

(2015) 04 KL CK 0122

In the High Court Of Kerala

Case No : Criminal R.P. Nos. 422 and 428 of 2015

M.P. Chothy

APPELLANT

Vs

Subhash and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190(1)(a), 190(1)(b), 200, 202
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(5)

Citation : (2015) 04 KL CK 0122

Hon'ble Judges : C.T. Ravi Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.T. Ravi Kumar, J—These revision petitions are directed against the common order dated 28.1.2015 passed by the Court of Sessions Judge, Ernakulam in CrI. M.P. Nos. 3154, 3297 and 3298 of 2014. In fact, the former revision petition has been filed against the orders in CrI.M.P. Nos. 3297 and 3298 of 2014 and the latter revision petition has been filed against the order in CrI.M.P. No. 3154 of 2014 by the same petitioner. The revision petitioner in the captioned revision petitions filed complaints against the respective first respondents in the revision petitions, before the Court of Judicial First Class Magistrate-I, Perumbavoor alleging commission of offence punishable under Section 3(1)(5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Those complaints were forwarded for investigation under Section 156(3) of the Code of Criminal Procedure. After registering crimes and after the culmination of the investigation final reports were filed in those cases before the court. In fact, refer reports were filed. The revision petitioner herein was served with notice as he being the defacto complainant in those cases and pursuant to which he filed objections to the refer reports. Subsequently, the revision petitioner moved the aforesaid Criminal Miscellaneous Petitions. The petitioner has produced

photocopies of those petitions in this proceedings and they would reveal the following:-

"Crl.M.P. No. 3297 of 2014 has been filed in C.C. No. 1301 of 2008 with the prayer to transfer the said Calendar case to Judicial First Class Magistrate Court, Kuruppampady as it being nearer to his residence and to order payment of Rs. 2,500/- on each day of his attendance before that court contending that he was tortured and compelled to go to another Court. Crl.M.P. No. 3298 of 2014 has been filed in the said Calendar Case itself with the prayer to stay further proceedings in the said case. Crl.M.P. Nos. 3154 of 2014 and 3155 of 2014 were filed in C.M.P. No. 2894 of 2013 which is the objection filed by the petitioner to the refer report in Crime No. 564 of 2012 of Perumbavoor Police Station. Crl.M.P. No. 3154 of 2014 has been filed with the prayer to transfer all the matters specifically mentioned in the affidavit accompanying the petition to the Court of Judicial First Class Magistrate, Kuruppampady and Crl.M.P. No. 3155 of 2014 has been filed with the prayer to stay further proceedings in C.M.P. No. 2894 of 2013 in Crl.M.P. No. 393 of 2012 and in other cases mentioned in Annexure-XII, marked as such in Crl.M.P. No. 3154 of 2014. In short, Crl.M.P. Nos. 3297 of 2014 and 3154 of 2014 have been filed, essentially under Section 408, Cr.P.C. to transfer the cases mentioned thereunder and the other Crl.M.Ps were filed seeking of stay of further proceedings in the cases mentioned thereunder. Those petitions were considered by the learned Sessions Judge and the impugned common order was passed."

2. Evidently, the revision petitioner took up the contention before the learned Sessions Judge that the learned Magistrate had declined to give an opportunity to him to adduce evidence in support of the objections filed on the refer reports. The learned Sessions Judge obviously called for the remarks from the learned Magistrate. It was reported that after the filing of the refer reports by the Investigating Officer in those cases the predecessor in office had rejected the refer reports and proceeded to conduct an enquiry as per the provisions under Section 200, Cr.P.C. after taking cognizance of the original complaint and thereafter the case was posted for enquiry under Section 202, Cr.P.C.. On 24.5.2014 three Police officers and the Taluk Surveyor were present before the Magistrate. The learned Sessions Judge took note of the circumstances why the learned Magistrate declined to examine them. Evidently, the learned Magistrate enquired with the complainant whether they were to be examined in support of the allegations in Crl.M.P. No. 393 of 2012 and it was replied in the negative. The learned Sessions Judge held that when the predecessor in office of the present Magistrate already took cognizance based on the private complaint after rejecting the refer report he was at a loss to understand the reason and purpose of seeking their examination and that in such circumstances, the revision petitioner - complainant was expected only to produce witnesses to support the allegations in the complaint. The learned Sessions Judge found nothing wrong in the visit of the Dy.S.P. who was summoned by the complainant, the Magistrate at his chamber in the circumstances explained in paragraph 4 of the impugned order.

The learned Sessions Judge took note of paragraph 15 of the decision in *Parameswaran Nair Vs. Surendran Panicker and Another*, (2009) CriLJ 2762 : (2009) 1 ILR (Ker) 831 to consider whether the course adopted by the learned Magistrate on receipt of the refer report is legal or not. In terms of paragraph 15 of the said decision on receipt of a final report the Magistrate is empowered to take cognizance of the offence on the materials furnished by the Police under Section 190(1)(b) Cr.P.C. rejecting the opinion of the Police or he is entitled to take cognizance under Section 190(1)(a) on the original complaint after recording the submission of the complainant and his witnesses in terms of the provisions under Section 200 Cr.P.C. The learned Magistrate is also entitled to direct for an investigation under Section 202, Cr.P.C. and conduct an enquiry and decide whether the materials are sufficient for issuing an order under Section 204 Cr.P.C. Paragraph 6 of the impugned order would reveal that out of the 10 cases listed in Annexure-XII filed along with the petition, CMP No. 2894 of 2013 is not now pending and CMP. No. 393 of 2012 stood posted for orders. In Crime No. 235 of 2013 final report was already filed and later the complaint was taken on file and numbered as C.C. No. 610 of 2014. In Crime No. 2271 of 2013, committal proceedings are pending as C.P. No. 40 of 2014. C.M.P. No. 336 of 2014 is posted for production of witnesses and C.M.P. No. 855 to 858 of 2014 were posted for taking sworn statement of the complainant. Yet another case, mentioned by the petitioner as C.C. No. 509 of 2013 is posted for appearance of the accused and C.C. No. 1009 of 2013 is the case in which the revision petitioner herein is the accused. The learned Sessions Judge, on such detailed consideration of the aspects found no legal infirmity in the action of the learned Magistrate. A perusal of the pleadings in these revision petitions would reveal that no ground whatsoever has been made out by the revision petitioner for interfering with the impugned order passed by the learned Sessions Judge refusing to transfer the cases from the files of the Court of Judicial First Class Magistrate-I, Perumbavoor. A careful scanning of the contentions in the revision petitions would reveal that absolutely no ground has been made out by the revision petitioner in support of the prayer for transfer of the cases. True that in the light of the apprehension of the revision petitioner the learned Magistrate revealed that he got no objection in transferring the case as requested by the revision petitioner. However, the learned Sessions Judge held that no party shall be allowed to pick and choose the forums for trial. I am of the view that the learned Sessions Judge is perfectly right in holding that the parties shall not be allowed to pick and choose the forums for trial. I do not find any infirmity in the finding of the learned Sessions Judge that when the refer report was already rejected and enquiry was being conducted under Section 202, Cr.P.C. no error could be found in the action of the learned Magistrate in not allowing the revision petitioner herein to adduce evidence to substantiate his case that the refer report was wrongly submitted. When the refer report itself was rejected there was absolutely no reason or purpose for adducing evidence in that regard, as held by the learned Magistrate. There cannot be any doubt with respect to the position that in an application under Section 408 Cr.P.C. transfer of cases could not be

granted on the mere asking. Only if it is ultimately found that it is expedient for the ends of justice transfer of a particular case is required and then and then only the learned Sessions Judge would be justified in invoking the power under Section 408 Cr.P.C. to transfer the cases from the file of a particular lower court to another court. A perusal of the impugned order would reveal that the entire circumstances have been gone into in detail by the learned Sessions Judge and only upon such consideration that it was found that not expedient in the interest of justice to order transfer of those cases. Having perused the impugned common order and the pleadings in these revision petitions and upon hearing the learned counsel for the revision petitioner I do not find any reason to disagree with the conclusions arrived at by the learned Sessions Judge. The revision petitioner did not make out any ground to hold that the rejection of the prayer to transfer the cases is illegal or against any provision of law and therefore, liable to be interfered with. In such circumstances, these revision petitions are liable to fail and accordingly, they are dismissed.