2025:KER:31930

**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.MC NO.8095 OF 2022**

**SEEKING TO QUASH THE CHARGE SHEET IN VC 08/2013/TSR OF VACB, THRISSUR, AND ALL PROCEEDINGS IN C.C.NO.7 OF 2022 ON THE FILE OF THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THRISSUR]**

**PETITIONER/ACCUSED NO.1:**

**V. JAYANANDAKUMAR**
**AGED 61 YEARS**
**S/O.P.K VELUPILLAI, RESIDING AT TC 13/223, VADAKKUVILAKOM, PANNIVILAKOM LANE, PATTOOR, PETTAH P O, THIRUVANANTHAPURAM, PIN - 695024**

**BY ADVS.**
**C.S.MANU**
**PAUL JOSE**
**T.B.SIVAPRASAD**
**C.A.ANUPAMAN**
**DILU JOSEPH**
**C.Y.VIJAY KUMAR**
**MANJU E.R.**
**ANANDHU SATHEESH**
**ALINT JOSEPH**

**RESPONDENTS/COMPLAINANT & THE INVESTIGATING OFFICER:**

1 **STATE OF KERALA**
**REPRESENTED BY THE PUBLIC PROSECUTOR,**
**HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031**

2 **DEPUTY SUPERINTENDENT OF POLICE**
**VIGILANCE AND ANTI-CORRUPTION BUREAU, THRISSUR, PIN - 680001**

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

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 24.03.2025, ALONG WITH Crl.MC.2621/2023, THE COURT ON 11.04.2025 PASSED THE FOLLOWING:**

**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.MC NO.2621 OF 2023**

**(SEEKING TO QUASH THE CHARGE SHEET IN VC08/13/TCR OF VIGILANCE AND ANTI CORRUPTION BUREAU, PENDING AS CC.07/2022 BEFORE THE COURT OF THE ENQUIRY COMMISSIONER& SPECIAL JUDGE,THRISSUR**

**PETITIONER/8TH ACCUSED:**

**SANTHOSH ANTONY**
**AGED 53 YEARS**
**S/O.E.I ANTONY, EMATTY HOUSE, SANTA-CROSS, MOTHER TERESA ROAD, KURIYACHIRA, THRISSUR., PIN - 680006**

**BY ADVS.**
**MANSOOR ALI**
**TOMSON T.EMMANUEL**

**RESPONDENTS/COMPLAINANT:**

1 **STATE OF KERALA**
**REPRESENTED BY PUBLIC PROSECUTOR,**
**HIGH COURT OF KERALA, ERNAKULAM., PIN - 682031**

2 **DEPUTY SUPERINTENDENT OF POLICE,**
**VIGILANCE AND ANTI CORRUPTION BUREAU, THRISSUR**
**NAIKKAL, SHORANUR., PIN - 680022**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 24.03.2025, ALONG WITH Crl.MC.8095/2022, THE COURT ON 11.04.2025 PASSED THE FOLLOWING:**

**P.G. AJITHKUMAR, J.**

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**Crl.M.C.No.8095 of 2022 and 2621 of 2023**

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**Dated this the 11th day of April 2025**

**O R D E R**

Accused Nos.1 and 8 in C.C.No.7 of 2022 pending before the Court of Enquiry Commissioner and Special Judge, Thrissur filed, respectively, Crl.M.C.No.8095 of 2022 and 2621 of 2023. They seek to quash the charge sheet and further proceeding in C.C.No.7 of 2022.

2. The case of the prosecution as borne out from the final report is as follows:

Accused No.1 was the Inspecting Assistant Commissioner (Intelligence), accused No.2 was the Intelligence Officer and accused Nos.3 as well as 4 were the Intelligence Inspectors, Commercial Taxes, Thrissur. They entered into a conspiracy with other accused for reducing tax rate from 12.5% to 4% of the tax due from M/s.Nano Excel Enterprises Pvt. Ltd to which accused No.5 was the Managing Director and accused No.7, the Director. In furtherance of the said conspiracy, the compounding tax liable to be paid by the

said company of Rs.13,06,29,613/- was reduced to Rs.7,00,68,469/-. Thereby the company had a pecuniary advantage of Rs.6,05,61,144/- during the year 2009-2010. In consideration of the same an illegal gratification of Rs.1.5 crores was paid to accused Nos.1 to 4 Which they had shared. Accused Nos.6 and 8 facilitated the transaction. The car provided by accused No.8 was used to take the said amount of bribe from the company of accused Nos.5 and 7 to the hotel where the money was transferred. Accordingly, the accused had committed offences 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 petitioners would contend that there is not enough materials to prosecute them and the final report as against them is liable to be quashed.

3. Heard the learned counsel for the petitioners, the learned Special Public Proseuctor (Vigilance) and the learned Senior Public Prosecutor.

4. Petitioner raised both legal and factual contentions. Raising very same legal contentions the 1st accused filed

W.P.(C) No.20028 of 2013 before this Court. The contentions are enlisted in paragraph No.18 of the judgment dated 08.02.2021 in that writ petition which are the following:

> "(1) The prosecution initiated against the petitioner as per Ext.P1 FIR is barred under Section 79 of the KVAT Act.
>
> 2) The institution of the proceedings against the petitioner as per Ext.P1 FIR is barred by limitation under Section 80 of the KVAT Act.
>
> (3) Earlier, another FIR had been registered against the petitioner as Crime No. 500/2011 of Wadakkancherry police station in the same matter. Registration of Ext.P1 FIR, on the same set of allegations and facts, is barred under law.
>
> (4) The petitioner was discharged under Section 239 of the Code in the case filed against him on the basis of the final report in Crime No.500/2011 of Wadakkancherry police station. Therefore, he is not liable to be prosecuted and tried for another offence on the same set of facts or allegations.
>
> (5) The petitioner cannot be prosecuted or tried on the same set of facts on the principle of issue estoppel.
>
> (6) The petitioner was exercising quasijudicial functions under the KVAT Act and therefore, he is entitled to get the protection under Section 3 of the Judges (Protection) Act, 1985."

5. All those contentions were considered by this Court in the said judgment. After detailed deliberation, this Court held that none of the said contentions was available or sufficient to quash the FIR. The investigating agency after collecting more materials submitted the final report alleging that the accused had committed the offences punishable under Section 13(1)(d) r/w Section 13(2) of the PC Act and Section 120B of the IPC.

6. Whether these accused, particularly the 1st accused, can be heard to contend the very same grounds in support of the plea for quashing the final report is raised by the learned Special Public prosecutor. In answer, the learned counsel for the 1st accused would submit that although the writ appeal filed challenging the judgment in W.P.(C) No.20028 of 2013 was dismissed by this Court, in the Special Leave Petition No.4829 of 2011, the Apex Court dehors refusing leave, left open all the contentions. It is therefore contented that the 1st accused is entitled to raise the very same contentions in support of his plea for quashing the final report. It may be noted that the materials based on which

the aforementioned questions could be considered at that stage and now are the same. Perhaps, after trial the accused may be able to raise at least a few of the said contentions with reference to the evidence that would come on record. Therefore, I hold that it is not possible for considering any of the contentions which are enumerated in paragraph No. 4 above, at this stage.

7. The contention next raised is that the materials produced by the prosecution are insufficient to make out a prima facie case against accused Nos.1 and 8 and therefore proceeding against them will be a travesty of justice. No doubt, if the materials produced by the prosecution are insufficient to constitute any offence, continuance of the prosecution against the accused can have no justification.

8. The Apex Court, in **State of Haryana and Others v. Bhajan Lal and Others [1992 Supp (1) SCC 335],** after considering the earlier precedents, laid down principles which the High Court must consider while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (Code) for quashing a proceeding. It will be advantageous to

refer to the following observations of the Apex Court in that case:

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non - cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and / or where there is a specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The Apex court reiterated the aforementioned propositions in a slew of judgements and recently in **Digambar v. State of Maharashtra [2024 KLT OnLine 3042].**

9. The learned counsel appearing for the 1st accused would submit that no witness has been cited by the prosecution to prove either the demand or receipt of gratification by him. It is trite that not only acceptance but also demand for material thing or pecuniary advantage by the public servant should be proved to establish an offence under Section 13(1)(d) of the PC Act. (See **P.Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh [(2015) 10 SCC 152]**).

10. It is urged that other than that an amount of Rs.1.5 crores was brought in a Maruti Swift car belonging to accused No.8 to the Pearl Regency hotel, Warriam Road, Thrissur and handed over to a person identified as the person sent by accused No.7, there is nothing on record to show that the 1st accused or any other commercial tax official received that amount. The person who received the money was not located. The aforesaid sum or a part of it has not been

recovered. Also, there is no evidence to prove the fact that there was any benefit inured by M/s.Nano Excel company in the matter of tax assessment. It is further contended that there was no occasion for the 1st accused to favour the said company. Instead, the 1st accused imposed a maximum compounding tax for which he was acclaimed by the Government. It is thus maintained that the prosecution of the 1st accused is without any basis and the proceedings against him will only be an abuse of process of the court.

11. Learned counsel for accused No.8 would submit that only allegations raised against him is that his car was used to take Rs.1.5 crores to Pearl Regency hotel. There is no other allegation to implicate him with the crime. Even accepting that his car was used for such a purpose, that is not enough to establish his complicity with the offence of criminal conspiracy resulting in commission of an offence under Section 13(1)(d) of the PC Act.

12. Witness Nos.7, 8 and 9 were the employees of M/s.Nano Excel company, Thrissur. From their statements before the investigating officers it can well be seen that an

amount of Rs.1.5 crore was transported from the office of the M/s.Nano Excel company, Thrissur in a Maruti Swift car bearing registration No.KL 08 AN 8081 to Pearl Regency hotel, Warriam Road, Thrissur. Witness No.7 categorically stated that the said amount was handed over to a person as instructed by accused No.7. When accused No.7 being the Director of the said company instructed witness No.7 to handover such an amount saying that it was for bribing the commercial tax officials including the 1st accused, the same is not merely a hearsay information, but a res gestae amounting to a circumstance coming within Section 10 of the Indian Evidence Act to prove the alleged act of conspiracy. Similar is the evidentiary value of the statement of accused No. 7 to the witness No. 7 Salim that it was the first accused who was settling the issue concerning the tax assessment. Involvement of accused No. 5 in the transaction has also been stated by this witness.

13. The prosecution has a definite allegation that following payment of such an illegal gratification the compounding tax of Rs.13,06,29,613/- was reduced to

Rs.7,00,68,469/-. More conspicuously on payment of that amount all documents and the account statements pertaining to the transactions of M/s.Nano Excel company were returned to the company without retaining even copies. When the prosecution alleges that such an act disabled the department from checking even the correctness of the action of fixing the compounding tax that certainly is another circumstance pointing to the conspiracy.

14. It is true the prosecution did not bring forth any direct evidence to prove handing over of bribe money to accused No.1 or any other official of the commercial tax department. The 1st accused has a contention that he imposed the maximum possible compounding tax and without understanding the requirements of the provisions in the Kerala Value Added Tax Act allegations are hurled against him.

15. When the charge is essentially that the public servants including the 1st accused received illegal gratification to a tune of Rs.1.5 crores and the available records would establish that the compounding tax initially proposed was

substantially reduced, the proof of not of the charge has to be decided based on the evidence and circumstances proposed by the prosecution. The circumstances mooted by the prosecution which are mentioned above, if proved, would establish payment of illegal gratification. Whether there occurred infraction from law while imposing compounding tax on M/s.Nano Excel company has only a secondary importance being one of the circumstances proposed to be proved. In the above circumstances, I am unable to accept the contentions of the 1st accused in support of his plea to quash the final report in C.C.No.7 of 2022 as against him.

16. Car bearing registration No.KL 08 AN 8081 belongs to accused No.8 is not disputed. Sufficient evidence is proposed to prove that the said car was used to carry Rs.1.5 crores from the office of M/s.Nano Excel company to Pearl Regency hotel for being handed over in terms of the instructions of accused No.7. But, no evidence has been collected to establish that accused No.8 knew that his car was availed for the purpose of carrying such a sum and also that he was a party to the conspiracy of bribing accused Nos.1 to

4. In the statement filed by the investigating officer also, no such evidence has been pointed out. Therefore, prosecution of accused No.8 for the offences punishable under Section 13(1)(d) r/w Section 13(2) of the PC Act and Section 120 B of the IPC cannot be justified. Such an exercise will end only in futility.

Accordingly, Crl.M.C No. 8095 of 2022 is dismissed and Crl.M.C 2621 of 2023 is allowed by quashing further proceedings in C.C. No.7 of 2022 as against accused No.8.

Sd/-
**P.G. AJITHKUMAR**
**JUDGE**

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**APPENDIX OF CRL.MC 2621/2023**

**PETITIONER ANNEXURES**

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| **Annexure A1** | **THE TRUE COPY OF FINAL REPORT IN CC.07/2022 PENDING BEFORE THE COURT OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE ( VIGILANCE ), THRISSUR ,FILED BY THE 2ND RESPONDENT** |
| **Annexure2** | **A TRUE COPY OF RELEVANT PAGES OF THE FINAL REPORT IN CRIME NO.500 OF 2011 OF WADAKKANCHERRY POLICE STATION FILED BEFORE THE CHIEF JUDICIAL MAGISTRATE'S COURT, THRISSUR** |
| **Annexure A3** | **A TRUE COPY OF THE ORDER IN CMP NO 1568/2012 IN CC 23/2012 DATED 14-3-2014** |

**APPENDIX OF CRL.MC 8095/2022**

**PETITIONER ANNEXURES**

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| **Annexure A-1** | **TRUE COPY OF THE FINAL REPORT IN CRIME NO. VC 08/13/TSR ON THE FILE OF VIGILANCE AND ANTI-CORRUPTION BUREAU THRISSUR FILED BY THE 2ND RESPONDENT BEFORE THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE), THRISSUR** |
| **Annexure A-2** | **TRUE COPY OF THE FINAL REPORT IN CRIME NO.500 OF 2011 OF WADAKKANCHERRY POLICE STATION FILED BEFORE THE CHIEF JUDICIAL MAGISTRATE'S COURT, THRISSUR** |
| **Annexure A-3** | **TRUE COPY OF THE ORDER DATED 14-3-2014 PASSED BY THE HONB'LE CHIEF JUDICIAL MAGISTRATE COURT AT THRISSUR IN CMP 1568/12 IN C.C.NO. 23/12** |