

Anilkumar Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1013461

Court : Kerala

Decided On : Jan-29-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Anilkumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN TUESDAY, THE 29TH DAY OF JANUARY 2013 9TH MAGHA 193 CrI.Rev.Pet.No. 148 of 2013 (C)
----- AGAINST THESPL.JUDGE,TRIVANDRUM
ORDER/JUDGMENT IN CRMP.259/2012 of ENQ.COMMR. & DATED 13 12-2012
REVISION PETITIONER/PETITIONER/COMPLAINANT:
----- ANILKUMAR, AGED 3 YEARS, S/O
CHANDRASEKHARAN PILLAI,ASWATHY BHAVAN, PANAYAM
CHERRY,ANCHAL VILLAGE,PATHANAPURAM TALUK, KOLLAM DISTRICT. BY
ADV. SMT.G.VIDYA COMPLAINANTS/COUNTER PETITIONERS/ACCUSED:
----- 1.REPRESENTED STATE OF KERALA, BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM. 2.Q-
858/82,PANAYAMCHERRY,ANCHAL, KERALA GRAMA VIKASANA SAMITHI,
REPRESENTED BY THE PRESIDENT,PRABHAKARAN PILLAI, AGED 63
S/O.LATE GOPALA PILLAI,CHAMAKALA VEEDU, PANAYAMCHERRY,ANCHAL
VILLAGE,KOLLAM DISTRICT PIN-691306. 3.S/O.LATE PRABHAKARAN PILLAI,

AGED 6 YEARS, GOPALA PILLAI, CHAMAKALA VEEDU, PANAYAMCHERRY ANCHAL VILLAGE, KOLLAM DISTRICT, (THEN PRESIDENT OF KERALA GRAMA VIKASANA SAMITHI Q-858/82, PANAYAMCHERRY, ANCHAL) PIN-691306.

4. W/O. PRABHAKARAN 50 YEARS, MAYADEVI, AGED PILLAI, CHAMAKALA VEEDU, PANAYAMCHERRY, ANCHAL VILLAGE, KOLLAM DISTRICT. (THEN TREASURER OF KERALA, GRAMA VIKASANA SAMITHI, Q-858/82, PANAYAMCHERRY, ANCHAL) PIN- 691306. CrI.Rev.Pet.No. 148 of 2013

(C) 5. JAYAVILASOM, PANAYAMCHERRY GOPINATHA PILLAI, ANCHAL VILLAGE, KOLLAM DISTRICT. (THEN COMMITTEE MEMBER OF KERALA GRAMA VIKASANA SAMITHI, Q-858/82, PANAYAMCHERRY, ANCHAL) PIN-691306.

6. S/O. GOPINATHA JAYACHANDRAN, PILLAI, JAYAVILASOM, PANAYAMCHERRY, ANCHAL VILLAGE, KOLLAM DISTRICT. (THEN COMMITTEE MEMBER OF KERALA GRAMA VIKASANA SAMITHI Q-858/82, PANAYAMCHERRY, ANCHAL) PIN-691306.

7. S/O. LATE G. RAVEENDRAN PILLAI, GOPALA PILLAI, CHAMAKALA VEEDU, PANAYAMCHERRY ANCHAL VILLAGE, KOLLAM DISTRICT, (THEN COMMITTEE MEMBER OF KERALA GRAMA VIKASANA SAMITHI Q-858/82, PANAYAMCHERRY, ANCHAL) PIN-691306.

8. W/O. LATE N. SUMATHI AMMA, T.K. NARAYANAN NAIR, LAL BHAVAN, PANAYAMCHERRY, ANCHAL VILLAGE, KOLLAM DISTRICT, (THEN COMMITTEE MEMBER OF KERALA GRAMA VIKASANA SAMITHI Q-858/82, PANAYAMCHERRY, ANCHAL) PIN-691306.

9. S/O. LATE. T.K. NARAYANAN N.S. HARILAL, AGED 4 YEARS, NAIR, LAL BHAVAN, PANAYAMCHERRY, ANCHAL VILLAGE, KOLLAM DISTRICT, (THEN COMMITTEE MEMBER OF KERALA GRAMA VIKASANA SAMITHI Q-858/82, PANAYAMCHERRY, ANCHAL) PIN-691306.

10. G. GIREESH, AGED 4 YEARS, S/O. GOPINATHA PILLAI, JAYAVILASOM, PANAYAMCHERRY, ANCHAL VILLAGE, KOLLAM DISTRICT. (THEN COMMITTEE MEMBER OF KERALA GRAMA VIKASANA SAMITHI Q-858/82, PANAYAMCHERRY, ANCHAL) PIN-691306.

11. VIJAYANANDAN, AGED 5 YEARS, FORMER VILLAGE OFFICER ANCHAL (AS ON 01-12-2010) DEVI KRIPA, EDAYAM, ARACKAL VILLAGE, KOLLAM DISTRICT, PIN-691532.

12. MINI.S.V, AGED 4 YEARS W/O.VIJAYANANDAN,DEVI KRIPA EDAYAM,ARACKAL VILLAGE, KOLLAM DISTRICT,PIN-691532.
13. M.ABDUL RAHIM, AGED 5 YEARS SUB REGISTRAR OFFICER,ANCHAL, KOLLAM DISTRICT (AS ON 01-12-2010) PIN-691306. CrI.Rev.Pet.No. 148 of 2013 (C) 14. M.O.GEETHA KUMARI, SUB REGISTRAR OFFICER,ANCHAL KOLLAM DISTRICT.(AS ON 21-06-2011),PIN-691306.
15. K.SASIDHARAN PILLAI, SUB REGISTRAR OFFICER,ANCHAL,KOLLAM DISTRICT (AS ON 20-07-2011),PIN-691306.
16. A.RAJENDRAN PILLAI, DOCUMENT WRITER,PUTHENVEETIL,THAZHAMEL ANCHAL,KOLLAM DISTRICT,PIN-691306.
17. T.N.ANIL, AGED 3 YEARS QDA 471,DOCUMENT WRITER,S/O.NARAYANAN THAIPLAMVILA VEEDU,THAZHAMEL,ANCHAL KOLLAM DISTRICT,PIN-691306.
18. K.BALAKRISHNA PILLAI, SENIOR CO-OPERATIVE INSPECTOR KHADI AND VILLAGE INDUSTRIES BOARD KOLLAM DISTRICT.(AS ON 21-12-1982)PIN-691001.
19. PROJECT OFFICER, KHADI AND VILLAGE INDUSTRIES BOARD KOLLAM DISTRICT.(DURING 23 12-1982 TO 30-12-2010)PIN-691001.
20. SECRETARY, KHADI AND VILLAGE INDUSTRIES BOARD, VANCHIYOOR, TRIVANDRUM (AS ON 30-03-1983)PIN-695035.
21. SECRETARY, KHADI AND VILLAGE INDUSTRIES BOARD VANCHIYOOR, TRIVANDRUM (DURING 9 12-2008 TO 30-12-2010)PIN-695035.
22. DISTRICT REGISTRAR, KOLLAM.(DURING 18 12-1982 TO 13-03-2012)PIN-691001.
23. P.C.RAJU, SENIOR CO-OPERATIVE INSPECTOR KHADI AND VILLAGE INDUSTRIES OFFICE KOLLAM.(AS ON 29-08-2009),PIN-691001.

24. VIMAL @ KANNAN, AGED 2 YEARS S/O.PRABHAKARAN PILLAI,CHAMAKALA HOUSE,PANAYAMCHERRY ANCHAL,KOLLAM DISTRICT,PIN-691306. R1 BY PUBLIC PROSECUTOR SRI.N.SURESH THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 29-01-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: V.K.MOHANAN, J.

----- Crl.R.P.No.148 of 2013 -----

Dated this the 29th day of January, 2013 ORDER The revision petitioner, who is the complainant in Crl.M.P.No.259 of 2012 of the court of the Enquiry Commissioner and Special Judge, Thiruvananthapuram, preferred this revision petition aggrieved by the order dated 13/12/2012 of the court below by which the court below ordered to conduct preliminary enquiry with respect to the various allegations only against R1 to R11 and R23 and as such no order is issued against R12 to R22.

2. The learned counsel for the petitioner vehemently submitted that R12 to R22, who are arrayed as accused in the complaint, are also involved in the commission of various offences alleged in the complaint. But the learned Judge while ordering preliminary enquiry, those prime accused were excluded from the purview of Crl.R.P.No.148/2013 :

2. : the preliminary enquiry. The substance of the allegation raised by the revision petitioner/complainant is that the accused mainly respondents 1 to 9 in the complaint committed various malpractices and as a result of the same, respondents 1 to 9 through mismanagement acquired movable and immovable and the properties of the society used for their own pecuniary interest and advantage. According to the complainant, respondent Nos.10, 11 and 23 colluded and conspired with respondents 1 to 9 in order to assign the properties belonging to the Society to R10 who is none other than the wife of R11 and also to R23. The learned counsel for the petitioner submitted that, in the complaint there are specific allegations to the effect that the respondents 12 to 22 accorded sanction in favour of the society and though the District Collector ordered recovery proceedings, the officers mentioned above have not taken any steps towards the same. It is also

the specific case of the petitioner that, though the society ceased to function
Crl.R.P.No.148/2013 :

3. : during the year 1997, the sales tax exemption was given on the basis of A5 report prepared by accused No.18. Thus, according to the learned counsel, the trial court has miserably failed to consider the above materials and allegations raised by the complainant.

3. I have carefully considered the arguments of the learned counsel for the petitioner and I have perused the order impugned in this revision petition with reference to the above allegation. I have also gone through the complaint, which made available to me at the time of hearing of the matter.

4. Though several allegations are raised against R12 to R22 and materials are produced along with the complaint, in the impugned order there is no discussion or reference to such materials furnished and the allegations raised by the complainant and no reason is stated as to how the learned Judge of the Special Court came into a conclusion that the complainant could not make out prima facie case against R12 to R22. According Crl.R.P.No.148/2013 :

4. : to me, when the complaint is filed figuring 23 persons in the array of accused and when the preliminary enquiry was ordered, it is for the learned Special Judge to assign reason for excluding respondents 12 to 22, who are shown as the accused, from the purview of the preliminary enquiry. So, according to me, the matter requires remand to the same court for passing a fresh and proper order. In the result, this revision petition is disposed of setting aside the order dated 13/12/2012 in Crl.M.P.No.259 of 2012 of the court of the Enquiry Commissioner and Special Judge, Thiruvananthapuram and remanded the matter back to the same court to issue a fresh order stating the reasons for not ordering preliminary enquiry against R12 to R22 after referring to materials and allegations, against those respondents. It is made clear that the above order of the Special Judge is set aside only to enable the learned Special Judge to pass fresh order and the learned Judge is free to pass fresh Crl.R.P.No.148/2013 :

5. : order untrammelled by any of the observation or opinion expressed by this Court in this order. The Revision Petition is disposed of accordingly.
V.K.MOHANAN, JUDGE skj True copy P.A. to Judge

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