

Abdul Rahim vs State of Kerala

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Court : Kerala

Decided On : Jun-01-2023

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : WP(Crl.)/437/2021

Appellant : Abdul Rahim

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
THURSDAY, THE 1ST DAY OF JUNE 2023 / 11TH JYAISHTA, 1945
WP(CRL.) NO. 437 OF 2021 PETITIONER: ABDUL RAHIM AGED 67
YEARS, S/O.SHAHUL HAMEED, RESIDING AT A.R. MANZIL,
MEEYANA MURI, VELINALLOOR VILLAGE, KOTTARAKKARA TALUK,
KOLLAM, PINCODE - 691 510. BY ADVS. B.DIPU SACH DEV ARUN
BABU RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY CHIEF SECRETARY TO
GOVERNMENT OF KERALA, CHIEF SECRETARY OFFICE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2 HOME SECRETARY TO GOVERNMENT OF KERALA HOME DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695001.
3 THE ADDITIONAL CHIEF SECRETARY AND PRINCIPAL SECRETARY TO GOVERNMENT OF KERALA, LOCAL SELF GOVERNMENT DEPARTMENT (RURAL), ROOM NO.404A, 4TH FLOOR, ANNEX-I, SECRETARIAT, THIRUVANANTHAPURAM, PINCODE - 695 001. SMT DEEPA K.R. SPL GP (LSGD)

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 01.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..2..

JUDGMENT

Dated this the 1st day of June, 2023 Ext.P4 order passed by the respondent no.2 declining sanction under Section 19 of the Prevention of Corruption Act, 1988 (for short, 'the P.C. Act') is under challenge in this Writ Petition (Crl.).

2. The petitioner herein filed Ext.P2 private complaint

before the Enquiry Commissioner and Special Judge (Vigilance), Thiruvananthapuram (for short, 'the Court below') against seven persons alleging that they have committed offences punishable under Sections 13(1)(c) and (d) of the P.C. Act r/w Sections 420, 468, 471, 120B r/w 34 of the I.P.C. Out of seven respondents, respondent nos. 4 to 7 are public servants being Presidents and Secretaries of Velinalloor Grama Panchayath. The allegation raised in the complaint is with respect to the misappropriation of public funds pertaining to 'Swajaladhara Kudivella Padhathi'. After filing Ext.P2 private complaint, the petitioner filed Ext.P3 to the respondent no.2, who is the Home Secretary to the Government of Kerala to accord sanction to proceed against the respondent nos. 4 to 7 in Ext.P2 complaint.

..3.. The respondent no.2 as per Ext.P4 order declined sanction. The said order is under challenge in this Writ Petition (Crl.)

3. I have heard Sri.B.Dipu Sach Dev, the learned counsel for the petitioner as well as Smt. Deepa K.R., the learned Special Government Pleader for LSGD.

4. The learned counsel for the petitioner submitted that

severe allegations of corruption and misconduct had been levelled against the respondent nos. 4 to 7 and the petitioner has also furnished materials to substantiate the same. Thus, the respondent no.2 ought to have been accorded sanction for prosecution. The counsel further submitted that the respondent no.2 passed Ext.P4 order without considering the relevant materials and applying its mind and thus it is liable to be set aside.

5. On the other hand, the learned Special Government

Pleader for LSGD submitted that the allegations made against the respondents in Ext.P2 complaint are not correct and even if the entire allegations in the complaint are believed in toto, no offence under the P.C. Act is attracted and thus the respondent no.2 was absolutely justified in declining sanction.

6. Section 19(1) of the P.C. Act says that no court shall ..4..

take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority referred to in sub sections (a), (b) and (c). Sub Section (a) says that, in the case of a person employed in connection with the affairs of the Union, the sanctioning authority is the Central Government. Sub Section (b) says that, in the case of a person employed in connection with the affairs of a State, the sanctioning authority is the State Government. Sub Section (c) says that in the case of any other person, the sanctioning authority shall be the authority competent to remove him from his office. The respondent nos. 4 to 7 in Ext.P2 complaint who are alleged to be public servants were the Presidents and Secretaries of a Panchayath. Ext.P3 application for sanction was submitted to the respondent no.2, who is the Home Secretary to the State Government. The respondent no.2 is not the competent authority to remove respondent nos. 4 to 7 from office. Thus, the application for sanction moved by the petitioner was not

before the competent authority.

7. The grant of sanction is not a mere formality but a solemn act which affords protection to the Government servants ..5..

against frivolous prosecution. It is settled that all the relevant records and materials for the grant of sanction must be made available to the sanctioning authority which must undertake complete and conscious scrutiny of those records and materials independently applying its mind before deciding whether to grant sanction or not. The order of granting or declining sanction should reflect that the sanctioning authority was furnished with all relevant facts and materials and applied its mind to all those materials.

8. A reading of Ext.P4 would show, the sanction was

declined by the respondent no.2 mainly holding that a similar application filed by the petitioner before the Human Rights' Commission was rejected by the Commission. There is no independent application of mind by the respondent no.2. For these reasons, Ext.P4 cannot be sustained and therefore it is set aside.

9. The petitioner is at liberty to file a fresh application

for sanction before the competent sanctioning authority. On receipt of the said application, the said authority shall dispose of the same, in accordance with law, after perusing all relevant records and applying its mind. The petitioner shall file the ..6..

application for sanction within a period of two weeks from today. On receipt of the said application, the authority shall pass an order on the said application within another period of four months. Needless to say, the petitioner shall also furnish all the relevant records and documents along with the application for sanction.

This Writ Petition (Crl.) is disposed of as above. Sd/- DR. KAUSER EDAPPAGATH JUDGE APA ..7.. APPENDIX OF WP(CRL.) 437/2021 PETITIONER'S EXHIBITS Exhibit P1 THE TRUE COPY OF THE ORDER IN COMPLAINT IN H.R.M.P NO. 4258 OF 2014 DATED 02.12.2015. Exhibit P2 THE

TRUE COPY OF THE PRIVATE COMPLAINT ON THE FILES OF THIRUVANANTHAPURAM SPECIAL INQUIRY COMMISSIONER OF VIGILANCE AND ANTI CORRUPTION BUREAU IN C.M.P.NO. 330 OF 2017 DATED 11.09.2017. Exhibit P3 THE TRUE COPY OF THE PROSECUTION SANCTION PETITION DATED 24.04.2018. Exhibit P4 THE TRUE COPY OF THE ORDER DATED 19.04.2021 ISSUED BY THE 3RD RESPONDENT.

Exhibit P4(a) THE TRUE TYPED COPY OF EXHIBIT P4 ORDER

DATED 19.04.2021 ISSUED BY THE 3RD RESPONDENT.

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