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Rafeek Vs. State of Kerala

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Court : Kerala

Decided On : Feb-28-2005

Reported in : AIR2005Ker185; 2005(2)KLT29

Judge : B. Subhashan Reddy, C.J. and; A.K. Basheer, J.

Acts : Constitution of India - Article 226

Appeal No. : W.P. (C) No. 5879 of 2005

Appellant : Rafeek

Respondent : State of Kerala

Advocate for Def. : C.K. Abdul Rahim, Sr.Government Pleader

Advocate for Pet/Ap. : Vincent Panikulangara, Adv.

Judgement :

B. Subhashan Reddy, C.J.

1. This pro bona publico Writ Petition has been filed by a practicing advocate and it concerns with the outside interference with legal profession. The trouble started with a complaint said to have been presented under the name 'Kerala Advocate General Office Employees Co-ordination Committee' on 9.6.2003 addressed to Sri. A.K. Antony, the then Chief Minister making imputation against Sri. V.K. Beeran, Additional Advocate General touching upon his integrity while conducting

the cases on behalf of the Government and even making accusations against him that he colluded with private persons and that he had appeared in cases on behalf of the Government even without the latter authorizing him to do so and that cases failed in the Courts only on account of the said conduct of Sri. V.K. Beeran.

2. There was a lot of controversy raised because of the press statements made by Sri. E.K. Bharat Bhushan, Secretary to Government, Forest and Wild Life Department which promoted Government Law Officers to file a representation dated 6.1.2004 signed by 41 Law Officers to the Government. The petitioner herein had also filed Ext.P4 representation dated 17.6.2004 to the respondent to take action against Sri. Bharat Bhushan on the ground that he was helping the delinquent officers and also in possession of wealth disproportionate to his income and seeking an enquiry to be conducted against him.

3. At the time of admission, we had asked the learned Government Pleader to produce the file and the file has been produced and we have perused the same in detail. To our dismay, we found that the complaint dated 9.6.2003 though addressed to the then Chief Minister, there is no endorsement of the Chief Minister's Office. It is received by the Forest and Wild Life Department of the Secretariat. There is no name of the person signed. In fact, it does not appear to be a signature. There is not even any endorsement by any officer on the said complaint. Strangely, at page 9 of the file, we see a letter addressed by Sri. Rudra Gangadharan, Principal Secretary to Government, Forest, Wildlife & Sports, Government of Kerala which is dated 20.9.2003 to the Advocate General seeking comments against Sri. V.K. Beeran, and, particularly about his involvement in S.L.P.No. 4487 of 2000. It only refers to the above petition dated 9.6.2003. There is no authority for seeking such comments. It is clear from the comments offered by the learned Advocate General on 9.1.2004 that there was no such organization known as 'Advocate General's Office Employees Co-ordination Committee'. Then, the complaint dated 9.6.2003 is only a fake one, and, on such, no action could be initiated at all. Further, the Office of the Additional Advocate General is a responsible office in the context of independence of judiciary. The role of Advocate General and Additional Advocate General assumes significance and their office cannot be undermined by any person. It is the privilege of the Chief Minister to

appoint Advocate General and Addl. Advocate General and they cannot be subjected to any control of the Secretary level officer. It is very strange that, on the basis of a fake complaint, some enquiries are sought to be made against Sri. V.K. Beeran without any basis and without any authority. Advocate General or Addl. Advocate General or an Advocate cannot be subjected to any vigilance enquiry, as they do not hold any civil post under the Government. An Additional Advocate General is a legal advisor and an advocate to the Government and threatening the Addl. Advocate General that he will be proceeded against by a vigilance enquiry making serious allegations on the basis of a fake complaint is a very serious thing, which ultimately results in undermining the judiciary. Sri. V.K. Beeran has appeared in some cases as Addl. Advocate General before the Courts and if the Courts had recorded any finding, that is an entirely different thing. But, no officer can embark upon enquiry against the Advocate General, Addl. Advocate General or an Advocate. Such an enquiry is not within the domain of the Government and more so in a case like this where the entire action emanated on the basis of a complaint dated 9.6.2003 and the said complaint is a fake one and there is no authority by which the Secretary had first sought for Government's action by his letter No. 8134/A2/2003/F & WLD dated 20.9.2003. As the said letter seeking comments from the Advocate General is without any basis or authority, as the basis, i.e., the complaint dated 9.6.2003 is fake, all other proceedings consequent to the above letter dated 20.9.2003 of the Principal Secretary to Government is unsustainable.

4. There is another factor which supports the pleadings of the petitioner relating to the role of Sri. E.K. Bharat Bhushan in setting the proceedings in motion, as he was the one who had endorsed on 26.6.2003 in the capacity of Secretary to Government, Forest and Wildlife Department that he had examined the substance of the allegation against Sri. V.K. Beeran and that he would suggest an enquiry either by Vigilance or Anti-corruption Department. This certainly proves the role of Sri. Bharat Bhushan resulting in initiation of tirade against Sri. V.K. Beeran and which continued further leading to a 'Note' by the Law Secretary on 19.5.2004 to make an enquiry by the Vigilance Department and which has been authorized by the Law Minister on 19.5.2004 and then by the Chief Minister on 27.5.2004. As the complaint dated 9.6.2003 falls down for the reasons mentioned supra, everything

becomes non-est and also for the reasons that independency has to be maintained in the role played by either Advocate General or Addl. Advocate General or even by any other Law Officer, unleashing of terror in the name of enquiry by Vigilance Department cannot be legally approved. Hence, we set aside all the proceedings against Sri. V.K. Beeran in file No. 37/LS/2004/ Law/ No. 8134/A2/03/F&WLD.; We equally do not approve the stand of the petitioner for an enquiry against Sri. E.K. Bharat Bhushan as it is not for this Court to issue any such directions.

The Writ Petition is disposed of accordingly.

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