

(1992) 12 KL CK 0031
In the High Court Of Kerala
Case No : O.P. No. 13589 of 1992

Remia and Another

APPELLANT

Vs

Sub-Inspector of Police and Others

RESPONDENT

Date of Decision : 09-12-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177, 188
Penal Code, 1860 (IPC) — Section 3, 4

Citation : (1993) CriLJ 1098 : (1993) 2 ILR (Ker) 863

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : V.P. Reghu Raj, for the Appellant; Govt. Pleader and A.M. Poullose, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—Regarding the death of one Sulaiman, a complaint has been filed by his mother, widow and brother before the Sub-Inspector of Police, Tanur (in Malappuram District). In the complaint it is specifically mentioned that they suspect one Ali to have murdered Sulaiman on 21-6-1992 at Sharjah in United Arab Emirates. Ext.P3 complaint, according to the petitioners, was not accepted by the Sub-Inspector of Police on the ground that the alleged offence was committed out side India. Petitioners have, therefore, filed this Original Petition for directing the aforesaid Sub-Inspector to prepare an FIR and register the crime on the basis of Ext. P3 complaint and to commence investigation.

2. Learned Government Pleader contended that the Sub-Inspector of Police has justification because no police in this State can enquire into the offence committed beyond the territories of India.

3. Section 177 of the Code of Criminal Procedure (for short "the Code") says that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. The said section, no doubt, deals with inquiries and trials and does not deal with investigation. Even otherwise, the

provision envisages only the general principle which is subject to exceptions. It is clear from the provision itself since the section employs the words "shall ordinarily" (vide *Nikka Singh Vs. The State*, Supreme Court also observed that with the use of the word "ordinarily" the provision has to be understood as "except as otherwise provided in the Code or special law" (vide *Narumal Vs. State of Bombay*,

4. Even when Indian Penal Code was codified, its authors took special care to incorporate two prefatory provisions in a guarded manner. They are Sections 3 and 4 of the Penal Code. Section 3 of the I.P.C. reads thus:

"Any person liable, by any Indian law, to be tried for an offence committed beyond India, shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India."

Section 4 reads thus:

"The provisions of this Code apply also to any offence committed by-

- (1) any citizen of India in any place without and beyond India;
- (2) any person on any ship or aircraft registered in India wherever it may be.

Explanation.- In this section the word "offence" includes every act committed outside India which, if committed in India, would be punishable under this Code."

5. Section 3 of the Penal Code helps the (authorities in India to proceed by treating the offence as one committed within India. No doubt it is by a fiction that such an assumption is made. But such a fiction was found necessary for practical purposes. Section 3 of the Penal Code was found insufficient for police authorities to investigate into the offence. It was in the aforesaid context that Section 188 has been incorporated in the Procedure Code. That section reads thus:

"188. Offence committed outside India.-

When an offence is committed outside India.-

- (a) by a citizen of India, whether on the high seas or elsewhere; or
- (b) by a person, not being such citizen on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found :

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

No doubt, Section 188 concerns as to how to deal with a person who has committed an offence outside India. Since the proviso casts an obligation to

obtain previous sanction of the Central Government to inquire into and try such person, the section has a message that for the pre-inquiry stage no such sanction is needed. If during pre-inquiry stage any offender can be dealt with (without such sanction) what could be the contours of that stage? I have no doubt that the pre-inquiry stage substantially relates to investigation of the crime. If there is any stage in which an offender can be dealt with before commencement of inquiry, it must be the investigation stage.

6. During such investigation stage, if the person (known or reasonably suspected to be the offender having committed the offence outside India) is not available in India, extradition proceedings may have to be resorted to (vide *State of West Bengal Vs. Jugal Kishore More and Another*,). Supreme Court observed that "extradition is the surrender by one State to another of a person desired to be dealt with for crimes of which he has been accused or convicted and which are justiciable in courts of the other State". Such extradition proceedings are contemplated to get down the person concerned to this country to be dealt with thereafter.

7. The upshot is that Sub-Inspector of Tanur Police Station can conduct investigation into the offence notwithstanding the place of occurrence being Sharjah because the person on whom the focus of suspicion turns is laid to be a citizen of India.

I, therefore, direct the Sub-Inspector of Tanur Police Station to record the statement of one of the petitioners regarding the death of Sulaiman, within one week from the date of receipt of a copy of this judgment and prepare an FIR, register the crime and proceed with investigation steps in accordance with law.

I express my gratitude to Sri. Jagadishchandran Nair, Advocate, who argued as *amicus curiae*.

Original petition is disposed of in the above terms.

Issue photo copy on usual terms.