

(2008) 12 KL CK 0013

In the High Court Of Kerala

Case No : Writ Petition (C) No"s. 13804 and 20817 of 2008

Padmarajan, C.V.

APPELLANT

Vs

Government of kerala and Others

RESPONDENT

Date of Decision : 15-12-2008

Acts Referred:

Constitution of India, 1950 — Article 141, 21
Criminal Procedure Code, 1973 (CrPC) — Section 120, 177, 178, 179, 188
Electricity (Supply) Act, 1948 — Section 18, 78A, 82
Penal Code, 1860 (IPC) — Section 109, 120B, 21, 307 , 326
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 19, 3, 3(1)

Citation : (2008) 12 KL CK 0013

Hon'ble Judges : V. Ramkumar, J

Bench : Single Bench

Advocate : N. Dharmadan and D.P. Renu, Ajith Narayanan and P.S. Biju, for the Appellant; K.K. Raveendranath, Addl. Director General of Prosecutions and P.N. Sukumaran, Philip T. Varghese and M.F. Mohammad Siyad, for the Respondent

Judgement

V. Ramkumar, J.

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THE TWO WRIT PETITIONS

W.P.(C) 13804 of 2008 is filed by the 5th accused, C.V. Padmarajan who was the Minister for Electricity and Coir in the State of Kerala for the period from 1991-1995 when the Ministry led by the United Democratic Front ("UDF" for short) was in power in the State of Kerala. The prayer in the said Writ Petition filed on 28-4-2008 is the following:

(a) issue a writ of certiorari or other writ or order to quash Ext.P-1 charge-sheet and Ext. P-2 summons and thereby upholding the protections of the Petitioner under the provisions of Sections 188 and 197(1) Code of Criminal Procedure.

(b) declare that the Vigilance Court, Thrissur has no jurisdiction and legal authority to proceed with Ext. P-1 charge-sheet and P-2 summons against the Petitioner.

(c) issue a writ of mandamus or other writ or order or direction directing the Respondents 1 to 4 to drop the prosecution proceedings now initiated against the Petitioner without any sanction from the competent authorities under Sections 188 and 197(1) Code of Criminal Procedure.

(d) Issue such other reliefs as this Hon"ble Court deems fit and proper in the circumstances of this case.

Respondents 1 to 4 in the said Writ Petition are:

(i) Government of Kerala, represented by the Secretary to the Government, Vigilance and Home Affairs Secretariat, Thiruvananthapuram

(ii) Sheristadar, Enquiry Commissioner and Special Judge, Vigilance, Thrissur

(iii) Director of Vigilance and Anti-corruption, Thiruvananthapuram

(iv) Superintendent of Police, Vigilance and Anti-corruption Bureau, Special Cell, Ernakulam.

Subsequently, on 24-6-2008 the Petitioner filed I.A. No. 8028 of 2008 for amendment of the Writ Petition so as to include two additional grounds that the Vigilance Judge committed an illegality in taking cognizance of the offences against the Petitioner against whom no offence was actually made out and that there was unexplained long delay of 15 years from the date of occurrence and

also to include the following additional prayer:

(d) to declare that Ext. P-1 charge-sheet does not disclose any offence and hence Ext. P-1 and P-2 are unsustainable in law and void ab initio.

2. Writ Petition (C) No. 20817 of 2008 is filed by the first accused R. Narayanan who was the Chairman of the Kerala State Electricity Board (K.S.E.B. for short) during the period from 20-8-1991 to 19-6-1993. The reliefs prayed for in the said Writ Petition are the following:

(a) Issue a writ of certiorari or any other appropriate writ, order or direction, issue quashing Ext. P-1 charge-sheet as illegal and unsustainable after calling for and perusing the records leading to the same.

(b) issue a writ of mandamus or any other appropriate Writ, Order or Direction directing Respondents 1 to 4 to drop the prosecution proceedings initiated in C.C. No. 3 of 2008 before the Vigilance Court, Thrissur against the Petitioner, since it is violative of Section 4(2) of P.C. Act, 197(1) and 188 of Code of Criminal Procedure.

(c) declare that the Vigilance Court, Thrissur is not having territorial jurisdiction and legal authority to proceed with Ext. P-1 charge-sheet against the Petitioner.

(d) declare that Ext. P-1 does not disclose any offence against this Petitioner and hence Ext. P-1 is unsustainable and void ab initio.

(e) issue such other reliefs as this Hon"ble Court deems fit and proper in the factual circumstances of the case.

(f) award cost to the Petitioner to the proceedings.

Respondents 1 to 4 in this Writ Petition and W.P. (C) No. 17804 of 2008 are the same.

THE ADVOCATES WHO APPEARED

3. I heard Senior Advocate Sri N. Dharmadan appearing for the Petitioner (A-5) in W.P.(C) 13804 of 2008, Adv. Sri V. Ajith Narayanan, the Learned Counsel appearing for the Petitioner (A-1) in W.P.C. 20817 of 2008, Advocate Sri P.S. Biju appearing for R. Sivadasan (A-3-7th Respondent in W.P.C. 13784/08) former Chairman of K.S.E.B. who took over from first accused R. Narayanan and Adv. Sri K.K. Raveendranath, the learned Addl. Director General of Prosecutions and Adv. Sri P.N. Sukumaran, the learned Public Prosecutor appearing for the State.

THE FORMER POWER MINISTER'S (A-5) STAND

4. Sr. Adv. Sri N. Dharmadan, the learned Counsel appearing for the Petitioner (A-5) in W.P.(C) 13804 of 2008 made the following submissions before me:

The gist of the charge is that accused Nos. 1 to 10 entered into a criminal conspiracy hatched at several official levels at different places within and outside

India at different times since 1991 with the dishonest intention of securing the project contract of 5 diesel power generators in the Bhramapuram Diesel Plant at Ernakulam, in favour of A-11 to A-13 representing a French Company namely S.E.M.T. PIELSTICK for a price escalated than the original price charged by the said Company for the supply of similar D.G sets to the Karnataka State Electricity Board for their Yelahanka Diesel Project causing wrongful loss to the Kerala State Electricity Board (K.S.E.B. for short) and wrongful gain to the said French Company. It has also been alleged in the charge that A-1, A-2, A-4 and A-7 had travelled to France and visited the plant and factory of the French Company (A-13) and held deliberations with A-4. The main overt act alleged in the charge-sheet against the Petitioner (A-5) is that on 25-10-1991 A-5 sent a letter to the Central Power Minister pursuant to a letter received by A-5 from A-6 and subsequently on 2-12-1992, A-5 approved the Memorandum Of Understanding ("MOU" for short) signed on 19-1-1992 by the Chairman of the K.S.E.B. at Paris in France. The proposal to set up a 100 mega watt (MW) Diesel Station was accepted by the State Planning Board way back in the year 1986 and K.S.E.B. was directed to take necessary action. Accordingly, the Central Electricity Authority was approached for sanction and a statutory notification was published. On 2-4-1987, the Left Democratic Government ("LDF" for short) came into power in the State of Kerala with Sri E.K. Nayanar as the Chief Minister and Sri T. Sivadasa Menon as the Power Minister. The said LDF Government was also making strenuous efforts for getting clearance for the Project from the Government of India and other Central Agencies. A major breakthrough came on 19-2-1991 when Debashish Mazumdar (A-6) met Sivadasa Menon at Delhi and offered to supply D.G sets and machinery as were supplied to the Yelahanka Project in Karnataka State with suitable commercial adjustments for the time lag. Sivadasa Menon had noted in the files that the suggested scheme was beneficial to the State and directed further examination and discussion with the parties. On 12-4-1991, the K.S.E.B. signed an MOU with S.E.M.T. PIELSTICK of France and Anr. MOU with the CDE a French Financial Agency for the Kasaragod Project. The price agreed upon was higher than that of Yelahanka. On 3-7-1991 the United Democratic Front ("UDF" for short) came into power in the State of Kerala with Sri K. Karunakaran as the Chief Minister and the Petitioner (A-5) as the Power Minister. Since certain objections were raised regarding the site selected for the Kasaragod Project the K.S.E.B. eventually opted for Bhramapuram in Ernakulam District instead of Kasaragod. An MOU similar to that of Kasaragod Project was executed at Paris by the K.S.E.B. and S.E.M.T. PIELSTICK for the Bhramapuram Project. It was a decision taken by the K.S.E.B. itself. The K.S.E.B. is legally competent to do so without any direction either from the Government or from the Petitioner (A-5) who was then the Power Minister. Subsequently the K.S.E.B. succeeded in getting all clearance for the project from the Central Government Agencies. When the Central Government insisted on State Government guarantee, approval of the MOU became necessary. It was at that stage that on the recommendations of the then Power Secretary the Petitioner approved the MOU which had been signed from Paris. After deciding to give State Government

guarantee for the project the file was circulated to the Finance Minister and Chief Minister and finally to the Council of Ministers. The whole proceedings were approved by the said Ministers as well as the Council of Ministers. Thereafter a tripartite agreement was executed and thereupon the MOU became a full-fledged contract binding on the parties. Going by the functions of a Minister as prescribed in the Rules of Business sanction from the Council of Ministers is not necessary for the Minister to approve an MOU. Such acts are only part of his routine official duties in his capacity as a Minister. Moreover the Rules of Business are not justiciable. Ext. P-1 charge-sheet is the product of political vendetta. A-5 relies on the decisions in *State of Andhra Pradesh Vs. P.V. Pavithran*, *Ramanand Chaudhary Vs. State of Bihar and others*, *Board of Trustees for the Port of Board of Trustees for the Port of Calcutta and another Vs. Bombay Flour Mills Pvt. Ltd. and another*, and *Lambodaran Nair v. State of Kerala* 2003 (1) KLT 115 in this context. The sword of Damocles has been hanging over the head of A-5 since 17-8-1999, the date on which the F.I.R. was registered against A-5 and Ors. . The Enquiry Commissioner and Special Judge, Thrissur ("Vigilance Court" for short) had no territorial jurisdiction to take cognizance or deal with any of the offences alleged in Ext. P-1 charge-sheet. In this case the acts alleged against the accused constituting the offences were all done either at Thiruvananthapuram or at Paris in France. So the Vigilance Court, Thrissur had no jurisdiction to take cognizance of the offences, much less, issue summons to the accused. That Court has no jurisdiction to try those offences. The cognizance taken by that court is illegal, null and void and liable to be quashed. Moreover, since the acts alleged against the Petitioner were committed while acting or purporting to act in discharge of his official duty as Minister, even if Section 19 of the Prevention of Corruption Act, 1988 is not attracted for the reason that the Petitioner has ceased to be a public servant, the provisions of Section 197 Code of Criminal Procedure are squarely attracted and the prosecution of the Petitioner (A-5) for want of sanction u/s 197 Code of Criminal Procedure is illegal and liable to be quashed. The cognizance taken and summons issued by the Vigilance Court, Thrissur for the offences allegedly committed outside India is also bad for the reason that the previous sanction of the Central Government has not been obtained under the proviso to Section 188 Code of Criminal Procedure before the commencement of inquiry and the act of taking cognizance and issuing process is part of the enquiry before the Court.

STAND OF A-3 (FORMER CHAIRMAN OF K.S.E.B)

5. Adv. Sri P.S. Biju, the Learned Counsel appearing for the 3rd accused (R. Sivadasan) made the following submissions before me in support of W.P.C. 13804 of 2008 in which he is the 7th Respondent:

The 3rd accused is a member of the Indian Railway Account Service (IRAS). It was 11 years after the 3rd accused left the K.S.E.B. as its Chairman that he is being prosecuted. The contract with the French Company S.E.M.T. PIELSTICK was signed during January 1992 at a time when the first accused in the case was

the Chairman of the KSEB. The 3rd accused came as a Chairman long thereafter and except for the fact that the conditionalities in the contract already signed got their approval during the tenure of the 3rd accused, he had absolutely no role to play in the alleged commission of the offences. Apart from the fact that the police charge is vague and incomplete for want of details regarding the place, date and time of occurrence as mandated by Section 212 of Code of Criminal Procedure the State Government is prosecuting officials for the project fixed and approved by the Government of India and the Central Electricity Authority for which the President of India has stood guarantee. There is a specific clause in the guarantee by the Government of India that the guarantee will be governed by the French Law. The allegations in Ext. P-1 charge are in relation to a project in which the Government of Kerala and the French Government are parties. French Nationals are also accused under Ext. P-1 charge-sheet. Therefore the case cannot be tried without the prior approval of the Government of India. This Respondent supports the Writ Petition filed by the 5th accused also besides raising these additional grounds.

STAND OF A-1 (FORMER CHAIRMAN OF K.S.E.B.)

6. Advocate Sri Ajith Narayanan, the learned Counsel appearing for the first accused (R. Narayanan) who has filed W.P.C. 20817 of 2008 made the following submissions in support of the said Writ Petition:

The first accused was the former Chairman of the K.S.E.B. He had worked in various capacities as the Additional Chief Secretary to the Government of Kerala, Chairman of the State Pay Commission, Chairman of Food Corporation of India and Commissioner of Travancore Devaswom Board etc. He was the Chairman of the K.S.E.B. during the period between 20-8-1991 and 19-6-1993.

It was he who signed the MOU at Paris on 19-1-1992 and the said MOU was approved by A-5 the Power Minister on 2-12-1993. The MOU is not a binding contract but only a Memorandum of Understanding arrived at between parties who are interested in a given proposal. The subsequent negotiation of the proposal, approval of the agreement and signing of the contract etc. took place after A-1 ceased to be the Chairman of the K.S.E.B. The basic document is not the MOU signed in the case. It was A-4 (Bertran Netto) who was the Chief Engineer of K.S.E.B. who placed orders with A-13 the French Company on 3-12-1993. The agreement was finally executed on 16-12-1993 between A-4 and A-13. The price structure was re-scheduled on 14-12-1993 at the instance of A-4. A-1 had nothing to do with the K.S.E.B. after 19-6-1993. MOU is only a precursor to a binding contract. If signing of an MOU would amount to an a binding contract then an MOU had been signed for the Kasaragod Project also but the Central Electricity Authority was not in favour of the thermal plant being installed at Kasaragod. A-1 also presses into service Section 188 Code of Criminal Procedure as also the decision of a Full Bench of this Court at para 20 in Samaruddin v. Asst. Director of Enforcement 1999 (2) KLT 794. Going by Sections 18, 78A and 82 of the Electricity Supply Act, the action of signing the

MOU has been done in good faith and consistent with the policy of the State Government. The statement of C.W. 45 who was the Area Manager of the French Company (A-13) has not been recorded nor produced before Court. It was C.W. 45 who signed the MOU on behalf of A-13. It was he who sent the basic documents as also the reply dated 2-8-1991 to A-2. This Respondent also supports the contentions of the other accused persons including A-3 and A-5.

STAND OF THE PROSECUTION

7. Adv. Sri K.K. Raveendranath, the learned Addl. Director General of Prosecutions and Adv. Sri P.N. Sukumaran, the learned Public Prosecutor made the following submissions before me in opposition to the Writ Petitions:

The following is the chronological events leading to the registration of the F.I.R., commencement of the investigation and filing of charge-sheet before the court below:

10-4-1991 Discussion by Deputy Chief Engineer R and P with Karnataka Electricity Board Officers regarding the Yelahanka Project.

16-7-1991 Accused No. 2 Moorthy sent letter of interest to accused No. 6 Mazumdar, who is the Indian Collaborator of A-13, French Company regarding the Brahmapuram Project.

August 1991 A-13 sent an offer document in response to the letter 16-7-1991 of Accused No. 2. A draft MOU giving the price was sent. Price offered was 285.127 million French Franks

24-10-1991 A-6 sent letter to A-5 stating the benefit of the Diesel Power Plant. Yelahanka specifications of contract details were agreed to be supplied.

25-10-1991 A-5 sent letter to Central Minister asking for clearance.

7-12-1991 Accused No. 1, Narayanan, Chairman, sent a letter to the State Government requesting to sanction foreign tour for a team to discuss the matter with A-13 company at France.

20-12-1991 GO. No. 186/91/PD issued granting permission to send a team to France for having discussion with A-13 Company

14-1-1992 A-1, A-2, A-4 and A-7 went to France to have discussion with the company regarding their offer.

19-1-1992 MOU signed at Paris for a higher price than the price offered in the year 1991.

Offered price in the August 1991 offer was

equipment price ₹285.127 Million FRF Price in the MOU ₹291.510 Million FRF Difference ₹6.383 Million FRF Ocean freight and Insurance ₹4.7 Million FRF Total loss is ₹(Rs. 5.984 crores) ₹Including duplication of Ocean freight and

Insurance. 29-4-1992 A-1, placed the matter before the Bord Meeting of K.S.E.B. without submitting the contract document and offered price. Facing sheet of MOU alone was submitted and got the matter passed in the Board Meeting. The representation was that the proposal is as in Yelahanka.

27-11-1993 A-3 sent a letter to the Power Secretary stating the details of contract and the Power Secretary placed the matter before accused No. 5 the then Minister. A-3, A-4 and A-8 were Board Members.

2-12-1993 A-5 approved the MOU. This was without placing the matter before the Cabinet as enjoined by entry 16 of Schedule I of the Rules of Business.

3-12-1993 Secretary, KSEB noted the irregularity. But A-3, A-4 and A-8 who were Board Members put up note stating that approval of Minister is sufficient and authorized A-4 to place the order.

10-12-1993 Under Secretary put a query in the note file whether approval given to MOU can be considered as approval to the contract.

Power Secretary discussed the matter with A-5 Minister and put up a note "Discussed with M(elec) and Board order is as per his intention".

14-12-1993 Meeting of the Board and price structure changed. CIF converted to FOB and additional freight and insurance added. Total FRF remained the same.

A-2, A-3, A-8 and A-9 were the Board Members.

16-12-1993 Agreement signed between KSEB and accused No. 13

The question of sanction u/s 197 Code of Criminal Procedure can be considered only during the trial of the case. See P.K. Pradhan Vs. The State of Sikkim represented by the Central Bureau of Investigation, , Madhya Pradesh Special Police Establishment Vs. State of Madhya Pradesh and Others, and State of Maharashtra Vs. Devahari Devasingh Pawar and Others, . Committing an offence is no part of the official duty of a public servant. Hence, for prosecuting a public servant who has committed offences punishable under Sections 420, 120 B and related offences, no sanction is necessary u/s 197 Code of Criminal Procedure [See Harihar Prasad v. State of Bihar 1972 SCC Cri 409-Para 66, State of Kerala Vs. V. Padmnabhan Nair, , Parkash Singh Badal and Another Vs. State of Punjab and Others, , State of H.P. Vs. M.P. Gupta, , K. Satwant Singh Vs. The State of Punjab, , Bakhshish Singh Dhaliwal Vs. The State of Punjab, and Manohar Nath Kaul Vs. State of Jammu and Kashmir, . Equally misconceived is the contention based on Section 188 Code of Criminal Procedure It is true that the offences were committed both in India and abroad. But the agreement entered into by the accused was for committing the offence of making unlawful gain for the French Company and the criminal conspiracy hatched in this behalf will endure only when it is accomplished, abandoned or proved abortive. In other words, the agreement will continue until the unlawful object is achieved. Criminal conspiracy is a continuing offence and therefore by virtue of Section 181(4) Code of Criminal

Procedure until the object is achieved the criminal conspiracy does not vanish. See *Ajay Agarwal Vs. Union of India and others*, . Criminal conspiracy terminates at the place where the consequence ensues. Both the overt acts by A-5 were committed in India. Hence, Section 188 Code of Criminal Procedure is not attracted. Vide *Ajay Agarwal Vs. Union of India and others*, and *Shaikh Rafiq and Another Vs. State of Maharashtra*, . The offence of criminal conspiracy is a continuing offence and it has terminated in causing loss to the Brahmapuram plant of the K.S.E.B. and a corresponding gain to the French Company. The Vigilance Court, Thrissur has been assigned the territorial limits of Ernakulam District and since the Brahmapuram plant is situated in Ernakulam District, the Vigilance Court at Thrissur has jurisdiction to take cognizance of the offences and issue process to the accused. The act of taking cognizance of the offence and issuing process to the accused do not amount to "enquiry" within the meaning of Section 188 Code of Criminal Procedure even if the said provision is attracted in this case. Both the Writ Petitions deserve only to be dismissed.

JUDICIAL EVALUATION

8. The F.I.R. in this case was registered on 17-8-1999 as Crime No. VC. 4/99/SCE. Ext. P-1 in both these Writ Petitions is the final report dated 10-2-2008 filed by the Superintendent of Police, Vigilance and Anti Corruption Bureau (Spl. Cell) Ernakulam before the Court of the Enquiry Commissioner and Special Judge, Thrissur (hereinafter referred to as the Vigilance Court) on 11-2-2008. There are altogether 13 accused persons who are the following:

A-1 R. Narayanan, I.A.S., Former Chairman of K.S.E.B. Petitioner in W.P.C. 20817/08

A-2 Y.R. Moorthy, Former Member, K.S.E.B.

A-3 R. Sivadasan, Former Member and Chairman, K.S.E.B.

A-4 C.J. Bertram Netto, Former Chief Engineer, K.S.E.B.

A-5 C.V. Padmarajan, Former Minister for Electricity (A-5-Petitioner in W.P.C. 13804/08)

A-6 Debashish Mazumdar, Former General Manager, M/s A.T.C. Projects India Limited which was the Indian collaborator to S.E.M.T. PIELSTICK

A-7 Chandrasekharan (expired) Former Deputy Chief Engineer K.S.E.B.)

A-8 S. Janardhanan Pillai, Former Member, K.S.E.B.

A-9 M.K. Parameswaran Nair, Former Member, K.S.E.B.

A-10 G. Krishnakumar, Former F.A. and C.A.O., K.S.E.B.

A-11 Alfred Hirtz, Chairman, S.E.M.T. PIELSTICK, France

A-12 Andre Obis, Area Export Manager, S.E.M.T. PIELSTICK, France

A-13 M/s. S.E.M.T. PIELSTICK, France, represented by its Chairman, Board of Management.

Cognizance of the offences as against A-1 to A-10 was taken by the Vigilance Court on 12-2-2008 and on the same day summons was issued against A-1 to A-10. The case against A-11, A-12 and A-13 all of whom are French nationals has been kept in abeyance u/s 205 Code of Criminal Procedure since extradition proceedings are being taken against them.

HISTORICAL BACKGROUND

9. The historical backdrop of this case as narrated in paragraphs 4 to 5 of W.P.C. 13804 of 2008 which is not controverted in the counter-affidavit dated 30-5-2008 filed by Respondents 3 and 4 as furnished and in the synopsis and dates submitted by A-5 is as follows:

4-11-1986 The State Planning Board accepted the proposal to set up a 100 Megawatt Diesel Power Station in Kerala and directed the K.S.E.B. to take steps. The Central Electricity Authority also approved the proposal.

26-3-1987 The Left Democratic Front (LDF) Government came into power with Sri E.K. Nayanar as the Chief Minister and Sri Sivadasa Menon as the Electricity Minister.

19-2-1991 A-6 Debashish Mazumdar who was the Indian Collaborator of A-13 (S.E.M.T. PIELSTICK) met Sivadasa Menon and gave a letter offering to supply diesel generator sets and accessories on the same terms and conditions for which they were supplied to the Yelahanka Project in Karnataka with sufficient modifications as may be required for the time elapsed.

22-2-1991 Sri Sivadasa Menon endorsed on the said letter that the offer was essential to the State.

12-3-1991 Sri Sivadasa Menon held discussions with A-6, Chief Secretary, Power Secretary etc.

12-4-1991 Chairman of K.S.E.B. signed an MOU with A-13 at Paris for establishing the project at Kasaragod without any global tender by Cabinet approval. There was objection regarding the seashore site at Kasaragod and the Kasaragod Project did not get all clearance for installation.

24-6-1991 The U.D.F. Ministry came to power with Sri Karunakaran as the Chief Minister and the 5th accused as Power Minister. In the light of the objections regarding the site for the Kasaragod Project the K.S.E.B. opted for Anr. location for the project at Brahmapuram in Ernakulam District.

19-1-1992 Another MOU similar to the one signed for the Kasaragod Project on 12-4-1991 was signed by the Chairman, K.S.E.B. with A-13 at Paris.

2-12-1993 The 2nd MOU was placed for approval before the Government. It was approved by A-5 the Power Minister. The approval by the Minister was necessary

since the K.S.E.B. was availing funds on credit from the French Government for purchase of the Diesel Power Units on Central Government guarantee.

3-12-1993 A G.O. was issued.

16-12-1993 Agreement was executed.

24-7-1995 Sri V.S. Achuthanandan who was the then opposition leader raised allegations against the U.D.F. Government in general and A-5 in particular attributing corruption in the decision to purchase diesel power units.

27-1-1996 The U.D.F. Government decided to prosecute V.S. Achuthanandan for defamation.

7-2-1996 A complaint was filed before the Sessions Court, Thiruvananthapuram against V.S. Achuthanandan the then opposition leader for defamation punishable u/s 500 I.P.C. The said case was registered as S.C. 65/1996.

20-5-1996 L.D.F. Government headed by late E.K. Nayanar came to power.

28-6-1996 Justice Sivaraman Nair appointed as Enquiry Commissioner to inquire into the allegations.

6-7-1996 Due to the expiry of Justice Sivaraman Nair, Justice Bhaskaran Nambiar was appointed as the Commission of Inquiry.

11-4-1999 Justice Bhaskaran Nambiar Commission submitted its report.

30-6-1999 A decision was taken to withdraw the complaint against Sri V.S. Achuthanandan.

17-8-1999 FIR was registered in the case as Crime No. VC 4/99/SCE.

17-5-2001 U.D.F. Ministry led by Sri A.K. Antony came to power

18-5-2006 L.D.F. Ministry led by Sri V.S. Achuthanandan came to power.

11-2-2008 After investigation by more than 15 officers, the final report dated 10-2-2008 filed before the Vigilance Court, Thrissur.

12-2-2008 Cognizance of offences u/s 13(1)(c) and 13(1)(d) punishable u/s 13(2) of the P.C. Act, 1988 read with Sections 409, 420, 109 and 120 B I.P.C. taken by the Vigilance Court, Thrissur. Summons issued to A-1 to A-10 after registering the case as C.C. No. 3 of 2008.

DELAY IN INVESTIGATION-whether fatal

10. Even though delay in the commencement and conclusion of investigation is put forward as a ground for quashing the proceedings, since the F.I.R. was registered only after Justice Bhaskaran Nambiar Commission submitted its report on 11-4-1999, it cannot be held that during the period between 1991 and 1999 the Sword of Damocles was hanging over the head of any of the accused persons. As for the delay between the period from 17-8-1999, (that is, the date

of registration of the F.I.R.) to 10-2-2008 (that is, the date of filing the final report) during the period between 17-5-2001 and 18-5-2006, it was the U.D.F. Ministry which was in power. Having regard to the functional set up of the Vigilance Department and the colour taken and ostensible allegiance shown by that department, like many other departments, with the change of Ministry, there is every reason to believe that the investigation was impeded and had become quiescent for 5 years. There have been ever so many instances of the ruling party or the political executives misusing the Vigilance Department for settling scores against their political antagonists. There cannot be a worse tragedy in the life of an honest public servant than to be subjected to a vigilance enquiry at the verge of his retirement. Some of the executive orders like GO. (P) No. 65/92/Vig. dated 12-5-1992 issued by the bureaucrats also take away the freedom of the Vigilance Department rendering that department vulnerable to the executive supremacy of the party in power to such an extent as to offend the standards set for the police by the Apex Court in Vineet Narain and Others Vs. Union of India (UOI) and Another, . Just as an independent judiciary is inevitable for any democratic system of governance, an independent police machinery for crime detection and investigation is a sine qua non for the sustenance of any democracy and for preserving the faith of the people in the administration of justice. The investigation in this case gained momentum after the present L.D.F. Ministry came into power. Going by the publication issued in the year 2006 by the Kerala Legislature under the title "Legislators of Kerala", the Ministries which were in power in Kerala are as follows:

During the period between 26-3-1987 and 17-6-1991 it was L.D.F. Ministry led by Sri E.K. Nayanar,

From 24-6-1991 to 16-3-1995 it was U.D.F. Ministry led by Sri K. Karunakaran
For the remainder of the quinquennium from 22-3-1995 to 9-5-1996 it was the Ministry led by Sri A.K. Antony

From 20-5-1996 to 13-5-2001 it was LDF Ministry led by Sri E.K. Nayanar

From 17-5-2001 to 29-8-2004 it was U.D.F. Ministry led by Sri A.K. Antony which were in power in the State.

For the rest of the quinquennial period between 31-8-2004 to 18-5-2006 it was the U.D.F Ministry led by Sri Ummen Chandy which was in power. From 18-5-2006 onwards it is the L.D.F Ministry led by Sri V.S. Achuthanandan which is in power.

After assumption of power, one Ministry initiating vindictive action against their political rivals of the previous Ministry is also a wicked sport revelled in by the revengeful and power-hungry rulers. But in this case, it is too early to quash the police report and consequent prosecution at the threshold on the ground that the accused are prosecuted on account of political vendetta. Hence, I am not inclined to quash the proceedings on the ground of delay in the investigation and infringement of the constitutional right of "speedy trial" guaranteed under Article

21 of the Constitution, even if "investigation" could be stretched to the realm of "trial".

PROSECUTION SANCTION u/s 197 Code of Criminal Procedure

11. Now coming to the question of prosecution sanction, while u/s 19 of the Prevention of Corruption Act the accused should continue to be a public servant on the date of cognizance for the said provision to apply, u/s 197 Code of Criminal Procedure even if the accused public servant has ceased to be such public servant, prosecution sanction is a must for the court to take cognizance of the offence. Leaving aside the other conditions of Section 197 Code of Criminal Procedure regarding the official status of the public servant and the authority competent to accord prosecution sanction, the essence of the said provision is that no court shall take cognizance of any offence alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duty whether he is still in service or not. Thus, if a public servant is to be prosecuted for a criminal offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty, prosecution sanction u/s 197 Code of Criminal Procedure is a must. But the case law on prosecution sanction is at present in a mess. The requirement of sanction cannot depend on the personal prejudices or predilections of the Judge. While there is a long line of decisions of the Apex Court to the effect that offences like criminal conspiracy, cheating, criminal breach of trust and misappropriation etc. are not part of the official duty of a public servant, in the case of *R. Balakrishna Pillai Vs. State of Kerala*, the Apex Court held that on the allegation that in pursuance of the criminal conspiracy entered into by the Minister he abused his official position and illegally sold electricity to a private industry in Bangalore causing wrongful loss to the K.S.E.B. to the tune of more than Rs. 19 lakhs, the alleged act was directly and reasonably connected with his official duty as a Minister attracting the protection u/s 197 Code of Criminal Procedure Relying on the Constitution Bench decision of the Supreme Court in *M. Karunanidhi Vs. Union of India and Another*, it was held that a Minister was a public servant within the meaning of Section 21 of the I.P.C. Approving the ratio of the Bombay High Court in *Namdeo Kashinath Aher Vs. H.G. Vartak and Another*, it was held by the Supreme Court that the Minister could not be prosecuted without obtaining the sanction from the Governor of the State. But the reasoning discernible in all the other decisions relied on by the learned Addl. Director General of Prosecutions is to the contrary. For a better comprehension of the scope and amplitude of Section 197 Code of Criminal Procedure the following illustrations could be examined in the case of a police officer in different situations.

The allegation is that-

- (1) A police officer in uniform extorted money from a known goonda during the dead of the night.
- (2) Pursuant to a demand made by a police officer and as a consideration for

refraining from arresting the accused brother of the complainant, the police officer accepts a bribe from the complainant from the house of the police officer who is in plain clothes.

(3) A police officer in plain clothes while chasing a criminal in order to apprehend him during night shoots at the criminal who dies on the spot. The police officer is accused of having committed murder.

(4) After arresting an accused person a police officer interrogates him. On finding that the accused person gives prevaricatory answers, the police officer assaults him with a lathi. The police officer is accused of having committed offences punishable under Sections 326 and 506(i) I.P.C.

(5) After reaching home a police officer in uniform assaults his wife in the midst of their domestic quarrels.

(6) A police officer in uniform commits theft of gold ornaments from his neighbours house.

(7) A Sub Inspector of Police after taking money from A supervises and gives protection for the forcible construction of a boundary wall by A after trespassing into the neighbouring property of B.

In the case of illustrations 1 to 4 and 7 above it is only by virtue of his authority as a police officer that he is able to use or misuse his official position for committing crimes. In all those cases, the police officer is acting or purporting to act as such police officer, and, therefore prosecution sanction is inevitable. But in the case of illustrations 5 and 6 above, the offending acts were committed not under colour of office as a police officer and, therefore, in my view, no prosecution sanction would be necessary to prosecute him. The above illustrations will also indicate that it is not the uniform which decides the authority of the police officer concerned.

12. It is very often said that it is no part of a public servant to commit crimes. The said statement is indeed correct. But then, the same is the position in the case of an ordinary citizen too. It is only when a public servant commits an offence that the question of prosecuting him will arise and it is only when he is to be prosecuted for the alleged offence that the question of prosecution sanction will also arise. If such public servant were to act within the four corners of his authority, then he does not commit any offence. It is only when he commits an offence by transgressing the limits of his authority as such public servant that the law insists that he can be prosecuted for the offence only after obtaining the requisite sanction for prosecution. Thus, when compared to an ordinary citizen, a public servant enjoys an additional safeguard in the matter of prosecution for an offence. It is not as if he enjoys a total immunity from prosecution. The prosecution sanction is only a protection against vexatious prosecution of a public servant against whom there may be disgruntled elements nurturing extreme animosity for not obliging such elements.

13. As far as the present case is concerned the overt acts by each of the public servants including accused Nos. 1 and 5 and the circumstances under which and the purported position in which those public servants committed the aforesaid overt acts can be considered in a better way only by the trial court and that too, after trial. It will be hazardous for the trial court or for this Court in a Writ Petition to attempt a decision on that question at this stage of the proceedings. Hence I leave it to the Petitioners to raise the question of prosecution sanction u/s 197 Code of Criminal Procedure before the trial court at the appropriate stage when the whole factual gamut is within the comprehension of the Court.

ABSENCE OF SANCTION u/s 188 Code of Criminal Procedure.

14. I now proceed to consider the defence contention based on Section 188 Code of Criminal Procedure. The said Section reads as follows:

188. Offence committed outside India - When an offence is committed outside India-

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

In the case on hand, the case of the prosecution is that knowing that the K.S.E.B. proposed to augment its power generating capacity in the State by installing Diesel Power Plant at suitable locations, A-1 to A-13 hatched a criminal conspiracy on different dates within and outside India since 1991 with the dishonest and fraudulent object of securing purchase contract in favour of A-11 to A-13, accused Nos. 1 to 5 and 7 to 10 with corrupt or illegal means and without any public interest and by abusing their official position and with the active connivance of A-6, secured the contract for 5 Diesel Power Generator Sets, auxiliaries and other accessories for the Brahmapuram Project of the K.S.E.B. at an escalated price than the price for which A-13 had executed the contract for the Yelahanka Project of the Karnataka State Electricity Board resulting in wrongful loss to the K.S.E.B. to the tune of 4.7 million FRF = Rs. 5.984 crores and a corresponding pecuniary advantage to A-11 to A-13 and A-1 to A-13 have thereby committed offences u/s 13(1)(c) and 13(1)(d) punishable u/s 13(2) of the P.C. Act and Sections 409, 420, 109 and 120 B I.P.C. It is specifically alleged that pursuant to the criminal conspiracy A-1 and A-11 signed a memorandum of understanding (MOU for short) dated 19-1-1992 at Paris in France and the same was witnessed and initialled by A-2 and further witnessed by a Copelovici, Area Manager of A-13. Since the aforementioned offences are alleged to have been committed in pursuance of the criminal conspiracy, the overt acts attributed to

each and every accused cannot be severed to hold that some of the offences were committed in India and the rest was committed abroad. [See *Queen Empress v. Baku* ILR 24 Bom 87 In Re: M.L. Verghese, In re Antony D'Silva and Ors. AIR 1949 Mad 3 and *Mohammed Zama v. Emperor* AIR 1945 Oudh 231] Thus, even where a part of the offence is committed outside India, Section 188 Code of Criminal Procedure is attracted. Admittedly, the previous sanction of the Central Government as envisaged by the proviso to Section 188 Code of Criminal Procedure has not been obtained.

15. One line of judicial opinion that even for conducting investigation, previous sanction of the Central Government is necessary, may be due to the employment of the words "he (the offender) may be dealt with in respect of such offence as if it had been committed at any place within India" in Section 188 Code of Criminal Procedure. In *Shadili v. Uthaman* 1988 (2) KLT 191 a learned single judge of this Court had taken the view that the Court's power to inquire into or try an offence committed outside India as per Section 188 Code of Criminal Procedure depends on the previous sanction of the Central Government and consequently the police officer will have no power to investigate the offence also in view of Section 156(3) Code of Criminal Procedure In *Central Bureau of Investigation Vs. State of Rajasthan and others*, it is observed in paragraph 30 as follows:

Even u/s 188 of the Code of Criminal Procedure, investigation of an offence committed outside Indian territory may be made only with permission of the Central Government. Of course, if permission is granted, offences committed outside India can also be investigated.

But in the case on hand the only argument on behalf of the accused is that without obtaining the prior sanction from the Central Government the Court is not entitled to "inquire into" or "try" any offence committed outside India. The prosecution on the other hand contends that in a case involving criminal conspiracy the decision in *Ajay Aggarwal's* case will go to show that the previous sanction of the Central Government even if necessary can be obtained before the commencement of the trial. In *Ajay Agarwal Vs. Union of India and others*, corresponding to AIR 1993 S.C. 1637 the offences involved were only I.P.C. offences which were punishable under Sections 120B, 420, 468 and 471 I.P.C. No offence under the P.C. Act was alleged in that case. Hence, the applicability of Sections 4(2) and 4(3) of the P.C. Act did not arise for consideration in that case. Moreover, in the leading judgment of K. Ramaswamy, J. at the end of paragraph 3 it is observed that all the accused committed the overt acts in furtherance of the conspiracy at Chandigarh and therefore, the sanction of the Central Government was not necessary. Again at paragraph 27 of the reported decision it is observed that the criminal conspiracy in that case was initially hatched at Chandigarh and even if, part of the conspiracy and overt acts were to be taken as having been committed at Dubai since the offences were committed during the continuing course of the transaction culminating in cheating the Punjab National Bank at Chandigarh there was no need to obtain the sanction of the Central

Government under the proviso to Section 188 Code of Criminal Procedure The learned Judge was thus taking into account the place where the consequence of the offences ensued. In the concurring judgment of Sahai, J. also, it is held at para 33 of the reported decision that the offences were committed in India. Relying on Section 179 Code of Criminal Procedure it is further held that since the consequence of conspiracy, cheating and forgery took place at Chandigarh the offences cannot be said to have been committed outside the country so as to attract Section 188 Code of Criminal Procedure.

16. First of all, the act of locating the place where the consequence of the offences ensued as envisaged by Section 179 Code of Criminal Procedure is not for deciding the place where the offence was committed. It is for deciding the territorial jurisdiction of the court which is competent to try the offence. Secondly, in a case as the present one, involving offences under the P.C. Act and where the final report has been filed before the Vigilance Court, the provisions applicable are Sections 3 and 4 of the P.C. Act. Sections 3 and 4 of the P.C. Act are as follows:

3. Power to appoint special Judges.-(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:

(a) any offence punishable under this Act, and

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in Clause (a)

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

4. Cases triable by special Judges.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in Sub-section (1) of Section 3 shall be tried by Special Judges only.

(2) Every offence specified in Sub-section (1) of Section 3 shall be tried the special Judge for the area within which it was committed, or as the case may be, by the special Judge appointed for the case, or, where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973

(2 of 1974), a special Judge shall, as far as practicable hold the trial of an offence on day to day basis.

17. Thus, the court which is competent to try the offences mentioned u/s 3 of the P.C. Act as well as the other offences mentioned u/s 4(3) of the P.C. Act is the Special Judge within whose local limits the offences were committed. A question arose before the Apex Court in C.B.I., A.H.D., Patna Vs. Braj Bhushan Prasad and Others, as to whether the non obstante clause in Sub-section (1) of Section 4 of the P.C. Act giving overriding effect over the Code of Criminal Procedure was confined only to that Sub-section or to the other Sub-sections as well. This is what the Apex Court observed in that decision:

39. Now, observe the distinction between Section 181(4) of the Code and Section 4(2) of the P.C. Act. When the former provision envisaged at least four courts having jurisdiction to try a case involving misappropriation the latter provision of the P.C. Act has restricted it to one court i.e. the Court of the Special Judge for the area "within which the offence was committed". No other court is envisaged for trial of that offence. We pointed out above that when the charge contains the offence or offences punishable under the P.C. Act as well as the offence of conspiracy to commit or attempt to commit or any abetment of any such offence, the court within whose local jurisdiction the main offence was committed alone has jurisdiction.

40. Shri Kapil Sibal, learned senior Counsel contended that Section 4(2) of the P.C. Act does not override the provisions of the Code regarding jurisdiction because among the four Sub-sections included in Section 4 of the said Act, only first and the last Sub-sections are tagged with the non obstante words "notwithstanding anything contained in the Code of Criminal Procedure". In his submission the fact that Sub-section (2) is freed from the non obstante words would indicate that the provisions of the Code can as well be read with that Sub-section. In that context learned senior counsel invited our attention to Sections 178 to 180 of the Code, showing that different courts having domain over different local areas have concurrent jurisdiction to inquire into or try the offences and hence the trial is permissible in any one of them.

41. Absence of a non obstante clause linked with Section 4(2) of the P.C. Act does not lead to a conclusion that the Sub-section is subject to the provisions of the Code. A reading of Section 4(2) of the Code (not P.C. Act) gives the definite indication that the legal position is the other way round. Section 4 of the Code is regarding trial of offences under the Indian Penal Code and other laws. Sub-section (1) of it relates only to offences under the Indian Penal Code. Sub-section (2) relates to "all offences under any other law". It is useful to read the said Sub-section at this stage:

All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of

investigating, inquiring into, trying or otherwise dealing with such offences.

42. Thus, if the P.C. Act has stipulated any place for trial of the offence under that Act the provisions of the Code would stand displaced to that extent in regard to the place of trial. We have, therefore, no doubt that when the offence is u/s 13(1)(c) or Section 13(1)(d) of the P.C. Act the sole determinative factor regarding the court having jurisdiction is the place where the offence was committed.

Thus, the court competent to try the offence under the P.C. Act along with I.P.C offences is the Special Court within whose territorial limits the offences were committed. In other words Section 4 of the P.C. Act only recognizes the rule laid down u/s 177 Code of Criminal Procedure which reads as follows:

177. Ordinary place of inquiry and trial- Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

The said provision u/s 4 of the P.C. Act is notwithstanding anything contained in the Code of Criminal Procedure If so, Sections 178 to 183 Code of Criminal Procedure cannot be pressed into service for deciding the territorial jurisdiction of the Special Court under the P.C. Act. To put it differently, the Special Court within whose territorial limits the consequence of the offences ensued within the meaning of Section 179 Code of Criminal Procedure cannot be the forum competent to try the case. Ajay Aggarwal's case is, therefore, no authority for the position canvassed by the prosecution in a case involving offences under the PC. Act.

18. No doubt, in paragraph 27 of Ajay Aggarwal's case after holding that sanction u/s 188 is not a condition precedent for taking cognizance of the offence, it is observed that if need be, such sanction could be obtained before the trial begins. First of all, after holding that the offences in that case were committed at Chandigarh in India and not outside India and, therefore, Section 188 Code of Criminal Procedure was not attracted, it was not necessary for the Supreme Court to consider the stage at which the previous sanction of the Central Government under the proviso to Section 188 Code of Criminal Procedure was to be obtained. Hence, the observation in paragraph 27 of the reported decision is only an obiter dictum which cannot be treated as the law laid down by the Supreme Court within the meaning of Article 141 of the Constitution of India. In Samaruddin v. Assistant Director 1999 (2) KLT 794 a Full Bench of this Court after referring to the authorities including Ajay Aggarwal's case observed that no sanction under the proviso to Section 188 Code of Criminal Procedure is needed at the pre-inquiry stage which is the stage of investigation.

19. Going by the wording of the proviso to Section 188 Code of Criminal Procedure there cannot be any doubt that no offence committed outside India shall be "inquired into" or "tried" in India except with the previous sanction of the Central Government. There is no dispute that this is a case involving offences committed both within and outside India. There is also no dispute that previous

sanction of the Central Government has not been obtained. The trial of the case is yet to begin. The trial in a warrant case, as the present one, will start only with the framing of the court charge. But the crucial question is whether there has been an "inquiry" by the Special Judge in this case without obtaining the previous sanction of the Central Government. The expression "inquiry" is defined u/s 2(g) Code of Criminal Procedure is as follows:

2(g) - "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.

So, the question is whether there has been an "inquiry" other than trial conducted in this case by the Special Judge. In *Tuneshwar Prasad Singh and Another Vs. State of Bihar*, a Full Bench of the Patna High Court speaking through S.K. Jha, J. observed as follows:

It would thus be seen that, when an offence is exclusively triable by a court of session in a case instituted on a police report or otherwise and the accused appears or is brought before the Magistrate, he shall commit the case to the court of session and, subject to the provisions of the Code relating to bail, remand the accused to custody during and until the conclusion of the trial. After taking cognizance of an offence, if the court finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may remand the accused if in custody, under the provisions of Section 309(2). It seems to me the beginning of wisdom in this matter to draw a real distinction between two things-trial and inquiry. Is a proceeding u/s 209 of the Code a trial? The answer clearly is in the negative. Is this then an inquiry? If the answer be in the negative, *cadit quaestio* - the Petitioners must succeed. If, on the contrary, it is an inquiry, the power of remand is expressly conferred on the Magistrate by Section 309(2) read with Section 209 of the Code. This at once leads me to the definition of the term "Inquiry" in Section 2(g) of the Code, which runs thus - "inquiry" means every inquiry, other than a trial conducted under this Code by a Magistrate or Court.

The definition of the term "inquiry" by itself does not, in my view, lead us very far. At the same time, it will be seen that the term "inquiry" has a very wide connotation under the Code and includes every inquiry other than a trial. One thing is well-settled and that is that a trial within the meaning of the Code is a judicial proceeding which ends in either conviction or acquittal. The dictionary meaning of the term "inquiry", however, is, according to the New Standard Dictionary, investigation into facts, causes, effects and relations generally and "to inquire" has been defined to mean in the same dictionary "to exert oneself to discover something". "Inquiry is a road to truth" said Gladstone. The Chambers's Twentieth Century Dictionary lays down the meaning of the term "to inquire" as "to ask; to seek" and the term "Inquiry" as the "search for knowledge; investigation; a question". An application of the mind to ascertain what offence is made out on the facts alleged and whether such an offence is exclusively triable by a court of session is an absolute necessity for the Magistrate before he can

commit the case to a court of session u/s 209 of the Code. Once on a judicial application of such mind the Magistrate comes to the conclusion that the allegations made and the materials on record (police report) attract a particular penal provision which, in its turn, is exclusively triable by a sessions court, he has to commit. This bringing of the judicial mind to bear upon the facts alleged and the ascertainment of the particular penal provision which is attracted and as to whether such offence is exclusively triable by a court of session certainly needs a scrutiny - it is a search for knowledge, it is to seek, to scrutinise and to study - not a mere mechanical act but an inquiry, albeit, within a very narrow compass. A Magistrate is exerting himself to discover something. It is extremely difficult to take the view that the proceedings before the Magistrate, after he has taken cognizance of the offence and until he has committed the case to the court of session, are not embraced within the term "inquiry" as defined in Section 2(g) of the Code. It is true that the protracted commitment inquiry under the provisions of Chapter XVIII of the Code of Criminal Procedure 1898 (old Code) has completely been done away with. That, however, does not mean that any proceeding, which is more or less of a summary nature involving no detailed consideration of facts, will in no case be termed an inquiry. The language of Section 208 itself makes it clear that when it appears to the Magistrate that the offence is triable exclusively by the court of session, he shall commit the case to the court of session. When the legislature uses the expression "it appears to the Magistrate", it means the formation of an opinion of the Magistrate on the materials on record. This evidently implies a judicial application of mind. Let us take a concrete example. An accused assaults a person with a hard blunt substance such as a lathi, on his thigh, causing a simple hurt. The police in its charge-sheet makes out a report of an offence u/s 307 of the I.P.C. Is the Magistrate like an automation bound to commit the case to the court of session? Has not the Magistrate to satisfy himself from the materials in the police report that the offence is not such as is exclusively triable by a court of session? Any negative answer to this question posed by me will in my view, be an absurd proposition. This application of the judicial mind by the Magistrate to the materials in the police report to find out as to whether an offence exclusively triable by a court of session has been made out or not, cannot be anything but an inquiry. The question as to whether the Magistrate is bound to afford to the accused an opportunity of being heard on the point whether or not the case is one exclusively triable by the court of session is wholly academic. It is in the fitness of things, therefore, that in Section 309(2) of the Code the Legislature has made a provision for adjourning any inquiry from time to time for reasons to be recorded and, while so doing, to remand the accused if in custody. Taking any different view of the matter would render the provision with regard to the adjournment of inquiry in Section 309(2) of the Code otiose. The term "inquiry" in Section 309(2) occurs in the context of the exercise of a power to remand the accused, if in custody after cognizance has been taken. The rule of harmonious construction, therefore, impels me, while reading Section 309(2) in juxtaposition of Section 209 of the Code, to hold as a matter of first impression and, on

principle, that the proceeding u/s 209 must inevitably be embraced within the term "inquiry" as defined in Section 2(g). That it should have been so provided in Section 309(2) is in the fitness of things since some time must elapse between the taking of cognizance and the order of commitment as the Magistrate has to satisfy himself within the meaning of Section 209 of the Code. In the context of Section 209 of the Code, I am tempted to use the words of Courtney Terrell. C.J. speaking for the Bench in the case of Hema Singh and Another Vs. Emperor, .

In other words, a trial is a judicial proceeding which ends in conviction or acquittal. All other proceedings are mere inquiries.

In Rabindra Rai Vs. State of Bihar, Anr. Full Bench of the Patna High Court after referring to State of Uttar Pradesh Vs. Lakshmi Brahman and Another, , Dalu Gour and Others Vs. Moheswar Mahato, observed as follows:

In view of the clear enunciation of the position that an inquiry within the meaning of Section 2(g) of the Code shall deem to have commenced since the submission of the police report, and shall continue till an order of commitment is made u/s 209, it is difficult for this Court to hold that such inquiry shall commence only after a formal order is passed by the Magistrate saying that cognizance has been taken. Once it is held that inquiry commences since the submission of the police report-charge-sheet there should not be any difficulty in holding that the Magistrate has during that period power to remand the accused in terms of Sub-section (2) of Section 309 of the Code.

In Vijaya Saradhi Vajja Vs. Devi Sriroopa Madapati and Another, a learned Single Judge of the Andhra Pradesh High Court held that the word "inquiry" used in the proviso to Section 188 Code of Criminal Procedure is confined to the proceeding before the Magistrate prior to trial alone but cannot be extended to investigation by the police and that the bar under the proviso to Section 188 Code of Criminal Procedure will operate to enquiry before the Magistrate after the police laid the charge-sheet for the offence.

20. Thus the action of the Special Judge in applying his judicial mind to the police report and deciding to take cognizance of the offences and issuing process to the accused u/s 204 Code of Criminal Procedure will certainly be part of the "inquiry" which is barred unless the prior sanction of the Central Government has been obtained. Hence, the Petitioners are well founded in their contention that the Special Judge was acting without jurisdiction by holding an "inquiry" without the prior sanction of the Central Government as envisaged by the proviso to Section 188 Code of Criminal Procedure. The cognizance taken and summons issued by the Special Court, Thrissur are accordingly quashed.

TERRITORIAL JURISDICTION OF THE THRISSUR COURT

21. The only other question which survives for consideration is the contention based on the lack of territorial jurisdiction of the Vigilance Judge, Thrissur. The competence of the Special Court at Thrissur is sought to be justified by the

following statement in paragraph 9 of the counter-affidavit filed by Respondents 3 and 4 in W.P.C. 13804 of 2008:

9. The Enquiry Commissioner and Special Judge, (Vigilance Court), Thrissur has got territorial jurisdiction to try the offences mentioned in the above case against the Petitioner and Ors. . Sections 178 and 179 of the Code of Criminal Procedure dealt with the place of enquiry and trial.

Section 179 of the Code of Criminal Procedure reads as follows:

When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

From a reading of the above section it is clear that when a person accused of the commission of an offence by reasoning of things first of being done, and secondly of any consequences which has ensued, when the jurisdiction is confirmed on the Court where the act has been done or the consequences has been ensued. When the offender has done an act the consequences is important factor and for consequence such acts and the offender is being tried having an offence as a result of both the acts and consequences. The Petitioner herein has approved the MOU in order to get unlawful gain to other accused and thereby caused wrongful loss to the Brahmapuram Plant owned by KSEB. So in view of the acts or omission on the part of the Petitioner, judge loss has caused to the Brahmapuram Plant situated at Ernakulam District owned by KSEB, therefore the Enquiry Commissioner and Special Judge, Thrissur has jurisdiction to try the above case against the Petitioner as well as Ors. . So, the contentions raised by the Petitioner contrary to the above aspects in the Writ Petition are unsustainable and without any legal basis.

It has already been seen that the correspondence preceding the signing of the MOU took place at Thiruvananthapuram and the MOU was signed at Paris in France. No part of the alleged offences had taken place at Brahmapuram in Ernakulam District except that Brahmapuram was the site finally selected for establishing the plant. Wrongful loss is also alleged to have been sustained by the K.S.E.B. which is having its registered office at Thiruvananthapuram. Pecuniary advantage obtained by A-11 to A-13 is at France. The provision of law which governs the forum for trial is Section 4(2) read with Section 4(3) of the P.C. Act. It has already been seen that in the light of the verdict of the Apex Court in C.B.I., A.H.D., Patna Vs. Braj Bhushan Prasad and Others, the Special Court competent to try the offence is that court within the local limits of which the offences were committed and that Court is certainly not the Special Court at Thrissur.

22. On the date of filing the charge-sheet in this case there were only three special courts—one at Thiruvananthapuram, Anr. at Thrissur and the 3rd at Kozhikode. The first among the special courts in the State of Kerala was established at Thrissur in the year 1957 [Vide Government Proceeding No. X(A)

2-602/57/AC dated 8-8-1957]. The next one was established at Thiruvananthapuram in the year 1986 as per GO. (MS) No. 152/86/Vig. dated 26-9-1986. The Special Court at Kozhikode was constituted in the year 1990 Vide GO. (MS) No. 139/90/Vig. dated 20-9-1990. After the Constitution of the Special Court at Kozhikode the territorial jurisdiction of the three courts was re-defined as per notification No. 255/C3/91-1 Vig. dated 1-4-1991 (SRO Nos. 488/91 to 492/91 as follows:

Name of Court	Revenue Districts	1. Enquiry Commissioner and Thiruvananthapuram, Special Judge's Court, Kollam, Pathanamthitta Thiruvananthapuram and Alappuzha	2. Enquiry Commissioner and Thrissur, Kottayam, Special Judge's Court, Thrissur	Ernakulam and Idukki	3. Enquiry Commissioner and Malappuram, Palakkad, Special Judge's Court, Kozhikode	Kozhikode, Wayanad, Kannur and Kasaragod
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Recently a fourth court has been established at Kottayam as per GO. (MS) No. 20/2008/Vig. dated 8-7-2008. The territorial limits of that Court consist of the Revenue Districts of Pathanamthitta, Alappuzha, Kottayam and Idukki Districts. The jurisdiction of all the four courts of Enquiry Commissioners and Special Judges in the State has been re-allocated as follows:

Name of Court	Revenue Districts	1. Enquiry Commissioner and Thiruvananthapuram and Special Judge's Court, Kollam	Thiruvananthapuram	2. Enquiry Commissioner and Pathanamthitta, Alappuzha, Special Judge's Court, Kottayam	Kottayam and Idukki	3. Enquiry Commissioner and Emakulam, Thrissur, Palakkad	Special Judge's Court, Thrissur and Malappuram	4. Do. Kozhikode	Kozhikode, Kannur and Kasaragod
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Thus, with regard to offences committed within the revenue district of Thiruvananthapuram, it is the Enquiry Commissioner and Special Judge's Court, Thiruvananthapuram which is competent to try those offences with effect from 26-9-1986 onwards. Since the Special Court at Thrissur has no territorial jurisdiction to try the present case and also since the objection regarding the jurisdiction has been raised at the earliest opportunity, I am inclined to uphold the said objection. The case can be tried only by the Special Court at Thiruvananthapuram. Consequently, the cognizance taken and the summons issued by the Special Court, Thrissur are quashed. The Special Court Thrissur shall return the charge-sheet and connected records to the charging officer for presentation before the Special Court at Thiruvananthapuram after complying with the legal formalities including the proviso to Section 188 Code of Criminal Procedure It shall be open to the Petitioners and the other accused to raise all other contentions as and when the case comes up for hearing before the appropriate court.

CONCLUSION

In the result, these Writ Petitions are allowed in part as follows:

1. The prayer for quashing the police report (charge -sheet) and further proceedings on the ground that the offences are not made out against the Petitioners, is disallowed since it is too early to accept the grounds put forward in support of the same.
2. The prayer for quashing the police report on the ground of delay in investigation is also disallowed.
3. The question of prosecution sanction u/s 197 Code of Criminal Procedure is relegated to the stage of trial as indicated herein before. Both sides are at liberty to raise all other contentions before the trial court during the trial of the case. This is without prejudice to the right of the accused persons to plead for a discharge.
4. The cognizance taken of the offences mentioned in Ext. P-1 police report and the issuance of summons to accused Nos. 1 to 10 u/s 204 Code of Criminal Procedure being part of the "inquiry" without obtaining the previous sanction of the Central Government under the proviso to Section 188 Code of Criminal Procedure., are bad and are accordingly quashed.
5. The Court of the Enquiry Commissioner and Special Judge, Thiruvananthapuram alone has jurisdiction to take cognizance of and try the offences. The Vigilance Court, Thrissur had no jurisdiction to take cognizance of the offences or issue process to the accused. The Vigilance Court, Thrissur shall return the police report and connected records for presentation before the proper Court after complying with the legal formalities.