

K. KARUNAKARAN

v.

STATE OF KERALA

DECEMBER 6, 2006

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

*Code of Criminal Procedure, 1973—Section 197—Prosecution without Sanction—Challenged—High Court holding sanction not necessary since the person was not holding the office when cognizance was taken—Additional allegation of victimization by prosecution due to mala fides and political rivalry in view of certain facts brought on record—Held: Decision of High Court regarding status on the date of taking cognizance justified—Since the additional facts regarding allegation of mala fides not brought to the notice of High Court, direction to High Court to consider the plea relating to malafides.*

Cognizance of an offence was taken against the appellant and he was prosecuted. The same was questioned on the ground of lack of sanction. High Court held that no sanction was necessary as the appellant was not holding the office which he allegedly abused.

In appeal to this Court, appellant contended that the prosecution was the outcome of *mala fides* and political vendetta, in view of the varying stands taken at different stages regarding the withdrawal of prosecution and continuation of the prosecution.

Disposing of the appeal, the Court

**HELD:** 1. The order of the High Court is upheld to the extent it held that the status on the date of taking cognizance *vis-a-vis* the position when the office was allegedly abused has been rightly decided. [286-B-C]

2. As regards the question whether *mala fides* are involved, certain peculiar features exist in this case which show that the State wanted to withdraw the prosecution and consequently showed no intention to withdraw the same, need consideration. These aspects were not before the High Court when the matter was heard. The relevance of these factors therefore could

- A not have been considered. High Court is directed to consider the matter relating to the plea of *mala fides* for which the parties shall be permitted to place relevant materials. [285-A-B; 286-B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 801/2003.

B

From the final Judgment and Order dated 19-2-2003 of the High Court of Kerala at Ernakulam in Crl. R.P. No. 430/2001.

Uday Umesh Lalit, Gaurav Agrawal for the Appellant.

- C Naveen Kumar Singh, Mukul Sood and Aruneshwar Gupta for the Respondent.

The Judgment of the Court was delivered by

- D 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.

- E 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.

- F 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  
G allegation cannot be taken note of.

- H 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. A

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

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: C

“xx    x    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. D
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”. E F

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

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 H

A 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.

B 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-a-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.

D The appeal is accordingly disposed of.

K.K.T.

Appeal disposed of.

E CRIMINAL APPELLATE JURISDICTION - SLP (crl). No. 2684 of 2003.

**DR. ARIJIT PASAYAT, J.** In view of the Judgment rendered today in the case of *K. Karunakaran* in Criminal Appeal No. 801/2003, the present petition is dismissed.

SLP dismissed.