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CRL.MC NO. 7443 OF 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 5TH DAY OF MARCH 2025/14TH PHALGUNA, 1946

CRL.MC NO. 7443 OF 2023

CRIME NO.471/2015 OF TOWN EAST POLICE STATION, THRISSUR

CC NO.175 OF 2018 OF CHIEF JUDICIAL MAGISTRATE,

THRISSUR

PETITIONER/ACCUSED:

GEORGE CYRIAC
AGED 60 YEARS
S/O KURUVILA, NIRAPPEL HOUSE,
MANDANCHIRA, KANNARA P O, PEECHI VILLAGE,
THRISSUR, PIN - 680652

BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
PRERITH PHILIP JOSEPH
ANILKUMAR C.R.
K.S.KIRAN KRISHNAN

RESPONDENTS/STATE/DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REP BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA ERNAKULAM
(CRIME NO 471/2015 OF TOWN EAST POLICE STATION,
THRISSUR), PIN - 682031
- 2 DIRECTOR GENERAL OF POLICE (LAW AND ORDER)
POLICE HEADQUARTERS,
THIRUVANANTHAPURAM, PIN - 695012



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3 CITY POLICE COMMISSIONER
OFFICE OF THE CITY POLICE COMMISSIONER,
THRISSUR, PIN - 680631

4 LALI KUTTY
AGED 56 YEARS
W/O. GEORGE VARKEY, PAPPADIYIL HOUSE,
THEKKUMBAGHAM, THODUPUZHA, IDUKKI,
PIN - 685584

BY ADVS.
MITHUN BABY JOHN
N.U.HARIKRISHNA(K/281/2013)
PRIYA P. K

SRI. JIBU T S, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 27.02.2025 AND THE COURT ON 05.03.2025 PASSED THE
FOLLOWING:



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ORDER

Dated this the 5th day of March, 2025

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C' for short), by the petitioner, who is the 1st accused in C.C.No.175/2018 on the files of the Chief Judicial Magistrate Court, Thrissur, arose out of crime No.471/2015 of Town East Police Station, Thrissur, challenging order in Crl.M.P.No.2122/2023 dated 04.07.2023, whereby an application filed by the petitioner seeking further investigation under Section 173(8) of Cr.P.C. was dismissed by the trial court. Respondents 1 to 3 are the State and the Police officials and the 4th respondent is the defacto complainant.

2. Heard the learned counsel for the petitioner/1st accused, the learned counsel for the defacto complainant and the learned Public Prosecutor representing



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respondents 1 to 3 in detail. Perused the available documents.

3. In this matter, the prosecution alleges commission of offences punishable under Sections 465, 468, 471 and 420 r/w 34 of the Indian Penal Code (hereinafter referred to as 'IPC' for short) by the 1st accused, on the allegation that the 1st accused forged two powers of attorney by putting false signatures and thumb impressions of the defacto complainant/ 1st witness and a false solvency certificate, with the assistance of the 2nd accused and thereafter the same were produced before the Excise department with intention to cheat and defraud the defacto complainant at the time when the 1st accused auctioned license in respect of AS Group No.1/1993-94 having Nos.112 to 123 for 12 arrack shops. The further allegation is that the 1st accused herein used the above forged documents as genuine and thereby committed the above offences. In this crime, FIR was registered on 02.03.2015 with regard to an occurrence in the year 1993-94 and eventually, the



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final report was filed on 24.09.2018.

4. Dissatisfied by the mode of investigation and the insufficiency of investigation the 1st accused/petitioner herein lodged Annexure-III complaint before the City Police Commissioner, Thrissur, seeking further investigation, as on 20.07.2023. That apart, Crl.M.P.No.2122/2022 also filed before the Chief Judicial Magistrate Court, Thrissur, seeking further investigation.

5. The learned counsel for the petitioner/1st accused sought further investigation for the reasons stated in Annexure-III complaint and in Crl.M.P.No.2122/2023. According to the learned counsel for the petitioner/1st accused, an accused or suspect can also knock the doors of the court seeking further investigation since it is the right of a suspect or an accused to have just and fair investigation and fair trial as per the mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair,



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tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. In this connection, the learned counsel for the petitioner/1st accused placed decision of the Apex Court in **Vinay Tyagi V. Irshad Ali**, reported in **2013(1) KLT SN 69**, with reference to paragraph No.16. In paragraph No.16, the Apex Court held as under:

“16. However, in the case of a ‘fresh investigation’, ‘reinvestigation’ or ‘de novo investigation’ there has to be a definite order of the court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating agency nor the Magistrate has any power to order or conduct ‘fresh investigation’. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of ‘fresh’/‘de novo’ investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of



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the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a 'fresh investigation'. In the case of *Sidhartha Vashisht v. State (NCT of Delhi)* [(2010) 6 SCC 1], the Court stated that it is not only the responsibility of the



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investigating agency, but also that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. An equally enforceable canon of the criminal law is that high responsibility lies upon the investigating agency not to conduct an investigation in a tainted or unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society. The maxim contra veritatem lex nunquam aliquid permittit applies to exercise of powers by the courts while granting approval or declining to accept the report. In the case of Gudalure M.J. Cherian & Ors. v. Union of India & Ors. [(1992) 1 SCC 397], this Court stated the principle that in cases where charge-sheets have been filed after completion of investigation and request is made belatedly to reopen the investigation, such investigation being entrusted to a specialized agency would normally be declined by the court of competent jurisdiction but nevertheless in a given situation to do justice between the parties and to



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instil confidence in public mind, it may become necessary to pass such orders.

6. That apart, the learned counsel also placed decision of the Apex Court in **Vinubhai Haribhai Malaviya v. State of Gujarat**, reported in **2019 (4) KLT OnLine 3025 (SC)**, wherein also, while dealing with the power under Section 173(8) of Cr.P.C., the Apex Court held in paragraph No.38 as under:

“38. 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 (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a



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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



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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 inculping 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* (supra). Therefore, to the extent that the judgments in *Amrutbhai Shambubhai Patel* (supra), *Athul Rao* (supra) and *Bikash Ranjan Rout* (supra) have held to the contrary, they stand overruled. Needless to add, *Randhir Singh Rana v. State (Delhi Administration)* (1997 (1) KLT SN 56 (C.No. 73) SC = (1997) 1 SCC 361) and *Reeta Nag v. State of West Bengal and Ors.* (2009 (4) KLT Suppl. 917 (SC) = (2009) 9 SCC 129) also stand overruled.”



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7. It is pointed out by the learned counsel for the petitioner/1st accused that in the auction held for the arrack shops during the period 1993-94, three persons participated, namely, (1) *Smt.Lalikutty Cyriac, W/o.George (the defacto complainant)*, (2) *Sri.Abraham, S/o. Pappadiyil Varkey, who is the brother of the husband of the defacto complainant* and (3) *Smt.Kochu Treasia (the mother in law of the defacto complainant)*. It is pointed out that representing party Nos.2 and 3 above, as authorized by powers of attorney, George Varkey, the husband of the defacto complainant, participated in the auction. The further case of the 1st accused is that since the defacto complainant is a lady and the auction was held in Thrissur, the 1st accused was asked to participate in the auction along with the husband of the defacto complainant for which, powers of attorney which were prepared by George, were entrusted to him and thereby he participated in the auction. According to the 1st accused, the beneficiaries of the auction



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were the defacto complainant along with her husband one George Varkey and their family. On this premise, it is submitted that there was no proper investigation with regard to forging of powers of attorney and the contention of the 1st accused is that if at all the signatures in the powers of attorney are not that of the defacto complainant, the responsibility is that of her husband, George and the 1st accused has no role in the matter of forgery as alleged. It is also contended that George Varkey also to be arrayed as an accused in this crime by investigating his role in the matter of forgery of powers of attorney. The further contention of the 1st accused is that the present complaint, regarding an occurrence in the year 1993-94, has been lodged with a view to avoid the revenue recovery proceedings against the property since there was failure to pay abkari kisth. It is also pointed out that, thereafter, George Varkey approached the Government under the Amnesty Scheme to permit him to pay the dues by installments. The



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sum and substance of the argument of the learned counsel for the 1st accused is that in the instance case, apart from the contention raised by the 1st accused herein, as per the final report also, who produced the powers of attorney before the Excise Authority during the year 1993-94 is not at all investigated or not specifically stated. Therefore, further investigation sought for regarding those aspects with a view to trace out, who committed forgery is necessary, otherwise, the same would prejudice the right of the petitioner.

8. According to the learned counsel for the defacto complainant/1st witness, the defacto complainant has no sister-in-laws. According to the learned counsel for the defacto complainant, as per the prosecution allegations and as contended in Annexure-III petition, the 1st accused admitted that he had participated in the auction procedure for and on behalf of the defacto complainant on the strength of the powers of attorney and the case of the defacto complainant is that the



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said powers of attorney have been forged and the defacto complainant has no knowledge regarding execution of such powers of attorney. According to the learned counsel for the defacto complainant, two powers of attorney, one registered and another unregistered one, as well as the solvency certificate produced before Abkari officials by the 1st accused are forged one and therefore, *prima facie*, the forgery is committed by the 1st accused in connivance with the 2nd accused though the 2nd accused is now no more and thereby case against him was abated. Therefore, the matter would warrant trial and there is no necessity to have further investigation in this matter so as to stall the trial further.

9. The learned Public Prosecutor also shared the argument advanced by the learned counsel for the defacto complainant and opposed further investigation. At the same time, it is pointed out by the learned Public Prosecutor that Annexure-III complaint was received by the City Police



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Commissioner, but in view of pendency of this Crl.M.C., no action has been taken so far.

10. While analysing the question of law as to whether an accused has an absolute right to seek for further investigation, in fact, an accused has no absolute right to seek further investigation or to dictate terms for investigation or to say that the investigation shall go in a particular manner. However, as held by the Apex Court in **Vinay Tyagi's** case (*supra*) and other decisions, the fundamental principle of criminal jurisprudence is that a just and fair investigation and fair trial shall be carried out in regard to an allegation levelled against a suspect or an accused, which is within the ambit of Articles 21 and 22 of the Constitution of India. When the investigation *ex facie* is unfair, tainted, mala fide, incomplete, shabby and meddled with smacks of foul play, the courts have power to intervene the investigation, thereby the constitutional courts can set aside such an investigation and direct fresh or *de novo* investigation or further investigation, as the case may be, to protect the fundamental right of the suspect



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or the accused and to ensure that there must be a fair investigation and consequential fair trial. Apart from that the courts other than constitutional courts dealing with the matter also can order further investigation under Section 173(8) of Cr.P.C. in an appropriate case within the sweep of the said power before start of trial.

11. In the instant case, it is not in dispute that the creation of two powers of attorney and solvency certificate for producing before the abkari officials during the year 1993-94 are the substratum, where from this crime was originated, that too at a much belated stage, as on 02.03.2015. As per Annexure-II final report, the prosecution cited 20 witnesses. Witness No.4 in the final report is Sabu P.Kurian, Manager, Excise Division Office, Thrissur. In his statement, it is recited that when arrack shop Nos.112 to 123, coming under AS Group 1/1993-94, was auctioned during the year 1993-94, when documents for the purpose of auction were asked for, the documents produced included the powers of attorney alleged to be executed by Lalikutty in favour of Jestin dated



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22.02.1992, solvency certificate dated 06.03.1993 in relation to 2 acres property in Sy.No.255 in the name of Lalikutty and also another power of attorney dated 10.03.1993. Thereafter, the police recovered the same by preparing mahazar and he signed in the mahazar along with other officials as witnesses. In the instant case, the point to be considered is whether the available materials would show with certainty that the petitioner is the person who produced forged documents as alleged or else, there is lack of clarity with regard to, who produced the documents, for which, a further investigation is absolutely necessary. It is true that as per the impugned order, the learned magistrate was not inclined to invoke power under Section 173(8) of the Cr.P.C., mainly on the ground that raising similar contentions, the 1st accused sought for discharge and on getting dismissal of the discharge petition, the present application for further investigation had been filed and the accused had no right to



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insist that the investigation should be conducted in a particular manner and also the accused has no right with reference to the manner of investigation or mode of investigation. In this regard, the trial court relied on decisions in **Surendra Babu V. State of Kerala**, reported in **2023 (2) KLJ 494** and **Sanjiv Rajendra Bhatt V. The Union of India**, reported in **2016(1) SCC 1**.

12. Having considered the crux of the matter, which emerged from the allegation of overt acts at the instance of the 1st accused committed in the year 1993-94, the crucial aspects which would make him an offender, *prima facie*, is production of two powers of attorney as well as a solvency certificate by the petitioner herein before the Excise Authority. As already pointed out, even though witness No.5 had given statement to the effect that those documents were produced and were taken by the police by preparing mahazar, who produced the documents is very



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vital in the instant case. That is to say, in this matter the persons who participated in the auction of arrack shops involved in this case in the year 1993-94 are (1) *Smt.Lalikutty Cyriac, W/o.George (the defacto complainant)*, (2) *Sri.Abraham, S/o. Pappadiyil Varkey, who is the brother of the husband of the defacto complainant* and (3) *Smt.Kochu Treasia (the mother in law of the defacto complainant)* and the petitioner alleged to have represented the defacto complainant as her power of attorney holder. But the case of the defacto complainant is that she did not authorize the 1st accused/petitioner to do so by executing powers of attorney and she did not entrust the 1st accused/petitioner to obtain solvency certificate and produce the same before the Excise Authority. It is relevant to note that even though the occurrence is of the year 1993-94, no complaint lodged till 2015, and complaint was lodged after a long gap of 22 years. Therefore, an effective further investigation, as regards to the



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allegations raised by the accused in Annexure-III as well as in Crl.M.P.No.2122/2023, is necessary, particularly taking note of the fact that even after filing Annexure-III complaint, no steps taken by the police authorities so far. In view of the above, I am inclined to allow this petition.

In the result, the order impugned is set aside and this petition stands allowed with direction to the investigating officer in this case to consider the allegations in Annexure-III and also in Crl.M.P.No.2122/2023 and to carry out further investigation, particularly by collecting materials which would highlight, who, in fact, produced the powers of attorney and the solvency certificate before the Excise Authority with certainty.

The Investigating Officer is further directed to complete the investigation within a period of four months from the date of receipt of a copy of this order and till the date of filing the supplementary final report, after further



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investigation, the trial of C.C.No.175/2018 on the files of the Chief Judicial Magistrate Court, Thrissur, stands stayed.

Registry is directed to forward a copy of this order to the trial court for information and compliance.

**Sd/-
A. BADHARUDEEN
JUDGE**

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