

Azeez Vs. State of Kerala and ors.

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Court : Kerala

Decided On : Feb-15-1984

Reported in : 1984CriLJ1059

Judge : T. Kochu Thommen, J.

Appellant : Azeez

Respondent : State of Kerala and ors.

Judgement :

ORDER

T. Kochu Thommen, J.

1. A school bus driven by the petitioner was involved in an accident on 12.9.1980 resulting in the death of one Devadas, aged 23, studying in the III year B.E. (Electronics and Communications) in Siddaganga Institute of Technology, Karnataka. A Claim Petition was filed by the mother and elder brother of the deceased before the Motor Accidents Claims Tribunal and I am told that the petition has since been disposed of allowing the claim in part. I am further told that an appeal for enhancement is now pending before this Court. The 2nd respondent, Shri. P. Velayudhan is a senior advocate at Palghat. He was a Public Prosecutor for a number of years. He was the counsel who appeared in the Motor Accidents Claim.

2. The mother and brother of the deceased requested the Government to appoint Shri. P. Velayudhan as a Special Public Prosecutor in the criminal case (C. C. No. 22 of 1980) registered against the petitioner for offences punishable under Sections 279, 337 and 304-A of the Penal Code. The Government allowed that request and appointed Shri. P. Velayudhan as a Special Public Prosecutor.

3. The petitioner who is the accused challenges the appointment of Shri. P. Velayudhan as a Special Public Prosecutor on the ground that he would be biased against the petitioner. The petitioner apprehends that Shri. P. Velayudhan would endeavour to obtain the conviction of the petitioner at all costs for the reason that he is already committed, as a lawyer to the cause of the mother and brother of the deceased.

4. The petitioner's counsel contends that a. Public Prosecutor ought to be impartial and unbiased. A person like Shri. P. Velayudhan would not be impartial and unbiased because he had already appeared on behalf of the next-akin in the Claims Tribunal. Being thus committed to their cause, he cannot be expected to be fair and unbiased. Counsel has referred to certain observations in *State of Bihar v. Ram Naresh* : 1957 CriLJ567 . *Raj Kishore v. State* : AIR1969 Cal321 and *Narayanankutty v. State of Kerala* 1982 Ker LT 605 : 1982 Cri LJ 2085. None of these cases is in my view, directly applicable to the facts of this case. In none of them was it considered whether a person who had appeared in a civil suit arising from the same crime was disqualified to act as Prosecutor. The observations in these cases are to the effect that a Public Prosecutor must be fair and truthful. These are norms which are as much applicable to any member of the learned profession. Every counsel appearing in a case before a court is expected to be fair and truthful. He must of course champion the cause of his client as efficiently and effectively as possible, but fairly and truthfully. He is not expected to be impartial, but only fair and truthful.

5. In this petition I am glad to see that no allegations are made against the advocate personally. There is no whisper to cast a shadow on his character.

6. In my view, the fact that Shri Velayudhan had appeared before the Claims Tribunal on behalf of the next of kin does not in any manner disqualify him

professionally to appear in the criminal Court on behalf of the State in respect of a crime arising from the same incident as that which gave rise to the claim for compensation. I expect that Shri. P. Velayudhan, while defending the public interest, which he represents on behalf of the State will act truthfully and fairly, and at the same time, advocate the cause for which he is engaged to the very best of his ability. This is what is expected of any counsel. The challenge against the impugned orders. Exts. P-2 and P-3, is unsustainable. The Original Petition is dismissed. No costs.

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