

(2014) 06 KL CK 0161

In the High Court Of Kerala

Case No : Crl. M.C. Nos. 455 and 470 of 2010

Praveen

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 200, 202, 202(1), 203
Penal Code, 1860 (IPC) — Section 120B, 415, 417, 418

Citation : (2014) CriLJ 4560 : (2014) 3 KHC 242

Hon'ble Judges : P.D. Rajan, J

Bench : Single Bench

Advocate : K. Ramakumar, (Senior Advocate), S.M. Prasanth, M. Manojkumar (Chelakkadan), Asha Babu and Ammu Charles, Advocate for the Appellant; Justin Jacob, (Public Prosecutor), Advocate for the Respondent

Judgement

P.D. Rajan, J.—These petitions are filed under Section 482 of Cr.P.C. to quash Annexure-A complaint in both the cases. The petitioners are accused in CC Nos. 602/2009 and 603/2009 of Chief Judicial Magistrate Court, Alappuzha. The 2nd respondent in both Crl MCs filed the above complaint before Chief Judicial Magistrate Court, Alappuzha against the petitioners alleging offence punishable under Section 120B, 415, 417, 418 and Prevention of Cruelty against Animals Act, 1960. Petitioners allegations in both cases are same. The petitioners contended that no averments are made in the complaint to attract the alleged offence. 1st petitioner is the Medical Representative of a veterinary Medicine Company at Alappuzha, Virbac Animal Health India Private Limited, based at Mumbai. Petitioners 2 and 3 are wholesale dealers of the Indian Company based at Alappuzha, who are entitled to sell Drugs on wholesale basis only. Petitioners 4 to 10 are the senior most Executives of the parent Company based at France, which includes the Chairman, The Chief Operating Officer, the Chief Financial Officer, the Presidents and Vice-President, all of the Directors, who are residing outside India. The said Company has established a reputation in the field of veterinary medicine and had been selling through the world medicines without

any risk or reason for Complaints. According to the petitioners, mandatory proceedings included in the Code of Criminal Procedure were violated by the Magistrate at the time of taking cognizance of the offence. When prima facie case is not made out against the petitioners, proceedings against the petitioners is a mere abuse of the process of Court. Therefore, the petitioners pray to invoke the inherent jurisdiction under Section 482 Cr.P.C. The allegations of the de facto complainants in both cases (CC No: 602/2009 & 609/2009) are that the 1st petitioner, who is the medical representative, visited their house and persuaded them to buy 25 vials of vaccine through C.V. Agencies, whole sale dealer, run by petitioners 2 and 3, by making them believe that viral infections like Canine Distemper, Parvo viral, Leptospirosis, Hepatitis etc affecting the animals, can be prevented by these vaccines. Therefore, the de facto complainants purchased the vaccine from petitioners 2 and 3 and got them administered through a Veterinary Doctor to their dogs and as a result, the dogs died due to the effect of vaccine. In the circumstances, the de facto complainants in both the cases preferred the above complaints before Chief Judicial Magistrate Court, Alappuzha.

2. The learned counsel appearing for the petitioners contended that petitioners 2 and 3 never sold any medicines to the 1st petitioner as alleged by the 2nd respondent. Petitioners 2 and 3 are whole sale dealers of veterinary medicines and they are distributing veterinary medicines and vaccines manufactured by its parent Company namely, Virbac SA, based at France. The learned counsel for the petitioners contended that petitioners 2 and 3 have no chance for selling retail medicines, since they are entitled to sell drugs only on whole sale basis. Petitioners 4 to 10 are senior most Executives of the Company residing outside India and they have no connection with the alleged incident. The person incharge and responsible for the day-to-day affairs of the Company was not impleaded as party by the de facto complainants in their complaint. Therefore, they are not liable for such prosecution. No ingredients attracting the alleged offence were averred in Annexure-A complaint in CC Nos. 602/2009 and 603/2009. If trial is proceeded, it amounts to a mere abuse of the process of the Court. Moreover, there is violation of Section 202 Cr.P.C.

3. The learned counsel for 2nd respondent in both the petitions, resisted the above contention and contended that the parent company manufactured and distributed killer medicines among its whole sale dealers in this country, which caused the death of dogs. When such killer medicines are supplied by the 2nd and 3rd petitioners, they are liable for the offence alleged in the complaint. All the ingredients attracting the offence were pleaded in the complaint. Therefore, there is no reason to interfere with the cognizance taken by the learned Chief Judicial Magistrate.

4. Before adverting to the arguments advanced by both counsel, I may refer the statutory provision contained under Section 202 Cr.P.C., which reads as follows:

202. Postponement of issue process.-- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has

been made over to him under Section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a Police Officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a Police Officer, he shall have for that investigation all the powers conferred by this Code on an officer-in-charge of a Police Station except the power to arrest without warrant.

According to Section 202 Cr.P.C., any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, if he thinks it fit, when the accused is residing beyond the jurisdiction of his area, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a Police Officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. The object of Section 202(1) is to enable the Magistrate to form an opinion as to, whether the process should be issued or not at the very beginning, if the accused is residing outside the jurisdiction. What the Magistrate is required to consider is whether there is prima facie evidence in support of complainant's allegation in the complaint and not whether the evidence is sufficient for a conviction. The words "if he thinks fit" confer a circumspection to direct an investigation or to make an inquiry. This discretion however, should be exercised judicially, which would help the Magistrate to take a decision regarding issue of process. No investigation shall be made where the offence complained of is triable exclusively by the Court of Sessions. Further, where a complaint is not made by a Court, no investigation shall be made unless the complainant and the witness have been examined on oath.

5. The Apex Court in *Manharibhai Muljibhai Kakadia and Another Vs. Shaileshbhai*

Mohanbhai Patel and Others, held as follows: (para 20 & 21):

20. Section 202 of the Code has twin objects; one, to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an unnecessary, frivolous or meritless complaint and the other, to find out whether there is some material to support the allegations made in the complaint. The Magistrate has a duty to elicit all facts having regard to the interest of an absent accused person and also to bring to book a person or persons against whom the allegations have been made. To find out the above, the Magistrate himself may hold an inquiry under Section 202 of the Code or direct an investigation to be made by a Police Officer. The dismissal of the complaint under Section 203 is without doubt a pre-issuance of process stage. The Code does not permit an accused person to intervene in the course of inquiry by the Magistrate under Section 202. The legal position is no more *res integra* in this regard. More than five decades back, this Court in *Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another*, *Ghadigaonkar* with reference to Section 202 of the Criminal Procedure Code, 1898 (corresponding to Section 202 of the present Code) held that the inquiry under Section 202 was for the purpose of ascertaining the truth or falsehood of the complaint i.e. for ascertaining whether there was evidence in support of the complaint so as to justify the issuance of process and commencement of proceedings against the person concerned.

21. In *Chandra Deo Singh Vs. Prokash Chandra Bose and Another*, , a four-Judge Bench of this Court had an occasion to consider Section 202 of the old Code. The Court referred to the earlier decision of this Court in *Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another*, and few previous decisions, namely, *Parmanand Brahmachari Vs. Emperor*, *Radha Kishun Sao Vs. S.K. Misra and Another*, , *Ramkisto Sahu Vs. The State of Bihar*, , *Emperor Vs. J.A. Finan*, , *Baidya Nath Singh Vs. Muspratt and Others*, and it was held that: (*Chandra Deo Singh* case, AIR p.1433, para 8)

"8.....the object of the provisions of Section 202 (corresponding to present Section 202 of the Code) was to enable the Magistrate to form an opinion as to whether process should be issued or not and to removes from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath."

It was further held that an accused person does not come into the picture at all till process is issued.

6. The learned counsel appearing for the petitioners contended that cognizance was taken and process was issued against the petitioners without verifying the complaint. Therefore, before issuing such process, the learned Magistrate has to conduct an enquiry with regard to the averment in the complaint which is limited only to ascertain the truth or falsehood, especially when the accused are residing outside Court's jurisdiction. Therefore, such procedural irregularity is to be

intervened, since under Section 202 Cr.P.C., accused has absolutely no locus stand/to interfere and is not entitled to be heard on the question whether process should be issued against him or not.

7. The inherent jurisdiction under Section 482 Cr.P.C. can be invoked by this Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of Court or otherwise to secure the ends of justice. While exercising such jurisdiction, this Court would not ordinarily conduct an enquiry with regard to the evidence produced before Court as to whether it is reliable or not or whether it is sufficient for a conviction. At this interlocutory stage, the Court is bound to consider the prima facie satisfaction of a case. Apex Court in *R.P. Kapur Vs. The State of Punjab*, observed as follows:

It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged, in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the Criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases

where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 482 the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the Trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under Section 482 in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point.

8. The allegation in both the cases are same. Since 2nd and 3rd petitioners are whole sale dealers, the averments made by the de facto complainants in both the petitions are to be scanned more carefully. The averment in the complaint is that the petitioners sold vaccines without quality and thereby cheated the de facto complainants. Section 415 IPC explains the ingredients of cheating as follows:

415. Cheating.-- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind reputation or property is said to "cheat". A dishonest concealment of facts is a deception within the meaning of this section.

9. I have perused the complaint made by the 2nd respondents in both the cases. Nothing was stated by the complainants to show that accused 4 to 10 committed any act fraudulently or dishonestly and induced them to deliver any property to any person or to consent that any person shall retain any property or intentionally induced the complainants to do or omit to do anything which they would not do or omit if they were not so deceived and thereby such act or omission caused any damage to the 2nd respondent in body, mind reputation or property in this case. They are the Directors and the allegation of cheating will not lie against them. Next, I have considered the question as to who is the person-in-charge of and responsible for the company's day-to-day affairs. According to law, a person-in-charge of and responsible for the day-to-day affairs of the company is liable for an offence committed by a company. Therefore, the person-in-charge of and responsible for the day-to-day affairs of the company is to be arrayed as a party in the complaint and Accused 4 to 10, who are the senior executives of the parent company based at France, impleaded in the complaint are not really the persons-in-charge and responsible for the day-to-day affairs of the company. It is the responsibility of the learned Magistrate to enquire as to whether those persons are the real accused and are they impleaded in the right time and prima facie case is revealed against them. Therefore, the issuance of process against accused 4 to 10 in CC Nos. 602/2009

& 603/2009 is liable to be quashed by invoking the inherent jurisdiction and I do so.

In the result, I quash the proceedings taken against A4 to A10 in the above case. The learned Magistrate is directed to proceed as per law and during the inquiry or at any stage, if the learned Magistrate feels that prima face case is made out against A4 to A10, he is at liberty to proceed against them as per law.

Crl. MCs are partly allowed.