

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

Crl.MC.No. 3149 of 2013 ()

AGAINST THE ORDER IN VC 4/2010 of ENQUIRY COMMISSIONER & SPECIAL JUDGE,
KOTTAYAM, DATED 01-10-2012

PETITIONER(S)/2ND ACCUSED:

P.V.SOSAMMA, AGED 50 YEARS,
W/O. A.G. KORAH, RESIDING AT ANTHERIL HOUSE,
P.O. MOOLAVATTOM, KOTTAYAM-686 026.

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

RESPONDENT(S)/RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY THE DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI-CORRUPTION BUREAU, EASTERN RANGE,
KOTTAYAM.

BY PUBLIC PROSECUTOR SMT. V.H. JASMINE.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26-02-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

:2:

Crl.MC.No. 3149 of 2013 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANX.1 : CERTIFIED COPY OF TRHE FIR IN VC NO. 4/2010/EASTERN RANGE, KOTTAYAM.

ANX.2 : CERTIFIED COPY OF THE FINAL REPORT IN VC NO. 4/2010/ESASTERN RANGE, KOTTAYAM.

ANX.3 : CERTIFIED COPY OF THE ORDER DT. 1-10-2012 PASSED BY THE HON'BLE SPL. JUDGE (VIGILANCE) KOTTAYAM IN VC NO. 4/2010/EASTERN RANGE, KOTTAYAM.

RESPONDENT(S)' EXHIBITS : NIL

// True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

.....
Crl. M.C.No.3149 of 2013
.....

Dated this the 26th day of February, 2015

ORDER

This is an application filed by the second accused in VC No.04/2010 of Eastern Range, Kottayam, challenging the order passed by the Enquiry Commissioner and Special Judge, Kottayam, rejecting the further action dropped report submitted by the investigating officer and ordering further investigation in the matter under Section 482 of the Code of Criminal Procedure.

2. When the case came up for hearing on the last hearing date, the learned Public Prosecutor submitted that, on the basis of the impugned order, further investigation was conducted and report has been submitted before the sanctioning authority, for seeking sanction to proceed with the matter. When this was pointed out last time, the counsel for the petitioner wanted time to ascertain about the same.

3. When the case came up for hearing today,

the counsel for the petitioner submitted that, on the basis of the report of the vigilance department, as requested by the Government, in the disciplinary proceedings, a report was called for from the Executive Engineer and on the basis of the report as recommended by the Chief Engineer, Government has passed an order dated 17.12.2013 as per G.O.(Rt)No.3084/2013/LSGD of Local Self Government Department (EW) Department has decided to impose the minor punishment of censure alone.

4. It is settled law that, if the court is not satisfied with the manner in which the investigation was conducted, though refer is filed, court has got power either to accept the report or reject the report and order further investigation and as such the direction of the Special Judge to conduct further investigation without accepting the further action dropped report cannot be said to be illegal. But however, court cannot direct the Government to review

the order, declining sanction or direct the Government to grant sanction. It is for the Government to decide on the basis of the material placed before it by the investigating agency or other materials called for, for this purpose in the file, as to whether sanction has to be accorded or not (see **Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and Others (2015(1) SCALE)**). Since in this case, further investigation has already been completed on the basis of the impugned order passed by the Special Judge and it is pending before the Government for consideration, this court feels that, there is no need to pass any further order in this petition. But, the Government has to take independent decision, untrammelled by the observations made in the impugned order of the Special Judge in this regard, applying its mind on the basis of all the materials placed by the investigating officer or other materials available on file in this regard or take its own procedure for

satisfying itself to grant sanction or not, applying the principles laid down in the decision reported in **Subramanian Swamy v. Manmohan Singh and Another (2012(3) SCC 64)**.

With the above direction and observation the petition is disposed of.

Sd/-

K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge

ss