

(2005) 05 KL CK 0027

In the High Court Of Kerala

Case No : Criminal M.C. No. 3409 of 2004

Fr. Jacob Kuruvila

APPELLANT

Vs

Ver. Rev. Baby Eachiravelil Vikar

RESPONDENT

Date of Decision : 23-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Kerala Police Act, 1960 — Section 51A

Citation : (2005) 2 ILR (Ker) 727 : (2005) 3 KLT 48

Hon'ble Judges : K. Padmanabhan Nair, J

Bench : Single Bench

Advocate : Noble Mathew, for the Appellant; K. Ramkumar, T. Ramprasad Unni and Saritha David Chunkath and P. Deepthi, Government Pleader, for the Respondent

Judgement

K. Padmanabhan Nair, J.—The accused in Petty Case No. 560 of 2004 of the Judicial First Class Magistrate-I, Ernakulam has filed this Criminal Miscellaneous Case to quash a complaint filed by the Sub Inspector of Police, Mulanthuruthy and all further proceedings.

2. The first petitioner is the Vicar of St. Ignatious Church, Ponnurunni and the second petitioner is working as Vicar of St. Mary's Church, Vadakara. He is stated to be a Hindi teacher, working in Upper Primary School, Edackattuvayal. According to them, they are Parishioners of St. George Simhasana Church situated at Perumpally and members of the General Body of that Church. It is averred that the 1st respondent is the Vicar of St. George Simhasana Church, Perumpally and the 2nd respondent is his relative. It is averred that there were lot of complaints against respondents 1 and 2. It is averred that a meeting was scheduled to be held at 11 am at St. George Simhasana Church on 17.10.2004 and at that time a former trustee, Mr. Mathai Kalarickal, had staged a Satyagraha in front of the meeting hall. It is averred that respondents 1 and 2 filed a complaint before the Sub Inspector of Police, Mulanthuruthy alleging that Mr. Mathai Kalarickal attempted to destroy the vehicle of the 1st respondent. On

getting that complaint, the 3rd respondent Sub Inspector of Police came to the Church and made enquiries regarding the complaint made by the 1st respondent. It was revealed that the complaint was false and at that time, the petitioners intervened and protested against the filing of such false complaint. It is averred that the respondents 1 and 2 exerted undue influence on the 3rd respondent, who took the petitioners to the police station and from there to the Government Hospital, Tripunithura. It was alleged that the doctor on duty was a person who belongs to Orthodox Syrian faction and he issued a certificate to the effect that the petitioners had consumed alcohol, but not under the influence of the same. It is also alleged that after obtaining such a certificate, the 3rd respondent filed a complaint before the Judicial First Class Magistrate alleging that the petitioners committed an offence punishable u/s 51A of the Kerala Police Act and thereafter issued notice to the petitioners to appear before the Magistrate at 11 am on 4.11.2004. According to the petitioners even if the entire averments contained in the complaint are accepted as such, it does not disclose any offence at all. It is averred that the petitioners came to the Church to attend the general body meeting after celebrating the Eucharist in their respective Parishes and during the course of celebration of the Holy Qurbana, the petitioners had consumed small quantity of mass wine. It is averred that they had never consumed any alcohol during their life. Hence this Criminal Miscellaneous Case to quash the complaint.

3. Respondents 1 and 2 filed a counter affidavit contending that the filing of the Criminal Miscellaneous Case is an abuse of process of Court and this Court is called upon to adjudicate the factual aspects, for which no materials are before it. It is alleged that the first respondent had with him all evidence and materials to substantiate the complaint that he has made before the concerned officials. It is alleged that the attempt of the petitioners is to frog leap and thereby prevent the administration of justice in the appropriate forum. It is averred that the contents of the certificates are matters to be considered by the Court below while taking evidence. It is contended that the petitioners did not conduct any holy mass on the date of incident and that is a matter to be proved by adducing evidence. It is contended that the mass wine is only a mixture of 1/2 ounce wine in 1 ounce water, which has no intoxicating effect. It is averred that the petitioners cannot take refuge under mass wine after consuming liquor. The time of mass, whether they performed the mass, quantity, etc. are all questions of fact which are to be determined by adducing evidence. It is contended that the essential ingredients to constitute an offence u/s 51A of the Police Act have been clearly made out in the complaint and the charge. It is further averred that the riotous, disorderly and indecent behaviour in the public place have been taken note of even by the police officer on his personal presence. It is also contended that the actions of the petitioners herein constituted nuisance and breach of peace. It is also contended that the petitioners had admitted their guilt before the Church authorities and the first respondent has documentary and oral evidence to prove the case. It is also contended that the allegations levelled

against respondents 1 and 2 are false. It is also contended that none of the parameters to exercise the powers of this Court u/s 482 of Cr.P.C. are established in this case. It is contended that this Court is relegated to the position of a Magistrate Court calling upon to appreciate evidence and adjudicate the factual disputes. Hence respondents 1 and 2 prayed for the dismissal of the Criminal Miscellaneous Case.

4. In view of the factual dispute, the entire records of the case were called and perused. It is well settled position of law that the inherent power of this Court to quash the proceedings though wide, has to be exercised sparingly, with caution and circumspection. It is also the settled position of law that the High Court cannot assume the role of a Trial Court and embark upon an enquiry as to the reliability of the evidence and sustainability of the accusation on a reasonable appreciation of such evidence. In *State of Karnataka Vs. M. Devendrappa and Another*, it was held as follows:-

"In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers u/s 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court".

So, the question arising for consideration in this proceedings is whether the complaint filed in this case disclose any offence or whether it is frivolous, vexatious or oppressive.

5. The petitioners have produced the copy of the complaint filed by the 3rd respondent before the Magistrate. In the complaint it is alleged that the third respondent had received a phone message as well as a written complaint from the first respondent he went to the St. George Syrian Orthodox Simhasana Church and at that time it was found that the petitioners, after consuming alcohol, were behaving in a disorderly manner and caused annoyance to respondents 1 and 2 and other Parishioners. In the notice issued to the petitioners it is stated that after consuming alcohol they were behaving in a disorderly manner. It is pertinent to note that there is no allegation that the petitioners committed any offence punishable u/s 51(a) of the Police Act. There is no allegation that the petitioners were found drunk and incapable of taking care of themselves or behaved in a disorderly manner under the influence of drink. The specific allegation is that they committed the offence punishable u/s

51A of the Kerala Police Act. Section 51A reads as follows:--

"51 A. Penalty for riotous or indecent behaviour in street, etc.-- Whoever in any street or public place or in any Court, police station or other public office or in any place of public amusement or resort or on board any passenger boat or vessel or in any public passenger vehicle, is guilty of any violent, riotous, disorderly or indecent behaviour shall, on conviction, be liable to fine which may extend to fifty rupees, or with imprisonment for a term which may extend to eight days or with both".

It is true that in order to sustain a conviction u/s 51A, it is not necessary to establish that the accused were found drunk in addition to their disorderly behaviour. The person is liable to be convicted if he is found to have been guilty of violent, riotous, disorderly or indecent behaviour.

6. In the complaint filed by the 3rd respondent, it is alleged that the 3rd respondent received a phone message as well as a written complaint from the 1st respondent. According to the Sub Inspector of Police, the complaint received by him was to the effect that the petitioners, after consuming alcohol, behaved in a disorderly manner. The exact averments in the complaint is that the 3rd respondent received a written complaint to the effect that the petitioners According to the Sub Inspector, on receipt of the complaint he went to the place and saw the petitioners--accused Though there is an averment in the complaint that the petitioners created nuisance and annoyance to the public, no independent witnesses are cited in this case.

7. Disorderly behaviour means an act, action, etc. causing disorder or making disturbance or breaking any rules, etc. Disorderly behaviour is an act which is the observable response of a person making the disturbance. It is not any and every act which can be termed as disorderly behaviour. It is also to be noted that it must be an act which is capable of objective analysis. In *George v. State* 1972 KLT 267, it was held that the mere uttering of words may not constitute violent or disorderly behaviour. The expression behaviour connotes something more than the way a person talks. The use of insulting or threatening language would not constitute riotous or disorderly behaviour. A behaviour which is contrary to law and more particularly such as tends to disturb public peace, or decorum or shock public sense of morality could be termed to be disorderly behaviour. Offensive and immoral conduct in public life will come within the meaning of disorderly behaviour. But, to enable the Court to have an objective analysis, there must be material to show what exactly was the behaviour, act or omission committed by the accused.

8. In the complaint there is absolutely no averment as to what exactly was the act or behaviour or action of the accused. Apart from stating that the accused there is no other statement which will enable the Court to make an objective analysis as to whether the acts or behaviour of the petitioners were disorderly or riotous. Apart from repeating some of the words from Section 51A of the Act,

there is no averment as to what exactly were the acts. The learned Magistrate failed to note that the factual foundation to adduce evidence regarding the acts or omissions or behaviour of the accused it is left to the whims and fancies of the witnesses and the Sub Inspector of Police. In the counter affidavit filed by respondents 1 and 2, who claims to have witnessed the entire episode, there is no averment regarding the acts of the petitioners which constituted the disorderly behaviour. In paragraph 4 of the counter affidavit it is contended that the actions of the petitioners constitute nuisance and breach of peace and the first respondent has documentary and oral evidence to prove the same, but what exactly were the acts of the petitioners which caused annoyance or shocked their sense of morality was not stated. The witnesses and the Sub Inspector of Police can give evidence according to their own whims and fancies regarding the acts and words, if any, alleged to be uttered by the petitioners. Though there is a specific averment in the complaint that the first respondent had filed a written complaint alleging disorderly behaviour of the petitioners, that complaint was also not produced before the Magistrate. The mere quoting of the Section or repeating the words of the Section alone are not sufficient to take cognizance of an offence. A reading of the complaint as a whole shows that the same does not disclose any offence at all and so the complaint and further proceedings are an abuse of process of Court and are liable to be quashed.

In the result, the Criminal Miscellaneous Case is allowed. All further proceedings in pursuance of the complaint filed as GL: Petty Case No. 560 of 2004, now pending as S.T.No. 3909 of 2004 on the file of the Judicial First Class Magistrate-I, Ernakulam are hereby quashed. CrI.M.P.No. 14481 of 2004 and CrI.M.A. No. 4453 of 2005 shall stand dismissed.