

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WA.No. 1543 of 2015 () IN WP(C).9626/2015

**AGAINST THE ORDER/JUDGMENT IN WP(C) 9626/2015 of HIGH COURT OF KERALA
DATED 02-06-0201**

APPELLANT(S)/FIRST RESPONDENT:

**DAVID LALY, S/O DAVID,
CHERUVILA VEEDU, VIZHAVOOR, MALAYAM PO
MALAYAMKEEZHU, THIRUVANANTHAPURAM,
NOW RESIDING AT AF2-71, 6TH BLOCK, VASANTH NAGAR,
KALOOR, KOCHI.**

**BY ADVS.SRI.V.V.NANDAGOPAL NAMBIAR
SRI.T.T.RAKESH**

RESPONDENT(S) PETITIONER & FIRST RESPONDENT:

- 1. YOHANNAN GEORGE KUTTY,
A.G.HOUSE, KURICHIVILA, MALAYAM PO,
THIRUVANANTHAPURAM 695571.**
- 2. THE STATE OF KERALA,
REPRESENTED BY THE PRINCIPLE SECRETARY
TO GOVERNMENT, HOME & VIGILANCE DEPARTMENT
GOVERNMENT SECRETARIATE,
THIRUVANANTHAPURAM.**

**BY SR GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR
BY SRI.M.REVIKRISHNAN**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 17-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ASHOK BHUSHAN, CJ

&

A.M. SHAFFIQUE, J.

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W.A. No. 1543 of 2015

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Dated this, the 17th day of July, 2015

J U D G M E N T

Ashok Bhushan, CJ

This writ appeal has been filed against interlocutory order dated 2nd June, 2015, by which order, learned Single Judge has directed Additional Chief Secretary to file an affidavit within three weeks. In para 5 of the order, learned Single Judge has made the following observation;

“The Government shall submit as to why extra ordinary jurisdiction conferred on this court should not be exercised in the facts of this case, when the sentence imposed for the offence under Sec.326 IPC and confirmed at all levels up to the Apex Court has been lightly and irresponsibly commuted by the Government”.

2. Learned counsel for the appellant submits that in the order, learned Single Judge has expressed his opinion which indicated that before the appellant could file a counter affidavit, the learned Judge has prejudged the issue. He submits that the maintainability of the writ petition against the order impugned

has also not been gone into by the learned Single Judge. Learned counsel appearing for the 1st respondent victim submits that the matter is yet to be heard and any observation in the order cannot be treated to be final expression of opinion.

3. We have considered the submission of the parties and perused the records.

4. The observation as quoted above where the Court has observed that the sentence imposed for the offence under Section 326 IPC and confirmed at all levels upto the Apex Court has been lightly and irresponsibly commuted by the Government cannot be said to be expression of any final opinion by the learned Single Judge. The said observation was made only with the intent that the Government may submit the explanation. The matter is still to be heard. Learned counsel for the appellant submits that the learned Government Pleader has filed an affidavit today in the case on behalf of the State. The appellant is yet to file a counter affidavit.

5. We, thus, are of the view that both the parties are at liberty to submit such pleas as permissible in support of their respective cases claimed. The order dated 2nd June, 2015 and

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observations as quoted above will not be treated as expression of any final opinion by the learned Single judge. The appellant is at liberty to raise all issues including the issue of maintainability as contended by him. It is for the learned Single Judge to consider all aspects of the matter and take appropriate decision.

With the above observations, the writ appeal is disposed of.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge

Rp