

ITEM NO.27

COURT NO.5

SECTION XIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SPetition(s) for Special Leave to Appeal (C) No(s).
17072-17073/2015(Arising out of impugned final judgment and order dated 04/03/2015
in WA No. 1959 and 1863/2014 passed by the High Court of Kerala at
Ernakulam)

S. NAMBI NARAYANAN

Petitioner(s)

VERSUS

SIBY MATHEWS & OTHERS ETC.

Respondent(s)

(with interim relief)

Date : 09/07/2015 These petitions were called on for hearing
today.CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANTFor Petitioner(s) Mr. V. Giri, Sr. Adv.
Mr. K. B. Sounder Rajan, AOR
Mr. Sudarshan Raja, Adv.
Mr. C. Unnikrishnan, Adv.
Ms. Shriya Chauhan, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E RHeard Mr. V. Giri, learned senior counsel, along with Dr.
Sounder Rajan, learned counsel for the petitioner.It is submitted by Mr. V. Giri, learned senior counsel,
that the present special leave petition fundamentally
pertains to the atrocities of the police where they have
arrested the petitioner, a renowned scientist in Indian Space
Research Organization (ISRO) in 1994 without any justifiable
reason as the same is evincible from the report submitted by
the Central Bureau of Investigation (CBI) in its

investigating report. Mr. Giri, learned senior counsel submitted that the CBI had recommended for taking appropriate action against the erring police officials but the State of Kerala, instead of taking action, issued a notification appointing a special investigating team to investigate the matter. The said notification, as asserted, was called in question before the High Court, in a writ jurisdiction under Article 226 of the Constitution of India, who thought that there was no warrant for interference with the issue of investigation. Being aggrieved, the petitioner, along with others, has approached this Court and eventually in Criminal Appeal No.489 of 1987 K. Chandrasekhar vs. State of Kerala & Ors. [(1998) 5 SCC 223], wherein this Court, while allowing the appeal, expressed the thus :

"If before taking up further investigation an opinion has already been formed regarding the guilt of the accused and, that too, at a stage when the commission of the offence itself is yet to be proved, it is obvious that the investigation cannot and will not be fair - and its outcome appears to be a foregone conclusion."

After so stating, the two-Judge Bench has observed that :

"26. From the above facts and circumstances we are constrained to say that the issuance of the impugned notification does not comport with the known pattern of a responsible Government bound by rule of law. This is undoubtedly a matter of concern and consternation. We say no more."

Despite the said judgment of this Court, the State Government did not take any action against the erring officials for a period of 15 years and thereafter on 29.06.2011, passed an order stating that it was neither proper nor legal to take any action against the erring officials.

After the said order came into existence, the petitioner invoked the writ court under Article 226 of the Constitution of India and the learned single Judge allowed the writ petition by quashing the order passed by the State Government and directed suitable action to be taken against the erring

officials. The said order constrained the officials to approach the Division Bench in intra-court appeal in Writ Appeal Nos.1863 and 1959 of 2014. The Division Bench, by the impugned order, has dislodged the order passed by the learned Single Judge, upheld the order passed by the State Government and in that context observed, thus :

"... Having already found that no disciplinary action can be taken after a long lapse of time and that too after retirement of the police officers concerned, we are of the view that the reasons stated in Ext.P2 is sufficient to decline further action against the officers. Hence, the direction to remit the matter back to the Government will be a futile exercise and requires to be set aside. However, we make it clear that disposal of these appeals and finding rendered herein shall not affect the right of the petitioner to take any other proceeding as envisaged under law."

It is submitted by Mr. Giri, learned senior counsel, that when liberty of a person, and that too a scientist of high repute, is comatosed in such a manner, it is obligatory on the part of the State Government to take stern action against the erring officials and the Division Bench of the High Court has failed to appreciate the reasoning of the learned single Judge who had expressed his agony with regard to the cruelty meted out to the petitioner. Learned senior counsel would further submit that in a situation like this, if the erring officers are allowed to go scot free solely because they have attained the age of superannuation, it may give a long rope to the investigating agency to take anyone into custody without a reason. Such a situation, submitted Mr. Giri, would be an anathema to the concept of justice.

Issue notice returnable within eight weeks.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master