
(2010) 05 KL CK 0093
In the High Court Of Kerala
Case No : Criminal M.C. No. 1866 of 2010

Joseph K.C. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 31-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 170, 173, 175(5), 207
Penal Code, 1860 (IPC) — Section 323, 324, 341, 506

Citation : (2010) 2 KLJ 411 : (2011) 6 RCR(Criminal) 2432

Hon'ble Judges : V. Ramkumar, J

Bench : Single Bench

Advocate : R. Anil, for the Appellant; S.U. Nazar, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V. Ramkumar, J.—Petitioners who are accused Nos. 1 to 3 in Crime No. 139/2006 of Pulinkunnu Police Station and now pending before the J.F.C.M, Ramankary as C.C. No. 181/2009 for offences punishable u/s 323, 324, 341 and 506(ii) read with 34 IPC seek to quash Annexure A7 order dated 22.3.2010 as per which the learned Magistrate refused the petitioner's request under Annexure A6 to supply copies of the 161 statements of CWs. 2 and 3 recorded by the earlier investigating officer namely Sub Inspector of Police, Ramankary. The learned Magistrate was of the view that only copies of those statements which are relied on by the prosecution need be supplied to the accused.

2. The above view taken by the Magistrate with regard to statements u/s 161 Cr.P.C. is clearly opposed to Section 173(5)(b) Cr.P.C. While in the case of documents, only those documents which the prosecution proposes to rely on, need be produced and copies supplied to the accused, the position is different in the case of statements of witnesses. Sub-section (5) of Section 173 Cr.P.C. reads as follows:

5) When such report is in respect of a case to which Section 170 applies, the

police officer shall forward to the Magistrate along with the report

- a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
- b) the statements recorded u/s 161 of all the persons whom the prosecution proposes to examine as its witnesses.

Thus, the statements recorded u/s 161 Cr.P.C. of all the persons whom the prosecution proposes to examine as its witnesses should be produced in the Court and copies supplied to the accused. There is no case for the prosecution that charge witnesses 2 and 3 are not going to be examined on the side of the prosecution. If those witnesses are proposed to be examined by the prosecution, then their statements recorded u/s 161 Cr.P.C. by all the Investigating Officers should be produced before the Court and copies supplied to the accused in compliance of Section 207 Cr.P.C. Accordingly, Annexure 7 order is set aside and Annexure 6 application will stand allowed. This Crl.M.C. is disposed of as above.