IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 17TH DAY OF FEBRUARY 2023 / 28TH MAGHA, 1944

OP(CRL.) NO. 510 OF 2022

AGAINST THE ORDER IN CMP 190, 191,192, 193 /2021 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE,KOZHIKODE.

PETITIONERS/ACCUSED NOS.8 TO 11:

1 C.V. BALAN
AGED 77 YEARS
S/O C. V. KANARAN, MANAGING PARTNER, ASHIRVAD LAWNS AUDITORIUM & COMPLEX P.O. KARAPARAMBA, KOZHIKODE, RESIDING AT 3130/A, 'ARADHANA, T.P. NARAYANAN NAIR ROAD, WEST HILL, KOZHIKODE, PIN - 673005

2 SMT. DEEPA BALAN
AGED 45 YEARS
D/O C.V. BALAN 3130/A, 'ARADHANA, T.P. NARAYANAN NAIR ROAD, WEST HILL, KOZHIKODE, PIN - 673005

3 SMT. PREETHI PRAJOD
AGED 42 YEARS
D/O C.V. BALAN, 3130/A, 'ARADHANA, T.P. NARAYANAN NAIR ROAD, WEST HILL, KOZHIKODE, REPRESENTED BY POWER OF ATTORNEY HOLDER C.V. BALAN, S/O C.V. KANARAN, PIN - 673005

4 SMT. JAYASREE BALAN
AGED 66 YEARS
W/O C.V. BALAN 3130/A, 'ARADHANA, T.P. NARAYANAN NAIR ROAD, WEST HILL, KOZHIKODE, PIN - 673005

BY ADV S.K.SAJU

RESPONDENTS/STATE & COMPLAINANTS:

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, KOZHIKODE, PIN - 673016

3 SRI. C.V. HARIDASAN
AGED 67 YEARS
S/O. C.V. SAMI, 'HARSHAM', 2/750A, CANAL ROAD, , P.O. KARAPARAMBA, KOZHIKODE, PIN - 673010

4 PRASANTH P
AGED 51 YEARS
S/O P. SREEDHARAN, 'SAGARIKA', OTHAYAMANGALAM ROAD, P.O. KARAPARAMBA, KOZHIKODE, PIN - 673010

5 JANARDHANAN P
AGED 62 YEARS
S/O KUNHIRAMAN NAIR, 'ANUGRAHAM', 2/756A, OTHAYAMANGALAM ROAD, P.O. KARAPARAMBA, KOZHIKODE, PIN - 673010

6 DR. PAVITHRAN
AGED 73 YEARS
S/O P. KRISHNAN, OTHAYAMANGALAM ROAD, P.O. KARAPARAMBA, KOZHIKODE, PIN - 673010

BY ADVS.
MURALEEDHARAN R
K.P.JOSE PIOUS(J-317)

OTHER PRESENT:

SRI.A.RAJESH.SPL.PP VACB, SMT. S.REKHA SR.PP

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 14.02.2023, THE COURT ON 17.02.2023 DELIVERED THE FOLLOWING:

"C.R."

J U D G M E N T

Dated this the 17th day of February, 2023

Ext.P6 common order passed by the Enquiry Commissioner and Special Judge, Kozhikode (for short, "the court below") forwarding the private complaints to the VACB, Kozhikode, for investigation u/s 156(3) of Cr. P.C. is under challenge in this Original Petition.

2. Four private complaints with identical allegations were filed by respondents Nos.3 to 6 against the petitioners and several others before the court below, alleging that they have committed the offences punishable under sections 468, 471 and 120B of IPC r/w sections 7, 8, 10 and 13(1) of the Prevention of Corruption Act, (for short, 'the PC Act').

3. The petitioners are the owners of Ashirvad Lawns and M/s Aiswarya Arcade situated at Karaparamba, Kozhikode. They

were arrayed as the accused Nos.8 to 11 in all the four complaints. The accused Nos.1 to 4 and 7, the officers of the Kozhikode Corporation, are public servants. The accused No.5 was an officer of the Kozhikode Corporation and has now retired from service. The accused No.6, the Regional Fire Officer, Kozhikode, is also a public servant. The allegation set out in all the complaints is that the petitioners, along with the remaining accused, hatched a criminal conspiracy and, in pursuance of the conspiracy so hatched, put-up construction in wetlands unauthorizedly and illegally and in violation of the Kerala Building Rules. It is further alleged that when the direction was given to the petitioners to demolish the building, corporation officials filed a false report to the effect that the building was demolished though it was not demolished. According to the complainants, the accused committed forgery, falsification of documents and criminal misconduct.

4. The court below called for a preliminary enquiry report from VACB, Kozhikode. Accordingly, the Deputy Superintendent of Police, VACB, Kozhikode, conducted a preliminary enquiry and filed Ext.P5 report. The enquiry officer found that the allegations in the complaints are not fully correct. He concluded that there was laches on the part of the officers of the corporation. There is no finding in the report that any criminal offence was committed by any officials. However, the court below, on perusal of the report and connected documents, concluded that there are materials to show criminal misconduct on the part of the corporation officials and the creation of false documents in connivance with the accused Nos.8 to 11. Accordingly, complaints were forwarded to the Station House Officer, VACB, Kozhikode, for registration of the crime and investigation u/s 156(3) of Cr.P.C. as per the impugned order.

5. I have heard Sri.M.Asokan, the learned counsel for the petitioners, Sri.A. Rajesh, the learned Special Public Prosecutor for

VACB and Sri.R.Muraleedharan, the learned counsel appearing for respondents 3 to 6.

6. The learned counsel for the petitioners placing reliance on the decisions of the Apex Court in ***Anil Kumar and Others v. M.K.Aiyappa and Another*** (2013 KHC 4790) and in ***L.Narayana Swamy v. State of Karnataka and Others*** [(2016) 9 SCC 598] argued that prior sanction for prosecution against a public servant is necessary u/s 19 of the PC Act before setting in motion even the investigation process under section 156(3) of Cr.P.C. The learned Special Public Prosecutor endorsed the said view. Per contra, the learned counsel, Sri.R.Muraleedharan appearing for respondents 3 to 6, submitted that section 19 of the PC Act mandates sanction only at the time of taking cognizance and no sanction is necessary while the court exercises its jurisdiction under section 156(3) of Cr.P.C which is a precognizant stage. The counsel further submitted that since gross misconduct, criminal conspiracy, and

falsification of documents are alleged against the public servants, there is no necessity for previous sanction as envisaged under section 19 of the PC Act. He has placed reliance on the decision of the Apex Court in ***Station House Officer, CBI/ACB/Bangalore v. B.A.Srinivasan and Another*** [(2020) 2 SCC 153].

7. Section 19(1) of the PC Act says that no court shall take cognizance of an offence punishable under sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority referred to in sub-clauses (a), (b) and (c). The question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duties. The purpose of obtaining sanction is to see that the public servant is not entangled in false and frivolous cases. The question whether a sanction under section 19 of the PC Act is necessary or not while ordering an investigation against a public servant invoking powers under

section 156(3) of Cr. P.C is no more *res integra*. In ***Anil Kumar*** (supra), it was held that in the absence of a prior sanction under section 19 of the PC Act, the Magistrate/Court cannot order an investigation against a public servant by invoking power under section 156(3) of Cr.P.C. After referring to various judgments on the issue of purport and meaning of the word "cognizance", it was concluded that "cognizance" has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. In ***L.Narayana Swamy*** (supra), the Apex Court held that an order directing investigation under section 156(3) could not be passed in relation to a public servant in the absence of valid sanction. It was observed that even while directing inquiry under section 156(3) of Cr.P.C., the Magistrate applies his judicial mind on the complaint, and therefore, it would amount to taking cognizance of the matter. The same issue arose before the Apex Court again in ***Manju Surana v. Sunil Arora and Others*** (2018 KHC 6224). After

considering the various judgments, including ***Anil Kumar*** (supra) and ***L. Narayana Swamy*** (supra), the Division Bench of the Apex Court directed the matter to be placed before the Larger Bench. Thereafter, a Division Bench of this Court in ***Muhammed V.A. and Others v. State of Kerala and Others*** (2019 (1) KHC 239) held that until a final decision is taken in the reference in ***Manju Surana*** (supra), the dictum laid down in ***Anil Kumar*** (supra) will hold the field. Therefore, as the law now stands, the requirement of sanction under section 19 of the PC Act is a prerequisite for presenting a private complaint against a public servant alleging the commission of an offence specified in sections 7, 11, 13 and 15 of the PC Act. No such complaint could be forwarded for investigation under section 156(3) of Cr.P.C. in the absence of sanction granted by the competent authority under section 19 of the PC Act. The decision of the Apex Court in ***B.A.Srinivasan*** (supra) relied on by the learned counsel for respondents 3 to 6 pertains to

sanction under section 197 of Cr.P.C and hence the dictum laid down therein does not apply to the facts of the case.

Considering the above findings, I am of the view that the court below could not have forwarded the complaints under section 156(3) of Cr.P.C for investigation without any sanction under section 19(1) of the PC Act obtained by the complainants. Hence, the impugned order cannot be sustained, and accordingly, it is set aside. The court below shall proceed with the complaints in accordance with law only after the production of prosecution sanction order under section 19 of the PC Act. The Original Petition is allowed.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp

APPENDIX OF OP(CRL.) 510/2022

ETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE CMP NO. 190/2021DATED 20.09.20221 FILED BY THE 3RD RESPONDENT BEFORE THE LEARNED ENQUIRY COMMISSIONER & SPECIAL JUDGE KOZHIKODE
Exhibit P2	TRUE COPY OF THE CMP NO. 191/2021 DATED 20.09.2021FILED BY THE 4TH RESPONDENT BEFORE THE LEARNED ENQUIRY COMMISSIONER & SPECIAL JUDGE KOZHIKODE
Exhibit P3	TRUE COPY OF THE CMP NO. 192/2021 DATED 20.09.2021 FILED BY THE 5TH RESPONDENT BEFORE THE LEARNED ENQUIRY COMMISSIONER & SPECIAL JUDGE KOZHIKODE
Exhibit P4	TRUE COPY OF THE CMP NO. 193/2021 DATED 20.09.2021 FILED BY THE 6TH RESPONDENT BEFORE THE LEARNED ENQUIRY COMMISSIONER & SPECIAL JUDGE KOZHIKODE
Exhibit P5	A TRUE COPY OF THE PRELIMINARY ENQUIRY REPORT DATED 19.04.2022 SUBMITTED BY THE VACB
Exhibit P6	TRUE COPY OF THE COMMON ORDER DATED 5.09.2022 IN CMP NOS. 190/2021, 191/2021, 192/2021 AND 193/2021