

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1772 OF 2011

SANJAY NIMDEO & ORS. . . . APPELLANT(S)

VERSUS

THE STATE OF KERALA & ANR. . . . RESPONDENT(S)

O R D E R

1. We have heard the learned counsels for the parties.

2. The crux of the allegations levelled by respondent No.2, as the complainant in the criminal proceedings, is that he had submitted his resignation on 10.02.2010 and had also deposited an amount of Rs.1,14,399/- being the amount due for the notice period (three months) so as to enable his early release from service. The respondent-complainant further alleged that he was relieved only on 17.04.2010 and the delayed release entitles him to receive back the amount tendered by him as he had served during the notice period of three months on account of the delay in acceptance of his resignation.

3. Even if we are to go by the correctness of the aforesaid averments made in the complaint-petition, we do not see how any case is made out for trial under Sections 405, 409 and 420 read with Section 34 IPC. At the highest, even assuming the allegations made to be correct, it could be a case of wrongful retention of money. We are, therefore, of the view that the High Court was not justified in refusing to quash the proceedings as sought for by the appellants(accused). The said proceedings, if allowed to continue, will be a lame prosecution and therefore the High Court in exercise of its power under Section 482 Cr.P.C. ought to have interdicted the same.

4. In view of the above discussion and for the reasons assigned, we set aside the order of the High Court, quash the impugned proceedings arising from Crime No.671 of 2010 at Kannur Police Station Kannur, Kerala.

5. However taking into account that the complainant has deposited a sum of Rs.1,14,399/- for early release from service

and has raised a claim for a further sum of Rs.1,78,460/- on account of leave encashment, we direct that the SBI Life Insurance Company Limited to pay the aforesaid amount(s), if not paid, along with interest at the rate of 6% per annum forthwith in any case within thirty days from today.

6. The order of the High Court is set aside and the appeal consequently is allowed with the above direction.

.....,CJI.
(RANJAN GOGOI)

.....,J.
(SANJAY KISHAN KAUL)

.....,J.
(K.M. JOSEPH)

NEW DELHI
OCTOBER 03, 2018

ITEM NO.102

COURT NO.1

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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...APPELLANT(S)

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THE STATE OF KERALA & ANR.

...RESPONDENT(S)

Date : 03-10-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s) Mr. Rakesh Kr. Khanna, Sr. Adv.
Mr. Rakesh Malhotra, Adv.
Mr. Bharat Malhotra, Adv.
Ms. Shefali jain, Adv.
Mr. Ali Mushtaq Newazish, Adv.
Mr. Debasis Misra, AOR

For Respondent(s) Mr. Nishe Rajen Shonker, AOR
Ms. Anu K. Joy, Adv.
Mr. Alim Anvar, Adv.
Mr. Reegan S. Bel, Adv.

Mr. Ranjith K. C., AOR
Mr. Bijo Mathew Joy, Adv.

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

The appeal is allowed in terms of the signed
order.

Pending application(s), if any, shall stand
disposed of.

(NEETU KHAJURIA)
COURT MASTER

(ASHA SONI)
ASSISTANT REGISTRAR

(Signed order is placed on the file.)