

**IN THE COURT OF THE ADDITIONAL SPECIAL SESSIONS JUDGE,  
(SPE/CBI)-III, ERNAKULAM**

Present :-

**SRI.SHIBU THOMAS, SPECIAL JUDGE.**

Friday the 12<sup>th</sup> day of January, 2024/ 22<sup>nd</sup> Pousha, 1945.

**Crl. M.P. No. 1187/2023**

in

**SC PMLA 04/2023**

**Petitioner/Petitioner** : State of Kerala, represented by V.A. Ullas,  
Deputy Superintendent of Police-1,  
Crime Branch Unit, Thrissur.

**Represented By** : Adv. Sajeev C.K, Addl. Govt. Pleader  
& Addl. Public Prosecutor-1,  
District Court Centre, Ernakulam.

**Respondent/Respondent:** Deputy Director, Directorate of  
Enforcement, Government of India,  
Cochin Zonal Office, Kanoos Castle,  
A.K. Seshadri Road, (Mullassery  
Canal Road West, Cochin -682011.

**Represented By** : *Adv.M.J. Santhosh*  
Spl. Public Prosecutor,  
Directorate of Enforcement.

This petition coming on for hearing on 4<sup>th</sup> day of January, 2024 in the presence of Counsels on both sides having stood over for consideration till day the Court passed the following:-

**ORDER**

Petitioner is the Chief Investigating Officer of the Special Investigation Team constituted for the investigation of crime Branch Crime 165/CB//TSR/R/2021 u/s. 120B, 406, 408, 409, 417, 418, 420, 423, 465, 468, 471, 4877-A, 201 r/w. 34 IPC and sec. 13(1)(c)(d)r/w. 13(2) of PC Act, 1988 and sec. 13(1) (a) r/w. 13(2) of PC (Amendment) Act, 2018 (Irinjalakuda PS Cr. 650/2021) in connection with the financial/loan scam of Karuvannur Service Co-operative Bank Ltd 112 of Thrissur District, Kerala.

2. The FIR was originally registered at Irinjalakuda Police station against six accused persons on 14.07.2021 based on the complaint of Smt. Sreekala, the Secretary-in-charge of Karuvannur Service Co-operative Bank.

3. As per order No.D3-108924/201/PHQ dated 21.07.2021, the investigation of the case was transferred to Crime Branch and accordingly the same was re-registered at Crime Branch, Police station, Thiruvananthapuram as Cr.165/CB/TSR/R/21 u/s. 406, 420, 409, 465 r/w. 34 IPC and the investigation of the case was entrusted to the petitioner.

Petitioner took over the investigation on 23.07.2021 and the same is being conducted in an effective manner.

4. During the course of investigation, sec. 13(1)(c), 13 (1)(d) r/w. 13(2) of PC Act, 1988 and sec. 13(1) (a) r/w. 13(2) of PC (Amendment) Act, 2018 are added and accordingly case was transferred to the Enquiry Commissioner and Special Judge (vigilance) Thrissur on 30.05.2022.

5. During the course of investigation, it was also revealed that A1 to A6 committed grave financial fraud and misappropriation with the connivance of the members of Board of Directors of the bank. Hence A7 was also added.

6. Apart from the main case, two cases were investigated at Irinjalakuda police station in connection with the Karuvannur Co-operative bank scam were also transferred to Crime Branch and accordingly the same were also re-registered at Crime Branch police station, Thiruvananthapuram being investigated by Special Investigation team.

7. The Enquiry Commissioner and Special Judge (vigilance), Thrissur by order dated 30.01.2023 attached all the 58 items of immovable properties appended in the affidavit till the termination of trial. The Court also ordered to seize the vehicle and to conduct sale as per the provisions

contemplated in the Cr.P.C. Auction procedure of the vehicles are in progress.

8. Accused persons by abusing their official position and by conjointly conspiring, issued illegal loans in fake addresses and by creating forged documents in the name of 180 persons during the period from 2011 to 2020 obtained loans and misappropriated the entire amount. Thereafter accused created fake loans without their knowledge and consent by forging their handwriting, signatures and fingerprints and fabricating false documents and siphon off the entire loan amount so disbursed for their own purpose.

9. While the investigation of the Cr. 165/CB/TSR/R/21 of Crime Branch Unit, Thrissur was in progress, officials from the Enforcement Directorate, Zonal office, Kochi conducted search in the Karuvannur Service Co-operative Bank on 10.08.2022 to 11.08.2022 and several items were seized by preparing a seizure memo. Apart from this, they took many files/records including loan files and kept them in the cabin of the Secretary in the first floor of the bank and sealed the same by issuing a prohibitory order to the Secretary-in-charge u/s. 17 (1)(A) of PMLA,2022.

10. Consequent to the search conducted by the officials from

Enforcement Directorate at Karuvannur Service Co-operative Bank, petitioner sent a letter to the Deputy Director, Enforcement Directorate on 20.08.2022 vide letter dated 187/TDR/DYSP-1/CB/TSR/22 requesting to take urgent necessary steps to make available original files, which the officials of Enforcement Directorate have kept in the sealed room in the bank for investigation purpose. No reply was received from the Enforcement Directorate.

11. Subsequently on 25.08.2022 ED seized and took away 162 loan files and connected documents by preparing seizure memo which was earlier kept by them in the sealed room.

12. The 162 loan files which were seized by the Enforcement Directorate officials also include the fake loan files, which are pivotal and cogent evidence for a successful and foolproof investigation of the above said Crime Branch case. During the course of investigation, so far the Special Investigation team have seized 96 fake loan files and connected incriminating documents. Rest of fake loan files are now in the custody of the Enforcement Directorate and therefore, Crime Branch could not conduct investigation in respect of those files.

13. On 25.08.2022, the petitioner again sent a request letter to the

Deputy Director of Enforcement Directorate to return the original loan files. In response to this letter, the Deputy Director, ED sent a reply by informing that as per Sec. 21(2) of PMLA, only the party from whom the materials are seized is entitled to get the copy of the seized materials or records and informed that it may be procured from Adjudicating Authority, New Delhi on approval.

14. It is submitted that the provisions of Sec. 21(2) is not at all applicable to an investigating agency. The Crime Branch is investigating the predicate the offence which forms the very basis of ECIR registered by the Enforcement Directorate. When the predicate offence is terminated/quashed, the ECIR cannot sustain in the eye of law. Hence it is only proper and legal that the investigating agency conducting the investigation into predicate offence is permitted to obtain relevant documents/files to complete the investigation in the most foolproof manner.

15. It is further submitted that as per sec. 21(4) of PMLA Act, 2002 the retention or continuation of records beyond the period of one hundred and eighty days can be ordered by Adjudicating Authority only if it is satisfied that the records are required for the purpose of Adjudication under Sec.8. The Deputy Director of ED had ordered the provisional

attachment by order 9 of 2022 (in ECIR/KCZO/45/2021) dated 02.12.2022 only in connection with the immovable and movable properties procured by the accused No. 5, Sri. Bijoy.A.K. In the meantime the Enquiry Commissioner and Special Judge (Vigilance), Thrissur by order dated 30.01.2023 in Cri. 165/CB/TSR/R/21 of Crime Branch, Thrissur unit attached 58 items of immovable properties and other movable properties procured by A2 to A6 by means of the offence.

16. Petitioner prepared a list of 90 loan files with specific details, required for the effective and foolproof investigation of Crime Branch Cr.165/CB/TSR/R/21 on the basis of available data with Karuvannur Service Co-operative Bank.

17. In the circumstances narrated above, petitioner submitted that without original files, records and loan files seized by the ED, the offences against the accused could not be proved beyond doubt. The said documents have to be scientifically examined at Regional Forensic Science Lab, Thrissur and Finger Print Bureau and for conducting the same, the said documents are to be routed to Regional Forensic Science Lab through the Enquiry Commissioner and Special Judge (Vigilance), Thrissur. It is submitted that the progress of investigation in the aforesaid case gets

practically stagnant for want of the above documents/files which are highly essential to file a foolproof charge sheet in the case.

18. Respondent filed objection is as follows:- The petition is not maintainable since there is no provision empowering this Court to direct the investigating agency to produce the seized documents and allow another investigating agency to seize the same from the Court.

19. The petitioner took over investigation in the predicate offence on 21.07.2021. The respondent conducted search for the purpose of investigation of the money laundering aspects only on 10.08.2022 and the documents are seized only on 25.08.2022. Therefore, they got ample opportunity to seize the documents from the Karuvannur Service Co-operative Society, but they did not take any steps to seize the documents till the moment documents were seized by ED/respondent, therefore contended that the purpose mentioned in the petition is not bonafide.

20. The documents were seized in accordance with law. Therefore, the petitioner has no authority to approach the respondent to return the original documents seized from the society. Furthermore, most of the documents seized by the Directorate of Enforcement are produced along with the complaint filed by ED against 55 accused and remaining

documents are required for the investigation against suspected persons. Furthermore, the properties attached for confiscation are pending consideration of Adjudicating Authority, New Delhi. It is also contended that Writ Petition to hand over the investigation in predicate offence to CBI, is pending consideration of Hon'ble High Court of Kerala, Therefore prayed to dismiss the petition.

21. Heard both sides.

22. I have considered the rival contentions and also perused the documents submitted along with the petition.

23. The points to be considered are:-

1. Whether there is sufficient ground to direct the respondent to produce documents/files mentioned in Annexure -8 and permit the petitioner to take custody of the above mentioned documents/files as per mahazar?

2. Whether there is sufficient ground to direct the respondent to produce the entire 162 loan files seized as per Annexure -4 and permit the petitioner to inspect the original loan files and take custody of them as per mahazar?

24. **Point Nos. 1 and 2:-** For convenience and brevity, these

points are considered together.

The Crime Branch filed a petition seeking production of documents and files seized by the respondent/Enforcement Directorate from the Karuvannur Co-operative Society for forensic analysis and completing the investigation of the predicate offence. Respondent wanted to produce the 162 files which it had seized from the said society and permit the investigating officer to take them into custody. These documents have to be sent to the Regional Forensic Science Laboratory, Thrissur and the Finger Print Bureau for examination through the Enquiry Commissioner and Special Judge (Vigilance), Thrissur. From their investigation, it is revealed that the accused had issued many fake loans in the name of 180 persons between 2011 and 2018 by forging signatures and documents and siphon off money from the bank. The signatures and handwritings in the original documents need to be compared to prove the charges of forgery. Petitioner is investigating the predicate offence, which forms the basis of the case registered by ED. The predicate offence needs to be proved against the accused for the respondent's case to sustain. If the predicate offence is not established, the case registered by ED/respondent will not be sustained. All the seized files by the respondent are crucial and unequivocal

pieces of evidence for substantiating the predicate offence.

25. The respondent has opposed the petition arguing that the Crime Branch has no authority to demand the release of the documents it has seized under the law. ED/respondent has also stated that it has completed the investigation against 55 accused and filed a complaint before this Court, along with most of the documents seized. The respondent has further claimed that the remaining documents are still required for the ongoing investigation against several other accused. It is pointed out that, the petitioner started investigation in the Karuvannur case in July, 2021. But the respondent started investigation only in the year 2022 and the records were seized only on 20<sup>th</sup> August, 2022. Had the Crime Branch investigated the case in the right direction, they would have had enough time to seize the documents. The respondent has also pointed out that a petition to hand over the investigation in the predicate offence to CBI is pending before the Hon'ble High Court of Kerala.

26. Section 91 of Cr.P.C empowers a Court or an officer in charge of a police station to issue summons or a written order to any person who has in his possession or power any document or thing that is necessary or desirable for the purpose of any investigation, enquiry, trial or any other

proceedings by or before such Court or officer. However, this power is not absolute and is subject to certain limitations and safeguards such as the relevance and materiality of the documents or thing, the possibility of tampering or destruction of evidence, the balance of convenience and justice between the parties, and the protection of the rights and interest of the person summoned. In the case on hand, the petitioner/Crime Branch has filed a petition u/s.91 of Cr.P.C seeking production of documents and files seized by the respondent/Enforcement Directorate from Karuvannur Co-operative Society for forensic analysis and completing the investigation in the predicate offence of fraud and forgery. The respondent has opposed the petition on the grounds that the petitioner has no authority or jurisdiction to demand for release the documents and files seized by the respondent under the law, and that the respondent has already completed the investigation against some of the accused and filed a complaint before the Court, along with most of the documents seized. The respondent has also claimed that the remaining documents are still required for the ongoing investigation against several other accused.

27. The petitioner seeks the documents that are allegedly the main evidence of the fraud and forgery committed by the accused. The inspection

of the original files may be necessary to ensure that the petitioner has a fair opportunity to verify the signatures and handwriting of those documents and compare them with the original documents, which are crucial for proving the charges of forgery and essential to sustain the money laundering case investigated by the respondent/ED. The respondent submitted that most of the seized documents are produced before the Court along with the complaint; the remaining documents are with them and are necessary for completing the investigation against the remaining accused. With respect to the documents that are in the custody of ED, seized by ED under law for the purpose of investigation of the money laundering case, this Court has no authority or jurisdiction under Section 91 to demand and release the documents seized by ED. Section 91 authorizes the Court or officer to order the production of documents or other things necessary for the investigation, enquiry, trial or other proceedings under Cr.P.C by or before such Court or officer. Therefore, if the proceedings are not pending before this Court, this Court has no power to order production under Section 91 Cr.P.C. It can only be done by the Court having jurisdiction. Hence, if the petitioner bona fide requires these documents from the custody of ED, they have to file an application before the Court where the

proceedings relating to the predicate offence are pending.

28. The respondent/ED admits that most of the documents they seized from the Karuvannur Co-operative Society have been produced before the Court along with the complaint filed against 55 accused persons. The petitioners seek the documents that are public documents, as they do not include any document required by law to maintain secrecy. Therefore, the petitioners can very well obtain certified copies of the said documents. However, the petitioners contend that the documents seized by the respondents are the main evidence of fraud and forgery committed by the accused, and the petitioners should be allowed to inspect the original files and take custody of them as per mahazar to verify the signatures and handwritings in the original documents through forensic examination. The respondents concede that the documents and files seized by them from the society are necessary for forensic analysis and completing the investigation of the predicate offence of fraud and forgery, which forms the basis of the money laundering case investigated by them. However, they argue that there is no provision in any criminal law authorizing an investigating agency to take custody of documents from another investigating agency lawfully seized for the purpose of their investigation. Moreover, the

learned Additional Public Prosecutor did not cite any provision to the Court that permits the Crime Branch to seize the documents from the custody of this Court. It is seen from the records that the documents produced along with the complaint are relevant and material for the money laundering case and to establish the case against the accused persons. Therefore, such documents cannot be allowed to be seized from the custody of this Court. In such circumstances, the only feasible option is that with assistance of Scientific Experts, the petitioners can copy the images of the impressions and signatures in the documents produced by the respondents along with the complaint from the office of the Court for the purpose of forensic analysis. In this technologically advanced era, I am of the opinion that it is not impossible to compare the copied images of impressions and signatures from the disputed documents with the admitted signatures, impressions etc. In this case, both investigating agencies, who are dealing with serious offences should not interfere with the investigation of each other and should co-operate with each other and work in tandem to bring the culprits to justice. With these observations, the petition is dismissed.

In the result, petition dismissed as above.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 12th day of January, 2024.

Sd/-  
**Shibu Thomas**  
**Special Judge, (SPE/CBI) – III**  
**Ernakulam**

**Appendix: Nil.**

Id/-  
**Special Judge, (SPE/CBI) – III**

Typed by:  
Compd. By:

