



2025:KER:58501

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 5TH DAY OF AUGUST 2025 / 14TH SRAVANA, 1947

CRL.MC NO. 6319 OF 2025

CRIME NO.2/2023/ALP OF VACB, ALAPPUZHA, Alappuzha
PETITIONER/ACCUSED NO.1:

RATHEESH K.G, AGED 40 YEARS
S/O GOPI.K KALLAMPALLY HOUSE, PURAKKAD.P.O,
AMBALAPPUZHA, ALAPPUZHA DISTRICT, PIN - 688561.

BY ADVS.

SRI.V.SETHUNATH

SHRI.THOMAS ABRAHAM (K/1051/2010)

SHRI.SREEGANESH U.

SHRI.LAKSHMINARAYAN.R

SHRI.GAUTHAM KRISHNAN K.G.

RESPONDENTS/STATE/COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.
- 2 THE DEPUTY SUPERINTENDENT OF POLICE
VIGILANCE & ANTI-CORRUPTION BUREAU, ALAPPUZHA,
PIN - 688001.
SPECIAL PUBLIC PROSECUTOR, VACB SRI RAJESH.A,
SENIOR PUBLIC PROSECUTOR, VACB SMT.REKHA.S

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
25.07.2025, THE COURT ON 05.08.2025 PASSED THE FOLLOWING:



A. BADHARUDEEN, J.

Crl.M.C No.6319 of 2025-H

Dated this the 5th day of August, 2025

O R D E R

The petitioner, who is arrayed as accused No.1 in Crime No.2/2023/ALP of VACB, Alappuzha, has filed this Criminal Miscellaneous Case under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking quashment of Annexures-A1 preliminary enquiry report dated 22.06.2022 in CV 1/2020/ALP and and Annexure A2 F.I.R in Crime No.2/2023/ALP of VACB, Alappuzha, dated 14.03.2023.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the respondents in detail. Perused the relevant documents and the decisions placed by the learned Public Prosecutor.

3. In this matter the entire prosecution case stems from the allegation that the petitioner herein Sri K.G.Ratheesh, who while working as the Principal Sub Inspector of Police of South Police Station, Alappuzha, along with Sri N.J.Sunekh, Probation Sub Inspector of Police



and Civil Police Officers Sri Dinlal D.Mohan and Sri Abeesh A.Ibrahim, at 8 p.m on 01.05.2020 reached at the residence of one Saji Philip, a Non-Resident Indian, and informed that they got a secret information that Foreign Liquor was kept illegally in the said house. Thereafter they entered into the room in the upstairs and demolished the lock of the showcase and took away 4 litres of Foreign Liquor, kept at the showcase, in the police vehicle. The further case is that thereafter they demanded Rs.6 lakh towards bribe for not registering a case. As per letter dated 25.05.2020 a preliminary enquiry was recommended. Thereafter, as per order dated 24.08.2020 preliminary enquiry was ordered. On 15.09.2020 one N.Babukuttan, a Police Inspector of VACB, Alappuzha, conducted the preliminary enquiry by questioning the witnesses starting from 15.09.2020 to 23.02.2021, suspending the petitioner and 3 other police officers in this regard. Accordingly, as on 22.06.2022, Annexure A1 report was filed. Finally it was reported that the accused, including the 1st accused/petitioner herein, abused their position as public servants with intent to create hazards and to defame the family of the defacto complainant and to obtain illegal gratification. Further accused Nos.1, 3 and 4 were found to have



involvement in the commission of offences punishable under Sections 7(a) or 7A of the Prevention of Corruption (Amendment) Act, 2018 [‘PC (Amendment) Act’ for short hereafter] as well as under Sections 182, 167, 219, 120B of the Indian Penal Code (‘IPC’ for short). Based on Annexure-A1 report dated 22.06.2022, Crime No.2/2023/ALP of VACB, Alappuzha, was registered on 14.03.2023 for the said offences.

4. In the FIR, the allegation is that the 2nd accused, who is Smt.Aleyamma, who had animosity with the brother of her husband, with intention to defame them and to cause unlawful loss to them, made telephone calls with the 1st accused on 30.04.2020 and 01.05.2020 knowing the fact that the 1st accused was aware about the animosity in between the brother of her husband and the 2nd accused and accordingly accused Nos.1, 3 and 4 abused their position as public servants and trespassed upon the residence of the complainant at 8.30 p.m on 01.05.2020 after reaching there in a police jeep bearing Reg.No.KL 01 CH 7018 entered into the first floor of the house, demolished the key of the shelf which was used as bar counter and took away 4 bottles of foreign liquor worth Rs.1,50,000/- each and left the place without preparing search



list after getting signature of the house owner in a blank paper and later the above Foreign Liquor bottles were taken in a carton box and carried the same at 10.00 p.m in the police jeep. Later, the 1st accused with the aid of the 4th accused prepared search memorandum by using forged signature and produced the same before the court. Thereafter, the 1st accused demanded Rs.6 lakh through the 2nd accused on 02.05.2020 to avoid registration of the case pursuant to the above occurrence, by demanding the same from Sajan Devassy, who is the son of the house owner.

5. According to the learned counsel for the petitioner, the entire allegations are false and the petitioner has been wrongly implicated in an occurrence in the year 2020 with intention to spoil his career. According to the learned counsel for the petitioner, even though FIR was registered as on 14.03.2023, no effective investigation was conducted and the investigation of this false case being kept dormant without filing final report to avoid promotion to the petitioner, while his juniors were promoted to the higher posts. It is pointed out by the learned counsel for the petitioner that the entire prosecution is unwarranted and the story of demanding Rs.6 lakh as bribe for not registering a case for keeping 4 litres



of Foreign Liquor without authorisation is an improbability. It is submitted that if such a case was registered, on pleading guilty, payment of a much lesser amount as fine would suffice to save them. It is pointed out further that even though it has been alleged that the 1st and 2nd accused talked in between them on 30.04.2020 and 01.05.2020, it has been revealed during investigation that when the CDRF of the mobile number (mentioned in the preliminary enquiry report as that of Aleyamma, the 2nd accused) was verified, it was found that the same was not in the name of Aleyamma and the same was in the name of a third person. According to the learned counsel for the petitioner, none of the offences would attract in the facts, where, as per the FIR it is specifically alleged that the recovered contraband was produced before the court by the 1st accused.

6. While opposing quashment as sought for, the learned Public Prosecutor placed report of the Investigating Officer and paragraph Nos.5, 6 and 8 to 10 are relevant and the same are extracted hereunder:

“5. *The contention raised by the petitioner is that in the preliminary enquiry report that Sub Inspector Ratheesh and party were searching the shelves (showcase) in the first floor of the*



house and Probationary Sub-Inspector, Sri. Sunekh, was searching ground floor for dangerous goods, and when he went upstairs, he found only empty liquor bottle covers in the first floor. It is also alleged that, during the preliminary enquiry the officer who was part of the search team, had not seen anything being seized or loaded into the vehicle. During the investigation of case VC-02/2023/ALP, it is revealed that SI Sri Sunekh was on probation during the said period, and that he did not disclose the truth at the time due to threat from Sub Inspector Ratheesh and others, who warned him that he would lose his job if he reveal the truth. During the investigation Sri Sunekh has given a statement under Section 164 of the CrPC regarding the whole incident that happened during the search.

6. It is alleged that the mobile No. mentioned in the Preliminary Enquiry report which was not belonging to Aleyamma during the said period and CDR of the number were taken in the Preliminary Enquiry is not that of Aleyamma. In the investigation it is revealed that the phone number was regularly used by Aleyamma and the connection was taken in the name of one Dinu Komalan, cousin of Aleyamma without his knowledge.

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8. It is alleged that Sajan Devasya, brother in law of the house owner Saji Philip, was not present at the time of search in the said house. In the investigation it is revealed that Sajan Devasya was indeed present at the house during the time of search and was a witness to the search. This has been clearly established from the witness statements of Smt. Selina Devasya, Sri. Saji Philip, Sri. N.J. Sunekh (a member of the search team), Smt. Sheena Sajan,



Stalin K.J., and Rajesh C.

9. *The petitioner's averment that the information leading to the said search was allegedly provided by an individual named Sadikh, and that he was not examined during the preliminary enquiry. In the Preliminary Enquiry the statement of Sadikh could not be recorded and during the investigation it revealed that no such information was provided by Sadikh as claimed by the petitioner.*

10. *It is alleged that page thirteen of the Preliminary Enquiry report states that the Probation Sub Inspector had directed the witnesses in the search to sign in a blank paper and no search list was prepared on the spot. It is submitted that in the investigation that foreign liquor was taken away by the petitioner and party from the said house during the search, without adhere the procedures mentioned in CrPC while conducting a search. The act of seizing articles without recording them in a search list at the location, and failing to seize them properly and to take legal action as mandated, is viewed as a deliberate act by the petitioner, a government official entrusted with such responsibilities constituting abuse of official position for undue advantage."*

7. On tracing the history of the case, as discernible from the prosecution case narrated herein above, as per Annexure-A1 preliminary enquiry report and as per the allegation in the FIR, the prosecution case is that 4 bottles of Foreign Liquor worth Rs.1,50,000/- were taken away by the petitioner along with other party and produced the same before the



court on the basis of forged seizure mahazar. In the report of the investigating officer nothing could be gathered to see collection of any evidence regarding forgery, even though this is an occurrence in the year 2020 and the investigation is still being halted without collecting sufficient materials in support of the prosecution evidence. In this context, it is relevant to note that as per the preliminary enquiry report and as per the report of the Investigating Officer, when the CCTV footage of the nearby house of Dr.Jihaludeen was verified by the vigilance, the video of taking the contraband from the house of Saji Philip could not be available from the CCTV footage since the house of Saji Philip was far from the CCTV and the police jeep was parked inside the car porch.

8. In the instant case, when there is allegation that a police officer, who is empowered to search a house on getting an information regarding availability of contraband, if at all searched the same and seized the contraband without preparing seizure mahazar, the same itself is not a criminal offence though same may be a misconduct warranting action under the relevant Service Rules and Conduct Rules respectively. It is submitted by the learned counsel for the petitioner that in the disciplinary proceedings



minor penalty was imposed and proceedings were finalised. Even though it is submitted by the learned Public Prosecutor that Probation Sub Inspector of Police gave 164 statement before the Magistrate on 18.03.2023 supporting the allegation, the same also would suggest that the contraband was produced before the court, as alleged in the FIR. Demand for bribe from Saji Philip through the 2nd accused is also alleged, to attract offence under Section 7 of the PC (Amendment) Act. Thus in order to prove demand of bribe, the complainant's brother's wife is introduced. In this matter, demand for bribe to the tune of Rs.6 lakh to avoid registration of a case pursuant to recovery of 4 bottles of Foreign Liquor, after its production before the court indicating registration of crime would go to the root of the allegation. Thus the allegation of demand for bribe is not substantiated, *prima facie*, to find commission of offences punishable under Sections 7 or 13 of the PC (Amendment) Act. Most importantly, when search was conducted, contraband was found and recovered from the house of the complainant, the prosecution allegation that the petitioner and party searched the house of the complainant with intention to defame them is a baseless allegation. If at all there was procedural irregularity in



the matter of seizure of contraband alone, that by itself would not constitute any offence, though the same would attract disciplinary proceedings. Initiation of disciplinary proceedings and imposition of penalty on that count is admitted by the petitioner. It is true, as argued by the learned Public Prosecutor relying on paragraph 23 of the decision of the Apex Court in [2021 (3) KHC 25 : 2021 (1) KLD 645 : 2021 KHC OnLine 6234 : AIR 2021 SC 1918 : 2021 (3) KLT SN 3 : 2021 CriLJ 2419 : 2021 SCC OnLine SC 315 : 2021 (2) KLT OnLine1039 : 2021 LiveLaw (SC) 211 : 2021 (19) SCC 401 : AIR OnLine 2021 SC 192], ***Neeharika Infrastructure Pvt. Ltd. (M/s.) v. State of Maharashtra & Ors.***, that it is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit any investigation to go on; the power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases' (not to be confused with the formation in the context of death penalty); while examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness of otherwise of the allegations made in the FIR/complaint;



criminal proceedings ought not to be scuttled at the initial stage and quashing of a complaint/FIR should be an exception rather than an ordinary rule. In the decision reported in [2024 KHC 442 : 2024 KHC OnLine 442 : 2024 KER 36779 : 2024 LiveLaw (Ker) 332 : 2024 (4) KLT SN 30 : 2024 KLT OnLine 1681], ***Vignesh Kumar Balasundar v. State of Kerala***, this Court held that when commission of an offence is, *prima facie*, disclosed from the complainant and the allegations are made, registration of FIR is mandatory. In the instant case, it appears that the investigation being stalled based on an FIR, whereby the prosecution alleges production of contraband before the court by preparation of forged seizure mahazar, but no investigation so far conducted to find out any such forgery.

9. In this connection, it is relevant to mention that when there is allegation as to commission of offence by a public servant under the 'PC (Amendment) Act' or under the IPC or Bharatiya Nyaya Suraksha Sanhita, 2023, registration of FIR as per law and investigation thereof are essential to find out the truth of the allegations. But when the allegation is scrutinised in a case where the investigation not reached at any stage, even



after six years and the allegation would not constitute offences alleged, the registration of FIR to be held as unwarranted. In the instant case, when the allegations are taken in *toto*, it could be gathered that registration of FIR and delay in investigation is without support of sufficient materials and in such situation, registration of this crime and its aftermath are nothing but denying promotion to the petitioner, as apprehended by him, is having force. It is relevant to note that the report of the investigating officer would reveal that even the mobile phone number alleged to be used by Smt.Aleyamma to talk with the petitioner/1st accused also doesn't belong to her. In such a case, it could be held that the entire proceedings is unwarranted and therefore the FIR is liable to be quashed.

Accordingly, the Crl.M.C stands allowed and the FIR in Crime No.2/2023 of V.A.C.B, Alappuzha stands quashed.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/



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APPENDIX OF CRL.MC 6319/2025

PETITIONER' S ANNEXURES

Annexure A1	THE TRUE COPY OF THE PRELIMINARY ENQUIRY REPORT ON 22-06-2022 IN CV 1/2020/ALP FILED BY THE DEPUTY POLICE SUPT V.A.C.B, ALAPPUZHA.
Annexure A2	THE TRUE COPY OF THE F.I.R IN 2/2023 OF ALAPPUZHA V.A.C.B DATED 14-3-2023.