

K. Prabhakaran Vs P. Jayarajan

Court: Supreme Court of India

Date of Decision: Oct. 1, 2002

Acts Referred: Constitution of India, 1950 " Article 191

Government of India Act, 1935 " Section 69

Penal Code, 1860 (IPC) " Section 143, 148, 149, 353, 427

Prevention of Damage to Public Property Act, 1984 " Section 3

Citation: AIR 2002 SC 3393 : (2002) 7 JT 507 : (2002) 3 KLT 521 : (2003) 1 MLJ 69 : (2002) 7 SCALE 196 : (2002) 8 SCC 79 : (2002) 3 SCR 1 Supp

Hon'ble Judges: R. C. Lahoti, J; H. K. Sema, J; Brijesh Kumar, J

Bench: Full Bench

Advocate: L. Nageswara Rao, Roy Abraham, K.C. Sudarshan, Jayant Muthraj and Himinder Lal, for the Appellant; K.K. Venugopal and G. Prakash, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This appeal u/s 116A of the Representation of the People Act, 1951 (RPA, 1951 - for short) deserves to be placed for hearing before a

Constitution Bench for the reasons stated hereunder.

2. No. 14 Kuthuparamba Legislature Assembly Constituency went to polls on 10th May, 2001. The respondent was declared elected. The

appellant lost in the election.

3. The undisputed facts are that vide judgment dated 9th April, 1997 passed by Judicial Magistrate First Class, Kuthuparamba (Annexure P1), the

respondent was held guilty of offences punishable under Sections 143, 148, 447, 353, 427, all read with 149 IPC and also u/s 3(2)(e) of the

Prevention of Damage to Property Act, 1984 read with 149 IPC and sentenced to several terms of imprisonment. All the sentences were directed

to run consecutively. The total term of imprisonment which the accused was required to undergo was of 29 months though individually the term of

imprisonment awarded for each of the several offences was less than two years. The respondent preferred an appeal laying challenge to the

conviction and the sentences passed on him. Vide the judgment dated 25th July, 2001, the Court of Sessions upheld the conviction and the

sentences passed on the respondent but subject to the modification that the substantive sentences of imprisonment passed by the Trial Court were

made to run concurrently (instead of consecutively). Thus, undisputedly, on the date of his election, the respondent was a convict sentenced to the

term of 29 months" imprisonment passed by the Trial Court.

4. The appellant filed an election petition putting in issue the respondent's election, u/s 100(1)(a) of RPA, 1951. The election petition came to be

decided on 5.10.2001 before which the criminal appeal preferred by the respondent had stood decided. The learned designated Election

Judge of the High Court, by the impugned judgment, directed the election petition to be dismissed forming an opinion that the verdict of guilty and

the sentence passed in the criminal appeal had wiped out the verdict of guilty and the sentences of imprisonment passed by the Trial Court and as

the total term of imprisonment awarded by the Appellate Court was for less than two years, in view of the sentences having been made to

run concurrently, the disqualification too had stood wiped out. The learned designated Election Judge has placed reliance on the decisions of this

Court in Vidya Charan Shukla v. Purshottam Lal Kaushik, [1981] 2 SCC 84 and Manni Lal v. Parmai Lal, [1970] 2 SCC 162 .

5. In Manni Lal's case (supra), a two-Judges Bench of this Court took the view that setting aside of the conviction and sentence in appeal has the

effect of wiping out retrospectively the disqualification. Manni Lal's case was followed by three-Judges Bench in Vidya Charan Shukla's case on

the principle of stare decisis. The learned Judges noted that correctness of the decision in Manni Lal's case was not disputed before them. Thus the

view of the law taken by two-Judges Bench in Manni Lal's case was affirmed by three-Judges Bench in Vidya Charan Shukla's case.

6. We have some reservations about the correctness of the view taken in Manni Lal's case and Vidya Charan Shukla's case. As per Article 191 of

the Constitution, a person shall be disqualified for being chosen as, and for being a member of the Legislative Assembly if he is so disqualified by or

under any law made by the Parliament. The relevant part of Section 8 of RPA, 1951 provides that a person convicted of any offence and sentenced

to imprisonment for not less than two years shall be disqualified from the date of such conviction and shall continue to be disqualified for a further

period of five years since his release. The disqualification or want of qualification to be chosen to fill the seat is to be fixed by reference to the date of

election of the returned candidate within the meaning of Clause (a) of Sub-section (1) of Section 100 of the RPA. The proposition that the candidate,

though disqualified on the date of being chosen, would become qualified by reference to subsequent event which may happen during the

pendency of an election petition is, in our humble opinion, open to question.

7. The other controversy centers around the interpretation of Sub-section (3) of Section 8 of the RPA, 1951. According to the appellant, the

several sentences passed on a person on his being convicted may be individually less than two years each but in view of the Court having directed

the sentences of imprisonment to run consecutively, the convict would come out of the prison only after serving out the total term of imprisonment

which being two years or more, the disqualification would be attracted. It was also submitted that even if the sentences are made to run concurrently

yet it is the total term of imprisonment which should be taken into account for fulfilling the object sought to be achieved by the

disqualification provision. On the other hand, it was submitted on behalf of the respondent, that whether consecutive or concurrent, it is the term

of imprisonment for each individual offence which is relevant and must govern the applicability of the disqualification provision. Whatever be the total

term of imprisonment, if the individual term of substantive imprisonment in respect of any one out of the several offences found proved is not two

years or more, Sub-section (3) of Section 8 of RPA is not attracted, is the submission on behalf of respondent. Reliance has been placed on a

decision by the Election Petitions Commission, UP in *Bashir Ahmed v. Aphtar Hussain Khan* decided on 26.8.1937 and reported as 2 Indian

Election Cases 341 wherein, interpreting Section 69(i)(e) of Government of India Act, 1935 the Commission has taken the view that the word

offence "used in singular cannot be read in plural as "offence".

8. As to the first question, as already said, we have some reservation about the correctness of the view taken in *Vidya Charan Shukla and Manni*

Lal's cases and the former being a three-Judges Bench decision, the issue deserves to be dealt with by Constitution Bench. As to the second

question, there is no decided case of this Court a (sic) able and the issue being of far reaching implications, an authoritative pronouncement by a

Constitution Bench would be conducive to justice and would settle the law.

9. Let the matter be placed before Hon'ble the Chief Justice of India for constituting an appropriate Bench for hearing the appeal.