



2026:KER:13358

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 13TH DAY OF FEBRUARY 2026 / 24TH MAGHA, 1947

CRL.MC NO. 7858 OF 2025

CC NO.36 OF 2010 OF ENQUIRY COMMISSIONER &
SPECIAL JUDGE, KOTTAYAM

PETITIONERS/ACCUSED NOS.13 & 14:

- 1 LUCY KURIAKOSE, AGED 66 YEARS,
KANDATHIL HOUSE, VATTAKATHARA BHAGOM, CHENAPPADY KARA,
ERUMELY THEKKU VILLAGE. KANJIRAPPALLY, KOTTAYAM
DISTRICT, PIN - 686510.
- 2 TONY C. MATHEW, AGED 50 YEARS,
CHERIPURAM HOUSE, PANTHAMAKKAL BHAGOM, CHENGALAM
VILLAGE, NOW RESIDING AT CHERIPURAM HOUSE, METTUKUZHY
KARA, KATTAPPANA VILLAGE, IDUKKI, PIN - 685508.

BY ADVS.
SRI.SERGI JOSEPH THOMAS
SHRI.A.MOHAMMED

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031.
- 2 ELAMGULAM SERVICE CO OPERATIVE BANK LTD NO. 3576
KOORALI (ESCB, KOORALI) KOTTAYAM.

[IMPLEADED AS PER ORDER DTD 18.09.2025 IN CRL.MC
7858/2025]

BY ADVS.
SPECIAL PUBLIC PROSECUTOR SRI RAJESH.A
SENIOR PUBLIC PROSECUTOR SMT.REKHA.S
R2 BY SRI.K.P.SREEKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
04.02.2026, THE COURT ON 13.02.2026 PASSED THE FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

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CrI.M.C No.7858 of 2025
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Dated this the 13th day of February, 2026

O R D E R

Accused Nos.13 and 14 in C.C.No.36/2010 on the files of the Enquiry Commissioner and Special Judge, Kottayam are the petitioners herein and they seek quashment of Annexure A1 final report in Crime No.6/1998/KTM (33) VACB, Kottayam, and C.C.No.36/2010.

2. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor in detail. Perused the records.

3. As per the final report, the prosecution alleges as under:

“That A1 being secretary, A4 being the president and A5 to A10 being members of Board of Directors and All being the Administrator of the Elangulam Service Co-operative Bank Ltd No 3576, Koorali (ESCB, Koorali) and as such being public servants in their official capacity by abusing their official position, entered into criminal conspiracy with A12, A13 and A14 with intention to misappropriate the funds of the said Bank and in furtherance of their criminal conspiracy A1, A4, A5 to A10 dishonestly and fraudulently resolved to pay Bill Discount advance (BDA) and Amended the

Byelaw without the sanction of the Joint Registrar of Co-operative societies, Kottayam and A2 and A3 being the Managers of the said Elangulam Service Cooperative bank Ltd No 3576 joined the conspiracy, hatched by A1, A4 to A10 and A12 and in furtherance of the said conspiracy A1, A2 and A3 illegally paid BDA No 3278-96-97 for 7,50,000/- and BDA 3279/96-97 for 6,79,370/25 on 31/3/97 by falsifying the accounts and records of the Bank by recording cheque No.21388 of Bank of Baroda, Kottayam Branch and cheque No.268230 of SBI, Thidanadu Branch respectively purported to issue to A12 and disbursed the said amounts to A12 and did not presenting the cheque in the Banks concerned for collection as if those would appear as a payment effected by discounting the said cheques to A12. All illegally given membership to A13 who is residing out the service area of the Bank and A13 was sanctioned illegal C C loan No.455/96-97 for 4 lakhs by A4 to A10 and A1, A2, A3 paid the loan amount to A13. Similary A14 was sanctioned illegal C C Loan No.456/96-97 for Rs. 5 lakhs by A4 to A10 and A1, A2, A3 paid the loan amount to A14. The total amount of the above two BDA's and 2 CC loans of Rs.23,29,370/25 was used for closing BDA No. 99/96-97, 101/96-97, 1614/96-97 and 1716/96-97 availed by A3 and BDA 100/96-97 availed by Sri.M.R Somarajan and BDA No 1489/96-97, 1490/96-97, 1847/96-97, 2746/96-97, 2789/96-97, 2949/96-97 and 3087/96-97 availed by Sri Varkey George and for paying additional share of A14 and thereby all the accused dishonestly and fraudulently misappropriated an amount of Rs.23,29,370/25 on 31/3/97 and by this committed criminal misappropriation, cheating, falsification of accounts, conspiracy and criminal misconduct punishable U/s 13(2) r/w

13(1) (c) and (d) of PC Act ,1988 and sec.409, 420, 477A and 120 B IPC.”

4. The learned counsel for the petitioners submitted that as per the final report, the allegation against the petitioners is that accused No.11 illegally given membership to the 1st petitioner/accused No.13, who is residing out of the service area of the Elamgulam Service Co-operative Bank, Koorali (hereinafter referred to as ‘Bank’ for short) and also granted CC loan of Rs.4 lakh. Similarly, the allegation against the 2nd petitioner/accused No.14 is that in the same way A4 to A10 granted CC loan of Rs.5 lakh to the 2nd petitioner/accused No.14, who also is a resident out of the service area of the Bank. According to the learned counsel for the petitioners, when the petitioners applied for loan after providing security, the Bank sanctioned the loan, after ensuring its repayment on production of sufficient security and execution of Gahan in favour of the Bank. It is submitted further that after availing the loan, the loan amounts including the interest were repaid. Thereafter documents of the petitioners were also returned to the petitioners after releasing the gahan executed in favour of the Bank. Thus, the allegation of the prosecution that the petitioners, who reside outside the service area of the Bank, availed pecuniary benefits on the strength of the loan granted to them, is baseless. It is also submitted that no loss sustained to the Bank, or no illegal

pecuniary advantage derived by the petitioners. Therefore, the contention that the petitioners have committed the alleged offences are without support of any prosecution records. Therefore, the prayer for quashment is liable to be allowed.

5. The learned counsel appearing for the additional 2nd respondent, the Bank, filed a statement through its present Secretary narrating the events leading to the registration of this case.

6. The learned Special Public Prosecutor, though supported the allegations in the final report, failed in his endeavour to justify whether any illegal pecuniary advantage was obtained by the petitioners, or by any other accused, as alleged by the prosecution.

7. On the crux of the matter, it could be seen that a complaint was lodged by P.A.Sebastian who was a resident of third ward of Elamgulam Panchayat and also President of Elamgulam panchayat during the year 1998 along with 26 members of the Bank complaining that though the Bank, which is intended to function within the territorial limits of the Elamgulam panchayat confined to ward Nos.1,2,9 and 10, instead of giving loan to those who are residing therein, had given loans to 40% of the members who are the residents beyond the area of the Bank and to 20% persons outside the territorial limits of Elamgulam panchayat

and even outside the Kottayam district. This is the base on which investigation was proceeded and final report as extracted herein above was filed.

8. On reading the entire case, as far as the petitioners are concerned, they had applied for the loans before the Bank and the same were granted on getting sufficient securities to ensure its realisation on default in repaying the loans. Then the petitioners timely repaid the loan and the liability was closed. Annexure A8 is the release deed dated 13.03.2014 executed by the President of the Bank in favour of the 2nd petitioner and Annexure A7 is the letter pertaining to the 2nd petitioner. Similarly, Annexure A9 is the letter issued in relation to the 1st petitioner and Annexure A10 is the release deed executed in favour of the 1st petitioner after closure of the loans. Thus it emerges that the petitioners herein availed loans when the same were sanctioned by the Bank on getting security for realisation of the loans in the event of default. Thereafter, the petitioners properly repaid the loans and the entire liability was closed. In such a case, how it could be found that there is misappropriation or pecuniary loss to the Bank or any other person, particularly, when the prosecution has no case that any members of the Bank were denied loans for diverting and granting of the money meant

for loans in favour of the petitioners and those who are not residing within the service area of the Bank. When a Co-operative Society/ Bank grants loan to a person outside its service area, that may be considered as an improper action, but the same by itself would not attract any offences. Thus on the facts discussed above, none of the offences alleged against the petitioners would attract *prima facie*. In such a case, it is not justifiable to find that the petitioners herein committed the offences punishable under Sections 13(2) r/w 13(1) (c) and (d) of PC Act, 1988 and Sections 409, 420, 477A and 120 B of IPC, *prima facie*, to proceed with trial. Hence the entire prosecution against them is liable to be held as an abuse of the process of the court.

9. Holding so, this petition is allowed. As a sequel thereof, Annexure A1 final report and the case pending as CC 36/2010 on the files of the Enquiry Commissioner and Special Judge, Kottayam, as against the petitioners stand quashed.

Registry is directed to forward a copy of this order to the jurisdictional court for information and compliance.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/

APPENDIX OF CRL.MC NO. 7858 OF 2025

PETITIONER'S ANNEXURES

- Annexure A1 TRUE COPY OF THE FINAL REPORT IN FIR NO VC 6/98/KTM (33), WHICH IS NOW PENDING AS CC NO. 36/2010 ON THE FILES OF THE COURT OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, KOTTAYAM.
- Annexure A2 TRUE COPY OF CRL.M.P NO 2018 OF 2017 IN C.C. NO. 36/2010 SUBMITTED BY THE PETITIONERS U/S 239 OF THE CODE OF CRIMINAL PROCEDURE.
- Annexure A3 TRUE COPY OF THE ORDER DATED 29/01/2024 IN CRL.M.P NO 2018 OF 2017 IN C.C. NO. 36/2010 OF THE COURT OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, KOTTAYAM.
- Annexure A4 TRUE COPY OF THE ORDER DATED 04/04/2019 IN CRL R.P. NO. 948 OF 2018 AND CONNECTED CASES.
- Annexure A5 TRUE COPY OF THE ORDER DATED 04/11/2019 IN CRL M.C. NO. 6345 OF 2019 AND CONNECTED CASES.
- Annexure A6 TRUE COPY OF THE ORDER DATED 26/10/2023 IN CRL M.C. NO. 4479 OF 2020 AND CONNECTED CASES.
- Annexure A7 TRUE COPY OF THE LETTER DATED 13/03/2014 SENT BY THE SECRETARY OF THE BANK TO THE PRESIDENT OF THE BANK.
- Annexure A8 TRUE COPY OF THE RELEASE DEED DATED 13/03/2014 EXECUTED BY THE PRESIDENT OF THE BANK.
- Annexure A9 TRUE COPY OF THE LETTER DATED 09/01/2025 SENT BY THE SECRETARY OF THE BANK TO THE PRESIDENT OF THE BANK.
- Annexure A10 TRUE COPY OF THE RELEASED DEED DATED 13/01/2025 EXECUTED BY THE PRESIDENT OF THE BANK.
- Annexure A11 TRUE COPY OF THE JUDGMENT DATED 18/02/2025 IN CRL.M.C. NO.1060/2024.
- Annexure A12 TRUE COPY OF REPLY DATED 09/03/2009 SENT BY THE INFORMATION OFFICER, ELANGULAM SERVICE CO-OPERATIVE BANK LTD NO. 3576.

RESPONDENT' S ANNEXURES

- Annexure R2 (a) True copy of the loan application dated 31.03.1997.
- Annexure R2 (b) True copy of the application dated 09.01.2025.
- Annexure R2 (c) A photocopy of the loan application submitted by the 2nd petitioner.
- Annexure R2 (d) A true photocopy of the mortgage deed.
- Annexure R2 (e) A true copy of ledger entry dated 13/03/2014.