

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

MONDAY, THE 15TH DAY OF NOVEMBER 2021 / 24TH KARTHIKA, 1943

CRL.REV.PET NO. 518 OF 2021

(AGAINST THE ORDER IN CRL.MP NO.71/2021 OF THE SPECIAL
JUDGE'S COURT, (SPE/CBI), THIRUVANANTHAPURAM DATED
27.08.2021)

REVISION PETITIONER/PETITIONER:

S.VIJAYAN,
AGED 65 YEARS
S/O. N.R. PADMANABHAN, RESIDING AT TC. 6/1893(4),
KOOOTHU ROAD, ELIPPODU, VATTIYOORKAVU,
THIRUVANANTHAPURAM 695013, PHNONE: 9061927059
BY ADVS.
SHABU SREEDHARAN
V.PRINCE DEV
JINSON OUSEPH
CHITRA VIJAYAN

RESPONDENTS/RESPONDENTS:

- 1 CENTRAL BUREAU OF INVESTIGATION
REPRESENTED BY THE ASST. SOLICITOR GENERAL,
OFFICE OF THE ASST. SOLICITOR GENERAL, HIGH COURT
OF KERALA, ERNAKULAM - 682031.
- 2 DEPUTY SUPERINTENDENT OF POLICE,
SPE, CBI, THIRUVANANTHAPURAM, OFFICE OF THE
CENTRAL BUREAU OF INVESTIGATION, VALLAKKADAVU,
THIRUVANANTHAPURAM - 695008.
- 3 RAJENDRANATH KAUL
S/O. LATE PTTL KAUL, JOINT DIRECTOR/IGP(RTD),
CBI, 109, MYTHRI APARTMENTS, MAYURVIHAR PHASE 1,
NEW DELHI - 91.
- 4 K.V. HARIVALSAN.
DYSP. CBI, ERNAKULAM (DURING 1994), C/O. SMT.
SYAMALA DEVI, W/O. K.RAJENDRAN, PUTHUSSERI HOUSE,
ELAMKULAM VILLAGE, KANAYANNUR TALUK, ERNAKULAM -
682020.

- 5 SALIL KUMAR CHATHOPADHYAYA.
S/O. LATE RAMAPADA CHATHOPADHYAYA, EMPLOYEE OF
PUBLIC SECTOR UNDERTAKING, 29 BALARAM BASUGHAT
ROAD, BHAVANIPUR POST, KOLKATHA - 7025.
- 6 PRATIK KUMAR CHATTERJEE.
S/O. LATE P.B. CHATTERJEE, ADVISOR IN ONGC, 74 C
POCKET-A, SFS FLATS, SECTOR G. MAYUR VIHAR PHASE
-III, NEW DELHI - 110096.
- 7 N.M. SASIDHARAN NAIR,
S/O. MADHAVAN PILLAI, CHIEF MANAGER, ONGC, N.A
1227, VASANTHKUNJ, NEW DELHI - 110070.
- 8 NAMBI NARAYANAN
S/O. LATE SHANKARALINGAM, R/O. T.C NO. 36/97,
SANGEETHA, NSS LANE, PERUMTHANNI,
THIRUVANANTHAPURAM - 695008.
- 9 N. SANKARAKUMAR.
S/O. NAMBI NARAYANAN, R/O. TC NO. 36/97,
SANGEETHA, NSS LANE, PERUMTHANNI,
THIRUVANANTHAPURAM - 695008.
BY ADV S.MANU, ASG FOR CBI
ADV.GIRISH KUMAR V, CGC FOR CBI

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 10.11.2021, THE COURT ON 15.11.2021 DELIVERED
THE FOLLOWING:

"CR"

R.NARAYANA PISHARADI, J

Crl.R.P.No.518 of 2021

Dated this the 15th day of November, 2021

ORDER

The petitioner is the complainant. He is a former police officer. The complaint filed by him was an offshoot of the case which is popularly known as 'ISRO Espionage Case'.

2. The order dated 27.08.2021 passed by the Court of the Special Judge (SPE/CBI), Thiruvananthapuram, by which it rejected the complaint filed by the petitioner, is challenged in this revision petition.

3. The petitioner had filed the complaint against respondents 3 to 9. For the sake of convenience, the petitioner would be hereinafter referred to also as 'the complainant' and respondents 3 to 9 would be referred to also as 'the accused'.

4. The sum and substance of the averments/allegations in the complaint can be stated as follows:

(i) The complainant was the Special Branch Inspector in Thiruvananthapuram City. On 20.10.1994, he arrested Smt.Mariam Rasheeda, a Maldivian National for overstaying in India. On the basis of his report, Crime No.225/1994 was registered at the Vanchiyoor Police Station under Section 14 of the Foreigners Act, 1946 and paragraph 7 of the Foreigners Order, 1948. Subsequently, he arrested Smt.Fousiya Hassan for committing the offences under Sections 3 and 4 of the Official Secrets Act, 1923 and on 13.11.1994, a case was registered as Crime No.246/1994 of the Vanchiyoor Police Station under Sections 3 and 4 of that Act. Subsequently, the Government of Kerala transferred the investigation of both cases to the Central Bureau of Investigation (CBI). The CBI re-registered Crime No.246/1994 of the Vanchiyoor Police Station as RC.11(S)/94 and conducted the investigation. After the investigation, on 16.04.1996, the CBI submitted a refer report/closure report in the Court of the Chief Judicial Magistrate, Ernakulam, stating that the allegations of espionage were not proved and found to be false. As per order dated 02.05.1996, this report was accepted by the Chief Judicial Magistrate after rejecting the objection filed by the complainant.

(ii) Respondent No.8, who was an accused in the above case, filed W.P(C).No.30918 of 2012 before the High Court for initiating action against the erring officers in the investigation of the case. The writ petition was allowed by the High Court. The judgment in the above writ petition was set aside by the High Court in WA.No.1863/2014 and WA.No.1959/2014 filed by Sibi Mathews, and K.K.Joshwa, former police officers. Respondent No.8 filed appeal before the Supreme Court challenging the judgment of the High Court in the above writ appeals. The Supreme Court constituted a Committee headed by Hon'ble Mr. Justice D.K. Jain, a former Judge of that Court, to find out ways and means to take appropriate steps against the erring officials. The Committee submitted its report dated 25.03.2021 in a sealed cover. The Supreme Court directed the Registrar (Judicial) to forward one copy of the said report to the Director/Acting Director of the CBI to proceed in the matter in accordance with law. Based on the above order dated 15.04.2021, the CBI registered a case against the complainant and other persons under Sections 120B,167,218,330,323,195,348,365,477A and 506 of the Indian Penal Code.

(iii) Very close associates of Respondent No.8 provided information to the complainant that Respondent No.8 had bribed the CBI officers who investigated and supervised the investigation of

the ISRO case in the year 1994-1998 by conveying property to them. It is revealed from documents that the conveyance of property was effected through the Sub Registrar's Office, Nanguneri in Thirunelveli District in Tamil Nadu in the years 1994, 1995, 1996, 2004 and 2008 by Respondent No.8 and his benami holders. The encumbrance certificates collected and produced by the complainant as Exts.4 to 23 would show transactions of properties by Respondents 3 to 8 .

(iv) The documents produced by the complainant, relating to property transactions, are sufficient to establish a prima facie case against Respondents 3 to 8 who were/are public servants under the Government of India. Respondent No.9 is the son of Respondent No.8 and he had aided the bribery move hatched by his father. He was the power of attorney holder of Respondents 3 and 5 to 7.

(v) Respondents 3 to 9 have committed the offences punishable under Sections 7, 8 and 9 of the Prevention of Corruption Act, 1988 read with Section 120B of the Indian Penal Code during the period from 1997-2008 by giving and accepting bribe to hush up the ISRO espionage case.

(vi) The complainant had made detailed petition dated 01.08.2021 before the CBI praying that an investigation into the offences under Sections 7 to 9 of the PC Act read with Section 120B of the I.P.C may be conducted.

5. On the basis of the above allegations raised in the complaint, the following prayer was made in the complaint.

"In exercise of powers under Section 156(3) Cr.P.C this Hon'ble Court may graciously be pleased to direct the 1st and 2nd respondents to investigate the involvement of respondents 3 to 9 in Exhibit-4 to Exhibit-23 and to file a Report u/s.173(2) Cr.P.C in accordance with the law and thus render justice."

6. As per the impugned order, the learned Special Judge rejected the complaint at the threshold. The complainant has filed this revision petition challenging the aforesaid order.

7. Heard learned counsel for the petitioner.

8. The complaint was filed by the petitioner in the form of a petition or application, with a prayer for issuing a direction to the CBI to investigate the involvement of the accused in the transactions covered by Exts.4 to 23 documents produced by him along with the application. Not only the persons against whom the allegations were raised but also the investigating agency and the investigating officer were made respondents in the above application.

9. Notwithstanding the above, the petition or application

filed in the Special Court can be treated as a complaint provided it satisfies the requirements under Section 2(d) of the Code of Criminal Procedure, 1973 (for short 'the Code').

10. Section 2(d) of the Code defines 'complaint' as follows:

"Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.-- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such a report is made shall be deemed to be the complainant."

11. As per the definition given under Section 2(d) of the Code, the essential ingredients of a complaint are: (1) it must be made to a Magistrate (2) it may either be oral or in writing (3) it must be made with a view to take action under the Code (4) it must contain allegation that some person has committed an offence and (5) it does not include a police report.

12. There is no specific form prescribed for a complaint. But, there must be an allegation which prima facie discloses the

commission of an offence with the necessary facts for the Magistrate to take action (See **Bhimappa v. Laxman : AIR 1970 SC 1153**).

13. There is no particular format of a complaint. A petition addressed to the Magistrate, containing an allegation that an offence has been committed and ending with a prayer that the culprits be suitably dealt with, is a complaint (See **Mohd.Yousuf v. Afaq Jahan : AIR 2006 SC 705**).

14. Even when the only relief prayed for in an application filed before a Magistrate is to forward it to the police for investigation under Section 156(3) of the Code, it can be treated as a complaint [See **Joseph Mathuri v. Swami Sachidanand Harisakshi: 2001 (3) Crimes 384 (SC)**].

15. Section 156(3) of the Code empowers the Magistrate to order investigation of a cognizable offence by an officer-in-charge of a police station. However, in order to exercise this power, he shall be a Magistrate who is empowered under Section 190 of the Code to take cognizance of such offence. As per Section 190(1)(a) of the Code, any Magistrate of the first class, may take cognizance of any offence upon receiving a complaint

of facts which constitute such offence. It follows that when a petition or complaint is filed, which only contains a prayer for sending it to the police under Section 156(3) of the Code for investigation, it shall necessarily contain facts which constitute a cognizable offence.

16. However, an application filed for invoking the power of the Magistrate under Section 156(3) of the Code shall be supported by an affidavit duly sworn to by the applicant (See **Priyanka Srivastava v. State of U.P : AIR 2015 SC 1758**). In the instant case, it is not seen that the petition/complaint was accompanied by an affidavit sworn to by the petitioner. It is not known whether he had separately filed any such affidavit.

17. The complaint has been rejected by the Special Court stating as follows:

"8. The allegation in the complaint does not constitute an offence, and when considered along with the records produced by the complainant it fails to disclose any cognizable offence, and any offence at that. There is no ground for proceeding against the accused, either by way of preliminary inquiry or u/s.156(3) Cr.P.C, especially reckoning the long and

unexplained delay in filing the complaint.

9. This private complaint u/s.190(1) Cr.P.C, is trammled by the requirements of Sec.2(d) of Cr.P.C and hence this complaint warrants rejection at the threshold as it is baseless and frivolous. I effect the rejection."

18. In exercise of the revisional jurisdiction of this Court, I find no sufficient ground to interfere with the impugned order. The Special Court has given sufficient reason for rejecting the complaint at the threshold. I have perused the complaint. The allegations in the complaint, *prima facie*, do not attract the ingredients of the offences under Sections 7 to 9 of the Prevention of Corruption Act, 1988 (before its amendment in the year 2018).

19. The documents produced by the petitioner as Exts.4 to 23 along with the complaint are copies of the certificates of encumbrance obtained from a website. They are not authenticated copies. Moreover, most of the matters stated in these documents are in Tamil, especially the names of the parties involved in the transactions. It is not seen that the petitioner had produced translated copies of these documents before the

Special Court. Further, encumbrance certificates issued in respect of landed properties, by themselves, are not sufficient to prove the transactions mentioned therein.

20. The petitioner had subsequently produced before the Special Court a copy of the sale deed dated 23.07.2004. This document shows the involvement of Respondent No.8 in the transaction covered by it. However, the refer report in the espionage case was filed by the CBI as early as in the year 1996. Merely on the basis of a transaction of property involving Respondent No.8, which took place eight years later, commission of the offences punishable under Sections 7 to 9 of the PC Act cannot be inferred. This document is sufficient only to raise a suspicion.

21. An unnecessary investigation or even a preliminary enquiry into an offence under the P.C Act against a public servant may cause blemish on his career and reputation. Once such a blemish is caused, it would be very difficult to erase it. What matters is not just that the complainant alleges commission of an offence. The complaint must disclose commission of an offence by some person. Investigation cannot be ordered on the basis of

a complaint which is not supported by genuine materials. The Court must be satisfied that an offence is 'disclosed' by the materials produced by the complainant (See **Manoj Abraham v. Chandrasekharan Nair : 2017 (3) KHC 983 : 2018 (1) KLT 174**).

22. Learned counsel for the petitioner submitted that the petitioner is ready to produce before the Special Court documents showing the details of property transactions which would clearly indicate involvement of the accused in the commission of the offences under the PC Act.

23. At this juncture, it is to be noted that the complaint was only rejected and not dismissed by the Special Court. Rejection of a complaint does not preclude the complainant from filing a fresh complaint with adequate materials.

24. The request made by the petitioner to direct investigation under Section 156(3) of the Code was rightly turned down by the Special Judge in the absence of sufficient materials produced by the complainant to substantiate the allegations in the complaint. I do not find sufficient ground to interfere with the discretion exercised by the Special Judge.

25. It is made clear that this Court has not considered or decided the question whether the Special Court has got power under Section 156(3) of the Code to forward a complaint for investigation by the CBI.

26. The revision petition is accordingly dismissed. However, it is made clear that the dismissal of this revision petition will not preclude the petitioner/complainant from preferring a fresh complaint with adequate materials to substantiate his case. If such a complaint is filed, the Special Judge will have to judicially and judiciously apply his mind and do the needful in accordance with law.

Sd/-R.NARAYANA PISHARADI, JUDGE

jsr