
(1971) 11 KL CK 0016
In the High Court Of Kerala

S. Narayanaswami

APPELLANT

Vs

Padma and Another

RESPONDENT

Date of Decision : 08-11-1971

Acts Referred:

KERALA HIGH COURT ACT, 1958 — Section 5

Citation : (1972) CriLJ 985

Hon'ble Judges : T.C. Raghavan, C.J.;P. Unnikrishna Kurup, J

Bench : Division Bench

Judgement

T.C. Raghavan, C.J.—The appellant filed an application before this Court for transferring a criminal case pending against him from the file of the court of the District Magistrate, Trichur to the file of the court of the District Magistrate, Quilon. A learned Judge of this Court dismissed the application; and the appellant seeks to file the appeal against that order.

2. Mr. Thayyil K. Vasudevan, the counsel of the appellant, argues that the appeal is competent u/s 5(i) of the Kerala High Court Act which reads:

An appeal shall lie to a Bench of two Judges from-

(i) a Judgment or order of a Single Judge in the exercise of original jurisdiction.

The question for us to decide is whether the order passed by the Single Judge is in the exercise of original jurisdiction.

3. The decision of a Division Bench of this Court in Ouseph v. Pylee 1957 Ker LT 1221 has been brought to our notice. In that case, the appellant filed an appeal before a Division Bench against an order appointing a receiver by a Single Judge. Raman Nayar J. (as he then was) in repelling the argument of the counsel of the appellant observed.

"The term, "original jurisdiction" is well understood and comprises those matters of which the Court takes cognizance as a court of first instance." And the learned Judge made a distinction between an order Passed in the exercise of original

jurisdiction and an order in the nature of an original order passed in the exercise of appellate jurisdiction. (This case was a civil case, and we feel this must apply equally to a criminal case.) When we apply this distinction, which appeals to us, to the case before us what follows is that an order of the High Court transferring or refusing to transfer a case from the file of one magistrate to the file of another magistrate may be an order in the nature of an original order, but it is only an order passed in the exercise of appellate or revisional jurisdiction and not one passed in the exercise of original jurisdiction of the High Court -not an order passed as a court of first instance.

4. Another decision of another Division Bench (P. T. Raman Nayar C.J. wrote the judgment in this case as well) has also been brought to our notice-*vide* J. Sreedhara Kamath v. Jawala Prasad Gupta (Crl. Appeal No. 218 of 1970 (Ker)), wherein the Division Bench has held that the power u/s 561-A of the Code of Criminal Procedure is in the nature of a revisional power and an order made by a Single Judge in the exercise of that power is not an order in the exercise of original jurisdiction so as to attract an appeal to a Bench of two Judges under Clause (i) of Section 5 of the Kerala High Court Act. Regarding this decision, though it is not necessary for us to express any opinion, we feel that the above observation might be too wide, because the inherent power of the High Court may consist of original, appellate, revisional or supervisory powers-not merely revisional powers. In this connection, we may refer to one passage from the decision of the Supreme Court in *Amitava Das Gupta Vs. Nath Bank Ltd.*, wherein the Supreme Court has observed:

Reliance has been placed on *Navivahoo v. Turner* (Official Assignee) (1889) 16 Ind. App. 156 (PC) in which it was laid down that the ordinary jurisdiction of the High Court embraces all such as exercised in the ordinary course of law and without any special step being necessary to assume it.

This indicates that the jurisdiction of a High Court, by virtue of its being a High Court, might embrace all such, jurisdiction as exercised in the ordinary course of law, eg., original, appellate and revisional. At any rate, as already stated, the correctness or otherwise of the Division Bench ruling second cited need not be considered in this case: we are pointing out this only as a caution against the said Division Bench being accepted in that wide form without further consideration. For the purpose of this case, it is enough to hold that the power of the High Court to transfer a case from the file of one magistrate to the file of another is not a power exercised by" the High Court in its original jurisdiction, even if it may be (here also, we do not definitely say it is) a power in the nature of an original power exercised by a High Court in its appellate or revisional jurisdiction.

The result is that the appeal is incompetent and the same is dismissed.