



2025:KER:50430

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 9TH DAY OF JULY 2025 / 18TH ASHADHA, 1947

CRL.REV.PET NO. 163 OF 2023

AGAINST THE ORDER DATED 26.09.2018 IN C.M.P. NO. 15/2016 IN C.C.NO.158 OF
2016 ON THE FILES OF THE COURT OF THE ENQUIRY COMMISSIONER AND SPECIAL
JUDGE, THALASSERY

REVISION PETITIONER/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE ADDITIONAL PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV PUBLIC PROSECUTOR
SPL PP FOR VACB - RAJESH.A
SRPP FOR VACB - REKHA.S

RESPONDENT/ACCUSED NO.2:

THOMAS MATHEW G.
S/O. N. J. MATHAI, GRACE COTTAGE, KUNNIKKODE P. O.,
VILAKKUDI VILLAGE, PATHANAPURAM, KOLLAM DISTRICT
(SC DEVELOPMENT OFFICER, KALPETTA BLOCK)

BY ADV SRI.SUMAN CHAKRAVARTHY

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
02.07.2025, THE COURT ON 09.07.2025 DELIVERED THE FOLLOWING:

**“C.R”****ORDER****Dated this the 9th day of July, 2025**

This revision petition has been filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973, at the instance of the State of Kerala, aggrieved by discharge of the respondent, who is arrayed as the 2nd accused in C.C. No.158 of 2016 on the files of the Court of the Enquiry Commissioner and Special Judge, Thalassery, as per the order dated 26.09.2018 in C.M.P. No.15 of 2016 in the above case.

2. Heard the learned Public Prosecutor representing the State of Kerala and the learned counsel appearing for the respondent, in detail. Perused the order impugned and the decisions placed by both sides.

3. Parties in this criminal revision petition shall be referred as ‘prosecution’ and ‘1st, 2nd and 3rd accused’, hereafter.

4. In this matter, the prosecution case is that, the 1st accused conspired and colluded with the 2nd accused,



who has been working as Scheduled Caste Development Officer, Kalpetta Block, and the 3rd accused, a document writer, with dishonest intention to misappropriate government fund meant for the scheme 'Rehabilitation of Landless and Homeless Scheduled Caste People' of the Scheduled Caste Development Department, implemented through the Block Development Office for Scheduled Castes, Kalpetta, forged two sale deeds on 09.02.2011 and eight sale deeds on 31.03.2011 with the connivance and assistance of the other accused and the 1st accused created false documents showing his own land of three cents each at Pakkalippallam, comprised in RS No.295/9 of Kottappadi Village in Vythiri Taluk to 10 Scheduled Caste beneficiaries without the consent or knowledge of the prospective beneficiaries, at the rate of Rs.75,000/- per beneficiary. Thereby, the accused misappropriated Rs.7,50,000/- and obtained undue pecuniary advantage. On this premise, the prosecution alleges commission of offences punishable under Sections 13(1)(c) and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 [hereinafter referred as 'P.C. Act' for short] and under



Sections 409, 420 and 468 read with 34 of the Indian Penal Code, by all the accused.

5. In this matter, the 1st accused filed C.M.P. No.177/2016 and the 2nd accused filed C.M.P. No.6/2016 before the Special Court seeking discharge. The Special Court dismissed the discharge petition filed by the 1st accused and discharged the 2nd accused as well as the 3rd accused as per the impugned order.

6. While assailing the impugned order, it is pointed out by the learned Public Prosecutor that, the Special Court discharged the 2nd accused finding two reasons. The first reason found by the Special Court to discharge the 2nd accused is the non obtaining of sanction under Section 197 of Cr.P.C. to prosecute him. Secondly, the Special Court found that there was no allegation in the charge or any materials on record to the effect that the 2nd accused dishonestly or fraudulently misappropriated or otherwise converted for his own use any property entrusted to him or under his control as a public servant.

7. Insofar as the sanction under Section 197 of Cr.P.C. in relation to the 2nd accused is concerned, the



learned Public Prosecutor argued that, since the 2nd accused is not a person, who holds a civil post under the Union or State, he could not be removed by an authority subordinate to the Government by which he was appointed and therefore, no sanction under Section 197 of Cr.P.C. is necessary to prosecute the 2nd accused. In this connection, the learned Public Prosecutor placed decision of the Apex Court reported in **[2023 KHC 6761 : 2023 (5) KHC SN 21 : 2023 KHC OnLine 6761] Sreenivasa Reddy A. v. Rakesh Sharma**, with reference to paragraph Nos.40 and 41. The same read as under:

40. S.197 of the Cr PC provides that when any person who is or was a public servant, not removable from his office save by or with the sanction of the Central Government or State Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties, no Court shall take cognizance of such offence, except with the previous sanction of the appropriate Government.

41. Sub-section (1) of S. 197 of the CrPC shows that sanction for prosecution is required where any person who is or was a Judge or



Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty. Art.311 of the Constitution lays down that no person, who is a member of a civil service of the Union or State or holds a civil post under the Union or State, shall be removed by an authority subordinate to that by which he was appointed. It, therefore, follows that protection of sub-section (1) of S.197 of CrPC is available only to such public servants whose appointing authority is the Central Government or the State Government and not to every public servant.

8. It is pointed out by the learned Public Prosecutor further that, even otherwise, it is the well settled law that, in order to prosecute an accused, who is a public servant, alleged to have committed offences punishable under Sections 467, 468, 471, 420 as well as 120B of IPC, no sanction is necessary. In this connection, the learned Public Prosecutor placed decision of the Apex Court reported in **[2012 KHC 4159 : 2012 (1) KLD 643 :**



2012 (2) KLT 106 : 2012 (2) KLJ 453] Om Kr. Dhankar v. State of Haryana and Another, with reference to paragraph No.13. The same reads as under:

*13. In our view, the controversy with regard to the second question is concluded by the decision of this Court in **Prakash Singh Badal and Another v. State of Punjab and Others, 2006 KHC 1810: 2007 (1) SCC 1: JT 2007 (1) SC 89: AIR 2007 SC 1274**. Rakesh Kumar Mishra case (supra) was considered in Prakash Singh Badal case (supra) in para 49 of the report. This Court thus held that the offence of cheating under S.420 or for that matter offences relatable to S.467, S.468, S.471 and S.120B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. This Court stated in paragraphs 49 and 50 of the report thus:*

"49. Great emphasis has been laid on certain decisions of this Court to show that even in relation to the offences punishable under S.467 and S.468 sanction is necessary. The foundation of the position has reference to some offences in Rakesh Kumar Mishra case. That decision has no relevance because ultimately



this Court has held that the absence of search warrant was intricately (sic linked) with the making of search and the allegations about alleged offences had their matrix on the absence of search warrant and other circumstances had a determinative role in the issue. A decision is an authority for what it actually decides. Reference to a particular sentence in the context of the factual scenario cannot be read out of context.

50. The offence of cheating under S.420 or for that matter offences relatable to S.467, S.468, S.471 and S.120B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence."

9. By highlighting statements given by CWs 2, 3, 4, 10, 40 and 41 along with the statements of CWs 8, 12, 17, 18 and 27, who are cited as the beneficiaries of the scheme, the learned Public Prosecutor contended that there was conspiracy in between the 1st and 2nd accused in creating forged documents regarding the property owned by the 1st accused in the names of CWs 8 to 12, 17, 18



and 27, without their knowledge. Thereby, the accused persons misappropriated Government fund to the tune of Rs.7,50,000/-. Another decision of the Apex Court reported in **[2009 KHC 726 : 2009 (2) KLD 192 : 2009 (6) SCC 372 : 2009 CriLJ 3069] State of U.P. v. Paras Nath Singh**, also has been placed by the learned Public Prosecutor in support of his contentions. On the above facts, the learned Public Prosecutor pressed for interference of the impugned order discharging the 2nd accused and to set aside the same.

10. While supporting the order of discharge as against the 2nd accused, the learned counsel for the 2nd accused argued that, the Special Court rightly found that, there is no allegation in the charge or any materials on record to the effect that the 2nd accused dishonestly or fraudulently misappropriated or otherwise converted for his own use any property entrusted to him or under his control as a public servant. He has placed decision of the Apex Court reported in **[2023 SCC OnLine SC 900] A.Srinivasalu v. State Rep. By the Inspector of Police**, wherein, while considering as to whether 197



sanction for the offences under Sections 420, 468, 471 and 120B of IPC is necessary to prosecute a public servant, the Apex Court in paragraph No.51 held as under:

51. No public servant is appointed with a mandate or authority to commit an offence. Therefore, if the observations contained in paragraph 50 of the decision in Parkash Singh Badal are applied, any act which constitutes an offence under any statute will go out of the purview of an act in the discharge of official duty. The requirement of a previous sanction will thus be rendered redundant by such an interpretation.

11. The learned counsel for the 2nd accused argued further that, in this case, in order to have trial of the 2nd accused, there must be some primary materials to show the conspiracy i.e. meeting of mind between accused Nos.1 to 3. Since, the said ingredient is not at all established by the prosecution by any materials, *prima facie*, the Special Court rightly discharged the 2nd accused. It is also pointed out that, if the charge against the 2nd accused would lie, then the charge against the 3rd accused also would lie. But, the prosecution did not challenge the



order of discharge as against the 3rd accused. It is pointed out that, the 2nd accused is a person, who verified the documents produced before him and sanctioned the amount by issuing cheque. According to the learned counsel, it is the well settled legal principle that a document is presumed to be genuine if the same was registered and therefore, *prima facie*, a registered document would be valid in law. Thus, the onus of proof would be on the person, who leads evidence to rebut the presumption. In this connection, the learned counsel for the 2nd accused placed decision of the Apex Court reported in **[(2021) 15 SCC 300] Rattan Singh and Others v. Nirmal Gill and Others**. The learned counsel for the 2nd accused mainly asserted the point that, none of the P.C. Act offences would attract as against the 2nd accused.

12. In view of the rival submissions, it is necessary to analyze the reasoning, whereby the learned Special Judge discharged the 2nd accused along with the 3rd accused. The learned Special Judge is of the view that, no sanction under Section 197 of Cr.P.C. was obtained to prosecute the 2nd accused and therefore, the entire



prosecution is non-est as against him. That apart, the reasons for discharge could be gathered from paragraph No.29 of the impugned order. The same reads as under:

29. On going through the materials on record including the charge, it can be seen that prosecution has sought to cover the case of A2 under sub clause (ii) and not under sub clause (i) and (iii). In so far as sub clause (ii) is concerned, it stipulates that a public servant is said to commit the offence of criminal misconduct if he, by abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. Thus the ingredients which will be required to attract the offence under sub clause (ii) of Section 13 (1) (d) of Prevention of Corruption Act.

1. The public servant has abused his position.

2. By abusing that position, he has obtained for himself or for any other person any valuable thing or pecuniary advantage.

13. First of all, it is necessary to address the question, as to whether the 2nd accused has any role in forging the documents as part of conspiracy hatched



between accused Nos.1 to 3 and by using the same as genuine, thereby the 1st accused obtained pecuniary advantage?

14. The learned Public Prosecutor stressed the statement given by CW2, who joined as Scheduled Caste Development Officer Gr-II in Block Scheduled Caste Development Office, Kalpetta as on 27.08.2011, stating that, Sri.G. Thomas Mathew (2nd accused) was suspended from service pending enquiry, on finding that there was violation of rules in the matter of selection of the beneficiaries of the scheme 'Rehabilitation of Landless and Homeless Scheduled Caste People' as per the order dated 02.08.2011 of the Director of Scheduled Caste Community. Further, as on 18.02.2011, Rs.6,00,000/- was remitted to one Ravi (the 1st accused) is shown in the cheque issue register. The statement given by CW3, who has been working as a Peon in the Block Scheduled Caste Development Office, Kalpetta, also would show that, the 1st accused remitted back Rs.6 Lakh out of Rs.7,50,000/- and out of the same, Rs.50,000/- was deposited from the account of the sister of the 2nd accused. According to the



learned Public Prosecutor, the same would show that the 2nd accused has involvement in this crime.

15. CW4, the District Scheduled Caste Development Officer, who joined the office as on 28.05.2010, given statement to the Police that, applications, documents and other records produced by eight beneficiaries submitted before the Block Scheduled Caste Development Officer were handed over to the Sub Inspector of Police, as instructed by him.

16. As per the statement of CW4, the verification of the beneficiaries and their documents is the duty of the Block Scheduled Caste Development Officer. But, according to the learned counsel for the 2nd respondent, that is the duty of the Scheduled Caste Promoter. The statements given by CWs 10 and 41 are also pointed out by the learned Public Prosecutor to show the role of the 2nd accused in this crime.

17. In this matter, CW4, who is the District Scheduled Caste Development Officer, joined the office after suspension of the 2nd accused, given statement before the Police that, it is the duty of the Block Scheduled



Cast Development Officer to verify the beneficiaries and their documents and in any Panchayat, if the beneficiaries could not be found, the Officer shall rearrange the grant to the beneficiaries of other Panchayat. In consonance with the statement of CW4, the statement of CW10 is relevant. CW10 is none other than the Scheduled Caste Promoter, worked in the office in between 18.08.2009 to 03.08.2011. The statement given by CW10 would show that, during his tenure, there were 13 other promoters in Scheduled Caste/Scheduled Tribe Development Office, Kalpetta and Sri.Thomas Mathew (the 2nd accused) was the block Scheduled Caste Development Officer. The promoters used to attend meeting, which would be held on every Wednesday and two promoters each would be posted for office duty. Ravi (the 1st accused) was introduced by one Vasu and he used to come to the office in connection with the demands of the Scheduled Caste community in his place, Meppadi. When all the promoters were at the office, Sri.Thomas Mathew demanded to find out eight beneficiaries for the scheme of the year 2010-2011 and he also advised that eight beneficiaries were there in



Meppadi. On 28.03.2011, Ravi reached the office, while CW10 and Vasu were there as directed by the Officer and Vasu and CW10 accompanied Ravi to inspect the property. When they reached the place, Ravi informed them that the broker was not available and the property could not be seen. Then, he agreed to sell property having an extent of 24 cents out of 25 cents belonged to him to eight beneficiaries. The property belonged to Ravi was 500 metres away from the road having transport facility. But, he did not either show or state who are the beneficiaries. On 29.03.2011, while CW10 and Vasu were at the Office, Ravi handed over the applications of 8 beneficiaries by name Madhavi, Karukan, Kavitha, Gururaj, Suresh, Pinkan, Prasad Murthi and Chandran, out of which the application of one Kavitha was filled up by CW10 and others were prepared by other promoters. It was directed by Sri.Thomas Mathew that the applications only to be filled and the signatures in the applications and the certificates etc. would be obtained by Ravi and accordingly those applications were entrusted to Ravi. After departure of the Ravi, Sri.Thomas Mathew said, if the documents



accompanying the applications would be ready, the same should be given to Ravi. The registration of the property was allowed to be done by the District Scheduled Caste Development Officer. Soon, Vasu replied that he did not see the beneficiaries and what to be done without seeing them. Sri.Thomas Mathew informed CW10 that the property would be registered by Ravi and the documents pertaining to registration to be obtained and kept at the office. Soon, Ravi told him to be witness to the documents. Accordingly, he signed as the first witness to the documents and he did not know who was the second witness. Even though, documents were handed over later, no certificates produced. But, he did not know when Ravi obtained the cheque.

18. Going by the evidence given by CW10, it could be gathered that, promoters were appointed temporarily and in the matter of selection of the beneficiaries their roles were curtailed by the 2nd accused, for reasons known to him and the same culminated in registration of the documents in favour of the beneficiaries and the beneficiaries given statements to the Police that they



were not aware about any such registration or receipt of money. Most importantly, the 2nd accused released the amount in favour of the 1st accused even without insisting for production of certificates.

19. Finding the overt acts of the 1st accused, inclusive of one discussed herein above, the Special Court dismissed the plea of discharge at the instance of the 1st accused, while allowing the same insofar as accused Nos.2 and 3 are concerned.

20. In this matter, the records would show that the 2nd accused is the person responsible for finding out beneficiaries through the promoters and to supervise purchase of property in the names of the beneficiaries. It is his duty to scrutinize the documents and also after ensuring that beneficiaries ultimately would get the property registered under the scheme, the 2nd accused could encash the money. Verification of the certificates also is an important duty of the 2nd accused. It is discernible from the prosecution materials that, money was encashed to the 1st accused and later repaid by him and the same includes Rs.50,000/- paid by the 2nd accused



through his sister.

21. In such a case, the observation of the Special Judge in paragraph No.34 of the impugned order is relevant. In paragraph No.34, the learned Special Judge observed as under:

I find that there is sufficient prima facie material to proceed against A1. It is pertinent to note that during investigation, majority of the beneficiaries have disowned their signatures in the applications submitted in their names in the office of A2 for getting benefit under the pertinent scheme. Moreover it has come out from the materials that A1 has remitted back 6,00,000/- being the refund of the amount received from the office of A2, by using the said sale deeds. This is a material circumstance which would justify the stand of the prosecution that there is ground for presumption that A1 has committed the offences alleged. So on examination of the important materials relied on by the prosecution to substantiate the allegation in the final report, I find that there is ground for presumption that A1 had committed the offences alleged against him by the prosecution u/s. 409, 420 and 468 IPC.



Therefore I have no other go except to hold that he is not entitled for a discharge and the petition filed by him therefore is liable to be dismissed.

22. After holding so, as observed in paragraph No.29, the 2nd accused was discharged. Even though, it is submitted by the learned counsel for the 2nd accused that, the 2nd accused has no role in this crime and it is the duty of the promoters to find the beneficiaries and to verify the applications, the materials produced by the prosecution including the statements of the promoters would show otherwise and it could be discernible from the documents that, the 2nd accused should have verified and identified the beneficiaries before encashing the amount, apart from verifying the documents, production of certificates of the beneficiaries also should be ensured by the 2nd accused. So the involvement of the 2nd accused in this crime cannot be decided at the pre-trial stage, as the prosecution materials disclose that he has involvement in this crime, as the outcome of conspiracy hatched between accused Nos.1 to 3 and in such view of the matter, the Special



Court went wrong in discharging the 2nd accused.

23. Coming back, the contention raised by the learned counsel for the 2nd accused that, there was no prosecution sanction obtained to prosecute the 2nd accused under Section 197 of Cr.P.C. is concerned, going by the decision in ***Prakash Singh Badal's*** case (supra) rendered in earlier point of time, no prosecution sanction is required to prosecute a public servant, who alleged to have committed offences punishable under Sections 420, 467, 468 and 471 read with 120B of IPC, since the same are not overt acts intrinsically connected with their official duties, while acting or purporting to act in discharge of their official duty. Following the said ratio, the finding of the Special Judge holding the view that, in order to prosecute the 2nd accused for the IPC offences, sanction under Section 197 of Cr.P.C. is required, is found to be unsustainable. Even otherwise, for the P.C. Act offences, sanction under Section 19 of the P.C. Act was obtained by the prosecution. Therefore, the order of the Special Court discharging the 2nd accused is found to be unsustainable and the same is liable to be interfered. Accordingly, this



revision petition is liable to succeed.

24. In the result, this criminal revision petition stands allowed and the order of the Special Court discharging the 2nd accused stands set aside, with direction to the Special Judge to frame charge against the 2nd accused also and complete the trial.

25. It is specifically made clear that, the observations in this order are to decide the question as to whether the order of discharge is right or wrong and not on the merits of the matter. That apart, the 2nd accused is at liberty to raise all his contentions during trial based on evidence and the observations in this order have no binding effect, while deciding the case on the basis of evidence recorded by the Special Court, after trial.

Registry is directed to forward a copy of this order to the Special Court, within three days, for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE



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Crl.R.P. No. 163 of 2023

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APPENDIX OF CRL.REV.PET 163/2023

PETITIONER ANNEXURES :

Annexure A

**TRUE COPY OF CRL. M. P. NO.15/2016 IN CC
NO.158/2016 ON THE FILES OF THE COURT OF
THE ENQUIRY COMMISSIONER AND SPECIAL
JUDGE, THALASSERY.**