

(2000) 08 KL CK 0064
In the High Court Of Kerala
Case No : Criminal M.C. No. 4651/97

Joseph George Vadakkedom

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 195(1)
Penal Code, 1860 (IPC) — Section 172, 188, 21, 447

Citation : (2001) 2 RCR(Criminal) 387

Hon'ble Judges : T.M. Hassan Pillai, J

Bench : Single Bench

Advocate : P. Vijayabhanu, for the Appellant; P.K. Muraleedharan Pillai, Govt. Pleader for 1st Respondent and K. Ramakumar, for Addl. 2nd and 3rd Respondents, for the Respondent

Judgement

T.M. Hassan Pillai, J.—The challan laid against the Petitioner after conducting investigation alleging commission of offences under Sections 188 and 447 I.P.C. by the Konni Police in Crime No. 418/95 is sought to be quashed invoking the inherent powers of this Court u/s 482 Code of Criminal Procedure.

2. The gist of the charge leveled against the Petitioner (Annexure A charge sheet) is that he committed breach of the injunction granted by the Munsiff Court, Pathanamthitta in O.S. 269/1983 restraining the Defendants in that suit and their men from trespassing into the Utupara Mamotil Rubber Estate comprised in Sy. No. 540-1-1-39 of Aruvapulam village belonging to C.W. 1, or otherwise interfering with his peaceful possession and enjoyment of that property, and in willful and deliberate disobedience of the order of injunction Petitioner drove his jeep bearing No. KCE 9691 through the road passing through the middle of that Estate and the offences alleged were committed by him on 7th March 1995 at 12 noon.

3. The learned Magistrate (Judicial First Class Magistrate II, Pathanamthitta) took cognizance of the offences and issued process.

4. The foremost ground vehemently urged before me by learned Counsel for the Petitioner to invoke the inherent powers of this Court for quashing the criminal proceedings is that even if it is proceeded on the premise that the Munsiff, Pathanamthitta, who passed the judgment and decree in O.S. 269/1983 filed by C.W. 1 under Order 1 Rule 8 is a public servant an order promulgated by a public servant cannot refer to an order made by a public servant in the course of a civil proceedings between two parties and any breach of such order can be adequately dealt with under the provisions of the CPC but cannot be said that they are orders promulgated within the meaning of Section 188 I.P.C.; the disobedience of which would result into obstruction, annoyance or injury. In support of his contention learned Counsel for the Petitioner relied on the decision rendered by the Allahabad High Court in Dalganjan Koeri and Others Vs. State, and the decision of the Travancore-Cochin High Court in Govindan v. Krishnan AIR 1953 T.C. 350

5. The second limb of contention urged to stultify or to stall the criminal proceedings initiated is that since no public servant filed any complaint alleging commission of offence u/s 188 I.P.C. Section 195(1) Code of Criminal Procedure is a bar for taking cognizance of the offence and the learned Magistrate is not justified in taking cognizance of the offence u/s 188 I.P.C. In support of the argument advanced, Counsel relied on the decision of the Andhra Pradesh High court rendered in Saladi Chandra Rao Vs. Gollakoti Sambayya, . Learned Counsel also relied on that decision to contend for the position that the charge leveled against the Petitioner u/s 447 I.P.C. is also not sustainable on the ground that taking cognizance of that offence would amount to an evasion of the provisions of Section 195 of the Code of Criminal Procedure, because in truth and substance the act of trespass was in itself an act of disobedience of the decree of the court granting permanent prohibitory injunction.

6. Per Contra Shri Ramakumar, learned Counsel for the Respondent, submitted that the first limb of the contention that the judgment and decree passed by the Munsiff's Court in O.S. No. 269/1983 restraining the Defendants therein and their men from trespassing into the property involved in that suit and interfering with the peaceful possession and enjoyment of that property by C.W. 1 is not an order promulgated by a public servant is tenuous, specious and untenable and he contended that a judgment or order passed in open court constitutes a formal declaration to the public of the decision of the court in the case in which the order is given or the judgment is passed and pronouncement of a judgment in open court is a promulgation to the parties to that case. Munsiff who passed the judgment and decree is a public servant as defined in Section 21 of I.P.C. He contended that an open declaration of the order in court must be deemed to be duly promulgated. Learned Counsel fairly submitted that Section 195(1) Code of Criminal Procedure created bar in taking cognizance of the offences under Sections 172 - 188 I.P.C. except on the complaint in writing of the public servant concerned or some other public servant to whom he is subordinate and that hurdle is insurmountable and the learned Magistrate is not justified in taking

cognizance of the offence u/s 188 I.P.C. without making a complaint in writing by the public servant who promulgated the order or by any of his superior officer. Controverting the third ground urged by the Petitioner that in truth and Substance the act of trespass alleged was in itself an act of disobedience of the decree of the court passed the learned Counsel argued that Section 447 I.P.C. is a district offence and the judgment and decree passed by the civil court should not be allowed willfully and deliberately to be disobeyed or violated with impunity taking a defense that since no complaint in writing is made by the public servant who promulgated the order taking cognizance of the offence is barred and taking cognizance of that offence would amount to an evasion of the provisions of Section 195 of the Code of Criminal Procedure because in truth and substance the act of trespass was in itself an act of disobedience of the decree passed by the court. His submission is that even if an offence u/s 188 I.P.C. is not made out it is clear from the allegations made in the challan laid against the Petitioner by the police after duly completing the investigation and also from the materials collected during the course of investigation that the Petitioner committed an offence u/s 447 I.P.C. and to meet the ends of justice the criminal proceedings initiated are not to be stalled invoking the powers of this Court u/s 482 Code of Criminal Procedure which is to be exercised sparingly and with circumspection.

7. Whether the learned Magistrate was justified in taking cognizance of the offences under Sections 188 and 447 I.P.C. as against the Petitioner on the basis of the challan laid against him by the Konni Police after investigation is the question that is to be answered.

8. Counsel for the Petitioner fairly not disputed the fact that Munsiff who passed the decree in O.S. No. 269/1983 is a public servant as defined in Section 21 I.P.C. and it is difficult to accept the contention of the learned Counsel for the Respondents 2 and 3 that the judgment and decree passed by the Munsiff Court in O.S. 269/1983 granting permanent prohibitory injunction restraining the Defendants and their men from trespassing into or otherwise interfering with the peaceful possession and enjoyment of the property involved in that suit is an order promulgated within the meaning of Section 188 I.P.C., the disobedience of which would result in obstruction, annoyance or injury. Section 188 I.P.C. does not contemplate order passed by civil or revenue courts in judicial proceedings.

9. Any order announced in open court will be deemed to have been promulgated and the open declaration of the order in court would be deemed to be a notice not to the public at large but to the parties of the case in which the order is passed. An order duly pronounced in open court must be deemed to be duly promulgated so far as the parties to the case are concerned. Section 188 I.P.C. contemplates orders made by public functionaries for public purposes and not an order made in a civil suit. The Madras High Court in *Pommani Chintakatk Mammali v. Kutti Ammu* AIR 1918 Mad. 640 (1) V3(C) held that the word "promulgated" in Section 188, Penal Code refers to orders issued under the Code of Criminal Procedure and not to judgments and orders of civil courts. The

Bombay High Court in *Mallappa Mallappa Tavargi v. Emperor* AIR 1915 Bom. 22 (1) V 2 (D) took the same view. The word "promulgated" in Section 188 could not refer to an order made by a public servant in course of a civil proceeding between two parties and such an interpretation is further strengthened by the fact that the disobedience of the order promulgated by a public servant, which is made punishable by Section 188, must be a disobedience which causes or tends to cause obstruction, annoyance or injury, to any person lawfully employed. The orders contemplated by Section 188 can be orders made by public functionaries in public interest. The disobedience of any order passed in favour of a party to the litigation by a court may result in annoyance to the party in whose favour it has been passed, but it cannot be said that it necessarily causes or tends to cause obstruction or annoyance or injury to any person. With great respect I am in respectful agreement with the principle of law laid down by the learned Judges in the above cited decisions.

10. Section 188 I.P.C. does not contemplate orders passed by civil or revenue courts in judicial proceedings. Any breach of such orders can be adequately dealt with under the provisions of the CPC but cannot be said that they are orders promulgated within the meaning of Section 188 I.P.C., the disobedience of which would result into obstruction, annoyance or injury.

11. Section 195(1) Code of Criminal Procedure reads thus:

(1) No court shall take cognizance-

(a) of any offence punishable under Sections 172 - 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate....;

The words of the section, namely, that the complaint has to be in writing by the public servant concerned and that no court shall take cognizance except on such a complaint clearly show that in every instance the court must be moved by the appropriate public servant. The words "no court shall cognizance" have been interpreted on more than one occasion by the apex court and they show that there is an absolute bar against the court taking seisin of the case except in the manner provided by the section [See *Daulat Ram Vs. State of Punjab*,]. Since no complaint was filed by a public servant in writing as provided in Section 195(1) Code of Criminal Procedure the learned Magistrate is barred from taking seisin of the case and therefore there is considerable force in the contention of the learned Counsel for the Petitioner that no offence is made out against him u/s 188 I.P.C.

12. The very allegation made in Annexure A charge sheet is that offences alleged to be committed by the Petitioner were committed in disobedience or in breach of permanent prohibitory injunction granted. It is clear from the materials placed (both sides have not disputed the fact that permanent prohibitory injunction has been granted by the Munsiff Court, Pathanamthitta in O.S. 169/1983) that the order of injunction alleged to be violated was passed in O.S. 269/1983 and

therefore taking cognizance of that offence would amount to an evasion of the provisions of Section 195 Code of Criminal Procedure, because in truth and substance the act of trespass was in itself an action of disobedience of the order of the court. So, this Court is not persuaded to accept the arguments of the learned Counsel for Respondents 2 and 3 that being a distinct offence the learned Magistrate is justified in taking cognizance of the offence u/s 447 I.P.C. Such a conclusion is arrived at on the basis of the authoritative interpretation of Section 195 Code of Criminal Procedure by the Supreme Court in *Basir-ul-huq and Others Vs. The State of West Bengal, (A)* and it is worthwhile to extract here the following guiding principles enunciated by the apex court:

(1) Section 195 Code of Criminal Procedure provides "inter alia" that no court shall take cognizance of an offence under Sections 172 - 188 I.P.C, except on the complaint in writing of the public servant concerned, or some other public servant to whom he is subordinate. The statute thus requires that without a complaint in writing of the public servant concerned no prosecution for the offences specified in Section 195 can be taken cognizance of. It does not further provide that if in the course of the commission of that offence other distinct offences are committed, the Magistrate is debarred from taking cognizance in respect of those offences as well.

(2) Where, upon the facts, the commission of several offences is disclosed some of which require a sanction and others do not, it is open to the complainant to proceed in respect of those only which do not require sanction; because to hold otherwise would amount to legislating and adding very materially to the provisions of Sections 195 - 199 Code of Criminal Procedure. Those sections deal with the requisites for the prosecution of certain specified offences and the provisions of those sections must be limited to prosecutions for offences actually indicated.

(3) Though Section 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices and camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of the public servant is required.

13. So, in order to prevent abuse of the process of court and also to meet the ends of justice the power of this Court u/s 482 Code of Criminal Procedure is invoked for quashing Annexure A charge sheet. Hence Annexure A charge sheet is quashed.

In the result, Crl. M.C. is allowed quashing Annexure A charge sheet.