

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

Crl.MC.No. 4147 of 2013 ()

**Crl.MC 5308/2003 of THIS HONOURABLE COURT
CC 3/2010 of ENQUIRY COMMISSIONER AND SPECIAL COURT,
THIRUVANANTHAPURAM**

PETITIONER/ACCUSED :

**SIVAPRASAD.S., AGED 53 YEARS,
RESIDING AT 'SREELEKSHMI', JOSEPH LANE, KACHANI,
KARAKULAM P.O., THIRUVANANTHAPURAM
PRESENTLY WORKING AS CHIEF EXECUTIVE OFFICER,
VEGETABLE AND FRUIT PROMOTION COUNCIL, KERALAM
MYTHRI BHAVAN, KAKKANAD.**

**BY ADVS.SRI.S.M.PRASANTH
DR.K.BALAKRISHNAN**

RESPONDENT/RESPONDENT & COMPLAINANT :

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

R1 BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 05-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- ANNEXURE A1:** TRUE COPY OF THE ORDER IN CRL.M.C NO.5308/2003 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM DATED 16/01/2004.
- ANNEXURE A2:** TRUE COPY OF THE ORDER IN CRL.M.C NO.1223/2010 OF THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM DATED 15/06/2010.
- ANNEXURE A3:** TRUE COPY OF THE FINAL REPORT IN THE ABOVE VIGILANCE CASE EXCLUDING THE LIST OF WITNESSES AND DOCUMENTS.
- ANNEXURE A4:** TRUE COPY OF THE RELEVANT EXTRACT FROM THE NO.6594/B2/12/VIG. OF VIGILANCE (B) DEPARTMENT OF THE ADDITIONAL SECRETARY DATED 10/9/2012.
- ANNEXURE A5:** TRUE COPY OF THE RELEVANT EXTRACT FROM THE NO.20276/E1/12/LAW OF LAW (E) DEPARTMENT DATED 20/9/2012.
- ANNEXURE A6:** TRUE COPY OF THE RELEVANT EXTRACT FROM THE NO.6594/B2/2012/VIG OF THE HON'BLE MINISTER FOR HOME AND VIGILANCE.
- ANNEXURE A7:** TRUE COPY OF THE CERTIFICATE OF AWARD.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

[CR]

B. KEMAL PASHA, J.

.....
Crl.M.C. No. 4147 of 2013
.....

Dated this the 5th day of October, 2015

ORDER

The accused in C.C.No.3 of 2010 pending before the Court of the Enquiry Commissioner and Special Judge, Thiruvananthapuram is the petitioner herein. The case was originally registered as V.C.2/2000/TVM. After investigation, the Vigilance Department has chosen to file a final report, arraigning the petitioner as the first accused.

2. The allegation against the petitioner is that he, while working as Assistant Director of Agriculture, caused to obtain undue pecuniary advantage of ₹7,90,167/- for a particular firm. The sanction for prosecution was accorded by the Government vide order dated 13.10.2009.

3. It seems that, thereafter, proceedings were initiated by the Under Secretary, Vigilance Department, Additional Secretary to Government, Vigilance Department and the Principal Secretary, Home and Vigilance Department for withdrawal of the prosecution under Section 321 Cr.P.C. Annexure A6 recommendation was prepared and the said file was directed to be circulated to the Chief Minister through the Minister of Home and Vigilance. The recommendation was to the effect that in view of a persuasive precedent in a similar matter, which is Annexure A1 judgment passed by a learned Single Judge of this Court in Crl.M.C. No.5308/2004, there could not be a successful prosecution. It was on that ground that the recommendation was made by the aforesaid officers for the withdrawal of the prosecution under Section 321 Cr.P.C.

4. On getting the file, it seems that the Minister for Home and Vigilance has passed the following order, “*The petitioner may approach the trial court or any Apex Court to seek*

for reliefs in the light of the precedents vide VC-3/2000/TVM”.

5. The learned Senior Counsel for the petitioner has argued that the aforesaid observation and direction made by the Minister for Home and Vigilance is unworkable and the petitioner cannot approach any forum at all, seeking the withdrawal of the case against him by the Government, under Section 321 Cr.P.C.

6. Even though the application under Section 321 Cr.P.C. has to be filed by the Public Prosecutor or Assistant Public Prosecutor, as the case may be, it is evident that to give a direction for the same is solely the prerogative of the Government. In a way, the present relief sought for is nothing but a direction to the Government to invoke the power under Section 321 Cr.P.C. which cannot not be exercised by this Court under Section 482 Cr.P.C. When it is purely the prerogative of the Government, whether the prosecution has to be withdrawn or not, is a question to be decided by the Government. This Court cannot direct the

Government once again to look into the matter and pass appropriate orders. It seems that ultimately the Government has decided not to withdraw the prosecution as is evident from Annexure A6. That is why, the Minister for Home and Vigilance has passed such an order. When the Minister has decided not to grant sanction to withdraw the prosecution under Section 321 Cr.P.C., this Crl.M.C. is devoid of merits, and is only to be dismissed, and I do so.

It is made clear that this order will not stand in the way of the petitioner from pursuing appropriate remedies. It is also made clear that this Court has not entered any finding with regard to the merits or otherwise of the case against the petitioner.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge