

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WP(C).No. 2272 of 2015 (H)

PETITIONER:

**ALL KERALA ANTI CORRUPTION AND HUMAN
RIGHTS PROTECTION COUNCIL (REG NO CA-597/6),
POST BOX NO 29.METTUPALAYAM STREET, PALAKKAD,
REPRESENTED BY ITS PRESIDENT ISACC VARGHESE.**

BY ADV. SRI.MANSOOR.B.H.

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HOME AFFAIRS,
SECRETARIAT, THIRUVANANTHAPURAM-PIN-695001.**
- 2. DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM, PIN-695001.**
- 3. DIRECTOR,
VIGILANCE AND ANTI - CORRUPTION BUREAU,
THIRUVANANTHAPURAM, PIN-695033**
- 4. THE SUPERINTENDENT OF POLICE SIT-1
VIGILANCE AND ANTI-CORRUPTION BUREAU, POOJAPURA
THIRUVANANTHAPURAM, PIN-695033.**

**BY ADVOCATE GENERAL SRI.K.P.DANDAPANI
SRI.K.JAYAKUMAR, (SENIOR ADVOCATE)(AMICUS CURIAE)
ADV. SRI.P.B.KRISHNAN(AMICUS CURIAE)**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 2272 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1:- A COPY OF THE FIR IN VC 6/14/SIU-1 SUBMITTED BEFORE THE HON'BLE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM.

P2: A COPY OF THE COMMON JUDGMENT IN WPC NOS 29856/2014 AND WPC NO 32032/2014 OF THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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ALEXANDER THOMAS, J.

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W.P.(C).No. 2272 of 2015

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Dated this the 3rd day of August, 2015

J U D G M E N T

The prayer in this Writ Petition instituted under Art.226 of the Constitution of India is for the issue of prerogative Writ of Mandamus to command the 4th respondent, Superintendent of Police, Special Investigation Team-1, Vigilance and Anti Corruption Bureau, Thiruvananthapuram, to submit periodical reports regarding the progress of the investigation in the Vigilance Crime No.6/14/SIU/1 before this Court so as to monitor the investigation by this Court. The matter has been coming up before this Court for quite some time since its institution on 21st January, 2015.

2. Heard Sri.B.H.Mansoor, the learned counsel appearing for the writ petitioner and the learned Advocate General appearing for the official respondents.

3. As the main prayer is for monitoring of investigation, it may not really be necessary to advert to the minute factual details of this case or to go into the meticulously pleaded grounds urged by

the learned counsel for the writ petitioner in view of the subsequent developments that has by now happened. Though the learned Advocate General had undertaken on 18.6.2015 to file a statement in this matter, no such statement has been filed till date, but from across the Bar, the learned Advocate General has submitted that the final report, by way of a refer report, has in fact been filed by the investigation team of the Vigilance and Anti Corruption Bureau in the Vigilance Crime No.VC6/14/SIU-1 on 7.7.2015 before the Court of Enquiry Commissioner & Special Judge, Thiruvananthapuram. This fact is admitted by the learned counsel appearing for the petitioner. Since this is the undisputed fact in the factual matrix now that is posed before this Court, this Court is of the considered opinion that the prayer for monitoring the investigation, does not survive for any further consideration, as the investigation itself has come to the point of termination and the matter has now entered into the seizin of the judicial forum, which is competent under the provisions of the Code of Criminal Procedure and the Prevention of Corruption Act.

4. Moreover, this Court is guided by the words of judicial wisdom spoken of by the Division Bench of this Court, in the case,

V.S.Achuthanandan v. State of Kerala and others, reported in ILR 2013 (4) Ker.190 = 2013(4) KHC SN.2 = 2013 (2) KLD 580, wherein it is observed as follows:

“The investigation is now concluded and final report is filed before the Magistrate. The persuasion of the petitioner before us is to look into the same and evaluate the material rather embark upon a process of sifting the grain from the chaff so as to find it to be insufficient and then order investigation by the CBI afresh. This is nothing short of scuttling the statutory procedure prescribe under the Code of Criminal Procedure. The duty cast on the Magistrate is to look into the material, ie., the final report and proceed further as stated above to take recourse to several available options, if he or she deems it fit. The order accepting the final report or even one directing further investigation again can be the subject-matter of appeal and revision as provided under the Code. We will not be doing justice or exercising our discretion properly, if we act preempting such procedural seminal consideration by the jurisdictional Magistrate. If we interfere now, it is nothing but upsetting the hierarchy of judicial forums as prescribed under the Code.”

The well considered view taken by the Division Bench in V.S.Achuthanandan's case supra is all the more apposite for guiding the exercise of discretion by this Court in the facts of this case, more so, in the situation, where the final report has already been filed before the competent Special Court designated under the provisions for the Prevention of Corruption Act, viz., the Court of Enquiry Commissioner and Special Judge, Thiruvananthapuram. So this Court is of the considered opinion that after the submission of the final report, things must be left eminently within the province of that competent criminal court for its wholesome consideration,

instead of keeping this matter pending. This view is taken by this Court in order to effectuate the full and wholesome exercise of discretion by the competent Special Court to proceed further in the matter, in accordance with law. It is for the aggrieved parties thereafter to proceed and work out their remedies in the manner known to law. At this juncture, Sri.B.H.Mansoor, the learned counsel appearing for the writ petitioner submits that this Court may grant liberty to the petitioner to approach this Court at the appropriate time, if he has any subsisting grievance in the matter. It is made clear that the closure of these proceedings shall be with liberty to the petitioner to work out his remedies, in accordance with law, at the appropriate stage.

With these observations and directions, the Writ Petition (Civil) stands finally disposed of.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

