

(2014) 08 KL CK 0225
In the High Court Of Kerala
Case No : Crl. M.C. No. 730 of 2013

Mansoor and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 210, 218(1), 223, 313, 323
Penal Code, 1860 (IPC) — Section 307, 323, 324, 325, 326

Citation : (2014) 4 KLJ 271

Hon'ble Judges : A. Hariprasad, J

Bench : Single Bench

Advocate : C.M. Mohammed Iquabal, Advocates for the Appellant; K.M. Firoz, M. Shajna, S. Kannan and N. Suresh (PP), Advocates for the Respondent

Judgement

A. Hariprasad. J.

1. Petition filed under Section 482 Cr.P.C. Prayer in the petition reads as follows:

"For the reasons stated above, it is respectfully prayed that this Hon'ble Court may be pleased to pass an order quashing Annexure A1 complaint and Annexure A3 and A4 summonses in C.P. No. 45/2012 on the file of the JFCM Court, Tirur."

2. Petitioners are accused 6 and 7 in C.P. No. 45/2012 on the file of the Judicial First Class Magistrate Court, Tirur. The offences alleged against the petitioners in Annexure A1 complaint are punishable under Sections 323, 324, 325, 326, 330, 341, 352, 355 and 307 and 506(i) and 506 r/w Section 34 I.P.C.

3. Brief case in the complaint is that on 03-02-2011 at about 7.45 p.m. while the complainant/second respondent was going to mosque to offer prayer, the accused persons blocked his way and attacked him with dangerous weapons and attempted to commit murder.

4. Heard the learned counsel of the petitioners, learned counsel for the second respondent and the learned Public Prosecutor for the State.

5. Learned counsel for the petitioners submitted that in respect of the same incident, Valancherry police has registered crime No. 40/2011 against two accused (accused 1st & 5th in the private complaint) under Sections 323, 324 and 506(i) r/w Section 34 I.P.C. Learned counsel for the petitioners contended therefore that the private complaint is not maintainable in view of the fact that the investigating machinery had already been set in motion by the complainant himself. Further, it is submitted that the allegations in the complaint are legally and factually unsustainable.

6. Learned counsel for the second respondent submitted that police has registered crime against a fewer number of accused persons and also with offences having lesser gravity. Learned Public Prosecutor submitted that the police has filed a charge in crime No. 40/2011 implicating the accused in offences punishable under Sections 324, 325 and 506(i) r/w Section 34 I.P.C.

7. Learned counsel for the petitioners further submitted that the complainant has mentioned the fact of registering a crime by police in the complaint itself. In that situation, the learned Magistrate should have stayed the proceedings under Section 210 Cr.P.C. and should have called for a report on the matter from the police officer conducting investigation. Apparently, that was not done in this case. The case registered by the police has been charge sheeted. Learned Public Prosecutor, however rightly submitted that at present there is no scope for invoking the power under Section 210 Cr.P.C. by the learned Magistrate, as that stage has been crossed.

8. Annexure A1 complaint reveals offences triable by a Court of Sessions. The charge sheet submitted by the police reveal offences triable by a Magistrate. The case is now pending in committal proceedings. The apprehension of the petitioners is that they will have to stand trial in two different criminal courts in respect of the same case. This apprehension can be alleviated, if the court applies the principle of law stated in *Peter v. Kurian*, 1994 (1) KLT 17. The following proposition of law is useful to understand the legal position.

"When S. 223 says that such cases "may be charged and tried together" what is contemplated is joint trial of such cases. The practical method to achieve the same is the following: There need be only one trial for both cases. One of the cases can be treated as the main case. All witnesses can be examined and all documents can be marked in that case. Examination of all accused as provided in S. 313 of the Code can also be held in that case. All such evidence can be treated as evidence adduced in the other case also. Both cases can be disposed of by a common judgment. If the aforesaid procedure is adopted there is no consolidation of the two cases together. If two cases are consolidated with each other identity of at least one case would be lost. But in a joint trial as indicated above, identity of both cases are kept alive though separate evidence is not collected in both cases. It is in the discretion of the court to decide whether two cases need be jointly tried. The commencing words in S. 223 of the Code are: "May be charged and tried together". From those words what can be discerned is

that a discretion is conferred on the court to decide whether any particular two or more cases need joint trial if offences have been committed in the course of the same transaction. If the cases are substantially different from each other, though the same incident is the basis for both cases, court may have to bear in mind the possibilities of such trial causing prejudice to the defence. The real test is whether prejudice would be caused to the accused in such joint trial. Proviso to S. 223 indicates that even cases not falling under any of the categories enumerated in the section can nevertheless be jointly tried if the accused would express the desire in writing to have such joint trial and if no prejudice would be caused to the accused. S. 218(1) of the Code directs that every charge for different offences should be tried separately. But there also an option is given to the accused to request the court to conduct a joint trial. When accused makes a request for joint trial the court can presume that no prejudice would be caused to him by adopting that course."

9. In view of the above said legal position, I am of the definite view that the petitioners or other accused in Annexure A1 complaint will not suffer any prejudice, if the complainant's case is committed to the Sessions court and the case charge sheeted by the police for magisterial offences is also committed to the same court under Section 323 Cr.P.C. However, it is made clear that the case revealing offences triable by the Magistrate can be committed only after committal of the case which is exclusively triable by a Court of Sessions. The petitioners are free to move the concerned court at the appropriate time to get the case involved in the final report submitted by police committed to the Court of Sessions, so that both cases can be tried together simultaneously in the light of the principles referred to in Peter's case (supra).

With these observations, Crl. M.C. is disposed of.

All pending interlocutory applications will stand dismissed.