
(1997) 02 KL CK 0031
In the High Court Of Kerala
Case No : O.P. No. 1836 of 1997-R

Dev Sebastian

APPELLANT

Vs

P.R. Kurup and Others

RESPONDENT

Date of Decision : 13-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1997 Ker 214

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : Tharian Joseph, for the Appellant; M.V.S. Nampoothiry, ACGSC and K.P. Satheesan, SC for CBI, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—This original petition is filed in public interest. According to the petitioner, first respondent Minister has violated the oath of office. It is also stated on the basis of Exts. P1, P2 and P3 paper reports that in violation of Section 2 of the Forest (Conservation) Act, 1980, a No Objection Certificate was given to a sandal wood factory by the first respondent-Minister. It is also stated that first respondent-Minister is corrupt and, therefore, an enquiry should be conducted by the seventh respondent-Chief Minister. Petitioner prays for a direction to cancel the No Objection Certificate given to the second respondent to start a sandal wood factory in total violation of Section 2 of the Indian Forest (Conservation) Act, 1980.

2. Learned Advocate General on getting instructions submitted that no such No Objection Certificate was given by the first respondent or at the instance of first respondent and, therefore, the allegations in the original petition are totally false. It is also submitted that petition of this type is not maintainable as it solely depends upon paper reports and nothing else.

3. Learned counsel appearing for the petitioner cited the interim order in O. P.

No. 202 of 1995 passed by the Supreme Court of India therein it was stated that in respect of non-forest activities in forest area there is permission from the Central Government and Section 2 of the Forest (Conservation) Act, 1980 is very clear about such approval from the Central Government. Various directions were given to all State Governments regarding conservation of forests and regarding constitution of an Expert Committee to identify the area of forests, forest materials etc. It is submitted by the petitioner that No Objection Certificate given by the first respondent is against the observations of the Supreme Court. It is also vehemently argued that in view of the paper reports various corrupt practices are going on. In view of the decision in *The State of U.P. Vs. Raj Narain and Others*, the people of this country are entitled to know the realities and, therefore, an enquiry at least should be conducted regarding these matters and, therefore, at least notice may be issued so that real facts can be known to the public.

4. Since it is submitted that No Objection Certificate in violation of Section 2 of the Indian Forest (Conservation) Act, 1980 was not given by the first respondent-Minister, most of the allegations in the original petition are wrong. Therefore, really nothing further is to be enquired into. The allegations are solely based on Exts. P1, P2 and P 3 which are only paper reports without any supporting evidence. In *Laxmi Raj Shetty and Another Vs. State of Tamil Nadu*, , Supreme Court held that newspaper report is merely hearsay and without supporting materials it cannot be relied on by the Courts. Supreme Court held as follows (at p. 1290):

"We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached u/s 81 of the Evidence Act to a newspaper report cannot be treated as proof of the facts reported therein.

It is now well-settled that a statement of fact contained in a newspaper is merely hearsay and, therefore, inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported."

The same view was expressed by the Supreme Court in (1993) 3 SCC 151 *S.A. Khan v. CH. Bhajan Lal and Anr.* and it was followed again in *Quamarul Islam Vs. S.K. Kanta and others*,

5. Here since the allegations are solely based on paper reports and no evidence was placed by the petitioner in support of the reports appeared in the paper, if this Court act it will be only based on hearsay evidence and doing a constitutional injustice.

6. In *K.C. Chandy Vs. R. Balakrishna Pillai*, this Court held that whether a

Minister has committed breach of oath etc. this Court cannot interfere under Article 226 of the Constitution. It was held as follows (at p. 119 of AIR):

"Breach of oath requires a termination of the tenure of office. This power can be exercised by the appointing authority under the Constitution, and according to the procedure, if any, prescribed therein. The termination of that tenure is not the function of a Court; and it would -not be appropriate to exercise jurisdiction under Article 226 in such cases."

In Kallara Sukumaran Vs. Union of India (UOI) and Others, it was held by this Court that it is political wisdom of the Chief Minister to choose his colleagues and Court cannot order the Chief Minister to conduct an enquiry against the allegations of a Minister. If this Court has no jurisdiction in such a matter, finding recorded by a Court which has no jurisdiction is a nullity.

7. The allegations based on newspaper reports are totally baseless. Petitioner should not have approached this Court on the basis of the allegations in the newspaper reports alone without any materials. Of course paper report can be a source and can be used in certain cases as secondary evidence. But one cannot approach this Court, merely on the basis of paper reports alone without making any enquiry. There is not even an averment that petitioner made any personal enquiry regarding the matter or he had tried to find out truth of the allegations from authorities or anywhere. When thousands of cases are pending disposal, approaching the Court and wasting Court time on the basis of newspaper reports without any supporting materials or without making any other enquiry regarding the correctness of the same should be discouraged and therefore, the Original Petition is dismissed with costs.