

(2008) 01 KL CK 0040
In the High Court Of Kerala
Case No : Criminal M.C. No. 26 of 2008

Mohanan and Others

APPELLANT

Vs

The Sub Inspector of Police and Another

RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 173, 173(2), 195(1), 2
Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 —
Section 2, 20, 21, 23, 24
Penal Code, 1860 (IPC) — Section 211
Post Office Act, 1898 — Section 55, 72
Railway Protection Force Act, 1957 — Section 8

Citation : (2008) CriLJ 1709 : (2008) 1 ILR (Ker) 382 : (2008) 1 KLJ 445

Hon'ble Judges : V. Ramkumar, J

Bench : Single Bench

Advocate : V. Sethunath, for the Appellant; K.S. Sivakumar, PP, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramkumar, J.—In this petition filed u/s 482 Cr.P.C. the petitioners, four in number, who are the accused in S.T. 1550 of 2007 on the file of the J.F.C.M.II, Pathanamthitta arising out of Crime No. 268 of 2007 of Koyippuram Police Station for offences punishable under Sections 20 and 21 of the Kerala Protection of River Banks and Regulations of Removal of Sand Act, 2001, ("the Act" for short) seek to quash the entire proceedings pending before the aforesaid Court.

THE PROSECUTION CASE

2. The case of the prosecution can be summarised as follows:

On 18-8-2007 at about 10 p.m. near the market bathing ghat at Maramon in Thottapuzhasseri Village, the Circle Inspector of Police, Kozhencherry and his police party detected first accused and driven by the 2nd accused and accused No. 3 and 4 loading the said lorry with sand from pampa river in contravention of

the prohibition against mining of sand during the monsoon period. The accused have thereby committed offences punishable under Sections 20 and 27 of the Kerala Protection of River Banks and Regulation of Sand Act.

THE COGNIZANCE

3. The learned Magistrate took cognizance of the offences and registered the case as S.T. 1550 of 2007 and issued process to the accused. It is at that stage that the accused have approached this Court for quashing the entire proceedings.

4. I heard Advocate Sri. Sethunath, the learned Counsel appearing for the petitioners/accused and Advocate Sri. K.S. Sivakumar, the learned Public Prosecutor in charge of the case.

THE STAND OF THE ACCUSED

5. Adv. Sri. V. Sethunath, the learned Counsel appearing for the petitioners/accused made the following submissions before me in support of this petition:

Even though the offences punishable under Sections 20 and 21 of the Act are made cognizable by virtue of Section 24 of the Act, Section 25 of the Act reads as follows:

No Court shall take cognizance of any offence punishable under the Act except upon a complaint in writing made by a person authorised in this behalf by the Government or District Collector or a Geologist of the Department of Mining and Geology.

Subsequently, as per notification published in the Kerala Gazette dated 18-1-2007 the Government Officers, Tahasildars, Deputy Tahsildars, Superintendent of Police, Deputy Superintendent of Police, and Station House Officers to exercise to make a complaint in writing in respect of any offence punishable under the Act. Thus, even if the Sub Inspector of Police, Koyippuram who is the Station House Officer is an authorised officer can only file a complaint in writing before the Magistrate. But what has been filed before the Magistrate. But what has been filed before the J.F.C.M. II, Pathanamthitta is Annexure I final report u/s 173 Cr.P.C., which is nothing but a "police report" as defined u/s 2(r) Cr.P.C. The word "complaint" has been defined u/s 2(d) Cr.P.C. which reads as follows:

"Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

that some person, whether known or unknown, has committed an offence, but does not include a police report.

Since the above definition specifically excludes a police report u/s 173 Cr.P.C. the Magistrate could not have taken cognizance of the offences on Annexure I police report. The Station House Officer ought to have filed a complaint in writing

instead of a police report u/s 173(2) Cr.P.C. Hence, the cognizance taken is bad. In *Bholanath Amritlal Purohit Vs. State of Gujarat*, , cognizance of an offence punishable u/s 55 of the Indian Post Office Act, 1898 was taken on a police report filed u/s 173 Cr.P.C. u/s 72 of the said Act no court could take cognizance of such offence except upon a complaint made by order of or under authority from the Director General or a Postmaster General. Interpreting the above provisions it was held that the police report eventually filed in the case as a culmination of the complaint lodged before the police by the appropriate postal authority could not be said to be a complaint made by order of or under authority from the Director General or a Postmaster General. In *Surajmani Srimali Vs. State of Orissa*, , a learned Single Judge of the Orissa High Court held that a charge sheet filed by the police for a cognizable offence under the Orissa (Schedule Area) Money Lenders Regulation, 1967 could not be treated as a complaint u/s 23 of the said Regulation where under no cognizance could be taken of the offence punishable under the Regulation except on a complaint in writing made by the Inspector. In *K. Rama Krishnan Vs. Station House Officer*, a learned Single Judge of the Kerala High Court held that cognizance taken of an offence punishable u/s 211 I.P.C. on a police report instead of a complaint by the court as provided u/s 195(1)(b)(i) Cr.P.C. was bad. In *State of Bihar v. Chandra Bhushan Sing and Ors.* AIR 2001 SC 429 it was held that a police report u/s 173 Cr.P.C. in respect of a non cognizable offence under the Railways Property (Unlawful Possession) Act, 1966 could not be treated as a complaint for the purpose of taking cognizance under the said Act. Hence, the cognizance taken by J.F.C.M. II, Pathanamthitta on the police report filed by the Sub Inspector of Police, Koyippuram is clearly illegal and is liable to be quashed.

JUDICIAL EVALUATION

6. I am afraid that I cannot agree with the above submissions made on behalf of the accused. The offences alleged against the petitioners are those punishable under Sections 20 and 21 of the Act. Those sections read as follows:

20. Penalty for contravention of this Act: Whoever contravenes any of the provisions of this Act or Rules made there under shall, on conviction be punished with imprisonment for a term of which may extend to two years or with fine which may extend to twenty-five thousand rupees or with both and in case of continuing contravention with an additional fine which may extend to one thousand rupees for every day during which such contravention continues.

21. Abetment of offences: Whoever abets any offence punishable by or under this Act or attempts to commit any such offence shall be punished with the penalty provided by this Act for committing such offence.

Section 24 of the Act which makes the offences under the Act cognizable reads as follows:

24. Offences under this Act to be cognizable - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), all

offences under this Act shall be cognizable.

Section 25 of the Act is the provisions regarding cognizance of the offences under the Act. The said Section reads as follows:

25. Cognizance of offences: No Court shall take cognizance of any offence punishable under this Act, except upon a complaint in writing made by a person authorised in this behalf by the Government or the District Collector or a Geologist of the Department of Mining and Geology.

Thus, a court can take cognizance of an offence punishable under the Act only on a complaint in writing made by a person authorised by the Government or any of the authorities mentioned in the Section. In exercise of the said power the Government of Kerala has issued a Notification as G.O. (Ms) No. 11/07/RD dated 10-1-2007 published in the Kerala Gazette dated 18-1-2007 as S.R.O. 64 of 2007 authorising certain officials to file a complaint in writing u/s 25 of the Act. The said notification reads as follows:

GOVERNMENT OF KERALA REVENUE (P) DEPARTMENT NOTIFICATION

G.O. (Ms) No. 11/2007/RD.

Dated Thiruvananthapuram, 10th January, 2007.

S.R.O. No. 64/2007 - In exercise of the powers conferred by Section 25 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (18 of 2001), the Government of Kerala hereby authorise the Revenue Divisional Officers, Tahsildars, Deputy Tahsildars, Superintendents of Police, the Deputy Superintendents of Police and Station House Officers to exercise the power to make a complaint in writing in respect of any offence punishable under the said Act.

By order of the Governor, Dr. Nivedita P. Haran Principal Secretary to Government.

7. Now the question for consideration is as to whether the report dated 16-09-2007 filed by the Station House Officer, Koyippuram Police Station styled as a final report u/s 173 Cr.P.C. alleging that the petitioners committed offences punishable under Sections 20 and 21 of the Act, is a complaint filed u/s 25 of the Act and if not could it be treated as such a complaint. The word "complaint" has not been defined under the Act, but has been defined u/s 2(d) Cr.P.C. as extracted in paragraph 5 above and it excludes a police report. The expression "police report" has been defined u/s 2(r) Cr.P.C. as follows

"Police report" means a report forwarded by a police officer to a Magistrate under Sub-section (2) of Section 173.

Thus, police report is a report forwarded by a police officer to a Magistrate u/s 173(2) Cr.P.C. Here, the Sub Inspector of Police, Koyippuram, who filed the final report on 16-09-2007, i.e., after the notification published on 18-1-2007 was

doing so not in his capacity as the police officer but in his capacity as the authorised officer u/s 25 of the Act. Hence, it is not a police report u/s 173(2) Cr.P.C. forwarded by a police officer. If so, it cannot be treated as a "police report" as contemplated u/s 2(r) Cr.P.C. Consequently, such a report is not excluded from the definition of complaint as contained in Section 2(d) of the Act. It is not the label or nomenclature of the report which matters. What is to be examined is as to whether the said report satisfies the definition of a complaint falling u/s 2(d) Cr.P.C. The report filed by the Station House Officer, Koyippuram contains an allegation in writing given to a Magistrate with a view to his taking action under the Code and stating that the petitioners herein have committed the aforementioned offences which are made cognizable by Section 24 of the Act. It, therefore, satisfies the definition of a complaint and it does not amount to a police report since it is filed by an authorised officer.

8. I am not able to find any contraindication or binding precedent in the rulings cited at the bar by the learned Counsel for the petitioners. In Bholanath's case (supra) there was no complaint before the Magistrate by order of or under authority from any of the officials enumerated u/s 72 of the Indian Post Office Act, 1898 and what was before the Magistrate was only a final report by the police who were not one of the enumerated authority u/s 72 of the Post Office Act. Hence, that decision is not an authorities for the proposition canvassed by the learned Counsel for the petitioner. In Surajmani's case (supra), no doubt, an almost identical question arose before the Orissa High Court. But then, going strictly by the label of the police report and without properly imbibing the principles of law laid down in Bholanath's case adverted to therein, a learned Judge of the Orissa High Court came to the conclusion that the cognizance taken on a police report without there being a complaint was bad. In Ramakrishnan's case (supra) the offence involved was one punishable u/s 211 I.P.C. which is a non-cognizable offence. When, to start with, the offence is a non-cognizable offence, the police cannot conduct an investigation without the permission of the Magistrate u/s 155(2) Cr.P.C. Hence, the investigation conducted by the police without such permission and the cognizance taken by the Magistrate on the police report u/s 173(2) Cr.P.C. were held to be bad. This case is also clearly distinguishable. Same is the position with regard to Chandra Bhushan Singh's case (supra). There also the offence was a non-cognizable offence and a final report filed by police u/s 173 Cr.P.C. instead of a complaint was held to be bad. But in the case on hand the offences are made cognizable by the provisions of the Act itself. Merely because the report filed by the police has the label of a charge sheet filed u/s 173(2) Cr.P.C. it does not cease to be a complaint the essential requisites of which are present in the report. Since it has been filed by an officer authorised u/s 25 of the Act it cannot be said to be a final report filed by a police officer answering the definition of a "police report" u/s 2(r) Cr.P.C.

9. In the decision report in *State of Bihar v. Chandra Bhushan Singh* AIR 2001 S.C. 429 an enquiry report submitted u/s 8 of the Railway Protection Officers Act was held to be a complaint. Similarly in the decision report in *State of Kerala v.*

Sreedharan 1964 KLT 309 a report filed by the Prohibition Officer was held to be a complaint. As long as the Act does not prescribe any form for the complaint to be filed under the Act, it is sufficient that the report filed by an officer authorised under the Act satisfies the definition of a complaint. All that the law requires is that there must be an allegation which prima facie discloses the commission of an offence with the necessary facts for the Magistrate to take action. See in this connection the decision in Bhimappa Basappa Bhu Sannavar Vs. Laxman Shivarayappa Samagouda and Others, .

10. The matter can be examined from another angle as well. The definition of various expressions u/s 2 Cr.P.C. is are with a rider "unless the context otherwise requires". So, the meaning of the word "complaint" in Section 25 of the Act can only be understood in the context in which it is used under the Act.

11. I am, therefore, not inclined to accept the contentions raised by the petitioner. The cognizance in the case has been validly taken on the final report which satisfies the definition of a complaint. This CrI. M.C. is accordingly dismissed.