

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

Crl.MC.No. 3534 of 2015

CRME NO.VC3/2013/TVM

PETITIONER(S)/ACCUSED NO.3 :

**B.S.THYAGRAJABABU,
ASSISTANT COMMISSIONER-I,
OFFICE OF THE DEPUTY COMMISSIONER(AUDIT ASSESSMENT),
COMMERCIAL TAXES DEPARTMENT), TAX TOWER,
THIRUVANANTHAPURAM, PIN-695 002.**

**BY ADVS.SRI.C.S.MANU
SRI.S.K.PREMRAJ**

**RESPONDENT(S)/COMPLAINANT/INVESTIGATING OFFICERS AND THE DE-FACTO
COMPLAINANT :**

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF KERALA,
DEPARTMENT OF HOME, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695 001.**
- 2. DIRECTOR,
VIGILANCE AND ANTI-CORRUPTION BUREAU,
THIRUVANANTHAPURAM, PIN-695 001.**
- 3. DEPUTY SUPERINTENDENT OF POLICE,
(VIGILANCE AND ANTI-CORRUPTION BUREAU),
THIRUVANANTHAPURAM UNIT,
THIRUVANANTHAPURAM, PIN-695 001.**
- 4. D.PRAKASH,
S/O.DANIEL, ANUGRAHA, SECRETARIAL COLONY,
KANJIRAMPARA, THIRUVANANTHAPURAM, PIN-695 030.**

R1 TO R3 BY PUBLIC PROSECUTOR SMT.S.HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 25-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1:** TRUE COPY OF THE CERTIFICATE OF MERIT DATED 08.01.2011 ISSUED BY THE COMMISSIONER OF COMMERCIAL TAXES, GOVERNMENT OF KERALA TO THE PETITIONER.
- ANNEXURE A2:** TRUE COPY OF THE CERTIFICATE OF KERALA STATE E-GOVERNANCE AWARDS-2010 ISSUED BY THE GOVERNMENT OF KERALA TO THE PETITIONER.
- ANNEXURE A3:** TRUE COPY OF THE CERTIFICATE OF COMPLETION OF E-GOVERNANCE EXECUTIVE TRAINING PROGRAMME ISSUED BY THE GOVERNMENT OF INDIA, DEPARTMENT OF ELECTRONICS AND INFORMATION TECHNOLOGY, MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY TO THE PETITIONER.
- ANNEXURE A4:** TRUE COPY OF THE PRIVATE COMPLAINT FILED BY THE 4TH RESPONDENT ON 27.08.2009 AS CRL.M.P.NO.1488 OF 2009 BEFORE THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM.
- ANNEXURE A5:** TRUE COPY OF THE STATEMENT OF OBJECTIONS FILED BY THE 4TH RESPONDENT ON 20.08.2010 IN CRL.M.P.NO.1488 OF 2009 BEFORE THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM.
- ANNEXURE A6:** TRUE COPY OF ORDER DATED 07.12.2012 PASSED BY THE SPECIAL JUDGE IN CRL.M.P.NO.1488 OF 2009.
- ANNEXURE A7:** TRUE COPY OF FIR REGISTERED BY THE 3RD RESPONDENT BEARING NO.VC3/2013/TVM DATED 7.3.2013.
- ANNEXURE A8:** TRUE COPY OF FINAL REPORT DATED 30.07.2014 FILED BY THE 2ND RESPONDENT.
- ANNEXURE A9:** TRUE COPY OF THE APPLICATION DATED 15.05.2015 SUBMITTED BY THE PETITIONER TO THE GOVERNMENT OF KERALA (SECRETARY TO THE GOVERNMENT OF KERALA, DEPARTMENT OF TAXES).

RESPONDENT(S)' ANNEXURES : NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No.3534 of 2015

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Dated this the 25th day of June, 2015

ORDER

The prayers in this Crl.M.C. are as follows:

- “(i) Direct the Court of Enquiry Commissioner and Special Judge, Thiruvananthapuram to finalise the proceedings based on Annexure A-8 final report in VC3/2013/TVPM on the files of the 3rd respondent expeditiously within a time frame that may be fixed by this Hon'ble Court.
- (ii) Order that the proceedings based on Annexure A-8 final report in VC3/2013/TVPM pending before the Court of Enquiry Commissioner and Special Judge, Thiruvananthapuram shall not be reckoned to the disadvantage of the petitioner as a Government servant in service and the same shall not stand in the way of granting any service benefits including promotion due to the petitioner, pending finalization of the said proceedings.
- (iii) Grant such other and further reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.
- (iv) Allow cost of the petition to the petitioner.”

2. In compliance with the directions issued, by this Court on 12/06/2015, the Court of Enquiry Commissioner and Special Judge, Thiruvananthapuram has furnished a report to the Registry stating that presently, Vigilance Crime No.VC.3/13/TVM stands posted to 10/07/2015 and that final orders in this case would be passed within two months from 10/07/2015.

3. It is pointed out by Sri.C.S.Manu, learned counsel for the petitioner that Annexure A-8 is the report dated 30/07/2014 submitted by the 3rd respondent Deputy Superintendent of Police, (Vigilance and Anti-Corruption Bureau), Thiruvananthapuram, wherein it is concluded that no evidence for criminal misconduct could be collected against the officials during the investigation and that Annexure A-8 refer report has been submitted before the Court of Enquiry Commissioner and Special Judge after clearing all procedural formalities in that regard. It is further pointed out by Sr.C.S.Manu, learned counsel for the petitioner that the pendency of this impugned criminal proceedings is causing unnecessary hardships and great injustice to the petitioner's claims for further promotions and that this court in the case Sasidharan v. State of Kerala reported in 2008 (4) KLT 149, after considering the impact of the relevant provision of KS & SSR, has held that the pendency of any vigilance proceedings be it a preliminary enquiry or even vigilance case after registration of a crime, will not by itself be a bar for such claims etc. It is further pointed out that in similar situation this Court has granted interim order dated 08/04/2015 in

IA No.5108/2015 in WP(C) No.20028/2013 which reads as follows:

“Heard. Interim order granted by the court stands already modified on 26/03/2015. A further modification felt not necessary. However, it is clarified that pendency of the prosecution proceeding will not by itself stand in the way of the petitioner's prospects in service, and his benefits available in service. This prosecution shall not be reckoned the disadvantage of the petitioner as a government servant.”

4. It is prayed that such orders should also be issued by this Court so as to protect the bonafide interest of the petitioner's claim for promotion benefits as the promotion benefits have been kept deferred indefinitely due to the pendency of the impugned proceedings.

5. Heard. Sri.C.S.Manu learned counsel appearing for the petitioner and learned Public Prosecutor appearing for State of Kerala.

6. Having regard to the totality of the facts and circumstances of the case and taking into account the aforestated report dated 22/06/2015 submitted by the Court of Enquiry Commissioner and Special Judge, Thiruvananthapuram, it is ordered in the interest of justice that the Court of Enquiry Commissioner and Special Judge, Thiruvananthapuram, will take all reasonable endeavours possible in the circumstances to ensure that orders on the Annexure A-8

report submitted in VC.3/13/TVM, is passed without any further delay after hearing necessary parties. It is ordered that the court below will endeavour to pass orders within at least six weeks from the date of production of certified copy of this order or at least within the period mentioned in the aforestated report of the court below.

7. It is further made clear that in the meanwhile the pendency of the subsisting vigilance proceedings by itself need not be taken as a bar for consideration of the petitioner's service benefits including promotion claims and needless to state that such consideration of claims for promotion etc. could be effected in accordance with law.

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

Sd/- ALEXANDER THOMAS, JUDGE

MJL

