

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

FRIDAY, THE 10TH DAY OF SEPTEMBER 2021 / 19TH BHADRA, 1943

OP(CRL.) NO. 329 OF 2016

AGAINST THE ORDER IN CRMP 44/2015 OF ENQUIRY COMMISSIONER &
SPECIAL JUDGE, KOTTAYAM

PETITIONER:

RAJAN
AGED 52 YEARS
S/O. KUNJU PANICKER, RESIDING AT ANUVILLA,
KUTTANPEROOR P.O., MANNAR VILLAGE, CHENGANNOOR
TALUK, ALAPPUZHA DISTRICT.
BY ADVS.
SRI.M.RAMASWAMY PILLAI
SMT.PREETHY R. NAIR

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY, REVENUE
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 THE TAHSILDAR
TALUK OFFICE, CHENGANNOOR-689 622.
- 3 THE VILLAGE OFFICER
MANNAR VILLAGE, MANNAR P.O.-689 622.
- 4 M.BASHEER
SUB REGISTRAR'S OFFICE IN 2003, MANNAR-689 622.
- 5 ANIL KUMAR
STAMP VENDOR (LICENCE NO.ADA 369), VADAVAKKAD
VEEDU, BUDHANOOR P.O., CHENGANNOOR, ALAPPUZHA
DISTRICT-689 001.
- 6 SURESH KUMAR ASB 515
PADAYILATHU VEEDU, VISHVASSERIKARA, MANNAR P.O.,
ALAPPUZHA DISTRICT-689 001.
- 7 THULASI BAI
DWARAKA HOUSE, KOTTANPEROOR P.O.,
MANNAR, CHENGANNOOR, ALAPPUZHA DISTRICT-689 001.

O.P.(Crl) No.329/2016

2

- 8 RAJAPPAN
S/O. KUNJU PANICKER, PARUMALA PURAYIDOM,
KUTTANPEROOR, MANNAR, CHENGANNOOR, ALAPPUZHA
DISTRICT-689 001.
- 9 THE DISTRICT COLLECTOR
COLLECTORATE, ALAPPUZHA-689 001.
BY ADVS.
SRI.DEEPAK JOY.K.
SRI.P.VINODKUMAR
SMT.A.ANUMOL
SMT.A.R.ANITHA
SMT REKHA S- SR PP

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
08.09.2021, THE COURT ON 10.09.2021 DELIVERED THE
FOLLOWING:

O.P.(CrI) No.329/2016

3

R.NARAYANA PISHARADI, J

O.P.(CrI).No.329 of 2016

Dated this the 10th day of September, 2021

J U D G M E N T

The petitioner filed Ext.P3 complaint in the Court of the Enquiry Commissioner and Special Judge, Kottayam against respondents 2 to 8, alleging that they committed the offences punishable under Sections 7, 11, 12 and 13 of the Prevention of Corruption Act, 1988 (for short 'the Act').

2. Respondents 2 to 8, who are arrayed as Accused 1 to 7 in Ext.P3 complaint, shall be hereinafter also referred to as accused in accordance with their rank in the complaint.

3. The first accused was the Tahsildar, Chengannur Taluk. The second accused was the Village Officer of Mannar Village (these persons are arrayed in the complaint only in their official

capacity). The third accused was the Sub Registrar of the Sub Registrar's office, Mannar. Accused 4 to 7 are private persons.

4. The allegations raised in Ext.P3 complaint against the accused can be briefly stated as follows: The property having an extent of 4.50 Ares comprised in R.S.No.422/7 of Mannar Village in Chengannur Taluk is Government land. The 6th accused took possession of the aforesaid property with the help of Accused 1 to 5 and thereafter, she sold it in favour of Accused No.7 by executing a false sale deed as document No.1599/2003 of S.R.O, Mannar. The 4th accused is the scribe and the 5th accused is the attester of that sale deed. The third accused is the person who registered the sale deed. The aforesaid sale deed was executed pursuant to a criminal conspiracy hatched by the accused. The accused have shown a false survey pattayam number in the sale deed. It is stated in that document that the father and the mother of the sixth accused obtained title over the property by the pattayam mentioned in that document.

5. The Special Court dismissed the complaint on the finding that there were absolutely no materials to make out a case against the accused as alleged in the complaint.

6. This original petition is filed under Article 227 of the Constitution of India by the complainant challenging the aforesaid order (Ext.P4) passed by the Special Court.

7. Heard learned counsel for the petitioner and the learned Public Prosecutor and also the learned counsel who appeared for the party respondents.

8. The reasons for dismissing the complaint are stated in the impugned order as follows:

"Even though the complainant raised the above said allegations against the respondents, no sufficient materials have been produced to believe them. There is absolutely nothing to show that the property covered under the above sale deed is a purambokku land. The complainant could have produced document issued from the Revenue Authorities to show that the said property is a purambokku land. On the other hand, the document produced by the complainant (Annexure VI) itself is

sufficient to show that the case of the complainant is not correct. The Annexure VI is the copy of the Thandaper account issued by the Village Officer, Mannar. It shows that property involved in the document in question belongs to the mother of the complainant as per a Thandaper No.2430. The mere fact that the Thandaper number is shown as the pattayam number in the document, cannot be considered to doubt any corruption in the execution of the document in question. As there is absolutely no materials to make out a case alleged in the complaint I am inclined to dismiss the same."

9. The substratum of the case against the accused is that they created a false sale deed in respect of Government land. As rightly observed by the Special Court, the petitioner could and should have produced documents which show that the land covered by the sale deed executed by the 6th accused was Government land. In the absence of any such material produced before the Special Court, the case against the accused, as projected by the petitioner in the complaint, had no basis at all.

10. In the above circumstances, I find no sufficient ground to exercise the jurisdiction of this Court under Article 227 of the

Constitution of India to interfere with the impugned order passed by the Special Court.

11. However, one thing requires to be noticed. The complaint was dismissed by the Special Court without taking cognizance of the offences or without forwarding the complaint for investigation under Section 156(3) Cr.P.C. Dismissal of a complaint under Section 203 Cr.P.C can only be at the post cognizance stage. But there is a power in every Magistrate to reject the complaint even at the pre-cognizance stage if the complaint on the face of it does not make out the offence alleged in the complaint. In such a case, the law does not oblige the Magistrate to proceed to Section 200 Cr.P.C or the subsequent sections. In such a case, the Magistrate undoubtedly has the power to reject the complaint at the threshold. Although complaints are being dismissed by the Magistrates at the pre-cognizance stage, such dismissal is made without noticing the real distinction between a dismissal of the complaint under Section 203 Cr.P.C at the post cognizance stage and a rejection of

the complaint under the pre-cognizance stage. Such dismissal at the pre-cognizance stage can only be treated as rejection of the complaint [See **Raju Puzhankara v. State of Kerala : 2008 (2) KHC 318 : 2008 (2) KLT 467**]. Therefore, when the complaint, on the fact of it, did not make out the offence alleged, the Special Court should have rejected the complaint instead of dismissing it.

12. Hence, the impugned order shall be treated as an order rejecting the complaint filed by the petitioner.

13. Consequently, the original petition is dismissed. However, it is made clear that the dismissal of this original petition shall not preclude the petitioner from preferring a complaint with adequate materials to substantiate his case and if any such complaint is filed, the Special Judge will do the needful in accordance with law.

(sd/-) **R.NARAYANA PISHARADI, JUDGE**

jsr

O.P.(Crl) No.329/2016

9

APPENDIX OF OP(CRL.) 329/2016

PETITIONER'S EXHIBITS:

P1	COPY OF SALE DEED NO.1599 OF 2003 DTD.5.11.2003 IN FAVOUR OF 8TH RESPONDENT.
P2	COPY OF THE REPLY LETTER NO.C4.456/13 DTD.18.1.2013.
P2 (A)	COPY OF THANDAPER ACCOUNT.
P3	COPY OF PETITION FILED BY THE PETITIONER BEFORE THE VIGILANCE ENQUIRY COMMISSIONER AS CRL.MP NO.44/2015.
P4	COPY OF ORDER DTD.11.5.2016 IN CRL.MP NO.44/2015 OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOTTAYAM.

RESPONDENTS' EXHIBITS:

NIL

TRUE COPY

PS TO JUDGE