

(2013) 03 KL CK 0114

In the High Court Of Kerala

Case No : Criminal M.C. No"s. 3493 and 3494 of 2011

Babu

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 192, 325, 407, 408, 410

Factories Act, 1948 — Section 105, 105(2), 106A, 92

Citation : (2013) CriLJ 3929 : (2013) 2 ILR (Ker) 454 : (2013) 2 KHC 136 :
(2013) 2 KLJ 457 : (2013) 2 KLT 103

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : Alan Papali and J. Vimal, for the Appellant; O.V. Radhakrishnan (Sr. Advocate), Public Prosecutor (Egy N. Elias), K. Radhamani Amma, Antony Mukkath and K. Ramachandran (Thykoodam), for the Respondent

Judgement

S.S. Satheesachandran, J.—The above CrI. M.Cs, both of them, and the Writ Petition are filed by the same petitioner, who is the common accused in two complaint cases. Petitioner filed the above CrI. M.Cs contending that the Chief Judicial Magistrate, Kollam, who received the complaints and ordered process, has no jurisdiction to entertain them, and hence proceedings in both cases are liable to be quashed, under S. 482 of the Code of Criminal Procedure (for short "the Code"). The CrI. M.Cs. were filed earlier and, subsequently, the petitioner has also filed the Writ Petition to challenge an O.M. issued by the High Court and seek for quashing it in exercise of the extraordinary jurisdiction of this court since that O.M. was set forth by the respondents empowering the Chief Judicial Magistrate to entertain and decide the complaints. The matrix of the case presented by the petitioner, both on facts and law, in the CrI. M.Cs and also Writ Petition, in the latter, quashing of the O.M. issued by the High Court is canvassed of, is similar in all respects and, so much so, reference to the averments made in the CrI. M.Cs and Writ Petition, separately, is not called for. Similarly, the

challenges raised by the respondents to the Crl. M.Cs and Writ Petition are also common except an additional statement in the counter affidavit filed in the Writ Petition narrating the circumstances under which the O.M. referred to was issued by the High Court.

2. Petitioner is the proprietor of a concern namely MVM Ayurvedic Research Lab, Pooyappally, Kollam, which is a factory registered under the Factories Act. That factory is situated in Pooyappally Panchayat of Kottarakkara taluk coming within the jurisdiction of Pooyappally Police Station and the court of the Judicial Magistrate of the First Class - II, Kottarakkara. The Inspector of Factories and Boilers, who is the second respondent in the Original Petition, inspected the factory of petitioner on 18.02.2010 and detected some alleged violation under the Factories Act, 1948 and Kerala Factory Rules. He thereupon filed two complaints before the Chief Judicial Magistrate to prosecute the petitioner for the offence punishable under S. 92 of the Factories Act. Cognizance taken of the offence in the respective complaint, both were received on file and numbered as S.T. No. 462 of 2010 and S.T. No. 463 of 2010. Process was ordered to the accused. Thereupon, he has filed the two Crl. M.Cs contending that the Chief Judicial Magistrate has no jurisdiction to entertain the complaints.

3. Cognizance of an offence under the Act on a complaint can be taken only on such complaint filed before the court within whose jurisdiction the plant is situate, is the challenge set forth contending that the plant of petitioner is situate within the jurisdiction of Judicial First Class Magistrate-II, Kottarakkara, and as such only that magistrate has competency to entertain the complaint over any offence relating to that plant under the Act and Rules. Petitioner places reliance on Sections 105 and 106A of the Act, which deal with the restrictions imposed for taking cognizance of the offences and also the court which alone can take cognizance.

4. The respondent, hereinafter referred to as complainant, filed a counter statement. Challenge raised is resisted thus: For violations covered by S. 92 of the Act penalty of fine up to Rs. 1,00,000/- is provided, and awarding of such sentence prescribed is not within the authority of a Judicial First Class Magistrate. That magistrate can impose only a fine up to Rs. 10,000/-. So, taking note of the penal provision, Annexure R1 Official Memorandum (for short "O.M.") was issued by the High Court directing all Chief Judicial Magistrates to accept the charge sheets filed under the Act for offences which the Judicial Magistrates of the First Class are not competent to impose adequate sentence, irrespective of the question that such offences were committed within the territorial jurisdiction of a Judicial First Class Magistrate. That O.M. also clarified that complaints constituting offences for which punishment provided under the statute does not exceed competency of the Judicial First Class Magistrate in awarding sentence of fine, shall be filed before the magistrate having territorial jurisdiction to enquire/try such offence. Apart from placing reliance on the above O.M., competency of a magistrate to return the complaint for presentation before the proper court, and

also power vested with the Chief Judicial Magistrate to make over a complaint after receiving it or recalling of any complaint from court of any magistrate under him, for enquiry/trial, empowered under S. 410 of the Code, is also canvassed to contend that the relief canvassed, quashing of the complaints, at any rate, is not entertainable.

5. In the light of Annexure R1 O.M. issued by this court by which the Chief Judicial Magistrates are directed to receive complaints over offences under the Act, irrespective of territorial jurisdiction fixed under the Act, petitioner was directed to implead the Registrar General of the High Court as an additional respondent in both petitions.

6. Registrar General impleaded as additional 2nd respondent, has filed a counter affidavit in the respective case raising contentions thus: S. 105(2) of the Act does not oust jurisdiction of the Chief Judicial Magistrate since it is a higher court which is competent to try any offence punishable under the Act. Judicial Magistrate of the First Class-II, Kottarakkara, within whose territorial limits the plant of petitioner is situate cannot impose the sentence of fine for the offence proceeded against in the complaints. Chief Judicial Magistrate's power to impose fine as part of sentence is unlimited. Chief Judicial Magistrate has jurisdiction over the entire district, and as such, he is competent to entertain complaints presented before him, though the plant is situate within the territorial jurisdiction of another magistrate under him. Reference is also made to some provisions of the Code relating to jurisdiction and also judicial pronouncements thereof to contend that complaints filed before the Chief Judicial Magistrate for violation of the Act and the Rules are entertainable by him, and, challenge raised thereof with reference to S. 106A of the Act is not sustainable. With the counter statement, a list of the Magistrates of Kollam with the names of police stations coming under their jurisdiction is produced to contend that no specific conferment has been made to Judicial First Class Magistrate-II, Kottarakkara, in whose territorial jurisdiction the plant of petitioner is situate, to take cognizance of the offences under the Act and the Rules. That circumstance is also canvassed to show that cognizance of the offences taken on the complaints by the Chief Judicial Magistrate cannot be assailed with reference to the provisions of the Act.

7. Petitioner filed the above Writ Petition later for quashing the O.M. marked as Ext. P3. That O.M. issued by the High Court transgresses and violates the statutory interdiction covered by the Factories Act with respect to the jurisdiction of the Magistrate's Court in receiving and proceeding with complaints for violation under the Act, is the case of petitioner for quashing the O.M. Third respondent in the Writ Petition, Registrar General, High Court of Kerala, filed a counter affidavit reiterating the objections raised, and referred to earlier, in the CrI. M.Cs in support of the O.M. issued. In the counter affidavit the circumstances under which the O.M. was issued are also referred to stating that a clarification was sought by the Government pointing out the limit of sentencing power enjoyed by the Judicial First Class Magistrate with reference to the offence

under S. 105 of the Factories Act after its amendment, and, thereupon, the administrative committee of the High Court resolved to issue Ext. P3 O.M. (Annexure R1 in the Crl. M.Cs) directing the Chief Judicial Magistrates to accept charge sheet filed under the Factories Act for offences for which Judicial Magistrates of First Class are not competent to impose adequate sentence irrespective of the question whether the offences arise from areas within the territorial jurisdiction of other Judicial Magistrates of the First Class. Since the case canvassed by petitioner in Crl. M.C. and Writ Petition, and also the contentions raised by respondents in both proceedings, are similar in all respects reference in detail over the O.P. is not called for. Common exhibits produced in both Crl. M.Cs and O.P. are hereinafter referred to as marked in the Crl. M.Cs for the sake of convenience.

8. I heard learned counsel for petitioner, learned Government Pleader and also learned senior counsel, who appeared for the additional 2nd respondent.

9. The question emerging for consideration in these petitions lies within a narrow compass. Where statute prescribes the court competent to entertain complaints, specifying how the jurisdictional conferment is based, for the reason the offence is punishable with a sentence exceeding the empowerment of that court to award, can such complaint be presented before and entertained by another court which has competency to impose the punishment provided, and also whether the High Court issuing a O.M. direct for entertaining the complaint by such court? The aforesaid question requires to be analysed with reference to the statutory provisions governing the filing of complaint before the magistrate for offences covered by the Act and Rules. The two sections of the statute which have a bearing on the issue are Sections 105 and 166A of the Act. Those Sections read thus:

105. Cognizance of offences:-

(1) No Court shall take cognizance of any offence under this Act except on complaint by, or with the previous sanction in writing of, an Inspector.

(2) No Court below that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence punishable under this Act.

106A. Jurisdiction of a court for entertaining proceedings, etc., for offence:--

For the purpose of conferring jurisdiction on any court in relation to an offence under this Act or the rules made thereunder in connection with the operation of any plant, the place where the plant is for the time being situate shall be deemed to be the place where such offence has been committed.

10. Petitioner is prosecuted on the complaints of the Inspector of Factories and Boilers for the reason that he has violated some provisions covered by the Act and Rules in the operation of his plant. Such violations invite penalty covered by S. 92 of the Act, which, if found guilty, is punishable with imprisonment for a term which may extend to two years or with fine which may extend to Rs. 1 lakh

or with both. Complaints were filed before the Chief Judicial Magistrate as he alone is empowered to impose sentence of fine without any limit, is the case of the complainant. The High Court has directed the Chief Judicial Magistrate to entertain complaints of such nature under Annexure R1 O.M. where violation of the Act and Rules is punishable with sentence exceeded the empowerment of the Magistrate in whose jurisdiction the place is situated, is banked upon to assert that such complaints are entertainable and be tried and disposed of, by the Chief Judicial Magistrate.

11. Learned counsel for the petitioner fairly conceding that cognizance of the offence by a magistrate even if he has no territorial jurisdiction to try the case cannot be impeached having regard to the provisions covered by Chapter XIII of the Code, however, projected a challenge banking upon the word "entertain" appearing in the heading of S. 106A of the Act. That word has much significance, and, no court other than the court having territorial jurisdiction can receive the complaint was the submission. Learned counsel has relied on *Lala Ram Vs. Hari Ram*, and *General Officer Commanding Vs. CBI and Another*, to support the above proposition canvassed.

12. In *Lala Ram's* case, the word "entertain" in relation to the maintainability of an appeal against an order of acquittal with reference to the statutory period prescribed under the Code of 1898 was considered. The question related to the "entertaining" of such appeal whether it should be brought before the court for consideration within the period prescribed for presentation, or filing must be within such period. In the context in which such word used in S. 417(4) of the Code fixing the time limit for preferring an appeal against an order of acquittal, it was held, it has a restricted meaning - filed or received by the High Court. That interpretation over the word used in the aforesaid section of the Code, has necessarily to be understood as having bearing only over an appeal presented in terms of that Section. In *General Officer Commanding Vs. CBI and Another*, what was considered in paragraphs 34 to 40 of that judgment, which were relied by the learned counsel related to institution of a case. There also, it has been held that the expression "institution" has to be understood in the context of the scheme of the Act applicable to a particular case. It is further clarified that so far as criminal proceedings are concerned institution does not mean filing, presenting or initiating the proceedings, rather it means taking cognizance as per the provisions contained in the Code. So much so, the aforesaid two decisions relied by the counsel in no way assist the proposition canvassed that entertaining the complaint takes within its ambit cognizance of the offence thereunder by the magistrate before whom the complaint was presented. It is well settled that the heading given to a Section cannot control the plain words of the provision and they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous, nor can they be used for cutting down the plain meaning of the words in the provision. Seeking assistance from the heading of Section to interpret the provision can be resorted to only in case of ambiguity or doubt, that too as an aid in construing the

provision. Even in such a case, it could not be used for cutting down the wide application of the clear words used in the provision. S. 106A has the heading "Jurisdiction of court for entertaining proceedings for offence" does not give any significance or merit to the word "entertaining" if the provision covered by that section has no ambiguity over its meaning and effect and no aid from the heading is called for, for its interpretation. That section is clear to the effect that in relation to any offence under the Act or Rules in respect of operation of any plant, the court within which that plant where such offence has been committed shall have jurisdiction. But that in no way cuts down or abridges the power vested with the criminal court in general under Chapter XII of the Code in taking cognizance of the offence on a complaint presented even if it has no territorial jurisdiction to proceed any further with the enquiry or trial of the case. The Apex Court in *Trisuns Chemical Industry Vs. Rajesh Agarwal and others*, has held that there is no restriction under the Code curtailing the powers of a magistrate in taking cognizance of an offence in relation to territorial barrier. In the aforesaid decision it has been stated thus:

The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the Court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post cognizance stage and not earlier.

There is no merit in the challenge raised that only the magistrate within whose territorial jurisdiction the plant is operated can receive a complaint over any offence committed under the Act and Rules banking upon the word "entertaining" in the heading of S. 106A of the Act.

13. Complaint involving offences under the Act and Rules by the competent authority, an Inspector, can be presented before any First Class magistrate within the District. However, whether the magistrate after taking cognizance can proceed with the enquiry or trial on such complaint has to be examined with reference to the provision covered by S. 106A of the Act. That provision, as indicated earlier, deals with the territorial jurisdiction of the court, for trial of offences under the Act and Rules. The offence alleged over the violation of the Act and Rules must relate to the operation of a plant situate within its jurisdiction. Statutory prescription under S. 106A of the Act confining jurisdiction on the First Class magistrate in the place where the plant is situate, does not impeach the right of the Chief Judicial Magistrate to receive the complaint and try the offence under the Act and Rules, is the contention of the complainant and also additional second respondent. That is so canvassed putting forth two pleas, one upon Annexure R1 O.M. issued by the High Court and the other on the basis that jurisdiction of the Chief Judicial Magistrate extends to the whole of the

District and he is empowered under the Code to call for even cases on the file of the magistrates under his control.

14. A statement was filed initially, by Registrar General of the High Court, but, before impleadment as an additional respondent, pursuant to orders passed by me directing the Registry to place the file relating to Annexure R1. That statement and also the file produced reveal the circumstances under which Annexure R1 was issued. Previous to the amendment of some of the provisions of the Factories Act, particularly over the quantum of fine that can be imposed for various offences, sentence of fine provided was within the authority of Magistrate of the First Class. However, after amendment of the Act, under Act 20/87, sentence of fine provided for some offences exceeded beyond the powers of Magistrate of the First Class over awarding sentence of fine. In the aforesaid circumstance clarification was sought for by the Government pursuant to representation made by the authorities under the Act over the incompetency of the First Class Magistrate to impose adequate sentence of fine. The administrative committee of the High Court thereupon resolved to issue directions to the Chief Judicial Magistrates to accept charge sheets filed under the Factories Act for offences for which the Judicial Magistrates of the First Class are not competent to impose adequate sentence irrespective of the question whether the offence arose within the territorial jurisdiction of a Magistrate of the First Class. The Committee also decided that charge sheets for the offences for which Judicial Magistrates of the First Class are competent to impose adequate sentence shall be filed before such magistrates having jurisdiction over the area. On the basis of the above decision, Annexure R1 O.M. was issued, which reads thus:

THE HIGH COURT OF KERALA

No. D1-6485/89.

Cochin-682 031,

Dated: 17.11.1989.

OFFICIAL MEMORANDUM

Sub:- Factories (Amendment) Act, 1987 - (Act 20 of 1987) - Filing of cases before any Court higher than Judicial First Class Magistrate Courts Clarification - Issued - regarding.

All Chief Judicial Magistrates are directed to accept charge sheets filed under the Factories Act, 1948 for offences for which Judicial Magistrate of the First Class are not competent to impose adequate sentence irrespective of the question whether the offences arise from areas within the territorial jurisdiction of other Judicial Magistrate of the First Class. Charge sheets for offences for which Judicial Magistrate of the First Class are competent to impose adequate Sentence shall be filed before such Magistrates having jurisdiction over the areas.

(By Order) Assistant Registrar.

15. No statement is made in the O.M. over enquiry/trial other than acceptance of charge sheets (complaints) imputing offences under the Act by the Chief Judicial Magistrates. But, it is clear, what was intended on acceptance of such complaints where sentence of fine exceeded competency of the Magistrate of the First Class, was a direction to proceed, try and dispose of such complaints by the Chief Judicial Magistrate. That was expected in issuing the O.M., though it is not spelt out, has not been disputed before me by the learned senior counsel appearing for the additional second respondent. Then, the question is whether the High Court could have issued such an O.M. empowering the Chief Judicial Magistrates to do so overlooking the statutory provision prescribing that only the Magistrate within whose territory the plant is operated has the jurisdiction to enquire or try the offence. Statutory mandate covered by S. 106A of the Act leaves no room for a different view other than that jurisdiction to enquire or try an offence under the Act and Rules in connection with the operation of any plant is with the court within the jurisdiction of which the plant is situate and the offence has been committed. When that be so, otherwise than by orders of transfer passed under Sections 407 or 408 of the Code or in exercise of the supervisory jurisdiction of this court under Art. 227 of the Constitution, enquiry or trial over complaints involving the offences under the Act and Rules has to be conducted by the court within the jurisdiction of which the plant is operated and the offences committed.

16. By amendment of the Act sentence provided for some offences committed has been enhanced and fine amount to be imposed as sentence exceeded the competency of First Class magistrate cannot empower the High Court to confer jurisdiction on another court, even if it has the competency to impose a sentence of fine fixed under the amendment where the statute prescribes and mandates the court which alone can conduct enquiry or try the offence. To get over the difficulties by the fixation of jurisdiction under S. 160A of the Act, as it now stands, the legislature has to step in and bring forth amendments required in the statute. There can be no legislation in that matter by the High Court, the difficulties ensuing from the enhancement of fine for the offences under the Act over the conferment of jurisdiction on the court cannot be undone by the High Court issuing an O.M. like Annexure R1. More so, when statutory prescriptions govern jurisdiction of court specifically over enquiry or trial of offences under the Act.

17. Whether a O.M. issued by this court can override statutory prescription is also a matter to be looked into, that too touching upon the jurisdiction of a court to enquire or try an offence. So far as the framing of Rules for the guidance of the criminal courts in the State, S. 477 of the Code empowers the High Court to do so, but with the previous approval of the State. Such Rules have to be published in the Official Gazette as well. What are the matters for which rules can be framed are covered by the above Section. High Court can frame rules over other matters, not falling under Clauses (a) to (c) of the Section, which is

required to be, or may be prescribed. Such rules framed by the High Court cannot override statutory prescriptions, more so, with respect to jurisdiction of the courts over enquiry or trial of an offence. The Code does not envisage issue of O.M. by the High Court over criminal proceedings by the subordinate courts. However, the authority of the High Court to issue such O.Ms. whenever and wherever necessary to remove difficulties in the criminal administration cannot be doubted at all. But all the same, it has to be noted that the power to issue such O.Ms. springs up from the supervisory jurisdiction vested with the High Court under Articles 227 of the Constitution. But such O.Ms. issued thereof in exercise of such supervisory jurisdiction or authority over the subordinate courts cannot overstep the statutory mandate prescribed, nor flout what is expressly stipulated and regulated by the provisions of a statute. When that be so, Annexure R1 O.M. issued by the High Court which militates against the mandatory prescription covered by S. 106A of the Act cannot be sustained.

18. Learned senior counsel appearing for the additional 2nd respondent has mainly banked upon the powers of the Chief Judicial Magistrates to entertain the complaints irrespective of the statutory prescription covered under S. 106A of the Act indicating otherwise. As stated earlier, in the counter filed by the additional second respondent and also in the submissions made, no justification for Annexure R1 O.M. was canvassed of, but the attempt made was only to show that the Chief Judicial Magistrate has power and control over the entire magistracy in the district. So far as his administrative control over the magistracy in the judicial district that is a different matter. However, with respect to his jurisdiction, and more so of territorial jurisdiction for enquiry or trial of offences otherwise than as provided by the Code, he does not have an omnibus power over the entire judicial district. This court in Anilkumar and Others Vs. Sindhu and Others, has considered the ambit of jurisdiction of Chief Judicial Magistrate and has held that the Chief Judicial Magistrate is not a "separate class", but only Judicial Magistrate of the First Class. In the above decision, it has also been held that the powers under S. 192 or 410 of the Code enjoyed by the Chief Judicial Magistrate to try the same do not confer any territorial jurisdiction to the Chief Judicial Magistrate. I respectfully agree with the views rendered in the aforesaid decision on the above aspects, and more so is bound by that decision as well. When that be so, there is no merit in the pleas made by the additional 2nd respondent that complaints presented before the Chief Judicial Magistrate can be enquired and tried by that magistrate overlooking statutory prescription under S. 106A of the Act.

19. There is no bar to the Chief Judicial Magistrate in taking cognizance of the offence on the complaints filed before him under the Act and the Rules. However, after taking cognizance he cannot proceed with the enquiry or trial if he lacks territorial jurisdiction as under S. 106A of the Act. Complaints over which cognizance have been taken, but, lacking jurisdictional authority, have to be transferred to the court which has territorial jurisdiction within which the plant is operated and offence committed under the Act. On enquiry or trial if the

magistrate of First Class is of opinion, after hearing the evidence for prosecution and the accused that the accused is guilty and he ought to receive a more severe form of punishment than he is empowered to inflict, recording his opinion thereto he can submit the proceedings and forward the accused to the Chief Judicial Magistrate. That is so provided under S. 325 of the Code. When that be so, statute provides for the offence a sentence of fine in excess of the empowerment given to the magistrate to inflict such a sentence of fine, is not an insurmountable difficulty which cannot be remedied.

In the circumstances Chief Judicial Magistrate, Kollam is directed to transmit the two complaints covered by the present proceedings to the magistrate having jurisdiction viz., Judicial Magistrate of the First Class-II, Kottarakkara, who is empowered under the Act to enquire/try the offences under the Act and Rules, within whose jurisdiction the plant is situate, operated and the offences are alleged to have been committed. The magistrate, receiving such complaints shall enquire/try the cases, taking note of the observations made above and in accordance with law.

Annexure R1 O.M. (Ext. P3 in the Original Petition) issued by the High Court is quashed.

Crl. M.Cs and Writ Petition are disposed of as above.