

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

THURSDAY, THE 6TH DAY OF MARCH 2025 / 15TH PHALGUNA, 1946

CRL.MC NO. 2062 OF 2020

IN CC NO.543 OF 2005 OF JUDICIAL MAGISTRATE OF FIRST
CLASS -II, NEYYATTINKARA AND CRIME NO.464/2004 OF PARASSALA
POLICE STATION, THIRUVANANTHAPURAM

PETITIONERS:

- 1 SHAHUL HAMEED, AGED 57 YEARS
S/O.S.M.SALAHUDEEN, RESIDING AT NO.8, ARIPPU STREET,
IDALAKKUDY HOUSE, KOTTAR, NAGAR KOIL-629 002, DOING
LOTTERY BUSINESS IN THE NAME AND STYLE OF VASANTHAM
LOTTERIES, KALIYIKKAVILA, PPM JUNCTION,
THIRUVANANTHAPURAM.
- 2 SHAMNAD, AGED 37 YEARS
S/O.ABOOBAKAR, RESIDING AT DOOR NO.1193, NEAR KRISHNAN
KOVIL, ARUKUVILA, NEW STREET, KRISHNAPURAM PANCHAYAT,
KANYAKUMARI, TAMIL NADU-629 401, EMPLOYEE OF VASANTHAM
LOTTERIES, KALIYIKKA VILA, PPM JUNCTION,
THIRUVANANTHAPURAM.

BY ADVS.
C.G.BINDU
SMT.AJITHA C.G.
KUM.K.J.SARANYA RAJ

RESPONDENTS/STATE & COMPLAINANTS:

- 1 STATE OF KERALA
REPRESENTED BY THE STATE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.
- 2 SUB INSPECTOR OF POLICE PARASSALA POLICE STATION,
PARASSALA P.O., THIRUVANANTHAPURAM.

3 DISTRICT LOTTERY OFFICER,
 OFFICE OF THE DISTRICT STATE LOTTERY DEPARTMENT,
 THAMPANOR P.O., THIRUVANANTHAPURAM-695 014.

SRI.SANGEETHARAJ.N.R, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 03.03.2025, THE COURT ON 06.03.2025 PASSED
THE FOLLOWING:



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ORDER

Accused Nos.1 and 3 in C.C.No.543/2005 on the files of the Judicial First Class Magistrate Court-II, Neyyattinkara, have filed this petition under Section 482 Cr.P.C to quash the proceedings against them in the said case.

2. The prosecution case is that, on 10.09.2004 at about 3:10 p.m, the accused Nos.2 to 4 were found to have been involved in the sale of lottery tickets of Bhutan Government, without any seal or logo of that Government, at the lottery shop of the first accused in Kaliyikkavila. The Sub Inspector of Police, Parassala has filed the final report against the petitioners herein and two other accused alleging the commission of offence under Section 7(3) of the Lotteries (Regulation) Act, 1998.

3. In the present petition, the petitioners would contend that the prosecution against them is not maintainable in view of the decisions of this Court as well as the Apex Court in the cases relating to the ban imposed by the State Government upon the sale of lotteries of other States. According to the petitioners, the prosecution against them is legally unsustainable after the decision



of the Apex Court in Crl.M.P.No.922/2012 on 31.07.2014. It is the further contention of the petitioners that the search conducted at the shop of the first petitioner which resulted in the registration of this crime was against the order of the Apex Court passed on 04.11.2009 in **State of Meghalaya and Another v. Union of India and Others [Civil Appeal No.3088/2004]**.

4. Heard the learned counsel for the petitioners and the learned Public Prosecutor representing the State of Kerala.

5. It has to be stated at the outset that the crime involved in this case was registered against the petitioners not in connection with the sale of lotteries belonging to other States in violation of the ban imposed by the State of Kerala. On the other hand, the definite case of the prosecution is that the petitioners were found to have been involved in the sale of lotteries of Bhutan Government without the necessary imprint and logo of the said Government as required under Section 4(b) of the Lotteries (Regulation) Act, 1998 which is punishable under Section 7(3) of the said Act. Therefore, the decisions of the Apex Court and this Court which the petitioner



has quoted in this petition are having no relevancy in the facts and circumstances of this case.

6. The contention of the petitioners that the search conducted at the lottery shop of the first petitioner was in violation of the direction of the Apex Court in **State of Meghalaya and Another v. Union of India and Others [Civil Appeal No.3088/2004]**, is also prima facie unsustainable in view of the fact that the search involved in this case was conducted on 10.09.2004, that is, about five years prior to 04.11.2009 when the Apex Court passed the orders in the said case. That apart, the subject matter dealt with by the Apex Court in the said cases is no way related to the crime registered against the petitioners for the sale of lotteries without the imprint and logo of the State Government concerned as required under Section 4(b) of the Lotteries (Regulation) Act which is punishable under Section 7(3) of the said Act. Therefore, the argument advanced by the learned counsel for the petitioners in the above regard is prima facie unsustainable.



7. It is true that an earlier Crl.M.C filed by the petitioners before this Court as Crl.M.C.No.1775/2010 was closed by this Court on 31.05.2010 with the observation that the proceedings in this case will stand stayed subject to the final outcome of the matter pending before the Supreme Court pertaining to the sale of lotteries by other State Governments and by the Royal Government of Bhutan. The aforesaid order appears to have been passed by a learned Single Judge of this Court upon the premises that the issue involved in this case related to the sale of lotteries of other States in violation of the ban imposed by the State of Kerala. As already stated above, the petitioners herein along with two others were booked by the Parassala Police for the sale of lotteries of Bhutan Government without the necessary imprint and logo of that Government. The violation committed by the petitioners in the above regard is no way related to the subject matter of the cases referred in the aforesaid order dated 31.05.2010 in Crl.M.C.No.1775/2010 of the learned Single Judge. Therefore, there is absolutely no basis for the argument advanced by the learned counsel for the petitioners that the present prosecution is



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liable to be terminated in the light of the decision of the Apex Court in the matters pertaining to the ban imposed by the State of Kerala upon the sale of lotteries belonging to other States. Needless to say that the request in this petition to quash the proceedings in C.C.No.543/2005 in the files of the Judicial First Class Magistrate Court-II, Neyyattinkara, cannot be allowed.

In the result, the petition is hereby dismissed.

(sd/-)

G. GIRISH, JUDGE

jsr



APPENDIX OF CRL.MC 2062/2020

PETITIONER ANNEXURES

- ANNEXURE 1 CERTIFIED COPY OF THE FIR DATED 10.09.2004 IN CRIME NO.464/2004 OF PARASSALA POLICE STATION.
- ANNEXURE 2 CERTIFIED COPY OF THE FINAL REPORT SUBMITTED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, NEYYATTINKARA.
- ANNEXURE 3 TRUE COPIES OF THE STATEMENT OF WITNESSES.
- ANNEXURE 4 TRUE COPY OF THE COMPUTER GENERATED COPY OF INTERIM ORDER DATED 04.11.2009 IN CIVIL APPEAL NO.3088/2004 OF THE HON'BLE APEX COURT EXTRACTED FROM SUPREME COURT WEBSITE.
- ANNEXURE 5 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 28.02.2008 IN CRL.MC NO.2328/2004.
- ANNEXURE 6 TRUE COPY OF THE ORDER DATED 31.05.2010 IN CRL.MC NO.1775/2010 OF THIS HON'BLE COURT.
- ANNEXURE 7 TRUE COPY OF THE ORDER DATED 15.07.2014 OF THE APEX COURT IN CRL.APPEAL NO.932/2012 ALONG WITH OTHER APPEALS.
- ANNEXURE 8 TRUE COPY OF THE ORDER SHEET OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT.