

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 21ST DAY OF JULY 2015 / 30TH ASHADHA, 1937

CRL.REV.PET NO. 557 OF 2015

AGAINST THE ORDER IN CRL.M.P 890/2013 IN CC 9/2010 OF

ENQUIRY COMMISSIONER& SPECIAL JUDGE,THRISSUR DATED

02.09.2014

REVISION PETITIONER/PETITIONER/ACCUSED:

ABDUL HAKEEM S/O.YOOSAF, SUHAIL MANZIL,
WADAKKANCHERRY, PALAKKAD

BY ADVS.
SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN
SRI.VIPIN NARAYAN

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA, ERNAKULAM

SRI.JIBU P.THOMAS - PP

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 21.07.2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

K.HARILAL, J.

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Crl.R.P.No.557 of 2015

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Dated this the 21st day of July, 2015

ORDER

The petitioner is the petitioner in Crl.M.P No.890/2013 in C.C.No.9/2010 on the files of the Enquiry Commissioner & Special Judge, Thrissur filed under Section 239 of the Code of Criminal Procedure, seeking to discharge him from the offence alleged against him. According to the petitioner, the charge against him is groundless. After considering the final report filed under Section 173(2) and the documents sent along with the said report, the court below dismissed the application by the impugned order under challenge. The legality and propriety of the findings whereby the court below dismissed the above Crl.M.P are under challenge in this revision petition.

2. According to the prosecution, the petitioner was

the Special Grade Secretary of the Kollengode Grama Panchayat and while discharging his official duty as a public servant, he demanded and accepted an amount of ₹10,000/- from the de facto complainant in addition to an amount of ₹6,000/- already paid to him on two different earlier occasions, for renewing his building permit, which was issued on 23.6.2004 and was valid up to 22.6.2007, and also for approval of a deviation plan. The case was registered on the basis of the first information statement given by the de facto complainant and thereafter, a trap was laid. Along with the three gazetted officers and the complainant, the Police party led by the Dy.S.P proceeded to the office of the Panchayat. According to the prosecution, on 27.9.2007 at 5 p.m., during the course of trap laid by the Dy.S.P, the petitioner accepted the bribe money which was marked from the office; Phenolphthalein test conducted on the accused turned positive and he was arrested.

3. In the above application for discharge, the case of

the petitioner is that, the charge sheet was laid without understanding the law regarding sanction of a building plan. Considering the status of the file dealt with the accused, there was no scope for demand or acceptance of bribery. Mere recovery of money is not sufficient to prove such an offence. So also, there was no motive for him to demand or accept money. So, the charge laid against him in the final report and the documents sent along with the report, does not make out a *prima facie* case against the accused. Therefore, the application is liable to be allowed.

4. The learned counsel for the petitioner advanced arguments assailing the findings whereby the court below dismissed the application for discharge. According to the learned counsel, mere recovery of the amount does not constitute the offence contemplated under Section 7 and 13(1)(d) of the Prevention of Corruption Act. It is also contended that the court below failed to appreciate the contention that there was no scope for demanding or

accepting bribe from the de facto complainant as he had a valid permit, though the period was expired.

5. Going by the impugned order, it is seen that, on the basis of a complaint filed by the de facto complainant, a trap was laid by the competent officer. The question to be considered is, whether a *prima facie* case has been made out against the accused. Indisputably, the bride money was recovered from the possession of the accused and Phenolphthalein test conducted on the accused turned positive. It is for the accused to substantiate his innocence during the course of trial. Moreover, going by the impugned order, it is seen that, the application for renewal of building permit and regularization of deviation plan was entertained by the petitioner without collecting the necessary application fee. Similarly, without referring the application to the Overseer, the petitioner himself issued the permit. Since the plinth area exceeded 500 square meters and since the proposed building was for a hospital, it

ought to have been forwarded to the Chief Town Planning Officer, Thiruvananthapuram for approval, but that was not done. Thus, according to the prosecution, the building permit was also seen issued violating all the procedures. Moreover, the contentions raised in defence cannot be looked into at this stage in view of the decision in ***State of Orissa v. Devendra Nath Pandhi*** [2005 (1) KLT 80 SC]. Therefore, I am of the opinion that the prosecution has made out a *prima facie* case and the petitioner has to face the trial. There is no illegality or impropriety in any of the findings whereby the court below dismissed the application.

The revision petition is dismissed accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge