



2024:KER:50808

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 24TH DAY OF JUNE 2024 / 3RD ASHADHA, 1946

CRL.MC NO. 1719 OF 2024

CRIME NO.9/2021 OF VACB, KANNUR, Kannur

PETITIONER/S:

PRASAD P V,
AGED 45 YEARS
S/O. BALAN A V, PADINJAAREVEEDU, NEAR
ANGANAVADY, WEAVERS STREET, KARIVELLUR, KANNUR
DISTRICT-, PIN - 670521
BY ADVS.
I.V.PRAMOD
AMRUTHA DIWAKAR
SAIRA SOURAJ P.
RESMI SAJEEVAN
MEGHA G.

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031
- 2 BABU C P
S/O KAMMARAN, C P HOUSE, VELLUR, PAYYANNUR,
KANNUR DISTRICT -, PIN - 670307
BY SRI A RAJESH SPL. GOVT PLEADER (VIGILANCE)
BY SMT S REKHA SR PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 24.06.2024, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:



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K.BABU, J

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Dated this the 24th day of June, 2024

O R D E R

The prayers In the Crl.M.C. are as follows:-

“.... to quash Annexure A-1 FIR, Annexure A-14 Final Report and the entire proceedings against the petitioner in FIR No.VC 9/2021/KNR Dated 18.10.2021 and C.C.No.4/2024 pending before Enquiry Commissioner and Special Judge, Thalassery,

2. The petitioner is the accused in V.C.No.9 of 2021 registered by the VACB, Kannur Unit alleging offences punishable under Sections 7(a) and 7A of the PC Act, 2018.

Prosecution case:-

Respondent No.2/the de facto complainant is an auto consultant at Payyannur. The accused was an Assistant Motor Vehicle Inspector attached to the Sub-RTO Office, Payyannur. On 01.10.2021, respondent No.2/the de facto



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complainant approached the petitioner to obtain Fitness Certificate for a Mahindra Pick-up bearing Regn No.KL-14-D-3001 and an auto taxi bearing Regn No.KL-58-L-9246. The petitioner asked Rs.3,000/- each as bribe to issue Fitness Certificates for the two vehicles. The petitioner informed respondent No.2 that the Fitness Certificate for the two vehicles would be issued only if he gave Rs.6,000/- as bribe. On 05.10.2021 also, he approached the petitioner. He repeated the demand. Again on 07.10.2021, respondent No.2 approached the petitioner and requested for issuing the Fitness Certificate. Respondent No.2 had submitted all relevant documents to the satisfaction of the petitioner. Finally, on 07.10.2021, the petitioner instructed the *de facto* complainant to give the bribe money to one Mr. Sarath, the proprietor of a driving school by name 'Cambridge'. Respondent No.2 filed



complaint before the DY.S.P. (Vigilance and Anti-Corruption Bureau) on 18.10.2021 as he was not prepared to pay the bribe. The Dy.S.P. recorded his statement and registered the impugned FIR. The Dy.S.P. (Vigilance) laid a trap. The trap team reached the Joint RTO Office, Payyannur at about 15 hrs on 18.10.2021 after completing all pre-trap formalities at the Vigilance Office, Kannur. Respondent No.2, as instructed by the Dy.S.P., approached the petitioner who asked him if he had brought the bribe money. Respondent No.2 answered positively. The petitioner instructed him to hand over the bribe money to one Sreehari who was working as a driver on Daily Wages in that office as Sarath was not present in the vicinity of the office. Respondent No.2 handed over the bribe money to Sreehari who in-turn gave the money to the accused. Respondent No.2 informed the Dy.S.P. that



the petitioner received the money. The Dy.S.P. rushed to the office and approached the petitioner and asked for the tainted money. He became nervous. He was subjected to Phenolphthalein test in the presence of witnesses which turned positive. Sreehari was also subjected to Phenolphthalein test. The test in respect of Sreehari also turned positive. The Detecting Officer thereafter asked the petitioner as to where he had kept the tainted money. He disclosed that it was handed over to his friend Suresh, the owner of Gems Supermarket functioning in the second floor of the same building. Sri Suresh stated to the Dy.S.P. that the petitioner had handed over Rs.11,000/- to him and instructed him to hand over the same to Sarath. The Dy.S.P. seized the currency notes except one currency note of the denomination five hundred from the possession of Suresh. The Dy.S.P. compared the



numbers of the currency notes recovered from the possession of Sri.Suresh and found them tallied with the numbers mentioned in *pre-trap* Mahazar. The Dy.S.P. subjected the notes to Phenolphthalein test. The liquid turned to pink colour. Sri. Suresh, was also subjected to Phenolphthalein test. The said test also turned positive.

4. I have heard the learned Counsel for the petitioner and the learned Senior Public Prosecutor.

5. The learned counsel for the petitioner submitted that the prosecution case is not believable as the prosecution has *prima facie* failed to establish demand. The learned Counsel further submitted that the VACB failed to recover the currency notes from the possession of the petitioner/ accused. The learned counsel submitted that the money allegedly recovered from the possession of Sri Suresh cannot be treated as bribe in the very strict sense because as early as on 01.10.2021 itself, the Fitness Certificate had been uploaded in the website



which was readily available for downloading and hence there was no requirement of giving any money as pleaded by the prosecution.

6. The learned senior Public Prosecutor submitted that there is concrete evidence to establish the demand and acceptance. The learned Senior Public Prosecutor submitted that the de facto complainant and the other charge witnesses supported the prosecution case.

7. I have gone through the statement of respondent No.2, the de facto complainant. He has specifically stated that on 01.10.2021, 05.10.2021, 07.10.2021 and finally on 18.10.2021, the petitioner/accused specifically demanded bribe. On the challenge of the requirement of bribe, the learned senior Public Prosecutor submitted that though the Fitness Certificate was uploaded on 01.10.2021, the petitioner had downloaded and kept the same with him and he refused to give the original of the Fitness Certificate to be



delivered to the owners of the vehicle and he continued to demand bribe for the issuance of the same. The prosecution relied on the statements of the de facto complainant, the gazetted officers who accompanied the trap laying officer and the Phenolphthalein test in support of its case that the petitioner voluntarily received bribe. Relying on the meaning of the word 'bribe' as described in the Oxford Advanced Learner's Dictionary, the learned counsel for the petitioner submitted that there was no persuasion in the present case, as the formalities for the issuance of Fitness Certificate had already been completed as early as on 01.10.2021.

8. The meaning of the word bribe as per the Oxford Advanced Learner's Dictionary-New [7th Edition] reads thus:-

“ a sum of money or something valuable that you give or offer to somebody to persuade them to help you, especially by doing something dishonest”.



9. The case of the prosecution is that, even if it is assumed that formalities had been completed as early as on 01.10.2021, the petitioner continued to demand Rs.6000/- as an undue advantage. The learned public prosecutor relied on Sections 2(d) and 7 and Explanation 1 to contend that even in the absence of any persuasion, the receipt of money as alleged by the prosecution comes under the definition of 'undue advantage'.

10. The relevant provisions read thus:-

"2.xxxxx

"(d) "undue advantage" means any gratification whatever, other than legal remuneration.

Explanation.-- For the purposes of this clause,--

(a) the word "gratification" is not limited to pecuniary gratifications or to gratifications estimable in money;

(b) the expression "legal remuneration" is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive."

**7. Offence relating to public servant being bribed,--Any**

public servant who,--

(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.-- For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.-- A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2.-- For the purpose of this section,--



(i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

11. Going by the definition of 'undue advantage' as contained in Section 2(d) and Explanation 1 and illustrations of Section 7, it is clear that, a Public servant receiving money to process even a routine application comes under the definition of 'undue advantage' to constitute the offences.

12. The learned Counsel for the petitioner finally submitted that the prosecution story is in no way believable as the petitioner was not the competent authority to issue the Fitness Certificate. The learned counsel for the petitioner submitted that the Motor Vehicle Inspector concerned is the competent authority to



issue Fitness Certificate, whereas the petitioner is only an Assistant Motor Vehicle Inspector and he has nothing to do with the process of issuance of Fitness Certificate. The learned Public Prosecutor relied on the deposition of the Joint Regional Transport officer (CW19) to the effect that the petitioner had already downloaded the Fitness Certificate from the Website in support of the prosecution case.

13. It is settled by a long course of decisions of the Apex Court that for the purpose of exercising its power under Section 482 Cr.P.C. to quash criminal proceedings, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has been further held that the High Court has no jurisdiction to examine the correctness or otherwise of the allegations {Vide: ***State of West Bengal v. Swapan Kumar Guha***



[(1982) 1 SCC 561], ***Pratibha Rani v. Suraj Kumar*** [(1985) 2 SCC 370]}.

14. In ***State of Kerala v. O.C. Kuttan*** [(1999) 2 SCC 651], the Apex Court held that while exercising the power, it is not possible for the Court to sift the materials or to weigh the materials and then come to the conclusion one way or the other. In ***State of U.P v. O.P.Sharma*** [(1996) 7 SCC 705] a Three Judge Bench of the Apex Court observed that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 Cr.P.C or under Articles 226 and 227 of the Constitution of India, as the case may be, and allow the law to take its own course. This view was reiterated by another Three Judge Bench of the Apex Court in ***Rashmi Kumar v. Mahesh Kumar Bhada*** [(1997) 2 SCC 397], wherein the Apex Court held that such power should be sparingly and cautiously exercised only when the Court is of the opinion that



otherwise there will be gross miscarriage of justice. It is trite that the power of quashing criminal proceedings should be exercised with circumspection and that too, in the rarest of rare cases and it was not justified for this Court in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the Final report or the complaint. A finding on the veracity of a material relied on by the prosecution in a case where the allegations levelled by the prosecution disclose a cognizable offence, is not a consideration for the High Court while exercising its power under Section 482 Cr.P.C. This view is fortified by the decision of the Apex Court in ***Mahendra K.C. v. State of Karnataka and Ors.*** (AIR 2021 SC 5711).

15. While dealing with the power under Section 482 Cr.P.C to quash the criminal proceedings the Apex Court in ***M/s.Neeharika Infrastructure Pvt. Ltd v. State of***



Maharashtra and others (AIR 2021 SC 1918) concluded thus in paragraph 23 of the judgment:

“23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the Accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed Under Section 173 Code of Criminal Procedure, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India, our final conclusions are as under:

(i) xxx xxx xxx

xxx xxx xxx

(xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore,



when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

(xiii) xxx xxx xxx

(xiv) xxx xxx xxx

(xv) When a prayer for quashing the FIR is made by the alleged Accused and the court when it exercises the power Under Section 482 Code of Criminal Procedure, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;"

16. In the present case, the petitioner failed to convince this Court that the allegations levelled against



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him in the prosecution records made available do not disclose the offences alleged. The correctness or otherwise of the allegations levelled in the Final Report is a matter to be tested during the course of the investigation. It is made clear that, this Court has not made any observation on the merits or otherwise of the allegations levelled in the Final Report.

Therefore the Crl.M.C. lacks merits and stands dismissed.

**Sd/-
K.BABU JUDGE**

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**APPENDIX OF CRL.MC 1719/2024****PETITIONER ANNEXURES**

- Annexure-A1** A CERTIFIED COPY OF THE FIR WITH FIS IN V.C NO. 9/2021 DATED 18/10/2021 OF THE VACB, KANNUR
- Annexure-A2** A TRUE COPY OF THE MAHAZAR DATED 19/11/2021
- Annexure-A3** A TRUE COPY OF THE SEIZURE MAHAZAR, DATED 30/11/2021
- Annexure-A4** A TRUE COPY OF SEIZURE MAHASAR DATED 6/1/2022
- Annexure-A5** A TRUE COPY OF THE SEIZURE MAHAZAR DATED 14/01/2022
- Annexure-A6** A TRUE COPY OF THE SEIZURE MAHAZAR DATED 17/01/2022
- Annexure-A7** A TRUE COPY OF THE MAHAZAR DATED 20/1/2022 PREPARED BY INSPECTOR, VACB, KANNUR
- Annexure-A8** A TRUE COPY OF THE SEIZURE MAHAZAR DATED 3/6/2022 PREPARED FOR SEIZING TELEPHONE DETAILS
- Annexure-A9** A TRUE COPY OF THE MAHAZAR PREPARED BY INSPECTOR, VACB, KANNUR TO SEIZE CALL RECORDS OF FOUR MOBILE NUMBERS DATED 3/6/2022
- Annexure-A10** A TRUE COPY OF THE MAHAZAR PREPARED BY INSPECTOR, VACB, KANNUR DATED 24/6/2022
- Annexure-A11** A TRUE COPY OF THE CIRCULAR NO. 14/2020 DATED 21/9/2020 ISSUED BY THE KERALA TRANSPORT COMMISSION
- Annexure-A12** A TRUE COPY OF THE CIRCULAR NO. 16/2013 DATED 3/7/2013 ISSUED BY THE KERALA TRANSPORT COMMISSION
- Annexure-A13** A TRUE COPY OF THE ORDER IN CRL. M.C. NO. 10044/2023 OF THIS HON'BLE COURT
- Annexure-A 14** A CERTIFIED COPY OF THE FINAL REPORT NO. 15/2023 DATED 30/11/2023



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Annexure 15	A TRUE COPY OF THE MEMO OF EVIDENCE DATED 30/11/2023
Annexure -A16	A TRUE COPY OF THE WITNESS STATEMENT RECORDED BY THE POLICE