

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

Crl.MC.No. 4893 of 2015

**CMP.2049/2015 IN C.C.371/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-III,
THIRUVANANTHAPURAM**

PETITIONER/ACCUSED 1 :

**RAJKUMAR, AGED 31 YEARS,
S/O RAVEENDRAN, THADATHARIKATHU VEEDU, PLAVATTI DESOM,
KALLIKADU WARD, VAZHACHAL VILLAGE,
NEYYATTINKARA TALUK.**

**BY ADVS.SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.V.S.THOSHIN**

RESPONDENT/COMPLAINANT:

**THE STATE OF KERALA,
THROUGH THE CIRCLE INSPECTOR OF POLICE,
CANTONMENT POLICE STATION, THIRUVANANTHAPURAM,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031.**

BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04-08-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

Crl.MC.No. 4893 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES

ANNEXURE A: THE TRUE COPY OF THE FINAL REPORT IN C.C.NO.371/10.

ANNEXURE B: TRUE COPY OF G.O.(P)NO.21/2010/VIG. DATED 9.6.10.

**ANNEXURE C: CERTIFIED COPY OF THE ORDER IN CMP NO.2049/2015 IN
C.C.NO.371/2010 DATED 23.6.1315.**

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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CrI.M.C No.4893 of 2015

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Dated this the 4th day of August, 2015

ORDER

The order under challenge in this petition filed u/s 482 of the Cr.P.C seeking invocation of this Court's inherent power conferred as per that provision is at Anx.C dated 23.6.2015 rendered on C.M.P No.2049/15 in C.C No.371/2010, whereby the plea of the petitioner for discharge has been refused. The petitioner is accused in C.C No.371 of 2010 on the file of the Judicial First Class Magistrate Court -III, Thiruvananthapuram for the offences under Secs. 409 and 34 of the IPC.

2. Heard Sri.Sasthamangalam S.Ajithkumar, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent, State of Kerala.

3. The two grounds urged by the petitioner before the court below are that firstly the impugned cognizance has been taken by the learned Magistrate without getting the mandatory sanction envisaged u/s 197(1) of the Cr.P.C, as the petitioner who is a public

servant of the fully Government owned Company within the meaning of Sec.21 of IPC. The latter ground is that the impugned final report/charge sheet has been filed by the incompetent officer in as said as the investigation has been done by a Sub Inspector of Police which is in violation of the provision contained in Anx.B Government order which stipulates that cases of misappropriation between Rs.2 lakhs and 5 lakhs will be investigated by the CBCID, since the amount alleged to be misappropriated as per the final report/charge sheet is Rs. 2.74 lakhs.

4. As regards the first contention, the learned counsel for the petitioner submits that the petitioner satisfies the definition clause of public servant as stipulated in Section 21 of the IPC, more particularly clause No.12 thereof. It is also submitted that the service of the petitioner could be validly removed or terminated only with the sanction or permission of the State Government and therefore he is entitled for the protection u/s 197(1) of the Cr.P.C in as much as there is a close nexus with the discharge of his official duties with the “actus reus” was involved in the alleged crime. The 12th explanation of clause (b) of Sec.21 of the IPC provides that a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Sec. 617 of the Companies

Act, 1956. The petitioner has taken this Court to the provisions of Sec.617 of the Companies Act which defines a Government Company and further submitted that the employer of the petitioner viz., Supply Co (which is the abbreviation of the Kerala State Civil Supplies Corporation Ltd.) is a 100% Government of Kerala owned company and it acts as the execution arm of the Department of Food and Civil Supplies of the Government of Kerala, founded in 1974, etc. as disclosed in their official website itself published in pursuance of the requirements of the Right to Information Act and further that the petitioner was holding the post of Junior Superintendent in this establishment at the time of the alleged commission of the offence in question and that an officer like the petitioner holding the post of Junior Superintendent though removable by the Managing Director of the Company, such removal requires the prior approval/sanction of the Government of Kerala in terms of the rules and regulations governing that Government Company. Sec.197(1) of the Cr.P.C reads as follows:

197. Prosecution of Judges and public servants.-(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013.

a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence

employed, in connection with the affairs of the Union, of the Central Government.

b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted."

5. In this back ground of the provisions contained in sub Section (1) of Sec.197 of the Cr.P.C, that the petitioner submits that his service under his employer at the time of the alleged offence is removable only with the prior approval/sanction of the Government and that the nature of the "actus reus" involved in the alleged offence has a direct nexus with the discharge of his official function.

6. The second contention raised by the petitioner is that the investigation in this case should have been conducted by the Crime Branch CID and not by the State Local Police in view of the provisions contained in clause (2) of Anx.B G.O.(P) No.21/2010/Vig. dated 9.6.2010. On a perusal of the impugned order, it is seen that the contentions now projected by the petitioner on the basis of the provisions contained in Sec.21 of the IPC and Sec.197(1) of the Cr.P.C have not been considered in the perspective that is now sought to be urged by the learned counsel for the petitioner. Even though the latter contention is adverted to, there is no specific

consideration of that aspect. Rather the court below has been persuaded to reject the plea of the petitioner mainly on the ground that the charge has already been framed and that the trial has commenced thereafter, etc.

7. The learned Public Prosecutor appearing for the respondent State of Kerala would submit that what is essentially sought to be prayed by the petitioner is a plea of discharge which is permissible only prior to framing of charge and that it is impermissible going by the mandate of the rigorous provisions of the Code of Criminal Procedure to entertain a plea for discharge after the charges have been framed. This is more so in this case, wherein the trial has commenced substantially. Per contra Sri.Sasthamangalam S. Ajithkumar, learned counsel for the petitioner would submit that the lack of sanction is an aspect which goes to the root of the matter, in view of the decision of this Court in the case Abdul Rehman v. State of Kerala [1995(1)KLT 234 (FB)].

8. The learned Public Prosecutor would also contend that these crucial contentions now sought to be raised by the petitioner more particularly, on the basis of Sec.21 of IPC and Sec. 197(1) of the Cr.P.C, have not been urged before the court below in the

manner now it is sought to be projected before this Court. It is also urged by the learned Public Prosecutor that the petitioner has not been able to establish even before the court below or before this Court that his service as Junior Superintendent of the Kerala State Civil Supplies Corporation/Supply Co is one which could be removable only with the prior approval/sanction from the Government of Kerala, as ordinarily the appointing authority of post of Junior Superintendent, even in Government service is not necessarily the State Government in respect of the post of Junior Superintendent in subordinate Government Departments.

However as the stage for consideration of the plea of discharge has already been crossed in this case, it will be open to the petitioner to raise all these contentions at the appropriate time in the trial and the court below will consider such contentions, if raised properly, untrammelled by its earlier stand in the impugned order.

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

sab

ALEXANDER THOMAS, JUDGE

