

(2026) 01 KL CK 1734

In the High Court Of Kerala

Case No : Criminal Revision Petition No. 713 Of 2025

Deputy Superintendent Of Police Vacb Thrissur Unit,
Represented By The Additional Public Prosecutor

APPELLANT

Vs

M P Sudhakaran Former Special Tahsildar

RESPONDENT

Date of Decision : 27-01-2026

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 438, 442
Indian Penal Code, 1860 — Section 120B, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Judges (Protection) Act, 1985 — Section 2, 2(a), 3

Citation : (2026) 01 KL CK 1734

Hon'ble Judges : A.Badharudeen, J

Bench : Single Bench

Advocate : Rajesh.A, Rekha.S, N.U.Harikrishna, Mithun Baby John

Final Decision : Partly Allowed

Judgement

A.Badharudeen, J

1. This criminal revision petition has been filed under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, by the prosecution, challenging order dated 09.12.2022 in CrI.M.P.No.572/2016 in C.C.No.12/2013 on the files of the Enquiry Commissioner and Special Judge, Thrissur, whereby the learned Special Judge discharged accused Nos.1 to 3 in the above case.

2. Though notice was served upon the respondents 1 and 2, the 1st respondent appeared through counsel. The notice issued to the 2nd respondent by registered post was returned with endorsement "unclaimed". Thereafter, notice was served upon the 2nd respondent through the Station House Officer concerned, and a memo to that effect also has been filed. Heard the learned Special Public Prosecutor as well as the learned counsel for the 1st respondent.

3. Here, the prosecution alleges commission of offences punishable under

Sections 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act, 1988' for short) as well as under Sections 468, 471, 420 and 120B of the Indian Penal Code (hereinafter referred to as 'IPC' for short) by accused Nos.1 to 3.

4. According to the learned Special Public Prosecutor, even though the finding of the Special Court granting protection to the 1st accused under the provisions of the Judges (Protection) Act, 1985 (hereinafter referred to as 'the Judges (Protection) Act' for short), has force, the discharge of the 3rd accused, who is a document writer alleged to have forged and falsified the sale deed which led to SM proceedings could not be spared from criminal prosecution by way of discharge and the learned Special Judge went wrong in finding otherwise to discharge him.

5. The learned counsel for the 1st accused/1st respondent canvassed confirmation of the order in view of the protection given to the 1st accused, who was the Special Tahsildar, Land Tribunal, who acted as a quasi-judicial body while issuing the purchase certificate, which, according to the prosecution, is a fraudulent one. In this connection, he has placed reliance on the decision of this Court in Remadevi K.P. v. Dy.Superintendent of Police, reported in 2025 KHC OnLine 827, wherein this Court while quashing the case against the retired Deputy Collector, who served as the Revenue Divisional Officer, Kozhikode, on the finding that he had exercised a quasi-judicial function in paragraph Nos.5, 6, 8, 9 and 10 observed as under:

"5. The learned Public Prosecutor placed a constitution of Division Bench of the Apex Court in Jaswant Sugar Mills Ltd. Meerut v. Lakshmi Chand and Others reported in [1963 KHC 538], with reference to paragraph Nos.11 and 13 and in paragraph No.13, the Apex Court enlisted the essentials to be satisfied to make a decision or an act judicial. The same as under:

13. To make a decision or an act judicial, the following criteria must be satisfied:

1) it is in substance a determination upon investigations of a question by the application of objective standards to facts found in the light of pre existing legal rules;

2) it declares rights or imposes upon parties obligation affecting their civil rights; and

3) that the investigation, is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

In the said case, the Apex Court considered the order passed by a Conciliation Officer in granting or refusing permission to alter the terms of the employment of workmen, at the instance of the employer and held that the direction of the

Conciliation Officer under Clause 29 of the order could not be said to be purely administrative.

6. According to the learned counsel for the petitioner, when the essentials set out by the Apex Court as stated above or gone through, it could not be safely concluded that the petitioner exercised the power of quasi-judicial function so as to get protection. The learned Public Prosecutor also placed decision of this Court in Paul P.R. v. State of Kerala and Another reported in [2013 (2) KHC 692], where this Court addressed the question as to whether Land Acquisition Officer discharging the functions of the District Collector is entitled to claim protection under the Judges (Protection) Act and held that he is not entitled to get the benefit of Section 3 of the Judges (Protection) Act, 1985. Similarly, the learned counsel for the petitioner placed decision of this Court in Sunil Kumar P. v. State of Kerala and Another, reported in [2021 KHC 5052], where this Court held that the Tahsildar, who is exercising the power of a Land Tribunal, is exercising quasi-judicial power. Likewise, in another decision in Santhosh Kumar G. v. State of Kerala reported in [2021 KHC 393], this Court appraised the question as to whether protection is available to the Kerala Value Added Tax Assessment Authority and held in the affirmative.

7. xxxx

8. Section 2 of the Judges (Protection) Act, 1985 defines the term 'Judge' as follows:

"In this Act, "Judge" means not only every person who is officially designated as a Judge, but also every person-

(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in clause (a)."

9. Section 3 of the Judges (Protection) Act, 1985 further provides as under:

"Additional Protection to Judges

(1) Notwithstanding, anything contained in any other law for the time being in force and subject to the provision of subsection

(2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section (1) shall debar or affect in any manner, the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in

force to take such action (whether by way of civil, criminal or department proceeding or otherwise) against any person who is or was a Judge."

10. Going by the Apex Court judgment in Jaswant Sugar Mills's case (supra), in order to find out whether an order passed by the authority of a quasi-judicial nature may not be a nomenclature to the officer to describe him as a Judge or a Judicial Officer and what would require is whether, by the virtue of the said Act, the officer declares rights or imposes obligation upon parties affecting their civil rights and whether the investigation, enquiry or the proceedings are subject to certain procedural articles contemplating an opportunity of presenting its case to a party ascertaining the facts by means of evidence on the fact disputed and if the dispute be on question of law on the presentation of legal arguments and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact. When an authority exercises a statutory power with the above requirements, for which, challenge by way of revision and appeal have been provided by the same statute, the said order should not be relegated as an order either of executive or an administrative nature, such order should be characterized as a quasi-judicial order and the officer, who passed the order, which is the core plank of this crime, thus, entitled to protection under Section 2(a) r/w 3 of the Judges (Protection) Act, 1985. Holding so, the FIR registered against the petitioner herein who had exercised quasi-judicial functions will not sustain in the eye of law."

6. According to the learned counsel for the 1st respondent/1st accused, since issuance of the SM proceedings is a quasi-judicial function exercised by the accused as the Special Tahsildar, he is entitled to protection in view of Sections 2 and 3 of the Judges (Protection) Act and therefore, the discharge granted by the learned Special Judge in favour of the 1st respondent/1st accused is liable to be sustained.

7. On going through the decision extracted herein above, in Sunil Kumar P. v. State of Kerala and Another, reported in [2021 KHC 5052], where this Court has specifically held that the Tahsildar who has been exercising the power of Land Tribunal is exercising quasi-judicial power. If so, the order of the Special Court discharging the 1st respondent/1st accused giving protection under the Judges (Protection) Act is only to be sustained though the meritorious consideration of the discharge petition is found to be unsustainable.

8. As submitted by the learned Special Public Prosecutor, it is discernible from the order that the specific allegation against the 2nd respondent / 3rd accused is that, being a document writer, he had forged and falsified a sale deed which led to issuance of purchase certificate. In such a case, how the 2nd respondent/3rd accused was discharged from all the offences cannot be justified from the order impugned. In this matter, it is discernible that apart from the offences under the PC Act, 1988, the prosecution has a specific case that accused Nos.1 to 3 had committed offences punishable under Sections 468, 471, 420 and 120B of IPC. Since the discharge of the 1st accused is found to be justifiable, no offences

under the PC Act can be tried by the Special Judge as of now, where the 2nd accused is no more. However, when allegation that the 3rd accused forged a sale deed and used the same as genuine by deceitful means to be discernible from the prosecution materials prima facie, offences under Sections 468, 471, 420 and 120B of IPC would attract against the 3rd accused, for which trial is absolutely necessary. Now the question is which court will try the case against the 3rd accused. Legal position in this regard also is not in dispute. Once charge has been framed by the Special Court, the trial shall be conducted before the Special Court and if no charge is framed by the Special Court, the trial shall be conducted by the competent Magistrate Court.

9. In view of the above, discharge of the 2nd respondent /3rd accused by the learned Special Judge while discharging all the accused is found to be unsustainable and the said order is interfered and discharge given to the 2nd respondent/3rd accused is set aside.

10. In the result, this criminal revision petition is allowed in part. The challenge against the discharge of the 1st respondent/1st accused is found to be meritless and accordingly, the discharge of the 1st accused is found to be sustainable.

11. At the same time, the order is interfered and set aside insofar as the discharge granted to the 2nd respondent /3rd accused is concerned, with direction to him to appear before the Special Court concerned on 19.02.2026 positively. On his appearance, or by securing his appearance if he fails to appear as directed, the learned Special Judge is directed to transmit the case to the Chief Judicial Magistrate for trying the 2nd respondent/3rd accused for the offences under the IPC.

Registry is directed to forward a copy of this order to the Special Court forthwith for information and further steps..