

(2014) 02 KL CK 0210
In the High Court Of Kerala
Case No : CrI. M.C. No. 1522 of 2012

Aniyappan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Companies Act, 1956 — Section 617
Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 190, 198, 199, 2(d)
Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 —
Section 25
Mines and Minerals (Development and Regulation) Act, 1957 — Section 18, 21, 21(1),
21(4A), 22
Penal Code, 1860 (IPC) — Section 379, 447, 511

Citation : (2014) CriLJ 2930 : (2014) 2 KHC 431 : (2014) 3 KLJ 117 : (2014) 3
KLT 273 : (2014) 4 RCR(Criminal) 532

Hon'ble Judges : P.D. Rajan, J

Bench : Single Bench

Advocate : A. Sreekala, Advocate for the Appellant; Reji Joseph, Public
Prosecutor, Advocate for the Respondent

Final Decision : Allowed

Judgement

P.D. Rajan, J.—This is a petition filed by 18 persons u/Section 482 of the Code of Criminal Procedure Code 1973 (short Code) praying that Annexure-A2 in crime 1349/2010 of the Vaikom Police Station, pending before the Judicial First Class Magistrate Court-I, Vaikom in ST No. 1519/2011 U/Section 4(1) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the "Act" for short) r/w Section 21(1) of the Act may be quashed. The Sub Inspector of Police, Vaikom arrested the petitioners, registered Annexure-A1 FIR and charge-sheeted them in the above case. The grounds urged for quashing the charge was violation of mandatory provisions contained in the Act and if trial is continued without considering the violation, it will end in acquittal which amounts to abuse of the process of Court. The allegation is that on 15/12/2010 at 9 a.m., the petitioners had collected clams, the recent lime shells accumulated over the

lake bed of Vembanad lake, measuring below 15 mm from T.V. Puram in Vaikom Village against the Government Order. The Sub Inspector of Police detected the offence and seized 1490 kg. clams collected by the petitioners and their 18 boats from the place of occurrence. After completing investigation Annexure-A2 final report has been filed before Court. The petitioners, who are members of Vaikom Taluk Lime Shell Co-operative Society Limited No. 3145 which was registered under Travancore - Cochin Co-operative Societies Act of 1953 having its office at Pallipurathurssery Village, Vaikom Taluk, Kottayam District approached this Court to invoke the inherent jurisdiction.

2. From the narration of the facts I propose to extract Section 4 of the Mines and Minerals (Development and Regulation) Act, 1957. The Section reads thus:

4. Prospecting or mining operations to be under licence or lease.--(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorate of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of Section 617 of the Companies Act, 1956:

Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.

(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the Rules made thereunder.

(2) No reconnaissance permit, prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the Rules made thereunder.

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the Rules made u/s 18, undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already

held under any reconnaissance permit, prospecting licence or mining lease.

Section 3(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;

Section 3(ha) "reconnaissance operations" means any operations undertaken for preliminary prospecting of a mineral through regional, aerial, geophysical or geochemical surveys and geological mapping, but does not include pitting, trenching, drilling (except drilling of boreholes on a grid specified from time to time by the Central Government) or sub-surface excavation;

3. Now it is clear that Section 4(1) of the Act was enacted with intention to prospecting mining operation to be done under a licence or lease. Without a proper licence, no person shall conduct any reconnaissance, prospecting or mining operation in any area. Insertion of sub-section 3 of Section 4 empowers the State Government that after prior consultation with the Central Government and in accordance with the Rule made u/Section 18 give permit for reconnaissance, prospecting or mining operation with respect to any minerals specified in the First Schedule. In the First Schedule, the minerals are divided into Part A, Part B and Part C. Part A contains minerals of Hydro Carbons or energy minerals. Part B contains Atomic Minerals and Part C contains Metallic and non-metallic minerals. Lime shell is not mentioned in First Schedule. But, according to Section 9, mining lease are granted for certain minerals notified in the Second Schedule. Lime shell is notified and the royalty of the lime shell is 63 rupees per month. The power to amend the second schedule is vested with the Central Government. Therefore, a close perusal of Sections shows that the power with regard to minerals notified in the Second Schedule is vested with the Central Government.

4. The learned counsel however submits that as per the First schedule of the Act, lime shell is not included as an item attracting Section 4(1) and 21 of the Act. The Second Schedule is issued as per Section 9 of the Act, which deals with the rates of royalty in respect of minerals mentioned therein. According to Section 22 of the Act, a written complaint from the authorised officer is necessary for prosecution and the Sub Inspector of Police, Vaikom is not an authorised officer.

5. Before I proceed further in this case, it is necessary to consider the scope of invoking inherent jurisdiction u/Section 482 of the Code and various decisions made by the Hon"ble Supreme Court in this regard. In R.P. Kapur Vs. The State of Punjab, the Supreme Court considered the circumstances in which the High Court can, by invoking its inherent powers, quash the criminal proceedings in a subordinate Criminal Court. The Supreme Court observed as follows:

It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily

criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged, in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the Criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction u/s 482 the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the Trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court u/s 482 in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point.

6. Now the surviving question in this case is whether the inherent jurisdiction u/ Section 482 Cr.P.C. can be invoked to quash Annexures-A1 and A2. According to Section 482 Cr.P.C., the Court can invoke such powers to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse

of process of the Court or otherwise to secure the ends of justice. The petitioners have challenged the order of taking cognizance and the allegation in the FIR. It was decided by this Court in catena of decisions that if on bare perusal of the FIR, the facts stated do not disclose commission of any offence, the continuation of such criminal proceedings will amount to an abuse of process of the Court. I think that the present case comes to such category of cases. Only in cases where prima facie reading of the FIR or complaint the allegation made therein on their face value do not establish any offence, such complaint may be quashed. Apex Court in *Dr. Sharda Prasad Sinha Vs. State of Bihar*, held that "the Hon'ble Supreme Court has laid down that the allegations in complaint or Charge-Sheet not constituting any offence, the order taking cognizance can be quashed by High Court in exercise of inherent powers".

7. From a close look to the narration of facts, it is found that the Sub Inspector of Police, Vaikom registered the above crime as against 18 persons, who are the members of the Vaikom Lime Shell Co-operative Society. The society is functioning as per the provisions of the Travancore Cochin Co-operative Societies Act, 1952. The Deputy Registrar of Co-operative Society, Kottayam issued registration certificate and thereafter, Society is collecting and selling the lime shells. Annexure-A4 shows that the Industries Department-Mining and Geology Government of Kerala had given sanction for collecting the lime shell. The royalty is fixed and the conditions mentioned in Annexure-A4 are subject to the modification and alterations by the Government of Kerala. Therefore, the President and the members of the Society engaged in lime shell collection and doing it for a pretty long time within the notified area and in the entire Vembanad lake, the lime shell deposit occur in two horizons. The top loose horizon of recent lime shells, mostly clams accumulated over the lake bed and the second horizon of bleached older shells buried in alternative layers of sand and mud in rhythmic sequence underground. The petitioners and other members are engaged in the collection of recent lime shells accumulated over the lake bed.

8. The next question that remains for consideration is, whether there is any complaint lodged by the authorised officer as per Section 22 of the Act 1957. No notification is produced by the respondents to show that the Sub Inspector of Police, Vaikom was an authorised officer to act as per Section 22 of the Act. Section 22 of the Act reads as follows:

22. Cognizance of offences.--No Court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

A careful reading of the above Section shows that no Court shall take cognizance of the offence punishable under this Act or any rules made thereunder except upon a complaint in writing made by a person authorised in this behalf by the Central Government or the State Government. Section 22 of the Act totally prohibits a final report as mentioned in Section 173(2) of the Code of Criminal

Procedure, 1973. The aim of such a provision is to avoid the unnecessary prosecution by any kind of officers. As per Section 22 of the Act, only an authorised officer or an empowered officer alone can file a complaint.

9. The word "complaint" as defined u/s 2(d) of the "Code" means, any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. If a Police Officer wishes to take action against the violation of any of the Act or Rule, the first condition as per Section 22 of the Act is that an authorisation from the Central Government or the State Government is necessary and without such authorisation, there is a total restriction on the Sub Inspector of Police to file a complaint. Secondly, if such authorisation is issued by the State Government or the Central Government, the concerned officer has to prefer a complaint in writing to the Magistrate. Then only a valid prosecution u/s 22 of the Act can be initiated against the petitioners. This question was considered by this Court in the following decisions in *Moosakoya Vs. State of Kerala*, , *Abdul Azeez Vs. State of Kerala*, , *Ismayil Vs. State of Kerala*, , and *P.M. Sumesh Vs. State of Kerala and Another*, while dealing with Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.

10. A Division Bench of this Court in *Ismayil Vs. State of Kerala*, discussed Section 25 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 which is similar to Section 22 of the Mines and Minerals (Development and Regulation) Act 1957. This Court in *Ismayil's* case (*supra*) held that a police report submitted u/s 173(2) of the Code cannot be treated as a complaint for the purpose of a prosecution under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. Applying the same parameters, a written complaint by an authorised officer by the Central or State Government as per Section 22 is necessary for taking cognizance of an offence. Therefore, it is mandatory that the authorised officers shall file a complaint in writing in respect of an offence punishable under the Act. The object of imposing such limitation is to save the accused from vexatious prosecution by revengeful feeling on the part of non-empowered officers. Therefore, the final report filed by the police cannot be treated as complaint as mentioned in the Act and a written complaint by an authorised officer as stated u/s 22 is a "sine qua non" or an indispensable condition.

11. The same question was considered in *K. Srinivas and others Vs. The State of Karnataka*, by the High Court of Karnataka and held as follows:

39. A close and careful reading of Section 22 extracted hereinabove, would show that there is a blank prohibition on the Court from taking cognizance of any offence punishable under the provisions of the Act of 1957 or the rules made thereunder except upon a complaint in writing made by a person authorised in that behalf by the Central Government or the State Government. If the investigation undertaken by the Jalahalli Police Station on the strength of the

information lodged by the Assistant. Superintendent of Police not competent to exercise the powers, which formed the basis for his information, were to culminate in the formation of opinion by the Sub Inspector of Police that petitioners 1 to 3 would be required to be forwarded for inquiry and trial for the offence punishable u/s 4 of the Act of 1957 and Sections 447 and 379 read with Section 511 of the Indian Penal Code, insofar as the quarrying operations in the land bearing Survey No. 11 and if the final report is to be submitted in accordance with the opinion, it is evidence from Section 22 that the learned Magistrate cannot take cognizance. The Charge-Sheet would be merely a scrap of paper. If the learned Magistrate could not take the cognizance of the offences, he cannot try the offences in accordance with law. In that view of the matter also, the registration of the case on the basis of the information furnished by the Assistant Superintendent of Police and the investigation taken upon the basis of the registration of the case and issuance of FIR. Would be a futile and fruitless exercise.

40. From what has been stated above, it becomes crystal clear that the failure to exercise inherent powers in favour of the petitioners would result in the failure of justice. In my view, there is a strong case made out for the exercise of inherent powers to prevent abuse of the process of the Court and to secure the ends of justice. Both on factual and legal aspects, the petitioners have shown that the registration of the case against them in Crime No. 14/1992 in the Police Station at Jalahalli and the investigation undertaken on the basis of the registration of the case are required to be quashed to secure the ends of justice.

12. A Single Judge of this Court while dealing with Section 22 of the "Central Act", In *Dijil and Another Vs. Sub Inspector of Police, Kunnamkulam*, held as follows: (paras. 18 & 19)

18. The provisions of the Central Act herein and that of the Rules are similarly worded as regards taking cognizance. Section 22 of the Central Act provides for taking cognizance only upon a complaint in writing made by a person authorised in this behalf by the Central Government or the State Government. As already noticed, u/s 21(4A), the power to order confiscation is conferred on the Court itself, which is competent to take cognizance of offence. Therefore, evidently only on a written complaint alone the Court can take cognizance.

19. This legal position under the very same enactment has been explained by a learned Single Judge of this Court in the decision reported in *P.M. Sumesh Vs. State of Kerala and Another*, wherein in para. 5 it has been held that a report filed by the Sub Inspector after investigation in a crime registered u/s 173(2) of the Code, cannot be treated and considered as a complaint enabling the Court to take cognizance of the offence stated thereunder. Reliance was placed on *Ismayil Vs. State of Kerala*, in which it is held as follows: (para. 23 & 24)

23. It is true that u/s 2(d) of the Code there is no particular form prescribed. A complaint can be even oral. No doubt, it must satisfy the essential ingredients in

Section 2(d) of the Code, namely, it must relate to commission of an offence by known or unknown person and there must be request to take action. It may be true that in substance the ingredients of a complaint could be culled out from the report u/s 173(2). In fact, at this juncture we must notice the submission of Sri. K.K. Dheerendra Krishnan, the learned counsel appearing on behalf of the petitioner in CrI MC 2622/2010 that the Code contemplates different procedures in respect of cases taken cognizance of on the basis of complaint and police report. He would point out that Section 202 of the Code is not applicable to cognizance based on police report. Of course, the question which we have to consider is whether a police report can be interpreted and understood as a complaint.

24.....The Statute unambiguously postulates a specific method for taking cognizance. Generally, any person can set the criminal law into motion. But, there are exceptions which are provided to the said principle in the Code and also in various special Statutes. Instances of the exceptions are Sections 198, 199 of Code of Criminal Procedure. Section 25 of the Act is another instance of a statutory prohibition against cognizance of the offence being taken in any manner other than what is provided therein. Therefore, the Legislature intended that cognizance can be taken only in the manner which is contemplated u/s 25 of the Act. This means that Legislature intended the provisions to be mandatory and intended further that what is provided therein is to be followed is unaware of the provisions of Section 2(d) or Section 2(r) of the Code. That is to say, the Legislature was very much aware that the word "complaint" as defined in Section 2(d) does not include a police report. The Courts would ascribe knowledge of the existing law to the Legislature when a law arises for interpretation. This being the position though it may be possible for the prosecution to point to the contents of the police report and canvass may also answer the description of a complaint, we are of the view that in the nature of the Statute and the decision of the Apex Court approving the decision of the Division Bench in Moosakoya's case and also the fact that the police reports in all these cases do not give any indication whatsoever that is intended to be filed as a complaint or even that it is filed by the Police Officer as authorised under the Act cognizance taken in all these cases would be hit by the prohibition contained in Section 25 of the Act namely that cognizance can be taken only on the strength of a complaint.

13. Therefore, evidently, as per the powers conferred under the Act, I have no doubt that a written complaint specified u/s 22 of the Mines and Minerals (Development and Regulation) Act, 1957 by an authorised officer by Central or State Government is mandatory. It is the well recognised principle of criminal jurisprudence that anyone can set the law in motion except where a Statute makes an act and a criminal offence indicates to the contrary. Section 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint but it does not prescribe any qualification for the complainant to file a complaint. But where an eligibility criterion for a complainant is contemplated in a special Statute by specific provisions that will prevail over general provision.

These specific provisions clearly indicate that in the absence of such statutory compliance, a locus standi of a complainant is a concept foreign to criminal jurisprudence. There is an absolute prohibition on the Court from taking cognizance of any offence under the Mines and Minerals (Development and Regulation) Act, 1957 except upon a complaint in writing made by an authorised officer u/Section 22 of the Act by the Central or State Government. Therefore, the report of the Sub Inspector, Vaikom, after investigation in Crime No. 1349/2010 u/s 173(2) of Cr.P.C. cannot be treated as a complaint u/s 22 of the Mines and Minerals (Development and Regulation) Act, 1957 enabling the Court to take cognizance of the offence. In such circumstances, the registration of the case and investigation by the S.I. of police, Vaikom would be a futile exercise. Hence, I quash Annexures-A1 & A2 pending before the Judicial First Class Magistrate's Court-I, Vaikom by invoking the inherent jurisdiction u/Section 482 Cr.P.C.

This Crl. MC is allowed.