

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

Crl.MC.No. 7331 of 2015 ()

INVESTIGATION OF A COMPLAINT BY THE VIGILANCE AND
ANTI CORRUPTION BUREAU, KANNUR.

PETITIONER/COMPLAINANT :

MANEESH E.,
S/O. KUMARAN, AGED 42 YEARS
ETTUVETIL HOUSE, CHAMBAD
THALASSETY TALUK, KANNUR.

BY ADVS.SRI.C.P.PEETHAMBARAN
SMT.MINI V.A.

RESPONDENTS/STATE & ACCUSED :

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
 2. THE DEPUTY SUPERINTENDENT OF POLICE
VIGILANCE AND ANTI CORRUPTION BUREAU, KANNUR.
 3. P.RAVEENDRAN
SECRETARY, PANOOR GRAMA PANCHAYAT,
KANNUR.
 4. RANJITH P.K.,
ASSISTANT ENGINEER,
LOCAL SELF GOVERNMENT DEPARTMENT
PANOOR SECTION, KANNUR.
 5. VINODAN
VERSEER, PANOOR GRAMA PANCHAYATH,
KANNUR.
 6. THAYAKKAL ANDUL LATHEEF
S/O. MAMMOOTTY, NALLIYULLATHIL, KOORARA P.O.
PANOOR, KANNUR.

R1 & R2 BY PUBLIC PROSECUTOR SMT. P. MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 14-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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...2/-

Crl.MC.No. 7331 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1 - TRUE COPY OF THE REPLY DT. 04.2.2014 GIVERN BY THE
CHIEF TOWN PLANNER'S OFFICE, THIRUVANANTHAPURAM.**
- ANNEXURE A2 - TRUE COPY OF THE CMP NO. 682/2014 FILED BY THE
PETITIONER BEFORE THE COURT OF ENQUIRY
COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE.**
- ANNEXURE A3 - TRUE COPY OF THE QUICK VERIFICATION REPORT
DT. 09.12.2014 OF THE 2ND RESPONDENT.**
- ANNEXURE A4 - CERTIFIED COPY OF THE ORDRE DT. 14.9.2015 IN CMP
NO. 682/2014 OF THE COURT OF ENQUIRY COMMISSIONER
AND SPECIAL JUDGE, KOZHIKODE.**

RESPONDENT(S)' ANNEXURES : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

[CR]

B. KEMAL PASHA, J.

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Crl.M.C. No.7331 of 2015
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Dated this the 14th day of December, 2015

O R D E R

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Heard learned counsel for the petitioner and learned Public Prosecutor.

2. Annexure-A4 order passed by the learned Enquiry Commissioner and Special Judge, Kozhikode, is under challenge. When a complaint was filed by seeking a relief to forward the matter under Section 156(3) Cr.P.C. for investigation, the court below has chosen to reject the complaint through Annexure-A4 order. Offences under the Prevention of Corruption Act are alleged in the private complaint. In such case, apart from forwarding the matter

for investigation under Section 156(3) Cr.P.C., the court below cannot take cognizance of the offences by proceeding through Section 200 or 202 Cr.P.C.

2. In the said matter, an investigation is required and sanction under Section 19 of the Prevention of Corruption Act is also required on the final report for taking cognizance of the offences. Even when the court below proceeds through Section 200 Cr.P.C., sanction is required within the meaning of Section 19 of the Prevention of Corruption Act for taking cognizance of the offences, even though sanction is not required to conduct an inquiry. Therefore, even if the court below decides to have an inquiry within the meaning of Section 200 or 202 Cr.P.C., no fruitful purpose would be served.

3. In such a case, even when the only relief sought for in the complaint is to get the complaint forwarded under Section 156(3) Cr.P.C., it cannot be said that the complaint

is not maintainable, if it reflects sufficient grounds to bring out the offences under the Prevention of Corruption Act. In cases wherein the contents of the private complaint reveal sufficient grounds to invite an offence, the mere fact that the complainant has sought for the relief of forwarding it to the police under Section 156(3) Cr.P.C., does not make the complaint not maintainable. When the contents reveal offences, courts are competent to take cognizance of the offences involved or to forward the matter under Section 156 (3) Cr.P.C. When the contents do not reveal any offence, and the relief sought for is solely for getting it forwarded to the police under Section 156(3) Cr.P.C., it can be said that such a complaint is not maintainable.

4. In this particular case, it seems that a preliminary enquiry was conducted and it was revealed that there are grounds to believe that the accused had committed the offences under the Prevention of Corruption Act. In such

case, the court below ought not to have rejected the complaint merely by highlighting the reason that the relief sought for is one for forwarding the same to the police under Section 156(3) Cr.P.C.

5. Over and above it, it seems that the court below has relied on the decision in **Anil Kumar v. Aiyappa** [2013 (4) KLT 125 (SC)] by taking a view that even for forwarding the complaint for investigation, sanction is required. The court below has not cared to consider the decision of the Constitution Bench in **Nand Ram Agarwala v. H.C. Bhari and others** [AIR 1956 SC 44(1)], where in an identical situation, it was held that '*sanction was required at the stage of taking cognizance only and not prior to it*'. In the decision in **Anil Kumar** (*supra*), the aforesaid decision of the Constitution Bench was not considered. When there is a decision squarely applicable on the point by the Constitution Bench, the court below ought to have followed the decision

of the Constitution Bench. Matters being so, the impugned order passed by the court below is liable to be set aside. The court below shall follow the observations made above as well as the decision of the Constitution Bench in ***Nand Ram*** (*supra*) and pass appropriate orders in accordance with law. The petitioner shall appear before the court below on 05.01.2016.

In the result, this Crl.M.C. is disposed of as above.

Sd/-
(**B.KEMAL PASHA, JUDGE**)

aks/14/12

// True Copy //

PA to Judge