IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 16TH DAY OF OCTOBER 2025/24TH ASWINA, 1947

OP(CRL.) NO. 712 OF 2023

CRIME NO.RC3(A)/2019/CBI/ACB/KOCH/2019 OF CENTRAL BUREAU OF INVESTIGATION, KOCHI, ERNAKULAM

AGAINST THE ORDER/JUDGMENT IN CRMP NO.48 OF 2022 OF SPE/CBI COURT, THIRUVANANTHAPURAM

PETITIONER/ACCUSED NO.1:

ABDUL RASHEED @ DR.A.R.BABU
AGED 68 YEARS, ALIYARU KUNJU
RESIDING AT CITADEL, GOLF LINK ROAD
KOWDIAR P.O., THIRUVANANTHAPURAM, PIN - 695003

BY ADVS.
SRI.C.S.MANU
SRI.C.Y.VIJAY KUMAR
SMT.MANJU E.R.
SHRI.ANANDHU SATHEESH
SHRI.ALINT JOSEPH
SRI.C.A.ANUPAMAN
SRI.DILU JOSEPH
SHRI.T.B.SIVAPRASAD
SRI.S.SREEKUMAR (SR.)

RESPONDENTS/ACCUSED NO.2 TO 6:

1. **CENTRAL BUREAU OF INVESTIGATION (CBI)**
ANTI CORRUPTION BRANCH, COCHIN KERALA,
REPRESENTED BY ITS SUPERINTENDENT OF POLICE.,
PIN - 682017

2. **SUNITHA BEEGAM RASHEED**
DIRECTOR, M/S HEERA CONSTRUCTION COMPANY
PVT.LTD, R/O TC 5/2527(5), T.K.V NAGAR, GOLF
LINKS ROAD, KOWDIAR.PO,
THIRUVANANTHAPURAM, PIN - 695003

3 SUBIN ABDUL RASHEED
S/O ABDUL RASHEED, DIRECTOR,
M/S HEERA CONSTRUCTION COMPANY PVT.LTD,
R/O TC 5/2527(5), T.K.V NAGAR, GOLF LINKS ROAD,
KOWDIAR.PO, THIRUVANANTHAPURAM, PIN - 695003

4 RESWIN ABDUL RASHEED
S/O ABDUL RASHEED, DIRECTOR,
M/S HEERA CONSTRUCTION COMPANY PVT.LTD,
R/O TC 5/2527(5), T.K.V NAGAR, GOLF LINKS ROAD,
KOWDIAR.PO, THIRUVANANTHAPURAM, PIN - 695003

5 SURUMI ABDUL RASHEED
D/O ABDUL RASHEED, DIRECTOR,
M/S HEERA CONSTRUCTION COMPANY PVT.LTD,
R/O TC 5/2527(5), T.K.V NAGAR, GOLF LINKS ROAD,
KOWDIAR.PO, THIRUVANANTHAPURAM, PIN - 695003

6 M/S HEERA CONSTRUCTION COMPANY PVT.LTD
REGISTERED OFFICE CITY CENTRE 113, PATTO PLAZA,
GOA, AND REGIONAL OFFICE AT HEERA PARK,
MP APPAN ROAD, VAZHUTHACAUD,THYCAUD VILLAGE,
THIRUVANANTHAPURAM., PIN - 695014

* ADDL R7 SURESH KUMAR M
REGIONAL MANAGER, REGIONAL BUSINESS OFFICE-I,
SBI, THIRUVANANTHAPURAM
ADDITIONAL R7 IS IMPLEADED AS PER ORDER DATED
21/08/2024 IN IA 1/2024 OF OP(CRL) 712/2023)

BY ADVS.
SHRI.SREELAL N.WARRIER,SREELAL N.WARRIER,
SPL.PUBLIC PROSECUTOR, CENTRAL BUREAU OF
INVESTIGATION (CBI)
SHRI.AKHIL SURESH
SMT.KALLIYANI KRISHNA B.
SRI.GILBERT GEORGE CORREYA

S.SREEKUMAR(SR.)

SPL PP CBI.SREELAL N.WARRIER

THIS OP (CRIMINAL) HAVING COME UP FOR HEARING ON 23.09.2025, THE COURT ON 16.10.2025 DELIVERED THE FOLLOWING:

"C.R"

JUDGMENT

Dated this the 16th day of October, 2025

The 1st accused in Crime No.RC3(A) 2009/CBI/ACB/Cochin, has filed this original petition (Criminal) under Article 227 of the Constitution of India, seeking the following prayers:

> "i. Quash the Ext.P-5 common order dated 26-6-2023 in Crl.M.P.No.48 of 2022, Crl.M.P.No.49/2022 and Crl.M.P.No.50 of 2022 passed by the Court of Special Judge (CBI/SPE), Thiruvananthapuram.
>
> ii. Direct the Court of Special Judge (CBI/SPE) Thiruvananthapuram to accept the fresh final report filed by the respondent CBI pursuant to the further investigation conducted by the CBI as per Ext.P-2 order.
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> iii. Direct the CBI to file final report before the Court of Chief Judicial Magistrate, Thiruvananthapuram in Crime No.RC3(A)/2019/ CBI/ACB/Kochi on the file of the CBI, Anti-Corruption Bureau, Kochi, if offences under the Prevention of

Corruption Act, 1988 are not involved and public servants are not charge sheeted.”

2. Heard the learned senior counsel appearing for the original petitioner and the learned Special Public Prosecutor for the CBI. Also heard the learned counsel appearing for the additional 7th respondent, Regional Manager, SBI, Thiruvananthapuram branch.

3. Acting on Ext.P1 complaint, lodged by Sri.Suresh Kumar M., Regional Manager, Regional Business Office-I, State Bank of India, the present case was registered. It is alleged that the accused persons with dishonest intention to cheat the bank and diversion of funds/sale proceedings of the collateral as well as the primary security offered to the Bank by the Directors of M/s.Heera Constructions Company Pvt.Ltd. (hereinafter referred to as 'HCCPL' for short), where HCCPL availed

loans to the tune of Rs.15 Crores but there was no proper remittance, and as on 26.03.2019, the amount due was accumulated to Rs.12.08 Crores. As per Ext.P1 complaint, it was alleged that the accused persons committed offences punishable under Section 120B r/w. 420 and Section 405 r/w 406 of the Indian Penal Code (hereinafter referred to as 'IPC' for short) as well as under Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as ‘PC Act’ for short) by the accused.

4. As on 30.06.2020, after investigation of the crime, CBI filed final report, excluding the Bank officials from the array of accused, and also filed charge against HCCPL and its Directors, alleging commission of offences punishable under Sections 420 and 406 of IPC.

5. After filing the said final report, CBI filed Crl.M.P.Nos.66/2021 and 67/2021 to exclude the Bank

Officials from the array of accused and to transfer the case against the other accused persons to a competent Magistrate court. As per Ext.P2 order dated 10.08.2021, the learned Special Judge was not inclined to accept the final report and accordingly, further investigation was ordered with direction to the Investigating Officer to conduct an effective and thorough investigation and to complete the same, not later than one month from the date of order. Pursuant to Ext.P2 order, again, CBI investigated the matter and filed a report on 13.07.2020, in tune with the earlier report filed on 30.06.2020. Thereafter, CBI filed Crl.M.P.Nos.48/2022, 49/2022 and 50/2022. Crl.M.P.No.48/2022 was filed to remove Section 13(2) r/w. 13(1)(d) of the PC Act, 1988, from the final report, Crl.M.P.No.49/2022 was filed to delete the unknown public servants listed as accused Nos.4 and 5 in the FIR. Crl.M.P.No.50/2022 was filed to transfer the case to the Chief Judicial Magistrate Court, as there was no element of conspiracy on the side of the Bank officials.

6. FIR was registered on 10.04.2019 at the office of CBI/ACB, Cochin, on the basis of a complaint dated 26.03.2019, received from the Regional Manager, Regional Business Office-I, SBI, Thiruvananthapuram. Coming to the prosecution allegations, as per the FIR, HCCPL, having its registered office at City centre 113, Patto Plaza, Goa and regional office at Heera Park, M.P.Appan road, Vazhuthacaud, Thycaud village, Thiruvananthapuram, was engaged in the construction of flats and housing project and Sri.Abdul Rahseed @ Dr.K.R.Babu, was the Managing Director and his wife and 3 children were the Directors of the said company. The Managing Director and the Directors of the HCCPL hatched conspiracy with an unknown public servants and other private persons to cheat the erstwhile

State Bank of Travancore (now State Bank of India) and in pursuance of the conspiracy, HCCPL had availed a project loan of Rs.15 crore on 27.09.2013 from the Kowdiar branch of State Bank of Travancore for the project of 'Heera Lake Front" at Akkulam. The loan was to be repaid on or before 23.12.2016. However, the Heera Lake Front project was not completed as scheduled, and the time limit was extended by the bank as requested by HCCPL, on 22.03.2017 and in continuance of the facility, the Bank extended the time limit upto 23.12.2017 at a reduced limit of Rs.9.90 Crores. However, the lonee did not pay the money.

7. As a sequel thereof, the project loan account had been classified as Non-Performing Asset (NPA) on 29.05.2017. Almost all the flats in the primary security 'Heera Lake Front', apartments were sold by HCCPL to various buyers without the consent of the Bank.

One of the collateral securities, a portion of the commercial property, namely, 'Heera Plaza', was sold by HCCPL without the permission of the bank.

8. In the instant case, Ext.P5 order is under challenge at the instance of the 1st accused. The learned Senior counsel appearing for the 1st accused/petitioner vehemently argued to substantiate that even during the initial stage of investigation and even after further investigation in continuation of Ext.P2 order, CBI found that no offences were committed by the Bank officials being public servants. Though it is a crime registered in the year 2019, in view of Ext.P5 order, the petitioner has been dragged into this proceedings without having finality to the allegations against him. According to him, if the allegations against the petitioner and the other members of HCCPL, alleging commission of offences under the IPC, to be

considered by the competent Magistrate court, the petitioner could very well pursue his remedies, in accordance with law. According to the learned Senior counsel for the petitioner, since CBI investigated the case twice and filed two reports, excluding the Bank officials who were initially arrayed as accused Nos.4 and 5, the further investigation ordered by the Special Judge as per Ext.P5 order is unwarranted, and the same would require interference by allowing the prosecution to proceed against the petitioner and other accused in terms of the reports, alleging commission of IPC offences. The learned Senior counsel pointed out that as per Ext.P1 complaint also, the Bank has no allegation that the Bank officials committed any offences. Thus, further investigation as ordered in Ext.P5 is unwarranted. It is also submitted that acting on this predicate offences, ED filed another crime and all the assets of the petitioner were frozen and therefore, the petitioner could not repay the amount and clear the loans.

9. The learned counsel appearing for the additional 7th respondent - SBI Thiruvananthapuram branch submitted that as of now, due to non-payment of loan, the same has been moved to Special Assets Recovery Branch (SARB) to recover the same as per law. Even though the learned counsel for the additional 7th respondent submitted that bank would file a statement in detail, no report filed so far.

10. The learned Special Public Prosecutor for CBI has taken this Court's attention to paragraph No.2 of Ext.P2 order, where the learned Special Judge extracted the report of the investigating officer, when he filed the initial report and the same reads as under:

"However, the evidence collected reveal gross negligence on the part of Sri. Ramaswamy and Smt. Veena Das while performing their duties as public servants in the capacities of Assistant General Manger and Deputy Manager / Field Officer of erstwhile State Bank of Travancore. The fact that Sri. Abdul Rashid (A1) had fraudulently, sold off fourteen shop rooms four months after creation of the equitable mortgage with the Bank while sanctioning project loan account could have been detected if Sri. Rama Swami and Smt. Veena Das had scrutinized the documents with due diligence while processing the request received from KSFE, Vadayattukotta for issuance of no liability certificate. Since the no liability certificate pertains to the undivided share of a portion of the property of a shopping complex, the two officers should have been carefiul regarding the mention of the undivided share for which no liability certificate was issued. The callous attitude of the two officers has resulted in the non detection of a fraud committed by the customer of the bank, and their negligence further resulted in issuance of no liability certificate for the illegally sold property thereby exposing the bank to the risk of losing one of its collateral securities. However, the evidence available could not establish the dishonest intention, or mens rea but could only establish the negligence and dereliction of duty on the part of the public servants. Thorough examination of the bank accounts and assets of Sri. Rama Swami and Smt. Veena Das was also done and it could not establish any quid pro quo received by the public servants from the accused private persons. There is no cogent evidence on record to prove that the public servants committed offence. Evidence for dereliction of duty is not sufficient to prosecute the public servants and hence recommended for departmental action".

11. In this matter, the question arises for consideration is whether the Special Court went wrong in passing Ext.P5 order, negating the reliefs sought for by the CBI in Crl.M.P.Nos.48/2022, 49/2022 and 50/2022 by ordering further investigation.

12. It is submitted by the learned Special Public Prosecutor for CBI that Pursuant to Ext.P5 order, this Court as per order dated 14.09.2023, stayed the proceedings and therefore, no further investigation was conducted. On perusal of the earlier report as extracted hereinabove as could be gathered from Ext.P2 order, the Investigating Officer opined that the evidence available could not establish the dishonest intention or mens rea of the Bank officials but could only establish the negligence and dereliction of duty on their part. At the same time, the

Investigating Officer observed that, there was evidence to show gross negligence on the part of the Bank officials while performing their duty as public servant in the capacities of Assistant General Manager and Deputy General Manager/Field Officer of the erstwhile State of Bank of Travancore. The Investigating Officer also reported that the Officers should have scrutinized the documents with due diligence while processing the request received from KSFE Vadayattukotta for issuance of no liability certificate, since no liability certificate was issued pertaining to undivided share of a portion of the property of the shopping complex, the two officers should have been more careful regarding the mention of undivided share for which non-liability certificate was issued. According to the Investigating Officer, this was a callus attitude of the officers, which resulted in non detection of fraud committed by the customer of the Bank. Coming to

Ext.P5 order, it was observed by the learned Special Judge that the documents produced before the Court did not show that HCCPL opened an escrow account despite that the SBI extended the loan period by one year and by that time, HCCPL had sold their flats to third parties and received the sales proceedings through different banks other than the SBI, where HCCPL kept their bank account. The materials collected by the Investigating Officer reveal that there was conspicuous silence on the side of the Bank officials and the same created shadow of doubt and this aspect was not properly explained by the Investigating Officer and therefore, in this regard, further investigation is inevitable. The learned Special Judge also discussed about the escrow account, holding that an escrow account is a temporary pass through account held by a third party during the process of transaction between two parties. The observations in paragraph No.30 of Ext.P5 order read as under:

> “30. The loan was sanctioned without opening an escrow bank account. An escrow account is a temporary pass through account held by a third party during the process of a transaction between two parties. The term escrow originated from the French term "escroue' which means a scrap of paper signifying a deed that is held by a third party. In India, almost all banks who provides financial assistance to a builder asks the mortgagee to open an escrow bank account to rout all future financial transaction through escrow bank account. The bank, before sanctioning the loan to a builder insists upon the mortgagee to close all his account with other banks, surrender all cheque books, close all loan transactions and do all future transactions through escrow account opened with the bank who advanced the loan. The account holder cannot take money out of the escrow account. The escrow is being opened considering the safety of the purchaser of flats from the builder and also ensure that the

> mortgage debt is satisfied with the sale proceeds of a flat. The purchaser of the flats from the builder has to transact all the money through escrow account. An escrow account is essentially savings account that is managed by mortgage servicer."

13. In paragraph No.21 of the order, the learned Special Judge found that some of the persons those who purchased the flats, form part of the property offered as security, applied for housing loan from the same bank and the bank officials sanctioned the said loan also, without the original records. No investigation was done by the investigating officer regarding this aspect. It was observed by the Special Court further that the Investigating Officer did not conduct any investigation under what circumstances, the Bank Officials extended the period beyond 36 months without clearing the advance loan within 24 months when huge

pendency of arrears was there. It is also found by the learned Special Judge that the Investigating Officer had failed to collect the original title document of 16.40 cents of land with double storied building in Sy.No.3564/3-5 and 3564/3-4 in Kowdiar village in the name of the 1st accused/petitioner herein, and no investigation was conducted regarding what happened to the original title deed.

14. Thus, the learned Special Judge opined that the investigating officer could not simply state that all the lapses from the side of the bank Officials were either negligent act or dereliction of duty, without criminal intend. On these circumstances, the learned Special Judge returned the final report dated 13.07.2020 filed pursuant to Ext.P2 order, with direction to the Investigating Officer to conduct proper and effective investigation and complete the same not later than three months from 26.06.2023 (the date of the

order).

15. The question to be considered herein is whether the learned Special Judge is justified in passing the order practically dismissing the petitions filed by the CBI. On scrutiny of the materials available, it could be gathered that in the investigation report earlier submitted itself, the investigating officer observed that there was evidence to show gross negligence on the part of the bank officials while performing their duty as public servants in the capacities of Assistant General Manager and Deputy General Manager/Field Officer of the Bank. The investigating officer also found that the officers failed to scrutinize the documents with due diligence while processing the request received from KSFE, Vadayattukotta, for issuance of ‘no liability certificate’ since ‘no liability certificate’ would have to be issued pertaining to the undivided share of a portion of the

property of the shopping complex. On this premise, the investigating officer also found callus attitude on the part of the officers in finding the fraud committed by the customers of the bank. In Ext.P5 order, on analysis of this observation of the investigating officer along with documents produced, the Special Court found that HCCPL did not open an escrow account despite the SBI extending the loan period by one year. During this period, HCCPL had sold their flats to third parties and received the sale proceeds through different banks other than the SBI where HCCPL maintained their bank account. In this matter, the learned Special Judge found that in such a case, the role of the bank officials is in serious doubt and the investigating officer did not consider this aspect with due seriousness. On scrutiny of the order impugned, as observed in paragraph No.21 of the order as extracted in paragraph No.13 hereinabove, the involvement of the bank officials in this crime could be gathered and the report of the investigating officer giving them clean chit in the matter of criminal culpability by merely alleging lapses alone on the part of the bank officials within the orbit of negligence or dereliction of the duty could not be justified.

16. Before conclusion, this Court is forced to address a relevant aspect, which, in fact, led to filing of this petition. Indubitably, the Special Court ordered further investigation as against accused Nos.4 and 5 as per the impugned order dated 26.06.2023. Till this date no petition was filed by accused Nos.4 and 5, challenging Ext.P5 order. But the petitioner who is arrayed as the 1st accused is aggrieved by the order on the submission that he is ready to face trial on the strength of the charge filed against him. Even though at the first blush, the delay in finality of the proceedings against him pointed out by the learned senior

counsel for the petitioner seems to be significant, a second thought with reasoning would espouse the fact that if accused Nos.4 and 5 got arrayed as accused after further investigation, where already the petitioner is arrayed as the first accused after investigation, the grievance of the petitioner is of least significance and in such a case, he could very well hope for expeditious further investigation in view of Ext.P5 order. Once the cause of accused Nos.4 and 5 being taken by the first accused to get the further investigation ordered against accused Nos.4 and 5 to be annulled, the intention of the first accused to be a saviour of accused Nos.4 and 5 protrudes, after lifting the curtain in front of him. This would show an unholy nexus between the first accused and accused Nos.4 and 5, where the specific allegation orbited is that the bank officials allowed the first accused to deal with the property offered as security, in ignorance of their legal obligation to secure the same to realise the liability of the Bank. This aspect also throw light on the fact that the bank officials have involvement in this crime. If the petitioner would not have filed this petition and stayed the further investigation as per Ext.P5, the further investigation ought to be completed much earlier. Therefore, the apprehension of delay in finalizing the proceedings, projected as the reason for challenge, could not sustain, as the pendency of this petition and stay thereof obtained by the petitioner delayed the investigation for more than two years.

17. In view of the discussion, the order impugned passed by the learned Special Judge found to be justifiable and in such view of the matter, no interference in Ext.P5 common order is warranted. Therefore, the challenge in this original petition, seeking quashment of Ext.P5 common order, would not stand and the consequence

thereof is dismissal of this petition. Accordingly, this petition stands dismissed.

Interim order of stay granted by this Court stands vacated. The investigating officer is specifically directed to conduct effective further investigation in terms of Ext.P5 order and file report thereof to the Special Court within two months from the date of receipt of this judgment.

Registry is directed to forward a copy of this judgment to the Special Court forthwith for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE

nkr

APPENDIX OF OP(CRL.) 712/2023

PETITIONER EXHIBITS

EXHIBIT P-1	**TRUE COPY OF THE SAID FIR ON THE FILE OF THE CBI, ANTI-CORRUPTION BUREAU, KOCHI**
EXHIBIT P-2	**TRUE COPY OF THE ORDER DATED 10-08-2021 IN CRL.M.P 66 OF 2021, 67 OF 2021 AND 68 OF 2021**
EXHIBIT P-3	**TRUE COPY OF THE ORDER DATED 8-3-2023 IN COPY APPLICATION NO.4 OF 2023 PASSED BY THE THE COURT OF THE SPECIAL JUDGE, THIRUVANANTHAPURAM**
EXHIBIT P-4	**TRUE COPY OF THE ORDER DATED 9-6-2023 IN WP(CRL). 325 OF 2023 PASSED BY THIS HON'BLE COURT**
EXHIBIT P-5	**TRUE COPY OF THE COMMON ORDER DATED 26-6-2023 IN CRL.MP NO. 48 OF 2022 , CRL.MP NO. 49 OF 2022 AND CRL.MP NO. 50 OF 2022 PASSED BY THE COURT OF SPECIAL JUDGE (CBI/SPE) THIRUVANANTHAPURAM**