R. NARAYANA PISHARADI, J

Crl.M.C.No.8758 of 2019

Dated this the 9th day of April, 2021

O R D E R

The petitioner is the second accused in the case registered as V.C.No.No.5/2014 by the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau (VACB), Eastern Range, Kottayam.

2. The case against the petitioner and the other accused is registered under Section 13(1)(d)(ii) read with 13(2) of the Prevention of Corruption Act, 1988 (for short 'the P.C Act') and also under Sections 465, 471 and 120B of the Indian Penal Code.

3. The allegations in the first information report (Annexure-I) in the case are as follows: On 11.08.2014, a surprise check was conducted at the Collectorate, Idukki and the Taluk Office, Udumbanchola by the Deputy Collector (LR), Idukki in the presence of the Superintendent of Police, VACB, Eastern Range, Kottayam. It was revealed during the surprise check that no proper follow up action was taken in the Taluk Office, Udumbanchola till August, 2010 with regard to the illegal occupation of government land in Sy.No.87/1 of Chinnakanal Village and the unauthorized

construction of buildings therein by M/s.Joys Group (A3) which had been detected by the Deputy Tahsildar, Task Force-III in March, 2008. On the basis of a court direction, Sri.V.R.Mohanan Pillai (A1), who was then the Tahsildar, Udumbanchola, had issued proceedings dated 11.08.2011, declaring that the land having an extent of 3.41 acres, including part of the land covered by patta No.71/72 (2.14 acres), was in the unauthorised possession of M/s.Joys Group and directing the Village Officer, Chinnakanal to take steps for resumption of the land. There were two major procedural irregularities in issuing this order. The first irregularity was, instead of conducting the hearing personally as prescribed by the Kerala Land Conservancy Act, the Tahsildar (A1) entrusted that task to the Head Clerk. The second irregularity was that, the first accused, in paragraph 8 of his order clearly stated that the party was free to avail the appellate provisions under the above Act but he issued notice and conducted summary eviction. The first accused was convinced that manipulation of records had been done by M/s. Joys Group with the connivance of revenue officials but he did not take any legal action against the culprits. The above irregularities were done by the first accused deliberately to favour M/s.Joys Group. M/s.Joys Group challenged the above proceedings

in the court, on the ground that the first accused had not followed the mandatory procedure before issuing the order. Later, on the basis of the direction of the court, Sri.P.Sunil Kumar (A2), who was then the Tahsildar, Udumbanchola, conducted a fresh hearing and he, without going through the back files and the factual position of the matter, issued a fresh proceedings dated 24.05.2014, which gave undue favour to M/s.Joys Group. Thus, the first and the second accused conspired with M/s.Joys Group and they abused their official position and allowed M/s.Joys Group to get undue pecuniary advantage and caused corresponding loss to the Government.

4. On the basis of the above allegations, Annexure-1 F.I.R was registered on 14.10.2014.

5. The petitioner, who is the second accused in the case, has filed this application under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') for quashing Annexure-I F.I.R registered against him.

6. The investigating officer filed a statement of facts on 14.01.2020 with regard to the investigation so far conducted in the case.

7. Heard the learned counsel for the petitioner and also the learned Public Prosecutor.

8. Learned counsel for the petitioner contended that the sin committed by the petitioner is that he passed Annexure-VI order dated 24.05.2014 in compliance with the direction given by this Court in W.P(C).No.22227/2011. Learned counsel would submit that the petitioner is needlessly harassed for the sole reason that the order passed by him, in his capacity as a quasi judicial authority, was not in favour of the Government. Learned counsel submitted that, even if the order passed by the petitioner was erroneous or illegal, he could not be prosecuted for the offences under the P.C.Act, unless there is an allegation that he was actuated by extraneous considerations in passing it. Learned counsel for the petitioner further submitted that, even if the entire allegations against the petitioner in Annexure-1 F.I.R are accepted as true, it would not attract any offence against him.

9. The circumstances which led to the issuing of Annexure-VI order are narrated in the statement filed by the investigating officer. The only additional fact mentioned in that statement is that the petitioner issued an order, correcting certain mistakes contained in Annexure-VI order and that such correction was made

by him without the concurrence of the District Collector. Inspite of the investigation conducted for about six years, the statement filed by the investigating officer does not reveal that any evidence has been collected against the petitioner to prove the offences alleged against him.

10. Learned Public Prosecutor submitted that the investigation of the case has been almost completed. But, whether any evidence against the petitioner could be collected or not during the investigation conducted over a period of more than six years, remains unanswered. Learned Public Prosecutor has also not made any submissions to controvert the contentions raised by the learned counsel for the petitioner.

11. Before proceeding further, it is necessary to narrate the circumstances which led to the registration of Annexure-I F.I.R. There was an allegation that M/s.Joys Enterprises was in unauthorised occupation of government land comprised in Sy.No.87/1 of the Chinnakanal Village and that they had illegally constructed buildings in that land. This allegation was raised on the ground that patta No.71/72 in respect of a portion of the above land was a fraudulent document. The first accused Tahsildar conducted an enquiry in the matter and he passed an order dated

11.08.2011, declaring that the land having an extent of 3.41 acres, including 2.14 acres covered by patta No. 71/72, was in the unauthorised possession of M/s.Joys Group and directing resumption of that land.

12. M/s. Joys Enterprises challenged the above order dated 11.08.2011 before this Court by filing W.P(C) No. 22227/2011. As per Annexure-III judgment dated 21.12.2011, this Court quashed the order dated 11.08.2011 issued by the first accused and directed the Tahsildar, Udumbanchola to conduct a fresh enquiry and to pass fresh orders within a period of three months from the date of receipt of a copy of that judgment. This Court also directed that possession of the property which was taken over from M/s. Joys Enterprises shall be returned to them forthwith.

13. The Government had challenged Annexure-III judgment by filing the appeal W.A.No.139/2012. As per Annexure-IV judgment dated 17.01.2014, this Court dismissed the above writ appeal.

14. The petitioner took charge as Tahsildar at Udumbanchola only on 20.02.2014. He had worked there only till 08.07.2014.

15. In accordance with the direction of this Court in W.P(C) No. 22227/2011, the petitioner conducted fresh enquiry and he passed Annexure-VI order dated 24.05.2014. A perusal of this order would show that the petitioner conducted personal hearing of the party (M/s.Joys Enterprises) on 23.04.2014 and verified the original documents produced by the party. The petitioner also conducted site inspection. The petitioner had also examined the prior documents relating to the disputed land. On scrutiny of the documents produced during the hearing, the petitioner reached the conclusion that the patta No.71/72 appeared to be a genuine document. He found that the file relating to issue of patta No. 71/72 was not available. He also found that the department could not trace out any documentary evidence to prove that the patta issued in L.A No. 71/72 was not a genuine document. Ultimately, as per Annexure-VI order, the petitioner came to the conclusion that the patta in L.A No. 71/72 appeared to be a genuine document issued as per law until documentary evidence could be traced out against it. A direction was also given to the Head Clerk concerned to find out documentary evidence, if any, to prove that the patta issued in L.A No. 71/72 was not a genuine document.

16. Annexure-VII is the copy of the order dated 28.06.2014 passed by the petitioner, making some corrections in Annexure-VI order. On a perusal of Annexure-VII order, it is seen that the corrections made as per that order were only with regard to some grammatical and spelling mistakes and modification of the language used in one or two sentences in Annexure-VI order. The ultimate conclusion reached by the petitioner in Annexure-VI order was not in any way corrected or changed as per Annexure-VII order.

17. However, the District Collector suo motu passed Annexure-VIII order dated 16.07.2014, cancelling Annexure-VII order on the ground that the corrections were made by the petitioner without the concurrence of any superior officer.

18. The allegation against the petitioner in Annexure-I F.I.R is that he passed Annexure-VI order without verifying the back records and without ascertaining the factual position and therefore, he committed criminal misconduct. Annexure-VI order dated 24.05.2014 passed by the petitioner is an order passed by him under Section 12 of the Kerala Land Conservancy Act, 1957. This provision contemplates issuing notice to the occupant of the land, recording statement of the parties and receiving evidence before

passing an order.

19. There can be no dispute with regard to the fact that the proceeding under Section 12 of the Act is a quasi judicial proceeding. In fact, it is specifically mentioned in this provision that, for the purpose of Section 199 of the Indian Penal Code, the proceedings taken under this provision shall be deemed to be judicial proceedings.

20. An aggrieved party can file appeal as provided under Section 16(1) against an order passed under Section 12 of the Kerala Land Conservancy Act. Revision against such order is also provided under Section 16(2) of the Act, which states that the Collector may either suo motu or on application revise any decision made or order passed under the Act by an authorised officer.

21. What is the distinction between a quasi judicial order or an administrative or ministerial order? In **Province of Bombay v. Kushaldas S. Advani : AIR 1950 SC 222**, it has been held as follows:

> *"(i) That, if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by any party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other,*

there is a lis and prima facie, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi - judicial act; and

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."

(emphasis supplied)

22. What shall be the criteria to decide whether a decision is judicial or not? In **Jaswant Sugar Mills Limited v. Lakshmi Chand : AIR 1963 SC 677**, the Supreme Court has held as follows:

"To make a decision or an act judicial, the following criteria must be satisfied:

1) it is in substance a determination upon investigations of a question by the application of objective standards to facts found in the light of pre existing legal rules;

2) it declares rights or imposes upon parties obligation affecting their civil rights; and

3) that the investigation,is subject to certain procedural attributes contemplating an

opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact".

23. Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi judicial. The presence of a lis or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi judicial authority, is sufficient to hold that such a statutory authority is quasi judicial authority. However, in the absence of a lis before a statutory authority, the authority would be quasi judicial authority if it is required to act judicially. What distinguishes an administrative act from quasi judicial act is, in the case of quasi judicial functions under the relevant law, the statutory authority is required to act judicially. When the law requires that an authority before arriving at decision must make an enquiry, such a

requirement of law makes the authority a quasi judicial authority. Another test which distinguishes administrative function from quasi judicial function is, the authority who acts quasi judicially is required to act according to the rules, whereas the authority which acts administratively is dictated by the policy and expediency (See **Indian National Congress v. Institute of Social Welfare : AIR 2002 SC 2158**).

24. Before passing an order under Section 12 of the Kerala Land Conservancy Act, an enquiry is contemplated. The Tahsildar has to act judicially in taking a decision in the matter before him. In such circumstances, if the principles mentioned in the decisions referred to above are applied, there can be no doubt that he is acting as a quasi judicial authority in passing an order under Section 12 of the Kerala Land Conservancy Act.

25. The question is, can a public servant, who acts as quasi judicial authority under a statute, be held criminally liable under the P.C.Act for passing a wrong or illegal order. Annexure-VI order was passed by the petitioner in revenue proceedings. Assuming that it was an illegal or wrong order or an example of arbitrary exercise of jurisdiction, can criminal proceedings be initiated against him for such quasi judicial adjudication?.

26. Dishonest intention on the part of the public servant cannot be presumed for the reason that he has passed a quasi judicial order in favour of one of the parties to the proceedings. There must be some reasonable and satisfactory material to proceed against the officer. There is absolutely no allegation against the petitioner that he deliberately committed any misconduct for extraneous considerations. No material disclosing such act on his part has been unearthed during the investigation conducted for more than six years. If the petitioner has passed a wrong order, it could be corrected by the appellate or revisional authority. Criminal proceedings cannot be initiated against a public servant under the P.C.Act merely for passing a wrong order, without any material to demonstrate that such order was deliberately passed by him for extraneous considerations or on oblique motives. There shall be legally admissible materials collected during the investigation to demonstrate such oblique motives or extraneous considerations. The investigating officer has got no case that any such material has been collected during the investigation of the case.

27. Every error committed by a quasi judicial authority, however gross it may be, should not be attributed to improper motives. The appellate and revisional forums have been provided on the pre-supposition that persons may go wrong in decision making, on facts as well as law. Even when the contest is between the Government and a private person, a quasi judicial authority entrusted with the task of decision making should feel fearless to give honest opinion while acting judicially. Even if there was possibility on a given set of facts to arrive at a different conclusion, it is no ground to indict a public servant for misconduct for taking one view. If a faulty order of a quasi judicial authority is taken as a ground for initiating criminal proceedings, the officer will be in constant fear of passing an order which is not favourable to the Government. Then he would not be able to act independently or fearlessly. Merely because the order is wrong, it does not warrant initiation of criminal proceedings against the public servant, unless he was actuated by extraneous considerations or oblique motives. The remedy for errors committed by a quasi judicial authority is appeal or revision to the forum or authority provided under the statute for that purpose. It is in public interest that a public servant acting as quasi judicial authority should be in a position to

discharge his functions with independence and without fear of consequences. The general rule applicable in the case of the issuance of a wrong order is that it is liable to be corrected in appeal or revision. A public servant acting as quasi judicial authority may become criminally liable for obtaining personal gains. But, when he is acting judicially, even if he commits an error and passes an erroneous order, he would be protected from legal action. His accountability in respect of the orders passed by him is ensured by provisions for appeal and revision.

28. What matters is not the end result of the adjudication. What is of relevance, in attributing criminal misconduct on the part of a public servant who has acted as a quasi judicial authority, is whether he had been swayed by extraneous considerations while conducting the process. The sanctity of decision making process should not be confused with the ultimate conclusion reached by the authority. Erroneous exercise of judicial power, without anything more, would not amount to criminal misconduct. If the statutory authorities who exercise quasi judicial powers feel that they cannot honestly and fearlessly deal with matters that come before them, then it would not be conducive to the rule of law. They must be free to express their mind in the matter of

appreciation of the evidence before them. Unless there are clear allegations of misconduct or extraneous influences or gratification of any kind, criminal proceedings cannot be initiated merely on the basis that a wrong order has been passed by the public servant or merely on the ground that the order is incorrect. Such decisions cannot ipso facto result in prosecution, unless the mental element of dishonesty, to cause advantage of an unwarranted variety to another is apparent.

29. If a public servant, acting as a quasi judicial authority under a statute passes an order and if such order is in favour of a person other than the Government, any pecuniary advantage obtained by such person by virtue of such order, cannot be the basis for prosecution of the public servant under the PC Act, unless there is an allegation that he was actuated by extraneous considerations or oblique motives in passing the order.

30. A bare perusal of Section 13(1)(d)(ii) of the P.C.Act would reveal that a public servant can be prosecuted under that provision, only if he has abused his position as public servant and obtained for himself or for any other person any valuable thing or pecuniary advantage. There is absolutely no whisper in Annexure-I F.I.R that the petitioner obtained any valuable thing or pecuniary

advantage by abusing his position as public servant. As noticed earlier, by virtue of the quasi judicial order passed by a public servant, if a party to the proceedings before the public servant had obtained any pecuniary advantage, it cannot be found that it was obtained by him as result of abuse of the official position of the public servant. The legislative intent is not to punish a public servant for any erroneous decision; but to punish him for corruption. Thus, to fall within the four corners of sub-clause (ii) of clause (d) of sub-section (1) of Section 13 of the P.C Act, the decision/conduct of the public servant must be dishonest amounting to corruption. Mens rea, the intention and/or knowledge of wrong doing, is an essential condition of the offence of criminal misconduct under Section 13(1)(d)(ii) of the P.C.Act. The presumption under Section 20 of the P.C Act does not apply to the offence under Section 13(1)(d)(ii) of that Act.

31. "Abuse" means misuse i.e. using the official position for something for which it is not intended (See **M. Narayanan Nambiar v. State of Kerala: AIR 1963 SC 1116**). An honest though erroneous exercise of power or an indecision is not an abuse of power (See **Tarlochan Dev Sharma v. State of Punjab: AIR 2001 SC 2524**).

32. Dishonest intention is the gist of the offence under Section 13(1)(d) of the P.C.Act. Mere conduct and action of a public servant, without dishonest intention but contrary to departmental norms, does not amount to criminal misconduct (See **Jaffer Sharief v. State: AIR 2013 SC 48**).

33. Therefore, even if it is accepted that the petitioner had passed Annexure-VI order without perusing the previous records or properly ascertaining the factual position of the matter, his act does not attract the offence under Section 13(1)(d)(ii) of the P.C.Act.

34. As noticed earlier, the correction of Annexure-VI order made by the petitioner as per Annexure-VII order, had not effected any substantial change to Annexure-VI order or the ultimate conclusion reached by him in that order. There is also no allegation against the petitioner in Annexure-I F.I.R that he manipulated or forged the revenue records for any purpose. Therefore, the offences punishable under Sections 465 and 471 of the Indian Penal Code will not lie against him.

35. The discussion above leads to the conclusion that Annexure-I F.I.R does not contain allegations against the petitioner which would attract the offences alleged against him. Though

investigation has been conducted since the year 2014, the investigating agency could not unearth any material as against the petitioner.

36. The salutary principle laid down by the Privy Council in **King Emperor v. Khwaja Nazir Ahmed: AIR 1945 PC 18** and reiterated by the Supreme Court very often is that, in normal circumstances, the court shall not thwart any investigation into an offence but allow it to have its own course under the provisions of the Code. The power of the police to investigate cases where they suspect or even have reasons to suspect the commission of a cognizable offence is unfettered. However, the Privy Council has also made a note of caution that "if no cognizable offence is disclosed and still more, if no offence of any kind is disclosed, the police would have no authority to undertake an investigation".

37. The condition precedent to the commencement of investigation is that the F.I.R must disclose, prima facie, that a cognizable offence has been committed. The right of the police to conduct investigation is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably have reason so to suspect unless the F.I.R, prima facie, discloses the commission of offence. If that condition is satisfied,

the investigation must go on. The Court has then no power to stop the investigation. On the other hand, if the F.I.R does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received. A person, against whom no offence is disclosed, cannot be put to any harassment by the process of investigation (See **State of West Bengal v. Swapan Kumar Guha : AIR 1982 SC 949**). Where the uncontroverted allegations made in the F.I.R and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, the F.I.R as against him is liable to be quashed (See **State of Haryana v. Bhajan Lal : AIR 1992 SC 604**).

38. Application of the above principles to the facts of the present case would lead to the conclusion that Annexure-I F.I.R, as against the petitioner, is liable to be quashed by invoking the power of this Court under Section 482 of the Code.

39. Consequently, the petition is allowed. Annexure-I F.I.R, as far as it relates to the petitioner, is quashed.

R. NARAYANA PISHARADI
JUDGE

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