

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WA.No. 2001 of 2014 IN WP(C).32399/2014

AGAINST THE JUDGMENT IN WP(C) 32399/2014 DATED 20-12-2014

APPELLANT/PETITIONER :

A.G.KORAH AGED 54 YEARS
S/O. LATE A.K.GEORGE, SENIOR GEOLOGIST
DIRECTORATE OF MINING AND GEOLOGY
THIRUVANANTHAPURAM-695 001
RESIDING AT ANTHERIL HOUSE, MOOLAVATTOM P.O.
KOTTAYAM-686 026.

BY ADV. SRI.C.S.MANU

RESPONDENTS/RESPONDENTS :

1. STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
DEPARTMENT OF HOME AND VIGILANCE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE SECRETARY
DEPARTMENT OF INDUSTRIES, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.
3. THE DIRECTOR OF VIGILANCE AND ANTI CORRUPTION BUREAU
VIKAS BHAVAN, THIRUVANANTHAPURAM-695 033.
4. THE SUPERINTENDENT OF POLICE
VIGILANCE AND ANTI CORRUPTION BUREAU, SPECIAL CELL
ERNAKULAM-682 017.
5. THE INSPECTOR OF POLICE
VIGILANCE AND ANTI CORRUPTION BUREAU, SPECIAL CELL
ERNAKULAM-695 033.

BY SR.GOVERNMENT PLEADER, SRI. P.I. DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, Ag.C.J. & A.M. SHAFFIQUE, J.

W.A. No. 2001 OF 2014

Dated this the 5th day of January, 2015

JUDGMENT

Ashok Bhushan, Ag.C.J.

Heard learned counsel for the appellant as well as learned Government Pleader.

2. This appeal has been filed against the judgment dated 20.12.2014 in W.P.(C) No.32399 of 2014 by which the learned Single Judge has dismissed the writ petition. In the writ petition, the petitioner has prayed for a mandamus directing respondents 1 and 2 to consider the explanation submitted by the petitioner vide Exts.P2, P3 and P4. The Vigilance and Anti corruption Bureau, Special Cell, Ernakulam registered a First Information Report against the petitioner on 20.06.2011 alleging commission of offence under Section 13(1) (e) read with Section 13(2) of the Prevention of Corruption Act, 1988. The petitioner has filed the writ petition with the following prayers:

“(1) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents 1 and 2 to consider the explanation submitted by the petitioner vide Exts. P2, P3 and P4 with regard to the

allegation of possessing assets disproportionate to the known sources of income of the petitioner during period between 1.12.2000 and 24.11.2009, while considering the request made by the 3rd respondent for sanction for prosecution of the petitioner for offence under section 13(1)(e) read with section 13(2) of the Prevention of Corruption Act, 1988.

(2) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents 1 and 2 to take up and consider Ext.P4 representation while considering the request made by the 3rd respondent for prosecution of the petitioner for offence under section 13(1)(e) read with section 13(2) of the Prevention of Corruption Act, 1988.

(3) Allow cost of the petition to the petitioner."

3. A letter dated 28.10.2014 by the Additional Chief Secretary to Government was sent to the Principal Secretary, Industries Department agreeing to prosecute the petitioner. A letter received from the Director of Vigilance & Anti Corruption Bureau was also annexed along with the said letter. The investigating officer has recommended to initiate prosecution against the accused under Section 13(2) read with Section 13(1) (e) of the Prevention of Corruption Act.

4. The Government which is competent to consider the materials placed before it for grant of sanction has to prima facie satisfy the materials before sanction for prosecution. The

Government is free to call for any further materials or to take a decision on the materials already submitted by the investigating agency. At this stage, the petitioner cannot be heard nor can seek for a direction to the Government to consider his explanation. We are of the opinion that the learned Single Judge has rightly refused to grant such relief.

5. The investigating agency who investigated the matter has recommended for sanction for prosecution after looking into the relevant materials placed before them. In any event, if there are no sufficient materials, it is for the Government to take a decision. At this stage, the prayer of the appellant/petitioner cannot be granted. We are of the opinion that the learned Single Judge has not committed any error in dismissing the writ petition. Accordingly, the Writ Appeal is dismissed.

**Ashok Bhushan,
Acting Chief Justice.**

**A.M. Shaffique,
Judge.**