



2025:KER:20737

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 7TH DAY OF MARCH 2025 / 16TH PHALGUNA, 1946

CRL.MC NO.2535 OF 2024

CRIME NO.14/2022/TSR OF 2022 OF VACB, THRISSUR

ORDER DATED 08.11.2022 IN CRMP NO.97 OF 2021 OF ENQUIRY
COMMISSIONER& SPECIAL JUDGE,THRISSUR

PETITIONERS/ACCUSED NO.1 & 2:

- 1 S.G.SHARMA
AGED 58 YEARS
FORMER DEPUTY DIRECTOR,
KERALA LOTTERY DEPARTMENT,
SREEVALABHAM, RIVER VIEW GARDENS,
KODUMBA, PALAKKAD,
PIN - 678551
- 2 C.R JOSEPH
AGED 54 YEARS
S/O.RAPPAI,
ADLO PATTAMBI LOTTERY SUB OFFICE,
CHALAKKAL, ANTHIKAD,
THRISSUR,
PIN - 680641

BY ADVS.
RAJIT
AJAIY BASKAR

RESPONDENTS/STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
PIN - 682031
- *2 BENNY K.T
KUNALIL HOUSE, KUMARANELLUR,
THALAPPILLY TALUK, WADAKKANCHERY,



2025:KER:20737

2

Crl.M.C.No.2535 of 2024

THRISSUR DISTRICT,
KERALA - 680582

* IS IMPEADED AS ADDITIONAL RESPONDENT NO.2 AS
PER ORDER DATED 03/12/2024 IN CRL.M.A.2/2024 IN
CRL.M.C.2535/2024

SMT REKHA S - SR. PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 07.03.2025, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:



2025:KER:20737

3

Crl.M.C.No.2535 of 2024

P.G. AJITHKUMAR, J.

Crl.M.C.No.2535 of 2024

Dated this the 7th day of March 2025

ORDER

A complaint was submitted alleging that petitioners Nos. 1 and 2 and another person committed offences punishable under Sections 13(1)(a) and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Sections 406, 407 and 120B of the Indian Penal Code, 1860. The Enquiry Commissioner and Special Judge, Thrissur forwarded the complaint to the Vigilance and Anti-Corruption Bureau, Thrissur for conducting an enquiry. In obedience to that direction an enquiry was conducted and a report submitted before the Special Court. Annexure C is a copy of the said report. The conclusion in the report was that there was no material to register a crime against the petitioners or the 3rd accused arraigned in the complaint. The learned Special Judge after considering that report ordered as per Annexure D dated 08.11.2022 that the materials collected in the preliminary



enquiry revealed commission of offences alleged in the complaint. Accordingly, the Deputy Superintendent of Police, VACB, Thrissur was directed to register a crime and conduct an investigation. The said order is under challenge in this petition filed under Section 482 of the Code of Criminal Procedure, 1973.

2. Heard the learned counsel for the petitioner and the learned Senior Public Prosecutor.

3. Allegations in the complaint were that 6000 lottery tickets issued to the 3rd accused on 12.08.2019 from the Lottery Sub Office, Guruvayur were taken back by accused Nos.1 and 2. They did so in furtherance of a criminal conspiracy hatched among them. The Government sustained a loss of Rs.1,80,000/- in doing so. When there was a prohibition in Rule 7(2) of the Kerala Paper Lotteries (Regulation) Rules, 2005 the act of petitioners 1 and 2 taking back the said lotteries was with dishonest intention of obtaining pecuniary advantage and thus their acts constituted the aforementioned offences.



4. Going by the allegations in the complaint and the findings in the preliminary enquiry, the fact that 6000 lottery tickets out of the 44100 lottery tickets purchased by the 3rd accused were left in the Lottery Sub Office, Guruvayur by his brother is beyond dispute. It is also seen that on the same day that fact came to the notice of the 2nd petitioner and steps were taken after intimating that fact to the 1st petitioner for taking back those lotteries. When Rule 7(2) of the Kerala Paper Lotteries (Regulation) Rules, 2005 prohibits taking return of any lottery issued to agents, petitioners 1 and 2 could not and should not have taken steps for receiving 6000 lotteries back. In that view of the matter there was gross violation of rules and regulations on the part of petitioner Nos.1 and 2.

5. In Annexure C report, it is stated that on account of the aforesaid violation, departmental action was initiated against the petitioners and also the 3rd accused. Besides, realisation of the entire loss of Rs.1,80,000/- from them, disciplinary proceedings were initiated against petitioners 1 and 2 and their increments were barred for a period of one



year without cumulative effect. The learned Special Judge after considering the report observed as follows:

"5. As per the rules of lottery department sold tickets shall not be taken back. It was taken back by A1 and A2 for the benefits of A3. This is revealed in the report itself. Being a public servant and lottery officers, they should not have committed the same. Their action under the guise of public servant is against the obligation, which should not have been done by them as public servant. They used and disposed lottery tickets against the terms of their obligation by which the trust of officers of the lottery should be discharged. In fact, they have a dominion over the lottery tickets and properties of lottery department. Therefore, their illegal activity would attribute Section 406 and 407 of I.P.C.

6. The aforesaid activity of the accused would be sufficient to prove that it was done with some pecuniary interest and they abused their official position. Therefore, they committed the offence u/s.13(1) (d) r/w 13(2) of the Prevention of Corruption Act. Therefore, they are liable to be prosecuted for offence u/s.13(1)(d) r/w 13(2) of the Prevention of Corruption Act and Section 120B of I.P.C."

6. As stated, the circumstances in which 6000 numbers of lottery tickets were happened to be retained in the Lottery Sub Office, Guruvayur was accidental. The 2nd petitioner, who issued the lotteries came to know that fact



when those lotteries were left abandoned. Immediately, the fact was conveyed to the 1st petitioner. The 3rd accused was also made known. From the facts and circumstances narrated in Annexure C, it is quite evident that the efforts for getting back the said lotteries were made with bonafides. Of course, when Rule 7(2) of the Kerala Paper Lotteries (Regulation) Rules prohibits taking back lottery tickets once sold, the petitioners should not have taken such steps. But the question is whether by doing so, ingredients of the offence under Section 13(1)(a) or 13(1)(d) of the PC Act and of criminal misappropriation are attracted.

7. In **Surendranath C. v. State of Kerala [2024(1) KLT 728]**, this Court held that dishonest intention is a sine qua non to attract an offence under Section 13(1)(d) of the PC Act. Acts of the accused which violate the rules and departmental norms would not amount to criminal misconduct unless there was dishonest intention on his part. The Apex Court in **C.K Jaffer Sharief v. State (through CBI) [(2013) 1 SCC 205]** took the view that if in the process the rules or norms applicable were violated or the decision taken



shows an extravagant display of redundancy, that by itself would not indicate that it was actuated by a dishonest intention. In order to attract the offence, corrupt or illegal means and abuse of position as a public servant must be proved.

8. It is quite clear from the materials already collected by the VACB that there was no purposeful effort from the part of the petitioners for retaining the lottery tickets and taking back with a view to cause loss to the State. Therefore, it is not possible to attribute dishonest intention. Of course, pecuniary loss was occasioned by the Government. It can be said that the 3rd accused, at least, obtained pecuniary advantage, but that alone is not enough to constitute the offence. Obtainment of pecuniary advantage must have been as a consequence of the misconduct of the public servant with dishonest intention. No such dishonest intention can be gathered from the facts and circumstances available on record, as though, violations of rules and norms by the petitioners 1 and 2 are established.



2025:KER:20737

Crl.M.C.No.2535 of 2024

9. In view of the law laid down in the aforesaid decisions, such violations of rules or norms without there being a misconduct by the public servant with dishonest intention of obtaining pecuniary advantage for himself or to any other person, no prosecution is possible. Therefore, an investigation as directed by the Special Court is unnecessary in this case. Annexure D order is accordingly set aside.

The Crl.M.C. is allowed.

Sd/-
P.G. AJITHKUMAR
JUDGE

PV



2025:KER:20737

10

Crl.M.C.No.2535 of 2024

APPENDIX OF CRL.MC 2535/2024

PETITIONER'S ANNEXURES

Annexure A	A TRUE COPY OF THE SUSPENSION ORDER GO (RT)NO.610/2019/TAXES, TVPM DATED 30.08.2019 OF THE PETITIONER
Annexure B	A TRUE COPY OF THE GO (RT)NO.804/2019/TAXES, TVPM DATED 31.10.2019
Annexure C	A TRUE COPY OF THE ENQUIRY REPORT DATED 06.04.2022 SUBMITTED BY THE DEPUTY SUPERINTENDENT OF POLICE (V.A.C.B) BEFORE THE LEARNED ENQUIRY COMMISSIONER AND SPECIAL JUDGE THRISSUR
Annexure D	A TRUE COPY OF THE ORDER DATED 08.11.2022 PASSED BY THE LEARNED ENQUIRY COMMISSIONER AND SPECIAL JUDGE THRISSUR
Annexure E	A TRUE COPY OF THE FIR IN CRIME NO. 14/2022/TSR OF VIGILANCE AND ANTI CORRUPTION BUREAU, THRISSUR DATED 08.12.2022
Annexure F	A TRUE COPY OF THE LETTER DATED 13.08.2019 SUBMITTED BY T.B DAYANANDHAN BEFORE THE DISTRICT ASSISTANT OFFICER
Annexure G	A TRUE COPY OF THE NEWSPAPER PAGE OF MANORAMA DAILY DATED 14.08.2019
Annexure H	A TRUE COPY OF THE GOVERNMENT ORDER DATED 21.05.2020 ISSUED BY THE GOVERNMENT OF KERALA