
(2011) 10 KL CK 0026

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26522 of 2011

Girish Babu. G.

APPELLANT

Vs

The High Court of Kerala

RESPONDENT

Date of Decision : 04-10-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 407

Citation : (2011) 4 KLJ 764 : (2011) 4 KLT 793

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Sebastian Paul and M.I. Johnson, for the Appellant;

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—This is a public interest litigation filed by a law student for a direction to the High Court to reject the request of the Enquiry Commissioner and Special Judge, Thiruvananthapuram to transfer C.C. 6 of 2003 pending before him to another court. We have heard counsel appearing for the petitioner and have gone through the petition and the News paper report annexed thereto. The contention of the counsel for the petitioner is that false, motivated and baseless allegations were made against the Vigilance Judge which prompted him to recuse himself from hearing the matter by requesting the High Court to transfer the case to another court. The contention raised is that those who made allegations against the Judge are not parties to the litigation and so much so, the allegations are motivated, which the Judge should have ignored. After hearing the counsel for the petitioner and after going through the writ petition and the documents and the News paper cuttings filed along with the writ petition, we are of the view that the writ petition is not maintainable for the following reasons.

2. Admittedly, the Special Judge, of his own, recused himself from hearing C.C. 6 of 2003. It is only after taking such a decision that the Judge is stated to have

requested the High Court to transfer the case from him to another court. The question whether a judicial officer should decide a particular case is purely a subjective matter. In fact, in order to recuse from hearing a matter, the judicial officer is not bound to record the reasons and we do not think the High Court or any party can ask the judicial officer the reasons for recusal unless motives are doubted. It is a well settled principle that justice should not only be done, but should also seem to be done which means that the judge who heard the matter should be free from any kind of involvement in the matter he decides. It is up to the judge to consider whether there is any likelihood of public or any party alleging bias on him and if so, to recuse himself from the case irrespective of whether the allegations which prejudice a judge or which lead the judge from recusing himself from the matter are right or not. Response to allegations is purely subjective because mental strength of the judicial officers and their approach and attitude are not the same or uniform. However, when a judge, for any reason, thinks that his deciding a case may lead to any kind of controversy or adverse opinion about him and it is not worthwhile to risk his reputation, in our view, the judge should recuse from hearing such matters. So much so, in our view, the recusal to hear a case by the judge concerned cannot be subject matter of scrutiny by a court on the judicial side and even the High Court on the administrative side because while recusing the case, the judge only tries to protect his dignity, integrity and image as a judicial officer which he is absolutely free to preserve. As already stated, this is a case where the request for transfer is made after the judge recused himself from hearing and we have already held that the judge is free to recuse from hearing a matter on any ground and he is not bound to disclose the reasons for doing so. Once the judge decides to recuse from hearing a matter, it necessarily follows that he has to request the High Court to transfer the case to another court. The High Court has powers u/s 407 of the Code of Criminal Procedure to transfer any case from one court to another for any reason stated therein or to meet the ends of justice. Further, under Article 227 of the Constitution, the High Court has power of superintendence over all courts subordinate to it. The constitutional authority conferred on the High Court under this article certainly obliges the High Court to protect judicial officers from unnecessary adverse criticism and therefore, if a judicial officer himself expresses inability to hear a matter, he should not be compelled to do it either under judicial direction or through administrative direction. We, therefore, feel that the High Court in the normal course should accept the decision taken by the judge to recuse himself from hearing the case and it should necessarily arrange for hearing the case by another court of competent jurisdiction. The counsel for the petitioner contended that the judge has given reasons for recusing himself from the case and for requesting the High Court to transfer the case. According to the counsel, these reasons are motivated allegations and the same should be rejected by the High Court. Since we have already taken the view that the judge is not bound to give the reasons for recusing himself from hearing a case, the reasons stated are not justiciable and so much so, in our view, even if the High Court does not consider the reasons stated by the Judge

as sufficient to recuse from hearing the case, the High Court should not compel such judge to hear the very same case against his wishes. So much so, we do not think there is any need for the High Court even to verify whether the judge recused from hearing a case has given reasons for the same and if so, whether those reasons are acceptable or not. It is the duty of the High Court to protect and insulate subordinate judicial officers from unnecessary public criticism and in this regard their freedom to avoid cases which they consider for any reason undesirable to be heard by them should be recognised and they should be relieved of such work.

In view of the findings above, we hold that the writ petition filed against the High Court itself is not maintainable. We, therefore, dismiss the writ petition.