



2025:KER:69617

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 18<sup>TH</sup> DAY OF SEPTEMBER 2025/27TH BHADRA, 1947

CRL.MC NO. 991 OF 2023

AGAINST THE ORDER DATED 18.01.2023 IN CMP NO.300 OF 2020  
OF COURT OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, EKM AT  
MUVATTUPUZHA

PETITIONER:

V.J KURIAN  
AGED 65 YEARS  
S/O V.J JOSEPH, FORMER MANAGING DIRECTOR,  
COCHIN INTERNATIONAL AIRPORT LTD, NEDUMBASSERY.  
NOW RESIDING AT VATTAVAYALIL HOUSE, PAPPALI LANE,  
VAZHAKKALA P.O, ERNAKULAM- 682030  
BY ADVS.  
SRI.THOMAS J.ANAKKALLUNKAL  
SHRI.JAYARAMAN S.  
SHRI.NIRMAL CHERIYAN VARGHESE  
SMT.LITTY PETER  
SMT.ANUPA ANNA JOSE KANDOTH  
SRI.P.VIJAYA BHANU (SR.)

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM - 682031
- 2 GIRISH BABU  
AGED 43 YEARS  
S/O.GOPALAKRISHNAN, PUNNAKKADAN HOUSE, KUSAT P.O,  
KALAMASSERY, KOCHI- 682022  
BY ADVS.  
SHRI.DINOOP P.D.  
SRI.K.P.PRASANTH  
SMT.T.S.KRISHNENDU  
SMT.ARCHANA SURESH  
SMT.SUNITHA K.G.  
SRI.C.UNNIKRISHNAN (KOLLAM)  
SHRI.ANANDA PADMANABHAN  
SMT.UTHARA A.S  
SHRI.GOUTHAM KRISHNA U.B.  
SRI.NIDHI BALACHANDRAN  
SHRI VIJAYKRISHNAN S. MENON  
SRI.RAJESH A, SPECIAL PUBLIC PROSECUTOR, VACB  
SMT.REKHA S, SENIOR PUBLIC PROSECUTOR, VACB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
20.08.2025, THE COURT ON 18.09.2025 PASSED THE FOLLOWING:



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## **ORDER**

Dated this the 18<sup>th</sup> day of September, 2025

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash Annexure A2 order dated 18.01.2023 in CMP No.300/2020 passed by the Enquiry Commissioner and Special Judge (Vigilance), Muvattupuzha. The petitioner herein is the 1<sup>st</sup> respondent in the above case.

2. Heard the learned senior counsel for the petitioner/ 1<sup>st</sup> respondent and the learned Public Prosecutor in detail. Perused the relevant records. Even though the learned counsel for the proposed additional 3<sup>rd</sup> respondent also appeared to support the order, the impleading petition filed by the additional 3<sup>rd</sup> respondent was dismissed by my predecessor as per order dated 07.09.2023.



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3. The learned senior counsel for the petitioner would submit that the quick verification order as per Annexure A2 is unwarranted since the entire allegations are baseless. According to the learned senior counsel, the allegation is that during 2004, the petitioner allotted 1,20,000 shares of Cochin International Airport Ltd., (CIAL) to one Sebastian, who is a non-employee of CIAL, which was meant for the employees of CIAL under the Employees Stock Ownership Plan (ESOP). The learned senior counsel would submit that, in fact, no such scheme so far implemented. Further, the allotment of shares is in accordance with the decision of the Director Board and the petitioner has no individual role. Therefore, the quick verification ordered by the court is unwarranted and the order is liable to be quashed.

4. Opposing this contention, the learned Public Prosecutor highlighted the contentions raised in paragraph



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No.7 of the memo, submitted by the learned Special Government Pleader (Vigilance), suggesting that earlier there was a quick verification as QV No.33/2016/EKM and on verification, the allegations which were the subject matter in the said quick verification were found not sustainable, and accordingly, further action was dropped. He also pointed out that even though the allegations considered in QV No.33/2016/EKM are found in favour of the petitioner, the allegations specifically raised in this case, as to procurement of large quantity of shares of CIAL by the petitioner through a benami named Sebastian was not included in QV 33/2016/EKM and therefore, for the said purpose, quick verification is required and in such view of the matter, facilitating quick verification of the said fact, in tune with Annexure A2 order, this Crl.M.C is liable to be dismissed.



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5. The question arises for consideration is whether Annexure A2 order, directing quick verification, is liable to be interfered and quashed in the facts and circumstances of the case.

6. In paragraph Nos.4 and 7 in Annexure A2 order, the learned Special Judge addressed the complaint while ordering quick verification regarding the allegation. In paragraph No.7 of the memo submitted by the Special Government Pleader (Vigilance), it is stated as under:

“7. It is respectfully submitted that, Q.V No.33/2016/EKM was conducted in the year 2016 in the VACB Central Range Ernakulam against the petitioner on the complaints received from 1. Sri.Denny John, Araykal House, Avanomkode P.O., Chowara, Ernakulam, 2. Sri.M.R.Ajayan, Green Kerala News, Mattappilly House, Ochamthuruthu P.O., Ernakulam, 3. Sri.K.P.Paily, (address is not available), 4. Sri.Pramod Kumar (address is not available), 5. Sri.Ajosh.S. (address is not available) and other anonymous petitions dated 21.09.2016, 18.07.2016, 30.10.2016,



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20.10.2016. The allegations in the above complaints are as stated below:

- (i) The sewage treatment plant in CIAL is functioning without observing the Govt.rules and norms.
- (ii) CIAL authorities have violated the tender proceedings in purchasing disposable cups.
- (iii) Allegation of irregularities in the implementation of solar units.
- (iv) Allegation about conducting functions by "TEAM EVENTOR":
- (v) Misuse of CIAL Infrastructure Fund and Misuse of Vehicles by Sri.V.J.Kurian.
- (vi) Allegation in the appointment of Security Assistant at CIAL
- (vii) Sri.V.J.Kurian amassed assets disproportionate to his known sources of income and spent huge amounts for the education of children. Sri.V.J.Kurian misused CIAL facilities and services of employees for the marriage of his son.



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7. In paragraph No.8, it has been stated that though quick verification was conducted regarding the allegations raised in paragraph No.7, extracted hereinabove, the same were found to be baseless and false. In paragraph No.9, it has been stated that regarding allegations such as procurement of large quantity of shares of CIAL by the petitioner through his benami named Sri.Sebastian was not included in QV No.33/2016/EKM. Thus the Vigilance wants to conduct quick verification based on the order.

8. The learned Public Prosecutor also argued that since the present complaint was lodged, which led to passing of Annexure A2 order, in the year 2020, Section 17A of the Prevention of Corruption (Amendment) Act, 2018 (hereinafter referred to as 'PC Act, 2018' for short) would apply and therefore, for conducting enquiry as per Annexure A2 order, prior approval under Section 17A of the PC Act,



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2018 is necessary for which the prosecution already applied for.

9. Although the learned counsel for the petitioner did not argue the necessity for prior approval under Section 17A of the PC Act, 2018 initially when the learned Public Prosecutor pointed out this aspect, the learned counsel for the petitioner also canvassed the said point.

10. In this case, in paragraph No.8 of Annexure A2 order, the learned Special Judge also doubted the taboo under Section 17A of the PC Act, 2018 and found that the prime allegation in the complaint is with respect to accumulation of the shares by the 6<sup>th</sup> respondent, an outsider, (said to be a benami of the 1<sup>st</sup> respondent) in CIAL contrary to Employees Stock Ownership Plan though by virtue of the said policy, the employees in the CIAL alone were entitled to get share at its face value and also during right issue of shares. Though the Special Judge found that since the allegation would indicate that





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a non-employee of CIAL obtained a huge shares of CIAL through Employees Stock Ownership Plan without any entitlement contrary to the true scope and spirit of the Employees Stock Ownership Plan (ESOP), prior approval under Section 17A of PC Act,2018 is not applicable in the present case.

11. In this connection, it is relevant to refer the decision of the Apex Court in **State of Rajasthan V. Tejmal Choudhary**, reported in **2022(2) KHC 49**, wherein the Apex Court addressed the question as to whether Section 17A of the PC Act, 2018 is retrospective in operation. In the said decision, the Apex Court held in paragraph Nos.11 and 12 as under:

“11. It is a well settled principle of interpretation that the legislative intent in the enactment of a Statute is to be gathered from the express words used in the statute unless the plain words literally construed give rise to absurd results. This Court has



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to go by the plain words of the Statute to construe the legislative intent, as very rightly argued by Mr.Roy. It could not possibly have been the intent of the Legislature that all pending investigations upto July, 2018 should be rendered infructuous. Such an interpretation could not possibly have been intended.

12. In his usual fairness, learned Senior Counsel appearing on behalf of the respondent does not seriously dispute the proposition of law that S.17A does not have retrospective operation. Learned Senior Counsel, however, argues that the Court might have looked into the merits and, in particular, the fact that investigation had ultimately been closed. We need not go into that aspect since the High Court has quashed the proceedings only on the ground of permission not having obtained under S.17A of the PC Act.”

12. In the decision in **Reena N.v. State of Kerala**, reported in **2025 KHC OnLine 726 : 2025 KLT OnLine 2286**, this Court considered the necessity of Sanction



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under Section 17A of the PC Act, 2018 in cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person and held that in such cases, prior approval under Section 17A of PC Act, 2018 is not necessary. In the said decision, this Court considered the necessity of sanction for which this Court considered the decision in **Nara Chandrababu Naidu V. State of Andhra Pradesh** reported in **2024 KHC OnLine 6031**, and held that a two Bench of the Apex Court expressed contrary opinion on the interpretation of Section 17A of the PC Act, 2018, as also its applicability to the subject case and referred the matter before the Constitution Bench and the said issue is now to be considered by a Constitution Bench of the Apex Court and the decision therein will hold the field thereafter. In the said case also, the Apex Court observed the observations in **Yashwant Sinha and**



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**Others vs. Central Bureau of Investigation**, reported in **(2020)**

**2 SCC 338**, and observed as under:

“60.(24) The judgment in case of **Yashwant Sinha and Others vs. Central Bureau of Investigation** (supra), relied upon by Mr.Salve also would not be of any help to the appellant. Mr.Slave has relied upon the observations made by Hon’ble Justice Joseph in his concurring judgment, which according to Mr.Rohtagi was a discordant note in variance with the main judgment of two judges. Be that as it may, what has been observed by Justice Joseph is that S.17A constitutes a bar of any enquiry, inquiry or investigation without the previous approval of the concerned authority. The said observation nowhere states that S.17A shall operate retrospectively or retroactively.”

13. In the instant case, the allegation in the complaint, for which a quick verification was ordered as per Annexure A2, is regarding the allegation as to procurement



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of large quantity of shares of CIAL by the petitioner through a benami named Sebastian.

14. In this connection, the provisions of the Prohibition of Benami Property Transactions Act, 1988 (hereinafter referred to as 'the Benami Prohibition Act') have significance. As per Section 3 of the Benami Prohibition Act, no person shall enter into any benami transaction and whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. As per Section 5 of the Benami Prohibition Act, any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government and Section 4 of the Benami Prohibition Act prohibits the right to recover the property held as benami. It is true that in August 2022, a three-judge bench of the Hon'ble Supreme Court declared that Section 3(2) of the



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Benami Prohibition Act (jail provision for benami transactions) was unconstitutional, calling it "manifestly arbitrary". The Court also held that the stricter provisions under the 2016 Amendment were ruled not to be retrospectively applicable, meaning that prosecutions and confiscations for benami transactions that took place before 25.10.2016 were quashed. On 18.10.2024, the Supreme Court recalled (overturned) its August 2022 judgment. The reason stated for the recalling of the judgment is that the earlier decision had ruled the provisions unconstitutional without any party raising that constitutional challenge. The recall means the 1988 Act's provisions (including jail terms and confiscation) are valid and still in force, though the case has been sent for reconsideration by a new bench designated by the Hon'ble Chief Justice.



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15. It is true that as per Section 17A of the PC Act, 2018, conduct of enquiry or inquiry or investigation by a police officer for any offence alleged to have been committed by a public servant under the PC Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval. So Section 17A of the PC Act, 2018 would apply only when an offence alleged to have been committed by the public servant under the PC Act where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval. Purchasing shares by the public servant as benami in the name of a third person is not within the domain of Section 17A of PC Act, 2018. In this case, an investigation as to commission of offences punishable under



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the benami Prohibition Act also steps in, where offences under the PC Act, 2018 also involved. Purchasing public property under a benami would not come within the purview of Section 17A of the PC Act, 2018.

16. In this connection, it is relevant to refer the decision of the Apex Court in **Vineet Narain v. Union of India** reported in **(1988) 1 SCC 226**, where the Apex Court held that constitutional courts have wide powers under Articles 32 and 226 of the Constitution of India to order investigations by independent agencies like the CBI in appropriate cases to uphold the rule of law.

17. In another decision in **Manoj Surana v. Sunil Arora & Others**, reported in **(2018) 5 SCC 557**, the Apex Court reiterated that no statutory ban can restrict the powers of the constitutional courts to order investigations.





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18. In this connection, it is relevant to refer a latest decision of the Apex Court in **Pradeep Nirankarnath Sharma v. State of Gujarat**, reported in **(2025) 4 SCC 818**. In the said decision, the facts considered by the Apex Court were that the appellant therein had sought a writ of mandamus directing the respondent authority to conduct a preliminary enquiry before registering any First Information Report (FIR) against him for the acts performed in his official capacity, where the appellant was a retired Indian Administrative Service (IAS) officer, who served in various administrative capacities, including as that of Collector of Kachchh District of Gujarat between 2003 and 2006. Several FIRs have been registered against the appellant in connection with alleged irregularities in land allotment orders passed during his tenure as the Collector. The allegation mainly is that of abuse of official position, corrupt practices and financial irregularities in



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the allotment of government land. Aggrieved by the registration of multiple FIRs, the appellant approached the High Court of Gujarat under Article 14, 20, 21, 22 and 226 of the Constitution of India, and sought the relief of issuance of a writ of mandamus or any other appropriate writ or order or direction, directing the respondent authorities to conduct a preliminary enquiry before registering any further FIRs against him.

19. The State of Gujarat opposed the petition and argued before the High Court that the relief sought by the appellant was legally untenable, contending that once information regarding the commission of a cognizable offence is received, the police authorities are duty bound to register FIR under Section 154 of the Code of Criminal Procedure, and granting the appellant's request for a mandatory preliminary enquiry would amount granting him a blanket protection



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against the investigation, which is impermissible under the law. The State also contended that reliance placed by the appellant in the decision in **Lalita Kumari v. State of U.P.** reported in **(2014) 2 SCC 1**, was misplaced, as the judgment itself clarified that the preliminary enquiry would be required only in limited categories of cases, such as family disputes, commercial matters and medical negligent cases. Accepting the contention raised by the State of Gujarat, the High Court dismissed the appeal holding that granting a blanket direction for a preliminary enquiry in all cases involving the appellant would amount to judicial legislature which was impermissible.

20. In paragraph Nos.14 and 15 of the above judgment, the Apex Court held as under:

“14. The scope of preliminary inquiry, as clarified in the said judgment, is limited to situations where the information received does not prima facie disclose a cognizable offence but requires verification.



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However, in cases where the information clearly discloses a cognizable offence, the police have no discretion to conduct a preliminary inquiry before registering an FIR. The decision in Lalita Kumari does not create an absolute rule that a preliminary inquiry must be conducted in every case before the registration of an FIR. Rather, it reaffirms the settled principle that the police authorities are obligated to register an FIR when the information received prima facie discloses a cognizable offence.

15. In the present case, the allegations against the appellant pertain to the abuse of official position and corrupt practices while holding public office. Such allegations fall squarely within the category of cognizable offences, and there exists no legal requirement for a preliminary inquiry before the registration of an FIR in such cases.”

21. Thus, in the above case, the appellant sought for a preliminary enquiry in tune with the mandate in the



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decision in **Lalita Kumari's** case (*supra*). Following the ratio in **Pradeep Nirankarnath Sharma's** case (*supra*), in the decision in **Vinod Kumar Pandey v. Seesh Ram Saini**, reported in **2025 KHC OnLine 6782**, where the facts of the case is that *the complainants filed complaints against CBI officers alleging procedural irregularities in document seizure and abuse of official authority including intimidation and coercion. Complainants approached Delhi Police seeking FIR registration but faced reluctance from Police authorities to investigate CBI officers. Subsequently, complainants filed writ petitions in High Court seeking directions for FIR registration. Appellants approached the Supreme Court after their Letters Patent Appeals were dismissed as not maintainable, challenging the Single Judge's order that found prima facie cognizable offences and directed Police to register FIRs. Questions that arose for consideration were: whether*



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*complaints alleging procedural irregularities and abuse of official position by CBI officers disclose cognizable offences warranting mandatory FIR registration and whether Constitutional Court can direct FIR registration when the concerned agency's preliminary inquiry concluded no cognizable offence existed.*

22. In the said decision, the Apex Court held in paragraph No.27 that *where the allegations pertain to the abuse of official position and corrupt practices while holding public office, such actions fall squarely within category of cognizable offences and therefore, they are to be inquired into, and holding of any preliminary inquiry before the registration of the FIR is not necessary. If the information provided to the police or the preliminary report discloses a commission of a cognizable offence, the police is duty bound under S.154 Cr.P.C. to register an FIR without any delay.*



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23. It is true that, in the above two decisions, the Apex Court not addressed the mandate of Section 17A of PC Act, 2018. However, in paragraph No.40, the Apex Court held that *in view of the law laid down in Lalita Kumari vs. Government of Uttar Pradesh and Ors., and reiterated thereafter to the effect that registration of FIR is mandatory under S.154 Cr.P.C. if the information discloses commission of a cognizable offence and no preliminary inquiry before FIR is permissible in such a situation; however, if the information received does not disclose a cognizable offence but indicates necessity of an inquiry being conducted, a preliminary inquiry may be conducted only to ascertain facts disclosing cognizable offence, if any.*

24. On a cursory look on the statement filed by the Dy.S.P., VACB, Ernakulam Unit, it is stated in Paragraph No.11 that *it is respectfully submitted that the order from the*



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*Court of the Enquiry Commissioner and Special Judge (Vigilance), Muvattupuzha is forwarded to Director VACB for approval for conducting Quick Verification.*

25. It is argued by the learned Public Prosecutor that in view of the submission made in paragraph No.11 extracted above, the prior approval is awaiting, but the same has not been obtained so far because of the stay in operation.

26. On scrutiny of the materials, along with the statement filed by the Investigating Officer to get prior approval under Section 17A of the PC Act, 2018, there is no necessity to interfere with the order impugned and the further steps as per the order can be proceeded on getting approval under Section 17A of the PC Act, 2018, sought for.

Holding so, this petition stands disposed of.

Interim order of stay granted by this Court stands vacated.





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Registry is directed to forward a copy of this order to the Special Court forthwith.

**Sd/-  
A. BADHARUDEEN  
JUDGE**

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APPENDIX OF CRL.MC 991/2023

PETITIONER ANNEXURES

|             |                                                                                                                                                                       |
|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Annexure A1 | CERTIFIED COPY OF THE PRIVATE COMPLAINT AS CMP 300/2020 FILED BEFORE THE ENQUIRY COMMISSIONER & SPECIAL JUDGE (VIGILANCE), MUVATTUPUZHA                               |
| Annexure A2 | CERTIFIED COPY OF THE ORDER DATED 18.01.2023 PASSED BY ENQUIRY COMMISSIONER & SPECIAL JUDGE (VIGILANCE), MUVATTUPUZHA FORWARDING CMP 300/2020 TO DYSP, VACB ERNAKULAM |
| Annexure A3 | TRUE COPY OF THE JUDGEMENT DATED 10TH JANUARY 2020 OF HON'BLE HIGH COURT OF KERALA IN WRIT PETITION NO.8011 OF 2014                                                   |