



2026:KER:3212

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 14TH DAY OF JANUARY 2026 / 24TH POUSHA, 1947

OP(CRL.) NO. 248 OF 2023

AGAINST THE ORDER DATED 08.06.2022 IN CMP NO.29A OF 2020 OF
COURT OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, EKM AT
MUVATTUPUZHA

PETITIONER:

ANAZ M.A.
AGED 48 YEARS
S/O.A.M. ABDULBARI, WORKING AS ASSISTANT CONSERVATOR
OF FORESTS [SPECIAL INVESTIGATION & PROTECTION] ,
FOREST RESOURCES SURVEY CELL, (SIP) CENTRAL CIRCLE,
THRISSUR - 680651, RESIDING AT B-11, GALAXY CLIFFORD,
CHILAVANNOOR, KADAVANTHARA, ERNAKULAM DIST., PIN -
682020

BY ADV.SRI.K.SANDESH RAJA

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031
- 2 DEPUTY SUPERINTENDENT OF POLICE
VIGILANCE & ANTI CORRUPTION BUREAU, CBI ROAD,
KATHRIKADAVU, ERNAKULAM, PIN - 682017
- 3 ROY P.
KUZHAKIYIL VEEDU, CHANNAANIKKADU, KOTTAYAM, PIN -
686533
R1 & R2 BY SPL.PUBLIC PROSECUTOR SRI.RAJESH.A,
SR.PUBLIC PROSECUTOR SMT.REKHA.S
R3 BY ADVS.SRI.SANIL JOSE
SRI.K.P.ANTONY BINU

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 05.12.2025,
THE COURT ON 14.01.2026 DELIVERED THE FOLLOWING:



"C.R"

A.BADHARUDEEN, J.

O.P(Crl.) No.248 of 2023

Dated this the 14th day of January, 2026

J U D G M E N T

This Original Petition has been filed by the petitioner seeking the following reliefs:

(i) *Call for the records relating to Exhibits P3 order and P4 FIR and to quash Ext.P3 order of the Enquiry Commissioner & Special Judge (Vigilance) Muvattupuzha dated 08.06.2022 in CMP 29A/2020 and Ext.P4 FIR registered by the 2nd respondent.*

(ii) *Such other order or direction as this Hon'ble Court may deem fit and proper in the facts and the circumstances of the case.*

(iii) *The petitioner may be permitted to dispense with the filing of the translation of the vernacular documents."*

2. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor. Also heard the learned counsel appearing for the 3rd respondent, who is the complainant in CMP



29A/2020 on the files of the Enquiry Commissioner and Special Judge (Vigilance), Muvattupuzha, detail.

3. It is pointed out by the learned counsel for the petitioner that the petitioner is arrayed as accused as per Ext.P3 order dated 08.06.2022 passed by the learned Special Judge (Vigilance) Muvattupuzha, forwarding a complaint filed by the 3rd respondent for investigation to the Deputy Superintendent of Police, VACB, Ernakulam, under Section 156(3) of the Code of Criminal Procedure ('Cr.P.C' for short) for registering a crime, which is unsustainable since the law in force doesn't permit the said course of action. He also pointed out the decision of this Court in Crl.M.C.No.7741/2025 and Crl.M.C.No.8392/2025 dated 21.11.2025 reported in [2025 KHC OnLine 1228], *Ajith Kumar.M.R v. State of Kerala* referring *Anil Kumar v. M.K.Aiyappa*. [(2013) 10 SCC 705], while holding that in order to forward a complaint under Section 156 of Cr.P.C by a Special



Judge, sanction under Section 19 of the Prevention of Corruption Act, 1988 ('PC Act, 1988' for short) is necessary.

4. The learned Special Public Prosecutor did not dispute this legal position which has been extensively discussed in *Ajith Kumar M.R's* case (*supra*).

5. It is argued by the learned counsel for the 3rd respondent that since the learned Special Judge already issued a direction to register FIR and Ext.P4 FIR also was registered, interference in Exts.P3 and P4 at the instance of this Court is totally unwarranted. Therefore, this petition is liable to fail.

6. In paragraph 34 of *Ajith Kumar M.R's* case (*supra*), this Court considered the impact of the judgment in *Anil Kumar v. M.K.Aiyappa's* case (*supra*) as under:

“34. If at all the view taken in the judgments referred by Advocate M.P.Shameen Ahamed is given emphasis, it is necessary to



*consider the argument of the learned Senior Counsel for M.R.Ajith Kumar also. Thus the arguments at the instance of the learned Senior Counsel appearing for Sri M.R.Ajith Kumar is that the Apex Court in **Anil Kumar v. M.K.Aiyappa** (supra) considered the finding of the High Court by quashing the order passed by the Special Judge after holding that the Special Judge could not have taken notice of a private complaint against a public servant unless the same was accompanied by a sanction order under Section 19(1) of PC Act, 1988, irrespective of whether the court was acting at a pre cognizance stage or at post cognizance stage. While addressing correctness of the said order, the Apex Court held in paragraph Nos.11 and 15 that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 of Cr.P.C, the Magistrate is required to apply his mind, and in such a case the Special Judge/Magistrate cannot refer the*



matter under Section 156(3) Cr.P.C for investigation against a public servant without a valid sanction under Section 19(1) of the PC Act, 1988. Further it was held that the word 'cognizance' has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge under the Prevention of Corruption Act, 1988 refers a complaint for investigation under Section 156(3) Cr.P.C, obviously he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. It was held further that when a Special Judge takes cognizance of the offence on a complaint presented under Section 200 Cr.P.C, the next step to be taken is to follow under Section 202 Cr.P.C. Therefore, the contention of the learned Senior Counsel for M.R.Ajith Kumar is that decision to proceed under Section 200 Cr.P.C or under Section 223 of BNSS is akin to taking cognizance. Apart



*from that the learned Senior Counsel raised a contention that either to forward a complaint filed before a Special Judge under the PC Act for investigation under Section 156(3) Cr.P.C or under Section 175(3) BNSS sanction under Section 19(1) is mandatory. He also argued that for the same reasons, when the Special Judge decided to proceed further on the complaint even if it is held the stage as "pre-cognizance stage" for which also sanction under Section 19(1) is mandatory and, then also Annexure 8 order is illegal. In this connection, it is not in dispute that the decision in **Anil Kumar v. Ayyappa** (supra) was considered in [(2018) 5 SCC 557], **Manju Surana v. Sunil Arora & Ors.** and the question was referred to a larger Bench for an authoritative verdict on the point. That apart, as per the decision in **B.S.Yeddiurappa v. A Alam Pasha & Ors.**'s case (supra) also the Apex Court raised 8 questions with reference to Sections 17A and 19*



*of the P.C Act, 2018 as well as under Sections 156(3) and 200 to 203 of Cr.P.C and referred the same also to be considered by a larger Bench in view of the decision in **Manju Surana** (supra). In fact, the questions referred to the larger Bench in **B.S.Yeddiyurappa v. A Alam Pasha & Ors.**'s case (supra) are also questions involved in this case, awaiting an authoritative pronouncement on those issues.”*

7. Since the legal position is clear on the point that the learned Special Judge has no power to order an investigation under Section 156(3) of Cr.P.C, Ext.P3 order issued to that effect and Ext.P4 FIR registered pursuant to Ext.P3 are unsustainable in law and are liable to be set aside.

In the result, the Original Petition stands allowed and Exts.P3 and P4 are set aside. Consequently, CMP.No.29A/2020 filed by the 3rd respondent before the Special Judge (Vigilance), Muvattupuzha is relegated back to the pre-cognizance stage with



opportunity to the 3rd respondent to obtain sanction under Section 19(1) of the PC Act, 1988 as amended 2018 from the competent authority following the procedure provided therein for proceeding further. The learned Special Judge is directed to insist production of sanction under Section 19 of PC Act, 1988 as amended 2018 to proceed further with the complaint and to proceed in accordance with law, on getting sanction as provided.

Sd/-

A.BADHARUDEEN, JUDGE

rtr/



APPENDIX OF OP(CRL.) NO. 248 OF 2023

PETITIONER'S EXHIBITS

Exhibit P1	TRUE COPY OF THE COMPLAINT DATED 21/12/2019 SUBMITTED BY THE 3RD RESPONDENT
Exhibit P2	TRUE COPY OF THE CONFIDENTIAL ENQUIRY REPORT NO.CV 03/2020/EKM DATED 6/5/2020 SUBMITTED BY THE 2ND RESPONDENT
Exhibit P3	TRUE COPY OF THE ORDER DATED 8/6/2022 IN CMP NO.29A/2020 OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE [VIGILANCE] MUVATTUPUZHA
Exhibit P4	TRUE COPY OF THE FIR NO.08/2022 DATED 15/7/2022 OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE [VIGILANCE] MUVATTUPUZHA

RESPONDENTS' EXHIBITS : NIL