

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

Crl.MC.No. 3836 of 2015

**ORDER DTD.15.6.2015 IN CRL.MP.NO.85/2013 IN CC.NO.35/2009 OF ENQUIRY
COMMISSION AND SPECIAL JUDGE, THIRUVANANTHAPURAM**
.....

PETITIONER(S)/PETITIONER/ACCUSED:

**S. PRABHULLAKUMAR,
S/O.SURENDRAN, 'CHAITHRAM', ALTHARAMOODU,
AARINIRATHUPARA, KADAKKAL VILLAGE, KOLLAM DISTRICT.**

**BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SRI.C.DINESH
SRI.G.RENJITH
SMT.ASHA BABU**

RESPONDENT(S)/COUNTER PETITIONER/STATE AND COMPLAINANT:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031.**
- 2. THE DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI-CORRUPTION BUREAU, SIU, KOLLAM,
PIN-691 001.**

**BY SRI.TOM JOSE PADINJAREKARA,
ADDITIONAL DIRECTOR GENERAL OF PROSECUTION**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
06-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A: TRUE COPY OF PETITION NO. CRL.MP.NO.85/2013 IN CC.35/2009 ON THE FILE OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM.

ANNEXURE B: TRUE COPY OF ORDER DTD.15.6.2015 IN CRL.MP.NO.85/2013 IN CC.35/2009 ON THE FILE OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM.

ANNEXURE C: TRUE COPY OF ORDER NO.C1(VC 3/08)/KLM)10074/08 DTD.9.1.2009 ISSUED BY THE DIRECTOR OF VIGILANCE TO THE COMMISSIONER OF LAND REVENUE, WHICH WAS OBTAINED BY THE PETITIONER UNDER THE RI ACT.

ANNEXURE D: TRUE COPY OF MODEL ORDER OF SANCTION OBTAINED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT.

RESPONDENT(S)' ANNEXURES:

ANNEXURE R1(a): COPY OF G.O.(RT) NO.494/09/RD DTD.5.2.2009.

ANNEXURE R1(b): COPY OF G.O.(RT) NO.1343/09 GAD DTD.22.2.2009.

//TRUE COPY//

P.S.TO JUDGE

Msv/

[CR]

B. KEMAL PASHA, J.

.....
Crl.M.C. No.3836 of 2015 F
.....

Dated this the 6th day of October, 2015

ORDER

~ ~ ~ ~ ~

Annexure-B order passed by the Enquiry Commissioner and Special Judge, Thiruvananthapuram in Crl.M.P.No.85/2013 in CC No.35/2009 is under challenge. The petitioner stands indicted before the court below for the offences punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 read with Section 13(1) (d) of that Act. The petitioner has seriously challenged the legality and validity of the sanction for prosecution before the court below within the provisions of Section 19 of the said Act. It is the specific case of the petitioner that the authority, who has granted the so-called sanction in the case, is not the authority who could remove the petitioner from service and, therefore, there is no valid sanction as

contemplated under Section 19 of the Act.

2. According to the learned Senior Counsel for the petitioner, the court below has taken the said question lightly and has simply discarded the said contention raised by the petitioner by stating in Annexure-B order that the sanction was issued by the officer, who was in charge of the Commissioner of Land Revenue and, therefore, the argument advanced by the petitioner on the basis of lack of valid sanction is only having little substance.

3. The learned Senior Counsel, Sri. K. Ramakumar for the petitioner, has pointed out that the petitioner can have resort to such a contention of the validity of sanction at the inception or at a later stage in the matter.

4. The learned Additional Director General of Prosecutions, Sri. Tom Jose Padinjarekkara, has pointed out that this is not a case in which the want of sanction is under challenge, whereas, this is a case wherein the petitioner has contended that the order of the sanction issued is illegal. In

Dinesh Kumar Vs. Chairman, Airport Authority of India and Another [AIR 2012 SC 858], the Apex Court has followed the decision in ***Parkash Singh Badal and another Vs. State of Punjab*** [AIR 2007 SC 1274] and held as follows:-

*“While drawing a distinction between the absence of sanction and invalidity of the sanction, this Court in **Parkash Singh Badal** expressed in no uncertain terms that the absence of sanction could be raised at the inception and threshold by an aggrieved person. However, where sanction order exists, but its legality and validity is put in question, such issue has to be raised in the course of trial. Of course, in **Parkash Singh Badal**, this Court referred to invalidity of sanction on account of non-application of mind. In our view, invalidity of sanction where sanction order exists, can be raised on diverse grounds like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to grant such sanction. The above grounds are only*

*illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the same category like the ground of invalidity of sanction on account of non-application of mind - a category carved out by this Court in **Parkash Singh Badal**, the challenge to which can always be raised in the course of trial.”*

5. As pointed out by the learned Additional DGP, this is a case wherein what is contended is not the want of sanction at all, whereas, what is contended is the legality and validity of the sanction issued. In such case, the matter has to be decided on merits and the petitioner will legitimately get an opportunity to challenge the validity or legality of the sanction in trial. Of course, the view taken by the court as if it is a closed chapter is not correct. Once again, the petitioner has to be given an opportunity to challenge the legality or validity of the sanction.

5. In this particular case, it seems that the sanction was issued by the Additional Commissioner (Land Revenue) while holding full additional charge of Commissioner (Land

Revenue). Annexure-R1(a) shows that the Additional Commissioner (Land Revenue) was given full additional charge of the Commissioner (Land Revenue). The question whether the sanction given by the Additional Commissioner (Land Revenue), who was holding the full additional charge of the Commissioner (Land Revenue), through a Government Order is legal or valid, has to be decided on merits during trial. The findings entered by the court below in Annexure-B order that *“the argument advanced by the learned counsel for the petitioner on the basis of lack of valid sanction is only having little substance”*, is hereby set aside. The petitioner shall be given an opportunity to moot the said question once again during trial.

With the said direction, this CrI.M.C. is disposed of.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/06/10

// True Copy //

PA to Judge