

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 12TH DAY OF FEBRUARY 2025 / 23RD MAGHA, 1946

CRL.MC NO.471 OF 2023

C.C.NO.10 OF 2022 ON THE FILE OF THE ENQUIRY COMMISSIONER &
SPECIAL JUDGE, MUVATTUPUZHA

PETITIONER/ACCUSED NO.1:

A.K.THANKAPPAN
AGED 71 YEARS
S/O.KUNJAYYAN, ALAMITTATHU HOUSE,
EAST KADUNGALLOOR, ALUVA., PIN - 683102

BY ADVS.
V.N.SUNIL KUMAR
AKHIL P.C.

RESPONDENT/RESPONDENT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM., PIN - 682031

SRI.REKHA S, SR. PP
SRI A RAJESH, SPL PP(VIG)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
12.02.2025, ALONG WITH Cr1.MC.2281/2023, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:



2025:KER:12063

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Crl.M.C Nos.471 of 2023 and 2281 of 2023

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 12TH DAY OF FEBRUARY 2025 / 23RD MAGHA, 1946

CRL.MC NO.2281 OF 2023

CRIME NO.03/2008 OF VACB, ERNAKULAM,

TO QUASH ALL FURTHER PROCEEDINGS PENDING AGAINST THE PETITIONER IN C.C NO.10 OF 2022 ON THE FILES OF COURT OF COURT OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, MUVATTUPUZHA (ERSTWHILE THRISSUR)

PETITIONER/2ND ACCUSED:

BHADRANANDAJI
AGED 37 YEARS
500B, KUNNUMPURAM LANE BAPPUJI NAGAR, PONGUMOODU,
SREEKARYAM P.O, THIRUVANANTHAPURAM, PIN - 695011

BY ADVS.
S.JAYANT
PRASANTH N.L.
JEREES J.

RESPONDENT/STATE & COMPLAINANT:

- 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERANAKULAM., PIN - 682031
- 2 DEPUTY SUPERINTENDENT OF POLICE, VIGILANCE AND
ANTI CORRUPTION BUREAU
KALOOR, KOCHI., PIN - 682017

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12.02.2025, ALONG WITH Crl.MC.471/2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



2025:KER:12063

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Crl.M.C Nos.471 of 2023 and 2281 of 2023

P.G. AJITHKUMAR, J.

Crl.M.C No.471 of 2023 and 2281 of 2023

Dated this the 12th day of February, 2025

ORDER

Accused Nos.1 and 2 in C.C.No.10 of 2022 pending before the Court of Enquiry Commissioner and Special Judge, Muvattupuzha filed, respectively, Crl.M.C.No.471 of 2023 and Crl.M.C.No.2281 of 2023. C.C.No.10 of 2022 was instituted on the final report filed in Crime No.VC/3/2018/CRE of Vigilance and Anti-corruption Bureau, Central Range, Ernakulam. It is alleged that the petitioners committed the offences punishable under Section 13(1)(d)(i) and (ii) read with 13(2) of the Prevention of Corruption Act, 1988 (PC Act) and offence under Rule 51(A) of the Arms Rules, 1962 read with Section 30 of the Arms Act, 1959. The petitioners contend that the allegations in the final report and the materials produced therewith would not make out commission of the said offences and therefore the final report is liable to be quashed, for which they have filed these petitions invoking the provisions of Section 482 of the Code of Criminal Procedure, 1973 (Code).



2. Heard the learned counsel for the petitioners in the respective petitions and the learned Senior Public Prosecutor.

3. Facts constituting the alleged offences narrated in the final report are extracted below:

"A1 while holding the charge of Additional District Magistrate, Ernakulam during the period between 11.6.07 to 31.3.08, A2 had submitted an Arms application to the District Collector, Ernakulam for obtaining Arms License for a pistol suppressing the fact that A2 had applied for an Arms License before the District Collector vide Application No M3-57052/06 dated 27.12.06 and is pending at the District Collectorate under A1 and A1 had submitted the 2nd Arms application filed by A2 during 2008 to the District Collector on 29.3.08 recommending the Arms License without obtaining the report of the Station House Officer of the concerned Police Station, Forest and Revenue Departments, within the stipulated time and not obtaining two passport size photographs along with the application and facilitated to grant of license by W-28 and issued the license to A2 by A1 through his proceedings, abusing his official position as a public servant without any public interest, for obtaining pecuniary advantage to A2 and to himself (A1) and hence A1 and A2 had committed offences u/s 13(2) r/w 13(1)(d)(i) and (ii) of Prevention of Corruption Act 1988 and A2 had committed offences under Rule 51 (A) of the Arms Rules 1962 r/w Sec. 30 of Arms Act 1959."



4. The learned counsel for the 1st accused would submit that even accepting the allegations in the final report as true, no offence described in Section 13(1)(d)(i) or (ii) is made out. Unless dishonest intention to enure some valuable thing or pecuniary advantage to the public servant or on his behest to any other person is established, no such offence would be attracted. In that regard, the learned counsel places reliance on the decision of this Court in **Surendranath C. v. State of Kerala [2024 (2) KHC 134]**.

5. It is further submitted by the learned counsel for the 1st accused that the acts forming the basis of the accusation are described in paragraph No.4 of the statement filed by the investigating officer and even if those acts were committed by the 1st accused that would not constitute an offence for, the decision to grant arm license to the 2nd accused was taken by the Collector. For easy understanding, paragraph No.4 in the statement submitted in Crl.M.C.No.471 of 2023 by the investigating officer (Deputy Superintendent of Police, VACB), Central Range, Ernakulam is extracted below:



"4. It is established in the investigation that A2 had applied for Arms License at Ernakulam District Collectorate on 27.12.06 in the address Sri. Heimaval Maheswara Bhadranandaji, Ravi Vihar, BTS Mamangalam Cross Road, Edappally, which was processed as file No. M3-57052/06 at M3 Section under A1. The application was processed and sent to the Police, Revenue and Forest Departments for getting the enquiry report. Police conducted enquiry and reported on 18.9.07 by not recommending the license as there was no threat against the life of the applicant. As Revenue and Forest departments have not submitted their reports in time, the said file was kept pending at District Collectorate. After a lapse of one year, by suppressing the above fact, A2 again gave an application on 18.2.08 in the address Sri. Heimaval Maheswara Bhadranandaji, Karma Mandir, Chaithram, Chittoor Road, Ernakulam and received at the Collectorate vide file No.M3-10545/08 processed at the M3 Section and sent to concerned officials of Revenue, Police and Forest for enquiry report. Though the normal period for obtaining enquiry report is 3 months as per Arms Act, without waiting for enquiry reports from Police, Revenue and Forest, the petitioner on the capacity of Addl. District Magistrate, put up a favourable note as "അപേക്ഷകൻ ശ്രീ.ഹിമവേൽ മഹേശ്വര ഭദ്രാനന്ദജിയെ എതിർന്നേരിട്ട് അറിയാവുന്നയാളും സൽസ്വഭാവിയും ആണ്. മറ്റ് അന്വേഷണ റിപ്പോർട്ടുകൾ ഇല്ലാതെ തന്നെ അപേക്ഷകൻ നൽകാവുന്നതാണ്" and submitted the file to the District Collector in person on 29.3.08 and got the approval of the then District Collector Sri. A.P.M. Muhammed Hanish IAS.



Then the petitioner issued proceedings No. DDis/10545/2008/M3 dtd, 31.03.2008 effecting the issuance of license vide No. 1351/KNR for the possession of one 0.32 bore pistol No. 101290 on producing the chalan and photos, Since A1 was the supervisory head of M3 Section, who is authorized to get the enquiry report and to put up the file with proper remarks, the District Collector did not suspect the note put up by A1 and on seeing the recommendation, he wrote 'granted' in the file and initialed. As per the declaration in the application form, two photos and chalan are to be enclosed along with the application, but in this case the chalan and photos were produced after granting the license and the Licence Book vide No.1351/KNR was issued to A2. Later the arms application of A2 was got enquired at Central Police Station and processed at the office of the Commissioner of Police, Kochi City, The then Asst. Commissioner of Police recommended to reject the application since the applicant A2 was caught by police for using beacon light on his car and his financial sources are suspicious. In this file the then Commissioner of Police, Kochi City has written a note on 16.5.08 that "give a strong negative recommendation". Another witness, the SI of Police, Central Police Station, also reported to the Commissioner of Police, that A2 holder of Arms License No.1351/KNR has involved in Cr.919/08 u/s 448, 506(a) and 294 (b) of IPC of Central Police Station, and hence his Arms License is to be cancelled. Accordingly the District Collector issued proceedings on 19.05.2008 to cancel the arms license No .1351/KNR of A2 Similarly the concerned



Revenue officials such as Village officer of Elamkulam Village and Tahsildar of Kanayannoor Taluk deposed by producing their records that no recommendations to issue arms licenses to A2 were given from their offices to the District Collector. Also the concerned officials of Forest department were stated that no enquiry report in to the file M3-10545/08 dated 18.2.08 of the Dist. Collector has been sent to that office. From the above, it is clear that there is no enquiry report into file M3- 10545/08 dated 18.2.08 have been received at Dist. Collectorate from Police, Revenue and Forest Department. But as per records, A1 had put up a note before the Dist. Collector recommending the arms license to A2 and vide the proceedings No. D. Dis 10545/08-M3 dated 31.3.08 of A1, he had issued Arms License No.1351/KNR to A2 with validity in Kerala State wherein the application, the validity column has not been filled by A2. From these it is clear that A1 has abused his official position for the pecuniary advantage to A2."

6. The learned counsel for the 2nd accused also raised similar contentions. It is further submitted that the District Collector on receipt of the application from the 2nd accused for an arm license, called for a report from the Sub Inspector of Police as insisted in Section 13(2) of the Arms Act. A report in that regard was submitted by the Sub Inspector. When license was issued after considering such a report, which alone was a statutory requirement for issuance of an arm license,



recommendation of the 1st accused was superfluous and the same cannot be a basis for a prosecution for the offences alleged against the 2nd accused. The learned counsel for the 2nd accused also places reliance on the principle laid down in **Surendranath C.** (supra).

7. Section 13 of the Arms Act reads as follows:

"13. Grant of licences.- (1) An application for the grant of a licence under Chapter II shall be made to the licensing authority and shall be in such form, contain such particulars and be accompanied by such fee, if any, as may be prescribed.

(2) On receipt of an application, the licensing authority shall call for the report of the officer in charge of the nearest police station on that application, and such officer shall send his report within the prescribed time.

(2-A) The licensing authority, after such inquiry, if any, as it may, consider necessary, and after considering the report received under sub-section (2), shall, subject to the other provisions of this Chapter, by order in writing either grant the licence or refuse to grant the same:

Provided that where the officer in charge of the nearest police station does not send his report on the application within the prescribed time, the licensing authority may, if it deems fit, make such order, after the expiry of the prescribed time, without further waiting for that report.

(3) The licensing authority shall grant,-



(a) a licence under section 3 where the licence is required;

i. by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bona fide crop protection:

Provided that where having regard to the circumstances of any case, the licensing authority is satisfied that a muzzle loading gun will not be sufficient for crop protection, the licensing authority may grant a licence in respect of any other smooth bore gun as aforesaid for such protection, or

(ii) in respect of a firearm to be used for target practice by a member of a rifle club or rifle association licensed or recognised by the Central Government;

(b) a licence under section 3 in any other case or a licence under section 4, section 5, section 6, section 10 or section 12, if the licensing authority is satisfied that the person by whom the licence is required has a good reason for obtaining the same."

8. Going by Rule 2(5) of the Arms Rules, the District Magistrate is the authority empowered to grant license in regard to the arms mentioned in Item No.3 of Schedule II, which includes a firearm. The licensing authority, therefore, is the District Magistrate (District Collector).

9. As a matter of fact, the license in question was issued by the District Collector. From the assertions in paragraph No.4



of the statement of the investigating officer, it is seen that the 1st accused recommended issuance of a license to the 2nd accused. The 1st accused jotted on the file that he personally knew the 2nd accused, who was of good conduct and even without obtaining other reports, a license could be granted. If the 1st accused is the person who issued the license and the aforementioned considerations actuated him to issue a license, certainly the same would have amounted to abuse of his position as a public servant, which would result in obtaining by the 2nd accused a valuable thing.

10. In the above regard, the learned counsel for the 2nd accused raised a contention that a license would not amount to a valuable thing or pecuniary advantage, and therefore, the same would not attract a criminal offence as defined in Section 13(1)(d) of the PC Act. I am unable to accept the said contention. Getting a firearm license certainly is a valuable thing, although not a pecuniary advantage. Value of a thing cannot be counted in terms of its monetary value alone. Something is valuable or not depends upon its utility to the prospective user concerned. Insofar as a person apprehending threat to his life



possessing a firearm is quite valuable since it provides protection to his life. Section 3 of the Arms Act prohibits possession of a firearm without a license. Therefore, a firearm license which enabled the 2nd accused to possess a firearm is certainly a valuable thing for him. Hence issuance of such a firearm license to the 2nd accused comes within the purview of 'valuable thing' mentioned in Section 13(1)(d) of the PC Act.

11. Profile of this case as presented by the prosecution is in a different perspective. The 1st accused was the Additional District Magistrate in the office of the District Magistrate, who issued license in favour of the 2nd accused. An Additional District Magistrate does not have any empowerment in the matter of grant of a firearm license where the District Magistrate is the licensing authority. Section 13(2) of the Arms Act insists on getting a report from the Station House Officer concerned before issuance of a license. Of course, reports of the forest and revenue officials may also be insisted. Nonetheless, the report in question of the 1st accused, which according to the prosecution resulted in granting license in favour of the 2nd accused, was only recommendatory in nature. The District Magistrate (District



Collector) being the statutory authority to decide whether or not to grant a license, he was not bound to act upon the recommendation of the 1st accused. Therefore, it cannot be said that as a result of the recommendation by the 1st accused alone, the license was granted. In that view of the matter, it is incorrect to say that misuse of the official position by the 1st accused resulted in the 2nd accused obtaining the license.

12. A learned Single Judge of this Court in **Surendranath C.** (supra) considered as to the essential ingredients of the offence of Section 13(1)(d). Paragraph Nos.21 and 22 of the decision are extracted below.

“21. To attract the term 'abuse' as contained in Section 13(1)(d) of the PC Act, the prosecution has to establish that the official concerned used his position for something it is not intended. The sum and substance of the discussion is that dishonest intention is the gist of the offence under Section 13(1)(d) of the PC Act.

22. The prosecution allegations, at the most, point to certain irregularities committed in the tender process. The prosecution also alleges conspiracy among the petitioners and the other accused.”

13. It can certainly be said that the 1st accused by making the recommendation in question, committed a grave dereliction



of duty. Such a recommendation is in gross violation of his duty as a public servant. He should not have made such a recommendation which was inferably actuated by his personal affinity to the 2nd accused. A public servant is expected to take decisions by virtue of his office dispassionately and unaffected by any personal predictions. In that prospective, the recommendation made by the 1st accused is tainted. But when that amounted only to a violation of the rules and official procedure, but does not amount to an act actuated by dishonest intention inasmuch as his decision by its own could not result in issuance of the license, an offence under Section 13(1)(d) of the PC Act cannot be charged against him. Similar is in the case of the offence under Section 30 of the Arms Act.

14. Accordingly, I hold that the charge against the petitioners in the final report resulting in institution of C.C.No.10 of 2022 is groundless and no successive prosecution is possible on the basis of that final report. Hence, further proceedings in C.C.No.10 of 2022 will only be a wasteful exercise and abuse of the process of the court. In the circumstances, said final report is liable to be quashed.



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The Crl.M.Cs are allowed. The final report in C.C.No.10 of 2022 on the files of the Court of Enquiry Commissioner and Special Judge, Muvattupuzha and the further proceedings thereon are quashed.

Sd/-
P.G. AJITHKUMAR
JUDGE

PV



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Crl.M.C Nos.471 of 2023 and 2281 of 2023

APPENDIX OF CRL.MC 2281/2023

PETITIONER ANNEXURES

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| Annexure A1 | A TRUE COPY OF THE FINAL REPORT IN CC NO 2/2010 BEFORE THE ENQUIRY COMMISSIONER &SPECIAL JUDGE, THRISSUR |
| Annexure A2 | A TRUE COPY OF LETTER ISSUED BY DISTRICT COLLECTOR, ERNAKULAM TO THE COMMISSIONER OF POLICE KOCHI DATED 18-02-2008 AS M3/10545/08 |
| Annexure A3 | A TRUE COPY OF UNDATED REPORT SUBMITTED BY SUB INSPECTOR OF CENTRAL POLICE STATION TO THE COMMISSIONER OF POLICE, KOCHI CITY |
| Annexure A4 | A TRUE COPY OF THE STATEMENT GIVEN BY SUB INSPECTOR OF POLICE, CENTRAL POLICE STATION BEFORE DEPUTY SUPERINTENDED OF VSCB, ERNAKULAM DATED 10-09-2008 |
| Annexure A5 | A TRUE COPY OF PROCEEDINGS OF DISTRICT MAGISTRATE, ERNAKULAM DATED 19-05-2008 AS M3.29332/08 |
| Annexure A6 | A TRUE COPY OF THE JUDGMENT IN SC NO 169/2014 OF THE ADDITIONAL DISTRICT AND SESSIONS COURT, NORTH PARAVUR |



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Crl.M.C Nos.471 of 2023 and 2281 of 2023

APPENDIX OF CRL.MC 471/2023

PETITIONER ANNEXURES

Annexure1

**CERTIFIED COPY OF FINAL REPORT IN CC
10/2022 ON THE FILE OF THE ENQUIRY
COMMISSIONER AND SPECIAL JUDGE,
MUVATTUPUZHA.**