

IN THE COURT OF THE SPECIAL JUDGE (SPE/CBI) – II, ERNAKULAM

Present:- Shri. Kamanees K, Special Judge (SPE/CBI)-II

Tuesday, the 17th day of January, 2023 / 27th Pousha, 1944

Crl.M.P Nos. 470/2021, 471/2021, 472/2021 and 473/2021

in

C.C No. 2/2021

Crl.M.P No. 470/2021:-

Petitioner / Accused No. 2 :-

K.P.Alias, Aged 69 years,
S/o. K.C.Poulose, (Late),
Kooranthazhathu Parambil House,
Puliyanam P.O., Angamali,
Ernakulam – 683 572.

By Adv. Sri. Ayyappan Sankar

Respondent / Complainant :-

Central Bureau of Investigation, ACB, Cochin, Kerala.

By Sri. Bobby Joseph.Y, Senior Public Prosecutor, CBI, Kochi.

Crl.M.P No. 471/2021:-

Petitioner / Accused No. 3 :-

Johnson.V.V, Aged 59 years,
S/o Varkey(Late), Vadukkod House,
Chelakkara, Thrissur – 680 586

By Adv. Sri. Ayyappan Sankar

Respondent / Complainant :-

Central Bureau of Investigation, ACB, Cochin, Kerala.

By Sri. Bobby Joseph.Y, Senior Public Prosecutor, CBI, Kochi.

Crl.M.P No. 472/2021:-

Petitioner / Accused No. 4 :-

K.M.Baby, Aged 63 years,
S/o. Mathew (Late),
KooranthazhathuParambil House,
Puliyannam P.O., Angamali,
Ernakulam – 683572.

By Adv. Sri. Ayyappan Sankar

Respondent / Complainant :-

Central Bureau of Investigation, ACB, Cochin, Kerala.

By Sri. Bobby Joseph.Y, Senior Public Prosecutor, CBI, Kochi.

Crl.M.P No. 473/2021:-

Petitioner / Accused No. 5 :-

Ibrahimkutty, Aged 53 years,
S/o. Kunjumoidenkutty Haji (late),
Kooranthazhathu Oruvil House,
Naduvattom.P.O, Kuttipuram (Via),
Malappuram - 679571

By Adv. Sri. Ayyappan Sankar

Respondent / Complainant :-

Central Bureau of Investigation, ACB, Cochin, Kerala.

By Sri. Bobby Joseph.Y, Senior Public Prosecutor, CBI, Kochi.

These petitions having been heard on 17/01/2023 and the court on the same day passed the following:-

COMMON ORDER

1) The accused persons 2 to 5 have filed these applications (CrI.MP Nos. 470/21, 471/21, 472/21 and 473/21) under section 307 of Cr.PC.

2) Almost same contentions have been raised in the respective applications. The accused persons are charged under section 13(2) r/w 13(1)(d) and section 15 of the Prevention of Corruption Act, 1988. The charges levelled against these accused persons are that they paid specific sums as bribe to the accused No.1 as demanded by them, being contractors entrusted with works of construction of various roads in Thrissur and Palakkad districts under the Pradhan Manthri Gram Sadak Yojana. The purpose was for getting the road construction work certified as 'satisfactory'. As the accused No.1 was a National Quality Monitor under the National Rural Road Development Agency.

3) The accused No.2, Shri.K.P.Alias states that he carried out the construction work of Varandharapilly-Karayampadam Road, Package No.KR 13-66 and maintenance of another road. Both were inspected by the 1st accused on 18.07.2017 and he graded the road as 'satisfactory' and 'satisfactory, requires improvement'. The accused No.3 Shri.Jhonson.V.V had been carrying out construction work of Alinkunnu-Chembankulambu Road, Package No.KR 13-52, Thrissur which was reported as 'satisfactory'.

4) The accused No.4, Shri.K.M.Baby had been carrying out the construction work of Mannamangalam-Punnachodu road, Package No.13-72 which was inspected by the accused No.1 on 20.07.2017 and was found 'satisfactory'. The accused No5, Shri.Ibrahimkutty states that he was carrying out the construction work of Palakkayam-Thiruppapathy road, Package No.KR 10-28, Palakkad which was inspected by the accused No.1 on 25.07.2017 and was graded 'satisfactory'.

5) All the petitioners state that the respective contractors were unnecessarily exploited by the officials like the accused No.1 by taking undue advantage of the stringent conditions and helplessness situation requiring urgent release of funds as per the approval bills. They state that they realise the menace of such corrupt practices by officials holding important public offices.

All the petitioners state that they undertake to make full and true disclosure of the whole circumstances within their knowledge relating to the commission of the offence to the extent it concerns their involvement and the involvement of the accused No.1. They plead that pardon be granted to the respective accused on such conditions as the court may deem fit.

6) Similar objections were filed to all the objections by the accused No.1. According to the accused No.1, the accused Nos. 2 to 5 had been conducting a criminal conspiracy with the state officials in Block Panchayath office and they planted currency notes in the hotel room which was taken by the state official of the Block Panchayath. The officials of Block Panchayath and the accused No.2 to 5 were aggrieved by the unsatisfactory report given by the accused No.1 and they used the CBI officials as a tool in order to take a revenge. The accused No.1 will not get access to an official letter written on 30.06.2007 by the Chief Engineer, PWD. The master mind behind the planting of currency notes are the accused Nos. 2 to 5. The accused is a native of Jabalpur and he visited Kerala only for the purpose of inspection. The CBI is silent with regard to Document No.12 and no inspection is conducted on this document. There are other witnesses who are alleged to have given money. There is foul play played by the CBI officers. The CB does not even have a

definite case regarding the matter. The document No.12 will prove that state officials are aggrieved by the unsatisfactory report. The case is not that of a trap. The accused No.1 was residing in the hotel room which was taken on rent by the state officials. The petitions are not maintainable.

7) The matter has been heard in detail.

8) It has to be seen that in none of the petitions the accused persons do state that they had passed money to the accused No.1 for some specific purpose. What they volunteered is that they shall make a true and full version of matters within their knowledge and for that purpose pardon be tendered to them under section 307 Cr.PC r/w 5(2) of the Prevention of Corruption Act. The CBI filed an objection which was later endorsed not pressing. The stand of the CBI seems to be that they are amenable for the prayer raised in CMP Nos. 470/2021 to 473/2021.

9) On almost same set of facts **Pascal Fernandes v. State of Maharashtra (1968 AIR (SC) 594)**, the Hon'ble Supreme Court held as follows in paragraph No.15 :

“It is not for the Special Judge to enter the ring, as a veritable director of prosecution. The power which the Special Judge exercises is not on his own behalf but on behalf of the prosecuting agency and must, therefore, be

exercised only when the prosecution joins in the request. The State may not desire that any accused be tendered pardon because it does not need approvers testimony. It may also not like the tender of pardon to the particular accused because he may be the brain behind the crime or the worst offender. The proper course for the Special Judge is to ask for a statement from the prosecution on the request of the prisoner. If the prosecution thinks that the tender of pardon will be in the interests of a successful prosecution of the other offenders whose conviction is not easy without the approvers testimony, it will indubitably agree to the tendering of pardon. The Special Judge (or the Magistrate) must not take on himself the task of determining the propriety of tendering pardon in the circumstances of the case.”

10) The said position had been later explained in **Jasbir Singh vs. Vipin Kumar Jaggi and Ors. : MANU/SC/0454/2001** in the following words :

18. Although the power to actually grant the pardon is vested in the Court, obviously the Court can have no interest whatsoever in the outcome nor can it decide for the prosecution whether particular evidence is required or not to ensure the conviction of the accused. That is the prosecution's job. This was the view expressed in Lt. Commander Pascal Fernandes vs. State of Maharashtra

where it was said:

"...Ordinarily it is for the prosecution to ask that a particular accused, out of several, may be tendered pardon. But even where the accused directly applies to the Special Judges he must first refer the request to the prosecuting agency. It is not for the Special Judge to enter the ring as a veritable director of prosecution. The power which the Special Judge exercises is not on his own behalf but on behalf of the prosecuting agency, and must, therefore, be exercised only when the prosecution joins in the request. The State may not desire that any accused be tendered pardon because it does not need approver's testimony."

11) The said position was again considered in **Bangaru Laxman vs State (through CBI) : MANU/SC/1409/2011**. As such the position explained in *Pascal Fernandes v. State of Maharashtra* still holds good and court is not expected to stand in the shoes of the prosecution and to decide whether the testimony to be given by the accused Nos. 2 to 5 are going to do any favour to the prosecution. When the prosecution can decide the same professionally, the court should only direct the accused persons 2 to 5 to approach the prosecution agency and let the prosecution agency decide whether they have to be sponsored under section 307 Cr.PC r/w 5(2) of the Prevention of Corruption Act.

In the result, all the applications are dismissed as lacking jurisdiction (without going into the merits of the claims of the petitioners). The petitioners herein are directed to approach the prosecution which shall take a decision in that regard.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court this the 17th day of January, 2023.

Sd/-
Kamanees.K
Special Judge (SPE/CBI)-II

APPENDIX:-NIL

Id/-
Special Judge(SPE/CBI)-II

// True Copy //

(By Order)

Sheristadar

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**Common Order in
Crl.M.P. Nos. 470/2021, 471/2021,
472/2021 and 473/2021
in C.C No. 2/2021
Dated 17/01/2023**