



2024:KER:55460

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946

WP(C) NO. 25863 OF 2020

PETITIONER:

KADAKAMPALLY MANOJ
AGED 45 YEARS
S/O.KUTTAPPAN, KADAKAMPALLY HOUSE, VADAKKEVILA
POST, KOLLAM, PIN-691 010.
BY ADV D.ANIL KUMAR

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 THE SECRETARY, INDUSTRIES DEPARTMENT (CASHEW),
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 3 CENTRAL BUREAU OF INVESTIGATION,
REPRESENTED BY SUPERINTENDENT OF POLICE, ANTI-
CORRUPTION BUREAU, KATHRUKADAVU, KALOOR P.O.,
KOCHI-682 017.
- 4 K.A.RATHEESH,
S/O.AYYAPPAN PILLAI, RAVI MANGALAM, KALLELIBHAGAM
P.O., KARUNAGAPPALLY, KOLLAM-690 519.
- 5 CHANDRASEKHARAN,
S/O.RAGHAVAN PILLAI, AYIKKUMATH HOUSE, SOORANAD
NORTH, SOORANADU P.O., KOLLAM-690 522.
BY ADVS.
SRI.C.UNNIKRISHNAN (KOLLAM)
SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA
SRI.MANJUNATH MENON
SRI.AJAY BEN JOSE



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-: 2 :-

SHRI.HARIKRISHNAN S.
SRI.R.GITESH
SRI.SREELAL WARRIAR, SC, CBI
SRI.A.RAJESH, SPL.PP (VIGILANCE)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 18.07.2024, ALONG WITH Cr1.MC.497/2022,
1634/2022, THE COURT ON 24.07.2024 DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946

CRL.MC NO. 497 OF 2022

AGAINST CC NO.45 OF 2021 OF CHIEF JUDICIAL
MAGISTRATE, THIRUVANANTHAPURAM

PETITIONER/ACCUSED NO.1:

K.A.RATHEESH,
AGED 58 YEARS
S/O.LATE SRI.AYAPPAN PILLAI, RESIDING AT C.A.K.
PALACE/147, MANALIL NAGAR, KOLLAM WEST VILLAGE,
KAVANAD P.O., KOLLAM.

BY ADVS.
C.UNNIKRISHNAN (KOLLAM)
ANANDA PADMANABHAN
UTHARA A.S
MAHESH CHANDRAN
SARITHA NANDANAN
VIJAYKRISHNAN S. MENON

RESPONDENT:

CENTRAL BUREAU OF INVESTIGATION,
ACB, COCHIN, REPRESENTED BY THE
SUPERINTENDENT OF POLICE-682 018.
BY ADV SREELAL WARRIAR, SC, CBI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
18.07.2024, ALONG WITH WP(C).25863/2020 AND CONNECTED
CASES, THE COURT ON 24.07.2024 DELIVERED THE FOLLOWING:



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-: 4 :-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946

CRL.MC NO. 1634 OF 2022

CRIME NO.RC 08(A)/2016/CBI/ACB/COCHIN
AGAINST CC NO.45 OF 2021 OF CHIEF JUDICIAL
MAGISTRATE, THIRUVANANTHAPURAM

PETITIONER/ACCUSED NO.3:

R. CHANDRASEKHARAN,
AGED 67 YEARS
S/O RAGHAVAN PILLAI, AYIKKUMATH HOUSE, SOORANAD
NORTH, SOORANAD P.O, KOLLAM, PIN - 690522
BY ADVS.P.MARTIN JOSE
P.PRIJITH
THOMAS P.KURUVILLA
R.GITESH
AJAY BEN JOSE
MANJUNATH MENON
ANNA LINDA V.J
HARIKRISHNAN S.
S.SREEKUMAR (SR.)

RESPONDENTS:

- 1 CENTRAL BUREAU OF INVESTIGATION,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682031
- 2 THE INSPECTOR OF POLICE
INVESTIGATING OFFICER,
CBI /ACB- COCHIN, PIN - 682017
SRI.A.RAJESH, SPL.PP (VIGILANCE)
SRI.SREELAL N.WARRIAR, SC, CBI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
18.07.2024, ALONG WITH WP(C).25863/2020 AND CONNECTED
CASES, THE COURT ON 24.07.2024 DELIVERED THE FOLLOWING:



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“C.R.”

J U D G M E N T

[WP(C) No.25863/2020, Cr1.M.C.Nos.497/2022
& 1634/2022]

The above criminal miscellaneous cases and the writ petition pertain to the final report dated 30/12/2020 submitted by the CBI, Cochin Branch, Kerala in RC 08(A)/2016/CBI/ACB/Cochin before the Special Judge, CBI Court, Thiruvananthapuram.

2. The Kerala State Cashew Development Corporation (for short, “KSCDC”) is a government owned company engaged in the business of cashew. It was formed in 1969 for the purpose of promoting the business of cashew and for providing employment to cashew workers in Kerala. As per the Articles of Association of the Company, its business and management shall be carried out by the Managing Director subject to the control and direction of the Board of Directors. The Chairman of the Company is entitled to preside over all the meetings of the Board of Directors. One Sri.K.A.Ratheesh was the former Managing Director of the Company from March 2005 to October 2015, one Sri.E.Kasim was the former Chairman of the Company from September 2006 to



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July 2011, and one Sri.R.Chandrasekharan was the former Chairman of the Company from February 2012 to October 2015. In the course of business, the company imports raw cashew nuts for the purpose of processing and sale. Alleging malpractices, mismanagement, corruption and misutilization of funds in the matter of procurement of raw cashew nuts by the company from India and outside resulting in huge loss to the company and consequentially to the exchequer, the petitioner in WP(C) No.25863/2020 approached this court by filing writ petition (WP(C) No. 16144/2014) praying for an investigation by the CBI. By judgment dated 23/9/2015, this court allowed the same and directed the CBI to conduct the investigation. Pursuant to the said direction issued by this Court, CBI registered an FIR on 27/7/2016 against three persons mentioned above (Sri.K.A.Ratheesh, Sri.E.Kasim & Sri.R.Chandrasekharan) and one Sri. Jaimon Joseph, Proprietor, M/s.JMJ Traders, Kottayam arraying them as accused Nos.1 to 4 respectively for the offences punishable under Sections 120B, 420 of the Indian Penal Code (for short, the IPC) and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act').



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3. The allegation in brief in the FIR was that the accused No.1 Sri.K.A.Ratheesh, former Managing Director of KSCDC, accused No.2, Sri.E.Kasim, former Chairman of KSCDC, and accused No.3, Sri.R.Chandrasekharan, former Chairman of KSCDC, during the period from 2006-2015, entered into criminal conspiracy with accused No.4 Sri. Jaimon Joseph, Proprietor of M/s. JMJ Traders, Kottayam and in furtherance of the said criminal conspiracy, accused Nos.1 to 3 dishonestly awarded tenders to M/s. JMJ Traders, Kottayam, for supplying raw cashew nuts with an intention to cheat KSCDC, in violation of the Rules and procedures adopted by the Government of Kerala, which resulted in wrongful pecuniary loss to KSCDC, estimated to be in several crores, and corresponding wrongful gain to private party and themselves.

4. The CBI, after conducting a detailed investigation, found that the accused Nos.1 to 4 mentioned above committed offences punishable under Section 120B r/w 420 of IPC and Section 13(2) r/w 13(1)(d) of the PC Act. Before filing the final report, accused No.2 died. Prior to the submission of the final report, CBI sought sanction before the sanctioning authority, the



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Secretary, Industries Department (Cashew), Secretariat, Thiruvananthapuram (2nd respondent in WP(c) 25863/2020) under Section 19 of the PC Act for prosecuting the accused Nos.1 and 3. As already stated, accused No.1 was the Managing Director in service of the company from March 2005 to October 2015 and accused No.3 was the Chairman of the company holding office from February 2012 to October 2015. However, the sanctioning authority declined sanction for prosecution of the accused Nos.1 and 3. Hence, the CBI filed the final report before the Special Judge, CBI Court, Thiruvananthapuram against accused Nos.1, 3 and 4 for the offences punishable under Sections 120B r/w 420 of IPC, with a prayer to transfer the case to the Chief Judicial Magistrate Court, Thiruvananthapuram (for short "CJM, Thiruvananthapuram") for taking cognizance, issuing process and conducting trial in accordance with law. Accordingly, the final report was transferred to the CJM Court, Thiruvananthapuram, which took cognizance, numbered the case as CC No.45/2021 and issued a process to the accused. Crl. M.C. No.497/2022 has been filed by the accused No.1, and Crl. M.C.No.1634/2022 has been filed by the accused No.3 to quash



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the final report and to drop all further proceedings in CC No.45/2021 on the file of the CJM Court, Thiruvananthapuram. WP(C) No.25863/2020 has been filed by the de facto complainant challenging the order refusing sanction under Section 19 of the PC Act.

5. I heard Sri.D. Anil Kumar, the learned counsel for the de facto complainant/petitioner in WP(C) No.25863/2020, Sri.G.Unnikrishnan, the learned counsel for the accused No.1/petitioner in Crl. M.C.No.497/2022, Sri.S.Sreekumar, the learned Senior Counsel instructed by Sri.Martin Jose, the learned counsel for the accused No.3/petitioner in Crl. M.C.No.1634/2022, Sri. Sreelal N. Warriar, the learned Standing Counsel for CBI and Sri. A. Rajesh, the learned Special Public Prosecutor.

6. Sri.D.Anil Kumar, the learned counsel for the de facto complainant, submitted that no sanction under Section 19 of the PC Act is necessary as accused Nos.1 and 3 were not holding public office, which was allegedly misused by them, at the time of taking cognizance of the offence. Alternatively, it was submitted that even if it is assumed that sanction is necessary, there are materials for granting sanction. Sri.G.Unnikrishnan, the learned



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counsel for the accused No.1 submitted that the learned Chief Judicial Magistrate committed illegality in taking cognizance of the offences pursuant to the final report under Sections 120B r/w 420 of IPC without prosecution sanction under Section 197 of Cr.P.C. The counsel further submitted that since the prosecution sanction applied by the CBI under Section 19 of the PC Act was rejected by the Government on a conscious consideration of the entire facts and circumstances of the case, prosecution for the offence under Section 120B r/w 420 of IPC without a prosecution sanction under Section 197 of Cr. P.C is unsustainable. Sri.S.Sreekumar, the learned Senior Counsel appearing for accused No.3, submitted that the allegations in the FIR together with the materials collected during the investigation, even if they are taken at their face value and accepted in their entirety, do not *prima facie* disclose any offence or make out any case against the accused No.3. The learned Senior Counsel further submitted that since the sanction for prosecution was refused by the Government under Section 19(2) of the PC Act, no prosecution can be lodged under Section 120B or 420 of IPC as well. Sri. Sreelal N. Warriar, the learned standing counsel for CBI,



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submitted that the sanctioning authority went wrong in declining sanction under Section 19 of the PC Act.

7. On consideration of the rival submissions, the following points arise for consideration:

- (1) Whether the sanction to prosecute accused Nos.1 and 3 is necessary in view of the amended provision of Section 19 of the PC Act?
- (2) Was the refusal to grant sanction under Section 19 of the PC Act to prosecute accused Nos.1 and 3 legal and proper?
- (3) Does the final report disclose any of the alleged offences against accused No.3?
- (4) Was the CJM, Thiruvananthapuram justified in taking cognizance of the offence under Section 120B r/w 420 of IPC against the accused Nos.1 and 3 without prosecution sanction under Section 197 of Cr. P.C?

Point No.1:

8. Section 19 of the PC Act deals with previous sanction for prosecution. By Act 16 of 2018, various provisions of the PC Act, including Section 19(1), were amended. Prior to the



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amendment, no sanction was required to prosecute a retired public officer under Section 19 of the Act. The Supreme Court interpreting the unamended Section 19 has held that no sanction for initiating prosecution is required if on the date of taking cognizance, the accused ceased to hold the public office [*L. Narayana Swamy v. State of Karnataka*, (2016) 9 SCC 598, *Habibulla Khan v. State of Orissa* (1995) 2 SCC 437, *Kalicharan Mahapatra v. State of Orissa* (1998) 6 SCC 411]. The amendment created a new obligation on the prosecution to obtain sanction to prosecute even retired public servants. In other words, while the pre-amended Section 19 applied only to employees in service, the post-amended Section 19 applies to employees in service as well as employees who were in service when the alleged offence was committed. However, the relevant date for sanction is the date of taking cognizance of the offence both before and after the amendment.

9. The amendment came into force on 26/7/2018. In this case, as per the prosecution version, the offence was committed prior to the amendment. The FIR was also registered prior to the amendment. However, the final report was filed on 30/12/2020,



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after the amendment. It is the contention of the de facto complainant that the amendment is prospective in nature, cannot affect the offence which was committed prior to the amendment and hence sanction is not required to prosecute accused Nos.1 and 3. *Per contra*, the contention of the accused Nos.1 and 3 is that obtaining sanction under Section 19 is procedural in nature and such procedural amendment to the existing Act should be given retrospective effect.

10. Substantive law refers to the body of rules that creates, defines and regulates rights and liabilities, while procedural law establishes a mechanism for determining those rights and liabilities and machinery for enforcing them. It is well settled that an amendment or new statute is generally prospective in nature unless the legislature specifically states that such amendment will apply retrospectively and if such amendment or statute is procedural in nature, the same will be applied retrospectively. However, the rule regarding the retrospective application of procedural laws is not absolute. A procedural statute should not be applied retrospectively where the result would be to create new disabilities or obligations or to



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impose new duties in respect of transactions already accomplished. To put it differently, if the amended procedural law affects the already accrued rights, obligations, liabilities, privileges, and protection of the parties, the same will not apply retrospectively. A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided, either expressly or by necessary implication. (*Hitendra Vishnu Thakur v. State of Maharashtra* (1994) 4 SCC 602).

11. The amendment to Section 19 (1) cast a new obligation upon the prosecution to obtain sanction to prosecute even the retired public servant. It also gives additional protection to retired public servants. A careful reading of Section 19(1) does not contain any express provision that they are retrospective in nature nor is it so discernible by implication. The Supreme Court while considering the effect of the newly introduced Section 17A of the PC Act by way of the Amendment Act 16 of 2018, which also created a new obligation upon the investigating agency to obtain approval to conduct the investigation, enquiry or inquiry, held that the said provision has only prospective operation and



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will not apply to an investigation which commenced before the said provision was enacted. [*State of Rajasthan v. Tejmal Choudhari* 2022 (2) KHC 49) and *State of Telangana v. Managipet @Mangipet Sarveshwar Reddy* (2019) 19 SCC 87]. This Court also took the same view in [*Ramesh K.R and Others v. Central Bureau of Investigation and Another*, 2020 (4) KLT 351]. That apart, the Amendment Act 16 of 2018 was specially made applicable w.e.f. 26/7/2018 by the Central Government. Hence, the intention of the legislature was also to make the amendments applicable prospectively from a particular date and not retrospectively or retroactively. For these reasons, I hold that the amendment to Section 19(1) of the PC Act by the Amendment Act 16 of 2018 cannot be given retrospective effect. It applies prospectively only. However, the crucial question is what is the material point of time for determining the prospectivity.

12. A plain reading of the provision makes it clear that the requirement of sanction under Section 19(1) of PC Act commences at the stage of cognizance of offence and not before. In other words, it is the date of taking cognizance of the offence and not the date of the commission of the offence which decides



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the applicability of the amended provisions of Section 19(1). The amended Section 19(1) does not distinguish between the commission of the offence prior to 26/7/2018 or post thereof. Thus, even if amended Section 19(1) is prospective in its operation, the material point of time for determining the prospectivity would be the time of taking cognizance of the offence. The legislative intention to amend Section 19(1) can only be to provide protection to even retired government employees who ceased to be public servants as on the date of taking cognizance. No doubt, penal statutes are to be construed strictly.

13. It is true the Supreme Court in *Tejmal Choudhari* (supra), while interpreting the scope and ambit of Section 17 A of the PC Act, held that the said provision would not apply to an investigation which had commenced before it was enacted. The scope of operation of Section 17A is, however, different from that of Section 19. The requirement of taking approval under Section 17A is at the time of commencing enquiry, inquiry or investigation, as the case may be, whereas the requirement of taking sanction under Section 19 is at the time of taking cognizance of the offence. Thus, the dictum laid down in *Tejmal*



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Choudhari (supra) will not apply to the question involved in this case.

14. For the aforesaid reasons, I hold that even though the amended provision of Section 19(1) of the PC Act is prospective in operation, if the cognizance is to be taken against a retired public servant after the amendment came into operation, i.e., on 26/7/2018, prior sanction is mandatory notwithstanding the fact that the offence was committed, crime was registered or even the final report was submitted prior to the amendment inasmuch as the material time for determining the prospective operation of the amended provision of Section 19(1) is the date of taking cognizance of the offence. However, the pending cases where cognizance was taken against public servants without sanction prior to the amendment would not be affected because of the requirement for sanction under the amended Section 19(1).

Point No.2:

15. Ext.P3 in WP(C) No.25863/2020 is the order declining prosecution sanction. The learned counsel for the de facto complainant submitted that there are sufficient materials on record for granting sanction and the sanctioning authority



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illegally refused sanction without application of mind. The learned counsel for the CBI submitted that the reasons stated in Ext.P3 for declining sanction are perverse and illegal. The learned counsel further submitted that the facts revealed during the investigation disclose a *prima facie* case against the accused Nos.1 and 3, and the sanctioning authority, without properly appreciating the materials and evidence forwarded by the CBI, misinterpreted some of the findings by it on technical grounds and ignoring the gravity of the offence. On the other hand, the learned counsel for the accused No.1 submitted that Ext.P3 order is a well-considered one issued after elaborately considering the evidence adduced by the investigating agency and it is the prerogative and discretion of the Government to decide whether prosecution sanction is to be issued or not against a public servant and once such a discretion is exercised on sound reasoning, it cannot be challenged in a writ court. The learned Senior Counsel appearing for accused No.3 submitted that granting or refusal of sanction is subject to the satisfaction of the sanctioning authority and this court cannot impeach the sanction order and compel the authority to issue sanction by invoking



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Article 226 of the Constitution of India.

16. The requirement of obtaining sanction is to protect a public servant to act in good faith while performing his duties. While a public servant should not be entangled in false and frivolous cases, genuine charges and allegations should be allowed to be examined by the court. As an order of sanction lifts the bar for prosecution, mechanical refusal to accord sanction, where a *prima facie* case of corruption is made out, could well result in a corrupt officer being let off scot-free.

17. The grant or refusal of sanction is not a mere formality, but a solemn act. The sanctioning authority must undertake complete and conscious scrutiny of all the relevant records and materials made available to it independently applying its mind before deciding whether to grant sanction or not. Proper application of mind to the existence of *prima facie* evidence regarding the commission of the offence is a precondition for the grant or the refusal to grant sanction. While the order of sanction need not contain detailed reasons, the sanctioning authority is required to arrive at the *prima facie* satisfaction that the relevant facts, as discernible from the report,



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constitute the offence and then either grant or refuse sanction. What is necessary and material is whether the facts collected during the investigation constitute the offence for which the sanction has been sought (*Superintendent of Police (CBI) v. Deepak Chowdhary and Others* AIR 1996 SC 186). The actual production of evidence is a matter of proof during the trial and is not to be undertaken at the stage of sanction. [*State (Anti-Corruption Branch), Government of NCT of Delhi and Another v. Dr.R.C.Anand and Another* AIR 2004 SC 3693].

18. The order of granting or declining sanction must *ex-facie* reflect that the sanctioning authority had considered the facts and all relevant materials placed before it. The validity of the sanction would, therefore, depend upon the materials placed before the sanctioning authority and on the application of mind by it to those materials and facts of the case. When the order of declining sanction is challenged before a court, the court must examine whether there has been an application of mind on the part of the sanctioning authority concerned with the materials placed before it. (See. *Central Bureau of Investigation v. Ashok Kumar Aggarwal* (2014) 14 SCC 295, *State of Bihar v. P.P.Sharma*



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AIR 1991 SC 1260 and ***Mansukhlal Vithaldas Chauhan v. State of Gujarat*** 1997 KHC 1065).

19. As stated already, the prosecution case is that accused Nos.1 to 3 during the period from 2006 to 2015, abusing their official position as public servants entered into criminal conspiracy with accused No.4 and in furtherance to the said conspiracy, accused Nos.1 to 3 dishonestly awarded tenders to M/s JMJ Traders, Kottayam for supplying raw cashew nuts with intention to cheat KSCDC in violation of the rules and procedures adopted by the Government of Kerala which resulted in wrongful pecuniary loss to KSCDC estimated to be in several crores corresponding wrongful gain to them. In Ext.P3 (marked in WP(C) No.25863/2020), the sanctioning authority has shown the following reasons for declining the sanction:

(i) The allegation raised by the investigating agency is that the guidelines of the Central Vigilance Commission and the Store Purchase Manual were not followed for procurement of the raw cashew nuts. A perusal of the report and the available materials show that apart from such allegations, there is no prosecutable evidence to confirm that the Central Vigilance Commission



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Guidelines and Store Purchase Manual are applicable to KSCDC.

(ii) All the contracts mentioned are sanctioned by the Board of Directors. The Board of Directors of KSCDC includes 11 members from various Government departments, including Senior Civil Service Officers. Thus, the alleged action of the accused is based on the decisions of the Board of Directors based on the said Government Order.

(iii) No supporting materials or prosecutable evidence are produced for the allegation with regard to the diversion of funds. Even though some allegations are made, no supporting materials are made out to establish that the accused have committed criminal misconduct as public servants and by corrupt or illegal means obtained for themselves or to any other person any valuable thing or pecuniary advantage.

(iv) The majority of the allegations in the report submitted by the CBI related to the fourteen tenders issued in favour of accused No.4 of the period ranging from 2006-2015. It is alleged that all the contracts were made resorting to the Government Order of the year 2007 and that the said Government Order was not issued with due application of mind. It is beyond the scope of



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the investigating agency to comment upon the Order issued by the Government.

20. The materials collected by the investigating agency during the investigation and the findings in the final report show that the Government of Kerala had issued orders from time to time for the proper functioning of KSCDC which includes the order dated 26/3/1996 allowing the Board of Directors of KSCDC and CAPEX, "Freedom with Responsibility" in the matter of purchase and import of raw nuts, keeping in mind the general interest of the organization and the industry in modification of existing guidelines. KSCDC entered into a long-term agreement with State Trading Corporation (STC) during 2005-06, 2009 and 2015 for the purchase of cashew nuts through STC and the State Government had made an agreement with the Government of Tanzania for the import of nuts. The findings in the final report suggest that the accused Nos.1 to 3 did not make any earnest efforts to materialise the object of the said agreement to favour accused No.4. Further, they discarded the State Government policy to locally purchase Kerala origin raw nuts and resorted to procure imported nuts to favour accused No.4. The investigation



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revealed that during the period between 2006 and 2015, several contracts were awarded to the accused No.4 by flouting all the norms and procedures issued by the Government of Kerala from time to time. The specific finding is that fourteen contracts were awarded to accused No.4 by misusing the “Freedom with Responsibility” granted by the Government and also by violating the Store Purchase Manual of KSCDC and CVC Guidelines for procurement of raw cashew nuts, resulting in huge loss to KSCDC. The findings in Ext.P3 that there is no evidence to confirm that Central Vigilance Commission Guidelines and Store Purchase Manual are applicable to KSCDC are factually incorrect. The Store Purchase Manual forms the basis for the procurement system of Government Departments, Public Sector Undertaking, Local Self Government Institutions, Universities and Autonomous Bodies. Annexure 1 of the Store Purchase Manual is the list of Local Bodies, Autonomous Bodies and Public Sector Undertakings. In the said list, KSCDC is shown as item No.77 in Public Sector Undertakings. That apart, KSCDC uses public money for procurement of raw cashew nuts. Therefore, it is a public procurement. Chapter 1 of the Store Purchase Manual merely



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stipulates that in public procurement, CVC guidelines shall be applicable to all PSUs. KSCDC does not have their own independent purchase manual. These materials and facts were not considered by the sanctioning authority while entering into finding No (i) in Ext. P3 that there is no prosecutable evidence to confirm that the Central Vigilance Commission Guidelines and Store Purchase Manual are applicable to KSCDC.

21. The Director Board of KSCDC consists of 11 members, 2 members as Additional Secretaries, one from the Industries Department and the other from the Finance Department; others are representatives of trade unions from ruling and opposition parties. The Managing Director is the Chief Executive of the company who is responsible for the regular conduct of the business and operations. The day-to-day functioning of the company is controlled and managed by him. The Chairman shall preside over all the meetings of the Board of Directors and shall exercise all such powers delegated to him from time to time by the Board of Directors. The findings in the final report show that the Chairman and Managing Director had to attend the entire Board Meetings for the finalization of tenders, whereas the



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attendance of other Board members may vary on each occasion and that the finalization of the tender and award of the contract for the procurement of raw cashew nut has been done on behalf of the Board of Directors, which was presided over by the Chairman. The findings further show that the accused, Nos 1 to 3, were taking all the decisions regarding the procurement of cashew nuts during their respective tenures. The investigation revealed that during the period from 2006 to 2015, accused Nos.1 and 3, abusing their official capacity as Managing Director and Chairman, respectively of KSCDC, entered into conspiracy with accused No.4 and awarded several contracts to his proprietorship concern for import and supply of raw cashew nuts violating the Rules. It was further found that grants aggregating to the tune of ₹80 crores were released by the Government of Kerala during the period 2008-2013 for procurement of raw cashew nuts from local sources in Kerala. But instead of procuring raw cashew nuts of Kerala origin, the accused Nos. 1 to 3 with dishonest intention utilized the major portion of the fund for procuring imported nuts through private contractors like accused No.4. It was also found that the grants given by the Government



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of Kerala from 2007-2008 to 2012-13 for procurement of raw cashew nuts were diverted and false certificate of utilization in Form K.F.R. 44 was submitted by accused No.1 to the Government. These materials and facts collected by the investigating agency and placed before the sanctioning authority were not all considered by the sanctioning authority before arriving at the finding Nos. (ii) and (iii).

22. So far as finding No (iv) in Ext. P3 is concerned, it is not the case of the prosecution that the Government Order of 2007, based on which contracts were made by KSCDC in favour of accused No. 4, was not issued with due application of mind. On the other hand, the finding in the final report is that pursuant to the conspiracy hatched by accused Nos. 1 to 3 with accused No. 4, accused No.1 succeeded in getting the said Order from the Government allowing KSCDC to continue prevailing of using "Freedom with Responsibility" in the matter of purchase and import of raw cashew nuts and contrary to the spirit of the said Order and the earlier guidelines, accused Nos. 1 to 3 did not protect the legitimate interest of KSCDC and misutilised the freedom granted by the Government of Kerala in conspiracy with



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accused No.4.

23. It is evident from the above discussion that the sanctioning authority passed Ext.P3 without considering the materials furnished and report submitted by the CBI in the correct legal perspective. It does not reflect the application of mind to the existence or otherwise of a *prima facie* case regarding the commission of an offence under Section 13(1)(d) of the PC Act by the accused Nos. 1 and 3. The sanctioning authority must exercise the discretion to refuse or grant sanction judiciously. The sanctioning authority is required to assign valid reasons why it did not consider it necessary to grant sanction for prosecution. Ext. P3 is bereft of reasons. Hence, it cannot be sustained.

Point No. 3:

24. The learned Senior Counsel for the accused No.3, the petitioner in Crl. M.C No.1634/2022 submitted that the final report does not disclose any offence against the accused No.3, the continuation of the proceedings against him would be nothing but an abuse of process of court and is liable to be interdicted.

25. It is trite that the exercise of inherent powers by the High Court under S.482 Cr.P.C. to quash criminal proceedings is



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the exception and not the rule. The High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution. However, when it is convinced beyond any manner of doubt that FIR or Final Report does not disclose the commission of any offence or that the allegations contained in the FIR do not constitute any cognizable offence or it is necessary to interfere to prevent abuse of the process of the Court, the High Court is entitled to quash the FIR/Final Report under the exercise of its wholesome power under Section 482 of Cr. P.C [*Kurukshethra University v. State of Haryana and Another* (1977) 4 SCC 451], *Madhavrao Jiwajirao Scindia and Others v. Sambhajirao Chandrojirao Angre and Others* [(1988) 1 SCC 692], *State of Haryana and Others v. Bhajan Lal and Others* (AIR 1992 SC 604) and *State of A.P v. Golconda Linga Swamy and Another* (2004) 6 SCC 522)].

26. I have already found while discussing point No. (ii) that there are materials on record to connect the accused Nos. 1 and 3 with the crime. The investigation could establish conspiracy between accused Nos.1 and 3 with accused No.4. The final report,



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with the support of so many materials collected during the investigation, finds that the accused Nos. 1 and 3 with dishonest intention to cheat KSCDC discarded the State Government policy to locally purchase Kerala-origin raw nuts and resorted to procuring imported nuts to favour accused No.4 thereby causing substantial wrongful loss to KSCDC and corresponding gain to accused No.4. Thus, the facts revealed during the investigation disclosed a *prima facie case* against the accused Nos. 1 and 3. When a *prima facie case* is made out, the jurisdiction vested with this Court to quash the proceedings under S.482 of Cr.P.C cannot be invoked.

Point No.4:

27. The learned counsel appearing for the accused Nos.1 and 3 submitted that sanction under Section 197 of Cr.P.C is mandatory to prosecute the accused for the offences under Sections 120B r/w 420 of IPC. It is further submitted that as sanction to prosecute the accused Nos.1 and 3 under the provisions of the PC Act, 1988 came to be declined, they cannot be prosecuted for the offences under the IPC without valid sanction under Section 197 of Cr.P.C. Reliance was placed on



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A.Srinivasulu v. State rep. By the Inspector of Police (2023 LiveLaw SC 485). On the other hand, the learned counsel for the de facto complainant submitted that although the sanctioning authority declined to accord sanction under Section 19 of the PC Act, 1988 to prosecute accused Nos.1 and 3 for the offences punishable under the provisions of the PC Act, yet that by itself is not sufficient to discharge them from the offences punishable under IPC. The learned counsel further submitted that protection by way of sanction under Section 197 of Cr. P.C is not applicable to officers or employees of Government companies or public undertakings. Reliance was placed on ***Mohd. Hadi Raja v. State of Bihar and Another*** (1998 KHC 970) and ***Bharat Sanchar Nigam Ltd. and Others v. Pramod V. Sawant and Another*** (AIR 2019 SC 3929). The counsel added that no prior sanction under Section 197 of Cr. P.C. is required to prosecute accused Nos.1 and 3 for the offences punishable under the IPC as there is no legal obligation for seeking such a sanction.

28. Section 197 of Cr. P.C provides that when any person who is a public servant, not removable from his office save by or with the sanction of the Central Government or State



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Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence, except with the previous sanction of the appropriate Government.

29. I will first meet the argument of the learned counsel for accused Nos.1 and 3 that as sanction under Section 19 of the PC Act, 1988 has not been granted, the accused cannot be prosecuted for the offences under the IPC alone, and therefore, they should be discharged from the criminal proceedings. Sanction contemplated under Section 197 of Cr. P.C concerns a public servant who is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, whereas the offences contemplated in the PC Act are those which cannot be treated as either direct or even purportedly done in the discharge of his official duty. Section 197 of Cr.P.C and Section 19 of the PC Act operate in conceptually different fields. There is a material difference between the statutory requirements of Section 19 of the PC Act on the one hand and Section 197 of Cr. P.C., on the other hand. In



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a prosecution for the offence exclusively under the PC Act, the previous sanction under Section 19 is mandatory. However, in a prosecution for the offence under the General Penal Law against a public servant, the necessity or otherwise of sanction under Section 197 depends upon factual aspects. The test is whether there is a nexus between the act of commission or omission and the discharge of duties of the public servant. Thus, even in a case where the sanction under Section 19 of the PC Act has not been granted to prosecute a public servant, still he can be prosecuted for the offences under General Penal Law (See. *Kalicharan Mahapatra v. State of Orissa* [(1998) 6 SCC 411], *Lalu Prasad alias Lalu Prasad Yadav v. State of Bihar* [(2007) 1 SCC 49] and *Sreenivasa Reddy v. Rakesh Sharma* [2023 KLT OnLine 1702 (SC)]).

30. Now, let me address the de facto complainant's contention that the prosecution of an officer/employee of a Government company or a public undertaking would not require any sanction under Section 197 of the Cr.P.C.

31. A reading of the provisions of Section 197(1) of Cr.P.C reveals that four conditions are to be fulfilled for the applicability



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of the protection of Section 197.

- (i) That the accused is a public servant;
- (ii) That the public servant can be removed from the post by or with sanction either of the Central or State Government, as the case may be;
- (iii) That the public servant is employed in connection with the affairs of the Union or State Government, as the case may be;
- (iv) The acts giving rise to the alleged offence had been committed by the officer in the actual or purported discharge of his official duties.

32. Section 21 of the Indian Penal Code defines “public servant”. Clause (b) of Clause 12 of Section 21 expressly makes the officers of local authority and Corporation established by or under a Central, Provincial or State Act or a Government-owned company as defined under Section 617 of the Companies Act, 1956, public servants. Clause 4(5) of the Memorandum of Articles of Association of KSCDC would show that it is a Government company within the meaning of Section 617 of the Companies Act, 1956. Accused Nos.1 and 3 are admittedly officers/employees of KSCDC. No doubt, thus they are public servants falling within the definition of Section 21 of the IPC.



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However, protection under Section 197 of Cr.P.C. cannot be claimed by a public servant unless other conditions indicated in that section are fulfilled.

33. As stated already, one of the main requirements for the applicability of protection of Section 197 of Cr.P.C is that the public servant concerned is employed in connection with the affairs of the Union Government or the State Government, as the case may be. Even though public undertakings and Government Companies may be treated as instrumentalities or agencies of the State in view of the control of the Government, it cannot be held that they are employed in connection with the affairs of the Union Government or the State Government. The employees or officers of the public undertaking and the Government company, even when they are instrumentalities or agencies of the State, have never been treated at par with Government servants (See. ***Dr.S.L.Agarwal v. General Manager, Hindustan Steel Ltd.***, AIR 1970 SC 1150). The Supreme Court in ***Mohd. Hadi Raja*** (supra), considered the need for sanction for prosecuting officers of public sector undertakings or Government companies falling within the definition of 'State' under Art.12 of the Constitution of India and



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who were removable from the office save sanction of the Government. Holding that protection under Section 197 of Cr.P.C was not available to such persons, it was held thus:

*“21. Although the instrumentality or agency with a corporate veil, for all intents and purposes may be held to be a third arm of the government and such instrumentality discharges the duties and functions which the State intends to do as indicated in **Ajay Hasia's case** (supra), such instrumentality or agency is none the less juridical person having a separate legal entity. Therefore, such instrumentality must be held to have an independent status distinct from the State and cannot be treated as a government department for all purposes. Therefore, even if an officer of such instrumentality or agency takes or receives, keeps or expends any property or executes any contract, such acts even though in ultimate analysis may be held to have been done in the interest of the State, such action cannot be construed, as of rule, an action of the government by its employees or by an authority empowered by the government....”*

“22. It is be noted that though through the contrivance or mechanism of corporate structure, some of the public undertakings are performing the functions which are intended to be performed by the State, ex facie, such instrumentality or agency being a juridical person has are independent status and the action taken by them, however, important the same may be in the interest of the State cannot be held to be an action taken by or on behalf of the



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government as such within the meaning of Section 197 Cr. P.C."

"24.The importance of the public undertaking should not be minimised. The government's concern for the smooth functioning of such instrumentality or agency can be well appreciated but on the plain language of Section 197 of the Code of Criminal Procedure, the protection by way of sanction is not available to the officers of the public undertaking because being a juridical person and distinct legal entity such instrumentality stands on a different footing than the government departments."

"28 Therefore, in our considered opinion, the protection by way of sanction under Section 197 of the Code of Criminal procedure is not applicable to the officers of Government Companies or the public undertakings even when such public undertakings are 'State ' within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the government."

Following the said decision, the Supreme court in ***N.K.Sharma v. Abhimanyu*** (AIR 2005 SC 4303), ***Punjab State Warehousing Corporation v. Bhushan Chander and Another*** (AIR 2016 SC 3014) and in ***Bharat Sanchar Nigam Ltd*** (supra) reiterated that employees or officers of public sector or corporations or Government companies are not entitled to protection under



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Section 197 of Cr.P.C. as a public servant. Thus, I have no hesitation in holding that prosecution against an officer of a Government company or public sector undertaking would not require any sanction under Section 197 of Cr.P.C.

34. The learned Senior Counsel, Sri.S.Sreekumar appearing for accused No.3, relied on the recent decision of the Supreme Court in *A.Srinivasulu* (supra) to support his argument that for prosecuting the employees of Government companies also, prosecution sanction under Section 197 of Cr.P.C. is necessary. That was a case where the officials of a Government Company, BHEL, and a contractor were prosecuted for the offences punishable under Section 120B r/w 420 of IPC and Section 13(2) r/w 13(1)(d) of the PC Act. No previous sanction under Section 197 was sought for prosecuting the accused No.1 who was a public servant. The stand taken by the prosecution was that the previous sanction was not necessary inasmuch as the offence committed by the accused No.1 was not attributable to while acting or purporting to act in the discharge of his official duty. Analysing the evidence on record, the Supreme Court found that the offence alleged to have been committed by the accused



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No.1 falls within the discharge of his official duty, and hence, previous sanction was necessary. The question whether prosecution sanction under Section 197 of Cr.P.C is required for prosecuting employees or officers of Government Companies or public sector undertakings never came up for consideration in the said case at all. Hence, the dictum laid down in the case is not applicable to the facts of this case. Thus, even though accused Nos.1 and 3 could be considered as public servants, the protection available under Section 197 Cr.P.C is not available to them since the conditions under Section 197 of Cr.P.C are not attracted.

35. The upshot of the above discussion is that the challenge against the prosecution on the ground that no prosecution sanction was obtained under Section 197 of Cr.P.C and that the final report does not disclose any offence against accused No.3 must fail and the challenge against Ext.P3 order in WP(C) No.25863/2020 must succeed. Since Ext.P3 order is found to be vitiated by non-application of mind, it is set aside. The 2nd respondent in WP(C) No.25863/2020 is directed to examine CBI's request for sanction afresh and take a decision on it in the light of



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the observations made in this judgment within a period of three months from the date of receipt of a copy of this judgment. The 2nd respondent shall communicate the decision to the CBI. Till such a decision is taken, further proceedings in CC No.45/2021 on the file of CJM Court, Thiruvananthapuram shall be kept in abeyance.

Crl.M.C.s are dismissed. Writ petition is allowed in part as above.

sd/-

DR. KAUSER EDAPPAGATH
JUDGE

Rp



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APPENDIX OF WP(C) 25863/2020

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF JUDGMENT DATED 23.09.2015 IN THE WPC NO.16144/2014.
EXHIBIT P2	TRUE COPY OF FIR IN CRIME NO.RC 8(A)/2016-CBI/ACB/COCHIN DATED 27.07.2016.
EXHIBIT P3	TRUE COPY OF ORDER OF THE 2ND RESPONDENT DATED 15.10.2020 DECLINING SANCTION ALONG WITH THE LETTER FROM THE CBI ISSUED TO THE PETITIONER.
EXHIBIT P4	TRUE COPY OF NEWS ITEM PUBLISHED IN MALAYALA MANORAMA DAILY DATED 27.10.2020.

RESPONDENT'S EXHIBITS

EXHIBIT R5(a)	TRUE COPY OF GO.(MS) 74/96/ID DATED 26.3.1996.
EXHIBIT R5(a) (1)	TYPED COPY OF EXHIBIT R5(a)
EXHIBIT R5(b)	TRUE COPY OF GO(MS) NO.149/2007/ID DATED 26/12/2007.
EXHIBIT R5(b) (1)	TYPED COPY OF EXHIBIT R5(b)



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APPENDIX OF CRL.MC 497/2022

PETITIONER ANNEXURES

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| Annexure A1 | A CERTIFIED COPY OF THE ORDER SHEET OF THE CJM COURT, THIRUVANANTHAPURAM IN CC 45/2021 DATED 13.01.2022. |
| Annexure A2 | A CERTIFIED COPY OF THE OBJECTION DATED 12.02.21 FILED BY THE PETITIONER BEFORE THE CJM COURT, THIRUVANANTHAPURAM. |
| Annexure A3 | A CERTIFIED COPY OF THE FINAL REPORT DATED 30.212.2020 SUBMITTED BY THE CBI BEFORE THE HON'BLE CBI JUDGE, THIRUVANANTHAPURAM CONTAINING THE PRAYER TO TRANSFER THE SAME TO THE CJM COURT, THIRUVANANTHAPURAM. |
| Annexure A4 | A TRUE COPY OF THE COMMUNICATION DATED 15.10.2020 ISSUED BY THE GOVERNMENT OF KERALA DENYING PROSECUTION SANCTION. |



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APPENDIX OF CRL.MC 1634/2022

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF FINAL REPORT IN RC 08 (A)/2016 /CBI/ ACB/ COCHIN DATED 30-12-2020
Annexure A2	TRUE COPY OF G.O.(MS) 74/96/ID DATED 26-03-1996
Annexure A2(a)	TYPED COPY OF ANNEXURE.A2
Annexure A3	TRUE COPY OF G.O. (MS).NO.149/2007/ID DATED 26-12-2007 .
Annexure A3(a)	TYPED COPY OF ANNEXURE.A3
Annexure A4	TRUE COPY OF GOVERNMENT ORDER DATED 15-10-2020.