IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

MONDAY, THE 12TH DAY OF JULY 2021 / 21ST ASHADHA, 1943

CRL.MC NO. 2237 OF 2021

CRIME NO.9/2013 OF VACB, THRISSUR, Thrissur

TO QUASH A-2 FINAL REPORT IN C.C.NO.6 OF 2010 ON THE FILE OF THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THRISSUR

PETITIONER/ACCUSED:

G.SANTHOSH KUMAR
AGED 59 YEARS
S/O. S.GOVINDAN, RESIDING AT SOUPARNIKA, VP III/848A, KAVADITHALAKKAL, MANIKANTESWARAM PO, THIRUVANANTHAPURAM (RETIRED AS ASSISTANT COMMISSIONER, OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES, TAXES TOWER, KARAMANA PO, THIRUVANANTHAPURAM, PIN-695 002).
BY ADV C.S.MANU

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN-682031.

2 DEPUTY SUPERINTENDENT OF POLICE
VIGILANCE AND ANTI CORRUPTION BUREAU, THRISSUR, PIN-680 001.

3 COMMISSIONER OF COMMERCIAL TAXES
TAX TOWER, KARAMANA P.O., THIRUVANANTHAPURAM, PIN-695 002.

BY SRI.A.RAJESH, SPL.PP VACAB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29.06.2021, THE COURT ON 12.07.2021 DELIVERED THE FOLLOWING:

"CR"

R.NARAYANA PISHARADI, J

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Crl.M.C.No.2237 of 2021

Dated this the 12th day of July, 2021

O R D E R

Whether an Assistant Commissioner of the Sales Tax Department, who passes an order of assessment of tax under the Kerala Value Added Tax Act, 2003 (for short 'the KVAT Act'), is entitled to get the protection envisaged under the Judges (Protection) Act, 1985? Answer to this question would decide the fate of this application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code').

2. The petitioner was the Assistant Commissioner (Assessment), Commercial Taxes, Thrissur. He is the first accused in the case C.C.No.6/2020 on the file of the Court of the Enquiry Commissioner and Special Judge, Thrissur. The second accused in the case was the Managing Director of the company

by name M/s.Nano Excel Enterprises Private Limited. The third accused in the case is the Sales Tax Practitioner who had allegedly acted as a mediator between the first and the second accused. The offences alleged against the accused in the case are punishable under Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short 'the PC Act') and also under Sections 465, 468, 471 and 120B of the Indian Penal Code.

3. As per a letter dated 25.06.2011, the Commissioner of Commercial Taxes informed the Director, Vigilance and Anti-Corruption Bureau (VACB) that the officers of the Commercial Tax Department at Thrissur had obtained bribe and assisted the company M/s.Nano Excel Enterprises to evade sales tax during the period 2010-2011. The Director, VACB ordered to conduct a vigilance enquiry regarding the above allegations. On the basis of the findings made in the vigilance enquiry, the Director, VACB ordered to register two cases, one against the petitioner and another case against one Jayananda Kumar, who was also then the Assistant Commissioner of Commercial Taxes at Thrissur.

Accordingly, a case was registered against the petitioner as VC/09/13/TSR. After completing the investigation, the Deputy Superintendent of Police, VACB, Thrissur filed Annexure-A2 charge-sheet against the petitioner and the other accused for committing the offences mentioned earlier.

4. The crux of the allegations in the final report filed against the petitioner is as follows: The petitioner, who was the assessing authority, deliberately omitted to verify the assessment files, audited statement of accounts, revised returns and other records including bank accounts relating to M/s.Nano Excel Enterprises for the years 2008-09 and 2009-10. He ignored the suppression of turn over made by M/s.Nano Excel Enterprises and without following the statutory provisions and in violation of the written directions given by the Deputy Commissioner, Commercial Taxes, passed an order dated 04.05.2011 for refunding an amount of Rs.48,20,606/- to the above company as excess tax remitted by the company for the year 2009-10. He also passed an order dated 31.05.2011 for refunding an amount of Rs.1,98,000/- as excess amount of tax remitted by the above

company for the year 2008-09. As a result, the Government sustained a loss of Rs.50,18,606/- (Rs.48,20,606 + 1,98,000). The aforesaid orders were passed and refund of amount was made by the petitioner pursuant to a conspiracy hatched between him and the other accused.

5. The petitioner has filed this application under Section 482 of the Code for quashing the final report filed against him by the VACB.

6. The investigating officer has filed a statement narrating the allegations against the petitioner and the other accused in the case.

7. Heard learned counsel for the petitioner and also the learned Public Prosecutor.

8. Learned counsel for the petitioner has challenged Annexure-A2 final report filed against the petitioner mainly on the following two grounds. (1) The prosecution against the petitioner is based on acts done or committed by him in good faith in discharge of his duties under the KVAT Act and therefore, he is entitled to get the protection under Section 79 of the KVAT

Act. (2) The prosecution against the petitioner is based on orders of assessment of sales tax passed by him as a quasi-judicial authority. He is entitled to get the protection envisaged under Section 3(1) of the Judges (Protection) Act, 1985.

9. *Per contra*, the learned Public Prosecutor has submitted that the assessment orders were passed by the petitioner not in good faith and he had violated the written directions given by the Deputy Commissioner. Learned Public Prosecutor has also submitted that the petitioner is not entitled to claim any protection or immunity under any law in respect of mala fide acts of corruption committed by him.

10. The prosecution against the petitioner is based on the assessment orders dated 04.05.2011 and 31.05.2011 passed by him under the KVAT Act, refunding a total amount of Rs.50,18,606/-, towards excess amount of tax paid by M/s.Nano Excel Enterprises.

11. Section 79 of the KVAT Act reads as follows:

> *"79. Bar of certain proceedings.-- (1) No suit, prosecution or other proceeding shall lie against any*

officer or servant of the Government for any act done or purporting to be done under this Act, without the previous sanction of the Government.

(2) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding, if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed by or under this Act."

12. Section 79 of the KVAT Act has nexus with official acts done under that statute. The section consists of two sub-sections which operate in two different fields. The first sub-section speaks of bar of suits against any officer or servant of the Government, for any act done or purporting to be done under the KVAT Act, without the previous sanction of the Government. The second sub-section deals with liability of an officer or servant of the Government in respect of any such act in any civil or criminal proceeding, if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed by or under that statute.

13. In the instant case, admittedly, sanction for

prosecution against the petitioner under Section 19(1) of the PC Act has been granted by the State Government. Once sanction under Section 19(1) of the PC Act has been granted for prosecution against the petitioner, it is not necessary to obtain any separate sanction of the Government under Section 79(1) of the KVAT Act.

14. The immunity granted under Section 79(2) of the KVAT Act is not total or absolute. The protection or immunity granted therein is only in respect of any act done or purported to be done in good faith, in the course of execution of duties or the discharge of functions imposed by or under the KVAT Act. In order to get the protection under this provision, the act complained of must have been an act done by the officer or servant of the Government in good faith.

15. The term 'good faith' is defined in Section 3(22) of the General Clauses Act, 1897. Under this section "a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not." The crucial test is whether the act has in fact been done honestly. Whether it is done

negligently or not would not be material. Whether a thing has been done honestly is a question of fact to be determined with reference to the circumstances of a particular case.

16. However, as per Section 52 of the Indian Penal Code, nothing is said to be done or believed in "good faith" which is done or believed without due care and attention. The element of honesty, which is incorporated in the definition of "good faith" under the General Clauses Act, is not introduced in the definition of it under the Indian Penal Code.

17. Whether or not an act was done in good faith is a question of fact. It is a question of fact to be determined in accordance with the proved facts and circumstances of each case. It is not a matter to be decided in a proceeding under Section 482 of the Code. Therefore, whether the petitioner is entitled to get the protection under Section 79(2) of the KVAT Act is a question of fact which cannot be determined in this application filed under Section 482 of the Code.

18. Learned counsel for the petitioner has contended that the petitioner was a public servant exercising quasi-judicial

functions under the KVAT Act and the prosecution against the petitioner relates to acts done by him in the course of discharge of such functions and therefore, he is entitled to get immunity under Section 3 of the the Judges (Protection Act), 1985 (hereinafter referred to as 'the Act').

19. As per the definition given in Section 2 of the 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).

20. Section 19 of the Indian Penal Code defines a “Judge” in identical words. Section 77 of the Indian Penal Code provides that, nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

21. Section 3(1) of the Act provides that, notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (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. Section 3(2) of that Act provides that, 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 departmental proceeding or otherwise) against any person who is or was a Judge.

22. At this juncture, the first question to be considered is, whether the petitioner, who was an Assistant Commissioner (Assessment) in the Sales Tax Department, comes within the purview of the definition of "Judge" under the Act.

23. As per the definition given in Section 2 of the Act, "Judge" means not only every person who is officially designated as a Judge. Every person who is empowered by law to give in any legal proceeding a definitive judgment also comes within the purview of the definition of "Judge" under the Act. The definition, clearly envisages that, in any legal proceeding, a person who is empowered to give a definitive judgment which is final or becomes final, if confirmed by the appellate authority, would be denoted as a Judge.

24. The expression used in Section 2 of the Act is "legal proceeding" and not "judicial proceeding".

25. "Legal proceeding" in its normal connotation can only mean a proceeding in accordance with law. There can be no doubt that assessment proceedings under the Sales Tax Act are such proceedings. The expression "legal proceeding" is not synonymous with "judicial proceeding". Proceedings may be legal even if they are not judicial proceedings, if they are authorised by law (See **Abdul Aziz Ansari v. State of Bombay : AIR 1958 Bom 279**).

26. Every judicial proceeding is a legal proceeding but not vice - versa, for the reason that there may be a 'legal proceeding' which may not be judicial at all, e.g. statutory remedies like assessment under Income Tax Act, Sales Tax Act, arbitration proceedings etc. So, the ambit of expression 'legal proceedings' is much wider than 'judicial proceedings'. (See **General Officer Commanding v. C.B.I : AIR 2012 SC 1890**).

27. There can be no doubt with regard to the fact that the assessment orders dated 04.05.2011 and 31.05.2011 passed by the petitioner are in the nature of definitive judgments in legal proceedings. There is no dispute with regard to the fact that the petitioner was empowered by law to pass the assessment orders. In such circumstances, I am of the view that, the petitioner, while passing the assessment orders dated 04.05.2011 and 31.05.2011, had discharged functions as a "Judge" as envisaged under Section 2 of the Act.

28. The next question is whether passing an assessment order under the KVAT Act constitutes an act in the discharge of judicial functions or duties as envisaged under Section 3(1) of

the Act.

29. The term "judicial" does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law. A judicial act is an act done by competent authority, upon a consideration of facts and circumstances, and imposing liability or affecting the rights of others (See **Venkata Narasimha Rao v. Municipal Council, Narasaraopet: AIR 1931 Mad 122**).

30. Often the line of distinction between decisions judicial and administrative is thin. But the principles for ascertaining the true character of the decisions are well settled. A judicial decision is not always the act of a Judge or a tribunal invested with power to determine questions of law or fact. It must however be the act of a body or authority invested by law with authority to determine questions or disputes affecting the rights of citizens and under a duty to act judicially. A judicial decision always postulates the existence of a duty laid upon the authority to act judicially. Administrative authorities are often invested with authority or power to determine questions which affect the rights of citizens. The authority may have to invite objections to the

course of action proposed by him, he may be under a duty to hear the objectors, and his decision may seriously affect the rights of citizens but unless in arriving at his decision he is required to act judicially, his decision will be executive or administrative. Legal authority to determine questions affecting the rights of citizens does not make the determination judicial. It is the duty to act judicially which invests it with that character. What distinguishes an act judicial from administrative is therefore the duty imposed upon the authority to act judicially. 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 (See **Jaswant Sugar Mills v. Lakshmi Chand : AIR 1963 SC 677**).

31. Applying the above tests, there is little doubt that the assessing authority under the KVAT Act in assessing the tax due from a dealer has to act judicially. His decision does not depend upon his subjective satisfaction. Sections 22 to 26 of the KVAT Act deal with various modes of assessment of tax. These provisions indicate that assessment of tax can be made only after providing reasonable opportunity to the dealer or the persons concerned of being heard. The assessing authority has to apply objective standards as prescribed by law to the facts and determine the amount of tax to be paid by a dealer. The assessment orders passed by the petitioner are not orders passed by him in an administrative capacity but they are orders passed by him as a judicial authority or atleast as a quasi-judicial authority.

32. In **Surendra Kumar Bhatia v. Kanhaiya Lal : AIR 2009 SC 1961**, the question arose whether the Collector/Land

Acquisition Officer, while making an enquiry and award under the Land Acquisition Act, acts in a judicial capacity or not. It was held that, even though the Collector may have power to summon and enforce the attendance of witnesses and production of documents, in making an award or making a reference or serving a notice, he neither acts in judicial nor quasi judicial capacity but purely in an administrative capacity and that he does not function as a judicial officer who is required to base his decision only on the material placed in the enquiry in the presence of parties.

33. In the decision rendered by this Court on 10.10.2014 in Crl.M.C No.1736 of 2013, the allegation against the accused was that, while working as Revenue Divisional Officer and Sub Divisional Magistrate, with a common intention along with another accused, he misused his official position and issued various proceedings for the release of 30 lorries carrying river sand without levying fine as required under the Kerala Protection of River Banks and Regulation of Removal of Sand (Amendment) Ordinance, 2010 and thereby he obtained pecuniary advantage to owners of the vehicles and caused corresponding loss to the

Government and he committed the offence punishable under Section 13(1)(a) read with 13(2) of the PC Act. This Court held that, the accused in that case was exercising quasi-judicial powers and he is entitled to the protection under Section 3 of the Act and therefore, quashed the FIR regisitered against him.

34. In **Sankaran Pillai v. Chandran : 1991 (1) KLT 586**, this Court has held that the assessing authority, under the Kerala Building Tax Act, is entitled to the protection under Section 3 of the Act.

35. Tax authorities, who are entrusted with the power to make assessment of tax, discharge quasi-judicial functions (See **State of Kerala v. K.T.Shaduli : AIR 1977 SC 1627**).

36. Whether the assessment be one relating to income tax, agricultural income tax or sales tax, the process of best judgment assessment is a quasi judicial process, an honest and bona fide attempt in a judicial manner to determine the tax liability of a person. And such determination must be related to the materials before the authority (See **Appukutty v. Sales Tax Officer : 1965 KLT 803**).

37. Assessment proceedings have all characteristics of judicial or quasi-judicial process and would clothe the Sales tax Officer making assessment orders with judicial or quasi-judicial character (See **Ujjam Bai v. State of U.P : AIR 1962 SC 1621**).

38. The word "quasi-judicial" itself necessarily implies the existence of the judicial element in the process leading to the decision. When the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed.

39. Applying the above tests, the act of the petitioner, passing the assessment orders dated 04.05.2011 and 31.05.2011, as a quasi-judicial authority under the KVAT Act, was an act done or committed by him in the course of discharge of his official or judicial duty or function. Therefore, he is entitled to get the protection under Section 3(1) of the Act. It follows that the

prosecution against him, which is based on the assessment orders dated 04.05.2011 and 31.05.2011 passed by him, is not maintainable.

40. Learned Public Prosecutor would submit that the Deputy Commissioner had given directions in writing to the petitioner with regard to the assessment of tax to be made in relation to the dealer M/s Nano Excel Enterprises but the petitioner had ignored those directions and passed the assessment orders in violation of those directions.

41. Section 3(4) of the KVAT Act provides that, all officers and persons employed for the execution of the Act shall observe and follow the orders, instructions and directions of the officers superior to them but no such orders, instructions or directions shall be given so as to interfere with the discretion of the Deputy Commissioner (Appeals) and Assistant Commissioner (Appeals) in the exercise of their appellate functions.

42. The mandate made in the statute as above, as to complying with the directions of a superior officer by the subordinate officers, can have application only to the directions

given in relation to administrative matters and not judicial matters.

43. In **Orient Paper Mills Limited v. Union of India : AIR 1970 SC 1498**, the Supreme Court had occasion to hold as follows:

> *"The main question is whether an assessment made by a subordinate officer in accordance with the instructions issued by the Collector to whom an appeal lay against the order of that subordinate officer can be called a valid assessment in the eye of law. ..... In the present case, when the assessment is to be made by the Deputy Superintendent or the Assistant Collector, the Collector, to whom an appeal lies against his order of assessment, cannot control or fetter his judgment in the matter of assessment. If the Collector issues directions by which the Deputy Superintendent or the Assistant Collector is bound no room is left for the exercise of his own independent judgment. ..... The assessing authorities exercise quasi judicial functions and they have duty cast on them to act in a judicial and independent manner. If their judgment is controlled by the directions given by the Collector it cannot be said to be their independent judgment in any sense of the word. An appeal then*

to the Collector becomes an empty formality".

44. Section 55 of the KVAT Act provides for appeal against an order of assessment. As per Clause (i) of Section 55(1) of the KVAT Act, appeal against an order passed by an authority of the rank of an Assistant Commissioner lies to the Deputy Commissioner (Appeals). In the instant case, it is alleged that the petitioner, who was in the rank of Assistant Commissioner, did not obey the written directions given by the Deputy Commissioner in the matter of assessment of tax. The petitioner, while acting as a quasi-judicial authority, was not bound to obey such directions. Assessment of tax made by him in violation of such directions cannot make him liable for committing any offence.

45. Learned Public Prosecutor has contended that the protection given under Section 3(1) of the Act is not absolute and acts done not in good faith are not protected under that provision.

46. There is no merit in the above contention. Section 3(1) of the Act does not use the expression "good faith". The reason

why judges are protected from action by the parties injured by their judicial acts, though done maliciously, is the interest of the public in securing the independence of the judges and to prevent vexatious actions from being brought against them. It is not for the sake of judges that protection is given but for the sake of public interest in securing their independence. In respect of any act as mentioned in Section 3(1) of the Act, if there is proof that the petitioner had acted in gross recklessness in the discharge of his duties or that he failed to act honestly or in good faith, the appropriate authority may take disciplinary action against him. But, for the reason that the act was done not in good faith, the protection under Section 3(1) of the Act cannot be taken away.

47. Learned Public Prosecutor has contended that, since the State Government has granted sanction for prosecution against the petitioner under Section 19(1) of the PC Act, sub-section (2) of Section 3 of the Act is attracted and therefore, the petitioner is not entitled to get the protection under sub-section (1) of Section 3 of the Act. Learned Public Prosecutor has contended that the protection given under sub-section (1) of Section 3 of the Act is subject to the provision

contained sub-section (2). It is submitted that, it is made clear in Section 3(2) of the Act that nothing in Section 3(1) would debar or affect 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 law to take action whether civil, criminal or departmental against the person who is a Judge or was a Judge.

48. Similar contentions raised by the prosecution were not accepted by a Division Bench of the Bombay High Court in **E.S.Sanjeeva Rao v. C.B.I** (**2012 Cri.L.J 4053**). Rejecting the contentions of similar nature, it was held as follows:

> *"32. In our view, it will not be possible to accept the submissions canvassed by the learned Additional Solicitor General. If the said submission is accepted, it would render the protection given to a Judge under Section 3(1) nugatory and the provision would be otiose or meaningless. It is a very well settled position in law that while interpreting the provision the words have to be interpreted in a harmonious manner and the words also have to be interpreted in a contextual manner after ascertaining the intention of the legislature. If*

the submission made by the Additional Solicitor General is accepted, it would mean that the legislature on the one hand had given protection to a Judge who was acting in the discharge of his official duty and, on the other hand, the same protection was taken away under Section 3(2) of the said Act. If the provision is so interpreted, it would be rendered meaningless.

34. Sub-section (1) gives complete protection to a Judge who is acting in judicial capacity. Sub-section (2), however, clarifies that the power of the Central Government, State Government, Supreme Court, High Court is not taken away to institute civil, or criminal proceedings against the said Judge. It, therefore, follows that if there is any other material which is available with the State or Central Government or higher judicial authorities which could show that the act of the Judge was not in discharge of his official duty then the protection was not available and the said Judge could be prosecuted. Therefore, if there is material to show that the judgment which was delivered was passed on extraneous considerations then on the basis of that material criminal case could be instituted against the said Judge and the said protection which is given under sub-section (1) would not be available. However, at the same time, it would not

> *be open to entertain or continue the proceeding which is based solely on the judgment which is delivered by the Court. Thus, it will not be open for the prosecuting agency to say that the judgment which is delivered is wrong because, according to the prosecution, the judgment should have been "X" and not "Y" more particularly since against the impugned order there is a remedy of filing appeal ..... ".*

I am in respectful agreement with the above view taken by the Bombay High Court.

49. In the instant case, the prosecution has not raised any allegation that the petitioner had accepted bribe or that the assessment orders were passed by him on extraneous considerations.

50. Dealing with the provision contained in Section 1 of the Judicial Officers Protection Act, 1850, in **Anwar Hussain v. Ajoy Kumar Mukherjee : AIR 1965 SC 1651,** it was held that if the act done or ordered to be done in the discharge of judicial duties is within jurisdiction, the protection is absolute and no enquiry will be entertained as to whether the act was done or ordered to be done erroneously, irregularly or even illegally, or without

believing in good faith that he had jurisdiction to do the act.

51. Section 1 of the Judicial Officers Protection Act, 1850 contains the common law rule of immunity of judges which is based on the principle that a person holding a judicial office should be in a position to discharge his functions with complete independence and what is more important, without there being in his mind, fear of consequences. The position of the Judges has since been made more secure by the enactment of Judges (Protection) Act, 1985 (See **S.P.Goel v. Collector of Stamps : AIR 1996 SC 839**). The provisions of this Act are in addition to and not in derogation of the provisions of any other law for the time being in force for protection of Judges.

52. Every error committed by a quasi judicial authority, however gross it may be, should not be attributed to improper motives. The appellate and revisional forums are provided on the pre-supposition that persons may go wrong in decision making, on facts as well as law. Even when the contest is between the Government and a private person, a quasi judicial authority entrusted with the task of decision making should feel

fearless to give honest opinion while acting judicially. Even if there was possibility on a given set of facts to arrive at a different conclusion, it is no ground to indict a public servant for misconduct for taking one view. If a faulty order of a quasi judicial authority is taken as a ground for initiating criminal proceedings, the officer will be in constant fear of passing an order which is not favourable to the Government. Then he would not be able to act independently or fearlessly. Merely because the order is wrong, it does not warrant initiation of criminal proceedings against the public servant, unless he was actuated by extraneous considerations or oblique motives. The remedy for errors committed by a quasi judicial authority is appeal or revision to the forum or authority provided under the statute for that purpose. It is in public interest that a public servant acting as quasi judicial authority should be in a position to discharge his functions with independence and without fear of consequences. The general rule applicable in the case of the issuance of a wrong order is that it is liable to be corrected in appeal or revision. A public servant acting as quasi judicial authority may become

criminally liable for obtaining personal gains. But, when he is acting judicially, even if he commits an error and passes an erroneous order, he would be protected from legal action. His accountability in respect of the orders passed by him is ensured by provisions for appeal and revision.

53. What matters is not the end result of the adjudication. What is of relevance, in attributing criminal misconduct on the part of a public servant who has acted as a quasi judicial authority, is whether he had been swayed by extraneous considerations while conducting the process. The sanctity of decision making process should not be confused with the ultimate conclusion reached by the authority. Erroneous exercise of judicial power, without anything more, would not amount to criminal misconduct. If the statutory authorities who exercise quasi judicial powers feel that they cannot honestly and fearlessly deal with matters that come before them, then it would not be conducive to the rule of law. They must be free to express their mind in the matter of appreciation of the evidence before them. Unless there are clear allegations of misconduct or

extraneous influences or gratification of any kind, criminal proceedings cannot be initiated merely on the basis that a wrong order has been passed by the public servant or merely on the ground that the order is incorrect. Such decisions cannot ipso facto result in prosecution, unless the mental element of dishonesty, to cause advantage of an unwarranted variety to another is apparent.

54. If a public servant, acting as a quasi judicial authority under a statute passes an order and if such order is in favour of a person other than the Government, any pecuniary advantage obtained by such person by virtue of such order, cannot be the basis for prosecution of the public servant under the PC Act, unless there is an allegation that he was actuated by extraneous considerations or oblique motives in passing the order.

55. This Court had occasion to make the above observations in **P.Sunil Kumar v. State of Kerala** (**2021 (4) KLT 51 : 2021 SCC OnLine Ker 1676**) while considering the question, whether a public servant, who acts as quasi judicial authority under a statute, can be held criminally liable under the P.C.Act

merely for the reason that he has passed a wrong or illegal order. The above observations squarely apply to the facts of the present case also.

56. At this juncture, it is apposite to quote the following observations of Lord Denning in **Sirros v. Moore: (1974) 3 WLR 459**, which read as follows:

> *"As a matter of principle the Judges of superior courts have no greater claim to immunity than the Judges of the lower courts. Every Judge of the courts of this land from the highest to the lowest should be protected to the same degree, and liable, to the same degree. If the reason underlying this immunity is to ensure "that they may be free in thought and independent in judgment," it applies to every Judge, whatever his rank. Each should be protected from liability to damages when he is acting judicially. Each should be able to do his work in complete independence and free from fear. He should not have to turn the pages of his books with trembling fingers, asking himself : "If I do this, shall I be liable in damages?" So long as he does his work in the honest belief that it is within his jurisdiction, then he is not liable to an action. He may be mistaken in fact. He may be ignorant in*

> *law. What he does may be outside his jurisdiction in fact or in law but so long as he honestly believes it to be within his jurisdiction, he should not be liable. Once he honestly entertains this belief, nothing else will make him liable. ... But, whatever it is the immunity of the judges – and each of them – should rest on the same principle. Not liable for acts done by them in a judicial capacity. Only liable for acting in bad faith, knowing they have no jurisdiction to do it*".

57. The intention behind granting protection to a Judge under Section 3(1) of the Act is to ensure that while discharging his official and judicial functions, he is not inhibited in performing his functions without fear or favour on account of constant threat of criminal and other proceedings. But, if there is material to show that the judgment has been passed on extraneous considerations, then the protection is no longer available.

58. In the present case, the petitioner was the competent authority under the KVAT Act who had the power to assess the tax due from M/s Nano Excel Enterprises. The assessment orders passed by him were in legal proceedings and, therefore, he would be squarely covered under the definition of "Judge" in

Section 2 of the Act which refers to every person who is empowered by law to give a definitive judgment in any legal proceeding. In my view, he is entitled to get the protection under sub-section (1) of Section 3 of the Act in respect of such act which was performed during the course of his quasi-judicial functions and it cannot form the basis for instituting criminal proceedings against him.

59. The prosecution against the petitioner is wholly based on the allegation that he did not care to verify and consider the proper documents in passing the assessment orders and granting refund of amount to the dealer. Learned Public Prosecutor has no case that the assessment orders were passed by the petitioner on extraneous considerations or that the prosecution has produced materials along with the charge-sheet to substantiate such an allegation. Learned Public Prosecutor has also no case that the prosecution has produced materials along with the charge-sheet to prove that the petitioner had obtained for himself any valuable thing or pecuniary advantage. If a public servant, acting as a quasi judicial authority under a statute,

passes an order and if such order is in favour of a person other than the Government, any pecuniary advantage obtained by such person by virtue of such order, cannot be the basis for prosecution of the public servant under the PC Act, unless there is allegation that the public servant was actuated by extraneous considerations or oblique motives in passing the order.

60. In **Ramesh Chennithala v. State of Kerala: 2018 (4) KLJ 647**, this Court has held as follows:

> *"It appears that there is a misconception among the officers of the VACB and the Police that loss caused to the Government or the Public Exchequer by a public servant in the discharge of his official functions is a ground for proceeding against him under the P.C.Act. This misconception is the result of the wrong understanding of the scope and object of the Prevention of Corruption Act. ... . There can be instances where some benefit or advantage is caused to a person, or such benefit or advantage is derived by a person by the wrongful acts of a public servant or due to his carelessness in the discharge of his duty or due to malfeasance. In such cases, there may be corresponding loss to the Government or the Public Exchequer also. What*

matters in such cases, is not whether the public servant has just caused loss to the Government or the Public Exchequer, but whether there has been any vicious link or nexus between him and the person benefited .... . Just because some loss was caused to the Government or the Public Exchequer or to any public sector undertaking or corporation or public body, by the discharge of functions of a public servant, he cannot be prosecuted under the P.C.Act. In short, mere instances of malfeasance or wrong administration or wrong discharge of functions or dereliction of duty will not cause a prosecution under the P.C.Act. .... In all cases of malfeasance or misfeasance or wrong administration, or in all cases of loss caused to the Government by the discharge of duty by public servants, a prosecution under the P.C.Act cannot be initiated. If it is only a case of dereliction of duty or wrong administration or malfeasance or misfeasance detected on enquiry, only disciplinary action can be initiated against the erring public servant."

The above observations also squarely apply to the facts of the present case.

61. To conclude, I find that the petitioner is entitled to get the protection envisaged under Section 3(1) of the Judges

(Protection) Act, 1985 in respect of the assessment orders dated 04.05.2011 and 31.05.2021 (Annexures-A4 and A6) passed by him and that the prosecution against him, which is based merely on those assessment orders, is barred and not maintainable in law. The criminal proceedings against the petitioner, based on Annexure-A2 charge-sheet, are liable to be quashed also for the other reasons stated earlier.

62. Consequently, the petition is allowed. The entire proceedings against the petitioner alone in the case C.C.No.6 of 2020 on the file of the Court of the Enquiry Commissioner and Special Judge (Vigilance), Thrissur, are hereby quashed.

(sd/-) **R.NARAYANA PISHARADI, JUDGE**

jsr

APPENDIX OF CRL.MC 2237/2021

PETITIONER'S ANNEXURES

ANNEXURE A1	TRUE COPY OF FIR IN CRIME NO.19/13/TSR DATED 6.6.2013 ON THE FILES OF THE VACB, THRISSUR.
ANNEXURE A2	TRUE COPY OF THE FINAL REPORT DATED 23.6.2020 IN CRIME NO.9-13-TSR OF VACB, THRISSUR FILED ON 7.7.2020 BEFORE THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THRISSUR AND TAKEN ON FILE AS C.C.NO.6 OF 2020 ON THE FILE OF THE SAID COURT.
ANNEXURE A3	TRUE COPY OF ASSESSMENT ORDER BEARING NO.ITD37/2009-10 DATED 10.2.2010 ISSUD BY THE INTELLIGENCE OFFICER, SQUAD NO.I DEPARTMENT OF COMMERCIAL TAXES, THRISSUR.
ANNEXURE A4	TRUE COPY OF ASSESSMENT ORDER BEARING NO.32080710011/2009-10 DATED 4.5.2011 ISSUED BY THE PETITIONER.
ANNEXURE A5	TRUE COPY OF REVISED PAYMENT ORDER DATED 11.5.2011 IN FORM NO.21K(1) ISSUED BY THE PETITIONER.
ANNEXURE A6	TRUE COPY OF ASSESSMENT ORDER BEARING NO.32080710611/2008-09 DATED 31.5.2011 ISSUED BYTHE PETITIONER.
ANNEXURE A7	TRUE COPY OF THE REVISED PAYMENT ORDER DATED 31.5.2011 IN FORM NO.21K(1) ISSUED BY THE PETITIONER.
ANNEXURE A8	TRUE COPY OF THE REPORT OF REVISED AUDIT ENQUIRY NO.93 OF THE SENIOR AUDIT OFFICER, STATUTORY REVENUE AUDIT (HEAD QUARTERS) II, OFFICE OF THE ACCOUNTANT GENERAL OF KERALA (AUDIT), THIRUVANANTHAPRUAM.

RESPONDENTS' ANNEXURES :

ANNEXURE R2(a) : COPY OF PAGE NO.34 AND 35 OF APPROVAL REGISTER FOR THE PERIOD FROM 2009-2010 TO 2011-2012.

ANNEXURE R2(b) : COPY OF STATEMENT OF DEPUTY COMMISSIONER (CW3) RECORDED UNDER SECTION 161 CR.P.C

ANNEXURE R2(c) : COPY OF DEPOSITION OF CW1 RENDERED UNDER SECTION 161 CR.P.C.

ANNEXURE R2(d): COPY OF THE ORDER DATED 27.01.2014 ISSUED BY CW4.

TRUE COPY

PS TO JUDGE