

K.J. Sahadevan Vs. State of Kerala

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Court : Kerala

Decided On : Jan-01-1976

Reported in : 1977CriLJ637

Judge : V. Balakrishna Eradi and; G. Viswanatha Iyer, JJ.

Appellant : K.J. Sahadevan

Respondent : State of Kerala

Judgement :

V. Balakrishna Eradi, J.

1. The petitioners in these Criminal Miscellaneous Petitions are employees of certain co-operative societies. They are figuring as accused in certain cases now pending trial before the Special Judge, Trivandrum wherein the petitioners stand charged for offences under Section 5(1)(c) and (d) read with Section 5(2) of the Prevention of Corruption Act and Section 408 I.P.C. The petitioner in Criminal M.P. 1001 of 1975 is also facing a charge under Section 409 I.P.C (before the Special Judge When those cases were taken up for trial by the Special Judge a preliminary objection was raised on behalf of these accused that they are not public servants liable to be proceeded against either under Section 5 of the Prevention of Corruption Act or under Section 409 IRC. and that hence the Court of the Special Judge has no jurisdiction to try the cases. By separate but similar orders the learned Special Judge overruled the said contention and held that he

has jurisdiction to proceed with the trial of the cases. These Miscellaneous Petitions have been preferred against the said decision rendered by the Special Judge on the preliminary point raised before him.

2. Counsel appearing on behalf of the petitioners placed strong reliance on the decision reported in *Arunachalam v. State of Kerala* 1974 Ker LT 7 wherein a learned single Judge of this Court has observed that the Secretary of a Co-operative Society cannot be said to be a public servant inasmuch as he does not come within any of the categories of officers mentioned in Clauses (1) to (9), (11) and (12) of Section 21 I.P.C. and that the evidence in that case did not also establish that the Secretary of the particular Co-operative Society came within the description contained in Clause (10) of Section 21 I.P.C. In our opinion this decision is not of any assistance to the petitioners in these cases nor can it be treated as an authority laying down that a Secretary or any other employee of a Co-operative Society cannot be regarded as a 'public servant' for the purpose of any of the provisions of the Indian Penal Code. The only provisions of the Indian Penal Code which fell to be considered by the learned Judge in that case was Section 409 and as we understand the decision what was held therein was only that on the evidence adduced in that case it would not be said that the duties of the Secretary of the particular co-operative society concerned in the case were such as to fall within the description contained in Clause (10) of Section 21.

3. By Sections 2 and 3 of the Kerala Criminal Law Amendment Act, 1962- Act 27 of 1962- Section 161 of the Indian Penal Code was amended by inserting the following explanation:

Public Servant' - For purpose of this section and Sections 162, 163, 164, 165 and 165A, the words 'public servant' shall denote, besides those who are public servants under Section 21 or who are deemed to be 'public servants' within the meaning of that section under any law for the time being in force, persons falling under any of the descriptions hereinafter following namely:

(i) Every officer in the service or pay of the Travancore Devaswom Board or the Cochin Devaswom Board;

- (ii) Every officer in the service or pay and every member of the Wakfs Board constituted under the Wakf Act, 1954 (Central Act, 29 of 1954);
- (iii) The President and every member of a Village Court or Village Panchayat Court;
- (iv) Every member of the Board of Directors or of the executive or managing committee and every officer or servant of a co-operative society registered or deemed to be registered under the law relating to co-operative societies for the time being in force;
- (v) Every member of the governing body and every officer or servant in the service or pay of a society registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 or the Societies Registration Act, 1860, and receiving aid or grant from the Government;
- (vi) Every teacher or other officer or servant of the University of Kerala;
- (vii) Every examiner of a University Examination or a Government Examination;
- (viii) Every Manager, or teacher or servant of an educational institution which receives or has received aid or grant from the Government or the University of Kerala.

As a consequence of the above amendment effected in Section 161 I.P.C the scope of the definition of the expression 'public servant' has been substantially widened in respect of matters arising under Sections 162 - 165 and 165A I.P.C. and various categories of officers who are not taken in by the definition contained in Section 21 are brought into the category of 'public servants' and rendered liable to be proceeded against under Sections 162 - 165 and 165A. Amongst the category so brought in are included the officers and servants of co-operative societies. In the case of this amendment - which does not appear to have been brought to the notice of the learned Judge who decided the case reported in *Arunachalam v. State of Kerala* 1974 Ker LT 7 it will certainly not be correct to say that employees of co-operative societies are not 'public servants' for the purpose of the Indian Penal Code, in so far as the offences arising under Chapter IX of the

I.P.C., that is, Sections 162 - 165 and 165A the officers and servants of co-operative societies are to be deemed to be public servants for the purpose of this section

4. What we are directly concerned in this case is however the liability of the petitioners before us to be proceeded against under Section 5 of the Prevention of Corruption Act. By Section 3 of Act 27 of 1862 the Prevention of Corruption Act, 1947 was also amended by substituting the following provision in the place of the original Section 2 thereof.

2. Interpretation.- For the purposes of this Act. 'public servant' shall have the meaning assigned to it under the Explanation to Section 161 of the Indian Penal Code as amended by the Kerala Criminal Law Amendment Act, 1962.

(ii) in Section 5A, for the words, figures and letter, 'under Section 161, Section 165 or Section 165A, the words, figures and letter 'under Sections 161, 162, 163, 164, 165 or 165A shall be substituted.

(iii) 'in Sub-section (1)' of Section 6, after Clause (b), the following clause shall be inserted, namely:

(bb) in the case of a person falling under any of the descriptions mentioned in items (i) to (viii) in the Explanation relating to 'public servant' in Section 161 of the Indian Penal Code as amended by the Kerala Criminal Law Amendment Act, 1962 save by or with the sanction of the State Government.

Under the amended provision of Section 2 of the Prevention of Corruption Act the expression 'public servant' is to be given the same meaning as has been assigned to it under the explanation to Section 161 of the Indian Penal Code as amended by Kerala Act 27 of 1962, We have already seen that under the said explanation officers and servants of cooperative societies are to be deemed to be 'public servants'. The contention put forward by the petitioners that they are not public servants liable to be proceeded against under Section 5 of the Prevention of Corruption Act cannot therefore be accepted. The learned Special Judge was perfectly correct in overruling the preliminary objection raised by the accused and

holding that he has jurisdiction to proceed with the trial of the cases.

These Criminal Miscellaneous Petitions will accordingly stand dismissed.

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