
(1998) 05 KL CK 0009
In the High Court Of Kerala
Case No : Criminal Appeal No. 837 of 1995

Dr. S.S. Subramanian

APPELLANT

Vs

Motor Accidents Claims Tribunal and Another

RESPONDENT

Date of Decision : 27-05-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 204(1), 204(2), 340, 341
Penal Code, 1860 (IPC) — Section 193

Citation : (1998) CriLJ 4738 : (1998) 3 ILR (Ker) 517 : (1998) 3 RCR(Criminal) 683

Hon'ble Judges : D. Sreedevi, J

Bench : Single Bench

Advocate : Ravi Sankar P.K. and D. Anilkumar, for the Appellant; Nandagopal Nambiar, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D. Sreedevi, J.—The appellant is the accused in C.C. No. 219/1995 on the file of the Judicial First Class Magistrate, Irinjalakuda. The offence alleged against the accused is punishable u/s 193 I. P. C. The appellant is a practising physician. During the course of his practice he treated one Sri K. D. Thomas for severe pain on the left side of chest, cough and fever. Thomas met with a motor accident on 8-7-1990 and was treated in the Medical College Hospital, Thrissur. Even though he was discharged from the Medical College Hospital, the pain persisted and hence he was treated by the appellant from 10-8-1990 onwards and the appellant has issued a permanent disability certificate stating that he has sustained 15% permanent disability, which was marked as Ext. A 1 in that case. Thomas filed M.V.O.P. 2394/1993 before the 1st respondent. The said certificate was marked through Sri Thomas. The Claims Tribunal found a fracture also in the certificate. According to him, Thomas has not complained about any fracture during the course of his evidence. So, finding that the certificate is not genuine, the Motor Accidents Claims Tribunal had issued a notice to the appellant to show cause why he should not be prosecuted u/s 193 I.P.C. But the appellant did not

turn up as he could not trace out the records leading to the issue of the certificate. The learned judge later filed a complaint (Annexure A3) which was taken cognizance of by the learned Magistrate as C.C. No. 219/1995. Thereafter summons was issued to him to appear before court. The appellant now seeks an order directing the M.A.C.T. to withdraw Annexure A3 complaint u/s 341 Cr. P.C. u/s 341 Cr. P.C. any person against whom a complaint has been made by any court may appeal to the court to which such former court is subordinate and thereupon, after notice to the parties concerned, direct the withdrawal of the complaint. The learned counsel for the appellant submitted that Annexure A 3 complaint docs not disclose the offence u/s 193 I.P.C, that the learned Tribunal did not conduct enquiry as contemplated u/s 340 Cr. P.C, that he was not given sufficient opportunity to furnish explanation to annexure A 2 notice and that the Tribunal has not entered a finding that it is expedient in the interests of justice and that the appellant shall be prosecuted for the offence punishable u/s 193 I.P.C The Public Prosecutor and the appellant were heard.

2. The first argument advanced by the learned counsel Mr. Anil Kumar is that the learned Judge has not made any preliminary enquiry as to whether there is any offence u/s 193 I.P.C. Ext. A 1 certificate was not properly proved. It was marked through Sri K. D, Thomas who was the petitioner in the claim petition. The learned Judge could sec only some minor injuries as per the wound certificate produced in the case. The appellant's case is that even though he was discharged from the Medical College Hospital, the pain continue and hence he underwent treatment under the appellant. The appellant issued a permanent disability certificate stating that Sri K. D. Thomas has 15% permanent disability. When the court entertained a doubt as to the genuineness of Ext. A 1 certificate, the court ought to have issued summons to the doctor who issued the permanent disability certificate to examine him as a witness in the claim case. The court has not done so. The certificate was not properly proved through him. He was not given an opportunity to give evidence as to how he happened to issue such a certificate. Without doing so and without entering a finding that the appellant, with the intent to give or fabricate false evidence, has filed a complaint. There is absolutely nothing, prima facie, to show that the appellant had issued a false certificate. We do not know whether after the motor accident he has sustained fracture and that he was treated by this appellant. That possibility Cannot be ruled out. The learned Judge has hastened to come to a conclusion without examining the appellant that the medical certificate is a false document. The procedure adopted by the Judge is wrong. The learned counsel submitted that u/s 340 Cr. P. C. the Tribunal has to conduct a preliminary enquiry to enter a finding as to whether the appellant has committed the offence u/s 193 I.P.C. He has relied on the decision reported in Tata Iron and Steel Co. Ltd. Vs. Radha Moni Dasi and Others, where the Calcutta High Court held that a Magistrate should record a finding that it is expedient in the interests of justice that an enquiry should be made. Such a finding is not there in this case.

3. The Calcutta High Court in another case Satis Chandra Mallik and Others Vs.

Emperor, - held as follows :

That in stating that there was material for prosecution of these persons the Magistrate indicated that in his opinion there may be a prima facie case against them. But nowhere within the four corners of this order could it be said that there was any finding recorded such as is referred to in Section 476, nor has he in any way directed his mind to the question as to whether any such order as he makes, is expedient in the interests of justice as to bring the order within Section 476. The corresponding section in the new code is Section 340.

1 agree with the above view. It is not every case of perjury irrespective of facts and circumstances that should form the subject of an enquiry, but it is only in such cases where the courts are of honest belief and opinion on an objective consideration of the facts and circumstances that the interest of justice require the laying of a complaint. It is not mandatory but discretionary for the court, depending upon the facts and circumstances of each case, either to conduct a preliminary enquiry or to dispense with the same to form an opinion that it is in the interests of justice to prosecute the person or persons who committed the perjury. The opinion or the satisfaction contemplated u/s 340 Cr. P.C. is an objective and not a subjective one and the same should be reflected in the finding recorded or the order passed by the court. Such an order must be a speaking one supported by valid and justifiable grounds to enable an appellate court u/s 340 Cr. P.C. to know the material on which the court has come to such a conclusion or opinion that it was expedient in the interests of justice to launch a prosecution. If there is no such finding, it cannot be said that it is a mere irregularity curable. It goes to the root of the matter as the court will have no jurisdiction to file a complaint without recording such a finding. Like all other criminal trial or proceeding, the existence of mens rea or the criminal intention behind an act complained of will also have to be looked into and considered before any action u/s 340 Cr. P.C. is recommended. The provisions of Section 340 are more or less procedural and indicates how a complaint in respect of offence u/s 193 is made.

4. Section 204(2) Cr. P. C. provides that no summons shall be issued against the accused under Sub-section (1) of Section 204 until a list of the prosecution witnesses has been filed. In this case no such list of witnesses has been filed. Thus it can be found that the provisions of Section 204 are also not complied with. The learned Public Prosecutor has submitted that a show cause notice has been issued by the M.A.C.T. That is annexure A 2. This notice, according to the respondent, is for conducting a preliminary enquiry as to whether it is expedient in the interests of justice to prosecute the appellant. As the appellant has not furnished any reply pursuant to Ext. A. 2, the court filed a complaint. Since the certificate was not properly proved through him, before prosecuting the person, the court ought to have conducted a preliminary enquiry to find that the person charged has intentionally given false document or evidence. In the absence of such a finding, no action can be taken on the complaint filed by the M.A.C.T.

Therefore I feel that this appeal has to be allowed.

In the result, the appeal is allowed and the 1 st respondent is directed to withdraw Annexure A 3 complaint pending before the Judicial 1st class Magistrate, Linjalakuda.