



2025:KER:31868

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE P. V. BALAKRISHNAN

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

WA NO. 1078 OF 2021

(AGAINST THE ORDER/JUDGMENT DATED IN WP(C) NO.27091
OF 2019 OF HIGH COURT OF KERALA)

APPELLANT/ADDITIONAL 7TH RESPONDENT:

THE GURUVAYOOR CO-OPERATIVE URABAN BANK
F-1652, P.O. GURUVAYUR - 680101, THRISSUR
DISTRICT, REPRESENTED BY ITS GENERAL MANAGER.

BY ADVS.
GEORGE POONTHOTTAM (SR.)
NISHA GEORGE

RESPONDENT/RESPONDENT

1 RAJEEV
AGED 40 YEARS
S/O. NARAYANAN NAIR, THONDAPALLI MADATHIPARAMBIL
HOUSE, KAAVEEDU, POOKODE, CHAVAKKAD TALUK,
THRISSUR DISTRICT - 680505.



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- 2 STATE OF KERALA,
REPRESENTED BY SECRETARY, MINISTRY OF HOME
AFFAIRS, VIGILANCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695001.
- 3 INSPECTOR GENERAL OF VIGILANCE,
THRISSUR RANGE, THRISSUR DISTRICT - 680001.
- 4 THE SUPERINTENDENT OF POLICE
VIGILANCE, THRISSUR RANGE, THRISSUR DISTRICT -
680001.
- 5 THE SUPERINTENDENT OF POLICE
DEPARTMENT OF CRIME BRANCH CID, THRISSUR -
680001.
- 6 DEPUTY SUPERINTENDENT OF POLICE
VIGILANCE, THRISSUR RANGE, THRISSUR DISTRICT -
680001,
- 7 THE JOINT REGISTRAR
CO-OPERATIVE DEPARTMENT, OFFICE OF THE CO-
OPERATIVE DEPARTMENT, AYYANTHOLE, THRISSUR -
680003.

BY ADVS.
RAJIT

OTHER PRESENT:

ADV. A RAJESH, SPL. GP.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
9.04.2025, ALONG WITH WA.1277/2021, THE COURT ON THE
11/4/2025 DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN

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

WA NO. 1277 OF 2021

(AGAINST THE ORDER/JUDGMENT DATED IN WP(C) NO.27091
OF 2019 OF HIGH COURT OF KERALA)

APPELLANT/NON-PARTIES:

- 1 VENUGOPAL V.,
AGED 66 YEARS
S/O.VASUDEVAN NAIR,AGED 66 YEARS,RESIDING AT
VILANGOTTE HOUSE,KANDANASSERY P.O.,THRISSUR
DISTRICT-680102.
- 2 ANTO THOMAS C.,
S/O.THOMAS, AGED 46 YEARS,RESIDING AT CHEERAN
HOUSE, PERAGAM P.O.,PERAGAM VILLAGE,CHAVAKKAD
TALUK, THRISSUR DISTRICT-680506.
- 3 K.P.UDAYAN,
S/O.SARASWATHY AMMA,.AGED 47 YEARS,KURUVANGAD
PUTHAN VEETIL HOUSE, EAST
NADA,GURUVAYUR,THRISSUR DISTRICT-680101.
- 4 P.SATHAR,
S/O.KAJA AVARASUKUTTY,AGED 62,PUTHUVETIL
HOUSE,PERAGAM P.O., ' THRISSUR-680506.PERAGAM
VILLAGE,CHAVAKKAD TALUK,THRISSUR DISTRICT.



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BY ADV ARUN CHANDRAN

RESPONDENT/WRIT PETITIONER & RESPONDENTS:

- 1 RAJEEV,
AGED 40 YEARS, S/O. NARAYANAN NAIR, THONDAPALLI
MADATHIPARAMBIL HOUSE, KAAVEEDU, POOKODE, CHAVAKKAD
TALUK, THRISSUR DISTRICT-680 505.
- 2 STATE OF KERALA.
REPRESENTED BY SECRETARY, MINISTRY OF HOME
AFFAIRS, VIGILANCE DEPARTMENT,
SECRETIVE, THIRUVANANTHAPURAM-695 001.
- 3 INSPECTOR GENERAL OF VIGILANCE,
THRISSUR RANGE, THRISSUR DISTRICT-680 001.
- 4 THE SUPERINTENDENT OF POLICE,
VIGILANCE, THRISSUR RANGE, THRISSUR DISTRICT-680
001.
- 5 THE SUPERINTENDENT POLICE,
DEPARTMENT OF CRIME BRANCH CID, THRISSUR-680 001.
- 6 DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE, THRISSUR RANGE, THRISSUR DISTRICT-680
001.
- 7 THE JOINT REGISTRAR,
CO-OPERATIVE DEPARTMENT, OFFICE OF THE CO-
OPERATIVE DEPARTMENT, AYYANTHOLE, THRISSUR-680003.
- 8 THE GURUVAYUR CO-OPERATIVE URBAN BANK,
F-1652, P.O. GURUVAYUR-680101, THRISSUR DISTRICT,
REP. BY ITS GENERAL MANAGER.

BY ADVS.



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**RAJIT
D. SOMASUNDARAM**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
9.04.2025, ALONG WITH WA.1078/2021, THE COURT ON
11/4/2025 DELIVERED THE FOLLOWING:**



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**RAJA VIJAYARAGHAVAN V,
&
P.V.BALAKRISHNAN,JJ.**

Writ.Appeal Nos.1078 & 1277 of 2021

Dated this the 11th day of April 2025

COMMON JUDGMENT

P.V.BALAKRISHNAN,J

These Writ Appeals are filed challenging the judgment dated 15/3/2021 in W.P.(C) No.27091/2019 passed by a learned Single Judge of this Court.

2. The appellant in W.A.No.1078/2021 was the additional 7th respondent in W.P(C)No.27091/2019 and the appellants in W.A.No.1277/2021 were not parties to the writ petition.

3. The facts in brief which are necessary for the disposal of these writ appeals are as follows:

The 7th respondent Co-operative Bank invited applications from eligible candidates to fill up 6 posts of appraisers and 5



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posts of Peons. A written examination was conducted on 12/11/2017 wherein 99 and 158 candidates appeared for the examination for the post of appraisers and peons respectively. The examination was conducted with the assistance of an outside agency and the maximum mark prescribed was 100. The shortlisted candidates were called for an interview and the maximum mark prescribed for the same was 20. The petitioner in the writ petition was a candidate for the post of appraiser and, being successful in the written examination, was called for the interview held on 25/11/2017. According to the petitioner, even though he performed well in the interview, he was placed only in the 20th position. It was alleged by the petitioner that rampant corruption and nepotism took place in the selection process and the answer papers of the candidates, who had bribed the Directors, were manipulated to ensure that they reflected high marks. Such candidates were duly instructed to leave the answers which were not known to them and the answers were later filled up after completion of examination



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with the help of experts by the Directors. With these allegations, the petitioner approached the Vigilance Court, Thrissur and preferred Ext.P2 complaint.

4. The court directed the Dy.S.P. to conduct a quick verification and submit a report.

5. After conducting an enquiry, the Dy.S.P. submitted Ext.P3 report by stating that his enquiry did not reveal any irregularity attracting the offences under the Prevention of Corruption Act. On filing of the report, the petitioner approached this Court by filing the writ petition challenging the report on the ground that the enquiry conducted was in a perfunctory manner and without verifying the relevant records.

6. As per the impugned judgment, the learned Single Judge came to the finding that the report as well as the conclusions arrived at by the investigating officer in Ext.P3 are absolutely unsustainable and do not stand to reason. It was also found that the investigating officer did not conduct an enquiry into the real issues that ought to have been probed and hence,



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considering the peculiar situation and exercising his discretionary jurisdiction, the learned Single Judge set aside Ext.P3 report and directed the 2nd respondent to conduct the preliminary enquiry through another Dy.S.P.

7. Being aggrieved by the above judgment, the 7th respondent in the writ petition and the persons who were arrayed as accused subsequently, after passing of the impugned judgment, have preferred these appeals.

8. We have heard Adv.George Poonthottam, the learned Counsel appearing for the appellants and Adv.A.Rajesh learned Special Government Pleader appearing for respondents 2 to 7 and Adv. Rajit appearing for the first respondent.

9. The learned Counsel for the appellants contended that the directions issued by the learned Single Judge to conduct a preliminary enquiry by another Dy.S.P by invoking Article 226 of the Constitution of India, is only an abuse of process of law since, the same was passed even before the Vigilance Court had occasion to apply its mind and take a decision on Ext.P3 report.



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He argued that there are no exceptional circumstances existing in this case justifying the exercise of such a power by this Court, and such action has resulted in virtually taking over the powers and functions of the Vigilance Court. He submitted that on the basis of the directions of the learned Single Judge, the Vigilance have even registered an FIR against the appellants resulting in causing considerable prejudice to them. Hence, according to the learned Counsel, the impugned judgment cannot be sustained.

10. Per contra, the learned Counsel for the respondents submitted that this Court has ample power under Article 226 of the Constitution of India to interfere and pass such orders in order to meet the demands of justice. They contended that sufficient reasons have been pointed out by the learned Single Judge for not accepting Ext.P3 report and it is thereafter, considering the peculiar situation arising in this case, the discretionary jurisdiction was exercised by passing the impugned judgment. They submitted that the subsequent preliminary enquiry based on scientific evidence has revealed



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that the accused have conspired and demanded bribes from the candidates, and after manipulation of answer sheets, the selection was made. They also submitted that on the basis of the revised preliminary enquiry report dated 16/6/2021, a vigilance case was registered against the appellants and others under Section 7 of the Prevention of Corruption Act, and Sections 465, 471 and 120(B) of the Indian Penal Code. It is also submitted that the charge sheet in this case will be filed shortly. They, by relying on the decision of the Chhattisgarh High Court in **Dhananjay Kumar v. State of Chhattisgarh and Others (2020 KHC 2748)** further contended that a prospective accused have no right of hearing before the registration of FIR and during investigation and, therefore, the appellants have no right to prosecute these appeals.

11. The materials on record show that the writ petition is filed seeking to quash Ext.P3 and to direct respondents 1 to 4 to take away the investigation and handover the same to any superior officer of the Crime Branch. While considering the writ



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petition, the learned Single Judge has found that the conclusions reached by the investigating officer, as reflected in Ext.P3, are absolutely unsustainable and does not stand to reason. After pointing out five material loopholes in the quick verification report, the learned Single Judge categorically found that the investigating officer has not conducted enquiry into the real issues highlighted. It is thereafter, the learned Single Judge exercised his extra ordinary discretionary jurisdiction, considering the peculiar situation arising in the case, and ordered a preliminary enquiry to be conducted by another Dy.S.P. It was rightly noted by the Writ Court that even if Ext.P3 does not find favour with the Vigilance Court, it could have only directed further preliminary enquiry to be conducted by the very same officer, which would serve no purpose. Further, it is to be kept in mind that the prayer as now sought in the writ petition, which is to transfer the investigation to Crime Branch, also is outside the purview of the Vigilance Court. Be that as it may, the report now filed by the investigating officer



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shows that during the pendency of these Writ Appeals the preliminary enquiry ordered by the learned Single Judge was completed and since it prima-facie revealed commission of cognizable offences, a vigilance case was registered against the accused and that the investigation in that case is at its fag end.

12. It cannot be disputed that the High Court has got the power and sometimes duty in appropriate cases to grant reliefs by exercising the powers under Article 226. It also cannot be disputed that the power under Article 226 is an extraordinary jurisdiction conferring very wide powers on the High Court. The said power is so wide that it can affect any person- even a private individual, and is available for any purpose even if there is an alternative remedy. Article 226 is a device to advance justice and is to be exercised for preventing miscarriage of justice and secure ends of justice. It is also beyond cavil that the Constitutional courts, while exercising such jurisdiction under Article 226, can direct the conduct of a preliminary enquiry, further investigation, fresh investigation and even re-



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investigation, if the situation so warrants(See **Bindulal v. State of Kerala (2024 KHC 1202)**, **Rohtas Industries Ltd. v. Rohtas Industries Staff Union [(1976) 2 SCC 82]**, **Hema Mishra v. State of Uttar Pradesh (AIR 2014 SC 1066)** and **Vinay Tyagi v. Irshad Ali (2012 KHC 4747)**).

13. In the decision in **Comptroller and Auditor-General of India v. K.S Jagannathan (1986) 2 SCC 679**, the Apex Court had the occasion to observe thus:

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a



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High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

14. In **Union Of India And Others v. Mangal Textile Mills India Private Limited And Others 2010 SCC 14 553**, the Apex Court observed that:

“We find substance in the contention of the learned counsel for the appellants. It is true that power of the High Court to issue prerogative writs under Article 226 of the Constitution is plenary in nature and cannot be curtailed by other provision of the Constitution or a statute but the High Courts have imposed upon themselves certain restrictions on the exercise of such power. One of such restrictions is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction under Article 226 of the Constitution. But again, this rule of



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exclusion of writ jurisdiction on account of availability of an alternative remedy does not operate as an absolute bar to entertaining a writ petition but is a rule of discretion to be exercised depending on the facts of each case.”

15. Keeping in mind the afore principles and considering the facts and circumstances of this case including the fact that the attempt of the learned Single Judge was only to secure the ends of justice and the fact that no prejudice has been caused to the appellants, we are of the view that no interference is required with the impugned judgment. Therefore, we find no merit in these appeals and the same are accordingly dismissed.

No costs.

Sd/-

RAJA VIJAYARAGHAVAN V

Judge

Sd/-

P.V.BALAKRISHNAN

Judge

dpk