

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE A. BADHARUDEEN**

**Wednesday, the 27th day of August 2025 / 5th Bhadra, 1947
CRL.MC NO. 7741 OF 2025**

CRMP 1356/2024 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

PETITIONER:

**M.R.AJITH KUMAR AGED 58 YEARS ADDITIONAL DIRECTOR GENERAL OF POLICE
POLICE HEADQUARTERS, VAZHUTHACAUD, PRESENTLY EXCISE COMMISSIONER,
EXCISE COMMISSIONERATE THIRUVANANTHAPURAM, PIN - 695010**

RESPONDENT:

- 1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR VACB, HIGH
COURT OF KERALA, ERNAKULAM, PIN - 682031**
- 2. NEYYATINKARA P NAGARAJ AYYAPPA NIVAS, OPPOSITE OF NEYYATINKARA COURT
COMPLEX, NEYYATTINKARA VILLAGE, THIRUVANATHAPURAM, PIN - 695121**

Application praying that in the circumstances stated therein the High Court be pleased to stay the further proceedings pursuant to Annexure-8 and all further proceedings pursuant to it in Crl.M.P.No. 1356 of 2024 of the court of the Enquiry Commissioner and special Judge, Thiruvananthapuram in the interest of justice pending disposal of this Criminal Miscellaneous Case.

This Criminal Misc. case coming on for orders, upon persuing the petition and upon hearing the arguments of R.ANIL, B.RAMAN PILLAI (SR.), SUJESH MENON V.B., THOMAS SABU VADAKEKUT, MAHESH BHANU S., RESSIL LONAN, ANANTH KRISHNA K.S., GEORGE VINCI JOSE, Advocates for the petitioner and and of M.P.SHAMEEM AHAMED, T.V.SREEJITH(K/598/2015), AHAMED IQBAL(K/4157/2024) Advocates for the 2nd respondent , the court passed the following:

A. BADHARUDEEN, J.

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Dated this the 27th day of August, 2025

O R D E R

Heard the learned senior counsel for the petitioner, the learned Director General of Prosecution (DGP) appearing for the VACB and the learned counsel appearing for the 2nd respondent.

2. Even though, the defacto complainant, Sri.P.V. Anwar, filed Crl.M.A. No.2 of 2025 to implead himself as additional 3rd respondent, the counsel representing other parties submitted that, copy of the impleading petition not served upon them. Hence, the learned counsel appearing for Sri.P.V. Anwar is directed to serve copies of the impleading petition to all parties and file memo in this regard. The impleading petition will be considered on the next posting date.

3. Going by the illegality in the impugned order as pointed out by the learned counsel for the petitioner, on par with the arguments tendered by the learned counsel for the

2nd respondent and the learned DGP, along with the report placed, it could be seen that, as far as the Enquiry Report is concerned, the observation made by the learned Special Judge stating that the report at the instance of an officer, who is below the rank of the petitioner, is *prima facie* sustainable, since enquiry or investigation at the instance of an officer below the rank of the diligent officer *prima facie* lacks transparency and fairness and the junior officer should be in an embarrassing position. However, since the petitioner contends otherwise and the said contention is strongly opposed by the learned counsel for the 2nd respondent and the learned counsel appearing for Sri.P.V.Anwar, this legal question will be heard in detail to take a final decision on this issue.

4. Coming to the second contention raised by the learned counsel for the petitioner that the procedure adopted by the learned Special Judge and as per the finding in the order impugned, the case reached the stage of cognizance, without obtaining sanction under Section 19 of the Prevention of Corruption Act, 1988 (as amended in 2018), is concerned, going through the order impugned, it

could be gathered that, in paragraph No.150 of the order, the learned Special Judge observed as under:

150. This court finds that the allegations in the complaint, the documents produced by the complainant, the materials collected by the enquiry officer, and the documents produced before the court would establish a prima facie case regarding commission of a crime referred in the complaint, and this is a fit case to proceed further with the complaint following the procedure outlined in Section 223 of the BNSS, 2023. So, posted for the examination of the complainant and any witnesses. So, this court passed the following order-

(1) The complainant has the locus standi to file the complaint alleging an offence under the PC ACT, 1988 (Amended in 2018) against the respondents.

(2) A private complaint without attaching a sanction, from the competent authority, alleging offences punishable under the Prevention of Corruption Act, 1988 (amended Act 2018) by a public servant would be maintainable before the Special Judge constituted under the Act to try the offences under the Act, 1988.

(3) The inquiry report is not acceptable and is rejected.

(4) This court does not have the power to direct the Director, VACB, to register a case and investigate the offence punishable under the P.C. Act, 1988 (amended in 2018).

(5) The complaint allegations, the documents he produced, the materials collected by the enquiry officer, and produced before the court, would show a prima facie case.

(6) There are sufficient materials to proceed further following the procedure of Section 223 of BNSS, 2023.

5. It is argued by the learned counsel for the 2nd respondent, by referring Section 19 of the Prevention of Corruption Act, 1988 (as amended in 2018) and proviso thereof, to substantiate that, though the learned Special Judge decided to proceed with the complaint by recording statements of the complainant and witnesses, the learned Special Judge did not reach the stage of cognizance. But, on perusal of the impugned order on par with the legal position, the procedure seems to have reached the stage of cognizance, without obtaining sanction under Section 19(1) of the Prevention of Corruption Act, 1988 (as amended in 2018). If so, the legality of the order to be considered in

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detail. Therefore, this legal aspect also will be decided on merits, after hearing both sides, in detail.

Post on 12.09.2025 as part heard for further hearing and disposal.

Crl.M.A. No.1 of 2025

Having considered the legal issues involved in this case, as discussed herein above, further proceedings based on the impugned order by the learned Special Judge stand stayed till 12.09.2025.



Sd/-
A. BADHARUDEEN
JUDGE

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APPENDIX OF CRL.MC 7741/2025

Annexure - 8

**CERTIFIED COPY OF THE ORDER OF THE COURT OF THE ENQUIRY
COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM
DATED 14.08.2025 IN CRL.M.P.NO.1356 OF 2024**

