

CASE NO.:
Appeal (crl.) 801 of 2003

PETITIONER:
K. Karunakaran

RESPONDENT:
State of Kerala

DATE OF JUDGMENT: 06/12/2006

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J

Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Kerala High Court holding that since the appellant was not holding office which he allegedly abused, at the time of taking cognizance, no sanction was necessary.

Primary stand in this appeal is that the view expressed in R. S. Nayak v. A.R. Antulay (1984 (2) SCC 183) is not correct and fresh look is necessary as the observations made are per incuriam. An additional point has been raised that the prosecution is the outcome of mala fides and varying stands taken at different stages clearly indicate the fact that the appellant is the victim of personal and political rivalry with leaders of some political parties.

Learned counsel for the respondent-State on the other hand submitted that the decision in R.S. Nayak's case (supra) cannot be said to be a case of per incuriam. Additionally, there is no mala fide involved. It is stated that even if for the sake of arguments it is conceded but not admitted that political reasons exist that cannot be a ground to quash the proceedings. In any event, the circumstances highlighted by the appellant to substantiate the plea of allegation cannot be taken note of.

The principal stand of the appellant's arguments regarding the status on the date of cognizance has been elaborately dealt with and the decision in Parkash Singh Badal's case rendered today (in Criminal Appeal arising out of SLP (Crl.) 19640 of 2004) rightly accepts his case. The stand in this regard is clearly without substance.

The residual question therefore is whether mala fides are involved. As is noted in Parkash Singh Badal's case even though there is an element of personal or political rivalry, it is ultimately to be seen whether materials exist to substantiate the allegations. In that sense it is not the credibility of the person who makes the allegations but the existence of materials necessitating investigation which is relevant.

To that extent, learned counsel for the respondent-State is correct. But certain peculiar features exist in this case

which need consideration.

The Chief Secretary of the State on 24.11.2005 has filed an affidavit stating that the State Government wanted to withdraw the prosecution and it is not in dispute that the affidavit was filed with authority. Relevant portion of the affidavit reads as follows:

"xx

xx

xx

xx

12. The allegations that petitioner had managed to clear the proposals through the Council of Ministers without any discussion has no basis. The matter was approved by the Council of Ministers.

13. From the foregoing facts it is obvious that no criminal culpability could be made out in respect of this deal. As the State Government did not incur any loss or as the private party did not make any unlawful gain, the allegations of criminal conspiracy or any other irregularity are not sustainable. Taking all these facts into consideration the State Government have decided to move the Court of the Special Judge & Enquiry Commissioner, Thiruvananthapuram for withdrawal of prosecution against all accused in the case No.CC6/03 charge sheeted based on the crime case 1/97/SCT u/s 13(2) r/w Section 13(1)(d) of PCX Act and Section 120B of IPC as provided U/s 321 of Criminal Procedure Code".

But interestingly subsequently another affidavit has been filed stating that there is no intention to withdraw the prosecution.

Learned counsel for the appellant attributes to this change of stand to the political scenario and the people in Government. It is stated that the person who had filed the application for intervention when the earlier affidavit proposing withdrawal of prosecution was filed happens to be the present Chief Minister of the State. This according to learned counsel for the appellant is a clear case of political vendetta.

Learned counsel for the respondent on the other hand stated that all relevant facts were not noticed when earlier petition was filed. Therefore, in essence there is no change in stand.

These aspects were not before the High Court when the matter was heard. The relevance of these factors therefore could not have been considered.

Therefore, while upholding the order of the High Court to the extent it hold that the status on the date of taking cognizance vis-à-vis the position when the office was allegedly abused has been rightly decided. We direct the High Court to consider the matter relating to the plea of mala fides for which the parties shall be permitted to place relevant materials. The same shall be done within a period of six weeks. As the matter is pending since long, we request the High Court to dispose of the matter within three months from the date on which the materials are placed by the parties before it. We make it clear

that we have not expressed any opinion on the said aspect of the case.

The appeal is accordingly disposed of.

JUDIS