

(2012) 02 KL CK 0016

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 525 of 2012 and C.M.P. NO. 708 (A) of 2011
in CC. 196 of 2011

Krishnakala Panicker, Poothra House, District Court Ward,
Alappuzha-13. and K. Divakara Panicker, Advocate, Poothara
House, District Court Ward Alappuzha-13

APPELLANT

Vs

Dr. P.A. Rajan and State of Kerala

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 195(1), 245(2)
Penal Code, 1860 (IPC) — Section 120B, 406, 463, 464, 465

Citation : (2012) 02 KL CK 0016

Hon'ble Judges : P. Bhavadasan, J

Bench : Single Bench

Advocate : R. Bindu Sasthamangalam, Sri. M. Sunil Kumar and Sri. Prasanth
M.P, for the Appellant; T.R. Rajesh, Public Prosecutor for R2, for the Respondent

Final Decision : Dismissed

Judgement

P. Bhavadasan, J.—This revision petition is directed against the order dated 03.02.2012 in CMP No.708(A) of 2011 in CC No.196/11. The above petition was one seeking discharge u/s 245(2) of Cr.PC. The case arose on a complaint alleging offence under Sections 120B, 463, 464, 465, 466, 468, 469 and 471 of IPC, which was originally filed before the Metropolitan Magistrate, 27th Court at Mulund, Mumbai. The brief facts of the case are as follows:

The first petitioner/first accused is the daughter- in-law of the respondent/petitioner and the second petitioner/second accused is the father of the first petitioner/first accused. The first accused had filed a written complaint on 1.3.2003 before the Kanur Marg Police Station, alleging offences u/s 498-A and 406 of IPC against the respondent/petitioner, his wife and his son. Subsequently, on 19.3.2003, the second petitioner/second accused visited the said police station and filed F.I.R. against the respondent/petitioner and two others. Subsequently, both petitioners/accused filed a rejoinder for reinvestigation with a

compilation of several documents running to 88 pages. The respondent/petitioner alleges that these documents contained several false documents prepared as a result of conspiracy by both petitioners/accused, thereby committing the offences of forgery, cheating, preparing false documents and submitting the same before the courts and police station.

2. The complaint was originally transferred to the JFCM Court-I, Alappuzha, from where it was made over to the JFCM Court-II, Alappuzha. It is seen from the order of the court below that the petitioners had approached this court by filing Crl. MC No.426/08 and this court had directed the petitioners to move for discharge before the court below.

It is pursuant to the said observation of this court that the present petition has been filed. According to the petitioners before the court below, the complaint is not maintainable in view of the specific bar envisaged u/s 195(1) of Cr.P.C. According to them, the decision in CC No.400/08 will have a bearing on the present crime also. However, the contention is that in view of the specific bar u/s 195(1) of Cr.P.C., the court cannot take cognizance of the offence.

3. The respondents filed an objection, pointing out that the bar under S.195 is attracted only when the forgery has been committed after the production of the documents before the concerned court i.e., custodia legis.

4. The court below, after consideration of the materials before it, came to the conclusion that as rightly pointed out by the learned counsel for the respondent before the court below, Section 195 can have no application as the alleged forgery is committed outside the court. Those documents are produced as evidence before court.

5. The learned counsel for the revision petitioner pointed out that the court below is not justified in dismissing the petition on the ground that Section 195 is not applicable to the facts of the case. The court below ought to have seen that the decision in CC No.400/08 will have considerable bearing on the decision in this case and ought to have allowed the petition.

6. The contention based on Section 195(1) is baseless. As rightly pointed out by the lower court, the specific bar u/s 195 would be attracted only when the offences enumerated in Section 195(1)(b)(ii) has been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court or while in custodia legis. Equally baseless is the contention that the decision in CC No.400/08 will have a bearing on the present proceedings. Both are independent and distinct proceedings. Therefore, the court below is perfectly justified in dismissing the petition for discharge. The learned counsel for the revision petitioner also pointed out that Section 464 of IPC cannot be attracted in the present case. Whether the offence u/s 464 of IPC is made out or not, is not a matter to be considered in these proceedings. On the basis of the evidence now available, discharge under S. 245(2) of Cr.P.C. is not possible and the court below has applied the correct law and rightly declined to grant discharge. No grounds

are made out warranting interference with the order passed by the court below. The revision petition is devoid of any merits and it is accordingly dismissed.