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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2026 / 28TH KARTHIKA, 1948

OP(CRL.) NO. 391 OF 2023

CRIME NO.2/2021 OF VACB, KOZHIKODE

AGAINST CMP NO.132 OF 2020 OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE.

PETITIONER/ACCUSED:

K.M. SHAJI
AGED 52 YEARS, S/O.BEERANKUTTY,
KALATHODIKA HOUSE, NEAR A.R. CAMP,
NGO QUARTERS, VENGERI P.O.,
KOZHIKKODE, PIN - 673010

BY
ADV.BABU S. NAIR
ADV.SMITHA BABU

RESPONDENTS/STATE & COMPLAINANT:

1 **THE STATE OF KERALA**
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

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**2 THE SUPERINTENDENT OF POLICE
VIGILANCE AND ANTI CORRUPTION BUREAU,
SPECIAL CELL, MAVOOR ROAD, KOZHIKKODE,
PIN - 673016**

**3 ADV. M.R. HARISH
AGED 51 YEARS, S/O.RAJEEVAN,
CHEMBARATHI, NEAR R.K. MISSION L.P. SCHOOL,
KALLAI P.O., KOZHIKKODE, PIN - 673003**

**BY
ADV.C.V.MANUVILSAN
ADV.NAEEM IBRAHIM
ADV.O.A.ANJU
ADV.VRINDA LAKSHMANAN**

ADV.SAMEER.S. - PUBLIC PROSECUTOR

THIS OP (CRIMINAL) HAVING BEEN CAME UP FOR HEARING ON 19.11.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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"C.R."

J U D G M E N T

Petitioner challenges Ext.P4 F.I.R, which was registered by the Investigating Officer pursuant to Ext.P2 Order of the Special Court, directing preliminary enquiry. The offences alleged against the petitioner as per Ext.P4 F.I.R are under Section 13(2), read with Section 13(1)(e); and Section 13(2), read with Section 13(1)(b) of the Prevention of Corruption Act ('the P.C Act', for short).

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

3. Learned counsel for the petitioner would submit that the registration of Ext.P4 F.I.R, pursuant to Ext.P2 Order, is illegal for want of sanction under Section 19 of the P.C Act. It has been categorically held in ***Anil Kumar and Others v. M.K. Aiyappa and Another*** [2013 KHC 4790 (SC)]

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that even for directing investigation under Section 156(3) of the Code of Criminal Procedure, sanction under Section 19 is required. The mere fact that the dictum laid down in ***Anil Kumar*** (supra) was referred for consideration by a larger Bench in ***Manju Surana v. Sunil Arora, and Others*** [2018 KHC 6224 (SC)] cannot impact the precedential value of ***Anil Kumar*** (supra). This aspect was referred and answered twice by two Division Benches of this Court in ***Mohammed V.A and Others v. State of Kerala and Others*** [2019 (1) KHC 239 (Ker.)]; and recently, in ***A.K. Sreekumar v. State of Kerala*** [Crl.M.C.No.4677/2022]. Thus, according to the learned counsel, so long as ***Anil Kumar*** (supra) holds the field, registration of Ext.P4 F.I.R, which is indisputably pursuant to Ext.P2 Order, without obtaining sanction under Section 19, can hardly be sustained in law.

4. Secondly, learned counsel would also attack Ext.P2 Order by pointing out that the preliminary enquiry ordered is against the directions of the Hon'ble Supreme Court in

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Lalita Kumari v. Government of Uttar Pradesh and Others [2013 (4) KLJ 686]. Learned counsel would point out that there cannot be any preliminary enquiry to ascertain whether the allegations are genuine and true, as found by the learned Special Judge in Ext.P2. The said course is squarely in the teeth of the concluding directions contained in clause no.(v) of ***Lalita Kumari*** (supra). The scope of preliminary enquiry is only to ascertain whether a cognizable offence is made out or not. Once a cognizable offence is made out, the inevitable course is to register an F.I.R. At any rate, there cannot be a preliminary enquiry to ascertain the *prima facie* veracity or otherwise of the information received in the complaint. Referring to Ext.P2 impugned Order, learned counsel would submit that the Special Judge had entertained a view that the complaint contained allegations regarding offences punishable under the P.C Act. If that be so, the preliminary enquiry ordered to ascertain whether the allegations are genuine and true, vitiates Ext.P2 Order. Yet another contention urged by the

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learned counsel to attack Ext.P2 is the reference to Section 17A of the amended Prevention of Corruption Act. Such reference should not have made, especially when the Special Court found in paragraph no.7 that the allegation is not relatable to any recommendation made, or decision taken by, a public servant in discharge of his duties. Thus, learned counsel would conclude that, Ext.P2 Order cannot be sustained.

5. In answer, learned Public Prosecutor would submit that, Ext.P2 Order only directed a preliminary enquiry to be conducted and wanted the Investigating Officer to file a report before the Court. Learned Public Prosecutor argued that, once a cognizable offence is revealed during the course of preliminary enquiry, there is no legal bar to register an F.I.R. In this regard, learned Public Prosecutor relies on ***Reghuthaman P. v. State of Kerala and Others*** [2016 (4) KHC 166], especially to paragraph no.15 therein.

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6. Having heard the learned counsel appearing for the respective parties, this Court is of the opinion that Ext.P4 F.I.R cannot be sustained in law.

7. Before addressing the correctness of Ext.P4 F.I.R, this Court will first address the challenge against Ext.P2 Order of the learned Special Judge. At the outset, it requires to be noticed that there is no prayer, as such, challenging Ext.P2 Order in the Original Petition. Nor is any relief sought for seeking to quash Ext.P2 Order. True, in Ground No.B, it is canvassed that the learned Special Judge committed an error by directing the Investigating Officer to obtain prior approval under Section 17A of the P.C Act. The rest of the challenges made are against Ext.P4 F.I.R registered without sanction under Section 19 of the P.C Act. In such circumstances, this Court is of the opinion that the arguments now raised during the course of hearing, as against Ext.P2 - based upon which the

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petitioner wants Ext.P2 to be quashed - cannot be entertained. It is true that the reference to Section 17A in Ext.P2 appears to be erroneous, inasmuch as Ext.P2 - vide paragraph no.7 - observe that the allegations made are not relatable to any recommendation made, or decision taken by, the public servant in the discharge of his official duties. However, that erroneous reference to Section 17A, by itself, cannot vitiate Ext.P2.

8. This Court is also not in a position to accept the contention that a clear finding is made in Ext.P2 Order that cognizable offences are made out, wherefore, there cannot be any Order directing preliminary enquiry. The learned Special Judge found in paragraph no.8 that the complaint contains allegations punishable under the P.C Act. The said finding has to be read in conjunction with the following sentence in Ext.P2, to the effect that a preliminary enquiry is necessary, while considering the nature of the allegations made in the complaint. Of course,

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the reference in Ext.P2 to the genuineness and truth, if any, of the allegations is beyond the scope of preliminary enquiry, going by the dictum laid down in ***Lalita Kumari*** (supra). When Ext.P2 Order, read as a whole, merely directs a preliminary enquiry so as to ascertain whether cognizable offences under the P.C. Act are made out or not, the same cannot be frowned upon. This aspect is clarified by the further direction to the Investigating Officer to file a report before the Special Court, after completion of preliminary enquiry.

9. The challenge against Ext.P2 will therefore stand repelled.

10. Coming to Ext.P4 F.I.R, this Court notice that the same is registered without obtaining necessary sanction under Section 19 of the P.C Act. Although the power of the police officer to register an F.I.R is traceable to Section 156(1) of the Code in cases of cognizable cases, one cannot lose sight of the fact that the genesis of the present

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proceedings was a private complaint preferred before the Special Judge under Section 190, read with Section 200 of the Code. The power to issue Ext.P2 Order, though it directs only a preliminary enquiry, can only be traced to Section 156(3) of the Code. The term '*preliminary enquiry*' was coined in ***Lalita Kumari*** (supra) by the Hon'ble Supreme Court, having its application limited to cases where a clear cognizable offence is not made out in the complaint. A preliminary enquiry can be pressed into service only if the information received does not disclose a cognizable offence, but indicates the necessity for an enquiry, to ascertain whether a cognizable offence is disclosed or not. Thus, although Ext.P2 Order directs a preliminary enquiry, the power of the Magistrate, or for that matter the Special Judge, is relatable only to Section 156(3).

11. ***Anil Kumar*** (supra) categorically held that sanction under Section 19 of the P.C Act is required for ordering an investigation under Section 156(3). It could possibly be conceived that, so long as an investigation, as such, is

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not ordered under Section 156(3), a sanction may not be required. That is why, in Ext.P2, learned Special Judge directed the Investigating Officer to file a report before the Court, after conducting a preliminary enquiry. The obvious purpose is to take a decision as to whether an investigation has to be ordered or not, after taking into account the fact whether the preliminary enquiry discloses a clear cognizable offence in the information/complaint. Therefore, directing a preliminary enquiry only, without obtaining sanction under Section 19, will not offend the law laid down in ***Anil Kumar*** (supra). However, registration of an F.I.R by the Investigating Officer during the scope of a preliminary enquiry requires sanction under Section 19, as the source of the Investigating Officer's power is traceable only to Section 156(3); and not to Section 156(1). Failure to obtain such sanction, while registering a crime pursuant to a direction under Section 156(3), offends ***Anil Kumar*** (supra). True that a police officer can register a crime under Section 156(1), if a cognizable

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offence is revealed in the information/complaint. However, the said power cannot be exercised in a case where the proceedings originated from the Order of a Magistrate, exercising powers under Section 156(3), when ***Anil Kumar*** (supra) holds that an investigation in terms of Section 156(3) requires sanction under Section 19. When the Magistrate requires a sanction to order an investigation under Section 156(3), it is incomprehensible that the police officer conducting a preliminary enquiry - acting on the Orders of the Magistrate under Section 156(3) - can do the same without a sanction under Section 19. The distinction between the powers of the Investigating Officer, when he acts under Section 156(1), and when he is conducting a preliminary enquiry pursuant to the directions under Section 156(3), should necessarily be borne in mind, while addressing the issue.

12. Coming to ***Reghuthaman P.*** (supra), this Court has no quarrel with respect to the findings in paragraph no.15

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that the Investigating Officer can register an F.I.R, if a cognizable offence is revealed during the course of a preliminary enquiry, except for offences requiring sanction under Section 19 of the P.C Act. When ***Anil Kumar*** (supra) - which governs the field, as held by two Division Benches of this Court - holds beyond the cavil of any doubt that an investigation under Section 156(3) requires sanction, the proposition that a police officer has power to register an F.I.R, if a cognizable offence is revealed during the course of a preliminary enquiry, can hardly be accepted. It is true that ***Lalita Kumari*** (supra) specifically directs registration of an F.I.R, if cognizable offence is disclosed. However, the impact of ***Anil Kumar*** (supra) on that legal position - insofar as offences under the P.C Act are concerned, requiring sanction under Section 19 of the P.C Act – appears to have been lost sight of in ***Reghuthaman P.*** (supra).

13. For the foregoing reasons, this Court is of the opinion that Ext.P4 F.I.R cannot be sustained, as the same

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is registered without sanction under Section 19 of the P.C Act. The Investigating Officer should have followed the course suggested in Ext.P2, that is to say, to file a report before the learned Special Judge, so as to enable the Special Judge to take a call as to whether an investigation under Section 156(3) has to be ordered. If that course is to be adopted, needless to say, sanction under Section 19 of the P.C Act has to be obtained, as per the prevailing law on the subject.

This Original Petition will stand allowed, as indicated above, quashing Ext.P4 F.I.R and all further proceedings pursuant thereto. However, it is clarified that, there will not be any bar to follow the course directed in Ext.P2.

Sd/-

C. JAYACHANDRAN

JUDGE

TR

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APPENDIX OF OP(CRL.) NO. 391 OF 2023

PETITIONER EXHIBITS

Exhibit P1	**A TRUE COPY OF THE COMPLAINT FILED BY THE 3RD RESPONDENT BEFORE THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE ON 6-11-2020**
Exhibit P2	**A TRUE COPY OF THE ORDER PASSED BY THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKKODE DATED, 9-11-2020 IN C.M.P.NO.132/2020**
Exhibit P3	**A TRUE COPY OF THE COMMUNICATION ISSUED BY THE LEGISLATIVE SECRETARY DATED, 2-12-2020**
Exhibit P4	**A TRUE COPY OF THE F.I.R. IN CRIME NO.02/2021/SCK DATED, 11-4-2021 OF THE VACB SPECIAL CELL, KOZHIKKODE**