L.Pusparani vs State,

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Court : Kerala

Decided On : Apr-12-2024

Judge : Honourable Mr.Justice K. Babu

Appeal No. : Crl.Rev.Pet/245/2020

Appellant : L.Pusparani

Respondent : STATE,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU FRIDAY, THE 12TH DAY OF APRIL 2024 / 23RD CHAITHRA, 1946 CRL.REV.PET NO. 155 OF 2020 CRIME NO.7/2011 OF VACB, THIRUVANANTHAPURAM, Thiruvananthapuram AGAINST THE ORDER IN CRL.M.P.NO.605/2017 IN CC NO.1 OF 2016 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM REVISION PETITIONER/3RD RESPONDENT: R.VIJUKUMAR EZHAMVILA VEEDU, CHEMMANNUVILA, AMARAVILA, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM DISTRICT. BY ADVS. R.BINDU (SASTHAMANGALAM) SRI.PRASANTH M.P RESPONDENT/RESPONDENT: STATE OF KERALA, REPRESENTED

BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682031. BY ADVS. SMT.REKHA-SR.PUBLIC PROSECUTOR SRI.RAJESH.A (SPL.PUBLIC PROSECUTOR) SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT.PLEADER THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 12.04.2024, ALONG WITH Crl.Rev.Pet.245/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Crl.R.P.Nos.155, 245 & 468 of 2020 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU FRIDAY, THE 12TH DAY OF APRIL 2024 / 23RD CHAITHRA, 1946 CRL.REV.PET NO. 245 OF 2020 AGAINST THE ORDER IN C.M.P.NO.616/2019 IN CC NO.1 OF 2016 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM REVISION PETITIONER/1ST ACCUSED: L.PUSPARANI AGED 51 YEARS W/O.CHANDRAN, SREEPURAM VEEDU, MALAYINKEEZHU VILLAGE, KATTAKADA TALUK, THIRUVANANTHAPURAM. BY ADVS. S.CHANDRASEKHARAN NAIR SRI.RAJU GEORGE (KARUVATTA) BALAMURALI K P RESPONDENT:

STATE, REPRESENTED BY THE DEPUTY SUPERINTENDENT OF POLICE, VIGILANCE AND ANTI CORRUPTION BUREAU, SPECIAL INVESTIGATION UNIT-I, THIRUVANANTHAPURAM, THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682031.

SRI.RAJESH A,SPL GP VIGILANCE, REKHA -SR PP THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 12.04.2024, ALONG WITH Crl.Rev.Pet.155/2020, Crl.R.P.Nos.155, 245 & 468 of 2020 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU FRIDAY, THE 12TH DAY OF APRIL 2024 / 23RD CHAITHRA, 1946 CRL.REV.PET NO. 468 OF 2020

CRIME NO.7/2011 OF VACB, THIRUVANANTHAPURAM, Thiruvananthapuram AGAINST THE ORDER IN CRL.M.P.NO.446/2017 IN CC NO.1 OF 2016 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM REVISION PETITIONER/4TH ACCUSED: AHAMMED KABEER AGED 60 YEARS NEWFA MANZIL, IDUVILLA, PARASSALA VILLAGE, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM DISTRICT. BY ADVS. K.K.VIJAYAN SRI.K.R.RAJESHKUMAR SRI.G.RANJU MOHAN RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY DYSP VIGILANCE AND ANTI CORRUPTION BUREAU, SIU, THIRUVANANTHAPURAM - 695 012. 2 STATE OF KERALA REPRESENTED BY SPECIAL PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031. SMT.REKHA -SR.PUBLIC PROSECUTOR RAJESH.A -SPL.PUBLIC PROSECUTOR THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 12.04.2024, ALONG WITH Crl.Rev.Pet.245/2020 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Crl.R.P.Nos.155, 245 & 468 of 2020 4 K.BABU, J -- Crl.R.P.Nos.155, 245 & 468 of 2020 --- Dated this the 12th day of April, 2024

O R D E R

The common order dated 7.1.2020 in Crl.M.P.Nos.616/2019, Commissioner and Special Judge, Thiruvananthapuram, dismissing the application seeking discharge filed by the revision petitioners, who are accused Nos.1, 4 and 5 respectively is under challenge. Accused No.1 is revision petitioner in Crl.R.P.No.245/2020. The revision petitioner in

Crl.R.P.No.468/2020 is accused No.4. Accused No.5 is the revision petitioner in Crl.R.P.No.155/2020. The VACB/SIU-I/TVM registered Crime No.7/2011/SIU-I against the accused alleging the offences punishable under Sections 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act and Section 468, 471 and 120B of IPC.

2. The prosecution case is as follows: There are seven accused persons. Accused No.1 is the Junior Superintendent, Commercial Tax Office, Neyyattinkara. Accused Nos.2 to 5 are the traders at Parassala in Thiruvananthapuram District.

Nos.6 and 7 are working as agents for the traders in the Commercial Tax Office, Neyyattinkara. Accused No.1 abused her official position as a public servant and conspired with accused Nos.2 to 7 and in pursuance of the said criminal conspiracy, accused Nos.6 and 7 submitted forged triplicate and quadruplicate challans showing the remittance of advance tax in the Sub Treasury, Neyyattinkara through SBT, Neyyattinkara on different dates between June, 2007 and June, 2008 on behalf of accused Nos.2 and 5 by boosting up the actual amount intending that those challans shall be used for the purpose of cheating and fraudulently and dishonestly used therein as genuine knowing them to be forged ones and thereby caused undue pecuniary advantage to accused Nos.2 to 5 and corresponding loss of Rs.26,58,595/- to the State exchequer. After completing the investigation, the VACB submitted final report before the Special Court. In response to the summons, the accused appeared. Accused Nos.1, 4 and 5 filed applications seeking discharge under Section 239 of Cr.P.C. The Special Judge dismissed those applications.

3. I have heard the learned counsel for the petitioners and the learned Public Prosecutor.

4. The learned counsel for accused No.1 submitted the following:

a) The prosecution failed to establish a prima facie case against accused No.1. b) Accused No.1 had no role in the alleged forgery. c) The forged challans were approved by the Commercial Tax Officer. Accused No.1 had no role in that process.

5. The learned counsel for accused Nos.4 and 5 made the following submissions:

> a) Accused Nos.4 and 5 being the proprietors of the firm never directly dealt with the Commercial Tax Office. b) They entrusted the responsibility to remit the advance tax to accused Nos.6 and 7 who worked as their agents. c) The challans were submitted by accused

Nos.6 and 7 before the Commercial Tax Office. d) They had remitted the entire amount due to the Government in response to the notice issued by the Commercial Tax Officer even before the registration of the crime.

6. The learned Special Pubic Prosecutor submitted the following:

The investigation revealed that the proprietors and their men with the aid of accused No.1 cheated the Government and misappropriated the Government money. Accused No.1 accepted the forged challans and put

her signature on it. The only person, who is aware of the original entries in the challans at the time of counter signing the same in the Commercial Tax Office, Neyyattinkara is accused No.1. Accused Nos.2 to 7 colluded with accused No.1 and committed the offences resulting in huge pecuniary loss to the Government and pecuniary advantage to the accused persons.

7. The obligation to discharge the accused under Section 239 Cr.P.C. arises when the Magistrate considers the charge against the accused to be groundless.

8. The primary consideration at the stage of framing charge is the test of the existence of a prima facie case. The probative value of materials on record is not to be gone into at this stage.

9. Section 239 envisages a careful and objective consideration of

the question whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not permissible under the law. But if the Judge, upon considering the record, including the examination, if any,

and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the accused. The order for the framing of the charge is of a far-reaching nature and it amounts to a decision that the accused is not entitled to discharge.

10. At the stage of framing charges even a very strong suspicion

founded upon materials before the Special Judge, which leads him to form presumptive opinion as to the existence of the factual ingredients constituting the offences alleged, may justify the framing of charges. In Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya and Others [(1990) 4 SCC 76] the Apex Court held thus:-

> From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

11. The procedure followed in the remittance of advance tax at the Commercial Tax Office, Neyyattinkara was as follows: Crl.R.P.Nos.155, 245 & 468 of 2020 9 The advance tax was remitted at the SBT, Neyyattinkara in the

relevant head of account through treasury challans in quadruplicates. The challans contain the particulars such as TIN number, name of dealer, name of assessing officer, commodity code number, amount in figure, total amount in words etc. The Junior Superintendent ensures proper entries in the challan and countersign them. The dealer/agent submits the challan to the Sub Treasury, Neyyattinkara for entering the treasury challan number and affixing the treasury seal. The amount entered in the challan is then remitted at the SBT, Neyyattinkara. The dealer/agent is issued with two counterfoils of the challan from the bank after remittance. Two counterfoils of the challan with a requisition from the dealer for affixing the office seal on the challan and sales bills of the materials are put up with the Commercial

Tax Officer. After approval from the Commercial Tax Officer, the Junior Superintendent makes the entries of the particulars of the challan in the advance tax register and returns the challan and the sales bill with office seal to the dealer/agent. The dealer/agent produces the said challan at the check post at the time of transportation of materials from the outer state.

12. In the present case, it was found that accused No.6, the agent on behalf of accused No.2 had actually remitted an amount of Crl.R.P.Nos.155, 245 & 468 of 2020 10

Rs.500/- as per challan No.584 on 14.3.2008. Later, digit 1 before 5 and digit 0 at the end of the figure were added making it to be believed as a challan for Rs.15,000/- and thereby enabled accused No.2 to gain a pecuniary advantage of Rs.14,500/-. In another instance, the amount in challan No.153 dated 6.3.2008 for Rs.900/- was altered as Rs.15,900/- by adding 15 before the actual amount and thereby gained a pecuniary advantage of Rs.15,000/- to accused No.3. In a similar manner forgery was found in 93 challans by boosting up the actual amount on behalf of accused No.2. 45 challans were forged on behalf of

accused No.3 by which he gained a pecuniary advantage of

Rs.5,64,150/-. Accused No.2 obtained a pecuniary advantage of Rs.17,64,313/-. Accused No.4 with the help of accused No.6 followed the same modus operandi in the remittance of advance tax in respect of 15 remittances for the period from 4/2008 to 6/2008 and gained an undue pecuniary advantage of Rs.2,03,150/-. Accused No.5 with the help of accused Nos.6 and 7 forged eight challans and obtained the undue pecuniary advantage of Rs.1,27,000/- and thereby the State suffered a loss of Rs.26,58,595/- during the period from 6/2007 to 6/2008.

13. Accused No.1 used to countersign the filled up challans produced by accused Nos.2 to 7 before the advance tax remittance. Crl.R.P.Nos.155, 245 & 468 of 2020 11

Accused Nos.2 to 7 presented such challans by making an entry of a marginal amount such as 300 or 500 in the column against figures and left the column against words blank. Thus, accused No.1 countersigned the same knowing fully well that the column against words is left vacant and countersigned the same. The dealer/agent remitted the amount at the SBT, Neyyattinkara. Accused Nos.2 to 7 forged the challans in setting the digits before and after the actual figure.

14. The prosecution alleges that accused No.1 alone is aware of

the amount filled up in the challan while countersigning and affixing the seal after the remittance. After remitting the amount, the dealer/agent forged the dealers copy of the challan. The investigation further revealed that accused No.1 received bribe for each transaction.

15. It is the submission of the learned counsel for accused No.1

that the Commercial Tax Officer and the concerned Section Clerk are the custodians of the file and accused No.1 has no access to the relevant files. It is further submitted that the purpose of placing the challan is to verify the head of account only. There is nothing to show that accused No.1 colluded with the other accused in committing the alleged forgery.

16. The prosecution has relied on the statement of the witnesses Crl.R.P.Nos.155, 245 & 468 of 2020 12

to contend that accused No.1 is the only person who is aware of the original entries in the challan at the time of countersigning and receiving the forged challan.

17. The prosecution has placed materials to show that accused

No.1 permitted the dealers/agent to submit a challan keeping the column against the amount in words blank for facilitating them to make alterations in the original amount remitted. The knowledge of accused No.1 in the forgery and misappropriation is prima facie evident from the fact that she permitted the dealers/agent to submit chalan for countersigning before remittance with the column against the amount in words leaving vacant.

18. The material placed before the Court leads to a grave suspicion in the involvement of accused No.1. Therefore, accused No.1 is not entitled to discharge.

19. The learned counsel for accused Nos.4 and 5, the dealers

submitted that the dealers had no role in the alleged forgery and it was accused No.1 along with the agents committed the alleged forgery. It is further submitted that when the Inspecting Assistant Commissioner, Neyyattinkara on getting information regarding the discrepancy, directed Crl.R.P.Nos.155, 245 & 468 of 2020 13

the dealers to remit the difference amount with interest they positively responded and remitted the amount. Accused Nos.3 and 5 relied on the proceedings of the Assistant Inspecting Commissioner, Neyyattinkara showing the reconciliation of the tax remittance in support of their contention. It is submitted that the remittances were made by the agents who are accused No.6 and 7. Accused Nos.4 and 5, the dealers came to

know the discrepancy in the challans and the actual remittance only when they received notice from the Commercial Tax Officer, Neyyattinkara. Immediately on receipt of the notice, they remitted the difference amount without any delay.

20. The learned Public Prosecutor submitted that though there are no documentary evidence to show that the dealers committed forgery, the oral evidence of the relevant witnesses and the circumstances brought out on record would reveal the participation of

the dealers in the conspiracy. The case of the prosecution is that the proprietors/dealers, accused Nos.4 and 5, and other dealers and their agents with the aid of accused No.1 misappropriated the public money by producing forged challan. It is the case of the prosecution that accused No.1 being a public servant allowed the dealers and agents to

dishonestly and fraudulently misappropriate the public money. The Crl.R.P.Nos.155, 245 & 468 of 2020 14 specific allegation against accused No.4 is that in 16 instances he delegated Sri.Satheesh Kumar (accused No.6) to remit the advance tax on his behalf and obtained a pecuniary advantage of Rs.2,03,150/- by submitting forged challans. The prosecution specifically alleges that the circumstances brought out would make it clear that accused No.4 conspired with accused Nos.1 and 6 and submitted forged challans with the ulterior motive of obtaining pecuniary advantage. The prosecution alleges that accused No.5 with the aid of accused Nos.6 and 7 forged eight challans and obtained undue pecuniary advantage of Rs.1,27,000/- and thereby caused loss to the State exchequer during the period from 3.5.2008 to 25.6.2008. It is submitted by the learned counsel for accused No.5 that the dealers have no direct role in the remittance of advance tax.

21. Accused No.5 relied on document No.56, a letter issued by the Inspecting Assistant Commissioner, Commercial Tax Office, Neyyattinkara to show that even long before the registration of the

crime he remitted the amount due to the Government. When the competent authorities had recovered the discrepancy in the remittance of advance tax by accused Nos.4 and 5, they contacted them over phone and directed to remit the difference amount with interest. The demand Crl.R.P.Nos.155, 245 & 468 of 2020 15 notices were also issued to them. The dealers remitted the amount and represented that their employees are responsible for the discrepancy and they have no involvement. There is nothing to show that any legal steps have been initiated against the agents at the instance of the dealers.

22. The prosecution attempts to rope in accused Nos.4 and 5 with the aid of the conspiracy theory as provided in Section 120A of the IPC.

23. The learned Special Judge considered the contentions of accused Nos.4 and 5 in the impugned order in the following way:

The contentions raised by A4 and A5 that there are no materials against them to rope them in the case is untenable. The 161 Cr.P.C statements of the witnesses and the documents produced along with the final report would show that there are ample materials to come to a

conclusion that accusation made against the accused is

> not frivolous and there are materials for proceeding against the accused. The contention of A4 that he is the victim of fraud played by A1 and A6 is a matter which can be decided only after trial. Likewise the contention of A5 that he is a victim of the foul play done by his employees is also a matter which can be decided only after trial. It is to be borne in mind that A4 and A5 would admit that there was fraud.

24. It appears that the Court below has not applied its judicial mind to the materials made available. Crl.R.P.Nos.155, 245 & 468 of 2020 16

25. While considering the application seeking discharge of an

accused on the ground that there are no materials to presume the guilt of the accused, the Court has bounden duty to apply its judicial mind to the available materials. It is profitable to extract the observation of the Supreme Court in V.C.Shukla v. State through CBI [1980 SCC (Cri) 695]. In V.C.Shukla, the Apex Court held thus:-

> 8.There can be no doubt that the stage of framing of the charges is an important stage and the court before framing the charge has to apply its mind judicially to the evidence or the material placed before it in order to make up its mind whether there are sufficient grounds for proceeding against the accusedWe may, however, point out that we are in complete agreement with the principle, involved in the cases discussed above, that an order framing charges against an accused undoubtedly decides an important aspect of the trial and it is the duty of the court to apply its judicial mind to the materials and come to a clear conclusion that a prima facie case has been made out on the basis of which it would be justified in framing charges.

26. Having gone through the order impugned, this Court is of

the view that the learned Special Judge has not considered the applications seeking discharge filed by accused Nos.4 and 5 within the meaning of Sections 239 and 240 of the Cr.P.C. Crl.R.P.Nos.155, 245 & 468 of 2020 17

> In the result, i) The common order dismissing Crl.M.P.Nos.446/2017 and Commissioner and Special Judge, Thiruvananthapuram stands set aside. ii) Crl.R.P.Nos.155/2020 and 468/2020 are allowed by way of remand. iii) The learned Special Judge shall consider Crl.M.P. Nos.446/2017 and 605/2017 afresh after giving opportunity to both sides and take a decision within a period of two months from the date of receipt of a copy of this order. iv) The order dismissing C.M.P.No.616/2019 in C.C.No.1/2016 by the Enquiry Commissioner and Special Judge, Thiruvananthapuram is confirmed. v) Crl.R.P.No.245/2022 stands dismissed.

Criminal Revision Petitions are disposed of as above. Sd/- K.BABU JUDGE ab Crl.R.P.Nos.155, 245 & 468 of 2020 18 APPENDIX IN CRL.R.P.NO.155/2020 PETITIONERS ANNEXURES: ANNEXURE A: COPY OF THE FINAL REPORT DATED 31.12.2015. ANNEXURE B: COPY OF THE LETTER DATED 23.07.2008 ANNEXURE C: COPY OF THE PETITION DATED 11.9.2017 RESPONDENTS ANNEXURES: NIL Crl.R.P.Nos.155, 245 & 468 of 2020 19 APPENDIX IN CRL.R.P.NO.468/2020 PETITIONERS ANNEXURES: ANNEXURE A: COPY OF THE CHARGE DATED 31.12.2015. ANNEXURE B: DISCHARGE COPY OF THE ORDER IN CRL.M.C.NO.3467/2017 ANNEXURE C: DISCHARGE PETITION BEFORE THE COURT BELOW AS CRL.M.P.NO.446/2017 ANNEXURE D: COPY OF THE ORDER IN C.C.NO.1/2016 RESPONDENTS ANNEXURES: NIL