2025:KER:26691

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 27TH DAY OF MARCH 2025 / 6TH CHAITHRA, 1947

CRL.REV.PET NO. 921 OF 2019

AGAINST THE COMMON JUDGMENT DATED 31.05.2019 IN CR.M.P.NOS.660 AND 982 OF 2018 IN CC NO.40 OF 2015 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, KOTTAYAM

REVISION PETITIONER/ACCUSED:

KORAH.A.G
AGED 58 YEARS
S/O. A.K GEORGE, ADDITIONAL DIRECTOR OF MINING AND GEOLOGY (RETIRED), ANTHERIL HOUSE, MOOLAVATTOM P.O, KOTTAYAM, PIN - 686 026.

BY ADVS.
C.S.MANU
SRI.S.K.PREMRAJ

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY THE SUPERINTENDENT OF POLICE, VIGILANCE AND ANTI-CORRUPTION BUREAU, SPECIAL CELL, ERNAKULAM, PIN 682 011 (NOTICE TO WHOM MAY BE SERVED ON THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM – 682 031.

SMT REKHA S, SR PUBLIC PROSECUTOR
SRI A RAJESH, SPL PUBLIC PROSECUTOR (VIG)

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 24.02.2025, ALONG WITH WP(C).27530/2019, THE COURT ON 27.03.2025 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 27TH DAY OF MARCH 2025 / 6TH CHAITHRA, 1947

W.P.(C) NO. 27530 OF 2019

PETITIONER:

KORAH.A.G
AGED 59 YEARS
S/O. A.K GEORGE, ADDITIONAL DIRECTOR OF MINING AND GEOLOGY (RETIRED), ANTHERIL HOUSE, MOOLAVATTOM P.O, KOTTAYAM - 686 026.

BY ADVS.
C.S.MANU
SRI.S.K.PREMRAJ

RESPONDENTS:

1 **STATE OF KERALA**
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF KERALA, DEPARTMENT OF HOME AND VIGILANCE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.

2 **DIRECTOR OF VIGILANCE,**
VIGILANCE AND ANTI CORRUPTION BUREAU, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM, PIN - 695 001.

3 **SUPERINTENDENT OF POLICE,**
VACB, SPECIAL CELL, ERNAKULAM, PIN - 682 018.

SMT REKHA S, SR PUBLIC PROSECUTOR
SRI A RAJESH, SPL PUBLIC PROSECUTOR (VIG)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR FINAL HEARING ON 24.02.2025, ALONG WITH Crl.Rev.Pet.921/2019, THE COURT ON 27.03.2025 DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J. "C.R."

Crl.R.P.No.921 of 2019
and
W.P.(C) No.27530 of 2019

Dated this the 27th day of March, 2025

ORDER/JUDGMENT

The accused in C.C.No.40 of 2015 pending before the Court of Enquiry Commissioner and Special Judge, Kottayam has filed the revision petition as well as the writ petition. In the revision petition he challenges the common order of the Special Court dismissing two petitions the petitioner has filed; both seeking discharge under Section 239 of the Code of Criminal Procedure, 1973 (Code). Only that additional grounds are canvassed in the second petition. In the writ petition, he seeks the following reliefs:

"(i) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the 2nd respondent to take up, consider and pass orders on Ext.P6 representation ordering further investigation in C.C.No.40 of 2015 on the files of the Court of the Enquiry Commissioner and Special Judge, Kottayam as per Section 173(8) of the Cr.P.C. 1973, regarding income of the petitioner during the check period reflected in Ext.P3;

(ii) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents 2 and 3 to conduct further investigation in C.C.No.40 of 2015 on the files of the Court of the Enquiry Commissioner and Special Judge, Kottayam as per Section 173(8) of the Cr.P.C. 1973 regarding the income of the petitioner during the check period reflected in Ext.P3."

2. The petitioner was a Senior Geologist in the Mining and Geology Department, State of Kerala. Crime, VC-02/ 2011/SCE was registered alleging that he has committed an offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (PC Act). The allegation then was that during his tenure as a public servant from 01.12.2000 to 24.11.2009, he amassed wealth to a tune of Rs.28,70,971/-, which was disproportionate to his known sources of income. After investigation, a final report was filed wherein it has been alleged that during the check period, i.e., from 01.12.2000 to 22.06.2011, the petitioner acquired assets worth Rs.54,32,686.27/- and 587.121 grams of gold ornaments, which was disproportionate to his known sources of income, for which he could not satisfactorily account.

3. Before the Special Court, the petitioner has filed Crl.M.P.Nos.660 of 2018 and 982 of 2018, both seeking discharge. The Special Court after hearing the prosecution and the defence and also considering the materials produced by the prosecution held that there was sufficient grounds to proceed against the petitioner and to frame a charge. Those petitions were accordingly dismissed. He calls in question the said order in the revision petition.

4. In the meantime, the petitioner filed the writ petition, which he got amended subsequently. Several legal and factual grounds are raised in the writ petition. Apart from the illegality and irregularity in the investigation, incompetency of the officers who conducted investigation, lack of sanction for prosecution, refusal to abide by the provisions in the amended PC Act and the non-consideration and non-production of all the documents along with the final report, particularly, those submitted by the petitioner are set forth as grounds necessitating a further investigation.

5. A statement of the investigating officer along with Annexures R1(a) to R1(d) were placed on record in the Crl.R.P. A statement and an additional statement of the investigating officer were placed on record in the writ petition. More or less similar contentions are set forth in both these statements.

6. Heard the learned counsel for the petitioner, the learned Senior Public Prosecutor and learned Special Public Prosecutor (Vigilance).

7. The petitioner produced a few documents in the writ petition and the respondents produced a few documents in the revision petition. Documents are referred to hereunder in the order those are marked in the respective proceedings.

8. Upto what stage of a criminal proceedings the Magistrate wields power to order a further investigation has been considered by the Apex Court in **Vinubhai Haribhai Malaviya v. State of Gujarat [(2019) 17 SCC 1]**. The three-Judge Bench held that a Magistrate can order further investigation at any time before the trial has been

commenced. Paragraph No.42 of the judgment is extracted below:

> "42. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri Vasu v. State of U.P. and Ors. (2008) 2 SCC 409, Samaj Parivartan Samudaya and Ors. v. State of Karnataka and Ors. (2012) 7 SCC 407, Vinay Tyagi v. Irshad Ali and Ors. (2013) 5 SCC 762, and Hardeep Singh v. State of Punjab and Ors. (2014) 3 SCC 92 having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused

or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi v. State of Gujarat and Ors. (2004) 5 SCC 347. Therefore, to the extent that the judgments in Amrutbhai Shambhubhai patel v. Sumanbhai Kantibhi Patel (2017) 4 SCC 177, Athul Rao v. State of Karnataka and Anr. (2018) 14 SCC 298 and Bikash Ranjan Rout v. State through the Secretary (Home), Government of NCT of Delhi (2019) 5 SCC 542 have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129 also stand overruled."

9. In this case, although the petitions seeking discharge were dismissed, no charge has been framed against the petitioner, meaning thereby trial of the case is not commenced yet. Therefore, a further investigation in the matter could be ordered. Whether such a further investigation is required in this case has to be considered in the light of the rest of the contentions of the parties.

10. Ext.P1 is a copy of the final report. The petitioner states that he has submitted statements regarding his assets, sources of income, etc. in the prescribed proforma, through his superior officer in pursuance to a direction of the investigating officer. Ext.P2 is a copy of the letter of the investigating officer. Ext.P3 series are copies of various statements and documents the petitioner has submitted. The grievance of the petitioner is that the investigating officer did not consider those statements or records and filed the final report in a total disregard of such statements and records. None of such statements or records has been produced along with the final report also. It is alleged that thereby, the process of investigation is defective and the final

report is vitiated. The petitioner claims that a further investigation in the matter is therefore absolutely necessary.

11. The learned Special Public Prosecutor at the outset raised a contention that having the Special Court dismissed the applications of the petitioner seeking discharge, no further investigation as contemplated in Section 173(8) of the Code can be ordered. When the trial court is disabled from ordering a further investigation at such a stage, this Court is also not expected to do so. Insufficiency of grounds to order a further investigation has also been highlighted.

12. Going by the allegations in the final report the petitioner acquired disproportionate assets worth Rs.54,32,686.27/- and 587.121 grams of gold ornaments. According to the prosecution, that is 85.12% more than his known sources of income. He would, however, contend that the investigating agency neither considered the documents furnished by him, nor produced them before the court, which is their obligation in view of Rule 19 of the Criminal Rules of Practice, Kerala 1982.

13. The final report was submitted before the Special Court on 16.09.2015. The crime was registered on 20.06.2011. In answer to Ext.P2, the petitioner claimed to have submitted the details in the prescribed proforma on 21.05.2012. The petitioner would urge that the investigating agency did not enquire about correctness of the sources of various items of income mentioned in Ext.P3 with the result an incorrect final report was happened to be filed. The petitioner would maintain that each item of the income was supported by documents, which were also submitted along with Ext.P3. It is alleged that no such document was verified. It is his definite version that the total income he had during the check period was Rs.1,51,31,853.26/- as against the income assessed by the prosecuting agency as Rs.1,18,14,497.27/-. The petitioner enlisted in the petition various items of income which escaped notice of the investigating agency, which are item Nos.16 to 18, 23, 28, 30, 33 to 37, 39 and 40 in Ext.P3. The petitioner also contended that he obtained a few more items of income which he failed

to mention in Ext.P3. Highlighting such an omission on the part of the investigating agency the petitioner seeks to have a further investigation.

14. The stand taken by the learned Special Public Prosecutor is that all sources of income which the petitioner reported to the employer or to the income tax authorities were taken into account. The claims set forth by the petitioner in Ext.P3 were also verified during investigation, but the unsubstantiated items were not accepted. It is further submitted that the investigating agency was unable to accept the sources of income which were not reported to the employer or shown in the income tax statements, as known sources of income and therefore, the contention of the petitioner that every item mentioned by him in Ext.P3 should have been considered, cannot be countenanced.

15. The learned counsel for the petitioner would submit, in the above regard, that the amendment brought about to Explanation-2 to Section 13(1) of the PC Act is only explanatory in nature and should be applied retrospectively.

In that view, the omission on the part of the investigating agency to reckon with the sources of income pointed out by the petitioner has the inevitable effect of vitiating the investigation altogether.

16. The learned counsel in this regard placed reliance on **Vishal Agrawal v. Chhattisgarh State Electricity Board [(2014) 3 SCC 696]**. Amendment to Section 151 of the Electricity Act, 2003 was in question. The change brought about was concerning the method of taking cognizance of the offence under the Electricity Act. The amendment enables police investigation and filing of final reports. The Apex Court, after analysing the relevant provisions, held that the said amendments were concerning procedural aspects and clarificatory in nature. It was in that context, it was held that the amendments have retrospective effect.

17. The question concerning retrospective application of Section 17A of the PC Act was considered by the Apex Court in **State of Rajasthan v. Tejmal Choudhary [2022 (2) KHC 49]**. The said provision was added with effect from

26.07.2018. The Apex Court held that Section 17A of the PC Act was not a mere procedural aspect and could have only prospective application. It was observed that the intention of the Legislature to bring in that provision is quite clear and it could not be interpreted in such a way as to render every investigation conducted before adding Section 17A in the PC Act infructuous. The rationale to take such a decision is mentioned in paragraph No.7 of the judgment, which reads as follows:

> "7. It is a cardinal principle of construction that every statute is prospective, unless it is expressly or by necessary implication made to have retrospective operation. There is a presumption against retrospectivity. An express provision should ordinarily be made to make a statute retrospective. The presumption against retrospectivity may also be rebutted by necessary implication as held by this Court in Akram Ansari v. Chief Election Officer reported in (2008) 2 SCC 95, which has been referred to and relied upon by the Kerala High Court in its judgment in K.R. Ramesh v. Central Bureau of Investigation and Another reported in 2020 SCC Online Kerala 2529. The device of a legal fiction can also be used to introduce retrospective operation. Generally, it is considered that every statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made retrospective."

18. The said analogy is applicable to Explanation-2 to Section 13(1) of the PC Act also. Before the amendment, Explanation was as follows:

> "Explanation.- For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant."

The amended Explanation-2 reads as follows:

> "Explanation 2.- The expression "known sources of income" means income received from any lawful sources."

19. Even if receipt of any income has not been intimated in accordance with the provisions of any law, rules or orders applicable to the public servant, such income can be reckoned with during investigation after the amendment. That is a right provided to an incumbent. It is not merely a procedural provision. Hence it cannot have a universal retrospective application. All the same, having it created a right in favour of an accused, he may be able to claim its benefit in a way as is possible in a proceedings before the court. But, he cannot ask for the investigating agency to clock

back the process. In a case where the investigation was already concluded and final report filed before the introduction of the new Explanation, the accused cannot ask to conduct a further investigation.

20. This Court in **Ramesh K.R. and others v. Central Bureau of Investigation and another [2020 (4) KHC 220]** considered a similar question. There the contention was that having Section 13(1)(d) been deleted from the PC Act, the prosecution for an offence under the said provision was not possible. The principle of retrospective operation was canvassed to take such a view. This Court held that Section 13(1)(d) was retained in the provision in a different form in Section 7. That apart, it was held that the amendment was introduced much after the final report was laid, and therefore, the plea for retrospective operation could not be countenanced.

21. The broader aspect of non-consideration of a few documents by the investigating agency during investigation and its consequences were considered by the Apex Court in

State of M.P. v. Virender Kumar Tripathi [(2009) 15 SCC 533]. The view taken by the Three-Judge Bench of the Apex Court is that the plea related to non-consideration of documents during investigation, which is unrelated to an illegality of the investigation, could not be a ground to quash a final report. It was held that the consequence of non-consideration of a few matters or documents during investigation is connected to the question of prejudice, which are matters of evidence. Paragraph Nos.11 to 13 of the judgment are extracted below:

> "11. xx xx The broader issues raised need not be looked into. The function of investigation was merely to collect evidence and any irregularity and illegality in the course of collection of evidence can hardly be considered by itself to affect legality of trial by a competent Court of the offence so investigated.
>
> 12. In H.N.Rishbud and Anr. v. State of Delhi (AIR 1955 SC 196), it was observed that a conviction is not violated because there has not been strict compliance with the provisions of the Act in the matter of investigation by a police officer unless the accused is shown to have been prejudiced. There is no material to show prejudice. The proceedings started in 1987. FIR was registered on 22.2.1991. In 1992, the accused filed a petition before the High Court. Charge Sheet was filed on 21.12.1993. On 30.8.2000, the petition filed before the High

> Court was disposed of. There was no challenge at that stage to legality of investigation and related to consideration of certain documents. Learned Special Judge considered the matter afresh and rejected accused's plea. Again, the High Court was moved. Only the plea related to non-consideration of documents during investigation and did not relate to legality of investigation. So, the present stand without establishing any prejudice deserves to be rejected.
>
> 13. So far as the exclusion of certain alleged income of relatives is concerned, it needs to be noted that these are matters of evidence and in such matters, the decision of this Court in State of Orissa v. Debendra Nath Padhi [JT 2004(10) SC 303] is relevant. The High Court's judgment in this aspect does not suffer from any infirmity."

22. The respondents took a definite stand that all the documents and details furnished by the petitioner were looked into. It is pointed out that the statements of the petitioner were recorded during investigation on various dates, such as 25.10.2011, 22.02.2012, 21.03.2012 and 19.09.2013. After verifying all the data furnished by the petitioner alone, the final report was submitted. The learned Special Public Prosecutor conceded that a few of the documents made available by the petitioner were not appended to the final report. That was for the reason that all such documents were

not genuine or reliable. I am not expected to make any comment on that aspect at this stage for, any finding in that regard would be peremptory and affect the petitioner prejudicially. While refraining from making any further observations regarding the contentions concerning the omitted items of income, which are narrated in the writ petition, I may point out that the petitioner disclosed those sources of income only after registration of the crime. Be that as it may, in the light of the propositions of law made mention of above, the contention of the petitioner that there shall be a further investigation on account of non-consideration of a few sources of income and the documents he had mentioned in Ext.P3 is untenable.

23. Another contention raised by the petitioner is that the investigation was conducted by Inspectors of Police, but they were not authorised as contemplated in Section 17 of the PC Act. Section 17 insists that an investigation into an offence under the PC Act should be conducted by a Deputy Superintendent of Police or police officer of equivalent rank. It

is, however, provided that a police officer not below the rank of an Inspector of Police can be authorised to investigate by the State Government. The respondent produced Ext.R1(d) series by which respective Inspectors of Police were authorised to investigate in this case. Of course, those orders were issued by the Superintendent of Police, VACB, Ernakulam. When such an order was issued in exercise of the powers under Section 17 of the PC Act the same amounts to valid authorisation and the contention of the petitioner in this regard cannot be accepted. Further, investigation by a lower rank officer is an irregularity and on account of such an irregularity alone, the investigation will not be illegal. The Apex Court in **Vinod Kumar Garg v. State (Government of National Capital Territory of Delhi) [(2020) 2 SCC 88]** held as follows:

> "27. The last contention of the appellant is predicated on Section 17 of the Act and the fact that the investigation in the present case was not conducted by the police officer by the rank and status of the Deputy Superintendent of Police or equal, but by Inspector Rohtash Singh (PW-5) and Inspector Shobhan Singh (PW-7). The contention has

to be rejected for the reason that while this lapse would be an irregularity and unless the irregularity has resulted in causing prejudice, the conviction will not be vitiated and bad in law. The appellant has not alleged or even argued that any prejudice was caused and suffered because the investigation was conducted by the police officer of the rank of Inspector, namely, Rohtash Singh (PW-5) and Shobhan Singh (PW-7).

28. This Court in Ashok Tshering Bhutia v. State of Sikkim, (2011) 4 SCC 402 referring to the earlier precedents has observed that a defect or irregularity in investigation however serious, would have no direct bearing on the competence or procedure relating to cognizance or trial. Where the cognizance of the case has already been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless a miscarriage of justice has been caused thereby. Similar is the position with regard to the validity of the sanction. A mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby. Section 19(1) of the Act is matter of procedure and does not go to the root of the jurisdiction and once the cognizance has been taken by the court under the Code, it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance and for that matter the trial."

24. In the above view of the matter, the petitioner is not entitled for a discharge. A further investigation in the matter is not called for on that ground also. The learned counsel for the petitioner pointed out that in a similar circumstance the Government had ordered further investigation as evidenced by Ext.P7 and therefore it is necessary and apposite to allow his plea for a further investigation. The petitioner had submitted Ext.P8 representation to the 1st respondent as early as on 05.02.2021 for that purpose. It is true that a further investigation was ordered by the Government vide Ext.P7 order even after submitting the final report before the jurisdictional court. But that was in consideration of the facts and circumstances of that case. Here is a case where the final report was submitted before the court on 16.09.2015. The Special Court considered the plea of the petitioner for discharge and repelled. I held hereinbefore that the petitioner could not substantiate sufficient reason to order a further investigation. In such circumstances the petitioner cannot fall upon Ext.P7 to impell this Court to order a further investigation.

25. The Apex Court in **Ashok Tshering Bhutia v. State of Sikkim [(2011) 4 SCC 402]** considered the impact of non consideration of documents concerning income/expenditure, on the ground that the same were not submitted in compliance of the mandatory provisions in the Service rules. The learned counsel for the petitioner strenuously urged that the view taken in that decision is applicable in this case also. That was a case where the appellant was convicted after a duly constituted trial. A few items of income of the appellant, regarding which evidence was adduced by him were not taken into account on the ground that sources of such income were not reported to the employer as insisted by the mandatory provisions of the service rules. The Apex Court held that non-filing of statements regarding the sources of income in accordance with the mandatory service rule concerned may render the incumbent for disciplinary proceedings under service jurisprudence, but that would not be a ground for rejecting the evidence in that regard without being examined at the trial.

26. I have pointed out above the view taken by the Apex Court in **Virender Kumar Tripathi** (supra) that even in a case where the investigation failed to place on record documents concerning some items of income of the accused, the prosecution would not ipso facto be vitiated. That is a matter for evidence and the consequence is relative of the possible prejudice to the accused. Therefore, the law laid down in **Ashok Tshering Bhutia** (supra), which was in a post-conviction scenario, cannot be applied to this case, particularly to support a plea for ordering further investigation.

27. The learned counsel for the petitioner next submitted that if a public servant is to be prosecuted after four years of the date of superannuation, sanction from the Government is mandatory in view of the proviso to Rule 3, Part III of the Kerala Service Rules (KSR) and for want of such a sanction, the prosecution of the petitioner is bad in law. The proviso to Rule 3 imposes such a restriction. True, no sanction was obtained from the Government also as contemplated in the proviso to Rule 3, Part III of the KSR.

28. First of all, the judicial proceedings mentioned in Rule 3 does not take in its fold a prosecution for an offence under the PC Act. That is a proceedings concerning a loss caused to the Government on account of the misconduct of the pensioner. That apart, when the PC Act contemplates obtaining sanction for prosecution in a particular manner, that would govern the field and a provision in another statute cannot be read into as a means of protection from prosecution. This aspect was dilated by this Court in **Sivadasan Pillai and others v. State of Kerala and others [2019 (4) KHC 529]**. After considering the relative legislative powers of the Centre and the State and also the method of resolution contained in Article 251 of the Constitution of India in the event of inconsistency, it was held that a prosecution under the provisions of the PC Act must be governed by that Act itself. Such a prosecution cannot be controlled by the provisions of any special or local law by way of protection or immunity from prosecution. A public servant facing prosecution under the PC Act cannot therefore resort to

a provision in another special or local law to claim protection from prosecution. Hence, the contention of the petitioner in this regard can only be rejected.

29. Another reason urged by the petitioner to order further investigation is that Rule 19 of the Criminal Rules of Practice, Kerala, 1982 could not be complied with inasmuch as all the documents collected by the prosecution were not submitted before the court. Sub-rule (4) of Rule 19, which was inserted with effect from 19.05.2022 insists on supplying, in addition to the statement of witnesses recorded and a list of documents as are mentioned in Sections 173, 207 and 208 of the Code and a list of material objects, a list of statements, documents and material objects that are not relied upon by the investigating officer. When Sub-rule (4) of Rule 19 was brought to the Statute book only on 19.05.2022 the petitioner cannot be heard to contend that for non-production of the list of statements, documents and material objects, which are not relied upon by the investigating officer along with a final report filed as early as on 16.09.2015, there should be a

further investigation. If so advised, the petitioner can certainly request the Special Court to supply him such a list after getting it produced by the investigating officer.

30. It is to be noted that the power of revision cannot be exercised in a casual or mechanical manner. The Apex Court in **State through Deputy Superintendent of Police v. R.Soundirarasu [AIR 2022 SC 4218]** held that a revisional power can be exercised to correct a manifest error of law or procedure which would cause injustice, if it is not corrected. The revisional power cannot be equated with appellate power. A revisional court cannot undertake meticulous examination of the materials on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. Looking at the records of the case in the light of the aforesaid proposition of law,

there is no ground to interfere with the impugned order dismissing the petitions for discharge.

31. What emerges from the above is that the view taken by the Special Court which led to the dismissal of the petitions for discharge filed by the petitioner cannot be said to be incorrect. The plea of the petitioner to order a further investigation cannot also be entertained. I take such a view also for the reason that the petitioner having been unsuccessful in the petitions he had filed seeking discharge only filed the writ petition claiming such a relief.

32. The result is that the revision petition as well as the writ petition are liable to be dismissed. Accordingly both the revision petition and the writ petition are dismissed.

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr

APPENDIX OF WP(C) 27530/2019

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE FINAL REPORT/CHARGE SHEET DATED 16-09-2015 FILED BY THE 2ND RESPONDENT BEFORE THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOTTAYAM ON 26-09-2015 IN CRIME NO. VC-02/2011/SCE ON THE FILES OF THE VACB, SPECIAL CELL, ERNAKULAM**
EXHIBIT P2	**A TRUE COPY OF THE LETTER DATED 22-03-2012 ISSUED BY THE INSPECTOR OF POLICE, VACB, ERNAKULAM TO THE DIRECTOR OF MINING AND GEOLOGY, THIRUVANANTHAPURAM.**
EXHIBIT P3	**TRUE COPY OF THE PROPERTY STATEMENTS IN FORM NOS. 1 TO VI SUBMITTED BY THE PETITIONER TO THE DIRECTOR OF MINING AND GEOLOGY, THIRUVANANTHAPURAM**
EXHIBIT P3(A)	**TRUE COPY OF THE COVERING LETTER DATED 21-5-2012 SUBMITTED BY THE PETITIONER TO THE DIRECTOR OF MINING AND GEOLOGY, THIRUVANANTHAPURAM**
EXHIBIT P3(B)	**TRUE COPY OF THE AGREEMENT FOR SALE OF LAND DATED 12.08.2008 RECEIVED AGAINST SALE OF LAND FROM SRI.MATHEW JOSE KOLADY AND REFERRED TO AS ITEM NO.16 IN ANNEXURE TO STATEMENT NO.1 IN EXT.P3.**
EXHIBIT P3(C)	**TRUE COPY OF THE AGREEMENT FOR SALE OF LAND DATED 08.09.2008 RECEIVED AGAINST SALE OF FLAT FROM SRI.M.I.KURIAKOSE AND REFERRED TO AS ITEM NO.17 IN ANNEXURE TO STATEMENT NO.1 IN EXT.P3.**

EXHIBIT P3(D)	**TRUE COPY OF THE SETTLEMENT AGREEMENT WITH SMT.P.V.SOSAMMA AND P.V.KORUTHE DATED 15.08.2002 AND REFERRED TO AS ITEM NO.18 IN ANNEXURE TO STATEMENT NO.1 IN EXT.P3.**
EXHIBIT P3(E)	**TRUE COPY OF THE PURCHASE BILL OF SALE OF GOLD TO M/S FORNAS JEWELLERS (3 NOS.) AND REFERRED TO AS ITEM NO.23 IN ANNEXURE TO STATEMENT NO.1 IN EXT.P3.**
EXHIBIT P3(F)	**TRUE COPY OF CHEQUE NO.007541 DATED 03.08.2005 OF FEDERAL BANK HOSPITAL JUNCTION, KUNDARA ISSUED TO P.V.SOSAMMA BY P.V.KORUTHE PUNNAVILA AND REFERRED TO AS ITEM NO.28 IN ANNEXURE TO STATEMENT NO.1 IN EXT.P3.**
EXHIBIT P3(G)	**TRUE COPY OF CERTIFICATE OF WITHDRAWAL OF CASH FROM FEDERAL BANK HOSPITAL JUNCTION KUNDARA DATED 11.01.2002 ON (3 DAYS VIZ.03.02.2001 RS.25,000/-, 08.09.2001 RS.52,000/-, 29.11.2001 RS.20,000/-) REFERRED TO AS ITEM NO.28(A) IN ANNEXURE TO STATEMENT NO.1 IN EXT.P3.**
EXHIBIT P3(H)	**TRUE COPY OF PENSIONERY BENEFIT DETAILS OF SRI.V.V.JOSEPH WITH ENDORSEMENT BY THE PETITIONER REFERRED TO AS ITEM NO.30 IN ANNEXURE TO STATEMENT NO.1 IN EXT.P3.**
EXHIBIT P3(I)	**TRUE COPY OF CHEQUE NO.28669 DATED 03.08.2005 ISSUED BY BIJU PHILIPOSE TO THE PETITIONER REFERRED TO AS ITEM NO. 33 IN ANNEXURE TO STATEMENT NO.1 IN EXT.P3.**
EXHIBIT P3(J)	**TRUE COPY OF CHEQUE NO.990771 DATED 19.11.2003 OF SBT, KUNDARA ISSUED BY KOSHY JOHN TO P.V.SOSAMMA REFERRED TO AS ITEM NO. 34 IN ANNEXURE TO STATEMENT NO.1 IN EXT.P3.**
EXHIBIT P3(K)	**TRUE COPY OF PROOF OF PAYMENT OF MONEY THROUGH UAE EXCHANGE (4 NOS. DT.22.02.2004, 13.03.2004, 02.03.2004, 21.03.2004) REFERRED TO AS ITEM NO.35**

	IN ANNEXURE TO STATEMENT NO.1 IN EXT.P3.
EXHIBIT P3(L)	**TRUE COPY OF PROOF OF EXPRESS MONEY TRANSFER THROUGH UAE EXCHANGE FINANCIAL SERVICE LTD. FROM SALEENA JOSEPH (2 NOS. DT.06.11.2002,K 22.11.2002) REFERRED TO AS ITEM NO.36 IN ANNEXURE TO STATEMENT NO.1 IN EXT.P3.**
EXHIBIT P3(M)	**TRUE COPY OF CASH WITHDRAWAL TO HDFC ON 29.10.2010 AND REPAYMENT STATEMENT COPY REFERRED TO AS ITEM NO.37 IN ANNEXURE TO STATEMENT NO.1 IN EXT.P3.**
EXHIBIT P3(N)	**TRUE COPY OF PROMISSORY NOTE EXECUTED IN FAVOUR OF PHILIP JACOB ALIAS JAIMON JACOB PARAYIL ON 09.10.2009 BY THE PETITIOENR REFERRED TO AS ITEM NO.39 IN ANNEXURE TO STATEMENT NO.1 IN EXT.P3.**
EXHIBIT P3(O)	**TRUE COPY OF PROMISSORY NOTE EXECUTED IN FAVOUR OF BABU THOMAS PULIKKAL 05.12.2005 BY THE PETITIONER (STATED AS ORAL AGREEMENT IN STATEMENT BY MISTAKE – ORIGINALK DOCUMENT WAS HANDED OVER TO SRI.T.M. VARGHESE DURING THE CORUSE OF VIGILANCE ENQUIRY ON 24.01.2011 REFERRED TO AS ITEM NO.40 IN ANNEXURE TO STATEMENT NO.1 IN EXT.P3.**
EXHIBIT P4	**TRUE COPY OF LETTER NO. 145/E2/2010 DATED 23-5-2017 ISSUED BY THE DIRECTOR OF MINING AND GEOLOGY, THIRUVANANTHAPURAM TO THE INSPECTOR VACB, ERNAKULAM**
EXHIBIT P5	**TRUE COPY OF REPRESENTATION DATED 16-6-2012 SUBMITTED BY THE PETITIONER TO THE SUPERINTENDENT OF POLICE, VACB, SPECIAL CELL, ERNAKULAM**
EXHIBIT P6	**TRUE COPY OF THE POSTAL RECEIPT DATED 05-10-2019 ISSUED BY THE POSTAL**

	DEPARTMENT FOR HAVING SENT EXT. P7
EXHIBIT P6(A)	**TRUE COPY OF POSTAL RECEIPT DATED 05-10-2019 ISSUED BY THE POSTAL DEPARTMENT FOR HAVING SENT EXT. P6**
EXHIBIT P6(B)	**TRUE COPY OF TRACK CONSIGNMENT REPORT OBTAINED FROM THE POST OFFICE WEBSITE CONFIRMING DELIVERY OF EXT. P-6 REPRESENTATION TO THE 2ND RESPONDENT**
EXHIBIT P7	**TRUE COPY OF THE GO(MS) 1/2021/VIG DATED 28-1-2021.**
EXHIBIT P8	**TRUE COPY OF THE REPRESENTATION DATED 5-2-2021 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**
EXHIBIT P8(a)	**TRUE COPY OF THE POSTAL RECEIPT DATED 5-2-2021 OBTAINED FROM THE RMS BOOKING COUNTER FOR HAVING DISPATCHED EXHIBIT P-8.**
EXHIBIT P9	**TRUE COPY OF THE CHEQUE NO.10018543 DATED 11.08.2010 OF FEDERAL BANK CHINGAVANOM TO SAIRA SUSAN KORAH (PETITIONER'S DAUGHTER) BY RAJI MATHEW, THE PETITIONER'S COUSIN BROTHER AS GIFT.**
EXHIBIT P10	**TRUE COPY OF THE CHEQUE NO.10018544 DATED 11.09.2010 OF FEDERAL BANK CHINGAVANOM TO SAIRA SUSAN KORAH (PETITIONER'S DAUGHTER) BY RAJI MATHEW, THE PETITIONER'S COUSIN BROTHER AS GIFT.**
EXHIBIT P11	**TRUE COPY OF THE CHEQUE NO.10018542 OF FEDERAL BANK CHINGAVANOM TO HANNA SUSAN KORAH (PETITIONER'S DAUGHTER) BY RAJI MATHEW, THE PETITIONER'S COUSIN BROTHER AS GIFT.**

EXHIBIT P12	**TRUE COPY OF THE PRIMOSSORY NOTE EXSECUTED IN FAVOUR OF P.K.SAVITHRY AMMA BY A.G.KORAH DATED 04.07.2005 (ORIGINAL HAND OVER TO SRI.T.M.VARGHESE DURING THE COURSE OF VIGILANCE ENQUIRY ON 24.01.2011.**
EXHIBIT P13	**TRUE COPY OF THE PROMISSORY NOTE EXECUTED IN FAVOUR OF SRI.A.J.SCARIA ANKATHATTIL ON 12.09.2005 BY THE PETITIONER.**
Exhibit P-14	**TRUE COPY OF THE SAID REPRESENTATION DATED 18-6-2012 SUBMITTED BY THE PETITIONER TO THE DIRECTOR OF MINING & GEOLOGY, THIRUVANANTHAPURAM**