

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

Crl.MC.No. 4483 of 2015 ()

(AGAINST THE ORDER IN CRL.M.P.NO.383/2015 IN C.C.NO.22/2008 OF
THE ENQUIRY COMMISSIONER AND SPL.JUDGE, THIRUVANANTHAPURAM)

PETITIONER(S)/PETITIONERS/PETITIONER:

1. A.RAJAGOPALAN, AGED 65 YEARS,
RETIRED EXECUTIVE ENGINEER, K W A, THIRUVANANTHAPURAM.
2. S. S. ROY, AGED 55 YEARS,
FORMER EXECUTIVE ENGINEER, SEWERAGE SECTION, K W A,
PATTOOR, THIRUVANANTHAPURAM.
3. DEVAKUMAR, AGED 58 YEARS,
FORMER ASSISTANT EXECUTIVE ENGINEER, SEWERAGE SECTION,
K W A, PATTOOR, THIRUVANANTHAPURAM.
4. VIJAYAKUMAR, 54 YEARS,
FORMER DRAFTSMAN, SEWERAGE SECTION, SASTHAMANGALAM,
THIRUVANANTHAPURAM.

BY ADVS.SRI.K.K.VIJAYAN
SMT.MINI GANGADHARAN

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

THE STATE OF KERALA,
VIGILANCE AND ANTICORRUPTION BUREAU, SIU
THIRUVANANTHAPURAM, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SMT.P.MAYA.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
10-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

:2:

Crl.MC.No. 4483 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

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ANNEXURE A1:-THE TRUE COPY OF THE CHARGE IN CC NO 22/2008 ON THE
FILE OF THE COURT OF THE ENQUIRY COMMISSIONER AND
SPECIAL JUDGE, THIRUVANANTHAPURAM.

ANNEXURE A2:-TRUE PHOTOSTAT COPY OF DISCHARGE PETITION CRMP NO
229/2009.

ANNEXURE A3:-TRUE PHOTOSTAT COPY OF CRMP NO 383/2015 IN
CC NO 22/2008.

ANNEXURE A4:-TRUE CERTIFIED COPY OF ORDER DTD 16/5/2015 IN
CRMP NO 383/2015 IN CC NO 22/2008.

RESPONDENT(S) ' EXHIBITS

: NIL

// True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

Crl. M.C.No.4483 of 2015

Dated this the 10th day of September, 2015

ORDER

Petitioners in Crl.M.P.No.383/2015 in C.C.No.22/2008 on the file of the Enquiry Commissioner and Special Judge, Thiruvananthapuram, are the petitioners herein. The petitioners are arrayed as accused Nos. 3, 4, 6 and 8 in C.C.N.o.22/2008 on the file of the Enquiry Commissioner and Special Judge, Thiruvananthapuram. The petitioners along with other accused persons were charge sheeted by the Deputy Superintendent of Police, Vigilance and Anti Corruption Bureau, Special Investigation Unit, Thiruvananthapuram, alleging offences under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Section 120(B) of Indian Penal Code.

2. The case of the prosecution was that, accused Nos. 1 to 8 who were working as Engineers in Kerala Water Authority had abused their official position

and hatched a criminal conspiracy with 9th accused in respect of execution of Thiruvananthapuram Drainage Scheme (TDS) 'E' Block, parallel main laying of 1200 MM RCC MP3 pipes from Kannettumukku to Valiyasala Railway Cross Road Reach and thereby caused undue pecuniary gain to the tune of ₹9,72,677.78 to the 9th accused/contractor and corresponding loss to the Government. It is alleged by the prosecution that first accused Engineer intentionally ignored the option given by the Chief Engineer/CW2 that either to accept the lowest rate of 26.12% below estimate and use the provision of interlocking sheets shoring at the rate arrived at by witness No.2/ Chief Engineer or to cancel the tender and rearrange the work after inviting fresh tender as per the approved estimate including the provisions of shoring with interlocking sheet piles. But in pursuance to the above said conspiracy, first accused proceeded with the work and sent a proposal for the steel shoring and sand bag protection outside the face

of steel shoring around the manholes and in side the trenches as extra items which is very similar to the item of interlocking sheet piles having in the approved original estimate and later the first accused sanctioned the above work as extra item in his capacity as Chief Engineer and thereby 9th accused obtained undue gain to the tune of the above mentioned amount. According to the petitioner the sub soil investigation conducted by the LBS Centre for the work executed during 1994-95, lacks for information or material to arrive at a definite opinion or possible opinion without reasonable doubt. The work site is adjacent to 'Killy river' and experts have not considered the movement of the soil around the ground water as ground water is moving stream which flows under gravitational force. It is also contended that the ground water table of the work site was not appreciated by the experts who filed the report on behalf of LBS. The natural ground water regime of the work site coupled with ground water level at rainy season affects

the movement of soil mass to the adjacent parts were not considered by the persons who filed the reports. It is also contended that the experts who submitted the report had not inspected or drilled the area outside the sheet piling whereby major data has not been collected by the experts. After the completion of the work and before the inspection conducted by the LBS, 14 to 20 rainy seasons have been passed. The work site is the area where arching happens. More over stratum contained arching and aquifer process affects the plasticity of the soil, thereby soil can flow to any direction beneath the surface and the soil can be remoulded. So according to the petitioners, investigation has not been properly conducted and these aspects were not considered by the experts or the investigating agency before coming to the conclusion that unlawful gain has been made by the 9th accused and thereby consequential loss has been caused to the Government. This can be found out only by conducting further investigation. So they filed

Crl.M.P.No.383/2015 before the court below, which was dismissed by the court below and that is being challenged by the petitioners by filing this petition.

3. Heard, the counsel for the petitioners Sri.K.K.Vijayan and Public Prosecutor Smt.P.Maya appearing for the respondent.

4. The counsel for the petitioners submitted that, unless the materials mentioned in the documents are collected by conducting further investigation, it cannot be said that, the investigation was properly conducted and it is not possible for the court to come to a definite conclusion regarding the genuineness of the allegations made and also for proper adjudication of the case, these aspects will have to be elicited by proper expert. So the court below was not justified in dismissing the application.

5. On the other hand, the application was opposed by the learned Public Prosecutor.

6. It is an admitted fact that the petitioners

along with other accused persons were the persons responsible for the execution of work under dispute in the case. The case of the prosecution was that, without complying with the directions of the then Chief Engineer and on account of the conspiracy hatched by the official accused persons namely accused Nos. 1 to 8 with the 9th accused granted the contract to the 9th accused causing loss to the Government and an unlawful gain to the 9th accused and this was done against the public interest abusing their official position.

7. The court below on appreciation of the documents produced came to the conclusion that the investigating agency had appointed CW38 Dr. T.K.Gopalakrishnan Nair, as an expert to prepare the estimate of the work done to find out the loss caused to the Government. It was on the basis of that report that the final report has been filed, based on which the case has been taken on file. The case of the petitioners in the petition was

that, necessary data's required to be collected for ascertaining the correctness of the work done were not really taken by the experts and that can be elicited only by conducting further investigation and it was on the basis of this allegation that the petition for further investigation has been filed.

8. As rightly pointed out by the Special Judge that, for the purpose of collecting evidence for the defence, it is not necessary to order further investigation. Further it is settled law that the investigation agency is expected to conduct investigation on the basis of the materials available before them for the purpose of finding out as to whether the allegation of commission of the offence has been committed or not. At the time of investigation they are not expected to anticipate all the defences likely to raise at the time of trial and collect the evidence on that basis before filing the final report. These facts can be elicited by the defence at the time of trial by cross examining the experts and if they were

able to show that there is an irregularity in the investigation and expert report is not reliable, that fact can be considered by the court to ascertain as to whether the prosecution was able to prove the allegations or commission of offence against the accused persons beyond reasonable doubt and not at this stage. The defence can also adduce independent evidence to prove these aspects as well. Further in this case, the final report was filed in the year 2008 and after lapse of 7 years that the present petition for further investigation was filed by the petitioners, that also was taken note of by the court below as a ground for dismissing the application, as court below found that they have not come with a bona fide intention. So under the circumstances, there is no illegality committed by the court below in dismissing the application for further investigation under Section 173(8) of the Code of Criminal Procedure filed by the petitioners warranting interference of this court, invoking the power under Section 482 of the Code of

Criminal Procedure. The petitioners are at liberty to raise all the contentions raised by them either in the application for discharge said to have been pending before that court or at the time of trial and it is for the Special Judge to consider these materials and pass appropriate orders in the matter at the appropriate time.

With the above direction and observation, the petition is dismissed.

Sd/-
K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge