



W.P(C) No.20552 of 2021 &
O.P.(Crl.) No.98 of 2021

2025:KER:9190

'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 30TH DAY OF JANUARY 2025/10TH MAGHA, 1946

OP(CRL.) NO. 98 OF 2021

AGAINST THE ORDER/JUDGMENT DATED IN CRMP NO.213 OF 2019 OF ENQUIRY
COMMISSIONER & SPECIAL JUDGE, KOTTAYAM/III ADDITIONAL DISTRICT COURT,
KOTTAYAM

PETITIONER:

K.S.XAVIER
KUNNUMPURATH HOUSE,
KADAKKARAPALLI P.O.,
CHERTHALA, ALAPPUZHA.

BY ADVS.
K.P.SANTHI
SMT.TARA PREM

RESPONDENTS:

- 1 JAMES
AGED 55 YEARS
CHINKUTHARA HOUSE, FORMER BOARD MEMBER,
THANKEY SERVICE CO-OPERATIVE BANK LIMITED NO.1003, WARD
NO.4, KADAKKARAPPALLY, CHERTHALA-688 529.
- 2 BAIJU KUJAPPAN,
AGED 50 YEARS
FORMER OFFICE STAFF AND PRESENT SECRETARY,
THANKEY SERVICE CO-OPERATIVE BANK LIMITED NO.1003, WARD
NO.4, KADAKKARAPPALLY,
CHERTHALA-688 529.
- 3 K.P.PRAKASHAN,
AGED 58 YEARS
KODIVEETTIL, CHERTHALA SOUTH,
AREEPARAMBU, CHERTHALA SOUTH PANCHAYAT,



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FORMER SECRETARY, THANKEY SERVICE CO-OPERATIVE BANK
LIMITED NO.1003, WARD NO.4,
KADAKKARAPPALLY, CHERTHALA-688 529.

4 P. L. JOSE,
AGED 70 YEARS
PUNNACKAL, THAICKAL P.O.,
KADAKKARAPPALLY PANCHAYAT,
KADAKKARAPPALLY VILLAGE, CHERTHALA TALUK,
BOARD MEMBER OF THANKEY SERVICE CO-OPERATIVE BANK
LIMITED NO.1003, WARD NO.4,
KADAKKARAPPALLY, CHERTHALA-688 529.

5 KALESH,
KAIPPARISSERIL, THAICKAL,
KADAKKARAPPALLY PANCHAYAT,
KADAKKARAPPALLY VILLAGE, CHERTHALA TALUK,
BOARD MEMBER OF THANKEY SERVICE CO-OPERATIVE BANK
LIMITED NO.1003, KADAKKARAPPALLY P.O.,
KADAKKARAPPALLY VILLAGE, WARD NO.4,
KADAKKARAPPALLY, CHERTHALA-688 529.

6 THANKEY SERVICE CO-OPERATIVE BANK LIMITED NO.1003,
WARD NO.4, KADAKKARAPPALLY, CHERTHALA-688529,
REPRESENTED BY ITS SECRETARY.

7 THE JOINT REGISTRAR,
OFFICE OF THE JOINT REGISTRAR CO-OPERATIVE SOCIETY
(GENERAL), MULLAKKAL, KERALA-688011.

BY ADVS.
ADITHYA RAJEEV
T.R.HARIKUMAR (K/000295/1992)
ARJUN RAGHAVAN (K/1277/2012)

ADV.DHEERENDRAKRISHNAN -AMICUS CURIAE

ADV.SMT.REKHA S. -SENIOR PUBLIC PROSECUTOR
ADV.A.SRI.RAJESH -SPECIAL PUBLIC PROSECUTOR
(VIGILANCE)

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 30.01.2025, ALONG
WITH WP(C).20552/2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 30TH DAY OF JANUARY 2025/10TH MAGHA, 1946

WP(C) NO. 20552 OF 2021

PETITIONER:

K. S. XAVIER
AGED 75 YEARS
KUNNUMPURATH HOUSE,
KADAKKARAPALLI P.O, CHERTHALA,
ALAPPUZHA

BY ADV K. S. XAVIER (PARTY-IN-PERSON)

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
CO-OPERATIVE DEPARTMENT,
GOVERNMENT OF KERALA, TRIVANDRUM 695 001
- 2 REGISTRAR OF CO-OPERATIVE SOCIETIES
DEPARTMENT OF CO-OPERATION,
OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
JAWAHAR SAHAKARANA BHAVAN,
DPI JUNCTION, THYCAUD (PO)
THIRUVANANTHAPURAM 695 014
- 3 THE JOINT REGISTRAR
OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETY(GENERAL), MULLAKKAL, KERALA 688 011
- 4 THANKEY SERVICE CO-OPERATIVE BANK LIMITED NO. 1003
WARD NO.4, KADAKKARAPPALLY, CHERTHALA 688 529
REPRESENTED BY ITS SECRETARY.
- 5 ADDL.R5 JAMES,
CHINKUTHARA HOUSE, FORMER BOARD MEMBER,
THANKEY SERVICE CO- OPERATIVE BANK LIMITED NO.1003, WARD
NO.4, KADAKKARAPPALLY, CHERTHALA-688529.



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6 ADDL.R6 BAIJU KUJAPPAN,
FORMER OFFICE STAFF AND PRESENT, SECRETARY,
THANKEY SERVICE CO-OPERATIVE BANK LIMITED NO.1003, WARD
NO.4, KADAKKARAPPALLY, CHERTHALA-688529.

7 ADDL.R7 K.P.PRAKASHAN,
KODIVEETTIL, CHERTHALA SOUTH, AREEPARAMBU,
CHERTHALA SOUTH PANCHAYAT, FORMER SECRETARY,
THANKEY SERVICE CO-OPERATIVE BANK LIMITED NO.1003, WARD
NO.4, KADAKKARAPPALLY, CHERTHALA-688529.

8 ADDL.R8 P.L.JOSE,
PUNNACKAL, THAICKAL P.O., KADAKKARAPPALLY PANCHAYAT,
KADAKKARAPPALLY VILLAGE, CHERTHALA TALUK, BOARD MEMBER
OF THANKEY SERVICE CO-OPERATIVE BANK LIMITED NO.1003,
WARD NO.4, KADAKKARAPPALLY, CHERTHALA-688529

9 ADDL.R9 KALESH,
KAIPPARISSERIL, THAICKAL, KADAKKARAPPALLY PANCHAYAT,
KADAKKARAPPALLY VILLAGE, CHERTHALA TALUK, BOARD MEMBER
OF THANKEY SERVICE CO-OPERATIVE BANK LIMITED NO.1003,
KADAKKARAPPALLY P.O., KADAKKARAPPALLY VILLAGE, WARD
NO.4, KADAKKARAPPALLY, CHERTHALA- 688529 [ADDL.R5 TO R9
ARE IMPLEADED AS PER ORDER DATED 15/03/2023 IN IA
NO.1/2023 IN WP(C) 20552/2021]

BY ADVS.
GOVERNMENT PLEADER
T.R.HARIKUMAR
ARJUN RAGHAVAN
PRASAD CHANDRAN

ADV.DHEERENDRAKRISHNAN -AMICUS CURIAE

ADV.SMT.REKHA S. -SENIOR PUBLIC PROSECUTOR
ADV.A.SRI.RAJESH -SPECIAL PUBLIC PROSECUTOR
(VIGILANCE)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.01.2025,
ALONG WITH OP(Crl.) 98/2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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'CR'

P.G. AJITHKUMAR, J

**W.P. (C) No.20552 of 2021
&
O.P.(Crl.) No.98 of 2021**

Dated this the 30th day of January, 2025

JUDGMENT

The common petitioner is the complainant in Crl.M.P. No.213 of 2019 which he has filed before the Court of the Enquiry commissioner and Special Judge, Kottayam.

2. The allegation in the complaint is that the accused, being public servants as president, members of the Managing Committee and staffers of the Thankey Service Co-Operative Bank Ltd. No.1003, Kadakkarappally, Cherthala, by abusing their official powers misappropriated funds of the bank which was provided by the National Bank for Agriculture and Rural Development (NABARD) and the State Government for the purpose of extending various benefits to the loanees, particularly those who availed agriculture loans. The offences alleged in the complaint are punishable under Sections 120B, 409, 465 and 471



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of the Indian Penal Code, 1860 and Section 13(2) of the Prevention of Corruption Act, 1988.

3. The petitioner filed W.P.(C) No.20552 of 2021 in order to ventilate his grievance that as per Ext.P14, the 3rd respondent refused to accord sanction to prosecute the accused. He seeks the following reliefs in the writ petition:

(i) issue a writ of certiorari or such other writ, direction or order quashing Exhibit P14 as arbitrary,

illegal and unjust;

(ii) issue a writ of mandamus or such other writ, direction or order directing the 3rd respondent to grant

sanction to the petitioner to prosecute the offenders, within a time frame to be fixed by this Honourable Court.

4. In O.P.(Crl.) No.98 of 2021, the grievance espoused by the petitioner is that the Special Judge did not oblige his request to initiate prosecution proceedings against the accused without insisting on a sanction as contemplated in Section 19(1) of the PC Act, 1988. He therefore seeks an order directing the Special Court to proceed with the complaint, a copy of which was produced as Ext. P4, without insisting the petitioner to obtain sanction for



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prosecution.

5. The learned counsel, who filed this writ petition and original petition on behalf of the petitioner relinquished vakalath. The petitioner appeared in person and expressed his desire to prosecute the matter on his own. This Court, considering the seriousness of the matter involved, as per the order dated 15.02.2023 appointed Adv. K.K.Dheerendrakrishnan as Amicus Curiae.

6. Heard the petitioner in person, the learned Amicus Curiae, the learned Special Public Prosecutor (Vigilance), learned counsel for Respondent No. 4 and learned counsel for Additional Respondents No. 5 to 9 in W.P.(C) No.20552 of 2021, and the learned counsel for Respondents No. 1 to 6 in O.P.(Crl). No.98 of 2021.

7. Parties and documents are referred to hereunder as arrayed and marked in W.P.(C) No.20552 of 2021.

8. This Court on 15.02.2023, raised two questions in order to adjudicate these matters, which are (1) Whether the President and Board of Directors of the Co-operative Society are public servants and (2) Whether sanction is necessary to



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prosecute them?

9. The learned Special Judge took the view that sanction under Section 19(1) of the P.C. Act was required to proceed further on the complaint. It is seen that the petitioner submitted Ext.P12 before the 2nd respondent-Registrar of Co-operative Societies requesting to initiate action against the accused persons who are respondents No.5 to 9 in respect of the alleged misdeeds. It is mentioned in Ext.P12 that the petitioner had earlier approached the Joint Registrar of Co-operative Societies, Alappuzha-the 3rd respondent, seeking sanction for prosecuting the accused. That request was not soon decided, but eventually it was rejected as per Ext. P14 dated 06.09.2021. In Ext.P14 order, the Joint Registrar took the view that the members of the managing committee and members of the staff of a Co-operative Society/Bank would not come within the definition of public servant and that the Joint Registrar was not competent to accord sanction for prosecution under Section 19(1) of the PC Act. In the light of Ext.14, the petitioner was left with no other remedy than can approach this Court by filing a writ petition.

10. The question whether or not the accused are public



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servants they being the president and members of the managing committee of the Co-operative Bank has to be answered with reference to the nature of the incriminating act. Who is a public servant for the purpose of the PC Act is not defined in the Co-operative Societies Act. Therefore, the definition of the term 'public servant' in Section 2(c) of the P.C. Act has to be applied. In order to understand whether President and members of the Managing Committee of a Co-operative Society/Bank are public servants for the purpose of that Act, Clause (ix) of Section 2(C) of the PC Act is relevant; it reads:

2(c) "Public Servant" means

i) xxxxx

ii) xxxxxx

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a



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Government company as defined in section 617 of the
Companies Act, 1956 (1 of 1956);

11. The core of the allegation in the complaint is that the accused misusing their powers as public servants misappropriated the funds provided to the Thankey Service Co-Operative Bank Ltd provided by the NABARD and State Government. The funds were provided to extend benefits to the members of the bank who availed loans, particularly agricultural loans. As held in **State of Maharashtra v. Brijlal Sadasukh Modani [(2016) 4 SCC 417]** a sprinkle of aid to the co-operative society will bring an employee within the definition of 'public servant'. This Court in **Ramakrishnan K. v. Additional Legal, Vigilance and Anti-Corruption Bureau, Thrissur [2021 (1) KLT 650]** held that in the light of the decision of the Apex Court in **Brijlal** the contention that the Society has not received financial aid from the Government and therefore, the office - bearers of the Society were not public servant coming under Section 2(c)(ix) of the P.C. Act could not be gone into in detail at the initial stage. It was further observed that the same was a matter to be dealt with in the course of the trial of the case.



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12. In the light of the above whether or not the Bank has received any financial aid from the NABARD or the Government, and therefore the accused are public servants or not, is liable to be decided at the trial of the case and not now. Viewed so the 3rd respondent should not have cite as one of the reasons to refuse sanction as per Ext. P14 that the accused were not public servants.

13. The second reason assigned by the 3rd respondent to decline sanction is that he was not competent under the law to accord sanction. As a matter of fact, when sanction for prosecution was declined as per Ext.P14 there was no specific provision concerning grant of sanction for prosecution of the president, members of the Managing Committee and staffers of a Co-Operative Society/Bank. However in this regard, Section 68B was inserted in Kerala Co-operative Societies Act, 1969 with effect from 07.06.2024, which read as follows:

68B. Power of Government or Registrar to deal with irregularities etc.- (1) The Government or the Registrar, as the case may be, may forward the cases of misappropriation or irregularities or corruption in the society which comes under the provisions of the Indian Penal Code, 1860 or/and of the Prevention of Corruption Act, 1988, to the Police or Vigilance and Anti-Corruption Bureau, as the case may be, for



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investigation and further action.

(2) The Registrar shall be the authority to accord sanction for inquiry/enquiry or investigation and also for taking cognizance of an offence under the Prevention of Corruption Act, 1988 against the members of the Committee and/or officers and servants of the society.

(3) In the case of Chief Executive Officers appointed by the Government, the Secretary to Government, Co-operation Department shall be the sanctioning authority.

14. In the light of Sub Section (2) of Section 68B, no further deliberation is required as to who is the authority competent to accord previous approval under Section 17A of the PC Act as well as sanction under Section 19(1) of the PC Act. It is the Registrar of Co-operative Societies who is empowered to take decisions under Section 17A as well as Section 19(1) of the PC Act concerning president, members of the Managing Committee and officers and servants of Co-operative Societies/Banks. In view of the said specific provision, Ext.P14, which was issued by the 3rd respondent, the Joint Registrar cannot sustain in law. Of course, Section 68B of the Co-operative Societies Act came to the effect subsequent to Ext.P14. However, the question of previous approval for enquiry or investigation as well as sanction for



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prosecution under Section 19(1) are to be decided when such steps have to be initiated. Here, Ext. P4-complaint is still pending before the Special Court awaiting sanction for prosecution. Hence, provisions of Section 68B of the Co-operative Societies Act are applicable to the case. It is also seen that the Registrar of Co-operative Societies-2nd respondent did not take a decision on Ext.P12 application yet. Therefore, the question whether or not previous sanction has to be granted to prosecute the accused in Ext. P4 complaint shall be taken by the 2nd respondent-Registrar of Co-operative Societies.

15. In the circumstances, I am of the view that this writ petition and original petition are liable to be disposed of by setting aside Ext.P14 order and directing the 2nd respondent Registrar to take appropriate decision in accordance with law on Ext.P12 with reference to Section 19 of the PC Act after affording an opportunity of being heard as provided in the second proviso to Section 19 besides to the petitioner. It is made clear that when a Special Court decides to direct an investigation into the offence, naturally the question of previous approval as contemplated under Section 17A of the PC Act may arise and it is then for the person concerned to



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obtain the previous approval from the competent authority.

The 2nd respondent, the Registrar of Co-operative Societies shall take a decision in Ext.P12 as expeditiously as possible at any rate within the time frame as stipulated in the provisos to Section 19 of the PC Act.

Sd/-

P.G. AJITHKUMAR, JUDGE

SMF



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APPENDIX OF WP(C) 20552/2021

PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF THE COMPLAINT DATED 14-09-2015 SUBMITTED TO THE REGISTRAR OF CO-OPERATIVE SOCIETIES

EXHIBIT P2 TRUE COPY OF THE REPORT DATED 30-12-2016 OF THE ASSISTANT REGISTRAR

EXHIBIT P3 TRUE COPY OF THE REPORT DATED NIL OF THE JOINT REGISTRAR

EXHIBIT P4 TRUE COPY OF CRL.M.P NO 213 OF 2019 FILED BEFORE THE ENQUIRY COMMISSION AND SPECIAL JUDGE, KOTTAYAM DATED 13-05-2019

EXHIBIT P5 TRUE COPY OF THE REPRESENTATION DATED 17-07-2019 SUBMITTED TO THE JOINT REGISTRAR.

EXHIBIT P6 TRUE COPY OF THE REMINDER DATED 25-10-2019 SUBMITTED TO THE 3RD RESPONDENT

EXHIBIT P7 TRUE COPY OF THE REPLY DATED 28-10-2019 OF THE 3RD RESPONDENT.

EXHIBIT P8 TRUE COPY OF THE LETTER DATED 6-11-2019 OF THE PETITIONER TO THE JOINT REGISTRAR

EXHIBIT P9 TRUE COPY OF THE REPLY DATED 21-11-2019 OF THE JOINT REGISTRAR.

EXHIBIT P10 TRUE COPY OF THE APPEAL DATED 25-11-2019 SUBMITTED TO THE DEPUTY REGISTRAR.

EXHIBIT P11 TRUE COPY OF THE REPLY DATED 4-12-2019 OF THE DEPUTY REGISTRAR.

EXHIBIT P12 TRUE COPY OF THE LETTER DATED 27-11-2019 SUBMITTED TO REGISTRAR OF CO-OPERATIVE SOCIETIES

EXHIBIT P13 TRUE COPY OF THE REPLY DATED 24-12-2019 OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES



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EXHIBIT P14

**TRUE COPY OF THE ORDER DATED 6.09.2021 OF
THE 3RD RESPONDENT**



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APPENDIX OF OP(CRL.) 98/2021

PETITIONER EXHIBITS

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EXHIBIT P4	TRUE COPY OF CRL.M.P.NO.213 OF 2019 FILED BEFORE THE ENQUIRY COMMISSION AND SPECIAL JUDGE, KOTTAYAM DATED 13.05.2019.
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EXHIBIT P6	TRUE COPY OF THE REMINDER DATED 25.10.2019 SUBMITTED TO THE 7 TH RESPONDENT.
EXHIBIT P7	TRUE COPY OF THE REPLY DATED 28.10.2019 OF THE 7TH RESPONDENT.
EXHIBIT P8	TRUE COPY OF THE LETTER DATED 06.11.2019 OF THE PETITIONER TO THE JOINT REGISTRAR.
EXHIBIT P9	TRUE COPY OF THE REPLY DATED 21.11.2019 OF THE JOINT REGISTRAR.
EXHIBIT P10	TRUE COPY OF THE APPEAL DATED 25.11.2019 SUBMITTED TO THE DEPUTY REGISTRAR.
EXHIBIT P11	TRUE COPY OF THE REPLY DATED 04.12.2019 OF THE DEPUTY REGISTRAR.
EXHIBIT P12	TRUE COPY OF THE LETTER DATED 27.11.2019 SUBMITTED TO REGISTRAR OF CO-OPERATIVE SOCIETIES.



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EXHIBIT P13

**TRUE COPY OF THE REPLY DATED 24.12.2019 OF
THE REGISTRAR OF CO-OPERATIVE SOCIETIES.**