

**IN THE COURT OF THE ENQUIRY COMMISSIONER AND
SPECIAL JUDGE, THIRUVANANTHAPURAM.**

Present:- Sri.Rajakumara.M.V
Enquiry Commissioner & Special Judge.

Monday the 6th day of May, 2024
(Saka 1946 Vaisakha 16)

Crl.MP.No.326/2024

Dr.Mathew.A.Kuzhalsadan, : Complainant
Residing at "Kuzhalsatu House",
Paingattoor P.O.,
Moovattupuzha, Kerala – 686 671.
(By Adv.Dileep Sathyan.S)

Vs.

1. Pinarayi Vijayan, : Respondents
Chief Minister of Kerala,
Cliff House, Nanthancode,
Thiruvananthapuram.
2. M/s. Cochin Minerals and Rutile Ltd.,
Market Road, Alwaye,
Ernakulam.
Represented by its Managing Director,
Sathivilas Narayan Kartha Sasidharan Kartha.
3. Sathivilas Narayan Kartha Sasidharan Kartha,
Managing Director,
M/s. Cochin Minerals and Rutile Ltd.,
Market Road, Alwaye,
Ernakulam.
4. M/s. The Kerala Minerals and Metals Limited,
represented by its General Manager, NH66,
Sankaramangalam, Chavara, Kollam District.
5. M/s. Indian Rare Earths Ltd.,
represented by its Managing Director,
Rare Earth Division, Udyogamandal P.O.,
Ernakulam district.

6. M/s. Exalogic Solution Pvt. Ltd.,
1051, 7th main, 80ft road, Koramangala,
Bangalore, represented by the 7th respondent.

7. Mrs. Veena Thaikandiyil,
Pravik, Pinarayi P.O.,
Kannur, Founder and owner of
Exalogic Solutions Pvt. Ltd.,
1051, 7th main, 80ft road, Koramangala,
Bangalore.

This petition having come up for final hearing on 03.05.2024 and having stood over for consideration till this day the court passed the following:

ORDER

This is a complaint filed under Sec. 190 and 200 of Cr.P.C.

2. Shorn off unnecessary details, the material allegations in the complaint can be stated as below :- A1 in the complaint is the Chief Minister of Kerala and A7 is his daughter. A6 is a one man company owned by A7. A2 is M/s. Cochin Minerals and Rutile Ltd (for short CMRL) and A3 is its Managing Director. A4 is M/s. Kerala Minerals and Metals Ltd (KMML) and A5 is M/s. Indian Rare Earths Ltd (IREL). CMRL was incorporated on 18.08.1999 with the assistance of Kerala State Industrial Development Corporation (KSIDC). CMRL requires 1,00,000 metric ton per annum of ilmenite, for its regular production. Though IREL had assured to supply the required quantity of ilmenite, it was not honoured after

1999-2000. Since then CMRL has been importing low quality ilmenite from abroad by incurring huge loss. With the object of commencing mineral sand mining project in Kerala, CMRL incorporated M/s. Kerala Rare Earth and Minerals Ltd (KREML) on 17.08.2001. KREML purchased 20.84 hectares of land at Lakshmithoppu in Thrikkunnappuzha Village and another 3.67 hectares of land in Arattupuzha Village of Alappuzha district. The lands were purchased for mining of minerals and for setting up mineral complex comprising of mineral separation plant, concentrate up-gradation unit and auxiliary facilities. KREML is shown as a joint venture company. Its 49% of the shares is with CMRL and 7% is with CMRL Associates. Another 20% is with IREL and 11% is with KSIDC. Remaining 30% is with financial institutions.

3. Though the Industrial Department, Government of Kerala, had granted four mining leases on 15.09.2004 in favour of KREML for the extraction of minerals from the Kerala coast, it was cancelled as per order dated 25.09.2004. The Kerala Government also rejected other mining applications of KREML for which it had obtained concurrence from the Ministry of Mines. These orders of the Kerala Government were challenged before the Ministry of Mines, Government of India,

by way of revision. In the revision, orders of the Government of Kerala were cancelled and the State Government was directed to reconsider the matter. After reconsideration, the State Government confirmed its earlier order, in the light of its own Industrial Policy of 2007. This order was challenged before the Hon'ble High Court and the Hon'ble High Court quashed the orders of the Government. Though the matter was challenged before the Hon'ble Supreme Court, it was unsuccessful. In the meanwhile, as per order dated 20.02.2019, Government of India amended Atomic Mineral Concession Rules, 2016 by which, in effect no beach sand minerals can be mined in the country by private companies. Thereby the hope of KREML in starting its own mining unit was shattered forever. As per order dated 19.03.2019 of the Chief Controller of Mines, Government of India took a decision that the mining lease can invariably be granted to Government company or Corporation owned by the Government only and also directed for premature termination of all existing mineral concessions of beach sand minerals by private persons or companies in India.

4. In May 2016, the tenure of the then Chief Minister of Kerala, Mr. Oommen Chandy came to an end and A1 herein became the Chief Minister from 25.05.2016.

During December 2016, CMRL entered into an agreement to get IT and Marketing Consultancy Services from A7 and another agreement was signed in March 2017 with A6 company for software services. As per these agreements, CMRL has agreed to pay and paid ₹ 5 lakh per month to A7 and ₹ 3 lakh per month to A6 company. Neither A6 nor A7 had provided any service to M/s. CMRL but they have received ₹ 1.72 crores on the basis of the agreements with CMRL. These amounts were received by A1 through his daughter A6. By receiving this amount through A6 and A7, A1 has enriched himself unlawfully.

5. These payments were revealed when the Income Tax Department raided the office of CMRL in 2019. In a proceedings before the Interim Settlement Board of the Income Tax Department, the Chief Finance Officer of CMRL had revealed that A6 or A7 had not provided any service to them and CMRL was making payments to functionaries, members of various political parties, media houses, police etc, for smooth functioning of their business especially in view of the fact that they obtained ilmenite which is mined by PSUs as their raw materials which in turn is having environmental impact.

6. In order to help KREML and CMRL a man made flood disaster was created in the year 2018 and in the

guise of Disaster Management the Government decided to remove the sand bar formed on the Thottappally Spillway Mouth in the pretext of protecting Kuttanad area. This order was passed on 31.05.2019 allowing KMML to remove mineral sand from Thottappally Spillway Mouth at the rate of ₹ 464.55 per M3 excluding GST, excavations and dredging charges. This was the highest amount offered by KMML. While issuing this order, the prevailing rate of minerals per M3 was purposefully not considered. The contract was granted for a low rate. The sand mined by KMML was supplied to CMRL and thereby CMRL was favoured by the Government. This was in consideration of the amount received by A6 and A7 without providing any service to CMRL.

7. For holding land in excess of the ceiling, the Taluk Land Board initiated proceedings against KREML. Its applications to obtain exemption from ceiling limit as provided under Sec. 81 (3) of the Kerala Land Reforms Act, 1963 had been rejected several times by the Government earlier. After the agreements between A6 and A7 with CMRL, fresh attempts were started by KREML in obtaining exemption from ceiling limit. In that attempt on 05.07.2021, KREML again approached A1 with an application and A1 without considering the nature of

allegation and the previous decisions taken by the Government, gave direction to the Principal Secretary, Industrial Department to take appropriate decision. Thereafter in the meeting convened by the District Collector, Alappuzha on 15.06.2022, a favourable decision was taken to recommend the Land Board for exempting the land from ceiling limit. This is another favour shown by A1 in favour of CMRL and KREML. This was also in consideration of the amount received by A6 and A7. Therefore, all the accused persons have committed the offences punishable under Sec. 13(1)(b) of the Prevention of Corruption Act, 1988 and Sec. 120B and 34 of IPC.

8. When the complaint was presented on 29.02.2024, this court called for a report as to the status of similar petition filed by the complainant before the Director, VACB. The learned Public Prosecutor Sri.Renjith Kumar.L.R has filed a report stating that similar complaints filed by two other persons before the Enquiry Commissioner and Special Judge, Muvattupuzha and Kottayam have been rejected and a revision petition filed against the order of Enquiry Commissioner and Special Judge, Muvattupuzha is pending before the Hon'ble High Court as CrI. RP.No. 890/23 and therefore

no investigation on the allegations made in the complaint herein was undertaken by the Bureau.

9. Along with the complaint, the complainant has produced fourteen documents. Thereafter, on 23.03.2024 he has produced six more documents. Then, on 25.04.2024, three more documents were produced. Again on 02.05.2024 four documents and on 03.05.2024 one document, were produced by him.

10. I have heard the learned counsel for the complainant Adv. Dileep Sathyan.S and the learned Public Prosecutor, Sri. Renjith Kumar.L.R.

11. Learned counsel for the complainant taking me through several allegations in the complaint and the documents produced by him, contended that there are clear allegations and materials to proceed against the accused under Sec. 200 of Cr.P.C. Initially he made a request for forwarding the complaint under Sec. 156 (3) of Cr.P.C for investigation. In fact he had filed Cr1.MP. No. 540/2024 with a prayer that he may be permitted to obtain sanction from the appropriate authority to proceed with the complaint under Sec. 156(3) of Cr.P.C. Later he not pressed this petition and submitted that court may conduct enquiry under Sec. 200 of Cr.P.C.

Learned Public Prosecutor would argue that since there are no factual allegations constituting the offence under any of the provisions of the P.C.Act, the complaint is only to be rejected. He also submitted that even to proceed under Sec. 200 of Cr.P.C, sanction under Sec. 19(1) of the P.C. Act is mandatory.

12. In view of the law laid in **Anil Kumar and Others v. M. K. Aiyappa and Another, 2013 KHC 4790** followed by **L. Narayana Swamy v. State of Karnataka and Others, 2016 (9) SCC 598** a complaint filed before the Special Court for the offences under the P.C. Act, cannot be forwarded for investigation under Sec. 156(3) of Cr.P.C, with out previous sanction under Sec.19 of the P.C.Act. How ever, the complainant is not seeking an investigation by VACB. His prayer is for an enquiry by the court.

13. Sec.19 of the P.C.Act was amended in 2018 which came in to effect from 26.08.2018. Result of amendment is that when a private complaint is filed before the Special Court, the Court can proceed with it and if the complaint is not dismissed under Sec.203 of Cr.P.C, then alone the complainant need to apply for and obtain sanction.

14. Sec.19 (1) requires that the prosecution sanction from the competent authority is to be obtained before

the court takes cognizance of any offence under Sec.7, 11, 13 and 15 of the P.C.Act. To Sec.19 (1), certain provisos were added in the amendment referred to above. First proviso is as below:-

"Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless-(i) such person has filed a complaint in a competent court upon the alleged offences for which the public servant is sought to be prosecuted; and (ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding". (emphasis added)

From this it is clear that when a complaint is filed or when the court proceeds under Sec.200 and 202 of Cr.P.C, sanction need not be obtained. The question of sanction arises only if the court has not dismissed the complaint under

Sec.203 of Cr.P.C. Further, the appropriate Government or competent authority cannot entertain a request or application for sanction by a private person unless an order is passed by the Special Court directing him to produce the sanction. These two conditions are prerequisites for applying for sanction by a private complainant.

15. Learned Public Prosecutor has invited my attention to the decisions in **Balan.C.V. v. State of Kerala (2023 (2) KHC 281)**, **Shylaja.P. v. State of Kerala (2021 (2) KHC 11)** and **Mohammed v. State of Kerala (2019 (1) KLT 156)**. It is argued that in the light of these decisions court cannot even proceed under Sec.200 of Cr.P.C with out sanction. It is necessary to consider the facts of all these decisions to find out whether they are applicable to the present case. In the case of **Balan.C.V v. State of Kerala** challenge was against an order passed by the Special Judge forwarding a private complaint for investigation under Sec.156 (3) of Cr.P.C. Said order was set aside by the Hon'ble High Court, in the light of the decisions of the Apex Court in **Anilkumar** and **L.Narayana Swami** referred to above. Learned Public Prosecutor points out an observation in paragraph 7 of the judgment. It is observed that requirement of sanction under Sec.19 of the P.C.Act is a prerequisite for

presenting a private complaint against a public servant alleging the commission of an offence specified in Sec.7, 11, 13 and 15 of the P.C.Act. But it is well settled that an observation cannot be read separating it from the facts of the case. Very next sentence in the decision is that, no such complaint could be forwarded for investigation under Sec.156 (3) of Cr.P.C in the absence of sanction granted by the competent authority under Sec.19 of the P.C.Act. This makes it clear that, the observation was made only in the context of sending a complaint for investigation under Sec. 156(3) of Cr.P.C.

16. In **Shylaja.P v. Vigilance and Anti-Corruption Bureau Director and Others**, cited supra also, the question was regarding the necessity of sanction before forwarding the complaint under Sec.156 (3) of Cr.P.C. In that case, a complaint submitted before the Director of VACB was sent for surprise check followed by a vigilance enquiry. Result of enquiry was that no direct evidence could be collected to prove the allegation of corruption. That report was challenged by the complainant before the Hon'ble High Court and Hon'ble High Court closed the writ petition granting liberty to the complainant to invoke appropriate remedies in accordance with law. Thereafter, the complainant filed a complaint before the

Special Judge and Special Judge forwarded the same to VACB for preliminary enquiry. Basing on the earlier enquiry report VACB submitted a report in tune therewith stating that there were no grounds for taking action against the accused persons. Learned Special Judge accepted this report and dismissed the complaint. The complainant Shylaja.P. approached the Hon'ble High Court against this order of dismissal. It is apt to note that the crime in this case was allegedly committed before the amendment to Sec.19 of the P.C.Act came in to force. At paragraph 27 of this judgment Hon'ble High Court took note of the amendment to Sec.19 (1) and observed as below:-

“Therefore, after the amendment of S.19(1) of the Act, which came into effect from 26/07/2018, in order to get sanction for prosecution, a private person has to satisfy two conditions. The first condition is that he should have filed a complaint in the competent Court alleging the offences for which the public servant is sought to be prosecuted. The second condition is that the Court has not dismissed such complaint under S.203 of the Code but directed him to obtain sanction for prosecution against the public servant. In such a situation, the law now also provides an opportunity to the

public servant concerned of being heard in the matter of granting sanction for prosecution.”

17. This decision does not hold that after the amendment to Sec.19 (1), a prosecution sanction must be obtained before proceeding under Sec.200 of Cr.P.C. The dictum laid down there is only that before forwarding a complaint under Sec.156 (3) of Cr.P.C, prosecution sanction must be obtained in view of the decisions in **Anilkumar** and **L.Narayana Swami**.

18. **Mohammed.V.A v. State of Kerala and Others** cited above also related to the requirement of prosecution sanction before forwarding a complaint under Sec.156 (3) of Cr.P.C. It is also to be noted that the offences referred to therein are said to have been committed before the amendment to Sec.19 (1) of the P.C.Act. Though the Hon’ble High Court referred to the amendments, the question whether prosecution sanction is necessary when the Special Court proceeds under Sec.200 of Cr.P.C, did not fall for consideration and hence not considered. Therefore, none of the above decisions cited by the learned Public Prosecutor is applicable to the legal issue involved in this case.

19. Sec.5 (1) of the P.C.Act provides that a special Judge may take cognizance of offences without the accused being

committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by Cr.P.C, for the trial of warrant cases by Magistrates. It is well settled that a Special Judge under the P.C.Act is performing dual role of a Sessions Judge as well as a Magistrate. For the purpose of Sec.190, 200, 202 and 203 of Cr.P.C, the Special Judge is functioning as a Magistrate. Sec.190 empowers a Magistrate to take cognizance of an offence upon receiving a complaint of facts which constitute such offence. On receiving such complaint the Magistrate has two options, either to proceed under Sec.200 of Cr.P.C or to forward the complaint under Sec.156 (3) of Cr.P.C. If the Magistrate decides to proceed under Sec.200, he shall examine the complainant and witnesses if any, upon oath and the substance of such examination shall be reduced to writing. The next stage is Sec. 202 of Cr.P.C which says that any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of

deciding whether or not there is sufficient ground for proceeding.

20. At this stage, the Magistrate can either record evidence of witnesses on oath or can order an investigation by the police officer or any other person. It is only thereafter, the stage of Sec.203 comes. As per this section, if, after considering the statements on oath of the complainant and of the witnesses (if any) and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

21. Therefore, there cannot be any doubt that stage for dismissal of a complaint under Sec.203 can be reached only if stages under Sec.200 and if invoked, Sec.202 are covered. Hence, for the purpose of first proviso to Sec.19 (1) of P.C.Act, stage of taking cognizance is to be taken as a stage after Sec.203 of Cr.P.C. Otherwise Sec.19(1) and its first proviso can not be reconciled. Though in the general parlance Sec.200 of Cr.P.C is the stage of taking cognizance in a private complaint, first proviso to Sec.19 (1) has changed that position. To that extent it is inconsistent with the general provisions of Cr.P.C.

Here, it is apposite to note Sec.5 (3) of the P.C.Act, which is as below:-

"Save as provided in sub – section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge: and for the purposes of the said provisions, the Court of Special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Judge shall be deemed to be a Public Prosecutor"

22. It is clear that general provisions of the Cr.P.C is not applicable when special provision, which is inconsistent with the general provision, is made in the P.C.Act. For this reason also, I am inclined to hold that proceeding with a complaint under Sec.200 of Cr.P.C is not barred in the light of the amendment.

23. Now coming to facts of this case, there cannot be any dispute on the proposition of law that a complaint must contain facts constituting an offence. This is clear from Sec. 190 (1) (a) and Sec. 2 (d) of Cr.P.C. Therefore, even to proceed under Sec. 200 of Cr.P.C, the complaint must conform to the

above parameters ie; it must contain facts constituting the offence.

24. I have already narrated the material facts alleged in the complaint. I am not able to find that they constitute an offence under Sec. 13 (1) (b) of the P.C.Act or Sec. 120B and 34 of IPC. In other words, necessary facts constituting corruption are absent in the complaint. Even if facts stated in the complaint are accepted on its face value they do not constitute the offence alleged. Of course, there are allegations of corruption which have sprouted from certain suspicion and doubts entertained by the complainant. But allegations of such doubts and suspicions are not factual allegations constituting the offence. In ***Oommen Chandy v. State of Kerala 2016 (3) KHC 621***) it is held that a complaint should be a complaint of 'facts' which constitute such offence and mere allegations or averments can not constitute 'facts'.

25. Crux of the allegation is that CMRL paid ₹ 1.72 crores to A6 and A7 and this was a bribe paid to A1 for getting favours. Two kinds of favours are alleged. One is that, under the pretext of disaster management a Government Order was issued granting permission to KMML to remove sand from Thottappally Spillway mouth which is rich with minerals. This

was supplied to CMRL and thus favour was shown, according to the leaned counsel. I have gone through the entire records produced by the complainant. I could not find even a single scrap of paper which supports this contention. Unauthenticated abstracts of certain e-way bills are produced to point out that IREL has supplied ilmenite to CMRL. One cannot make out from these documents as to the nature of commodity involved in the e-way bills. Even if the authenticity of these records are accepted that will only show that IREL has sold some commodities to CMRL. Learned counsel would point out that the mining of mineral sand at Thottappally Spillway is being carried out by KMML and IREL and those minerals are being supplied to CMRL. It may be noted that, both KMML and IREL are Government Sector Undertakings. First one is owned by the State Government and the second one is owned by the Central Government. The Government has given permission to segregate the minerals from the excavated sand. The segregated minerals are to be sold to the prospective purchasers and one can not ask these public sector companies to keep the minerals with them. Sale of such minerals appears to be the main business activity of these public undertakings. Even as per the complaint, IREL has undertaken

to supply ilmenite to CMRL. In such situation, how one can find fault with KMML and IREL if they supply the minerals to CRML or other companies. There is no allegation that this was supplied free of cost. I could not find even an allegation that the supply was made on concession rate or for a rate beneficial to CMRL. In other words, what is the benefit gained by CMRL is not stated. According to the learned counsel, CMRL is getting its raw materials such as ilmenite for a low price. But such factual allegation is not seen in the complaint. It may be that when the raw materials are available locally, cost of procurement may be less compared to the raw materials imported from abroad. This cannot be branded as corruption. Moreover, this Government order was challenged before the Hon'ble High Court and the Hon'ble High Court confirmed the same as per judgment in **Suresh Kumar v. Union of India (2022 KHC 5595)**. Though the learned counsel for the complainant made an attempt to challenge this decision stating that it was obtained by making misleading arguments, that argument does not stand here. It is binding to this court as well as to all concerned. Learned Public Prosecutor pointed out that the complainant herein was one among the advocates appeared in that case. If so, he can not make this

argument. In the above judgment it was held: *“Anyhow, it is clear that the said work is entrusted with the public sector undertaking; and we also do not find any allegations of mala fides concerning the entrustment. Therein also, we are of the clear opinion that the spiraling work is done by the public sector undertaking in order to remove the atomic mineral from the sand removed from the sandbar at the Thottappally Spillway region.”*

26. Another favour alleged is that A1 is planing to grant exemption from land ceiling in respect of the landed properties of KREML. Here also, I do not find necessary factual allegations in the complaint. What is stated is that, after A6 and A7 entered into agreements with CMRL, the KREML has made fresh efforts to obtain exemption from land ceiling and in pursuance to this an application was made by KREML on 05.07.2021 to A1 seeking exemption. It is alleged that on this application A1 made endorsement directing the Principal Secretary, Industrial Department, to take appropriate decision. It is also alleged that in pursuance to this, in the meeting held by the District Collector, Alappuzha on 15.06.2022, a decision favourable to KREML was taken. Learned counsel argues that this decision was taken at the instance of A1.

An endorsement made by A1 in the application of KREML to take appropriate action, cannot be considered as any direction or recommendation made by him to grant exemption from ceiling limit. It appears to be the routine procedure when a petition is received by a minister. One can not say that the minister should not make any endorsement on it. It is argued that on earlier occasions similar applications have been rejected and therefore, this application also should have been rejected at the thrushhold. But, one can not forget that the minister will not be in custody of the file related to the subject matter and the file will be in the concerned department. The minister need not know the previous rejection orders. Once it is sent to concerned department, the cocerned section has to prepeare note by verifying the related files and submit it to higher ups. This is a routine procedure followed. No ulterior motive can be inferred simply for the reason that A1 has made a forwarding endorsement on the application. Further, merely because the District Collector has taken a stand favourable to KREML, A1 can not be linked to it. From the documents submitted by the complainant, it is seen that as per order dated 28.04.2023, the request of KREML was rejected by the Government. It is pertinent to note that if there was

actually an intention on the part of A1 to favour KREML, one would expect a favourable Government Order exempting the land of KREML from ceiling limit. That has not happened here. The complainant has produced a copy of the order in WP(C)No. 21546/2023 passed by the Hon'ble High Court in which the above order dated 28.04.2023 was challenged. Hon'ble High Court set aside that order and directed the Government to reconsider the application of KREML and pass fresh orders. Learned counsel at that point of time argued that on the strength of this order the Government is going to exempt the land of KREML from ceiling limit. Then the learned Public Prosecutor made available a copy of the order dated 25.10.2023 by which the application of KREML was again rejected with a rider to submit fresh application with detailed project report along with the recommendations of related departments. Then the learned counsel for the complainant changed his line of argument contending that this clause was incorporated as a door to favour KREML once it files fresh application. According to him by this order, a direction has been given to the District Collector to obtain fresh application from KREML and forward it with the reports of concerned departments and his recommendations. I am unable

read that order in that way. It only says that KREML shall file fresh application with detailed project report and then the Collector shall forward with his recommendation and that of related departments. It is apposite to note that Sec.81(3) does not prevent filing of successive applications. Sec. 81(3)(b) contemplates exemption even for any commercial or industrial purpose. It is argued that acts of A1 are intended to set a stage for the play of granting exemption. This argument is also not acceptable because, if A1 intended to favour KREML, there were two opportunities before him, one immediately getting the favourable report of the District Collector and another, when the Hon'ble High Court directed to reconsider the application. Complainant cannot forecast everything and on that basis cannot presume that there is corruption.

27. This matter was once posted for orders on 19.04.2024. To give an opportunity to the complainant to clarify three crucial points, I had reopened the case. Those three points were, (1) Was there any business deal between KMML and CMRL? (2) What is the favour received by CMRL in return to the alleged payment to A6 and A7? and (3) Has the Land Board exempted the land of KREML from the ceiling limit?. During further hearing, learned counsel could

not clarify any of these points. Regarding first question his argument is that removal of sand from Spillway mouth is being carried out by KMML and IREL jointly and IREL is supplying segregated ilmenite to CMRL. That means there is no direct deal between KMML and CMRL. Moreover, the agreement for removal of sand does not show that IREL is jointly engaged with KMML. Mere allegation of supply of ilmenite by IREL to CRML does not lead us anywhere. As to the second question also same argument is made. As to the third question, it is conceded that so far the Government has not granted exemption. It is argued that exemption will be granted in future.

28. It is pertinent to note that the orders dated 28.04.2023 and 25.10.2023 by which application for exemption was declined, have been passed after the alleged payment of ₹ 1.72 crores by CMRL to A6 and A7. If the suspicion or doubt entertained by the complainant was true, by this time there should have been an order by the Government in favour of KREML.

29. Learned counsel for the complainant, relying on the Circular Note produced by him on 02.05.2024, points out that four mining leases granted to KREML on 15.09.2004 were not

cancelled in spite of the directions given by the Central Government and said leases were cancelled only after the complainant approached the Director, VACB on 05.10.2023. It is argued that the Circulation Note would clearly indicate that the decision to cancel the leases was delayed by A1 on the pretext of obtaining legal opinion from the Advocate General and this was a favour given to CMRL and KREML who, along with similar other companies, were lobbying with the Central Government to reverse its policy prohibiting the private sector companies from mining beach sand. Additional four documents filed on 02.05.2024 and another document filed on 03.05.2024 are relating to this allegation. But this is a new allegation raised only now with out any factual foundation in the complaint. Needless to say that facts not alleged in the complaint can be considered by the court. Moreover, the fact that in the meeting chaired by A1 a decision to seek legal opinion from the Advocate General regarding the judgment of the Hon'ble Supreme Court was taken, can not be stretched to imagine that it was a favour shown to A2.

30. In the complaint at para 43, extra judicial confession of the Chief Financial Officer of CMRL is quoted as per which payments were being made to functionaries/members of various

political parties, media houses, police etc. It seems, the complainant has no grievance regarding the alleged payments made to others. He has no case that all those who alleged to have received payments, have favoured the CMRL in any manner. He has not voiced any grievance as to other payments. He is also not seeking any investigation or enquiry against them. A question would naturally arise why investigation or enquiry against A1, A6 and A7 alone is sought. This would strengthen the argument that the complaint is politically motivated. A similar issue was considered in **Ramesh Chennithala v. State of Kerala and Another (2018 KHC 716)**. The then Home Minister was accused of corruption in granting promotion to a senior police officer and posting him as the Director of VACB. In the same order three other officers also were promoted. Excluding them, a complaint was filed before the Special Court on which a preliminary enquiry was ordered. When that order was challenged, the Hon'ble High Court, observed as below:

“It is not known why one of the four promotees alone is arraigned as accused in the complaint brought by the second respondent. Four Police Officers were given promotion by the former Government, and the present Government has approved it, and have maintained the promotion given to the Police Officers. If the promotion

granted by the Government is illegal, or if it involves any element of corruption or nepotism, it is not known why the complainant would not question the promotion given to the other three Police Officers. This conduct itself makes it very much clear that this is a mala fide complaint, or the second respondent brought such a complaint either for personal ends or with some other ulterior motive.”

31. In **Manoj Abraham v. P P Chandrashekharan (2017 (3) KHC 983)** and **Common Cause and others v. Union of India (2017 (11) SCC 783)** the Constitutional Courts have cautioned that the court has to be on guard while ordering investigation against any important constitutional functionary, officers or any person in the absence of some cogent legally cognizable material.

32. For the above reasons, I find that no offence is made out from the complaint and the materials produced by the complainant. Therefore, there is no necessity to proceed under Sec. 200 of Cr.P.C. Complaint deserves to be rejected.

In the result, the complaint is rejected.

Dictated to the Confidential Assistant typed by her, corrected and pronounced by me in open court on this the 6th day of May, 2024.

SD/-
RAJAKUMARA.M.V
Enquiry Commissioner & Spl.Judge.

