(2002) 09 KL CK 0041

In the High Court Of Kerala

Case No : Criminal M.C. No. 7460 of 2002

Abdul Salam APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 04-09-2002

Acts Referred:
Constitution of India, 1950 — Article 20(2)
Criminal Procedure Code, 1973 (CrPC) — Section 188, 300, 300(6)

Citation : (2002) 09 KL CK 0041

Hon'ble Judges : G. Sasidharan, J

Bench : Single Bench

Advocate : P. Gopalakrishnan Nair and P.A. Ahammed, for the Appellant; K.I. Abdul Rasheed, Public Prosecutor, for the Respondent

Judgement

G. Sasidharan, J.—The grievance of the petitioner is that respondents 1 to 3 are not taking any steps for registering crime against the fourth respondent on the basis of Annexure I and Annexure II petitions. This petition is filed for giving direction to respondents 1 to 3 to register crime against the fourth respondent and to investigate the same. Annexure I is a petition given before the Superintendent of Police (Rural) Thiruvananthapuram and Annexure II is a petition given to the Chief Minister of Kerala which was forwarded to the third respondent for necessary action.

2. The petitioner is a businessman doing business in Abu Dhabi. According to the petitioner he is doing the business of selling vegetables and other food stuffs in Meena Wholesale Market, Abdu Dhabi which also has a branch at Dubai. Petitioner gave a job to the fourth respondent in his establishment at Abu Dhabi about fourteen years ago. According to the petitioner, the fourth respondent along with three others were in charge of the cash as well as the sales section in his establishment and misusing trust and confidence reposed on them, they conspired together, forged and manipulated records and bill books and committed theft of Rs. 2 crores over a period of two years. Petitioner gave a

complaint in the City Police Station, Abu Dhabi against the fourth respondent and three others and on the basis of the complaint, charges were framed against them and they were tried in Abu Dhabi Federal First Instance Court. After taking evidence, they were found guilty and were convicted and sentenced to undergo imprisonment.

3. According to the learned counsel for the petitioner, in spite of the fact that the fourth respondent was convicted and sentenced in Abu Dhabi, respondents 1 to 3 are bound to register crimes on the basis of Annexure I and investigate the crime. Section 188 Cr.P.C. provides that when an offence is committed outside India by a citizen of India, whether on the high seas or elsewhere he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found. Section 300 Cr.P.C. provides that a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence. The bar u/s 300 Cr.P.C. will be there only when a person has once been tried by a court of competent jurisdiction for an offence and has been convicted or acquitted of such offence and he is going to be tried again for the same offence. Here, the allegation in Annexure I complaint given by the petitioner is not regarding the commission of the offence for which he had already been convicted in a foreign country. Annexure III is the copy of the judgment which would go to show that the conviction was for the acts which were made offences by the law which was in force in Abu Dhabi. The bar for the second trial of prosecution will be there only if the fourth respondent is tried for the same offence under the law which is in force in the country where he was convicted and sentenced to undergo imprisonment. Here, the allegation is regarding the commission of the offence mentioned in the Act which is in force in India and the offence alleged is different from the offence for which he was convicted and sentenced to undergo imprisonment.

4. Sub-section (6) of Section 300 of the Criminal Procedure Code says that nothing in that Section shall affect the provisions of Section 188 of the Code. When an offence is committed outside India and the person who committed the offence being a citizen of India is being dealt with in respect of such offence as if it had been committed within India Section 300 has no application. Article 20(2) of the Constitution of India says that no person shall be prosecuted and punished for the same offence more than once. There also what is said is about prosecution and punishment for the same offence. When a person, who had been prosecuted and punished in a foreign country for an offence under the law in force in that country, is prosecuted in India for the commission of an offence, he is being prosecuted for an offence under the law in force in India. The prosecution in India is not for the act which was made an offence under the law in force in foreign country, but for the act which is an offence as per the law in India. Identity of the offence is requisite for the application of Article 20(2). The previous prosecution and conviction or acquittal does not bar a subsequent

prosecution and trial for a separate and distinct offence even though the two offences arise out of the same facts. In spite of the fact that the fourth respondent was convicted and sentenced to undergo imprisonment in Abu Dhabi it is open to respondents 1 to 3 to register crime on the basis of Annexure I if the statements in Annexure I disclose commission of cognizable offence. Direction is given to respondents 2 and 3 to register crime against the fourth respondent on the basis of Annexure I and Annexure II to proceed with the investigation of the crime.