

Presented on : 05-04-2019

Sub:- Public Interest Litigation – Illegal possession of Elephant Tusks in violation of the provisions of Sections 39 (3), 40, 49, 57, 58 (C) and 58 (F) of the Wild Life (Protection) Act, 1972 read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 – Challenge against legality of Exhibit P-2 and P-8 Orders

**BEFORE THE HON'BLE HIGH COURT OF KERALA
AT ERNAKULAM**

W.P. (C). No.

of 2019

**Petitioner
Paulose A.A.**

V.

**Respondents
Mohanlal & 2 Ors.**

**WRIT PETITION (CIVIL)
FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF
INDIA**

Dr. Abraham P. Meachinkara(A-95)

Roll No. K/1234/95

Lalu Mathews M.V.(L-209)

Advocate (K/210/2009)

George Cleetus (G-553)

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&

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Room No. 803, KHCAA Chamber Complex

High Court, Ernakulam-682 031

Tel. No. 9349752863

**BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM**

11.	Exhibit P-8 (True copy of Proceedings No. BDC2-504/14,OCT. No.01/2016 dated 16-01-2016)	-42-
12.	Exhibit P-9 (True copy of the information received from the Public Information Officer of the Judicial First Class Magistrate Court III, at Perumbavoor dated 2-2-2019)	-43-
13.	Exhibit P-9 (a) (True translation of Exhibit P-9)	-44

Dated this the 2nd day of April 2019.

Dr. Abraham P. Meachinkara
Counsel for the Petitioner

**BEFORE THE HON'BLE HIGH COURT OF KERALA
AT ERNAKULAM**

BEFORE THE HON'BLE HIGH COURT OF KERALA
AT ERNAKULAM
(Special Original Jurisdiction)

W.P. (C) No.

of 2019

Paulose A.A., aged 47 years,	}	
S/o. Augustine, Anthikadu House,	}	Petitioner
Eloor South, Udyogamandal P.O.,	}	
Ernakulam District, Pin- 683 501.	}	
	Vs.	

- | | | | |
|----|---|---|-------------|
| 1. | Mohanlal, S/o. late Viswanathan Nair, | } | |
| | aged about 58 years, Vismayam Vedu, | } | |
| | Thevara, Ernakulam, now residing at | } | |
| | 'Sree Ganesh', Rajiv Nagar, | } | |
| | Elamakkara P.O., Kochi-682 026. | } | |
| | | } | |
| 2. | State of Kerala, rep. by the | } | |
| | Additional Chief Secretary to Government, | } | |
| | Forest & Wild Life Department, | } | |
| | Government Secretariat, | } | Respondents |
| | Thiruvananthapuram, Pin- 695 001. | } | |
| | | } | |
| 3. | The Principal Chief Conservator of Forest | } | |
| | (Wild Life) and Chief Wild Life Warden, | } | |
| | Kerala, Forest Headquarters, | } | |
| | Wild Life Office, Thiruvananthapuram, | } | |
| | Pin- 695 014. | } | |

**WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA**

Address for the service of notice and processes on the petitioner is that of his counsel Dr. Abraham P. Meachinkara, Advocate, Chamber No. 803, KHCAA Chamber Complex, High Court Premises, Cochin-682 031.

Address for service on the respondents are as shown above or on their counsel, if and when engaged

STATEMENT OF FACTS

1. This Writ Petition (Civil) is being filed in public interest. The petitioner is a public spirited individual. The petitioner has in the

Act. Now, therefore, it was liable to be seized under section 58 F of the Act. As there was a clear violation of the provisions of the law, the 1st respondent was liable to be prosecuted and punished under Sections 51 and 58 Y of the Wild Life (Protection) Act. Instead of taking steps of prosecution, the respondents have collusively acted to by-pass the law and to protect the 1st respondent by issuing Exhibit P-8 certificate. It is evident that Exhibit P-8 Order is a product of collusion and the illegality in bringing about Exhibit P-8 Order is an act of corruption as contemplated under Section 13 (1) (d) of the Prevention of Corruption Act.

The elephant tusks are the property of government as declared under section 69 of the Kerala Forest Act, 1961 and therefore the 1st respondent is not entitled to keep them as his private property. Exhibit P-8 Order is unsustainable in the eye of law and it is only to be quashed and a direction to respondents 2 and 3 to take effective steps to complete investigation on the basis of the proceedings initiated under O.R. No. 14 of 2012 of Meckappara Forest Station, Kodanadu Range, now pending on the file of the Judicial First Class Magistrate Court III, Perumbavoor, is issued, in the interests of justice. Hence this W.P (C) is filed for appropriate directions.

Dated this the 2nd day of April 2019.

Dr. Abraham P. Meachinkara
Counsel for the Petitioner

past approached this Hon'ble Court by filing W.P.(C) No. 7151 of 2014 for the effective implementation of the "Eloor Drinking Water Supply Scheme" in conformity with the directions issued by the Hon'ble Supreme Court of India. Interim orders in favour of petitioner's cause had already been issued by this Hon'ble Court and the writ petition is still pending final adjudication. The petitioner has also filed CrI. M.C. No. 2114 of 2014 before this Hon'ble Court for agitating public cause in the matter of illegal appointments made in Travancore-Cochin Chemicals Ltd., Eloor. Yet another Writ Petition has also been filed by the petitioner as W.P.(C) No. 1235 of 2019 against the cessation of a ferry service connecting Eloor-Cheranelloor-Mannanthuruthu and the same is also pending.

2. The petitioner had approached the Court of the Enquiry Commissioner and Special Judge (Vigilance), Muvattupuzha by filing Criminal M.P. No. 739 of 2016 in respect of illegal possession of elephant tusks by the 1st respondent, alleging violation of the provisions of sections 39(3), 40, 49, 57, 58 (C) and 58 (F) of the Wild Life (Protection) Act, 1972 read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 and section 120B of the Indian Penal Code. In Criminal M.P. No. 739 of 2016 the Special Court passed the following order:

"So, I am forwarding the complaint to the Director, VACB, Thiruvananthapuram to conduct a Quick Verification of the allegations made against R1 and 7 to 9 in this case. The Enquiry Officer will also ascertain whether any other public servants are involved, and whether there are grounds to proceed further".

A true copy of the order in Criminal M.P. No. 739 of 2016 dated 15-10-2016 of the Court of the Enquiry Commissioner and Special Judge's Court (Vigilance), Muvattupuzha is produced herewith and marked as **Exhibit P-1**.

3. The grievance put forward by the petitioner in Criminal M.P. No. 739 of 2016 is that in June 2012, there was a raid by the Income Tax authorities in the house of 1st respondent, who is a Cine Artist and that 4 elephant tusks were seized from his possession and the same was informed to the Forest Department. Thereupon, the Meckappala Forest Station, Kodanad Range, has registered O.R. No. 14 of 2012 in respect of the same. All the investigations that followed were done to save 1st respondent by introducing loop holes and hence he was not even required to seek any bail and that for the next 50 months, no progress was made in the investigation. In the meanwhile, the 1st respondent filed a petition before the then Forest Minister to exonerate him from the said case. It was contended by the petitioner that elephant tusks cannot be purchased or sold or change hands except by way of inheritance. Because of the influence exerted by 1st respondent and using his influence all the Officers gave all help to him. It was also averred that all the government officials, who are supposed to see that the law is enforced, has acted unlawfully for unlawful gain in the process. It was specifically averred that 1st respondent has not complied with the provisions of the Wild Life (Protection) Act 1972 for possessing elephant tusks in his house. Possession of elephant tusks by him is without having obtained an ownership certificate issued under Section 42 of the Wild Life (Protection) Act, 1972. Instead of taking action against 1st respondent, the then Forest Minister and government officials were interested to see that the forest case is withdrawn. In fact, if a crime was registered, he ought to have approached the appropriate court either for bail or for anticipatory bail. Therefore, the officials saw to it that no crime was registered. The responsible government servants had not acted in accordance with the provisions of law.

4. While so, another petitioner –All Kerala Anticorruption and Human Rights Protection Council filed M.P. No. 1259/2012 in the JFCM Court I, Perumbavoor in O.R. No. 14/2012 of Meckappala Forest Station alleging that after the registration of the Occurrence Report, the

contraband articles were entrusted to the 1st respondent herein i.e., after its seizure. It was contended that releasing of the contraband articles to the accused himself is in contravention of the provisions of Section 50 (3A) and 50 (4) of the Wild Life Protection Act, 1972. However, the court did not entertain the said contentions. Therefore, they approached this Hon'ble Court by filing Crl. M.C. No. 3318 of 2012 for appropriate directions.

5. But in the meanwhile, the Government of Kerala issued an order as G.O.(Rt) No. 538/2015/F&WLD dated 16-12-2015 under Section 40(4) of the Wild Life (Protection) Act 1972, granting permission to the 1st respondent to declare the elephant tusks with him to the Chief Wild Warden/Authorized Officer under sub Section 4 of Section 40 of Wildlife (Protection) Act 1972 within 30 days from the date of the said order. A true copy of G.O.(Rt) No. 538/2015/F&WLD dated 16-12-2015 issued under Section 40(4) of the Wild Life (Protection) Act 1972, granting permission to the 1st respondent to declare the elephant tusks is produced herewith and marked as **Exhibit P-2**. Therefore, this Hon'ble Court vide Order dated 29-02-2016 in Criminal M.C. No. 3318 of 2012 held:

"Presently, it seems that the Government of Kerala has issued an order as GO(RT) No.538/2015/F&WLD, Thiruvananthapuram, dated 16-12-2015 under Section 40 (4) of the Wildlife (Protection) Act, 1972 by granting permission to the 1st respondent Dr. Mohanlal to declare the elephant tusks with him to the Chief Wildlife Warden/Authorised Officer under sub-Section 4 of Section 40 of the Wildlife (Protection) Act, 1972, within 30 days from the date of the said order. Therefore, presently, the possession of the aforesaid elephant tusks by the 1st respondent has become legalized through the aforesaid Government Order issued under Section 40(4) of the Wildlife (Protection) Act, 1972. Matters being so, there is

absolutely nothing to interfere with the matter at present, in view of the said Government Order.

The learned Senior Counsel Sri. T.A. Shaji has submitted that this order should not stand in the way of proceeding with the matter with regard to the legality of the possession of those things by the 1st respondent as on the date of seizure. Of course, this order will not stand in the way of proceeding further with the matter, if so advised.

Crl. M.C. is disposed of accordingly”.

A true copy of Order dated 29-02-2016 in Criminal M.C. No. 3318 of 2012 is produced herewith and marked as **Exhibit P-3**.

6. While matters remained so, the 1st respondent as petitioner filed W.P.(C) No. 35610 of 2016 before this Hon'ble Court with a prayer to quash the private complaint filed by the petitioner on 13-6-2016 and also to quash Exhibit P-1 Order dated 15-10-2016. This Hon'ble Court vide judgment dated 15-6-2017 in W.P.(C) No. 35610 of 2016 held that Exhibit P-1 order passed by the Enquiry Commissioner and Special Judge is not legally sustainable. At the same time it was further held: *“However, no observation is made regarding the pending criminal proceedings or the legality of possession by the petitioner as on the date of actual seizure. It is also made clear that the vice of the governmental action leading to Exhibit P-4 is also not considered in this proceeding.”* Exhibit P-4 is Exhibit P-2 herein above. A true copy of the judgment dated 15-6-2017 in W.P.(C) No. 35610 of 2016 is produced herewith and marked as **Exhibit P-4**.

7. It can therefore be found that the question of the legality of possession of the 4 elephant tusks by the 1st respondent, as on the date of seizure, is a matter left open to be considered in accordance with law. The fact is that as on the date of seizure the 1st respondent did not have any legal right to possess the 4 elephant tusks. He was not issued with a certificate of possession under Section 42 of the Wildlife (Protection) Act, 1972.

8. The presumption under Section 57 of the Wild Life (Protection) Act, 1972 is that the accused is in illegal possession of the property and the presumption under section 69 of the Kerala Forest Act is that it is the property of the Government. This position has been specifically upheld by the Hon'ble Supreme Court in *Wildlife Warden Vs. Komarikkal Elias* [2018 (8) SCC 114] = 2018 (3) KHC 348]. Further, the Hon'ble Supreme Court of India in *H.N. Rishbud Vs. State of Delhi*, [AIR 1955 SC 196], has laid down various stages of investigation. The said stages as laid down by the Hon'ble Supreme Court are the same steps and powers given to a Forest Officer as per section 50 of the Wild Life (Protection) Act, 1972. This makes it clear that when any Wildlife offence is committed, the officers specified in Section 50 (1) of the Wildlife Protection Act can commence investigation.

9. The petitioner submits that the law and procedure in respect of unlawful possession of elephant tusk is crystal clear. Yet, Additional Chief Secretary to Government (the 2nd respondent herein) issued Exhibit P-2 order vide GO (RT) No. 538/2015/F&WLD dated 16-12-2015 to protect the offender-the 1st respondent herein -by permitting him to declare the possession of the elephant tusks within a further period of 30 days purportedly in exercise of the powers under Section 40 (4) of the Wild Life (Protection) Act, 1972.

10. On the basis of Exhibit P-2 Government Order, the 1st respondent filed a declaration under Section 40 (4) of the Wild Life (Protection) Act, 1972 on 1-1-2016. A true copy of the declaration made by the 1st respondent on 1-1-2016 is produced herewith and marked as **Exhibit P-5**.

11. It can be found that the facts stated in the declaration are not true and certainly the 1st respondent was concealing the basic facts about how he acquired possession of the elephant tusks. It is submitted that the Assistant Conservator of Forest (K.J. Martin Lowel) visited the house of the 1st respondent on 7-1-2016 and made an inventory report in

Form 15. This is evident from the letter No. E2-43/16 dated 7-1-2016 issued by the Assistant Conservator of Forests, to the Principal Chief Conservator of Forest. A true copy the letter bearing No. E2-43/16 dated 7-1-2016 issued by the Assistant Conservator of Forests, to the Principal Chief Conservator of Forest is produced herewith and marked as **Exhibit P-6**. Along with Exhibit P-6, the Assistant Conservator of Forest forwarded a copy of an ownership declaration made by one Mr. K. Krishna Kumar dated 4-9-2011. A true copy of the declaration of ownership made by Mr. K. Krishna Kumar dated 4-9-2011 is produced herewith and marked as **Exhibit P-7**.

12. It can be found that the owner of 2 numbers of ivory was the said Mr. K. Krishna Kumar and he had purchased this from Mrs. Nalini Radhakrishnan in the year 1983 for a sum of Rs. 60,000/-. It is also stated that these 2 numbers of ivory were entrusted to the 1st respondent in the year 2005 to be kept in his safe custody. From the above statement it is clear that Mr. K. Krishna Kumar has obtained possession of the 2 tusks in total violation of the provisions of the Wild Life (Protection) Act, 1972. By his act of purchase in the year 1983, he committed an offence under section 39 (3) the Act. That apart the 1st respondent, whether obtained by way of purchase or otherwise, got possession of the same on 4-9-2011. This is also in violation of section 39 (3) the Act. The very documents available before the Chief Conservator of Forest and Wild Life amply proves that both Mr. K. Krishna Kumar and Mr. Mohanlal committed offences under the Act and it was thereafter that the State Government proceeded to grant possession certificate to the 1st respondent.

13. In spite of clear violation of law and against the specific mandate of law the 3rd respondent vide his Proceedings No. BDC2-504/14,OCT. No.01/2016 dated 16-01-2016 issued certificate of ownership of the 4 elephant tusks in Form No. 16 as provided under Section 40 (4) of the Wild Life (Protection) Act, 1972 to the 1st respondent. A true copy of Proceedings No. BDC2-504/14,OCT.

No.01/2016 dated 16-01-2016 is produced herewith and marked as **Exhibit P-8**.

14. The petitioner submits that Exhibit P-8 Certificate of Ownership was issued to the 1st respondent without conducting any proper inquiry or investigation in O.R. 14/2012 of Meckappala Forest Station pending on the file of the Judicial First Class Magistrate Court III, at Perumbavoor. The petitioner has applied before the Public Information Officer of the Judicial First Class Magistrate Court III, at Perumbavoor for information regarding the current status of the proceedings in O.R. 14 of 2012 of Meckappala Forest Station. A true copy of the information received from the Public Information Officer of the Judicial First Class Magistrate Court III, at Perumbavoor dated 2-2-2019 is produced herewith and marked as **Exhibit P-9**. A true translation of Exhibit P-9 is produced herewith and marked as **Exhibit P- (a)**. It can be found that in response to his application under the Right to Information Act, it is stated that Form 2 report in O.R. 14 of 2012 has not yet been filed in the court and that no information is received in the court regarding completion of enquiry in the case. It is also stated that the said case is not being called in the court. It is further stated that no application is received for termination of the proceedings in the above case.

15. The above being the position, the petitioner is highly aggrieved by the way in which the 1st respondent is unlawfully protected by issuing Exhibit P-8 Certificate of Ownership. The 1st respondent is legally not entitled to get the certificate of ownership and it has been issued in total violation of the provisions of law. The 4 elephant tusks in the possession of the 1st respondent are government property as per law. He has no right to keep them as his personal property. Several other persons are being prosecuted in the State of Kerala for even minor violation of the provisions of the Wild Life (Protection) Act, 1972. The principle of equality before law and equal protection of law as guaranteed by the constitution is given a go bye by the respondents who

are bound to protect the constitution and the law. Aggrieved by the infringement of the constitutional guarantees and discriminatory treatment given to similar persons, the petitioner prefers to approach this Hon'ble Court to set the law in motion, in the interest of justice.

8. In the aforesaid circumstances, for achieving the aforesaid objective, the petitioner has no other alternative and efficacious remedy other than approaching this Hon'ble Court under Article 226 of the Constitution of India on the following amongst other:-

GROUND

A. That the actions taken by the respondents for issuing Exhibit P-8 certificate is in gross violation of the provisions of the Wild Life (Protection) Act, 1972 and the Kerala Forest Act, 1961.

B. That the 1st respondent was not legally entitled to possess the 4 elephant tusks at the time of its seizure on 21-12-2011. As on that date no person was entitled to possess such articles without a certificate of ownership as was specifically made clear under the provisions of Section 39 (3) of the Wild Life (Protection) Act, 1972 as it was specifically provided so under Section 39 of the Act. Now, therefore, as on date of seizure, the 1st respondent was not entitled, under law, to possess the articles seized. It was liable to be seized under section 58 F of the Act. There was a clear violation of the provisions of the law and therefore the 1st respondent was liable to be prosecuted and punished under Sections 51 and 58 Y of the Act. Instead of taking steps of prosecution, the respondents have collusively acted to bye-pass the law and to protect the 1st respondent by issuing Exhibit P-8 certificate.

C. It can be found that the owner of 2 numbers of ivory was one Mr. K. Krishna Kumar as evidenced by Exhibit P-7 and he had purchased this from Mrs. Nalini Radhakrishnan in the year 1983 for a sum of Rs. 60,000/-. It is evident that he too was in illegal possession. It is stated in Exhibit P-7 that these 2 numbers of ivory were entrusted to the 1st respondent in the year 2005 to be kept in his safe custody. From

the above statement it is clear that Mr. K. Krishna Kumar had obtained possession of the 2 tusks in total violation of the provisions of the Wild Life (Protection) Act, 1972. By his act of purchase in the year 1983, he committed an offence under section 39 (3) the Act. That apart the 1st respondent, whether obtained by way of purchase or otherwise, got possession of the same on 4-9-2011. This is also in violation of section 39 (3) the Act. The very documents available before the Chief Conservator of Forest and Wild Life amply proves that both Mr. K. Krishna Kumar and Mr. Mohanlal committed offences under the Act and it was thereafter that the State Government proceeded to grant possession certificate to the 1st respondent.

D. That Exhibit P-8 certificate is issued on the basis of Exhibit P-5 declaration and on the strength of Exhibit P-7 letter issued by one Mr. K. Krishna Kumar. Exhibit P-7 itself discloses commission of offence by Sri. K. Krishna Kumar. Therefore, going by the mandate of law, he too should have been brought on the array of accused. Instead of commencing prosecution against the said K. Krishna Kumar, Exhibit P-7 declaration is taken as a piece of evidence to support the 1st respondent's claim of ownership and to bring about Exhibit P-8 Certificate of ownership. It is submitted that two illegalities cannot bring about one legality. The declaration in Exhibit P-5 itself shows that the 1st respondent obtained possession of the elephant tusks as per Exhibit P-2 Government Order which permitted the 1st respondent to file a declaration within 30 days from Exhibit P-2 Order. It is submitted that Exhibit P-2 Order is not on the basis of which the 1st respondent got possession of the articles, as is evident from Exhibit P-7.

E. That it is for the 1st respondent to explain how he obtained possession of the contra band articles. The presumption of law is that he has committed an offence under the Act as it is so specifically stated in Section 57 of the Wild Life (Protection) Act, 1972.

F. That it is evident that Exhibit P-8 Order is a product of collusion and the illegality in bringing about Exhibit P-8 Order is an act

of corruption as contemplated under Section 13 (1) (d) of the Prevention of Corruption Act.

G. That the 1st respondent is unlawfully protected by issuing Exhibit P-8 Certificate of Ownership. The 1st respondent is legally not entitled to get the certificate of ownership and it has been issued in total violation of the provisions of law. The four elephant tusks in the possession of the 1st respondent are government property as per section 69 of the Kerala Forest Act, 1961. He has no right to keep them as his personal property. Several other persons are being prosecuted in the State of Kerala for even minor violation of the provisions of the Wild Life (Protection) Act, 1972. The principle of equality before law and equal protection of law as guaranteed by the constitution is given a go-bye by the respondents who are bound to protect the constitution and the law.

H. It can be found from Exhibit P-3 and P-4 judgments that this Hon'ble Court did not consider the question of the legality of possession of the four elephant tusks by the 1st respondent, as on the date of seizure and it is a matter left open to be considered in accordance with law. The fact is that as on the date of seizure, the 1st respondent did not have any legal right to possess the 4 elephant tusks. He was not issued with a certificate of possession under Section 42 of the Wildlife (Protection) Act, 1972.

I. That Exhibit P-8 Order is unsustainable in the eye of law and it is only to be quashed and a direction to respondents 2 and 3 to take effective steps to complete investigation on the basis of the proceedings initiated under O.R. No. 14 of 2012 of Meckappara Forest Station, Kodanadu Range, now pending on the file of the Judicial First Class Magistrate Court III, Perumbavoor, is issued.

For these and other reasons to be urged at the time of hearing, this Hon'ble Court may be pleased:

PRAYER

(i) to issue a writ of certiorari and quash Exhibit P-2 order passed by the 2nd respondent and Exhibit P-8 Orders passed by 3rd Respondent.

(ii) to issue a writ of mandamus or any other appropriate writ, order or direction directing the 2nd and 3rd respondents to take effective steps for completion of investigation in the offence registered as O.R. No. 14 of 2012 of Meckappara Forest Station, Kodanadu Range and pending on the file of the Judicial First Class Magistrate Court III at Perumbavoor.

(iii) to issue any other appropriate writ, order or direction that this Hon'ble Court deems fit, in the interests of justice and in the facts and circumstances of the case.

AND

(iii). to award cost of this Writ Petition (Civil) to the Petitioner.

**INTERIM RELIEF PRAYED FOR UNDER RULE 150 OF THE
HIGH COURT RULES**

For the reasons stated in the Writ Petition (Civil) and the accompanying affidavit, it is humbly prayed that this Hon'ble Court may be pleased to call for the records leading to Exhibit P-2 and P-8 Orders, pending disposal of the Writ Petition (Civil), in the interests of justice.

Dated this the 2nd day of April 2019.

Dr. Abraham P. Meachinkara
(Counsel for the Petitioner)

Paulose A.A.
(Petitioner)

W.P. (C). No. _____ of 2019

AFFIDAVIT

Dr. Abraham P. Meachinkara
Advocate

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EXHIBIT P-1

IN THE COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE
(VIGILANCE), MUVATTUPUZHA

Present:- Sri.P.Madhavan, Enquiry Commissioner & Special Judge, Muvattupuzha

Saturday the 15th day of October, 2016.

Crl. MP 739 /2016

Sri. A.A.Paulose, 44 Years, : Complainant
S/o. Augustin, Anthicaud House,
Udyogamandal P.O., (Rep. By Adv. Lalu Mathews)
Eloor.

Vs.

- | | | |
|--|---|---------------|
| <ol style="list-style-type: none"> 1. Sri. Thiruvanchoor Radhakrishnan
Former Forest Minister Kerala. 2. Sri. Marapandyan, Former Secretary
Forest Department, Kerala 3. Sri. Phanidrakumar, Ifs, DFO,
Malayattoor Range 4. Sri. I P Sanal, Range Forest Officer,
Kodanad 5. Sri. K Padmakumar,
City Police Commissioner Kochi City 6. Sri. Bijo Alexander, ACP, Thrikkakara 7. Padmasree Bharat Mohanlal,
S/o Viswanathan Nair, Vismayam Veedu,
Thevara, EKM 8. Sri. P N Krishnakumar, Hill Garden Colony,
Kuttanelloor Desam, Thrissur 9. Sri. K Krishnakumar, Nayanam Veedu,
North Fort Gate, Thripunithura 10. Smt. Nalini Ramakrishnan, Sterling Appartment,
Chennai. | } | : Respondents |
|--|---|---------------|

ORDER

This is a complaint filed under S.190 Cr.pc alleging offences under S.120(B) IPC and S.13(1)(d) of the prevention of corruption act against the respondents.

The complainants case in a nut shell is that R7 Mohanlal(Cine artist) who is the recipient of Padmasree award and Honorary Colonel of territorial army was found illegally keeping 2 sets elephant tusks unauthorisedly in his house "Vismaya" in Thevara Village by the Income Tax authorities in a search and the Forest

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Ext P-1/2

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Department registered an occurrence report as OR 14/12. One set of ivory was procured from R9 and R10 and another set of tusks were procured from R8. R7 had not reported the procurement to the Forest Department. He was keeping the same in house unauthorizedly from 1988 onwards. According to the complainant, R7 used his undue influence with R1 and had procured an illegal order to withdraw the case without any further investigation regarding the origin of the tusks and owing to the undue influence with R1 to 6, R1 to 6 had abused their official position as public servants and had even permitted Sri.Mohanlal(R7) to declare the animal trophy by issuing a special order only for the purpose of Sri.Mohanlal and there after granted a certificate of ownership violating the provisions of wild life (Protection) Act 1992. According to the complainant, if such an offence was committed by an ordinary man, he would have been incarcerated by arrest and detention in Jail stating it as a serious offence. But the Forest Department had treated Mohanlal differently in violation of Act 14 of the constitution that "all are equal before law."

2. Perused the complaint and various documents produced by the petitioner/complainant. The provisions of the wild life (Protection) Act 1972 clearly prohibits acquisition, keeping, receiving, selling or otherwise transfer of any animal object, trophy etc., except with the previous permission in writing of the chief wild life warden or the authorized officer (S 40(2)).

3. S.40(2A) states that no person other than a person having certificate of ownership, shall after the commencement of amending act (2003) acquire, receive keep in his custody any animal article, trophy of animals mentioned in schedule I and II except by way of inheritance (the alleged offence is a continuing offence).

4. S.40(2) (B) makes it mandatory to declare any inheritance within 90 days of such inheritance to the chief wild life warden and the provisions of S.40(1), 41, 42

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Ext P-1/3

of the act will apply to such declaration. S.40(4) is an enabling provision to the State government to require such persons to notify the possession to the Government.

5. S.41, and S.42 of the wild life (Protection) Act states how to proceed on making such a declaration before the Forests and wild life Department. Under S.41 an enquiry has to be conducted as to whether the possession was legal and inventory has to be prepared regarding the property declared by the authorized officer. S.42 clearly states that the wild life warden can issue a certificate of ownership only if the possession is found lawful. Here, it seems that no proper enquiry was conducted as to how R7, 8 and 9 got into possession of these elephant tusks. It is clear that R7 has violated the provisions of wild life (Protection) Act. The declaration does not contain anything as to how R7 came into possession of the contraband. Only if possession is legal, it can be accepted by the wild life warden. There cannot be any special consideration given to R7 because he is a recipient of a national award. On going through the complaint and documents filed, I find that the withdrawal as well, declaration and granting of ownership certificate was done at the instance of R1 the then forest minister in favour of R7 to 9. The main allegation is that R1 and others had conspired with R7 to 9 and had abused the official position in granting benefits to R7 to 9. The forest department, at first was against issuing an order for declaration of the tusks held by Mr. Mohanlal. It was at the instance of R1, the file was again put up for granting an order for declaration as per advice of R1 (vide order dt.19.11.15)

6. At this stage there is no sufficient material to show that R2 to 6 had actively participated in granting the benefits.

7. A preliminary enquiry is necessary to ascertain whether R1 had in fact abused his official position as Minister in giving a *differential treatment* to R7 to 9 as alleged in the complaint.

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Ext P-1/4.

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8. So, I am forwarding the complaint to the Director, VACB, Thiruvananthapuram to conduct a Quick Verification of the allegations made against R1 and 7 to 9 in this case. The enquiry officer will also ascertain whether any other public servants are involved, and whether there are grounds to proceed further.

9. The report will be filed on or before 16.12.2016.

Pronounced in the open court this the 15th day of October, 2016.

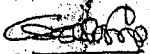
Sd/-

P.MADHAVAN

Enquiry commissioner and Special Judge
MUVATTUPUZZHA

(True Copy)

By Order



R. N. Nair

This is a true copy of the document produced & marked as Exhibit P-1 is the W.P.(C) filed herewith.

Adm. Secy.

68846



GOVERNMENT OF KERALA

Abstract

Forest and Wildlife Department- Declaration of Elephant Tusks possessed by Dr. Mohanlal, F-4 Chorus, Kochar Road, Sasthamangalam, Thiruvananthapuram - Permission granted under Sec 40(4) of the Wildlife Protection Act, 1972 - Orders issued.

FOREST & WILD LIFE (D) DEPARTMENT

GO (Rt) No.538/2015/F&WLD

Thiruvananthapuram, Dated: 16.12.2015

Read : 1) Letter F.No.1-7/2015/WL dated 29/4/2015 from Ministry of Environment and Forest addressed to Dr. Mohanlal
 2) Letter dated 01/06/2015 from Dr. Mohanlal
 3) Letter No. BDC 2-504/2014 dated 17.10.2015 and 14.12.2015 from the Chief Wildlife Warden, Kerala

ORDER

DL
 12
 S/12
 As per letter read as 1st paper above Inspector General of Forests (Wildlife) Ministry of Environment, Forest and Climate Change informed Dr. Mohanlal that *"presently the Ministry has initiated a review of Wild Life Protection Act, 1972 and your request, along with similar other requests would be considered during the review process. In the meantime you may also like to take up the matter with the concerned State Government/Chief Wildlife Warden, with respect to sub section(4) under Section 40 of the Wildlife Protection Act, 1972."*

7
 S/W
 F (WL) & G
 As per letter read as 2nd paper above Dr. Mohanlal informed that the license of the Elephant Tusks in his possession is held by his friend and the same is not registered in his name. It is also informed that the Inspector General of Forests (Wildlife) in a letter addressed to him has shared his concern along with other citizens who could not declare the Wildlife Stock within the stipulated time period and informed that his request has grounds to be considered during the review of Wildlife Protection Act 1972.

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Ext P-2/2

As per letters read as 3rd paper above, The Principal Chief Conservator of Forests (Wildlife) informed that as per Sec 40(4) of the Wildlife Protection Act, 1972, the State Government is competent to issue notification for declaration of Animal and animal article including tusks. The Principal Chief Conservator of Forests (Wildlife) also informed that since the Central Government vide letter read as 1st paper above has directed the applicant to take up the matter with the State Government under Sec 40(4) of the Wildlife Protection Act, 1972, the State Government may consider for issuing notification under Section 40(4) limiting to ivory artifact and tusks.

Government have examined the matter in detail and are pleased to grant permission to Dr. Mohanlal to declare the Elephant tusks with him to the Chief Wildlife Warden/Authorized Officer under subsection (4) of Section 40 of the Wildlife protection Act, 1972 within 30 days from the date of this order.

(By order of the Governor)

P.MARA PANDIYAN
Additional Chief Secretary to Govt.

To

The Principal Chief Conservator of Forests (Wildlife) Thiruvananthapuram
Dr. Mohanlal, F-4 Chorus, Kochar Road, Sasthamangalam, Thiruvananthapuram
The Accountant General (Audit/A&E) Thiruvananthapuram,
The Web and New Media, I&PRD
Stock File /Office Copy



Forwarded/by order

[Signature]

Section Officer

*This is a true copy of the document produced & made
as Exhibit P-2 in the W.P.(C) filed herewith.*

Advocate

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EXHIBIT P-3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 29TH DAY OF FEBRUARY 2016/10TH PHALGUNA, 1937

Crl.MC.No. 3318 of 2012 ()

MP.NO. 1259/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-1,
 PERUMBAVOOR
 QR.NO.14/2012 OF MECKAPPALA FOREST STATION

PETITIONER/PETITIONER:

ALL KERALA ANTI CORRUPTION & HUMAN RIGHTS
 PROTECTION COUNCIL, REG. NO. CA -597/6,
 REPRESENTED BY ITS PRESIDENT ISSAC VARGHESE,
 POST BOX NO. 29, METTUPALAYAM STREET, HEAD POST OFFICE,
 PALAKKAD DISTRICT.

BY SRI.T.A.SHAJI, SENIOR ADVOCATE
 ADV.SRI.MANSOOR.B.H.

RESPONDENT(S)/RESPONDENTS:

1. MOHANLAL,
 CINE ACTOR, 'VISMAYA', HOUSE NO. CC 56/2161,
 VIDYA VIHAR ROAD, THEVARA,
 ERNAKULAM DISTRICT - 682 013.
2. K. KRISHNAKUMAR,
 'NAYANA', THIRIPUNITHURA,
 ERNAKULAM DISTRICT - 682 306.
3. P.N. KRISHNAKUMAR,
 HILL GARDEN, HOUSE NO. 127,
 KUTTANELLUR HOUSING COMPLEX,
 THRISSUR DISTRICT - 688 001.
4. THE DIVISIONAL FOREST OFFICER,
 P.O. KODANADU, MALAYATTOOR, KERALA - 683 587.
5. STATE- REPRESENTED BY THE PRINCIPAL CHIEF CONSERVATOR OF
 FORESTS (WILD LIFE) GOVERNMENT OF KERALA,
 VAZHUTHACAUD, TRIVANDRUM - 695 014,
 REPRESENTED BY THE PUBLIC PROSECUTOR,
 HIGH COURT OF KERALA, ERNAKULAM.

R1 SRI.M.K.DAMODARAN, SENIOR ADVOCATE
 ADV. SRI.K.R.RADHAKRISHNAN NAIR
 R4 & R5 BY ADVOCATE GENERAL SRI.K.P.DANDAPANI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
 ON 29-02-2016, THE COURT ON THE SAME DAY PASSED THE
 FOLLOWING:

sts

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Ext P-3/2

[CR]

B. KEMAL PASHA, J......
Crl.M.C. No.3318 of 2012
.....*Dated this the 29th day of February, 2016***ORDER**

~~~~~

During the course of an income tax raid at the house of Dr.Mohanlal, a well known cine artist, four elephant tusks were found at his residence. The matter was reported to the forest officials and consequently, on 21.12.2011, the Deputy Range Officer of the Malayattoor Forest Station and party conducted a search at his house and found four elephant tusks. Since he had no authorisation to keep those elephant tusks in his possession, OR No.14/2012 of Meckappala Forest Station was registered against him. It seems that even on the registration of the occurrence report, the contraband articles were entrusted to the 1<sup>st</sup>

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Ext P-3/3

Crl.M.C.3318/2012

: 2 :

respondent herein, after the seizure.

2. Heard learned Senior Counsel Sri.T.A.Shaji for the petitioner, learned Senior Counsel Sri.M.K.Damodaran and Sri.K.R.Radhakrishnan Nair for the 1<sup>st</sup> respondent and learned Advocate General Sri.K.P.Dandapani for the State.

3. The learned Senior Counsel for the petitioner has challenged the aforesaid action of the forest officials in handing over the contraband back to the 1<sup>st</sup> respondent, after the seizure, by alleging that it is in contravention of the provisions of Section 50(3A) and 50(4) of the Wildlife (Protection) Act, 1972.

4. Presently, it seems that the Government of Kerala has issued an order as GO(RT) No.538/2015/F & WLD, Thiruvananthapuram, dated 16.12.2015 under Section 40(4) of the Wildlife (Protection) Act, 1972 by granting permission to the 1<sup>st</sup> respondent Dr.Mohanlal to declare the elephant tusks with him to the Chief Wildlife Warden/Authorised Officer under sub-Section 4 of Section 40 of the Wildlife

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Ext P-3/4

Crl.M.C.3318/2012

: 3 :

(Protection) Act, 1972, within 30 days from the date of the said order. Therefore, presently, the possession of the aforesaid elephant tusks by the 1<sup>st</sup> respondent has become legalised through the aforesaid Government Order issued under Section 40(4) of the Wildlife (Protection) Act, 1972. Matters being so, there is absolutely nothing to interfere with the matter at present, in view of the said Government Order.

5. The learned Senior Counsel Sri.T.A.Shaji has submitted that this order should not stand in the way of proceeding with the matter with regard to the legality of the possession of those things by the 1<sup>st</sup> respondent as on the date of seizure. Of course, this order will not stand in the way of proceeding further with the matter, if so advised.

Crl.M.C. is disposed of accordingly.

Sd/-  
(B.KEMAL PASHA, JUDGE)

aks/29/02

// True Copy //

PA to Judge

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Ex P-3/5

CRL.M.C.NO.3318/2012APPENDIXPETITIONER'S ANNEXURES:

- ANNEX I COPY OF THE ORDER DATED 13/09/2012 IN CMP.NO.1259/2012 IN O.R.NO.14/2012 OF MECKAPPALA FOREST STATION ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE NO.1, PERUMBAVOOR.
- ANNEX II COPY OF THE REPLY DATED 07/09/2011 ISSUED BY THE 4TH RESPONDENT ON PETITIONER'S QUERY.
- ANNEX III COPY OF THE MAHAZAR DATED 21/12/2011 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER UNDER THE PROVISIONS OF THE RIGHT TO INFORMATION ACT.
- ANNEX IV COPY OF THE REPLY DATED 31/03/2012 ISSUED TO THE PETITIONER.
- ANNEX V COPY OF THE COMPLAINT DATED 02/04/2012 PREFERRED BY THE PETITIONER BEFORE THE FOREST RANGE OFFICER, KODANAD.
- ANNEX VI COPY OF THE CMP.NO.1259/2012 FILED BY THE PETITIONER IN OR.NO.14/2012 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE NO.1, PERUMBAVOOR
- ANNEX VII COPY OF THE STATEMENT DATED 09/07/2012 FILED BY THE DIVISIONAL FOREST OFFICER, MALAYATOOR IN CMP.NO.1259/2012
- ANNEX VIII COPY OF THE FORM NO.1 SEIZURE REPORT DATED 12/06/2012 PREPARED UNDER SECTION 52 OF THE FOREST ACT, 1961.

RESPONDENT'S ANNEXURES:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

This is a true copy of the document produced & marked as Exhibit P-3 is the W.P.C. filed herewith

Advocate

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EXHIBIT P-4.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 15TH DAY OF JUNE 2017/25TH JYAISHTA, 1939

WP(C).No. 35610 of 2016 (A)  
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PETITIONER:  
-----

MOHANLAL,  
SON OF LATE VISWANATHAN NAIR, VISMAYAM VEEDU,  
THEVARA, ERNAKULAM, NOW RESIDING AT  
'SREE GANESH', RAJIV NAGAR,  
ELAMKKARA PO, KOCHI

BY ADVS.SRI.M.K.DAMODARAN (SR.)  
SRI.K.R.RADHAKRISHNAN NAIR

RESPONDENT(S):  
-----

1. A.A.POULOSE,  
SON OF AUGUSTINE, ANTHICAUD HOUSE,  
UDYOGAMANDAL PO, ELOOR, ERNAKULAM, PIN 683501
2. STATE OF KERALA,  
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY(HOME),  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695001
3. THE DIRECTOR,  
VIGILANCE AND ANTI CORRUPTION BUREAU,  
THIRUVANANTHAPURAM 695001

R1 BY ADV. SRI.M.V.LALU MATHEWS  
R2,R3 BY SENIOR GOVERNMENT PLEADER SRI SUMAN CHAKRAVARTHEY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 6-04-2017, THE COURT ON 15-06-2017 DELIVERED THE  
FOLLOWING:

K.V.

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Ext P-4/2

**SUNIL THOMAS, J.****W.P.(C)No.35610 of 2016**Dated this the 15<sup>th</sup> day of June, 2017**JUDGMENT**

The petitioner herein is an acclaimed cine artist. On 22/7/2011, the Income Tax Department conducted a raid in the house of the petitioner herein and found four elephant tusks kept there. The matter was immediately reported to the Forest Department. It was found that the petitioner did not have the requisite licence to keep the tusks in custody. Hence, OR No.14/2012 was registered by Mekkapala Forest Station, Kodanad Forest Range.

2. In the meanwhile, Ext.P1 complaint was laid by the first respondent herein before the court of Vigilance and Special Court and Enquiry Commissioner (V & ACB), Muvattupuzha, against the petitioner herein and nine other persons, including the then Forest Minister. It was alleged that after the interception of the elephant tusks, no legal action was taken against the petitioner herein. Though, O.R.No.14/2012 was registered, the petitioner herein was not arrested. One Anil Kumar had submitted complaint to the City Police Commissioner, who forwarded it to the Assistant Commissioner for enquiry. The Assistant Commissioner had submitted a report. It is alleged that, no action was

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Ext P-4/3

WP.(C)No.35610/2016

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recommended. FIR was also not registered. The petitioner herein was not arrested in spite of lapse of 50 months. The petitioner also did not declare the possession of the tusks within the time granted by the Government. Much later, the accused had filed an application dated 14/1/2016 before the Minister for Forest to exempt him from the prosecution. It was alleged that Ext.P5 Government order was issued permitting the petitioner herein to declare the articles, which were not in accordance with law. According to the complainant, the petitioner herein is stated to have purchased the tusks from three persons arrayed as respondents 8 to 10 in the complaint. The second respondent was the then Secretary to the Government, Forest Department and third and fourth respondents in the complaint were the officials under the Forest Department. The City Police Commissioner and the Assistant Commissioner were arrayed as 5<sup>th</sup> and 6<sup>th</sup> respondents. It was alleged that all of them had colluded to save the petitioner herein from criminal prosecution both for violation of the provisions of the Forest Act and the Wild Life Protection Act. It was contended that, assigning the asset of the State to an individual resulted in loss to the exchequer and consequently, amounted to a corrupt practice as provided under the provisions of Corruption Act. Hence, necessary action was sought against the respondents mentioned in the complaint.

3. The Special Judge (Vigilance), by Ext.P2 order held that

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Ext P-4/4

WP.(C)No.35610/2016

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materials on record did not disclose that the respondents 2 to 6 had actively participated in granting any benefit to the petitioner herein. However, the court held that, on perusing the complaint and the documents filed, Ext.P5 order was issued at the instance of the first respondent in the complaint, who was the then minister. It was held that under section 42, wild life warden can issue certificate of ownership only if the possession was found lawful. No proper inquiry was conducted as to how respondents 7 to 9 got into possession of the elephant tusks. It was also held that, it was at the instance of the first respondent that the file was again put up for granting an order for declaration as per the advice of the first respondent. According to the court, it was necessary to ascertain whether first respondent had in fact abused his official position as Minister in giving preferential treatment to respondents 7 to 9. Hence, the Director, VACB, Thriuvananthapuram was directed to conduct quick verification of the allegations made against the first respondent and respondents 7 to 9 therein. The above order along with Ext.P1 complaint is under challenge in this writ petition.

4. Heard the learned senior counsel for the petitioner, learned counsel for the first respondent/complainant and the learned Public Prosecutor. Examined the records.

5. Essential facts are not in dispute. A perusal of Ext.P1 complaint shows that the crux of the grievance of the complainant

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Ext P-4/5

WP.(C)No.35610/2016

4

was that, in spite of the registration of OR, no further action was taken by the Forest Officials. Crime was also not registered by the police pursuant to the report of the Assistant Commissioner, It was alleged that crime was not taken against the petitioner under the purported influence of the petitioner herein and thereby the Government officials made monetary gain. The further allegation was that by legalising the possession of tusks, the Minister and officials gave preferential treatment to petitioner and thereby gained pecuniary benefits and state suffered financial loss.

6. Countering the above, the petitioner herein contended that, Ext.P1 complaint was set up at the instance of the persons who were inimical terms with the petitioner herein. There was absolutely no corrupt practice involved, much less any illegal act. Pursuant to the complaint given, a crime was registered before the JFCM, Perumbavoor. Two other proceedings were initiated at the instance of the persons who were in inimical terms with the petitioner herein, which has resulted in Exts.P3 and P4 orders of this court. Having failed in their attempt, they have set up the petitioner to spite the petitioner herein.

7. Ext.P5 is the Government Order issued by the Government permitting the petitioner herein to declare his articles legally. The above order was issued under Section 40(4) of the Wild Life Protection Act 1972 as GO(Rt)No.538/2015/FAWLD Thiruvananthapuram dated 16/12/2015. As far as Ext.P5 order

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Ext P-4/6

WP.(C)No.35610/2016

5

stands, the legality and validity of the order cannot be challenged before the Vigilance Court. It can only be challenged in a proceeding before the Constitutional Courts under Article 226 or Article 32 of the Constitution of India. The stand of the Government appears to be that the claims of the petitioner regarding the legality or otherwise of possession of the tusk was found to be acceptable by the competent authority under the Wild Life Act. As long as the Government Order legalizing the possession of the elephant tusks with the petitioner stands, no investigation or enquiry can be ordered by the Vigilance court into the justiciability of the order or the circumstances that resulted in the order issued under the authority of the Governor of the state.

8. The specific contention of the first respondent herein was that, the Minister and the Government officials flouted the laws, gave preferential treatment to the petitioner and thereby derived pecuniary advantage and resulted in consequent loss to the Exchequer. According to the court below, "the withdrawal, declaration and granting of ownership certificate was done at the instance of Minister in favour of respondents 7 to 9". Ext.P5 order itself reveals that the petitioner was advised by the Ministry of Environment and Forest to take up the matter with the State Government under Section 40 of the Wild Life Protection Act 1972. Ext.P5 shows that the Government examined the issue in detail and decided to grant permission to the petitioner to declare the

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Ext P-4/2

WP.(C)No.35610/2016

6

Elephant tusks with him to the Chief Wildlife Warden/Authorised Officer under section 40(4) of the Act. Hence, for the purpose of quick verification, holding that the first respondent alone is liable to be proceeded for, in the absence of prima facie material that the Minister acted independently and contrary to the stand of the Department will be prejudging the issue.

9. It appears that one Anilkumar had filed Cr.M.P.No.641/2014 before the enquiry commissioner and Special Judge, Thrissur alleging that the then Forest Minister was hand in glove with the petitioner herein to save him from the consequence of illegal possession of elephant tusk and that the minister, contrary to the duties attached to the office at the relevant time, had gone out of way to do favour to the the petitioner herein, in relation to the seizure of the contraband articles from his house. The complaint filed by Anilkumar was dismissed by the Vigilance court holding that the matter was pending before the Judicial First Class Magistrate Court. This was assailed by one Pramod in O.P. (Crl.) No.1896/2013. A Learned Single Judge of this Court by Ext.P3 judgment dismissed the complaint, inter alia, on a finding that criminal proceedings have also been initiated and the FIR has been filed before the JFCM, Perumbavoor. It was also found that the above proceedings initiated by the complainant was not one involving public interest and was a clear case of misuse of the provisions. The court dismissed the writ petition holding that

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Ext P-4/8

WP.(C)No.35610/2016

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absolutely nothing was produced by the complainant to prove that there was any instance of the officials concerned acting in a manner against the law. It was held that there was nothing to show that the Minister favoured the petitioner herein. There was also nothing to show that they have acted in breach of trust reposed on them.

10. Another proceeding was initiated by one Anti Corruption & Human Rights Protection Council by filing M.P No.1259/2012 in the Judicial First Class Magistrate Court -1Perumbavoor in OR No. 14/2012 challenging the action of the Forest Officials in handing over the tusks to the petitioner herein on a premise that it was in contravention of the provisions of Sections 50 (3A) and 50 (4) of the Wild Life (Protection) Act 1972. That application was dismissed which was challenged in Crl.MC.No.3318/2012 . By Ext.P4 order, another Hon'ble Judge of this Court held that pending the proceedings, Ext.P4 order (which is Ext.P5 in the present proceedings) was issued by the Government of Kerala granting permission to the petitioner herein to declare the elephant tusks with him to the Chief Wild life Warden/Authorised officer under section 4 (4) of the Wildlife (Protection) Act 1972. Hence it was held that there was nothing to be interfered with, in view of the Government Order.

11. Evidently, the first respondent herein has approached the Special Court invoking its jurisdiction, as a matter of public

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Ext P-4/9

WP.(C)No.35610/2016

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interest. On two earlier occasions, the action of the Forest Authorities was under challenge before the two separate authorities and both have held in favour of the Government, evidenced by Exts.P3 and P4. In Ext.P3, it was held that in the complaint in that case, there was absolutely nothing on record to show that the State or its officers acted in breach of the trust reposed on them contrary to the public trust doctrine. In the present complaint also the issues were once concluded by Exts.P3 and P4. However, by Ext.P4, the right to challenge with regard to the legality of possession of the articles as on the date of seizure was kept open. However, that is not challenged in the present proceedings. The Special Court, on an evaluation of the materials placed before it, had concluded that, there was no material to show that accused 2 to 6 in the complaint, who were the officers under the Government have misused the authorities. On the other and, the court arrived at a conclusion that prima facie there were materials to show that the then Minister had acted in collusion with the petitioner herein to protect him. Evidently, the Government acts through its officers and the very order by which the officers who were exempted from the scope of enquiry and harping on the minister alone itself militates against that part of the order by which enquiry was ordered against the first respondent and the petitioner herein and few other private parties.

12. It seems that the complainant did not have a case that

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Ext P-4/10

WP.(C) No.35610/2016

9

Ext.P4 order was the product of a corrupt practice. Absolutely no ground was made out in the complaint challenging the vice of Ext.P5 or the process of Governmental action which led to the Governmental Order. Further, Ext.P5 is not under challenge in any other proceedings. As long as Ext.P5 stand and the consequential declaration of the items, an enquiry into the subject matter of Ext.P5 can only be considered as mis conceived one. It was also held by this court in Ext.P4 that, once the declaration is made there is absolutely nothing to be interfered it again. The allegations raised by the first respondent are vague, bereft of any details, generalised and courts cannot be called upon to venture into a fishing expedition or a roving enquiry on the basis of mere suspicion entertained by a person to find out whether any corrupt practice is involved. It is also to be noted that the criminal proceedings are already pending. I feel that, in the light of the above, it is only to be held that, the process of Government action being not under challenge, on vague allegations. Ext.P2 order is not legally sustainable.

13. It was further contended by the learned senior counsel for the petitioner that the Vigilance Court, after taking cognizance of the complaint, and offence alleged in the complaint, instead of proceeding under Section 200 Cr.P.C. in Chapter XV of Cr.P.C. after examining the complainant on oath and the witnesses present, had invoked under Section 156(3) Cr.P.C. by deleting accused 2 to

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Ext P-4/11

WP.(C)No.35610/2016

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4, holding that there is no sufficient materials to implicate them. It was argued by the learned senior counsel that the Vigilance Court has reverted back to Section 156 (3) of the Cr.P.C., which was illegal. The learned senior counsel relied on the decision in **Balasubramanian K.S.v Biju Kochu Paul and another 2016 (3) KLT 220**), to support the contention. If I feel that the above decision applies to the facts of this case.

14. In the light of the above, it is only to be held that Ext.P2 passed by the court below is not legally sustainable. However, no observation is made regarding the pending criminal proceedings or the legality of possession by the petitioner as on the date of actual seizure. It is also made clear the vice of the Governmental action leading to Ext.P4 is also not considered in this proceeding.

In the above circumstances, Ext.P2 order is not legally sustainable and is liable to quashed. It is done accordingly. The writ petition is allowed and all further proceedings pursuant to Ext.P2 stand quashed.

Sd/-

**SUNIL THOMAS**  
Judge

dpk

/true copy/ PS to Judge.

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Ex P-4/12

WP(C).No. 35610 of 2016 (A)

## APPENDIX

## PETITIONER(S)' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE COMPLAINT CRL.MP. NO. 739/2016 DATED 13.06.2016 FILED BY THE 1ST RESPONDENT BEFORE THE COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE (VIGILANCE) MUVATTUPUZHA
- EXHIBIT P2 TRUE COPY OF THE ORDER IN CRL.MP.NO. 739/2016 DATED 15.10.2016 OF THE COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE (VIGILANCE) MUVATTUPUZHA
- EXHIBIT P3 TRUE COPY OF THE JUDGEMENT IN OP.CRL. NO. 1896/2013 DATED 18.06.2013 OF THIS HON'BLE COURT
- EXHIBIT P4 TRUE COPY OF THE ORDER IN CRL.MC. NO. 3318/2012 DATED 29.02.2016 OF THIS HON'BLE COURT
- EXHIBIT P5 TRUE COPY OF THE GOVERNMENT ORDER GO (RT)NO. 538/2015/F& WLD THIRUVANANTHAPURAM DATED 16.12.2015

RESPONDENT(S)' EXHIBITS NIL

/TRUE COPY/

P.A.TO JUDGE

K.V.

This is a true copy of the document produced & marked as Exhibit P-4 in the WP(C) filed herewith.

Advocate

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EXHIBIT P-5

Mohanlal

01<sup>st</sup> January, 2016

The Additional Principal Chief Conservator of Forests (Wild Life)  
 (Bio Diversity Cell)  
 Forest and Wildlife Dept.  
 Government of Kerala  
 Thiruvandrum- 695 014  
 Kerala

Dear Sir

Sub:- Declaration of Elephant Tusks

Notification Reference: GO (Rt) No. 538/2015/F&WLD of 16<sup>th</sup> December 2015.

Ref:- BDC 2-504/ 2014 of 18/12/2015

This has reference to the above notification of 16<sup>th</sup> December 15 by the Government of Kerala.

As advised I herein present the 'articles' for declaration before your good office under Section 40, subsection (4) for certificate of ownership.

Enclosed you may please find the Form, the application under section duly filled on the 'articles' in description / dimensions and with supporting photographs for your perusal / verification. I will await the certificate of ownership based on this declaration.

I am also attaching a copy of the money remitted by Chalan for Rs. <sup>3,000/-</sup>~~1,500/-~~ towards fee for 'Declaration of Tusks'

I take this opportunity to thank the office of the Additional Principal Chief Conservator of Forests (Wild Life) (BDC) for giving me an opportunity to present my case and for the patient hearing provided.

Thanking you

Yours Faithfully

APCCF (BDC)

MOHANLAL

Encl: The application.



Contract

M. B. Bomil Kumar

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Ext P-5/2

P-5

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## KERALA FOREST DEPARTMENT

Form of declaration of Trophy and Animal Articles Sec 40(4)  
(GO (Rt) No. 538/2015/F&WLD Dated 16.12.2015)To : The Chief Wildlife Warden  
Forest & Wild Life Dept., State of Kerala  
Trivandrum-695 014, Kerala

Sir

I, MOHANLAL, son of (late) Mr. Viswanathan Nair and Mrs. Santhamma Nair, presently residing at 'Vismaya House', House Number CC 26/ 2802, Vidhaya Vihar Road, Thevara, Cochin, Ernakulam Dist, Pin-682 013, Kerala and having permanent residence at 'Hill View', House No.TC. 19/1961, Mudavanmughal, Poojappura P.O, Trivandrum Dist, Pin-695 012, Kerala State hereby declare that I have in my control/custody/possession the following:-

| Animal Article/<br>Trophy         | Number                                                                                           | Description<br>including name of<br>animal from which<br>derived | Dimensions                                                                                                                                                                                                                                                                                                                                                                                                 | How obtained                                                                                                                                                                                                                                 | Premises where<br>kept                                                                                                                                                                               |
|-----------------------------------|--------------------------------------------------------------------------------------------------|------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Animal Article:<br>Elephant Tusks | 4 nos (2<br>pairs)<br>Tusk Set One<br>A1-Left<br>A2-Right<br>Tusk Set Two<br>B1-Left<br>B2-Right | Indian Elephant<br>(Elephas maximus<br>Tusks)                    | Length- (outer<br>dimensions)-<br>A1- 130 cms<br>A2- 128 cms<br>Girth- (nearer to the<br>base/bottom)-<br>A1- 36 cms<br>A2- 36 cms<br>Weight- (in<br>Kgs/gms)<br>A1- 15.600 Kgs<br>A2- 15.000 kgs<br><br>Length- (outer<br>dimensions)-<br>B1- 125 cms<br>B2- 122 cms<br>Girth- (nearer to the<br>base/bottom)-<br>B1- 37 cms<br>B2- 37 cms<br>Weight- (in<br>Kgs/gms)<br>B1- 16.650 kgs<br>B2- 16.850 kgs | GO (Rt) No.<br>538/2015/F&WLD<br>Dated<br>16.12.2015<br><br>Certificate of<br>Ownership<br>No.WL2-3903/86<br>dated 12.09.1686<br><br>GO (Rt) No.<br>538/2015/F&WLD<br>Dated<br>16.12.2015<br><br>Declaration by<br>Donor dated<br>04.09.2011 | Both the Sets (2<br>pairs / 4 no.s)<br>are in:<br><br>'Vismaya House'<br>House Number<br>CC 26/2802,<br>Vidhaya Vihar<br>Road,<br>Thevara, Cochin<br>PIN-682-013,<br>Ernakulam Dist.<br>Kerala State |

Animal Article: Elephant Tusk four (4) numbers  
Please note: A1 & B1 are Left Tusks AND A2 & B2 are Right Tusks  
Trophy: (Not applicable) As detailed above

Yours faithfully

Place: Cochin  
Date: 30<sup>th</sup> December 2015MOHANLAL  
Signature of the Applicant

This is a true copy of the document produced & marked  
as Exhibit P-5 in the WPCC filed herewith.

Advocate

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EXHIBIT P-6

No. E2-43/16

Office of Assistant Conservator of Forests  
 Social Forestry Division, Ernakulam  
 Marutha Road, Edappally  
 Ph: 0484 2344761  
 Email: acf.sf-ekm@forest.org.in  
 Date: 07.01.2016

From

K.J. Martin Lowel  
 Assistant Conservator of Forests

To

The Principal Chief Conservator of Forests (Wildlife) &  
 Chief Wildlife Warden,  
 Thiruvananthapuram

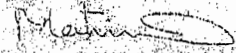
Sir,

Sub: Declaration of Elephant Tusk - reg

Ref: That office letter dated 06.01.2016

In obedience to the letter cited above, I have visited Sri. Mohanlal's house on 07.01.2016 and made an inventory report in Form 15 as directed. The inventory report in Form No. 15 and Photographs are enclosed herewith for kind perusal.

Yours faithfully,



Assistant Conservator of Forests

Encl. As above  
 FOCF (WLD) & CWW



APCCE (BDC)

FORM No. 15  
[See rule 36(2)]  
Inventory of stocks

Ext P-6/2

Shri. Mohanlal s/o. Late Sri. Viswanathan Nair and Mrs. Santhamma Nair resident of Vismaya House, Thevara, Kochi declared in Form No.12 as being in control/custody or possession of animals specified in Schedule I or Part II, to the Wildlife (Protection) Act, 1972 and/or animal articles/trophies/uncured trophies derived there from as listed below:

2. On visiting the premises on 07.01.2016 and making personal inquiries, the stocks specified below were found to be in the control, custody or possession of the said person.

| Animal articles | Stocks declared  | Stocks found in control, custody or possession after verification | Particulars of identifications marks | Remarks                                                 |
|-----------------|------------------|-------------------------------------------------------------------|--------------------------------------|---------------------------------------------------------|
| 1               | 2                | 3                                                                 | 4                                    | 5                                                       |
| Elephant Tusks  | 2 Pairs (4 Nos.) | 2 Pairs (4 Nos.)                                                  | Dimensions & Photographs (attached)  | Tusks are fixed on wooden structure and looks very old. |

#### Animal Articles

(i) Description including name of animal from which derived.

(ii) Number 2 Pairs (4 Nos.)

(iii) Dimension or weight A1- Length: 130cm, Girth: 36cm at 37cm height from bottom  
A2- Length: 128cm, Girth: 36cm at 27cm height from bottom  
B1- Length: 125cm, Girth: 37cm at 34cm height from bottom  
B2- Length: 122cm, Girth: 37cm at 30cm height from bottom

Note: Tusks are mounted on wooden structure, hence weight could not taken.

(iv) Premises where kept A1 & A2- Visiting room in ground floor of the house  
B1 & B2- Visiting room in first floor of the house

#### II. Captive Animals

(i) Species and sex

(ii) Number

(iii) Adult or juvenile

NA

(iv) Premises where kept

#### III. Trophies

(i) Description including species of animal

(ii) Number

(iii) Dimension or weight

NA

(iv) Premises where kept

The above verification was done in the presence of the following member of the household whose signature are appended below:

Name and Signature of the member of household  
Date: 7.01.2016

A. J. MATHEW

1 (OFFICE MANAGER)

(HOUSE HOLD CARETAKER)

K. A. ANEESH

(HOUSE HOLD STAFF)

Signature of the Chief Wildlife Warden/  
Authorized officer

K. J. MARTIN LOWEL  
ASST. CONSERVATOR OF FORESTS  
SOCIAL FORESTRY DIVISION  
ERNAKULAM

This is a true copy of the document produced & marked as Exhibit P-6 in the D.P.C. filed herewith.

Advocate

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EXHIBIT P-7

From

4-9-2011  
TripunithuraK.Krishnakumar,  
Nayanam,  
N.F.Gate, Tripunithura,  
Kochi - 682 301.

To

The Chief Conservator of Forests and Wild Life,  
Kerala State.

Dear Sir,

Sub:- Ownership of 1 No.Dressing table with one oval shape mirror fitted on 2 Nos. Ivory.

This is with reference to the above mentioned Dressing table fitted with 2 Nos. Ivory and an oval shape mirror, found by the Income Tax authorities in Mr.Mohanlal's residence at Thevara, Ernakulam.

Please note that I am the exclusive owner of this Dressing table and the same was in my house for the last 28 years.

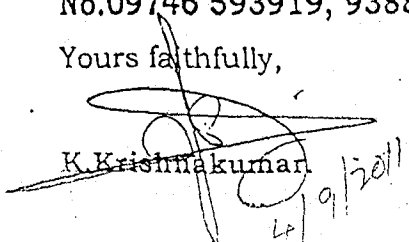
I have purchased this piece from Mrs.Nalini Radhakrishnan, residing at Sterling Apartments, Chennai in the year 1983. I have purchased it for a sum of Rs.60,000/- (Rupees sixty thousand only) and the payment was made by cheque through my NRE account.

I am told by Mrs.Nalini Radhakrishnan that this piece was inherited by her father in law whose father was then Maharaja of Cochin.

The dressing table was sent to Mr.Mohanlal in the year 2005, to be kept in his safe custody at his Trivandrum residence as I was planning to demolish my residential building at Tripunithura, Kochi.

In case you need any further information regarding this matter, I will be glad to provide the same to you at any time. My contact No.09746 593919, 9388861616.

Yours faithfully,

  
K.Krishnakumar

This is a true copy of the document produced & marked as Exhibit P-7 is the W.P(C) filed herewith

Advocate

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**KERALA FOREST DEPARTMENT**  
**FORM NO.16**  
**CERTIFICATE OF OWNERSHIP**  
(Section 40/4)

NO. BDC2-504/14  
OCT.No. 01/2016

Office of the  
Principal Chief Conservator of Forests (Wildlife) &  
Chief Wildlife Warden, Kerala

Dated: 16 .01.2016

**Sub:** Declaration from Dr V. Mohanlal, Vismaya House, CC 26/2802, Vidhaya Vihar Road, Thevara, Cochin, Ernakulam Dist, Kerala. 682013 for getting the Ownership Certificate of the Tusks of died elephant named "Krishnankutty"

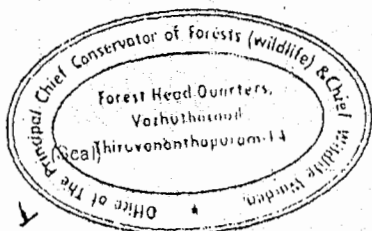
**Ref:**

- 1 GO (Rt) No:538/2015/F & WLD Dated: 16.12.2015.
- 2 Declaration dated 30.12.2015 from Dr V Mohanlal, Vismaya House, CC 26/2802, Vidhaya Vihar Road, Thevara, Cochin, Ernakulam Dist, Kerala 682013
3. Inventory Report No E2-43/16 dtd 7.1.16 of Assistant Conservator of Forest (SF) Ernakulam.

It is hereby certified that Dr V. Mohanlal, Vismaya House, CC 26/2802, Vidhaya Vihar Road, Thevara, Cochin, Ernakulam Dist, Kerala 682013 has under his control/custody/possession the following animal articles/trophies specified in Schedule I of the Wildlife (Protection) Act, 1972.

| Items including species from which derived                                   | Dimension, Number and description of animal article/trophies |                               | Number                   | Place where kept                                                                                                          | Identification marks, if any. |
|------------------------------------------------------------------------------|--------------------------------------------------------------|-------------------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Animal Articles                                                              | Dimension of Tusks                                           |                               |                          |                                                                                                                           |                               |
| 1. Tusks of captive elephant named "Krishnankutty" (Species Elephas maximus) | Right Tusk                                                   | Left Tusk                     | four numbers (Two Pairs) | Residence of Dr V. Mohanlal, Vismaya House, CC 26/2802, Vidhaya Vihar Road, Thevara, Cochin, Ernakulam Dist Kerala 682013 | OCT-1/16                      |
|                                                                              | Length:128 cm<br>Girth: 36 cm                                | Length:130 cm<br>Girth: 36 cm |                          |                                                                                                                           |                               |
| 2. Dressing table fitted with two Nos of ivory (Species Elephas maximus)     | Length:122 cm<br>Girth: 37 cm                                | Length:125 cm<br>Girth: 37 cm |                          |                                                                                                                           |                               |

The certificate is issued to Dr V. Mohanlal, Vismaya House, CC 26/2802, Vidhaya Vihar Road, Thevara, Cochin, Ernakulam Dist, Kerala 682013 in consequence to the declaration and GO(Rt)No:538/2015/F&WLD Dated:16.12.2015.



G. Harikumar, IFS  
Principal Chief Conservator of Forests (Wildlife) &  
Chief Wildlife Warden, Kerala

*This is a true copy of the document produced & marked as Exhibit P-8 is the D.P.C.C. filed herewith.*

*Advocate*

This is a true copy of the document produced & marked as Exhibit P-9 in the R.P.C. filed herewith.



പ്രതികൃത സാക്ഷ്യങ്ങൾ ഉൾപ്പെടെ  
ജഡ്ജ് കോർട്ട് ഓഫ് മേജിസ്ട്രേറ്റ്  
ക്ലാസ്-III, പെരുംബവൂർ

ജഡ്ജ്  
4. ടി.കേശ്വരസ്വാമിപ്പിള്ളിയിൽ താഴെ പറയുന്നവർക്കെതിരെ നിലവിൽ  
3. കോടതിയിൽ ടി.കേശ്വരസ്വാമിപ്പിള്ളിയിൽ.  
2. ടി.കേശ്വരസ്വാമിപ്പിള്ളിയിൽ താഴെ പറയുന്നവർക്കെതിരെ കിട്ടിയിട്ടില്ല.  
ജഡ്ജ് കോടതിയിൽ ടി.കേശ്വരസ്വാമിപ്പിള്ളിയിൽ.  
1. 08/14/2012 ജേതൃത്വം ടി.കേശ്വരസ്വാമിപ്പിള്ളിയിൽ 11 റിപ്പോർട്ട്  
താഴെ പറയുന്നവർക്കെതിരെ നിലവിൽ കോടതിയിൽ കിട്ടിയിട്ടില്ല.  
സംഗ്രഹം: താഴെ പറയുന്നവർക്കെതിരെ 12/2019 തീയതിയിൽ നിലവിൽ  
ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല.  
സംഗ്രഹം: പരിവർത്തനം 2005 പ്രകാരമുള്ള  
ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല.

സംഗ്രഹം  
ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല  
ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല  
ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല  
ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല  
ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല

ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല  
ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല  
ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല

ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല  
ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല  
ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല  
ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല  
ജഡ്ജ് കോടതിയിൽ കിട്ടിയിട്ടില്ല

D.No: 190/19

EXHIBIT P-9

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Address

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EXHIBIT P-9(a).

D. No. 190/19

Office of the Judicial First  
Class Magistrate III  
Perumbavoor  
Date : 02-02-2019

RTI - 1/18-19

From

The Public Information Officer,  
Judicial First Class Magistrate Court-III  
Perumbavoor.

To

Shri. A. A. Poulse  
S/o. Augustine  
Anthicadu House  
Udyogamandel P.O.  
Eloor, Kochi- 683 501.

Sir,

Sub: Reply to your application under the Right to Information Act, 2005.

Ref: Your application dated 1-2-2019.

Reply to your application is given hereunder:-

1. Form II report in O.R: 14/2012 of Meckapala F.S. case has not been produced before this Court.
2. No intimation is received regarding completion of the above case.
3. The above case is not being called in the court.
4. There is no application pending with regard to the closure of this case.

Seal

Office of the Temp. Court of Judicial-  
Magistrate of the First Class-III  
Perumbavoor

Sd/-

Public Information Officer  
Judicial First Class Magistrate  
Court-III, Perumbavoor

*This is a true translation of Exhibit P-9 produced & marked  
as Exhibit P-9(a) in the W.P.C.C) filed herewith*

*Advocate*

