

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).7938/2009
(From the judgement and order dated 13/11/2008 in CRLRP No. 284/2002
of The HIGH COURT OF KERALA AT ERNAKULAM)

KURIAKOSE MATHEW Petitioner(s)

VERSUS

FOOD INSPECTOR & ANR. Respondent(s)
(With appln(s) for exemption from filing O.T. and bail and permission
to file additional documents and office report)

Date: 05/04/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE A.K. PATNAIK

For Petitioner(s) Mr. K.V. Vishwanathan, Sr. adv.
Mr. Harshad V. Nanee, Adv.
Mr. Kuriakose Varghese, Adv.
Mr. K. Rajeev, Adv.

For Respondent(s) Mr. G. Prakash, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The impugned judgment and order is set aside
without going into the merits of the case and matter is
remanded to the High Court for hearing the revision
petition afresh.

Since the appellant was on bail during the
pendency of the revision petition before the High Court
and his application for exemption from surrendering was
allowed vide order dated 09.09.2009 of this Court, we
direct that the appellant shall continue to remain on
bail during the disposal of the revision petition by the
High Court.

Appeal stands disposed of.

(Indu Satija) (Ajay Kr. Jain)
Court Master AR-cum-PS

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 690 OF 2010
(Arising out of SLP(Crl.) No. 7938 of 2009)

Kuriakose Mathew Appellant

Versus

Food Inspector & Anr. Respondents

O R D E R

Heard learned counsel for the parties.

Leave granted.

This appeal has been filed against the impugned judgment and order dated 13.11.2008 of the High Court of Kerala whereby the criminal revision petition filed by the appellant herein has been dismissed and sentence imposed on his has been maintained.

We have gone through the impugned judgment and order. A perusal of the impugned judgment and order shows that neither the appellant herein nor his counsel was present and hence the appellant herein was not heard by the High Court before passing of the impugned order.

It has been held by this Court in a number of decisions that if the accused is not present or is not represented by a counsel, the Court should appoint an amicus curiae before passing any order against the accused. (See : Khaili and Others Vs. State of Uttar Pradesh 1981 (Supp) SCC 75; Bapu Limbaji Kamble Vs. State of Maharashtra (2005) 11 SCC 413 and Man Singh and Another Vs. State of Madhya Pradesh (2008) 9 SCC 542)

Placing reliance on the aforesaid decisions of this Court, we set aside the impugned judgment and order without going into merits of the case and remand the matter to the High Court for hearing the revision petition afresh after giving an opportunity to the appellant herein to engage a counsel and in case the appellant cannot engage a counsel then to appoint an amicus curiae.

Since the appellant was on bail during the pendency of the revision petition before the High Court and his application for exemption from surrendering was allowed vide order dated 09.09.2009 of this Court, we direct that the appellant shall continue to remain on bail during the disposal of the revision petition by the High Court.

Appeal stands allowed in the aforesaid manner.

.....J.
(MARKANDEY KATJU)

.....J.
(A.K. PATNAIK)

NEW DELHI;
APRIL 05, 2010