

**Dr.Abdul Rasheed vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1441170](http://sooperkanoon.com/1441170)

**Court :** Kerala

**Decided On :** Aug-22-2022

**Judge :** Honourable Mr.Justice K. Babu

**Appeal No. :** Crl.Rev.Pet/16/2022

**Appellant :** Dr.Abdul Rasheed

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU MONDAY, THE 22ND DAY OF AUGUST 2022 / 31ST SRAVANA, 1944 CRL.REV.PET NO. 16 OF 2022 AGAINST THE ORDER OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE DATED 20.02.2020 IN VC 01/2017/KKD REVISION PETITIONER/ACCUSED: DR.ABDUL RASHEED, AGED 56 YEARS, S/O.POKKERKUTTY, MEDICAL CONSULTANT, GOVT. TALUK HOSPITAL THAMARASSERY PRESENT ADDRESS MEDICAL CONSULTANT, GOVT. DISTRICT HOSPITAL, MANANTHAVADI - 683 032. BY ADVS. V.T.RAGHUNATH MANJU RAJAN RESPONDENT/COMPLAINANT: STATE OF KERALA REP. BY DEPUTY SUPERINTENDENT OF

POLICE, VIGILANCE AND ANTI-CORRUPTION BUREAU, KOZHIKODE, THROUGH THE SPL. PP FOR VIGILANCE, HIGH COURT OF KERALA, ERNAKULAM - 682 031. BY ADVS SRI. RAJESH .A (SPL G.P)(VIGILANCE) SMT. SMT.REKHA.S (SR.P.P) THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD ON 22.08.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.BABU, J.**

----- Crl.R.P. No.16 of 2022  
----- Dated this the 22nd day of August,  
2022

## **ORDER**

This Criminal Revision Petition is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973.

2. The accused in V.C.No.1/2017 of VACB Kozhikode,

challenges the order dated 20.02.2020 passed by the Enquiry Commissioner and Special Judge, Kozhikode, directing further investigation under Section 173(8) of the Cr.P.C.

3. The Vigilance registered the above referred crime against the petitioner/accused alleging offences under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

4. The petitioner/accused is a Doctor in the Health Services. It is alleged that the accused demanded a sum of Rs.2,000/- as bribe for conducting Laparoscopic Surgery for the wife of the complainant.

5. The petitioner/accused was working as a Medical Officer, Government Taluk Head Quarters Hospital, Thamarassery. The Deputy Superintendent of Police, Vigilance

and Anti Corruption Bureau, Kozhikode laid a trap. The petitioner/accused was arrested. The Vigilance team recovered the currency note stated to have been handed over to the complainant from the possession of the petitioner/accused. The phenolphthalein test conducted at the time of the seizure turned positive.

6. In the subsequent investigation, the Investigating Officer arrived at a conclusion that there are sufficient

materials to prove the alleged offence against the petitioner/accused. The Investigating Officer prepared a factual report and submitted the same along with the relevant documents to the Additional Legal Adviser, who opined that the evidence collected during the investigation was insufficient to make out a prima facie case against the petitioner/accused. The Superintendent of Police, VACB Northern Range, accepted

the opinion of the Legal Adviser. The Director of VACB concurred with the findings of the Superintendent of Police, VACB, Northern Range and directed the VACB to file a refer report. Subsequently, the Investigating Officer submitted a report under Section 173(2) of the Cr.P.C. dropping further action against the petitioner/accused before the Enquiry Commissioner and Special Judge.

7. The Enquiry Commissioner and Special Judge,

Kozhikode, after considering the final report submitted by the Investigating Officer found that the complainant as well as the 34 witnesses examined along with the documents relied on by the prosecution, established materials sufficient for a successful prosecution.

8. The Court below found that the Investigating Officer

had not taken a decision independently while analysing the evidence collected by him. The Court below found that no proper and honest investigation was conducted, and therefore, further investigation was required. Based on these findings, the Court returned the final report and directed the Investigating Officer to conduct a further investigation.

9. The order directing further investigation is under challenge in this Criminal Revision Petition.

10. Heard Sri.V.T.Raghunath, the learned counsel appearing for the Revision Petitioner and Smt.Rekha S., the learned Senior Public Prosecutor appearing for the State.

11. The learned counsel for the Revision Petitioner

contended that the Court below should not have ordered further investigation after recording a finding to the effect that the materials were sufficient to prove a successful prosecution. The learned counsel contended that the course adopted by the Court below is not legally sustainable.

12. The learned Senior Public Prosecutor per contra

submitted that the Court below rightly held that a further investigation was required to collect additional materials as prima facie there were materials to establish the offences alleged against the petitioner. The learned Senior Public Prosecutor submitted that there is no illegality which warrants intervention by this Court exercising the revisional jurisdiction in the order impugned.

13. The Court below, after considering the report

submitted by the Investigating Officer directed the Investigating Officer to appear in person. The Investigating Officer, explained the situation in which he was compelled to file a refer report. The Court below perused the statement of the witnesses and the documents produced along with the final report. The Court below concluded that the statement of the witnesses recorded under Section 161 of the Cr.P.C., and the documents produced along with the final report are sufficient to prove the offences allegedly committed by the

petitioner/accused. The materials produced by the Investigating Agency, according to the Court below prima facie revealed the offences alleged against the petitioner/accused.

14. The Investigating Officer had formed an opinion that

there are sufficient materials to prove the offences alleged against the accused. A factual report was also prepared by the Investigating Officer to be placed before the Superior Officers. On examination of the factual report, the Additional Legal

Adviser suggested that the evidence gathered by the Investigation was insufficient to make out a prima facie case against the accused. The Superiors, including the Director of VACB, accepted the opinion of the Additional Legal Adviser, which resulted in the submission of the refer report by the Investigating Officer before the Court below. The Court below had taken note of the fact that though the Investigating Officer formed an opinion that there was sufficient materials to

proceed against the accused, as per the directions of the Superior Officers, including the Director of VACB, a refer report happened to be filed before the Trial Court.

15. The Trial Court has specifically held that the

Investigating Officer could not take an independent decision in the matter. The Court below further held that the Investigating Officer committed a mistake while taking a final decision. The Court added that no proper and honest investigation was conducted in the case. The Court also found that further materials are to be collected in the matter. When a report filed

under Sub-section (2) of Section 173 of the Code of Criminal Procedure is forwarded to the Special Judge/Magistrate, the Special Judge has the option to adopt 1 of 3 courses.

(1) he may accept the report and drop the proceedings or

(2) he may disagree with the report and take the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or

(3) he may direct further investigation to be made by the Police under sub-section (3) of Section 156 of Cr.P.C.

16. In the present case, the Court below adopted the 3 rd

option with the specific findings that the Investigating Officer has not conducted a proper and honest investigation and further materials are also to be collected.

17. A very wide power is vested with the Investigating

Agency to conduct a further investigation after it has filed a report in terms of Section 173(2) of the Code. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. The purpose of the provision contained in Section 173(8) of the Code is to enable the Investigating Agency to gather further

evidence and that cannot be frustrated. [Vide : Vinay Tyagi v. Irshad Ali (2013) 5 SCC 762, State of West Bengal vs. Salap Service Station (1994 SCC (Cri) 1713)].

18. The further investigation cannot trench upon the

proceedings before the Court because final word regarding further action is with the Magistrate or the Special Judge and that final word is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation [Ram Lal Narang vs. State (Delhi Administration) (AIR 1979 SC 1791)]

19. In the present case, the petitioner/accused failed to

establish that any prejudice has been caused to him by way of further investigation. It is also trite that further investigation does not have the effect of wiping out directly or impliedly the initial investigation conducted and earlier final report filed by the Investigating Officer. The scope of further investigation is restricted to the discovery of further oral and documentary evidence. The petitioner has approached this Court to exercise the revisional jurisdiction under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973. In Amit Kapoor v. Ramesh Chander [(2012) 9 SCC 460], the Apex Court on the revisional power of the Court under Section 397 of Cr.P.C.

**held thus:**

12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the

### **legality and regularity of any proceedings or order**

made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional

jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the Cr PC.

20. Amit Kapoor v. Ramesh Chander (supra) was

followed by the Apex Court in *The State of Madhya Pradesh vs. Deepak* [AIR 2019 SC 5604]. On a careful analysis of the materials placed before the Court, this Court fails to find any

### **patent defect or an error of jurisdiction or law in the order**

impugned.

21. There is nothing to show that the impugned decision is grossly erroneous or that the Court below ignored any established provisions of law.

22. The learned Senior Public Prosecutor relied on

*Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and others* [(2015) 3 SCC 123] to contend that revisional Court is not meant to act as an appellate Court and the whole purpose of the revisional jurisdiction is to preserve the power in the Court to do justice in accordance with the principles of criminal jurisprudence.

23. In *Sanjaysinh Ramrao Chavan v. Dattatray*

### **Gulabrao Phalke and others (supra), the Apex Court held**

thus:

The revisional power of the court Under Sections 397 to 401 Cr PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.

24. Having bestowed to the legal principles in the light of the materials placed before this Court, I am of the view that the petitioner fails to succeed.

25. After dictating this part of the judgment, the learned counsel for the petitioner Sri.V.T.Raghunath, pressed for giving

direction to the Investigating Officer to consider Annexure-1, an information furnished to the petitioner in an application submitted under the Right to Information Act.

26. The learned Senior Public Prosecutor, Smt.Rekha S., countered and submitted that Annexure-1, not being a public document, cannot be relied upon.

27. This Court is of the view that Annexure-1 is not a document to be considered by this Court while exercising the revisional jurisdiction.

28. The learned counsel for the Revision Petitioner prayed for a direction to the Investigating Officer to complete the process of investigation in a time bound manner.

29. There will be a direction to the Investigating Officer to complete the investigation within a period of six months from this date. It is made clear that the interim order passed by this Court stands vacated.

The Criminal Revision Petition is disposed of as above. Sd/- K.BABU JUDGE VPK  
APPENDIX OF CRL.REV.PET 16/2022 PETITIONER ANNEXURES Annexure 1  
TRUE COPY OF INFORMATION DATED PETITIONER. Annexure 2 TRUE COPY  
OF G.O.(MS) NO.270/2005/H & FWD DATED 25/10/2005. Annexure 3 TRUE  
COPY OF CHARGE MEMO IN DISCIPLINARY PROCEEDINGS UNDER RULE  
15 OF THE KCS (CC &A) RULES.

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