

Jacob Vs. State of Kerala

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Court : Kerala

Decided On : Feb-23-2001

Reported in : 2001CriLJ1910

Judge : Mr. N. Krishnan Nair, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 239 and 482; Criminal Rules - Rule 252; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 120(B), 409, 468, 471, 477A; [Constitution of India](#) - Article 194

Appeal No. : Crl. M.C. No. 6630 of 2000

Appellant : Jacob

Respondent : State of Kerala

Advocate for Def. : K. Gopalakrishna Kurup, Public Prosecutor

Advocate for Pet/Ap. : M.N. Sukumaran Nayar, Sr. Adv. and; S. Vijaya Kumar, Adv.

Judgement :

ORDER

N. Krishnan Nair, J.

1. Sri. T.M.Jacob, an Ex-Minister of Kerala who is an accused in C.C. 2/99 on the file of the Court of the Enquiry Commissioner and Special Judge, Kozhikode has filed this petition under S. 482 of the Code of Criminal Procedure to quash the order dtd. 6.12.2000 of the Special Judge in Crl. M.P.No. 31/2000 in C.C. 2/1999.

2. The facts necessary for the disposal of this petition may be stated as follows:

The petitioner is the 9th accused in C.C.No.2/99 on the file of the Court of the Enquiry Commissioner and Special Judge, Kozhilode. The petitioner and 10 others are charged with the offences punishable under Ss. 120(B), 409, 468, 471, 477A read with S. 34 IPC and S. 13(1)(d) read with S. 13(2) of the P.C. Act 1988. The substance of the allegations against the petitioner is that while he was functioning as a Minister for Irrigation in the Kerala State, he entered into a criminal conspiracy with the other accused and entrusted the work for executing the contract in connection with Kuriarkutty-Karappuzha Irrigation Project to accused No. 7 in the case with the object of causing wrongful gain to the contractor and wrongful loss to the Government.

3. On 14.1.2000, the petitioner filed Crl. M.P.No. 30/2000 for an order of discharge under S. 239 of the Code of Criminal Procedure. He also filed Crl. M.P.No. 31/2000 praying for summoning the documents listed in the schedule to the petition. Though the Special Prosecutor stoutly opposed the application, the Court below allowed the application and directed to issue summons for the production of documents listed in the Schedule. Pursuant to the summons issued by the Court, some of the documents were produced. But there was delay in producing the documents listed as items 15, 16 and 18 which are in the custody of State Legislature. Summons was issued to the Secretary of the Kerala State Legislature Assembly to produce those documents. While so, the learned Judge who passed the order was transferred and his successor Judge passed the impugned order nullifying the earlier order passed by his predecessor.

4. The learned counsel for the petitioner strongly contended that the order of the lower court is clearly illegal and cannot be sustained in law. According to the learned counsel, the observation of the lower court that his learned predecessor has already passed an order for framing charges is wrong and incorrect. He

further contended that the learned Judge who passed the impugned order had no jurisdiction to review the order of his predecessor. On the other hand, the learned Public Prosecutor contended that since an order for framing charge against the petitioner had already been passed in the case, it is necessary for summoning the documents at this stage.

5. The question for consideration is whether the impugned order (Annexure C) is sustainable. The petitioner is alleged to have committed the offences under Ss. 120(B), 409, 468, 471, 477A read with S. 34 IC and S. 13(1)(d) read with S. 13(2) of the P.C. Act while he was functioning as the Minister for Irrigation in the Kerala State. The Petitioner claims protection under Art. 194 of the [Constitution of India](#) in respect of the proceedings before the Court. According to the petitioner, the documents summoned by the Court are necessary for considering the protection under S. 194 of the [Constitution of India](#). The learned Judge who passed the earlier order was of opinion that the documents sought to be summoned would be necessary for deciding whether there is a prima facie case against the petitioner. The relevant portion of the order reads as follows:

'But if the documents sought to be summoned will help the question of consideration of prima facie case, the prayer cannot be turned down saying that the documents can be summoned only at the trial stage.'

6. The court below had issued summons as contemplated under R. 252 of the Criminal Rules of Practice to the Secretary of the Cariole State Assembly. It is true that in obedience to the summons, the documents were not produced. According to me, it is not just and proper to deny the petitioner's right to get the documents produced before the Court on the ground that the documents were not produced in time. In this case by the impugned order the successor Special Judge has reviewed the earlier order of his predecessor. The review of the earlier order is illegal. The successor Special Judge should not have reviewed the order which he is not entitled to do under the Criminal Procedure Code.

7. The reasons given by the Judge to nullify the order of his predecessor Judge are no at all. It appears that the Special Judge passed the impugned order on the pretext that there is a direction of the High Court for the expeditious trial of the

case and his predecessor Judge had passed an order for framing of charges. A lower court is not expected to take hasty steps and follow short cut procedure under the premise that there is a direction from the High Court for the early disposal of the case. It appears that the learned Special Judge has also misread the previous proceedings in the case. According to me, the impugned order is illegal, improper and unreasonable. It follows that the order is liable to be set aside.

In the result, the order dtd. 6th December, 2000 of the Enquiry Commissioner and Special Judge, Kozhikode in Crl. M.P.No. 31/2000 in C.C. 2/99 is set aside and the Special Judge is directed to issue summons for the production of the documents as ordered by his predecessor.

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