



2025:KER:29712

Crl.M.C Nos.1852 & 1892 of 2021

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

CRL.MC NO. 1852 OF 2021

AGAINST THE ORDER DATED 19.03.2021 IN CMP NO.2228 OF 2020

OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE (E&O), ERNAKULAM

PETITIONER/COMPLAINANT:

SUPERINTENDENT OF CUSTOMS,
CUSTOMS (PREVENTIVE) COMMISSIONERATE OF CUSTOMS,
COCHIN REPRESENTED SPECIAL PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682031.

BY ADVS.
SASTHAMANGALAM S. AJITHKUMAR
ADV. P.G. JAYASHANKAR, SPECIAL PUBLIC PROSECUTOR
(CUSTOMS)

RESPONDENT/PETITIONER:

T.P.NANDAKUMAR,
AGED 59 YEARS,
CHIEF EDITOR,
CRIME MAGAZINE PUTHIYARA ROAD,
CALICUT-673004.

BY ADV
BIMALA BABY



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THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
08.04.2025, ALONG WITH Cr1.MC.1892/2021, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

CRL.MC NO. 1892 OF 2021

AGAINST THE ORDER DATED 19.03.2021 IN CMP NO.2228 OF 2020

OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE (E&O), ERNAKULAM

PETITIONERS:

- 1 SHRI. YUSUFF ALI M.A.,
AGED 64 YEARS,
S/O M.V. ABDUL KHADER, CHAIRMAN AND M.D,
LULU GROUP INDIA PVT LTD, 34/1000, NH-47,
EDAPPALLY, ERNAKULAM-682024.
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER MR.
PEETHAMBARAN V., AGED 54 YEARS, S/O RAMAN NAIR,
RESIDING AT VADASSERY HOUSE, KATTOOR P.O,
TRICHUR DISTICT, PIN-680702.
- 2 MR. FAHAZ ASHRAF,
AGED 25 YEARS,
S/O ABDUL KADER ASHARAF ALI,
EMKE MANSION NO.1, NATTIKA P.O,
THRISSUR, PIN-680566.

BY ADVS.
S.SREEKUMAR (SR.)
HARIKRISHNAN S.



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RESPONDENTS :

- 1 THE SUPERINTENDENT OF CUSTOMS,
CUSTOMS (PREVENTIVE) COMMISSIONERATE,
COCHIN-682031.

- 2 T.P.NANDAKUMAR,
AGED 58 YEARS,
CHIEF ENGINEER, CRIME MAGAZINE,
PUTHIYARA ROAD, CALICUT-4.

BY ADVS.
SRI.SASTHAMANGALAM S. AJITHKUMAR
ADV. P.G. JAYASHANKAR, SPECIAL PUBLIC PROSECUTOR
(CUSTOMS)
ADV.BIMALA BABY

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
08.04.2025, ALONG WITH CrI.MC.1852/2021, THE COURT ON THE

SAME DAY PASSED THE FOLLOWING:



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K.BABU, J.

Crl.M.C Nos.1852 & 1892 of 2021

Dated this the 8th day of April, 2025

ORDER

The petitioners in the Crl.M.Cs challenge an order of the jurisdictional Magistrate directing the Investigating Officer to conduct a proper investigation under Section 156(3) of the Cr.PC.

2. The petitioner in Crl.M.C No.1852/2021 is the Superintendent of Customs, Customs (Preventive) Commissionerate, Kochi. The petitioners in Crl.M.C No.1892/2021 are two strangers.

3. The facts leading to the filing of these Crl.M.Cs are the following:

3.1. On 30.06.2020, 30 Kg of gold was consigned to Thiruvananthapuram International Airport in diplomatic baggage from the United Arab Emirates. The baggage was addressed to the Charge D Affairs in the UAE Consulate, Thiruvananthapuram,



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Kerala. The customs department had registered a case as O.R No.7 of 2020 alleging illicit smuggling of gold through diplomatic baggage. One Smt.Swapna Prabha Suresh and Sri.Sarith P.S were implicated in the crime.

3.2. Smt.Swapna Prabha Suresh was working with the Consulate General Office of UAE, Thiruvananthapuram, Kerala, on "Work on Request Basis". She filed B.A No.4186/2020 before this Court seeking pre-arrest bail. Along with the bail application, she produced a letter dated 16.06.2020 addressed to the Managing Director of Cochin International Airport from the Consulate General of UAE, Thiruvananthapuram, Kerala. It was stated that the letter was issued from the Consulate General informing that they have no objection regarding the travel of Mr.Fahaz Ashraf from Kerala to UAE. During the pendency of the bail application Smt.Swapna Prabha Suresh was arrested by the National Investigating Agency in R.C No.2 of 2020. The bail application was, therefore, closed as per order dated 14.07.2020.



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3.3. One Sri.T.P.Nandakumar (respondent in Crl.M.C No.1852/2021 and respondent No.2 in Crl.M.C No.1892/2021) claiming to be the Chief Editor of "Crime Magazine" telecasted through YouTube online channel "Crime Online" remarks about the contents of certain documents produced by Smt.Swapna Prabha Suresh in the bail application. This was telecasted in two other YouTube online channels ie., "Marunadan Malayali" and "Karma News". Petitioner No.1 in Crl.M.C No.1892/2021 caused to issue a lawyer notice to respondent No.2 calling upon him to tender unconditional apology and seeking damages stating that the contents of the video contain defamatory allegations. Similar notices were stated to have been issued to the other online YouTube channels also. On 17.12.2020, the petitioners in Crl.M.C No.1892/2021 instituted O.S No.274/2020 before the Sub Court, Ernakulam, claiming Rs.50 Crores, being damages for the publication of defamatory live videos against Sri.T.P.Nandakumar and the "Crime Online".

3.4. Sri.T.P.Nandakumar filed CMP No.2228/2020 before the



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Additional Chief Judicial Magistrate Court (EO), Ernakulam, seeking investigation into the allegations of the contents in the documents produced by Smt.Swapna Prabha Suresh in her bail application. He pleaded that cognizable offences were revealed. The learned Additional Chief Judicial Magistrate allowed the application and directed the Investigating Officer to investigate the veracity of the alleged E-mail communication issued from the office of the Consulate General, UAE. This order is under challenge in these CrI.M.Cs.

4. I have heard the learned Senior Counsel appearing for the petitioners in CrI.M.C No.1892/2021, the learned Special Public Prosecutor (Customs) appearing for the Customs Commissionerate and the learned counsel appearing for the party respondent.

5. The learned Senior Counsel appearing for the petitioners made the following submissions:

- (a) The learned Magistrate has not applied his mind while ordering an investigation under Section



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156(3) of the Cr.PC.

- (b) The learned Magistrate has misinterpreted and misunderstood the documents allegedly produced by Smt.Swapna Prabha Suresh in the bail application.
- (c) The customs authorities filed only a complaint as provided in the Customs Act. They are not competent to file a final report as provided in the Code of Criminal Procedure.
- (d) The complaint filed by the party respondent was only a retaliation to the suit filed by the petitioners for damages.
- (e) The finding of the learned Magistrate is that E-mail has no reference to Mr.Fahaz Ashraf c/o M.A.Yusuf Ali, and therefore, the core finding of the learned Magistrate is erroneous and unsustainable.



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6. The learned Special Public Prosecutor appearing for the Customs Commissionerate submitted the following:

The learned Magistrate has no jurisdiction to order investigation under Section 156(3) of the Cr.PC or further investigation under Section 173(8) of the Cr.PC.

7. The learned Special Public Prosecutor relied on **Kishin S. Loungani v. Union of India and Others [2017 (1) KHC 355]** and **Aji Krishnan v. Union of India and Others (MANU/KE/0925/2023)** in support of his contentions.

8. The learned counsel appearing for the party respondent made the following submissions:

- (i) The customs officers are empowered to conduct investigation. As per Section 4 of the Cr.PC, all offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions of the Code; it does not matter



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whether the investigation is made by a Police Officer or a Customs Officer.

(ii) Even in a complaint case, the jurisdictional Magistrate is empowered to order further investigation.

(iii) The documents produced by Smt.Swapna Prabha Suresh, in the bail application, revealed cognizable offences and, therefore, the jurisdictional Magistrate was bound to order an investigation.

9. The learned counsel for the party respondent relied on **Directorate of Enforcement v. Deepak Mahajan [(1994) 3 SCC 440]** in support of her contentions.

10. The points that arise for consideration are:

1. Is the jurisdictional Magistrate empowered to order an investigation under Section 156(3) Cr.PC or under Section 173 Cr.PC in



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an Occurrence Report (O.R) registered by the customs authorities under the Customs Act?

2. Was the learned Magistrate justified in ordering an investigation based on the materials produced by the party respondent?

Point No.1

11. Having regard to the materials placed before the Court, this point is only of academic importance. Therefore, the question raised is left open.

Point No.2

12. The issue for consideration is whether the learned Magistrate was justified in ordering an investigation into the contents of the documents relied on by Smt.Swapna Prabha Suresh in her bail application. The operative portion of the order reads thus:



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"15. In the result, application is allowed. Investigating Officer is directed to investigate about the veracity of statement of A3, Swapna Prabha Suresh as regards the preparation and forwarding of e-mail for re-exportation of consignment with subject '*NOC to Fahaz Ashraf C/o M.A Yosuf Ali*' and the alleged complicity of those persons to unearth truth and ensure fairness in the investigation.

Investigating Officer shall incorporate the progress/result of the investigation in the periodical report being filed as per the earlier order in CMP No.1296/2020 dated 01.12.2020."

13. In the bail application, Smt.Swapna Prabha Suresh produced five documents. Document No.1 (Anx.A1 in the bail application) is said to be an E-mail communication prepared and sent on account of some educative programmes against the spreading of Covid-19. The second document (Anx.2 in the bail application) is a communication sent by the Consulate General, UAE, Kerala, Thiruvananthapuram, to the Managing Director, Cochin International Airport, dated 16.06.2020. The contents of these documents (Anxs.C and C1) read thus:

"Ref: 7/6/0/2020/46
Date : 16-06-2020

Managing Director,
Cochin International Airport Ltd., Cochin.



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Consulate General of the United Arab Emirates presents its highest compliments to the Managing Director, Cochin International Airport Ltd., Cochin.

Consulate General of the United Arab Emirates in Kerala would like to Inform you that, the Government of United Arab Emirates have no objection regarding the travel of Mr.Fahaz Ashraf Mugliam Veettil, who is holding Indian Passport (Passport No.Z3850700) to United Arab Emirates. And kindly help to arrange his travel from Kerala to UAE at the earliest flight.

Consulate General of the United Arab Emirates avails itself of this opportunity to renew to the Managing Director, Cochin International Airport Ltd., Cochin and the assurance of its highest consideration.

Seal

Signature

Rashed Khamis Ali Alshemelli

Charge d'affaires

The General Consulate of the United Arab Emirates,
Kerala and South India."

14. Along with Anx.2 another document was produced, which reads thus:

"To

The Assistant Commissioner Customs,
Air Cargo Complex,
Thiruvananthapuram.

Consulate General of the United Arab Emirates presents its highest compliment to the Assistant Commissioner Customs, Thiruvananthapuram.

We hereby direct your goodself office to do the needful to return the Diplomatic Cargo vide Airway Bill No.17619938262 at the earliest to the origin.



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Thanking you,
General Administration
Consulate General of United Arab Emirates,
Kerala. "

15. Along with Anx.4 in the bail application two documents were produced. The first document reads thus:

"1 File 11.7 KB

Docx. 12 KB

Return Carg....
Download
Swapna S
.....Forward Message.....
From: swapnas.uae@gmail.com
Date: Fri, Jul 3, 2020 at 1:42 PM
Sub: Return Cargo.docx
To rashedalsheilli@mofaic.gov.ae "

16. The second document reads thus:

"Swapna S
.....Forward Message
From: Swapana Suresh swapnas.uae@gmail.com
Date: Tue, June 16, 2020 at 3:00 PM
Sub: NOC for Mr.Fahaz Ashraf C/o.M.A.Yousef Ali
To:
Cc:Rashed Khamis Ali Alshemelli rashedalsheilli@mofaic.gov.ae
His Excellency

Dear Sir,

Greetings for the day.

As per our telephonic conversation, this afternoon please find the attached NOC for the travel of Mr.Fahaz Ashraf to the



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United Arab Emirates.

Request your goodself office to do the needful for his hassle free trip.

Regards,

Swapna S
Consulate General of United Arab Emirates,
Kerala
+91 9972551195"

17. In one of the documents, there is mention of NOC to Mr.Fahaz Ashraf C/o M.A.Yoosuf Ali. The mention of the name of Mr.Fahaz Ashraf Mugliam Veettil is in the communication dated 16.06.2020. This is a letter of no objection given by the Consulate General to the Managing Director, Cochin International Airport, for 2nd petitioner's travel to UAE. It is submitted that this was issued in the wake of the air travel restriction imposed by the UAE Government.

18. The averments in the bail application submitted by Smt.Swapna Prabha Suresh is that the Consulate General, UAE received a mail from the office of the Assistant Commissioner on 01.07.2020 requesting his presence at the cargo complex at



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Thiruvananthapuram airport for verification of the diplomatic cargo at 11.00 a.m on 03.07.2020. Accordingly, the Consulate General went to the cargo complex and identified the cargo, and thereafter directed accused No.3 to prepare a mail seeking re-export of the cargo. This communication dated 03.07.2020 at 1.45 p.m is the one extracted above (Anx.4 in the bail application). The communication containing the name of petitioner No.2 in Crl.M.C No.1892/2021 is dated 16.06.2020.

19. The party respondent in the complaint filed before the learned Magistrate alleged that Smt.Swapna Prabha Suresh had produced along with her bail application documents showing that the petitioners requested the customs officials to return the contraband gold seized at Thiruvananthapuram Airport on 30.06.2020.

20. The learned Additional Chief Judicial Magistrate mechanically passed the impugned order on the erroneous belief that such communication was there in the bail application



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submitted by Smt.Swapna Prabha Suresh. The prosecution consequent to the impugned order, if continued, would be an instrument of harassment and abuse of the process of the Court.

21. Therefore, the impugned order passed by the Additional Chief Judicial Magistrate (EO), Ernakulam, directing investigation into the veracity of the statement made by Smt.Swapna Prabha Suresh (Accused No.3 in O.R No.7/2020 of Customs Preventive Commissionerate, Kochi) stands quashed.

The Criminal M.Cs are allowed as above.

Sd/-
K.BABU,
JUDGE

KAS



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APPENDIX OF CRL.MC 1852/2021

PETITIONER ANNEXURES

- ANNEXURE A** TRUE COPY OF THE BA NO.4186/20 OF
HON'BLE HIGH COURT OF KERALA WITHOUT
ANNEXURES.
- ANNEXURE B** TRUE COPY OF THE ORDER IN BA NO.4186/20
OF HON'BLE HIGH COURT OF KERALA DATED
14.07.2020.
- ANNEXURE C** CERTIFIED COPY OF THE ORDER IN CMP.
NO.2228/20 BEFORE THE ACJM(EO)
ERNAKULAM.

RESPONDENT ANNEXURES

- ANNEXURE R1** A PORTION OF THE WHATSAPP CHAT BETWEEN
MR. SIVASANKAR IAS AND SWAPNA SURESH
WHICH SHE WAS SIGNED AND ATTESTED WHEN
SHE WAS AT SUB JAIL THIRUVANANTHAPURAM
DATED 30/11/2020



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APPENDIX OF CRL.MC 1892/2021

PETITIONER ANNEXURES

- ANNEXURE-A** TRUE COPY OF ORDER DATED 19.03.2021
PASSED BY THE ADDITIONAL CHIEF JUDICIAL
MAGISTRATE (ECONOMIC OFFENCES)
ERNAKULAM IN CMP NO.2228 OF 2020 IN
O.R.NO. 7/2020 OF CUSTOMS PREVENTIVE
COMMISSIONERATE, COCHIN.
- ANNEXURE-B** TRUE COPY OF B.A.NO. 4186 OF 2020 FILED
BY SMT. SWAPNA PRABHA SURESH FILED
BEFORE THIS COURT.
- ANNEXURE-C** TRUE COPY OF COMMUNICATION SENT BY THE
CONSULATE GENERAL OF THE UNITED ARAB
EMIRATES, KERALA, TRIVANDRUM TO THE
MANAGING DIRECTOR, COCHIN INTERNATIONAL
AIRPORT DATED 16.06.2020.
- ANNEXURE -C1** READABLE COPY OF ANNEXURE-C.
- ANNEXURE-D** TRUE COPY OF THE ANNEXURE-A4 LETTER
FORWARDING THROUGH EMAIL DATED
16.06.2020 PRODUCED ALONG WITH
ANNEXURE-B BAIL APPLICATION AND TYPED
COPY.
- ANNEXURE-E** TRUE COPY OF ANNEXURE-A4 LETTER
FORWARDING THROUGH EMAIL DATED
16.06.2020 PRODUCED ALONG WITH
ANNEXURE-B BAIL APPLICATION AND TYPED
COPY.
- ANNEXURE-F** TRUE COPY OF SUIT AS OS NO. 274 OF 2020
FILED BY THE PETITIONERS BEFORE THE SUB
COURT, ERNAKULAM ON 17.12.2020.