

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

Crl.MC.No. 1943 of 2015

**CRL.MP 706/2015 OF ENQUIRY COMMISSIONER AND SPECIAL COURT,
KOZHIKODE, DATED 16-02-2015
CRIME NO. 5/2014 OF VACB, KOZHIKODE**

PETITIONER(S)/PETITIONER:-:

**T.K. CHOYIKUTTY, AGED 83 YEARS,
S/O.LATE KELUKUTTY, MODAKALLUR, ATHOLLY P.O.
CALICUT.**

**BY ADVS.SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.P.U.VINOD KUMAR
SRI.KANDAMPULLY RAHUL
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR**

RESPONDENT(S)/STATE:-:

**STATE OF KERALA,
REPRESENTED BY THE SUPERINTENDENT OF POLICE,
SPECIAL CELL, THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI/.N.SURESH

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 10-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

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APPENDIX

PETITIONER(S)' ANNEXURES

**ANNEXURE A1. A TRUE COPY OF THE COMMON ORDER DATED 16.02.2015 IN
CRL.M.P.NO.706/2015 OF THE HON'BLE SPECIAL JUDGE, KOZHIKODE.**

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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Dated this the 10th day of July, 2015.

ORDER

The order under challenge is the one impugned at Anx-A1 dated 16.2.2015 rendered by the Court of Enquiry Commissioner and Special Judge, Kozhikode, on Crl.M.P.No.706/2015 filed by the petitioner herein in V.C.No.5/2014 registered by the Vigilance and Anti Corruption Bureau, Special Cell, Kozhikode. The petitioner herein is not an accused in the Vigilance Crime but happened to be the father of the accused in the vigilance crime. It is the case of the petitioner that he is now aged 83 years and that he is separately residing in house building No.II/594 of Atholi Grama Panchayath, Kozhikode District which is owned exclusively by him and that his son is residing separately in another rented premise in house building No.2/1777A of Kozhikode Corporation. That the son is a Professor of Government Homeo Medical College Hospital, and that he happened to be an accused in the aforestated vigilance crime in connection with the allegations relating to disproportionate

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income. That a raid was conducted separately in the residential premises of the petitioner as well as his son and that an amount of Rs.21,10,695/- belonging to the petitioner was seized from his residential building and that an amount of Rs.2,35,005/- was seized separately from the separate residence of petitioner's son. The case of the petitioner is that he is the President of a well reputed Private Homeo Hospital Trust and that he has independent source of income and he has five children and that all his five children and their respective spouses are carrying on with respectable occupations and professions and that they have their own high levels of income and further that apart from running a well reputed Private Homeo Hospital, the petitioner and his wife are also retired teachers. It is the specific case of the petitioner that no incriminating factual materials are alleged by the investigation to pin point that the amount of Rs.21,10,695/-seized from the petitioner was in any way connected with his son, who is an accused in vigilance crime. That he and his son are living separately and merely because he happened to be the father of the accused, he cannot be inflicted with the extreme adverse measure

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of seizing his monies coming to more than Rs.21 Lakhs. The prayer for interim release of the aforementioned currency amount of more than Rs.21 Lakhs was refused by the court below as per the impugned order. The main ground stated by the court below as can be seen from a perusal of Anx-A1 order is that the contention raised that the petitioner as the father is the Head of the joint family and that such a concept cannot stand judicial scrutiny, at least for the present purpose and it cannot be believed that such a joint family system is in vogue in contemporary legal system and it can safely be presumed that tharavad or joint family system are outdated concepts and that secondly it cannot be believed that all the children have contributed to the petitioner, who is the father to accumulate Rs.21 Lakhs, especially, when the father himself is a former Government employee and he has his own source of income. It was on this basis, the court below rejected the plea of he petitioner.

2. Heard Sri.Babu Karukapadath, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent-State of Kerala.

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3. On a perusal of the ground for refusal stated by the court below as per Anx-A1 order, this Court is convinced that the grounds are based on irrelevant considerations. The petitioner is not an accused in the Vigilance Crime. The court below has been convinced that the petitioner and his wife are former Government employees and the petitioner has his own income. The very case of the vigilance police is that the petitioner happened to be the President of the Private Homeo Hospital which he is running. So long as the petitioner is not an accused in the vigilance crime, the onus is not on the petitioner to explain as to how the currency amount of more than Rs.21 Lakhs happened to be in his possession rather than it was the burden of the vigilance police to establish before the court below convincingly that they could collect convincing materials to show that the entire monies coming to more than Rs.21 Lakhs was that of the accused, who is the son of the petitioner and is not in any way monies of the petitioner. Even in the statement dated 31.3.2015 filed by the Inspector of Police, VACB, Special Cell, Kozhikode, in this case that there is no specific or pointed case that the vigilance police could get convincing

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materials on the basis of objective materials at least on the date of seizure of monies or at the time of consideration of application by the court below that monies were not that of the petitioner but that of the accused, who is the son of the petitioner. The vigilance police is not an authority like the Income Tax authority, who are lawfully entitled to demand to any citizen to know the source of income. Since the petitioner is not a public servant and since the petitioner is not an accused in the vigilance crime, prima facie, this Court is convinced that the approach made by the court below is not correct. Moreover, it is to be seen that the petitioner is the President of a successful well reputed Private Homeo Hospital and even going by the specific finding made by the court below, the petitioner has his own source of income. The court below ought to have taken note that the issues of the believability of the version of the petitioner that he is the head of the tharavad and such other issues are not relevant or germane for the present purpose. The Public Prosecutor was specifically requested to get instructions as to whether Rs.21,10,695/- was seized from the premises belonging to the petitioner and that the said amount happened to be

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exclusively owned by the petitioner and was not in any way owned or possessed by the petitioner's son who is residing in another rented premises. The learned Public Prosecutor on instructions submitted that the petitioner is living in his own premises as aforestated and the accused, who is the son of the petitioner, is living separately in another rented premises. For these reasons, this Court is convinced that the court below went wrong in not allowing the plea for interim release of currency seized from the petitioner's premises. Accordingly, the impugned order at Anx-A1 rendered on Crl.M.P.No.706/2015 in the aforestated vigilance case to the extent it affects the petitioner is set aside. So, the prayer for interim release of the currency can be considered in the light of the decision of the Apex Court in Sunderbhai Ambalal Desai v. State of Gujarat reported in 2003 (2) KLT 1089 (SC). Accordingly, following the legal principles laid down by the Apex Court in the aforesaid decision, it is ordered in the interest of justice that interim custody of the currency of Rs.21,10,695/- is liable to be returned back to the petitioner. To effectuate further steps in the matter, it is ordered that the Investigating Officer will take

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photographs/videographs, if necessary, showing all the currency notes and the details of the denominations and number of the notes are also clearly seen in such photographs/videographs and a inventory stock showing all the details of the currency which shall be prepared by the Investigating Officer in the presence of an independent witness, like Tahsildar, etc. The petitioner shall file an affidavit unconditionally undertaking before the court below that the custody of the articles now given to him will be subject to the final custody orders to be passed at the time of conclusion of trial and that he would abide by any such orders passed in that regard by the competent court, but without prejudice to his right to challenge any such adverse orders, in accordance with law. Further, the petitioner should execute a bond for the aforesaid seized amount and shall also furnish security by way of immovable property for value to the tune of aforesaid amount of seized currency. After completion of such formalities the aforementioned seized mount of Rs.21,10,695/- shall be forthwith returned back to the petitioner. It is made clear that the observations and findings in this order are made only in the limited context of consideration of

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the question of the interim custody of the articles and needless to say, such findings and orders shall not trammel or influence in any manner the further steps in the impugned criminal proceedings and its outcome.

With these observations and directions, this Crl.M.C stands finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-