



2025:KER:65451

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

WEDNESDAY, THE 27TH DAY OF AUGUST 2025/5TH BHADRA, 1947

W.A.NO.1291 OF 2021

AGAINST THE JUDGMENT DATED 15.09.2021 IN W.P(C) NO.7692
OF 2021 OF HIGH COURT OF KERALA

APPELLANT/WRIT PETITIONER:

BOBBY KURUVILA
AGED 53 YEARS
S/O.KURUVILA, KARUVELITHARA HOUSE,
MITHRAKARI PO, ALAPPUZHA DISTRICT 689 595

BY ADV.SRI.V.JOHN SEBASTIAN RALPH
BY ADV.SRI.B.DEEPAK
BY ADV.SRI.VISHNU CHANDRAN
BY ADV.SRI.RALPH RETI JOHN
BY ADV.SRI.APPU BABU
BY ADV.SMT.SHIFNA MUHAMMED SHUKKUR

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA
REP.BY ITS HOME SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM 695 001
- 2 TOMIN J. THACHANKARY
HOUSE NO.32/2899, THACHANKARY HOUSE,
THAMMANAM P.O., POONITHURA VILLAGE,
COCHIN 682 032
- 3 ADDITIONAL CHIEF SECRETARY
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM 695 001

BY ADV.SRI.B.RAMAN PILLAI (SR.)
BY SRI.S.U.NAZAR, SPECIAL PUBLIC PROSECUTOR (CRIMINAL)
BY ADV.SRI.A.RAJESH, SPECIAL PUBLIC PROSECUTOR



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(VIGILANCE)

BY SMT.REKHA S. , SENIOR GOVERNMENT PLEADER

BY ADV.SRI.S.RAJEEV

BY ADV.SRI.V.VINAY

BY ADV.SRI.M.S.ANEER

BY ADV.SRI.SARATH K.P.

BY ADV.SRI.ANILKUMAR C.R.

BY ADV.SRI.K.S.KIRAN KRISHNAN

BY ADV.SMT.DIPA V.

BY ADV.SRI.AKASH CHERIAN THOMAS

BY ADV.SRI.AZAD SUNIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
26.08.2025, THE COURT ON 27.08.2025 DELIVERED THE
FOLLOWING:



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"C.R."**J U D G M E N T****Dr. A.K. Jayasankaran Nambiar, J.**

The petitioner in W.P(C).No.1291 of 2021 is the appellant before us in this writ appeal that impugns the judgment dated 15.09.2021 of a learned Single Judge dismissing his writ petition. The brief facts necessary for a disposal of this writ appeal are as follows;

The facts in brief:

2. The appellant is stated to be an anti-corruption crusader who has been relentlessly fighting against corruption and nefarious activities of government servants including the 2nd respondent herein. In the writ petition, he impugned an order dated 28.01.2021 of the State Government in the Vigilance department whereby the State Government had accorded sanction for a further investigation in Crime No.VC3/2007/SCE by invoking Section 173(8) of the Code of Criminal Procedure [hereinafter referred to as the "Code"] and entrusting the investigation to another Special Investigation Unit. It was his contention in the writ petition that the State Government could not have passed such an order at a point in time when the criminal proceedings initiated against the 2nd respondent had reached a stage where the final report had already been filed before the jurisdictional Special Court concerned,



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and the 2nd respondent had already approached the said court with an application seeking discharge and thereafter, on its dismissal, approached the High Court through a criminal revision petition that was ultimately dismissed as withdrawn. The appellant also apprised the writ court of the fact that he had approached this Court at various stages during the course of investigation of the case against the 2nd respondent and had obtained orders from this Court directing an expeditious completion of the investigation initiated against the 2nd respondent. It was the specific case of the appellant therefore that the impugned order of the State Government was one that was passed to favour the 2nd respondent and to help him to protract the investigation so that the proceedings would not reach a stage where it would affect his career progression as a Police Officer in the State Police Force.

The impugned judgment:

3. The learned Single Judge, who considered the matter, found that inasmuch as the appellant was not the complainant at whose instance the investigation against the 2nd respondent had been initiated, or a person who had any direct connection with the case, he did not have the *locus standi* to maintain a writ petition impugning the Government Order in question. The learned Judge also found that the State indeed had the power to order a further investigation of a case and the existence of the said power could not be denied merely because there was a possibility of misuse of that power. He was also of the view



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that unless an extraordinary case of gross abuse of power was made out by [sic] those in charge of investigation, the further investigation could not be thwarted by the High Court by interference in exercise of its jurisdiction under Article 226 of the Constitution of India.

The arguments before us:

4. In the appeal before us, the contentions of Sri. John S. Ralph and Ms. Liz Johny, the learned counsel appearing on behalf of the appellant, briefly stated, are as follows:

- It cannot be said that the appellant does not have the *locus standi* to impugn a Government order that had the effect of unnecessarily prolonging the investigation against the 2nd respondent accused, and that too at the latter's instance. The appellant having approached this Court at every stage when it was noticed that the investigation in question was being stalled, and having obtained directions from this Court against the respondent investigating agencies to complete the investigation at the earliest could not have been seen as a stranger to the proceedings. In support of the said proposition, reliance is placed on the judgments in **Fertiliser Corporation Kamgar Union (Regd.), Sindri v. Union of India and Ors. - [(1981) 1 SCC 568]**; **Chiranjit Lal Chowdhuri v. The Union of India and Ors. - [1950 SCR 869]**; **T.C. Basappa v. T. Nagappa and another - [AIR 1954 SC 440]**; **Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association v. Union of India and Ors. - [(1981) 1 SCC 246]**.

- The impugned judgment of the learned Single Judge has in fact found that the concept of *locus standi* is alien to criminal jurisprudence in our



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country for it is well established that it is the State that prosecutes a case against an accused on behalf of a victim. However, having acknowledged this aspect in the impugned judgment, the learned Judge erred in holding that the appellant could not maintain the writ petition impugning the Government Order directing a further investigation in the matter, more so when the charges against the 2nd respondent accused involved corruption while in public office. Reliance is placed on the decisions in **Bandhua Mukthi Morcha v. Union of India and Ors. - [(1984) 3 SCC 161]**; **Vineet Narain and Others v. Union of India and another - [1998 (1) SCC 226]**.

- The State Government did not have the power to issue directions for a further investigation in the matter through another special investigation unit especially when the investigating agency had already filed a final report before the jurisdictional Special Court and the 2nd respondent accused had submitted to that jurisdiction and approached the said court with a discharge petition that was dismissed. Further, while it is no doubt true that the State may direct a further investigation to be undertaken at any stage, the power to direct such further investigation can be exercised only if the investigating agency comes across new/fresh information. In the instant case, there was no claim by the investigating agency that it had come across fresh information and hence the State Government could not have directed a further investigation merely on the request of the 2nd respondent accused, and by blindly accepting his contention that he had such material with him. This is more so because it is trite that an accused can have no say in the appointment or the manner of functioning of an investigating agency. Reliance is placed on the decisions in **Vinay Tyagi v. Irshad Ali @ Deepak & Ors. - [(2013) 5 SCC 762]**; **Rashmi Sundrani v. State of U.P. & Anr. - [2024 SCC Online All 7440]**; **K.Vadivel v. V.K.Shanthi & Ors. - [2024 SCC Online SC 2643]**.



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- On the merits of the representation preferred by the 2nd respondent accused before the State Government, it is submitted that there was no new material that was brought to the notice of the Government for seeking a further investigation in the matter. The material shown in the representation, as not considered by the investigating agency, was in fact adverted to in the order of the jurisdictional court while dismissing the application for discharge preferred by the 2nd respondent. It was evident therefore that the attempt of the 2nd respondent, who was a high-ranking Police Officer in the State, was only to prolong the investigation against him so that the proceedings against him would not stand in the way of his career progression.

5. *Per contra*, the submissions of Sri. A. Rajesh, the learned Special Public Prosecutor (Vigilance) appearing on behalf of the State Government are as follows:

- The State Government has the power to order further investigation even after a final report has been filed by the investigating agency before the jurisdictional judicial magistrate. Reliance is placed on the decisions in **State of Bihar and Another v. J. A. C. Saldanna and Others - [1980 KHC 591]** and **Reghuchandrabal M. R. v. State of Kerala and Others - [2009 (3) KHC 755]**.

- On the aspect of *locus standi* of the appellant, it is submitted that in criminal matters this court would be slow in permitting persons who do not have any nexus with the criminal proceedings to join as parties in the proceedings or to challenge those proceedings before a constitutional court. Reliance is placed on **P. S. R. Sadhanantham v. Arunachalam and Another - [1980 KHC 686]**; **Sanjai Tiwari v. State of Uttar Pradesh and Another - [2020 KHC 6699]**; **Janata Dal and Others v. H. S. Chowdhary and Others - [1991 KHC 1163]**



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and **Vinod Mathew Wilson v. Union of India - [2024 KHC 395]**.

- Relying on a note enumerating the steps taken by the investigating agency during the period from the date of the impugned Government order upto the present, it is submitted that the investigating agency has come across fresh material that would support the prosecution in the proceedings before the trial court. It is prayed in the alternative that even if this Court were to quash the impugned Government order on any ground, liberty may be reserved to the Prosecution to file a supplementary final report before the jurisdictional judicial magistrate for the purposes of the trial. Reliance is placed on the decisions in **Vinay Tyagi v. Irshad Ali @ Deepak and Others - [2012 KHC 4747]** and **Luckose Zachariah @ Zak Nedumchira Luke v. Joseph Joseph and Others - [2022 KHC 6253]**.

6. The submissions of Sri.B.Raman Pillai, the learned senior counsel appearing for the 2nd respondent, are as follows:

- The appellant is a person who has a number of criminal cases registered against him in various Police stations in Alleppey District and cannot therefore be seen as a *bona fide* crusader against public corruption. It is contended that the writ petition filed by him was nothing but a ruse to vent his personal vendetta against the 2nd respondent who had arrested him in connection with an offence while he was a jurisdictional Police officer. The appellant therefore lacked the *locus standi* to maintain the writ petition as rightly found by the learned single judge.

- As for the legality of Ext.P1 order passed by the Government, it is submitted the order directing further investigation was passed after consulting the Advocate General of the State and hence there was no



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illegality in the same. That apart, it is trite that the State Government has the general power of supervision over the prosecution conducted by the Investigating agencies and hence the argument regarding absence of power in the State Government to issue such an order has to be rejected. Reliance is placed on the judgment in **State of Bihar & Anr. v. J.A.C Saldhana & Ors - [(1980) 1 SCC 554]**.

Discussions and Findings:

7. We have considered the rival submissions and also perused the pleadings in this case and referred to the precedents cited across bar. At the outset, we deem it apposite to deal with the aspect of *locus standi* of the appellant to move the writ petition since that was the ground that was relied upon by the learned single judge to dismiss the writ petition. The rules of standing are essentially designed to weed out frivolous litigation from courts and to ensure that there is no abuse of the process of the court. As was recently observed by the Supreme Court in the context of public interest litigations, while public interest litigations serve as effective tools for addressing the grievances of the public, it must be carefully scrutinised to prevent misuse or abuse by those with ulterior motives. The courts must look beyond the surface to assess whether the litigation has been genuinely initiated in the interest of the public or as a result of mischief. This is because the essence of PIL lies in its aim to remedy genuine public wrongs or injuries rather than being driven by personal vendetta or malice **[Noida Toll Bridge Co. Ltd. v. Federation of NOIDA Residents Welfare Association & Ors. - [(2025) 6 SCC 717]]**.



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8. In the context of criminal cases, it has been observed by the Supreme Court in **M. R. Ajayan v. State of Kerala and Ors. - [2024 SCC Online SC 3373]** that since an offence is considered to be a wrong committed against society, and the prosecution against the accused person is launched by the State, it becomes the duty of the State to get the culprit booked for the offence committed by him. If the State fails in this regard, a party having a *bona fide* connection with the cause of action, and who is aggrieved by the order of a court, cannot be left at the mercy of the State and without any option to approach a judicial forum for seeking justice. In such cases, therefore, the court will ordinarily find in favour of the party approaching it if it finds that the litigation is not driven by personal vendetta or malice.

9. On the facts before us, we find that the appellant has been agitating against the delay occasioned by the investigating agency in completing the investigation into the complaint alleging possession of assets disproportionate to known sources of income lodged against the 2nd respondent, for over a decade. He has also secured directions from this Court in writ petitions filed by him in the past, and when those directions were not complied with, he had approached this Court with a contempt petition against the investigating officers of the respondent State. We cannot therefore accept the finding of the learned Single Judge in the impugned judgment that the appellant did not have the necessary standing to maintain the writ petition before this Court. This



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is more so because we cannot find it in ourselves to ignore the fact that the allegations against the 2nd respondent are serious in nature and relate to corruption while holding a public office in the Police Department of the State. As was observed by the Supreme Court in **Vineet Narain (supra)**, the lack of probity in public life leading to corruption has an adverse effect on foreign investment and funding from the IMF and World Bank, and hence the highlighting of corruption in public life through the medium of PIL by invoking judicial review should be frequent. We are therefore of the view that the appellant had the necessary *locus standi* to maintain the writ petition challenging the Government order that directed a further investigation to be conducted after almost five years since the investigating agency lodged a final report before the jurisdictional Special Court. The writ petition preferred by the appellant had to be seen as in continuation of his efforts at ensuring an expeditious completion of an investigation against the 2nd respondent accused.

10. Moving now to the contention of the appellant that the State Government did not have the power to issue the Government Order dated 28.01.2021 according sanction to conduct a further investigation in Crime No.VC3/2007/SCE under Section 173(8) of the Code by entrusting the investigation to another Special Investigation Unit, we find from a perusal of the said Government Order that it was issued in response to a representation dated 23.11.2020 preferred by the 2nd respondent who was the accused in the crime referred above. What we



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find most perplexing is that the sanction for further investigation appears to have been granted for the mere asking, and without examining the merits of the allegation raised by the 2nd respondent that material evidence in his favour was ignored by the investigating officer. While we are aware of the judicial precedents that clarify that the State Government has a general power of supervision over criminal investigations undertaken by an investigating agency appointed by it, and that such power extends to issuing directions for further investigation even after a final report is submitted before the jurisdictional court, we are at a loss to understand how the State Government could have exercised such a power to direct further investigation more than four years after the laying of the final report, and that too at the instance of material brought to their notice by an accused person who had already approached the jurisdictional court with a discharge petition that was eventually dismissed. It is a settled principle under our criminal jurisprudence that an accused has no right to dictate the manner and method by which an investigation must be conducted. As per the scheme of the Code, save under certain exceptional circumstances, the accused has no right of participation during the course of the investigation of a proceeding instituted on a police report till the investigation culminates in the filing of a final report under Section 173(2) of the Code, or in a proceeding instituted otherwise than on a police report, till the process is issued under Section 204 of the Code.



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11. There is also nothing in Section 173(8) of the Code to suggest that the court is obliged to hear the accused before any direction for further investigation is made **[Union of India and Another v. W.N.Chadha - [1993 Supp (4) SCC 260]]**. The Code only permits an investigating agency seeking a further investigation into a crime, to approach the jurisdictional court concerned for such directions, and that too only at the specified stages, for it is only the jurisdictional court, and no other authority, that can issue such directions once the proceedings reach the stage concerned. It is against the backdrop of the above scheme of the Code that we find the State Government to have issued a direction for further investigation by another special investigation unit, merely on the request of the accused person. In our view the State government did not have the power to issue such an order and, even if it did, the power was not exercised in the manner contemplated under law. The Government order dated 28.01.2021 was therefore clearly vitiated by legal *mala fides*.

A matter of concern:

12. Before parting with this case, we might express our concern with certain disturbing aspects of this case. We note from the pleadings before us that the complaint against the 2nd respondent before the Vigilance department of the State was preferred as early as in 2002. After a quick verification/preliminary enquiry, a report was filed by the Vigilance authorities before the State Government on 11.07.2007. Immediately thereafter a crime was registered bearing



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No.VC3/2007/SCE. The investigation into the crime continued for almost six years till the laying of the final report before the Special Court, Trichur where the case was numbered as C.C.No.22/2013. The case was later re-numbered as C.C.No.348/2016 before the Special Court, Muvattupuzha consequent to the establishment of a new court in Muvattupuzha and the transfer of the case file to that court. Still later, the case was transferred to the Special Court, Kottayam on the request of the 2nd respondent, and numbered as C.C.No.3/2020 before that Court. In the meanwhile, the appellant herein had approached this Court through W.P(C).No.36179 of 2005 seeking an expeditious completion of the investigation against the 2nd respondent. That writ petition was dismissed after recording the submission of the Public Prosecutor that the enquiry would be completed and a factual report submitted to the Government within six months from the date of the judgment viz. 27.11.2006. Thereafter, noticing that the preliminary enquiry report had been filed before the Government on 11.07.2007, this Court by order dated 29.07.2010, closed the Contempt Case [CCC No.592/2010] that had been filed in the meanwhile by the appellant, alleging non-compliance with the directions in W.P(C).No.36179 of 2005. While doing so, this Court expressed the hope that the final report after completion of the investigation by the Vigilance police would be filed before the Special Court expeditiously. As already noticed, the final report was laid before the Special Court only in 2013.

13. Even thereafter, there was considerable delay in the



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proceedings before the Special Court. Alleging that the delays were caused at the instance of the 2nd respondent accused, the appellant herein preferred complaints dated 15.08.2017 and 08.08.2018 before the Chief Justice of this Court and the Judge holding supervisory charge over the Special Court concerned. When the Special Court took up the case for consideration thereafter, the 2nd respondent filed a petition under Section 239 of the Code seeking an order of discharge. That petition was dismissed by the Special Court by a detailed order dated 29.05.2020. The said order deals specifically with the contentions of the 2nd respondent that many aspects of his case had not been looked into by the investigating agency. At any rate, challenging the said order the 2nd respondent approached this Court through a criminal revision petition [Crl.R.P.No.399 of 2020]. When the appellant herein got himself impleaded in the said revision petition, the 2nd respondent sought permission of this Court to withdraw the revision petition after reserving his liberty to impugn any order framing charges against him, as and when passed by the Special Court. Accepting his request, this Court by order dated 18.12.2020 dismissed Crl.R.P.No.399 of 2020 as withdrawn subject to the liberty reserved as mentioned above. It is significant that the 2nd respondent had in the meanwhile already approached the State Government through his representation dated 23.11.2020 seeking a direction for further investigation, based on substantially the same material that was relied upon before the Special Court while moving his petition under Section 239 of the Code seeking a discharge. It was this



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representation that was acted upon by the State Government while passing the impugned Government order.

14. We have deemed it necessary to narrate the above facts only to highlight the conduct of the 2nd respondent, who was till recently a high-ranking Police Officer in the Police Department of the State, in deliberately causing a procrastination of the investigation and the framing of charges against him. The Government order impugned in these proceedings, which we have found to be vitiated in law, does little to inspire a citizen's confidence in our criminal justice system. If the State, whose duty it is to bring offenders to justice, takes sides with an accused and permits him to dictate the manner in which the investigation against him is to progress, it will be antithetical to the concept of 'the rule of law' which has been recognised as a basic feature of our Constitution. In our role as the '*sentinel on the qui vive*' entrusted with the duty of safeguarding the rights of our citizens, we cannot permit such indiscretions on the part of the State Executive.

Conclusion:

In the light of the above discussions, we allow this Writ Appeal by setting aside the impugned judgment of the learned Single Judge and allow the writ petition by setting aside Ext.P1 Government order impugned therein. While doing so, however, we take note of the fact that the further investigation as directed by the State Government in Ext.P1 order was in fact undertaken, and new material has been



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obtained by the investigating agency over the course of the last four years when Ext.P1 order was in force. The said material cannot be seen as vitiated merely because it was obtained in an investigation carried out pursuant to an order that is now found to be illegal. In as much as there was no stay order in force against the operation of the order during the pendency of these proceedings, the *de facto* principle would operate to legitimise the said material for the purposes of the criminal proceedings that are to follow. We therefore direct that the Special Court shall proceed expeditiously with the framing of charges against the 2nd respondent/accused based on the final report already filed before it by the investigating agency, read with any supplementary final report that the investigating agency may choose to file immediately before the jurisdictional Special Court after obtaining its permission. Taking note of the period of time that has already elapsed in the matter, we would request the jurisdictional Special Court to endeavour to complete the trial of the case expeditiously, and at any rate within six months from the date of receipt of a copy of this judgment.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
JOBIN SEBASTIAN
JUDGE

prp/