
(2008) 04 KL CK 0009
In the High Court Of Kerala
Case No : Criminal R.P. No. 884 of 2008

Raju Puzhankara

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 203, 283
Penal Code, 1860 (IPC) — Section 409
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2008) 04 KL CK 0009

Hon'ble Judges : V. Ramkumar, J

Bench : Single Bench

Advocate : Renjith B. Marar and L. Rajesh Narayan, for the Appellant; K.S. Sivakumar, Public Prosecutor for 1st Respondent, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramkumar, J.—The Petitioner who claims to be a social activist preferred a complaint before the Enquiry Commissioner and Special Judge, Thiruvananthapuram, alleging offences punishable u/s 13(2) of the Prevention of Corruption Act, 1988 for the alleged infraction of Section 13(1)(d) of the said Act and Section 409 I.P.C. against two members of the Travancore Devaswom Board. One of the allegations made by the Petitioner was that there was large scale corruption in the appointment of 2400 temporary employees at Sabarimala Temple as revealed by the letter given by the Minister for Devaswom to the Minister for Home and Vigilance. Another allegation was that certain poojaries who were appointed by the Devaswom Board had unauthorisedly sold the worship threads and offerings received in the temple and had misappropriated and converted such offerings for their personal use causing wrongful loss to the Devaswom Board. The Petitioner did not choose to produce the letter which was relied on by him to buttress the said contention. He was contented with newspaper clippings. There was no material produced to show that the persons arrayed as accused in the private complaint were in any way involved in the

alleged sale of worship threads and offerings by the poojaries. No poojari was also arrayed as an accused. The Enquiry Commissioner and Special Judge found that there was no case made out for taking cognizance of the alleged offences since the complaint was deficient in the ingredients which constitute the offences alleged and also that the Petitioner did not produce any relevant material to substantiate his bald allegations. The Special Judge, therefore, dropped the proceedings and turned down the request of the Petitioner to forward the complaint for investigation by the Vigilance Police u/s 156(3) Code of Criminal Procedure. It is the said order passed by the Special Judge on 25-2-2008 which is assailed in this Revision.

2. The learned Counsel appearing for the revision Petitioner made the following submissions before me:

The only power available to a Magistrate to dismiss a private complaint is to be located u/s 203 Code of Criminal Procedure and as per the said provision the Magistrate can dismiss the complaint only after considering the statements on oath of the complainant and all his witnesses and also the result of the enquiry u/s 202 Code of Criminal Procedure. But here, the complaint was dismissed without even recording the sworn statement of the complainant. If the complaint was deficient in materials to substantiate the alleged offences the Special Judge ought to have acceded to the request of the Petitioner to forward the complaint to the Vigilance Police u/s 156(3) Code of Criminal Procedure in which the case a proper investigation would have brought to light the necessary materials.

3. I am afraid that I cannot agree with the above submissions fully. No doubt, u/s 203 Code of Criminal Procedure the Magistrate can dismiss the complaint only after taking cognizance of the offence. This much is clear from Section 203 itself which reads as follows:

203. Dismissal of complaint.- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) u/s 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

Thus, dismissal of a complaint u/s 283 Code of Criminal Procedure can only be at the post-cognizance stage. [See also Mohammed v. State of Kerala 2001 (2) KLT 48]. But there is a power in every Magistrate to reject the complaint even at the pre-cognizance stage if the complaint on the face of it does not make out the offence alleged in the complaint. In such a case, the law does not oblige the Magistrate to proceed to Section 200 Code of Criminal Procedure or the subsequent sections in Chapter XV of Code of Criminal Procedure and thereby take cognizance of the alleged offence the ingredients of which are not even averred in the complaint. In such a case, the Magistrate undoubtedly has the power to reject the complaint at the threshold. The decisions in CREF Finance Ltd. Vs. Shree Shanthi Homes Pvt. Ltd. and Another, , Govind Mehta Vs. State of

Bihar, and Nagraj Vs. State of Mysore, would go to reinforce the said view. Although complaints are being dismissed by the Magistrates at the pre-cognizance stage those dismissals are without noticing the real distinction between a dismissal of the complaint u/s 203 Code of Criminal Procedure at the post-cognizance stage and a rejection of the complaint under the pre-cognizance stage. Hence such dismissals at the pre-cognizance stage can only be treated as rejection of the complaint.

4. The request to forward the complaint u/s 156(3) Code of Criminal Procedure was also rightly turned down by the Special Judge since the complainant had not even prima facie convinced the Special Judge with reference to any materials justifying a forwarding of the complaint to the police for the purpose of investigation. I, therefore, do not find any good ground to interfere with the discretion exercised by the Enquiry Commissioner and Special Judge. This Revision is accordingly dismissed. However, it is made clear that the dismissal of this Crl. R.P. shall not preclude the Petitioner/complainant from preferring a more comprehensible complaint with adequate materials to substantiate his case in view of the decision in Arul v. Nair v. State of Kerala 2007 (4) K.H.C. 597. As and when such a complaint is filed, I am sure that the Special Judge will judicially and judiciously apply his mind and do the needful according to law.