2025:KER:31794

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

CRL.REV.PET NO. 63 OF 2023

AGAINST THE ORDER DATED 06.01.2023 IN IN CMP 746 OF 2019

IN CC NO.23 OF 2017 OF THE COURT OF ENQUIRY COMMISSIONER

& SPECIAL JUDGE, EKM AT MUVATTUPUZHA

REVISION PETITIONER/1ST ACCUSED:

S. KRISHNAKUMARI,
AGED 62 YEARS
W/O RAVIKUMAR THIRUVATHIRA HOUSE NEAR KAICHIRA
TEMPLE KARUMALOOR, ERNAKULAM, PIN – 683511.

BY ADVS.
RENJITH B.MARAR
LAKSHMI.N.KAIMAL

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT
OF KERALA, ERNAKULAM, PIN – 682031.

SMT REKHA S, SR PUBLIC PROSECUTOR
SRI A RAJESH, SPL PUBLIC PROSECUTOR (VIG)

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 17.03.2025, THE COURT ON 11.04.2025 DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

Crl.R.P.No.63 of 2023

Dated this the 11th day of April, 2025

O R D E R

The petitioner is the 1st accused in C.C.No.23 of 2017 on the files of the Court of Enquiry Commissioner and Special Judge (Vigilance), Muvattupuzha. The offences alleged against her are punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (PC Act) and Section 120B of the Indian Penal Code, 1860 (IPC). The petitioner filed C.M.P.No.746 of 2019 seeking discharge. The Special Court dismissed that petition as per the order dated 06.01.2023. Challenging that order, this revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (Code) has been filed.

2. Heard the learned counsel for the petitioner, the learned Senior Public Prosecutor and the learned Special Public Prosecutor (Vigilance).

3. There are two accused. The 1st accused/petitioner was the Secretary of the Alangad Grama Panchayat. The 2nd accused was the General Manager of M/s Alston Builders & Developers (P) Ltd. The 2nd accused had properties in Sy.Nos.108/2B, 78/2 and 78/5 of Alangad Village. Those properties were reclaimed illegally. There was prohibitory order from making any construction in the said property. The petitioner hatched a conspiracy with the 2nd accused and in order to obtain pecuniary gain for the 2nd accused, she granted permit to construct a building in the said property in violation of the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008 and also disregarding the prohibitory order. She thereby misused her official position and committed criminal misconduct constituting an offence under Section 13(1)(d) of the PC Act.

4. The learned counsel for the petitioner would submit that going by the law in force, and as per the evidence produced by the prosecution, the property in question was reclaimed long before and there was no absolute bar for

making construction in the property. Local Level Monitoring Committee (LLMC) prepared a draft data bank and as the property in question was not included in the final data bank, no criminal intention could be attributed on the part of the petitioner in granting building permit. The Revenue Divisional Officer issued a stop memo on 03.07.2012, but the same was received in the office of the petitioner only on 25.07.2012. The building permits were granted on 09.07.2012 and 17.07.2012. It is accordingly contended that the allegation of the petitioner granting building permit in disregard of the prohibitory order is against facts. No material, whatsoever has been produced to prove or probabilise that there was a conspiracy between the petitioner and the 2nd accused. Based on inferences alone the prosecution alleges conspiracy, which according to the learned counsel for the petitioner is untenable. No sanction as prescribed in Section 19(1) of the PC Act, Section 197 of the Code or Section 248 of the Kerala Panchayat Raj Act, 1994 was obtained. For that reason itself, the prosecution is illegal. The learned counsel accordingly

would submit that the Special Court went wrong in dismissing the application for discharge.

5. The learned Special Public Prosecutor would submit that a perusal of the note file concerning grant of building permit to the 2nd accused and the statement given to the police by the staff members of the Panchayat and the Assistant Director of Panchayats is enough to substantiate the allegations against the petitioner. It is pointed out that ignoring the note submitted by the subordinates against issuance of building permit, the petitioner granted permission for the construction. She was aware of the prohibitory order and also the fact that the land in question was included in the data bank. Despite, she granted permission. That necessarily would reveal that she did so with dishonest intention. Regarding assigning building number to the said construction also dishonesty is attributed against the petitioner. The learned Special Public Prosecutor accordingly urges that this revision petition is devoid of any merit.

6. After considering the materials on record, particularly the file notes and statements of witness No.3, the Assistant Secretary of Alangad Panchayat and witness No.10, the Senior Clerk in the Revenue Divisional Office, the Special Court found that the prohibitory order issued by the RDO on 03.07.2012 reached the office of the petitioner only on 25.07.2012. The Special Court further stated that whether the petitioner was really aware of issuance of such an order even earlier is a matter for evidence. The contention of the petitioner in that regard was accordingly repelled.

7. When the materials on record show that the prohibitory order was communicated to the office of the petitioner on 25.07.2012 alone and no witness states otherwise, there cannot be a prima facie finding that the petitioner knew about the order even before 25.07.2012. Therefore, the observation of the Special Court that the petitioner cannot bank upon such a contention in support of his plea of discharge, cannot be affirmed. The question is only for the reason that prohibitory order was communicated to

the office of the petitioner on 25.07.2012 alone, the petitioner is justified in granting the building permit.

8. The then Alangad Village Officer gave statement that the petitioner was informed about illegal reclamation of land in question by the 2nd accused immediately on noticing the reclamation on 27.02.2012. His statement reveals that the said fact was communicated to the Tahsildar, Paravur also as early as on 27.02.2012. An Upper Division Clerk in Alangad Panchayat during the relevant period stated that while submitting the file relating to application of the 2nd accused for building permit, details like tenure of the land, the question whether or not the proposal to include the property in the data bank was pending consideration, lack of NOC from the Fire Force Department, etc. were noted. Despite such notings in the file, the petitioner granted building permit.

9. An Assistant Secretary in the Panchayat, Smt.Jayakumari and the Assistant Director of Panchayats, Smt.Sobha K.N. gave statements to the effect that the petitioner allotted number to the building constructed by the

2nd accused in the property in dispute in total disregard of the restrictions for the construction. Thus, from the materials produced by the prosecution, it is prima facie evident that the petitioner granted building permit to the 2nd accused ignoring the restrictions. Therefore, it can only be said that the materials produced by the prosecution make out a presumption that the petitioner has committed the offence under Section 13(1)(d) of the PC Act. Whether there was a conspiracy behind the petitioner in doing so, is a matter for evidence. As of now, such a conspiracy cannot be ruled out. Therefore, the plea for discharge of the petitioner based on the factual contentions cannot be countenanced.

10. The petitioner retired from service before taking cognizance of the offence by the Special Court. So, a sanction under Section 19(1) of the PC Act was not required to prosecute the petitioner. The same is the parameters applicable to Section 248 of the Panchayat Raj Act. Coming to the question of sanction under Section 197 of the Code, the view taken by the Special Court cannot be said to be

incorrect. Obtaining of a pecuniary advantage misusing the official position and conspiracy to do such an act cannot be considered part of official duty or purported discharge of an official duty. On the face of the allegations contained in the final report, it cannot be said that sanction under Section 197 of the Code is a pre-requisite for her prosecution.

Accordingly, I hold that the impugned order does not require any interference. The revision petition is therefore dismissed.

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr