
(2008) 02 KL CK 0003
In the High Court Of Kerala
Case No : Criminal M.C. No. 3267 of 2004

Premkumar

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 155, 156, 157, 162
Penal Code, 1860 (IPC) — Section 304B, 34

Citation : (2008) 2 DMC 310

Hon'ble Judges : K.P. Balachandran, J

Bench : Single Bench

Advocate : Suman Chakravarthy, for the Appellant; P. Ravindra Babu, Public Prosecutor and C. Rajendran, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Premkumar and Others Vs. State of Kerala, (2009) 2 JT 314 : (2009) 1 SCALE 452 : (2008) 17 SCC 264

K.P. Balachandran, J.—This CrI.M.C. is filed by the accused in Crime No. 57/03 of Kadakkavoor Police Station in Kerala pending on the file of the Judicial First Class Magistrate's Court, Varkala as CP. 10/ 04. The prayer advanced by the petitioners is to quash Annexure-C Final Report and all proceedings pursuant thereto in CP. 10/04 aforesaid.

2. The contention that is advanced before me by the learned Counsel for the petitioners is that in relation to death of one Jeeja, the wife of the first petitioner and daughter-in-law of petitioners 2 and 3, Crime No. 64/03 was registered at Courtallam Police Station in Tirunelveli district, Tamil Nadu; that investigation therein was conducted and Annexure-A Final Report in Tamil, English translation of which is Annexure-B was filed on 21.7.2003; and that therefore, Annexure-C Final Report filed in Crime No. 57/08 registered on 4.3.2003 at the Kadakkavoor Police Station in relation to the same incident on a complaint filed by the father of deceased Jeeja before the Attingal Dy. S.P. is illegal and deserves to be

quashed. He has relied on the decision of the Apex Court in T.T. Antony v. State of Kerala III (2001) CCR 55 (SC) : 2001 (3)KLT 1 (SC), wherein the Apex Court has on a detailed consideration of the provisions of Sections 154 to 157, 162, 169, 170 and 173 of the Cr.P.C., held that there can only be one FIR in relation to a crime and that, therefore, registration of a second FIR u/s 154, Cr.P.C. on the basis of the letter of Director General of Police as Crime No. 268/97 is not valid and that the investigation made pursuant thereto was of no legal consequence. The FIR so registered a second time was hence quashed, however, without prejudice to the investigating agency seeking leave of the Court in Crime Nos. 353/94 and 354/94 for making further investigation and filing a further report or reports u/s 173(8), Cr.P.C. before the competent Magistrate in the said cases and that, therefore, in the instant case a second Final Report filed as Annexure-C in Crime No. 57/03 of Kadakkavoor Police Station deserves to be quashed. He has also contended on the basis of the decision of the Apex Court in Y. Abraham Ajith v. Inspector of Police II (2004) DMC 317 : III (2004) CCR 130 (SC) : 2004 (3) KLT 123 (C. No. 162) SC, that when the offences are alleged to have taken place within the jurisdiction of Courtallam Police Station and no offence is alleged to have been committed within the territorial limits of Kadakkavoor Police Station the proceedings culminating in Annexure-C report deserves to be quashed.

3. Before considering the questions of law canvassed certain admitted facts deserve to be stated. Marriage of the first petitioner with deceased Jeeja has taken place on 12.9.1999. Immediately after marriage they were residing for some time at Kaithamukku in Vanchiyoor village; thereafter in another house at Shencottah and later, at Courtallam and a child also was born to them on 6.3.2000. Petitioners 2 and 3 were also residing with the first petitioner and his wife/the deceased. On 14.2.2003, the deceased was found hanging at the house of the petitioners. On the basis of information furnished by the second petitioner, Crime No. 64/03 was registered at Courtallam Police Station u/s 174 of the Cr.P.C on 14.2.2003 itself. On intimation given, parents of Jeeja came over from Attingal and in their presence it is alleged that the Executive Magistrate opened the room and conducted inquest of the body of the deceased.

4. It is submitted that the inquest conducted and the post-mortem findings were consistent with death due to hanging. All the same, the fact remains that the death of the deceased has taken place within seven years of the marriage and the parents of the deceased had given statements in the inquiry to the effect that the death by suicide was on account of the cruelty meted out to the deceased inter alia, demanding dowry.

5. On 4.3.2003 Crime No. 57/03 was registered at the Kadakkavoor Police Station in relation to the same incident on complaint of father of deceased Jeeja before the Attingal Dy. S.P. The said crime was registered for offence u/s 304B, IPC read with Section 34 thereof. On 13.4.2004 Kadakkavoor Police filed Final Report in Crime No. 57/03 charge sheeting the petitioners for offence u/s 304B, IPC read with Section 34 thereof.

6. The contention of the petitioners appears to be sound and tenable at the first blush and it would appear that crime registered as 57/03 at the Kadakkavoor Police Station and all proceedings initiated on the basis thereof are illegal and Annexure-C Final Report deserves to be quashed. But the question would be as to whether Crime No. 57/03 registered at Kadakkavoor Police Station in Kerala is a second FIR in relation to the same occurrence in relation to which is Crime No. 64/03 of Courtallam Police Station in Tamil Nadu is registered. It is seen from pages 12 to 21 of Annexure-B report furnished to the Sub-Collector and Revenue Divisional Officer, Tenkasi by the Inspector of Police, Courtallam Police Station that the cause of death is ascertained to be by hanging and that the investigation in the case is stopped and further action dropped submitting that Final Report. The said report was the one filed on 21.7.2003. In Annexure-B at pages 1 to 10 English translation or letter from the RDO to the Dy. S.P. Tenkasi is seen and it is submitted that it is one submitted on 28.2.2003 wherein the result of the enquiry is recorded by the RDO as follows:

On the basis of the inquest conducted, and on the basis of the inquiries made with the husband, father-in-law, mother-in-law, brothers-in-law, father, mother, brothers and sisters, of the deceased, and on the basis of the evidence adduced by the reputed locals, and viewing the position and situation of the room in which the dead body was lying and other circumstances, I come to the conclusion that the death of Jeeja by hanging is not one due to dowry based cruelty.

7. Below the said result of inquiry, the RDO has stated further "I request you to make detailed investigation as to under what circumstances Smt. Jeeja died by hanging". Probably it is in view of such a direction that the Inspector of Police, Courtallam submitted a report on 21.7.2003 as already stated wherein it is seen that the Inspector of Police have come to the conclusion that Jeeja was affected by mental disease known as Schizophrenia and she was having the mental framework to come to the decision of committing suicide.

8. It is worthy to note in this context that in the initial stage the RDO had come to the conclusion that the death of Jeeja by hanging is not due to dowry based cruelty. Thereafter, he was directing detailed investigation being conducted as to under what circumstances Jeeja died by hanging. This means that he was directing an investigation being conducted as to any other cause for committing suicide other than the cause alleged by the parents of the deceased as he has already recorded the result of the inquiry that Jeeja died by hanging and is not due to dowry based cruelty. All these have happened in a crime registered u/s 174 of the Cr.P.C. When there was an allegation from the parents of deceased Jeeja that her suicide is a case of dowry death and the fact remained that death of Jeeja had occurred within seven years of her marriage, the crime registered should have been altered to one as in a cognizable case and report should have been given to the Judicial Magistrate incorporating also. I.P.C. 304B to the crime and also to the RDO/Executive Magistrate to forward the F.I.R. and connected papers in the case to the Judicial Magistrate as the matter required investigation.

That was however, not done in the instant case. In fact, when allegation was there and circumstances showed that the death of the deceased was within seven years of marriage the investigating agency should have treated the case as one in which an information has been received of a cognizable case which warranted investigation u/s 157 of the Cr.P.C. and a report should have been submitted u/s 173(2), Cr.P.C after due investigation in the case. In the instant case, the crime registered at the Courtallam Police Station did not reach the stage of investigation u/s 157 of the Cr.P.C but on the other hand, the Executive Magistrate/RDO was concluding that the case is one of suicide and not a case of dowry based cruelty and was directing an investigation being made into circumstances which led to Jeeja's death by hanging after holding that it is not due to dowry based cruelty:

9. Counsel for the petitioners submits that Final Report was being submitted by the investigating agency u/s 173(2) of the Cr.P.C. after due investigation though it was filed before the RDO. I fail to understand the submissions so made. If at all a cognizable offence is brought to notice, immediately the matter deserved to be reported to the Judicial Magistrate and investigation deserved to be conducted under his direction and Final Report had to be submitted before him so as to enable cognizance being taken and not before an Executive Magistrate who had no jurisdiction at all except in cases falling u/s 174 of the Cr.P.C. The inquiry u/s 174 when it reaches a stage where suspicion is roused of a cognizable offence having been committed all further investigation in the matter had to be done after submitting report before the Judicial Magistrate and getting the files transferred from the RDO to the Judicial Magistrate. Inasmuch as no such course was adopted in this case and the matter has been hushed up by submitting a report before the RDO/ Executive Magistrate, the Judicial Magistrate had no opportunity to apply his mind as to whether the Final Report has to be accepted and as to whether any further investigation was to be directed to be made in the case. In the circumstances, the argument of the learned Counsel for the petitioner relying on the decision of the Apex Court in Antony's case (supra), is of no help to him to contend that the crime registered at the Kadakkavoor Police Station is illegal and Annexure-C Final Report therein is to be quashed. It is also to be borne in mind that the Apex Court was dealing with a case of more than one F.I.R. being registered in relation to cognizable offence reported, whereas in the instant case report of cognizable offence has been registered only at the Kadakkavoor Police Station and what was registered at the Courtallam Police Station is a report for the purpose of an inquiry u/s 174 of the Cr.P.C in relation to an unnatural death. Further inasmuch as no Final Report had been submitted before the Judicial Magistrate in the crime registered by the Courtallam police there was no scope for any protest complaint also being filed by the de facto complainant.

10. In State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Apex Court has occasion to observe that the condition which is sine qua non for recording a First Information Report is that there must be an information and

that information must disclose a cognizable offence. A report regarding an unnatural death which calls for an inquiry u/s 174 of the Cr.P.C is not an information in relation to a cognizable offence.

11. Finally it is contended before me by the learned Counsel for the j petitioners that the Kadakkavoor police has no jurisdiction at all to conduct " any investigation and that only the Courtallam Police had jurisdiction to conduct investigation into the case as the cause of action has occurred at Courtallam only and not in any event within the territorial limits of jurisdiction of Kadakkavoor Police Station. Learned Counsel fails to note the aspect that suicide does not give rise to a cause of action by itself for registration of a cognizable crime unless the suicide is brought about by cruelty meted out to the wife so as to enable the case to fall under dowry death envisaged u/s 304B, I.P.C. Hence, cognizable offence is only in relation to crime registered at the Kadakkavoor Police Station and cruelty which furnished cause for the death if at all the allegation is true, is cruelty that is meted out to the deceased inter alia demanding dowry and part of the cause of action can be said to arise at the place of residence of the parents of the bride to whom demand was advanced to satisfy the claim for dowry. As to whether there was real demand for dowry and that has resulted in cruelty so as to drive the deceased to commit suicide are all matters which are to be considered at trial by the Sessions Court on committal of the case to the appropriate Sessions Division and are not matters for this Court to consider at this stage.

12. In view of the discussions that I have made above, I conclude that the grounds alleged assailing Annexure-C Final Report as illegal is not tenable and that therefore, Annexure-C and proceedings consequent thereon in C.P. 10/04 on the file of the Judicial First Class Magistrate's Court, Varkala does not deserve to be quashed. This CrI. M.C. in the circumstances, deserves to be dismissed.

13. In the result, I dismiss this CrI. M.C.