# State Of Kerala vs V. Padmanabhan Nair on 14 July, 1999

## Equivalent citations: AIR 1999 SUPREME COURT 2405, 1999 (5) SCC 690, 1999 AIR SCW 2526, (1999) 4 JT 499 (SC), 1999 (4) JT 499, 1999 CRILR(SC&MP) 438, 1999 CALCRILR 432, 1999 (3) LRI 806, 1999 SCC(CRI) 1031, 1999 CRILR(SC MAH GUJ) 438, 1999 (6) ADSC 363, 1999 (4) SCALE 82, (1999) 3 PAT LJR 155, 1999 (7) SRJ 295, (2000) 2 LABLJ 1478, (1999) 2 EASTCRIC 220, (2000) 96 FJR 508, (2000) MAD LJ(CRI) 50, (1999) 2 ORISSA LR 334, (1999) 2 RAJ LW 366, (2000) 2 SCJ 392, (1999) 3 CURCRIR 89, (1999) 6 SUPREME 1, (1999) 25 ALLCRIR 1578, (1999) 4 SCALE 82, (1999) 2 ANDHWR 63, (1999) 2 CHANDCRIC 83, (1999) 3 ALLCRILR 33, (1999) 3 CRIMES 103, (1999) 2 EFR 99, (1999) 2 KER LT 782, (1999) 39 ALLCRIC 318, (1999) 3 RECCRIR 442, (1999) 4 LAB LN 77, 1999 CHANDLR(CIV&CRI) 282, (1999) 1 MAH LJ 584, (1999) 25 ALLCRIR 1911, 1999 BOM LR 1 128, 1999 ALLMR(CRI) 1 110, (1999) SC CR R 642, (1999) 5 BOM CR 752

## Bench: K.T. Thomas, M.B. Shah

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           CASE NO.:
Appeal (crl.)  632 of 1999

PETITIONER:
STATE OF KERALA

RESPONDENT:
V. PADMANABHAN NAIR

DATE OF JUDGMENT: 14/07/1999

BENCH:
K.T. THOMAS & M.B. SHAH

JUDGMENT:
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JUDGMENT 1999 (3) SCR 864 The Judgment of the Court was delivered by THOMAS, J. Leave granted.

In July 1-989, respondent retired from Government service as Superintending Engineer of the P.W.D. under the government of Kerala. About three years thereafter he was arraigned along with certain other persons before a Special Judge for offence under Section 5(2} of the Prevention of Corruption Act 1947 (for short `the P.C. Act') and Sections 406,409, 201 read with Sections 120-B and 109 of the Indian Penal Code. A learned Single Judge of the High Court of Kerala quashed the criminal proceedings against the respondent for want of sanction under Section 197 of the Code of

Criminal Procedure (for short `the code'). State of Kerala, aggrieved by the said order of the High Cout, has come up with this appeal by special leave.

The case against the respondent, in shorts is that while he was working as Executive Engineer at the Moovattupuzha Valley Irrigation Project Division, he joined himself into a criminal conspiracy with four other accused for defrauding the Government by misappropriating about 600 tonnes of steel rods (costing Rs. 1,26,000). When respondent was charge-sheeted for the aforesaid offences, he appeared before the Special Judge's Court and filed a petition to discharge him on the ground that no prior sanction, as contemplated in Section 197 of the Code, has been obtained.Respondent, however-conceded before the Special Judge that no previous sanction is necessary under Section 6 of the P.C. Act 1947. But the Special Judge overruled his contention and held that "there is no necessary at all to obtain a sanction under Section 197 of the Code to proceed against the petitioner under the provisions of the P.C. Act 1947."

As the matter was taken up before the High Court the decision of this Court in Harihar Prasad v. State of Bihar, [1972] 3 SCC 89 was cited before the learned Single Judge, who heard the matter. It was held in the said decision that :

> "as far as the offence of criminal conspiracy punishable under Section 120- B, read with Section 409 of the Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act are concerned, they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. It is no part of the Code of Criminal Procedure. It is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar to a prosecution under Section 120-B, read with Section 409 of the Penal Code."

Learned Single Judge tried to distinguish the said decision by observing thus :

> "But here he is charged under Section 406 arid 409 also which relate to criminal breach of trust by a public servant. Therefore, sanction is necessary to prosecute the petitioner (respondent)."

In S.A. Venkatarman v. State, [1958] SCR [1940] and in C.R. Bansi v. State of Maharashtra, [1970] 3 SCC 537 this Court has held that :

> "There is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the Court was asked to take cognizance, although he had been such a person at the time the offence was committed."

When the newly worded section appeared in the Code (Section 197) with the words "when any person who is or was a public servant" (as against the truncated expression in the corresponding provision of the old Code of Criminal Procedure 1898) a contention was raised before this Court in Kalicharan Mahapatra v. State of Orissa. [1998] 6 SCC 411 that the legal position must be treated as changed even in regard to offences under the P.C. Act also. The said contention was, however, repelled by this Court in Kalicharan Mahapatra (cited supra) wherein a two Judge Bench has held thus :

> "A public servant who committed an offence mentioned in the Act, while he was a public servant, can be prosecuted with the sanction contemplated in Section 19 of the Act if he continues to be a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time, the Court can take cognizance of the offence without any such sanction."

The correct legal position, therefore, is that an accused facing prosecution ` for offences under the P.C. Act cannot claim any immunity on the ground of want of sanction, if he ceased to be a public servant on the date when the court took cognizance of the said offences. So the High Court was at any rate wrong in quashing the prosecution proceedings in so far as they related to offences under the P.C. Act.

That apart, the contention of the respondent that for offences under Sections 406 and 409 read with Section 120-B of the IPC sanction Under Section 197 of the Code is a condition precedent for launching the prosecution is equally fallacious. This Court has stated the correct legal position in Shreekantiah Ramayya Munnipalli v. State of Bombay, AIR (1955) SC 287 and also Amrik Singh v. State of Pepsu, AIR (1955) SC 309 that it is not every offence committed by a public servant which requires sanction for prosecution under Section 197 of the Code, nor even every act done by him while he is actually engaged in the performance of his official duties. Following the above legal position it was held in Harihar Prasad (supra) as follows :

> "As far as the offence of criminal conspiracy punishable under Section 120- B, read with Section 409 Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure, To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar." Learned Single Judge of the High Court declined to follow the aforesaid legal position in the present case on the sole premise that the offence under Section 406 of the IPC has also been fastened against the accused besides Section 409 of the IPG. We are unable to discern the rationale in the distinguishment Sections 406 and 409 of the IPC are cognate offences in which the common component is criminal breach of trust. When the offender in the offence under Section 406 is a public servant (or holding any one of the positions listed in the section) the offence would escalate to Section 409 of the Penal Code. When this Court held that in regard to the offence under Section 409 of

the IPC read with Section 120-B it is no part of the duty of the public servant to enter into a criminal conspiracy for committing breach of trust, we find no sense in stating that if the offence is under Section 406 read with Section 120-B IPC it would make all the difference vis-a-vis Section 197 of the Code.

For the aforesaid reasons, we have no doubt that the High Court has committed a grave error in quashing the prosecution proceedings. The case against the respondent has to go to trial in accordance with taw. Accordingly, we allow this appeal and set aside the judgment of the High Court and direct the Special Judge concerned to proceed with the trial