

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

OP(Crl.).No. 302 of 2014 (Q)

**CC 22/2008 OF ARISING OUT OF VACB(SC) KKD 3/04 REGISTERED BY
SUPERINTENDENT OF POLICE VACB, SPECIAL CELL, KOZHIKODE ON THE FILED OF
THE HON'BLE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE,
KOZHIKODE**

PETITIONER :

**K.A. ABDUL RAHIMAN, AGED 63 YEARS,
S/O.ABDU MOULAVI, KAROLI HOUSE, PERUMBAVOOR VILLAGE,
KARATTUPALLI KARA, KUNNATHUNAD TALUK,
ERNAKULAM DISTRICT, (RETIRED FOREST RANGE OFFICER,
KERALA FOREST DEPARTMENT)**

**BY ADVS.SRI.SIRAJ KAROLY
SRI.R.PARAMESWARA IYER**

RESPONDENT :

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, COCHIN 3.**

R1 BY GOVERNMENT PLEADER SMT. SAREENA GEORGE

**THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE FIR DATED 28/5/2014.

EXHIBIT P2: TRUE COPY OF THE REPORT DATED 7/9/2007.

EXHIBIT P3: TRUE COPY OF THE ORDER DATED 22/9/2007.

EXHIBIT P4: TRUE COPY OF THE CHARGE SHEET DATED 31/03/2008.

**EXHIBIT P5: COPY OF THE ORDER SHEET IN C.C. NO. 22/2008 ON THE FILE OF THE
ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE.**

**EXHIBIT P6: COPY OF MEDICAL THE CERTIFICATE ISSUED FROM THE S.N.
HOSPITAL**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

[CR]

B.KEMAL PASHA, J.

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O.P.(Crl.).No.302 of 2014

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Dated this the 9th day of October, 2015

J U D G M E N T

Initially a crime was registered against the petitioner through Exhibit-P1 First Information Report on 28.05.2004. The Vigilance and Anti-Corruption Bureau (VACB) conducted a detailed investigation in the matter and filed Exhibit-P2 Final Report before the court below on 07.09.2007.

2. Through Exhibit-P2, the Superintendent of Police, VACB, Special Cell, Kozhikode has reported that all further actions in the case were dropped, and the court below was requested to accept Exhibit-P2 Final Report to that effect. Precisely, the case was referred by the VACB.

3. The court below has resorted to a strange procedure, which is not warranted by Law, through Exhibit-P3, which reads as follows:

“Produced the file. The percentage of DA with reference to income is 17.6%. He has retired from service on 31.05.2006. Considering the facts and circumstances of this case, I find that this is a fit case to take cognizance U/s.13(2) R/W Sec.13(1)(e) of the PC Act. Since he had retired no sanction is required. So register the case against Sri.K.A.Abdulrahiman as above.”

4. It seems that the court below has not cared to apply its mind in the matter. Even though the court below has taken the view that it was a fit case to take cognizance of under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, the court below has chosen to direct the VACB to *“register the case against”* the petitioner. The said course adopted by the court below is not legally sustainable.

5. In ***King Emperor v. Nazir Ahmed***[AIR 1945 PC 18] it was held:

“Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the Judiciary and the police are complementary, not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function,

always of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then."

6. By approving the said decision in **King Emperor** (Supra), the Apex Court in **Abhinandan Jha and others v. Dinesh Mishra**[AIR 1968 SC 117] held:

"There is no power, expressly or impliedly conferred, under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under Section 169 of the Code, that there is no case made out for sending up an accused for trial. The functions of the Magistracy and the police are entirely different, and though, the Magistrate may or may not accept the report, and take suitable action, according to law, he cannot impinge upon the jurisdiction of the police, by

*compelling them to change their opinion,
so as to accord with his view”*

7. In ***Abhinandan Jha***(*supra*), it was further held:

“The investigation under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected, a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority.”

8. Directing a further investigation is entirely different from asking the police to submit a charge-sheet. Section 190 (1)(c) Cr.P.C. empowers the Magistrate to take cognizance of an offence, notwithstanding a contrary opinion of the police. The provisions clearly indicate that the formation of an opinion in an investigation is left to the police, i.e., the investigating

agency; whereas the court exercises judicial functions properly and correctly in dealing with the reports submitted by the police.

9. In **Abhinandan Jha**(*supra*) it was held:

“It was for the police to form their opinion and the final step in the investigation was to be taken only by the police and no other authority. As to the powers of the Magistrate he cannot call upon the police to submit a charge-sheet when they have sent a report, that there is no case for sending up the accused for trial because that would be dictating to the police to form opinion in accordance with that of the Magistrate. Such a course is not desirable. That is why the Magistrate can call for a further investigation.”

10. In the decision in **R.N.Chatterji v. Havildar Kuer Singh** [1970 (1) SCC 496], it was held that the provisions of the Criminal Procedure Code do not empower the magistrate to ask the police to submit a charge-sheet. In case, the magistrate is of the opinion that the report submitted by the investigating officer requires further investigation, he is free to

order so, under Section 173(8) Cr.P.C.

11. On getting the Final Report by which the investigating agency has chosen to refer the matter, the court receiving the Final Report has no power or authority to direct the investigating agency to file a charge sheet in the matter. On receiving the Final Report, if the court below was not satisfied with the Final Report and was of the view that further investigation was required, the court below could have ordered further investigation under Section 173(8) Cr.P.C. Over and above it, if the court below was of the view that the Final Report could not have been accepted and there were materials to bring out the offence alleged, the court below could have taken cognizance of the offence, evidently under Section 190(1) (c) Cr.P.C.

12. Exhibit P3 order does not show as to the reasons by which the court below has found that it is a fit case to take cognizance of the offence under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act. Without having recourse to any of the procedures aforesaid, the court

below has chosen to direct the Police to file a charge-sheet in the matter. The said course adopted by the court below is *per se* illegal and therefore, Exhibit P3 is liable to be quashed.

12. It seems that even without lifting its little finger, the VACB has chosen to swallow the direction contained in Exhibit-P3 and filed a charge-sheet against the petitioner merely based on the said direction by the court below in Exhibit-P3. Matters being so, Exhibit P4 2nd Final Report filed by the VACB is also an outcome of illegality. Exhibit-P4 is not in the form of a further Final Report under Section 173(8) Cr.P.C. There is no provision to file more than one Final Report in a case unless and until earlier Final Report is set aside and a fresh investigation or further investigation is ordered. In other circumstances, what is contemplated is a 'further Final Report', and not another Final Report. In this case, Exhibit-P2 1st Final Report was not set aside. There was no direction to conduct a fresh investigation or a further investigation in the matter. In such case, Exhibit P4 has also resulted in gross illegality. Matters being so, Exhibit P4 is also

liable to be quashed.

In the result, this Original Petition (Criminal) is allowed and Exhibits-P3 and P4 are quashed.

Sd/-

**B. KEMAL PASHA
JUDGE**

DSV/9/10/15

//True Copy//

PA.To Judge