

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

Cr1.MC.No. 3851 of 2015 ()

CRIME NO. 849/2015 OF VARKALA POLICE STATION ,
THIRUVANANTHAPURAM

PETITIONER(S)/ACCUSED NO.1:

ADV.K.R.BIJU
FORMER CHAIRMAN, VARKALA MUNICIPALITY, VAZHAVILA VEEDU
JANARDHANAPURAM DESOM, VARKALA VILLAGE, VARKALA TALUK
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN
SRI.VIPIN NARAYAN

RESPONDENT(S)/DEFACTO COMPLAINANT & STATE:

1. JOBIN.P.S.
S.P.VIHAR, VENKULAM, EDAVA
THIRUVANANTHAPURAM - 695 311.

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 11-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Cr1.MC.No. 3851 of 2015 ()

APPENDIX

PETITIONER(S) ' ANNEXURES :

- A - TRUE COPY OF THE COMPLAINT PREFERRED AS CRL.M.P NO. 230/2007 BY THE 1ST RESPONDENT HEREIN AGAINST THE ACCUSED.
- B - TRUE COPY OF THE ENQUIRY REPORT DT. 03.11.08 SUBMITTED BY N.SANILKUMAR, DEPUTY SUPERINTENDENT OF POLICE, VIGILANCE AND ANTI-CORRUPTION BUREAU, SOUTHERN RANGE, THIRUVANANTHAPURAM.
- C - TRUE COPY OF THE ENQUIRY REPORT DT. 17.2.11 SUBMITTED BY REJI JACOB, DEPUTY SUPERINTENDENT OF POLICE, VIGILANCE AND ANTI-CORRUPTION BUREAU, SOUTHERN RANGE, THIRUVANANTHAPURAM.
- D - CERTIFIED COPY OF THE FIR IN CRIME NO. 849/2015 OF VARKALA POLICE STATION, THIRUVANANTHAPURAM DISTRICT.

RESPONDENT(S) ' ANNEXURES : NIL

//TRUE COPY//

P.A TO JUDGE.

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B.KEMAL PASHA, J.

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Crl.M.C. No. 3851 of 2015

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Dated this the 11th day of December, 2015

ORDER

It seems that Crime No.849/2015 of the Varkala Police Station, Thiruvananthapuram District, has been registered by alleging that the petitioner along with A2 and A3, with the intention of cheating and defrauding the Government of Kerala, Varkala Municipality and the members of the public, in order to make undue enrichment, did not disburse the entire amount of ₹4,86,940/-, which was allowed by the Government for disbursing it to the members of the public, whose infected coconut trees were cut and removed during 2005 and 2006. It is alleged that they have misappropriated the said amount without disbursing it

to the actual persons entitled, by forging false documents, thereby they have cheated and defrauded the Government, Municipality as well as the members of the public.

2. The aforesaid allegations were found to be false even by the Vigilance, who conducted thorough enquiry twice. Annexure – B report as well as Annexure – C report clearly reveal that there was no question of any misappropriation of Government money in the case and the persons involved did not gain any pecuniary advantage in the matter. At the same time, through Annexure-C, a mere recommendation was given to register a crime by the local Police alleging offences under Sections 468 and 471 IPC. The local Police have gone one step ahead by incorporating the offence under Section 420 IPC also. It seems that wisdom prevailed on the local Police that offences under Sections 468 and 471 IPC cannot be made out without the aid of Section 420 IPC in a case like this. At the same time, when

there is a concrete finding entered by the Investigating Officer, who had conducted enquiry twice that there is no financial misappropriation of Government money in the matter by the persons involved and that they had not gained any pecuniary advantage, an offence under Section 420 IPC cannot be made out. In the light of the concrete findings entered earlier by the officers of the Vigilance and Anti-Corruption Bureau in the matter, an offence under Section 420 IPC cannot be alleged. Without the aid of an offence under Section 420 IPC, it is idle to allege that there is an offence under Section 468 or 471 IPC in a case like this.

3. Over and above it, even the officers of the Vigilance and Anti-Corruption Bureau, who had enquired the matter had no case that the petitioner, A2 and A3 had obtained any pecuniary gain for themselves or for others. In case, they had a case that the petitioner herein or the other persons, against whom allegations were made, had forged the documents for

the purpose of making pecuniary gain to others, an offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act would have been levelled against these persons. Therefore, even if the offences under Sections 468 and 471 IPC are levelled against the petitioner and the other accused, it cannot be said that it was for any purpose at all. In such case, it cannot be said that such forged documents were made use of as genuine for any specific purpose.

4. Whatever it is, when there is specific finding by the persons, who had thoroughly enquired the matter that there is no question of any misappropriation of Government money in the matter and the persons involved had not made any pecuniary gain for themselves or for others, the offences under Sections 420, 468 and 471 read with Section 34 IPC will not lie against the petitioner. Therefore, the continued investigation in Crime No.849/2015 of the Varkala Police Station as against the petitioner will be an idle

exercise and hence, Annexure-D FIR in Crime No. 849/2015 of the Varkala Police Station and all further proceedings as against the petitioner, are liable to be quashed.

In the result, this Crl.M.C is allowed and Annexure-D FIR in Crime No. 849/2015 of the Varkala Police Station and all further proceedings as against the petitioner, are hereby quashed.

Sd/-
B.KEMAL PASHA, JUDGE

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