

**George Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Feb-13-2004

**Reported in :** III(2005)ACC371; 2004(2)KLT369

**Judge :** K.A. Abdul Gafoor and; J.M. James, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 197

**Appeal No. :** C.A. No. 925 of 2000

**Appellant :** George

**Respondent :** State of Kerala

**Advocate for Def. :** T.K. Lattief, Government Pleader

**Advocate for Pet/Ap. :** Benoy Thomas, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**K.A. Abdul Gafoor, J.**

1. The appellant, faced a prosecution under the provisions of Prevention of Corruption Act on the allegation that using his position as public servant, he forged documents and misappropriated various amounts payable as unemployment assistance to various persons and thereby derived undue pecuniary advantage

and committed the offences punishable under Section 13(2) read with Section 13(1)(c) of the Prevention of Corruption Act, 1988 and also under Sections 409, 465, 471 and 477(A) of the Indian Penal Code. The petitioner attempted to interdict the prosecution launched against him by filing O.P.10181/1999 contending that he being a public servant sanction under Section 197 ought to have been obtained for launching the prosecution. Therefore, the prosecution should have been dropped and he could not have been proceeded with.

2. The contention urged by him before the learned Single Judge was that as a public servant he was not removable from his office except by or with the sanction of the Government. Accordingly prosecution ought to have been launched only if Government sanctioned it.

3. Admittedly by him the authority to impose the penalty of removal on him as per statutory rules governing conditions of service is not Government, but the Director of Employment. That means he could directly be removed or dismissed from service without any orders from Government, but upon an order by the Director. In such circumstances, merely because the Government is also having ultimate power to dismiss him being a superior authority, it could not be contended that sanction under Section 197 of Cr. P.C. is required to prosecute him. If this contention is accepted, everyone employed in the Government Service can be prosecuted only with sanction from the Government as ultimately Government has also the power to remove him from service. This is not what is intended by Section 197. Had it been so it would have been made clear in simple words that no Government servant shall be prosecuted in any case except with the sanction of the Government. The wording in the section is clear that sanction is required only in respect of a public servant 'not removable from his office save by or with the Government'.

4. The learned Single Judge while considering the issue had also referred to an earlier Division Bench decision of this Court in Sarojini v. Prasanna (1996 (2) KLT 859). In that case a Sub Inspector of Police removable from service only upon the order of a Deputy Inspector General and not by the Government faced prosecution. This Court held that in such situation they are not public servants not

removable from service save by or with sanction of the State Government. The benefit of Section 197 of Cr.P.C. as well as Section 19(1)(c) of the Prevention of Corruption Act also would not be therefore claimed. Accordingly we are in full agreement with the view taken by the learned Single Judge. Appeal fails.

Dismissed.

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