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CRL.MC NO. 5601 OF 2018

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 7TH DAY OF NOVEMBER 2024 /16TH KARTHIKA, 1946

CRL.MC NO. 5601 OF 2018

PETITIONERS/ACCUSED 1 & 2:

- 1 K.SUKUMARAN
SENIOR SUPERINTENDENT OF POST OFFICES,
DEPARTMENT OF POSTS, CALICUT DIVISION,
KOZHIKODE-673003.
- 2 K.PREMA,
SUB POST MASTER, MARIKUNNU POST OFFICE,
KOZHIKODE, PIN - 673012
BY ADV SRI.SUVIN R.MENON, CGC

RESPONDENTS/COMPLAINANT AND STATE:

- 1 KERALA STATE WAQF BOARD,
REPRESENTED BY ITS AUTHORIZED OFFICER,
SHARAFUDHEEN, LEGAL ASSISTANT,
DIVISIONAL WAQF OFFICE, KERALA STATE WAQF BOARD,
BANK ROAD, EROTH CENTRE, KOZHIKODE-673012.
- 2 SECRETARY,
JDT ISLAM ORPHANAGE COMMITTEE,
VELLIMADUKUNNU, CALICUT, PIN - 12
- 3 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
BY ADV.SRI.T.P.SAJID, SC, KERALA STATE WAQF
BOARDSRI.RENJITH.T.R, SR.PP
SRI.JAMSHEED HAFIZ, SC

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
07.11.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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P.V.KUNHIKRISHNAN, J.

Crl.M.C. No.5601 of 2018

Dated this the 07th day of November, 2024

ORDER

Petitioners are the accused in C.C.No.1024/2017 on the file of the Judicial First Class Magistrate Court-I, Kozhikode.

2. The 1st petitioner was the Senior Superintend of Post Offices, Calicut Division during the period from 07.07.2017 to 06.06.2018 and the 2nd petitioner was the Sub Post master of Marikunnu Post Office, Kozhikode. They were arrayed as accused in C.C No. 1024 of 2017 before the Judicial First Class Magistrate Court-I, Kozhikode based on Annexure-A14 complaint which was filed under Section 52A of the Waqf Act, 1995 (for short 'the Act'). The complaint was filed by the 1st respondent Waqf Board alleging that the petitioners illegally took possession of Waqf property



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without obtaining sanction from the Waqf Board and accordingly committed the offence under Section 52A of the Act. According to the petitioners, even if the entire allegations are accepted, the petitioners are not liable to be prosecuted under Section 52A of the Act. Hence this Crl.M.C. is filed.

3. Heard the learned counsel appearing for the petitioners, the learned Standing Counsel appearing for the 1st respondent, the learned counsel appearing for the 2nd respondent and the learned Public Prosecutor.

4. The short point raised by the petitioner is that, even if the entire allegations in Annexure-A14 are accepted, the properties were in possession of the Post Office even before Section 52A of the Act is inserted by way of amendment. Hence it is submitted that the prosecution is unsustainable.

5. Admittedly, the Department of Posts entered into an agreement with the 2nd respondent as per Annexure-A1



agreement dated 30.04.2000 and the same was renewed by the 2nd respondent as per Annexure-A2 agreement. Annexure-A1 is a lease agreement by which the 2nd respondent leased out the property under the ownership of the 2nd respondent to the Government of India for the functioning of Marikunnu Post Office. The period of lease agreement was from 01.10.1999 to 30.09.2004 and as per Clause 14 of the agreement, the lease is extendable. The Department of Posts was later informed about the intention of the 2nd respondent to build a shopping complex in the scheduled property and the Department was requested to shift the Post Office to another building provided by them. Accordingly, the Department of Posts shifted Marikunnu Post Office to a new building owned by the 2nd respondent. The Department of Posts had laid down necessary conditions before accepting the request to shift the Post Office so as to ensure the safety of the Post Office. The shifting was during the lease period. The 2nd respondent forwarded a lease



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agreement signed by the 2nd respondent to the Department of Posts and as per the lease agreement dated 02.06.2005, forwarded by the 2nd respondent, the lease will start from 01.03.2003 and had a validity of 5 years and the same was also extendable. Annexure-A2 is the lease agreement dated 02.06.2005. The 2nd respondent as per letter dated 09.08.2006 informed the Department of Posts that they are agreed to construct the additional grills for safety purpose in the building. Annexure-A3 is the letter. Though the Department of Posts reminded the 2nd respondent about the non-fixing of grills, the 2nd respondent had not completed the agreed renovations until 2014 is the submission. Hence the authorised representative of the Department of Posts had not signed Annexure-A2 agreement. The construction was completed only in 2014. The 2nd respondent was accepting rent until June 2014. Subsequently, the 2nd respondent refused to accept the rent. Thereafter the 2nd respondent issued a lawyer notice to the Department of



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Posts declaring that the lease is terminated and directed the Department of Posts to handover the vacant possession of the schedule property. Annexure-A4 is the notice. The 2nd respondent also filed OS(Waqf) No. 63 of 2015 before the Waqf Tribunal, Kozhikode seeking a declaration directing the Union of India to handover the vacant possession. Annexure-A5 is the plaint and Annexure-A6 is the written statement filed by the Union of India. The Tribunal passed an *ex-parte* decree in the above case and the Department of Posts filed a petition to set aside the *ex-parte* decree and the same was set aside and the suit was restored. Meanwhile, the Chief Executive Officer of the 1st respondent issued notice dated 22.02.2016 terming the Department of Posts as encroachers. Annexure-A7 is the notice. Later, the 1st respondent filed OA No.14/2017 before the Waqf Tribunal, Kozhikode seeking an order under Section 54(4) of the Act, as evident by Annexure-A8. The Department of Posts filed counter in it, as evident by Annexure-A9.



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Thereafter the Waqf Tribunal passed an order as evident by Annexure-A10, directing the Department of Posts to vacate the subject property within 45 days. Thereafter, it is submitted that the Department of Posts issued tender notice inviting tender from the building owners for the building to be leased to house Marikunnu Post Office. Annexure-A11 is the tender notice. It was published in Malayala Manorama Daily and Mathrubhumi Daily, as evident by Annexures A12 and A13. However no offers were received in reply to the tender notice. Meanwhile the 1st respondent filed C.M.P No. 5965/2017 before the Judicial First Class Magistrate Court-I, Kozhikode alleging that the petitioners being the officials of the Department of Posts have committed offences under Section 52A of the Act. Annexure-A14 is the complaint. The learned magistrate took cognizance of the offence of the same and issued summons to the petitioners. Annexure-A15 is the summons. Hence this criminal miscellaneous case is filed.



6. Admittedly Annexure-A14 complaint was filed under Section 52A of the Act. Admittedly Section 52A was inserted in the Act in the year 2013. It is also an admitted fact that the petitioners were in possession of the property even before introduction of Section 52A of the Act. Section 52A of the Act is extracted hereunder:

52A. Penalty for alienation of waqf property without sanction of Board.--

- (1) Whoever alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years:

Provided that the waqf property so alienated shall without prejudice to the provisions of any law for the time being in force, be vested in the Board without any compensation therefor.

- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any offence punishable under this section shall be cognizable and non-bailable.



(3) No court shall take cognizance of any offence under this section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf.

(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.

7. A perusal of the same would not show that a person who is in occupation of waqf property even prior to the insertion of Section 52A of the Act are liable to be prosecuted. Admittedly the Department of Posts were in possession of the property even prior to the insertion of Section 52A of the Act. The Post Office was functioning from 1999 onwards. Hence I am of the considered opinion that the prosecution against the petitioners is unsustainable.

Therefore, this criminal miscellaneous case is allowed. All further proceedings against the petitioners in



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C.C.No.1024/2017 on the file of the Judicial First Class Magistrate Court-I, Kozhikode, are quashed.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

JV/DM



**HIGH COURT OF KERALA
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APPENDIX OF CRL.MC 5601/2018

PETITIONER ANNEXURES

- ANNEXURE P1 A TRUE COPY OF THE LEASE AGREEMENT DATED 30.04.2000 ENTERED IN TO BETWEEN THE HON'BLE PRESIDENT OF INDIA AND THE 2ND RESPONDENT
- ANNEXURE P2 A TRUE COPY OF THE LEASE AGREEMENT DATED 02.06.2005
- ANNEXURE P3 A TRUE COPY OF THE LETTER DATED 09.08.2006 ISSUED BY THE 2ND RESPONDENT
- ANNEXURE P4 A TRUE COPY OF THE LAWYER NOTICE DATED 04.09.2014 ISSUED FOR AND ON BEHALF OF 2ND RESPONDENT
- ANNEXURE P5 A TRUE COPY OF THE PLAINT IN O.S. (WAGF) NO. 63 OF 2015
- ANNEXURE P6 A TRUE COPY OF THE WRITTEN STATEMENT FILED IN O.S. (WAGF) NO. 63 OF 2015 BY THE UNION OF INDIA
- ANNEXURE P7 A TRUE COPY OF THE ORDER NO. A14-1014/2016 DATED 22.06.2016 ISSUED BY THE CHIEF EXECUTIVE OFFICER OF THE 1ST RESPONDENT
- ANNEXURE P8 A TRUE COPY OF THE O.A.NO. 14 OF 2017 FILED BY THE 1SAT RESPONDENT BEFORE THE WAQF TRIBUNAL KOZHIKODE
- ANNEXURE P9 A TRUE COPY OF THE COUNTER FILED BY THE DEPARTMENT OF POST IN O.A NO. 14 OF 2017
- ANNEXURE P10 A TRUE COPY OF THE ORDER DATED 23.02.2018
- ANNEXURE P11 A TRUE COPY OF THE TENDER NOTICE DATED



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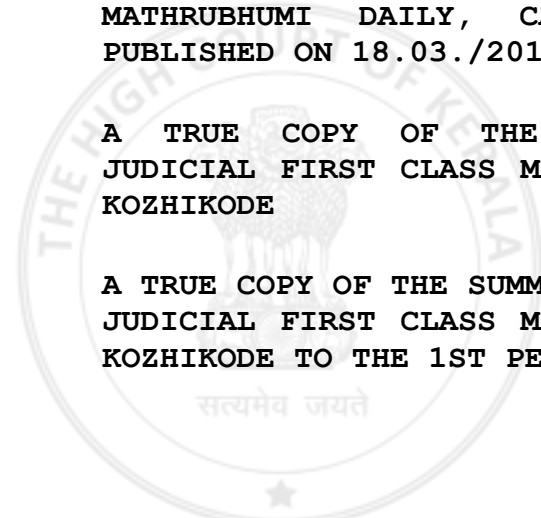
27.03.2017 PUBLISHED BY THE DEPARTMENT
OF POST

ANNEXURE P12 A TRUE COPY OF THE RELEVANT PAGE OF THE
MALAYALA MANORAMA DAILY CALICUT EDITION
PUBLISHED ON 20.03.2017

ANNEXURE P13 A TRUE COPY OF THE RELEVANT PAGE OF THE
MATHRUBHUMI DAILY, CALICUT EDUCATION
PUBLISHED ON 18.03./2017

ANNEXURE P14 A TRUE COPY OF THE C.M.P. NO.5965
JUDICIAL FIRST CLASS MAGISTRATE COURT-1
KOZHIKODE

ANNEXURE P15 A TRUE COPY OF THE SUMMONS ISSUED BY THE
JUDICIAL FIRST CLASS MAGISTRATE COURT-1
KOZHIKODE TO THE 1ST PETITIONER



HIGH COURT OF KERALA
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