IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

WEDNESDAY, THE 15TH DAY OF SEPTEMBER 2021 / 24TH BHADRA, 1943

WP(C) NO. 7692 OF 2021

PETITIONER:

BOBBY KURUVILA
AGED 53 YEARS
S/O. KURUVILA, KARUVELITHARA HOUSE,
MITHRAKARI P.O., ALAPPUZHA DISTRICT-689 595

BY ADVS.
V.JOHN SEBASTIAN RALPH
SRI.B.DEEPAK
SHRI.VISHNU CHANDRAN
SHRI. RALPH RETI JOHN
SHRI.APPU BABU
SMT.SHIFNA MUHAMMED SHUKKUR

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM-695 001

2 TOMIN.J.THACHANKARY,
HOUSE NO.32/2899, THACHANKARY HOUSE,
THAMMANAM.P.O., POONITHURA VILLAGE, COCHIN-682 032

3 ADDITIONAL CHIEF SECRETARY,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM-695 001

BY A.RAJESH, SPL.PP, VACB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.09.2021, THE COURT ON 15.09.2021 DELIVERED THE FOLLOWING:

R.NARAYANA PISHARADI, J
****
W.P.(C).No.7692 of 2021

Dated this the 15th day of September, 2021

J U D G M E N T

Is an order issued by the State Government, directing to conduct further investigation of a case, open to challenge by a total stranger to that case? This is the crucial question that arises for consideration in this writ petition.

2. The second respondent is a senior police officer. He is the accused in the case C.C.No.3/2020 pending in the Court of the Enquiry Commissioner and Special Judge, Kottayam. It is a case based on the final report filed in Crime No.VC3/2007/SCE by the Vigilance and Anti-Corruption Bureau (VACB), Special Cell, Ernakulam.

3. The offence alleged against the second respondent in the above case is punishable under Section 13(1)(e) read with

13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act'). The allegation against him is that, during the period from 01.01.2003 to 04.07.2007, he acquired and possessed assets worth Rs.64,70,891/-, which was disproportionate and in excess of 135.80% of his known sources of income.

4. The second respondent filed an application for discharge under Section 239 of the Code of Criminal Procedure, 1973 (for short 'the Code') in the Special Court. The aforesaid application was dismissed by the Special Court on 29.05.2020. The second respondent filed Crl.R.P.No.399/2020 in this Court challenging that order. The above revision petition was dismissed by this Court on 18.12.2020 as not pressed.

5. Thereafter, the Government of Kerala issued Ext.P1 order dated 28.01.2021, granting sanction for conducting further investigation of the case under Section 173(8) of the Code by another special investigation unit of the VACB. This order was issued by the Government on the basis of a representation made to it by the second respondent.

6. The present writ petition is filed by a third party for quashing Ext.P1 government order.

7. On behalf of the first and the third respondents, the Under Secretary to Government, Vigilance Department has filed a statement, challenging the maintainability of the writ petition and also the locus standi of the petitioner to challenge Ext.P1 government order.

8. No notice was issued to the second respondent. Heard learned counsel for the petitioner and the learned Special Government Pleader (Vigilance) / Public Prosecutor.

9. The history of the case against the second respondent now pending in the Special Court is narrated in the writ petition. Learned counsel for the petitioner made elaborate submissions, expanding the grounds mentioned in the writ petition, challenging Ext.P1 government order. He has contended that Ext.P1 order was issued by the Government with the sole intention of protecting the second respondent and to further protract the trial of the case which is pending against him in the Special Court. Learned counsel has contended that Ext.P1 order

is the result of mala fide exercise of power by the Government and it is liable to be quashed.

10. *Per contra*, learned Public Prosecutor contended that the writ petitioner has no locus standi to challenge Ext.P1 order issued by the Government. Learned Public Prosecutor contended that the petitioner is not a person aggrieved by Ext.P1 order. Learned Public Prosecutor also submitted that the Government has got every power to issue direction for conducting further investigation of a criminal case pending in a court of law. Learned Public Prosecutor further submitted that Ext.P1 order was issued by the Government on the basis of a representation made by the accused in the case and there was no mala fide exercise of power by the Government in issuing that order.

11. The question of locus standi of the petitioner to challenge Ext.P1 order shall be considered at first. The requirement of locus standi of a party to a litigation is mandatory. The legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the

threshold.

12. True, unless specifically indicated by a statutory provision, locus standi of the complainant is a concept foreign to criminal jurisprudence.

13. The Constitution Bench of the Supreme Court, in **A. R. Antulay v. Ramdas Sriniwas Nayak : AIR 1984 SC 718**, has held as follows:

> *"It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statue creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision. . .... In other words,*

the principle that anyone can set or put the criminal law in motion remains intact unless contra indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or, omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straight jacket formula of locus standi unknown to criminal jurisprudence, save and except

> *specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the Court would require an unambiguous statutory provision and a tangled web of argument for drawing a far fetched implication, cannot be a substitute for an express statutory provision".*

14. There is no provision either in the Act or the Code which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence (See **Dr.Subramanian Swamy v. Dr. Manmohan Singh : AIR 2012 SC 1185**).

15. However, the right to initiate criminal proceedings does not mean right to challenge or interfere or meddle with the investigation of a case. While any person has got right to initiate criminal proceedings, a third party or a total stranger has no right to interfere with such proceedings.

16. **Janata Dal v. H. S. Chowdhary : (1991) 3 SCC 756** was a public interest litigation for quashing a FIR lodged by the CBI, based on the core allegation that certain named and

unnamed persons had entered into a criminal conspiracy in pursuance whereof they had secured illegal gratification of crores of rupees from Bofors, a Swiss Company, through their agents as motive or reward. The C.B.I. had moved an application in the Delhi High Court for the issuance of a letter rogatory to the Swiss authorities for assistance in conducting investigation, which request was conceded. An advocate, Shri Harinder Singh Chowdhary, filed a criminal revision application before the High Court of Delhi for quashing the F.I.R and the letter rogatory on certain grounds. Several questions of law and fact were raised in support of the challenge. The High Court came to the conclusion that the said third party litigant had no 'locus standi' to maintain the action and so also the interveners had no right to seek impleadment/ intervention in the said proceeding. However, the High Court took suo motu cognizance of the matter and directed issue of show cause notice to the C.B.I and the State why the F.I.R. should not be quashed. On appeal, the Apex Court came to the conclusion that the High Court was right in holding that the advocate litigant as well as the interveners had no 'locus standi'.

In that case, besides the advocate litigant, certain political parties like the Janata Dal, the C.P.I. (Marxist), the Indian Congress (Socialist) had also approached the Apex Court challenging the order of the High Court rejecting their request for impleadment/intervention.

17. In **Sanjai Tiwari v. State of U.P : AIR 2021 SC 162**, a third party filed application under Section 482 of the Code in the High Court seeking expeditious disposal of a criminal case under the Act. The High Court directed the trial court to expedite the proceedings of the aforesaid case and conclude the same, at the earliest possible in accordance with law, without granting any unnecessary adjournment to either of the parties. In appeal, the Supreme Court set aside the order of the High Court, holding as follows:

> *"It is well settled that criminal trial where offences involved are under the Prevention of Corruption Act have to be conducted and concluded at the earliest since the offences under Prevention of Corruption Act are offences which affect not only the accused but the entire society and administration. It is also well settled that the*

High Court in appropriate cases can very well under Section 482 Cr.P.C or in any other proceeding can always direct trial court to expedite the criminal trial and issue such order as may be necessary. But the present is a case where proceeding initiated by respondent No.2 does not appear to be a bona fide proceeding. Respondent No.2 is in no way connected with initiation of criminal proceeding against the appellant. Respondent No.2 in his application under Section 482 Cr.P.C in paragraph 6 has described him as a social activist and an Advocate. An application by a person who is in no way connected with the criminal proceeding or criminal trial under Section 482 Cr.P.C cannot ordinarily be entertained by the High Court. A criminal trial of an accused is conducted in accordance with procedure as prescribed by the Criminal Procedure Code. It is the obligation of the State and the prosecution to ensure that all criminal trials are conducted expeditiously so that justice can be delivered to the accused if found guilty. The present is not a case where prosecution or even the employer of the accused have filed an application either before the trial court or in any other Court seeking direction as prayed by respondent No.2 in his application

> *under Section 482 Cr.P.C. ..... We are fully satisfied that respondent No.2 has no locus in the present case to file application under Section 482 Cr.P.C asking the Court to expedite the hearing in criminal trial. We have already observed that all criminal trials where offences involved under the Prevention of Corruption Act have to be concluded at an early date and normally no exception can be taken to the order of the High Court directing the trial court to expedite the criminal trial but in the present case the fact is that proceedings have been initiated by respondent No.2 who was not concerned with the proceedings in any manner and the respondent No.2 has no locus to file the application which was not clearly maintainable, we are of the view that the impugned judgment of the High Court dated 09/09/2020 cannot be sustained".*
>
> (emphasis supplied)

18. Locus standi of a person to prefer a complaint with regard to the commission of an offence under the Act cannot be equated with the right to challenge an order issued by the government directing to conduct further investigation of a case. It is stated in the writ petition that the petitioner is a person who is relentlessly fighting against corruption and the nefarious

activities of government servants. Even if the petitioner is a crusader against corruption, it does not confer him any special right to interfere with the investigation of a case. In **Sanjai Tiwari** (supra), the third party had claimed that he was a social activist and an Advocate. But, the Apex Court did not approve his locus standi to expedite the trial of the corruption case which was pending in the competent court.

19. Courts must do justice by promotion of good faith and prevent law from crafty invasions. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions (See **M/s Holicow Pictures Private Limited v. Prem Chandra Misra : AIR 2008 SC 913**).

20. The petitioner is a total stranger to the case against the second respondent which is pending in the Special Court. He is not the informant or the complainant in that case. He is not a witness in that case. He is not a direct victim of the offence allegedly committed by the second respondent. He is not a person in any manner affected by Ext.P1 order. Following the decisions in **Janata Dal** (supra) and **Sanjay Tiwari** (supra), the

conclusion is irresistible that the petitioner has no locus standi to challenge Ext.P1 order issued by the Government directing to conduct further investigation of the case against the second respondent.

21. The petitioner had filed W.P.(C) No.36179/2005 before this Court during the primary investigation stage of the case seeking to issue a direction to the investigating officer to complete the enquiry/investigation expeditiously. The aforesaid writ petition was dismissed by this Court as per Ext.P2 judgment, on the basis of the submission made by the learned Public Prosecutor that factual report would be submitted within a period of six months. Thereafter, the petitioner had filed Contempt of Court Case (C) No.592/2010 alleging violation of the above undertaking made before this Court. C.C.C.No.592/2010 was closed by this Court with the observation that this Court expected that the investigation in the case shall be completed and final report shall be filed as expeditiously as possible.

22. Ext.P4 is the copy of the order passed by this Court in C.C.C No.592/2010. Ext.P4 order shows that this Court had given

option to the petitioner to approach this Court afresh if appropriate action was not taken in the matter. There is also an observation made by this Court in Ext.P4 order that departmental action on the allegations against the second respondent shall also be taken to bring the proceedings to its logical conclusions and that such action is necessary to restore the faith of the individuals like the petitioner in the rule of law.

23. Learned counsel for the petitioner, relying upon Ext.P2 judgment and the observations in Ext.P4 order, would contend that the petitioner has locus standi to challenge the order passed by the Government for further investigation of the case against the second respondent.

24. On the basis of Ext.P2 judgment and Ext.P4 order, it cannot be found that the petitioner has got right to challenge Ext.P1 order issued by the Government for conducting further investigation of the case. The locus standi of the petitioner was not considered by this Court in the above proceedings. No finding regarding the locus standi of the petitioner was made by this Court in the above proceedings.

25. Section 156(1) of the Code empowers any officer in charge of a police station to investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. Section 173(2) of the Code provides that, as soon as the investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, which shall contain the particulars prescribed under clauses (a) to (h) therein. Section 173(8) of the Code states that, nothing in Section 173 shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed.

26. Section 36 of the Code states that, police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station. Section 18(1) of the Kerala Police Act, 2011 provides that the administration, supervision, direction and control of the police throughout the State shall, subject to the control of the Government, be vested in an officer designated as the State Police Chief.

27. In **State of Bihar v. J.A.C. Saldanha : AIR 1980 SC 326**, the two substantial questions that arose for consideration before the Apex Court were: (a) whether the State Government was competent to direct further investigation in a criminal case in which a report was submitted by the investigating agency under Section 173(2) of the Code to the Magistrate having jurisdiction to try the case? (b) when the investigation was in progress, whether the High Court was justified in interfering with the investigation and prohibiting or precluding further investigation in exercise of its extraordinary jurisdiction under Article 226 of the

Constitution?

28. The Apex Court, in **J.A.C. Saldanha** (supra), held that the State Government is competent to direct further investigation, even by a superior police officer, in a criminal case in which a report has been submitted by the investigating agency under Section 173(2) of the Code. The Apex Court also held that, unless an extra ordinary case of gross abuse of power is made out by those who are in charge of investigation, further investigation cannot be thwarted by the High Court by interference in exercise of its jurisdiction under Article 226 of the Constitution of India.

29. In **Popular Muthiah v. State : (2006) 7 SCC 296**, the Apex Court has held as follows:

> *"When a power under sub-section (8) of Section 173 of the Code of Criminal Procedure is exercised, the court ordinarily should not interfere with the statutory power of the investigating agency. It cannot issue directions to investigate the case from a particular angle or by a particular agency".*

The Apex Court has also held as follows:

> *"Investigation of an offence is a statutory power of the police. The State in its discretion may get the investigation done by any agency unless there exists an extraordinary situation".*
>
> (emphasis supplied).

30. In **Reghuchandrabal v. State of Kerala : 2009 (3) KHC 755**, this Court has categorically held that the State Government can order further investigation of a case.

31. Merely because power may sometimes be abused, it is no ground for denying the existence of the power. The wisdom of man has not yet been able to conceive of a government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief (**State of Rajasthan v. Union of India : AIR 1977 SC 1361**).

32. Learned counsel for the petitioner has contended that, Ext.P1 order smacks of mala fides in the exercise of power by the Government, at the instance of the accused in the case, and for that reason it is liable to be quashed.

33. Ext.P1 order reveals that the second respondent had made a representation to the Government stating that, during the primary investigation conducted in the case, the investigating officer had refused to incorporate relevant documentary evidence which would indicate the full extent of his known sources of income and that the investigating officer also did not consider the income of his wife and the gifts given to him by his siblings and his mother. It was on the basis of the aforesaid representation made by the second respondent that Ext.P1 order was issued by the Government granting sanction for conducting further investigation of the case.

34. An accused has no right to be heard at the stage of investigation (**Narendra G.Goel v. State of Maharashtra : (2009) 6 SCC 65**). The accused has no right with reference to the manner of investigation or mode of prosecution (**Sanjiv Rajendra Bhatt v. Union of India : (2016) 1 SCC 1**). It is trite law that accused persons do not have a say in the matter of appointment of an investigation agency. The accused persons cannot choose as to which investigation agency must investigate

the offence allegedly committed by them (**Narmada Bai v. State of Gujarat : AIR 2011 SC 1804).** The decision to investigate or the decision on the agency which should investigate does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with (**C.B.I v. Rajesh Gandhi : AIR 1997 SC 93**). Neither the accused nor the complainant or informant is entitled to choose his own investigating agency to investigate a crime in which he may be interested (**Divine Retreat Centre v. State of Kerala : AIR 2008 SC 1614**).

35. An accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. The provisions relating to the

investigation under Chapter XII of the Code do not confer any right of prior notice and hearing to the accused (**Union of India v. W.N.Chadha : AIR 1993 SC 1082**).

36. The fact, that the accused has no right to choose the investigating agency or to dictate the manner and method of investigation of the case against him, does not mean that he cannot even make a representation to the Government or the investigating officer to conduct further investigation. The Government or the investigating officer may or may not act upon such representation. There is nothing illegal, if the Government or the investigating officer, decides to conduct further investigation of a case acting upon such representation.

37. In **V.S.Achuthanandan v. State of Kerala (2012 (4) KHC 874)**, this Court has observed as follows:

> *"No doubt, the accused has no right to canvass who should conduct the investigation in the crime proceeded against him. However, when he has got a grievance that the investigation is conducted in a most unfair manner, his right to approach a superior police officer to look into that matter by moving a representation cannot be*

> *considered as something which he could not canvass of or seek redressal."*

The above observations of this Court would clearly show that an accused has right to make representation or application to the Government or a superior police officer for conducting further investigation of the case against him on the ground that the investigation already conducted was unfair.

38. The investigating officer may exercise his statutory power of further investigation in several situations. It need not be only when new evidence or facts come to his notice. When certain aspects of the matter had not been considered during the investigation already conducted and if it is found that further investigation is to be carried out from a different angle, it can be done. An accused can bring to the notice of the Government or the investigating officer certain facts which had been omitted to be noticed or investigated earlier. There is no legal impediment or prohibition for the accused to bring to the notice of the Government or a superior police officer any fact which was omitted to be traced out at the stage of submission of the earlier report.

39. A very wide power is vested in the investigating agency to conduct further investigation after it has filed the report in terms of Section 173(2) of the Code. The legislature, in Section 173(8) of the Code, has specifically used the expression 'nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Section 173(2) has been forwarded to the Magistrate', which unambiguously indicates the legislative intent that even after filing of a report before the court of competent jurisdiction, the investigating officer can still conduct further investigation and where, upon such investigation, the officer in charge of a police station gets further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the prescribed form. The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation (**Vinay Tyagi v. Irshad Ali : (2013) 5 SCC 762**).

40. 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 (See **State of West Bengal v. Salap Service Station : 1994 SCC (Cri) 1713**).

41. The hands of the investigating agency should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth. The mere fact that there may be further delay in concluding the trial shall not stand on the way of further investigation if that would keep the Court in arriving at the truth and do real and substantial as well as effective justice (See **Hassanbhai Valibhai Qureshi v. State of Gujarat : AIR 2004 SC 2078**).

42. There can be no basis for the apprehension of the petitioner that the further investigation ordered by the Government would result in filing a negative supplementary final report exonerating the second respondent and thereby the second respondent would escape from the clutches of law. The supplementary final report that would be filed by the

investigating officer, after conducting the further investigation, will not be the final word regarding the guilt or otherwise of the second respondent. Such a report would be subjected to scrutiny by the competent court.

43. The further investigation cannot trench upon the proceedings before the court because the final word in regard to further action is with the Magistrate. That final word is sufficient safeguard against any excessive use or abuse of the power of further investigation by the police (See **Ram Lal Narang v. State : AIR 1979 SC 1791**).

44. If the police files a refer report after conducting further investigation, it will not be the end of the matter. The previous as well as supplementary report shall form part of the record which the trial court is expected to consider for arriving at any appropriate conclusion in accordance with law. Further investigation does not have the effect of wiping out directly or impliedly the initial investigation conducted and the earlier final report filed by the investigating officer (See **Vinay Tyagi v. Irshad Ali : (2013) 5 SCC 762**).

45. Once a final report is filed in terms of sub-section (2) of Section 173 of the Code, it is the Magistrate and Magistrate alone who can take appropriate decision in the matter one way or the other. If he errs while passing a judicial order, the same may be a subject matter of judicial review (See **M.C. Mehta v. Union of India : AIR 2008 SC 180**). This principle is applicable also to a supplementary report filed after conducting further investigation.

46. Learned counsel for the petitioner contended that Ext.P1 order is the result of mala fide exercise of power.

47. "Legal malice" or "malice in law" means 'something done without lawful excuse'. In other words, 'it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite'. It is a deliberate act in disregard of the rights of others. Malice in law has been dealt as "something done without lawful excuse". Malice in law is also mala fide exercise of power, exercise of statutory power for purposes foreign to those for which it is in law intended (See **Ramjit Singh Kardam v. Sanjeev Kumar : AIR 2020 SC 2060**).

48. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. If at all, it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object. The legal malice, therefore, on the part of the State as attributed to it should be understood to mean that the action of the State is not taken bona fide (See **State of A.P. v. Goverdhanlal Pitti : (2003) 4 SCC 739**).

49. True, Ext.P1 order was passed by the Government immediately after the dismissal of the revision petition filed before this Court by the second respondent challenging the order of the trial court dismissing the application for discharge filed by him. But, merely for that reason, mala fides cannot be attributed against the State.

50. There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. The burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of

such allegations demands proof of a high order of credibility (See **E.P. Royappa v. State of Tamil Nadu : AIR 1974 SC 555**).

51. Striking down any act for mala fide exercise of power is a judicial reserve power exercised lethally, but rarely. The charge of mala fides against public bodies and authorities is more easily made than made out. It is the last refuge of a losing litigant (See **Gulam Mustafa v. State of Maharashtra: AIR 1977 SC 448**).

52. Learned counsel for the petitioner would submit that the further investigation of the case is being conducted by a special investigation unit comprising of police officers lower in the rank of second respondent and therefore, the result of that investigation can be very much predicted. The second respondent is an officer in the cadre of Director of General of Police in the State. In such a situation, investigation of the case by a police officer superior to him in rank is practically impossible. Moreover, as noticed earlier, the supplementary report that would be filed after conducting further investigation will not be the final word in the matter.

53. In **State of U.P. v. Surinder Pal Singh: AIR 1989 SC 811**, the Supreme Court had occasion to consider the competency of the Inspector of Police of Crime Branch, C.I.D., who was duly authorised by State Government in accordance with law, in investigating the offence covered by Section 5(1)(c) of the old Prevention of Corruption Act allegedly committed by a Deputy Superintendent of Police. The Supreme Court held that the investigation conducted by the Inspector of Police, Crime Branch, C.I.D., was not vitiated merely because he was not higher in rank to the Deputy Superintendent of Police.

54. The first proviso to Section 17 of the Act states that, if a police officer not below the rank of an Inspector of Police is authorised by the State Government by general or special order, such officer can investigate the offence under the Act (See **State v. S.Bangarappa : AIR 2001 SC 222**). Therefore, there is no legal bar for the special investigation unit authorised by the Government to conduct the further investigation of the case against the second respondent.

55. Article 226 of the Constitution is designed to ensure that each and every authority in the State, including the State, acts bona fide and within the limits of its power. However, the power of judicial review is not intended to assume a supervisory role. The power is also not intended to review governance under the rule of law. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration for judicial review. The power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards. But, when there is abuse or misuse of power, it is incumbent on the Court to intervene. However, the scope of judicial review is limited to the deficiency in the decision making process and not the decision. While exercising power of judicial review the court is more concerned with the decision making process than the merit of the decision itself. Judicial review is not much concerned with the merits of the decision but how the decision was reached. A mere wrong decision, without anything more, in most of the

cases will not be sufficient to attract the power of judicial review. The court will be slow to interfere with administrative decisions unless the decision is tainted by any illegality, irrationality or procedural impropriety. Proportionality, requires the Court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made. These principles are well-settled by the decisions of the Apex Court.

56. Ext.P1 order, when tested on the touch stone of the principles mentioned above, does not call for any judicial review by this Court. Having also found that the petitioner has no locus standi to challenge Ext.P1 order, the writ petition is liable to be dismissed.

Consequently, the writ petition is dismissed. No costs.

(sd/-)

R.NARAYANA PISHARADI, JUDGE

jsr

APPENDIX OF WP(C) 7692/2021

PETITIONER'S EXHIBITS

EXHIBIT P1	THE TRUE COPY OF THE G.O(MS) NO.1/2021/VIG DATED 28.01.2021 OF VIGILANCE (A) DEPARTMENT GOVERNMENT OF KERALA
EXHIBIT P2	TRUE COPY OF THE JUDGMENT DATED 27.11.2006 IN WPC 36179 OF 2006
EXHIBIT P3	TRUE COPY OF THE LETTER T (VE 23.04.SCT) 25583/2002 DATED 11.07.2007 OF VIGILANCE AND ANTI CORRUPTION BUREAU ADDRESSED TO THE ADDL.CHIEF SECRETARY TO GOVERNMENT , VIGILANCE DEPARTMENT, GOVT. OF KERALA
EXHIBIT P4	TRUE COPY OF THE ORDER DATED 29.7.2010 IN CCC NO.592 OF 2010 IN WPC 3670 OF 2006 OF THIS HON'BLE COURT
EXHIBIT P5	TRUE COPY OF WPC NO.19257 OF 2017 DATED 2.6.2017 BEFORE THE HON'BLE COURT OF KERALA
EXHIBIT P6	TRUE COPY OF THE INTERIM ORDER DATED 12.6.2017 PASSED IN WPC 19257/2017 OF THIS HON'BLE COURT
EXHIBIT P7	TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE GOVERNMENT IN WPC 19257/2017 BEFORE THIS HON'BLE COURT
EXHIBIT P8	TRUE COPY OF JUDGMENT DATED 11.8.2017 IN WPC 19257/2017 OF THIS HON'BLE COURT
EXHIBIT P9	TRUE COPY OF THE COMPLAINT DATED 15.8.2017 FILED BY THE PETITIONER BEFORE REGISTRAR GENERAL, HIGH COURT OF KERALA
EXHIBIT P10	TRUE COPY OF COMPLAINT DATED 8.8.2018 TO THE HON'BLE HIGH COURT OF KERALA
EXHIBIT P11	TRUE COPY OF THE ORDER DISPOSING THE DISCHARGE PETITION DATED 29.5.202 FILED BY 2ND RESPONDENT BEFORE THE HON'BLE VIGILANCE COURT, KOTTAYAM

EXHIBIT P12	TRUE COPY OF THE REVISION PETITION CRL.RP NO.399/2020 FILED BY 2ND RESPONDENT BEFORE THIS HON'BLE COURT
EXHIBIT P13	TRUE COPY OF THE PETITION FOR IMPLEADING CR.MA. 4/2020 U/S 482 OF CR PC IN THE REVISION PETITION CRL.R.P.399/2020 BEFORE THIS HON'BLE COURT WITHOUT ANNEXURES.
EXHIBIT P14	TRUE COPY OF THE ORDER DATED 18.12.2020 IN CRL REV PET 399/2020 OF THIS HON'BLE COURT

RESPONDENTS' EXHIBITS:

NIL

TRUE COPY

PS TO JUDGE