



2025:KER:22141

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

MONDAY, THE 24TH DAY OF FEBRUARY 2025 / 5TH PHALGUNA, 1946

WP(C) NO.36370 OF 2008

PETITIONER :-

T.K.PAVITHRAN
'PAVITHRAM', MAMBRAM P.O., PINARAYI VIA.,
KANNUR DISTRICT.

BY ADV SRI.KALEESWARAM RAJ

RESPONDENTS :-

- 1 KERALA LOK AYUKTA
REPRESENTED BY THE REGISTRAR,
LOK AYUKTA, THIRUVANANTHAPURAM.
- 2 V.K.DIVAKARAN (MAMBRAM DIVAKARAN)
PRESIDENT, INDIRA GANDHI CO-OPERATIVE SOCIETY,
THALASSERY, KANNUR.

BY ADVS.
SRI.J.HARIKUMAR
SRI.M.SASINDRAN
SMT.RENU. D.P., SC, LOK AYUKTA

OTHER PRESENT:

SRI.JOGGY MATHUNNI FOR R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT
Dated this the 24th day of February, 2025

Nitin Jamdar, C.J.

The Petitioner was the complainant before the Kerala Lok Ayukta. He had filed Complaint No.2723 of 2005 against the 2nd Respondent, who was the President of the Indira Gandhi Co-operative Hospital, Thalassery, alleging financial misdemeanour and illegal accumulation of properties. The 2nd Respondent filed a counter affidavit before the Lok Ayukta and denied the contentions raised by the Petitioner in the complaint. It is contended that no illegalities were committed by him, as alleged by the Petitioner, and that the Petitioner had not filed the complaint bonafide, but out of political rivalry. The Lok Ayukta, by order dated 19 May 2008 dismissed the complaint filed by the Petitioner.

2. Thereafter, the 2nd Respondent filed an application – I. A. No.415 of 2008 seeking permission to file a complaint against the Petitioner before the Court of Judicial First Class Magistrate, Thalassery under Section 21(3) of the Kerala Lok Ayukta Act, 1999 (the Act of 1999). The Lok Ayukta, by Ext.P11 order dated 21 October 2008, allowed the application filed by the 2nd Respondent and granted permission under Section 21(3) of the Act of 1999 to prosecute the Petitioner/ Complainant for filing a false complaint against him.



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3. Being aggrieved by the said order, the Petitioner/Complainant filed the present petition. In the petition, notice was issued on 17 December 2008 and the impugned order was stayed.

4. Heard Mr. Kaleeswaram Raj, learned counsel for the Petitioner and Mr. Joggy Mathunni, learned counsel for Respondent No.2.

5. The contention of the learned counsel for the Petitioner is that the exercise of power under Section 21(3) of the Act of 1999 is not automatic upon dismissal of the complaint and there is no discussion in the impugned order as to why the permission is being granted. It is submitted that the complaint was dismissed on the ground that the Petitioner was unable to produce sufficient evidence. It is further submitted that the impugned order, therefore, lacks reasoning and may be quashed and set aside.

6. The learned counsel for Respondent No.2 submitted that the Petitioner has been making various complaints against him, maligning his reputation, and there is a clear finding in the order dismissing the complaint that the said complaint is bogus. As regards the impugned order, it is submitted that all that is granted by the Lok Ayukta is permission for prosecution and that the Petitioner has all his contentions open in the said prosecution.

7. As regards false complaints are concerned, Section 21 deals with the same. Section 21 of the Act of 1999 reads thus :-

“21. Prosecution for false complaint.- (1) Notwithstanding anything contained in this Act, whoever makes any



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complaint with malicious intention under this Act shall, on conviction, be punished with imprisonment for a term, which shall not be less than three months but which may extend to six months and with fine, which shall not be less than two thousand rupees but which may extend to five thousand rupees.

(2) No Court inferior to that of a Court of the Judicial Magistrate of the First Class shall take cognizance of an offence under sub-section (1).

(3) No such Court shall take cognizance of an offence under sub-section (1), except on a complaint made by a person against whom false, frivolous or vexatious complaint was made, after obtaining the previous sanction of the Lok Ayukta or the Upa-Lok Ayukta, as the case may be.

(4) The prosecution in relation to an offence under sub-section (1) shall be conducted by the Public Prosecutor and all expenses connected with such prosecution shall be borne by the Government.”

Therefore, under Section 21, anyone who makes a complaint with malicious intention can be prosecuted and punished with imprisonment for a term not less than three months, which may extend up to six months, along with a fine. No court shall take cognizance of the matter without the sanction of the Lok Ayukta.

8. There are no parameters under Section 21 as regards the grant of sanction by the Lok Ayukta. This, however, does not mean that every complaint that is dismissed must invite the prosecution under Section 21. The Act of 1999 is an Act that provides for conducting enquiries into any



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action, omission, or commission by the Authorities specified under the Act, to bring about transparency and accountability in the administration of such bodies. The Lok Ayukta, upon being informed of such illegalities, has the power to make recommendations to the State Government. This being an important remedy available to citizens to bring their grievances against the officers of the State and other public bodies, the Lok Ayukta, while exercising its power, has to ensure that this remedy is not rendered illusory. If needless deterrent actions are taken against complainants, it will discourage the parties from bringing their grievances against public authorities before the Lok Ayukta.

9. The words ‘false complaint’ and ‘malicious intention’ used in Section 21(1) provide an indication as to how the power under Section 21(1) is to be used. Dismissal of a complaint due to lack of evidence is different from the complaints that are false and malicious. It is not necessary for the Lok Ayukta to write a detailed judgment while granting permission, however, the reasons must be apparent from the record, or in the order dismissing the complaint as to why it is with a malicious intention.

10. The impugned order first narrates the rival contentions and then conclude that the complainant, who has made grave allegations, has failed to substantiate those allegations. Ultimately, the conclusion is that the complainant has failed to prove the allegations. The narration in the earlier part of the judgment regarding various other complaints does not necessarily mean that the present complaint before the Lok Ayukta will have to be construed as false and malicious. According to us, the case at hand falls



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below the threshold that is required to initiate a prosecution under Section 21(3). We have to also take note that the impugned order has now been stayed for more than 17 years.

11. In these circumstances, the writ petition is allowed. The impugned order dated 21 October 2008 in I.A. No.415 of 2008 in Complaint No.2723 of 2005 is quashed and set aside.

Sd/-
NITIN JAMDAR
CHIEF JUSTICE

Sd/-
S. MANU
JUDGE



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APPENDIX OF WP(C) 36370/2008

PETITIONER EXHIBITS

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| Exhibit P1 | TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE LOK AYUKTA |
| Exhibit P2 | TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT IN COMPLAINT NO.2723 OF 2005 |
| Exhibit P3 | TRUE COPY OF THE APPLICATION DATED 18.10.2006 FILED UNDER THE RIGHT TO INFORMATION ACT |
| Exhibit P4 | TRUE COPY OF THE ORDER DATED 26.10.2006 |
| Exhibit P5 | TRUE COPY OF THE ORDER DATED 06.11.2006 |
| Exhibit P6 | TRUE COPY OF THE INTERIM ORDER DATED 12.12.2006 IN WP(C)33069/2006 |
| Exhibit P7 | TRUE COPY OF THE INTERIM ORDER DATED 28.02.2007 IN WP(C)33069 OF 2006 |
| Exhibit P8 | TRUE COPY OF THE ORDER DATED 19.05.2008 IN COMPLAINT NO.2723 OF 2005 |
| Exhibit P9 | TRUE COPY OF I.A.415/2008 IN COMPLAINT NO.2723/2005 |
| Exhibit P10 | TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER. |
| Exhibit P11 | TRUE COPY OF THE ORDER DATED 21.10.2008 IN I.A.415/08 IN COMPLAINT 2723/05. |