

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

WP(C).No. 19011 of 2014 (B)

PETITIONER :

**THOMAS MALIECKAL,
RESIDING AT MALIECKAL HOUSE, NATTASSERI KARA
PERUMBILAKAD VILLAGE, S.H.MOUNT, KOTTAYAM - 686 006.**

**BY SENIOR ADVOCATE SRI.K.GOPALAKRISHNA KURUP
BY ADVS.SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ABRAHAM VARGHESE THARAKAN**

RESPONDENTS :

- 1. DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI - CORRUPTION BUREAU
IDUKKI - 685 532.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 031.**
- 3. THE SECRETARY
WATER RESOURCES (GROUND WATER) DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 4. DIRECTOR
VIGILANCE AND ANTI-CORRUPTION BUREAU
THIRUVANANTHAPURAM - 695 001.**

R1 TO R4 BY STATE ATTORNEY SRI. P. VIJAYARAGHAVAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1 : TRUE COPY OF FIR IN VC 12/09/IDK DATED 10.12.2009.
- EXHIBIT P2 : TRUE COPY OF THE LETTER DATED 25.01.2010 ADDRESSED TO THE CHIEF ENGINEER, IRRIGATION.
- EXHIBIT P3 : TRUE COPY OF RELEVANT PAGE OF THE LETTER NO.VIG.5/2590/2010(1) DATED 14.09.2011 ALONG WITH COPY OF JOINT INSPECTION REPORT.
- EXHIBIT P4 : TRUE COPY OF GOVERNMENT ORDER GO (RT) 363/2012/WRD DATED 19.03.2012.
- EXHIBIT P5 : TRUE COPY OF LETTER DATED 21.05.2012 OF THE CHEIF ENGINEER, IRRIGATION TO THE 3RD RESPONDENT.
- EXHIBIT P6 : TRUE COPY OF THE GO (RT) NO.1152/2012/WRD DATED 24.09.2012.
- EXHIBIT P7 : TRUE COPY OF CHALLAN RECEIPT DATED 28.09.2012.
- EXHIBIT P8 : TRUE COPY OF LETTER NO.C6(VC)/12/2009/IDK/31228/2009 DATED 19.11.2012.
- EXHIBIT P9 : TRUE COPY OF THE DRAFT OF THE LETTER DATED 06.06.2013 ADDRESSED TO THE 3RD RESPONDENT BY THE CHIEF ENGINEER, IRRIGATION.
- EXHIBIT P10 : TRUE COPY OF THE GOVERNMENT ORDER (RT) NO.131/2014/WRD DATED 05.02.2014.
- EXHIBIT P11 : TRUE COPY OF THE FINAL REPORT DATED 28.03.2014 FILED BY THE 1ST RESPONDENT BEFORE THE COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, KOTTAYAM.
- EXHIBIT P12 : TRUE COPY OF THE SUMMONS RECIEVED BY THE PETITIONER IN CC NO.7/2014 OF THE COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, KOTTAYAM.
- EXHIBIT P13 : TRUE COPY OF THE JUDGMENT OF THE HON'BLE SUPREME COURT REPORTED AS AIR 2011 SC 2893.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

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[CR]

B. KEMAL PASHA, J.

.....
W.P.(C) No.19011 of 2014
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Dated this the 25th day of September, 2015

J U D G M E N T

The petitioner is the 2nd accused in C.C.No.7/2014 pending before the Court of the Enquiry Commissioner and Special Judge, Kottayam, for the offences punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, and Sections 409, 465, 468, 471 and 120(B) of the Indian Penal Code.

2. The petitioner is a former Government employee, who has retired from service as an Executive Engineer from the Irrigation Department. While he was working as the Assistant Executive Engineer, Poverty Alleviation Unit,

Idukki, he was the officer responsible for the construction work of the play ground of the Government Vocational Higher Secondary School, Devikulam, which was completed during January, 2007. The Vigilance Department, on investigation, prepared a factual report and placed it before the Government seeking sanction to prosecute the petitioner, alleging that the petitioner along with others had swindled an amount of ₹80,257/- in completing the said work, allegedly by making excess payment to the 3rd accused.

3. The Government, on examining the matter, through Ext.P4 found that a lenient view could be taken in the case of the petitioner on account of his imminent retirement on superannuation, and the proposal for prosecution sanctioned against him could be dispensed with subject to the remittance of the liability amounting to ₹80,257/- by him. The petitioner was given such an opportunity by the Government through Ext.P4 order dated

19.03.2012.

4. The petitioner wanted to get the said order reviewed by refixing the liability, since the liability was not properly assessed. Through Ext.P6 order, the Government has reviewed the matter and found that the total liability was ₹20,787/- only and the same had to be shared by all the persons involved and that the individual liability of the petitioner was ₹6,929/- only. Through Ext.P7 *chalan*, the petitioner remitted the said amount on 28.09.2012.

5. It seems that the Vigilance Department has never challenged the said orders passed by the Government. They have waited till the retirement of the petitioner from service. After his retirement, without revealing anything about the earlier orders in the matter, they have filed the final report before the court below, on the basis of which cognizance has been taken.

6. Heard the learned Senior Counsel for the petitioner and the learned Public Prosecutor.

7. The learned Senior Counsel has invited the attention of this Court to the decision in **Chittaranjan Das v. State of Orissa**[AIR 2011 SC 2893] wherein, in an identical situation it was held:

“Here in the present case while the appellant was in service sanction sought for his prosecution was declined by the State Government. Vigilance Department did not challenge the same and allowed the appellant to retire from service. After the retirement, Vigilance Department requested the State Government to re-consider its decision, which was not only refused but the State Government while doing so clearly observed that no prima facie case of disproportionate assets against the appellant is made out. Notwithstanding that Vigilance Department chose to file charge-sheet after the retirement of the appellant and on that Special Judge had taken cognizance and issued process. We are

of the opinion that in a case in which sanction sought is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of Public Servant. Any other view will render the protection illusory.”

8. In the decision in **State of Himachal Pradesh v.**

Nishant Sareen[(2010) 14 SCC 527] it was held:

“By way of foot-note, we may observe that the investigating agency might have had legitimate grievance about the order dated 27-11-2007 refusing to grant sanction, and if that were so and no fresh materials were necessary, it ought to have challenged the order of the sanctioning authority but that was not done. The power of the sanctioning authority being not of continuing character could have been exercised only once on the same

materials.”

9. This is a case wherein the Vigilance Department had sought for sanction from the Government to prosecute the petitioner and such a request was placed before the Government while the petitioner was in service. Then the Government considered the matter and took a lenient view, by considering the amount involved in the matter, and also the imminent retirement on superannuation of the petitioner. The Government has directed the petitioner to pay the amount, which he was liable to pay. By complying with the said direction, the petitioner has paid the said amount. It has to be noted that the Vigilance Department has not challenged any of the orders of the Government; on the contrary, they waited for the retirement of the petitioner, and without challenging the earlier orders, and without revealing anything regarding the said orders, they filed final report before the court below, which was taken cognizance of. Considering all these, this Court is satisfied that the

prosecution against the petitioner is only a futile exercise. Matters being so, all further proceedings against the petitioner in C.C.No.7/2014 pending before the Court of the Enquiry Commissioner and Special Judge, Kottayam can be quashed.

In the result, this Writ Petition is allowed and all further proceedings against the petitioner in C.C.No.7/2014 pending before the Court of the Enquiry Commissioner and Special Judge, Kottayam are hereby quashed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge