this the 17th day of January, 2022

ORDER

Can a Special Judge exercising jurisdiction under the Prevention of Corruption Act, 1988, direct the investigating agency to obtain sanction under Section 19 to prosecute the accused while ordering further investigation under Section 173 Cr.P.C? This is the issue that arises for consideration in this petition filed under Section 482 of the Code.

2. The petitioners are arrayed as accused Nos. 1 to 3 in VC-16/2016/EKM registered by the Ernakulam Unit of the Vigilance and Anti-Corruption Bureau, alleging offences punishable under Sections 465, 471 & 120-B of the Indian Penal Code and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 [for short 'the Act, 1988'].

3. The prosecution case is that accused No.4 conspired with the petitioners and obtained a bogus location sketch from Arakkapady Village Office and a building permit from the local authority.

4. The Vigilance and Anti-Corruption Bureau (the VACB) investigated the matter and submitted final report before the Court of the Special Judge finding no material to support the allegations in the First Information Report.

5. After considering the report submitted by the VACB, the Special Judge passed the following order

“Hence the final report is returned to the investigating officer to conduct further investigation as well as to obtain sanction under Section 19 of P.C. Act to prosecute A1 to A3. Further final report shall be submitted before this Court within three months”

6. Heard Sri.K.K.Dheerendrakrishanan, the learned counsel for the petitioners, and Sri.Rajesh A., the learned Special Government Pleader.

7. The learned counsel for the petitioners submitted that the impugned order is a positive direction to submit a charge sheet against the petitioners. The learned counsel contended that the direction to obtain sanction under Section 19 of the Act,1988, in the impugned order indicates that the Special Judge, in fact directed the investigating agency to submit a positive report against the petitioners.

8. The learned counsel for the petitioners relying on **Bhagwant Singh v. Commissioner of Police [(1985) 2 SCC 537]** and **M.C.Abraham and another v. State of Maharashtra and**

Others [(2003) 2 SCC 649], contended that it is for the investigating agency to submit a report to the Court concerned after a full and complete investigation and the Special Judge cannot direct the investigating agency to submit a report in accordance with his view.

9. When the report forwarded by the officer in charge of a police station to the Magistrate under sub-section (2)(i) of S.173 Cr.P.C. comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons, and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of S.156 and require the police to make a further report. The report may, on the other hand, state that, in the opinion of the police, no offence appears to have been committed, and where such a report has been made, the Magistrate again has the option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is

sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of S.156. **[Vide: Bhagwant Singh v. Commissioner of Police [1985 (2) SCC 537].**

10. It is the statutory duty and responsibility of the investigating agency to fully investigate the matter and then submit a report to the Court concerned, either finding the allegation substantiated or finding no material to support the allegation. It is not within the competence of the Court concerned to issue a direction that the case should not only be investigated, but also a report to the effect that the allegations have been supported by the material collected be submitted.

11. It is profitable to extract the declaration of law by the Apex Court in **M.C.Abraham and another v. State of Maharashtra and Others (supra)**. The Apex Court held thus:-

“17. The principle, therefore, is well settled that it is for the investigating agency to submit a report to the Magistrate after full and complete investigation. The investigating agency may submit a report finding the allegations substantiated. It is also open to the investigating agency to submit a report finding no material to support the allegations made in the first information report. It is open to the Magistrate concerned to accept the report or to order further enquiry. But what is clear is that the Magistrate cannot direct the investigating agency to submit a

report that is in accord with his views. Even in a case where a report is submitted by the investigating agency finding that no case is made out for prosecution, it is open to the Magistrate to disagree with the report and to take cognizance, but what he cannot do is to direct the investigating agency to submit a report to the effect that the allegations have been supported by the material collected during the course of investigation.”

12. In the instant case, the learned Special Judge not only directed further investigation but also required the investigating agency to obtain sanction under Section 19 of the Act, 1988, to prosecute the petitioners/accused Nos.1 to 3, which would necessarily indicate that the direction to the investigating agency was to submit a positive report against them.

13. The Special Judge, while ordering further investigation, is not empowered to direct the investigating agency to obtain sanction under Section 19 of the Act, 1988 to prosecute the accused.

14. Therefore, I set aside the impugned order.

15. However, the investigating agency is at liberty to take all steps to conclude the investigation and submit its report as per law, uninfluenced by the observations passed by the Special Judge. It is open to the investigating agency to submit such report as it considers appropriate.

16. Having regard to the facts and circumstances of the

case, it is made clear that the time limit stipulated by the Special Judge is not binding on the investigating agency. After such a final report is submitted by the investigating agency, the Special Judge, concerned may proceed to deal with the matter in accordance with the law without being influenced by any of the observations made by this Court.

The CrI.M.C. is allowed as above.

**Sd/ -
K. BABU
JUDGE**

VPK

APPENDIX OF CRL.MC 407/2023

PETITIONER ANNEXURES

- Annexure-I A TRUE COPY OF THE FINAL REPORT
SUBMITTED BY THE INVESTIGATING OFFICER
IN VC NO. 16/2016/EKM
- Annexure-II A TRUE COPY OF THE COMMUNICATION ISSUED
FROM THE OFFICE OF THE LAND REVENUE
COMMISSIONER, THIRUVANANTHAPURAM DATED
27.09.2022 TO THE 1ST PETITIONER
- Annexure-III A TRUE COPY OF THE JUDGMENT DATED
28.10.2022 IN OP(CRL) NO. 569/2022
PASSED BY THIS HONOURABLE COURT
- Annexure-IV THE CERTIFIED COPY OF THE ORDER DATED
18.11.2022 IN VC NO.16/2016/EKM PASSED
BY THE COURT OF ENQUIRY COMMISSIONER AND
SPECIAL JUDGE, MUVATTUPUZHA