
(1994) 11 KL CK 0010

In the High Court Of Kerala

Case No : Unnumbered Criminal Appeal of 1994

Abubacker Kunju

APPELLANT

Vs

Thulasidas and Others

RESPONDENT

Date of Decision : 05-11-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Kerala High Court Act, 1958 — Section 5(1)

Citation : (1994) 11 KL CK 0010

Hon'ble Judges : P.A. Mohammed, J; K.T. Thomas, J

Bench : Division Bench

Advocate : P. Gopalakrishnan Nair, for the Appellant; K. Ravikumar, Public Prosecutor, for the Respondent

Judgement

K.T. Thomas, J.—A futile endeavour is being attempted to make a new jurisdiction. A learned Single Judge of this Court passed an order in exercise of the inherent powers of the High Court as envisaged in Section 482 of the Code of Criminal Procedure (for short "the Code"). One of the parties thereto who is not satisfied with the order, now seeks to file an appeal in challenge of the order. His contention is that inherent power has been invoked in the exercise of High Court's original jurisdiction and hence an appeal can be maintained u/s 5(i) of the Kerala High Court Act, 1958.

2. But the registry of this Court put up a query to the Appellant to clarify whether such an appeal would lie. Counsel answered to it saying that "jurisdiction of the High Court u/s 482 of the Code is equivalent to the jurisdiction under Article 226 of the Constitution of India, which is not appellate or revisional jurisdiction, but original jurisdiction and hence an appeal will lie". He, therefore, prayed for sending up the matter to the Division Bench for consideration of the question. Accordingly the registry has sent it up.

3. Learned Counsel repeated his contention during arguments. Till now the point

is considered as settled since a Division. Bench of this Court (Raman Nayar, C.J. and Mathew, J.) has spoken about it, Sreedhara Kamath v. Guptha 1970 KLT 941 holding that the order passed is in exercise of its original jurisdiction. But learned Counsel feels that the said decision requires reconsideration in view of certain observations made in the judgment of the larger Full Bench in K.S. Das v. State of Kerala 1992 (2) KLT 358. Learned Counsel invited our attention to paragraph 33 of the said decision which, according to him, contains enough support. But we could not discover anything from the said paragraph or even elsewhere in the decision having any bearing on the question.

4. It is settled proposition that inherent powers of the High Court envisaged in Section 482 of the Code is supervisory in nature "to give effect to any order under this Code or to prevent abuse of the process of any court". The words "or otherwise to secure the ends of justice" in the said section must be construed on the principle of ejusdem generis. When Parliament reserved inherent powers only to the High Courts so far as criminal proceedings are concerned, it is intended to be exercised in respect of proceedings pending in the courts subordinate to it or pending before itself. Learned Counsel strained a little to trace some support from paragraph 111 of the decision of the Supreme Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, in which the Supreme Court recognised the power to quash F.I.R. while exercising the inherent powers envisaged in Section 482. It does not mean that the power is in exercise of original jurisdiction of the High Court. F.I.R. is a document which law enjoins on the police to forward to the Magistrate and thereafter investigation has to be conducted in the manner circumscribed by the Code of Criminal Procedure. Production of the accused after his arrest, remand of the accused to custody etc., are governed by the provisions of the Code. So even quashing an F.I.R. is not a process, involving the original jurisdiction of the High Court.

5. We do not find any reason to dissent from the view adopted by the Division Bench in Sreedhara Kamath's case 1970 KLT 941. The registry has rightly prevented the party from filing the appeal. Hence this need not be registered as an appeal.