
(2000) 12 KL CK 0038
In the High Court Of Kerala
Case No : Criminal M.C. 5072 of 1999

Saleem

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-12-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190(1), 195, 195(1), 307
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21
Penal Code, 1860 (IPC) — Section 193, 194, 195, 196, 199

Citation : (2000) 12 KL CK 0038

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : K. Ramakumar and Ramaprasad Unni T, for the Appellant; K. Gopalakrishna Kurup, Public Prosecutor, N. Nagaresh, A.C.G.S.C. and S. Ramesh Babu, for the Respondent

Judgement

M.R. Hariharan Nair, J.—The prayer of the petitioner, who is the 1st accused in Crime No. 164/99 of the Valiyathura Police Station, subsequently renumbered as Crime No. 234/CR/99/CB CID, SIG-I, is to quash the said proceeding. The case was registered based on a complaint which was forwarded for investigation under 8.156(3) of the Code of Criminal Procedure by the Chief Judicial Magistrate's Court, Thiruvananthapuram. At the time, the offences under Ss. 195, 196, 201, 211 and 307 of Indian Penal Code had been alleged against the accused. It is stated that subsequently, as per a report filed by the investigating officer, the offence under S. 21 of the NDPS Act is also included in the charge.

2. Sri. K. Ramakumar, who appeared for the petitioner submitted that the proceedings before the Chief Judicial Magistrate's Court, Thiruvananthapuram , are not maintainable and that the Court went wrong in directing investigation when the offences alleged against the petitioner, included those under Ss. 195, 196 and 211 of the IPC in respect of which cognizance is possible only on complaint made by the Court concerned. It is also argued that the attempt of the complainant is to subvert the proceedings pending before the Special Court for

NDPS Act Cases, Bangalore, in which Navaz Khan, who is the present complainant, is the 1st accused. Yet another argument is that the investigating officer in the present case cannot sit in judgment over the justifiability of the prosecution proceedings initiated by the Directorate of Revenue Intelligence, who initiated the prosecution pending before the Bangalore Court.

3. The learned State Prosecutor points out that the bar with regard to taking cognizance contained in S. 195 of the Cr.P.C. will not apply to the conduct of investigation under S. 156(3) of the Cr.P.C. Yet another argument is that at the time when the aforesaid offences were allegedly committed, the case was not pending before the Bangalore Court and hence there is no bar. He also points out that the investigation conducted so far shows that Navaz Khan was implicated in a false case with the connivance of the 5th accused in the Bangalore case pursuant to a criminal conspiracy.

4. In the affidavit filed by the investigating officer in support of CrI.M.P.No. 3173/2000, he has stated that the investigation so far conducted disclosed that the present petitioner who owns 20 cents of land at Coimbatore entered into a partnership with Navaz Khan for the construction of residential flats in the said plot at Coimbatore. Navaz Khan paid Rs. 17 lakhs to the petitioner as his share for the construction. Subsequently, the partners fell out. To avoid repayment of money to Navaz Khan, the petitioner entered into a criminal conspiracy with few others including Ajith Kumar the 5th accused in the Bangalore case in order to procure a conviction enabling life imprisonment for Navaz Khan. Accordingly, a false NDPS case was got registered at Bangalore with the connivance of the aforesaid 5th accused using 1.78 Kgs. of heroin which was procured with the joint efforts of all the present accused and by passing on information to the Directorate of Revenue Intelligence that the said 5th accused was available in room No. 94 at Hotel Hindustan, Gandhi Nagar, Bangalore holding the said contraband. Accordingly, the case was registered.

5. During hearing today, it was brought to my notice that Navas Khan, who failed in his attempt to get the proceedings in the Bangalore case quashed under S. 482 of the Cr.P.C, filed CrI.M.P. No. 5716/2000 before the Hon"ble Supreme Court along with SLP No. 2958/2000 and the Hon"ble Supreme Court passed an order dated 18.9.2000 directing release of Navaz Khan on bail as per the following order:

"Petitioner shall appear before the learned Special Judge and apply for bail and on such application being made, he shall be released on bail on furnishing of two sureties of Rs.20,000/- each".

6. The learned counsel for Navaz Khan also brought to my notice today that the Directorate of Revenue Intelligence failed to appear before the Hon"ble Supreme Court on the date fixed for their appearance and hence the matter did not happen to be boarded further in the Supreme Court.

7. The prohibition contained in S. 195 of the Cr.P.C., inter alia, is that no court

shall take cognizance of any offence punishable under Ss. 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 of the IPC when such offence is alleged to have been committed in or in relation to any proceeding in any court. It is true that in the complaint filed before the Chief Judicial Magistrate's Court, Thiruvananthapuram, which is produced as Annexure-B along with the Criminal Miscellaneous Case, the offences under Ss. 195, 196 and 211 of the IPC are also invoked. Nevertheless, it cannot be said that the Court has taken cognizance of these offences in so far as what the Court did was only to direct investigation under S. 156(3) of the Cr.P.C. That apart, it cannot be said that the offences under the aforesaid Sections were committed at a time when the proceedings were pending before the Bangalore Court. The Bangalore Court took cognizance of the offences involved in the case, there, as matters stood on 26.10.1999. The criminal conspiracy alleged in the present case and the commission of the offences falling under S. 195 of the Cr.P.C. aforementioned are allegedly committed on 13.9.1999. It is therefore obvious that the offences alleged in the case in the Chief Judicial Magistrate's Court, Thiruvananthapuram, were committed before the Bangalore Court was seized of the offences involved in the case there.

8. This Court had occasion to consider the impact of the prohibition in S. 195 of the Cr.P.C. in *Parvathi Amma v. Damodaran Nambiar* (1999 (2) KLT 721). That was a case where forgery of a document was involved. The document was produced in court on a later date. Based on the dictum in *Sachida Nand Singh and Another Vs. State of Bihar and Another*, this Court found that in respect of the alleged forgery of a document committed before the document was produced in Court, the provisions under S. 195(1)(b)(ii) of the Cr.P.C. are not applicable and that the contention that the complaint as well as the FIR registered by the Police on the basis of the directions of the Magistrate to investigate and to file report before the Court under S. 156(3) of the Cr.P.C. are illegal and are liable to be quashed, is not sustainable.

9. *State of Punjab v. Raj Singh* 1998 (1) KLT SN 75 also dealt with a similar question. It was found by the Apex Court that a plain reading of S. 195 of the Cr.P.C. makes it clear that the prohibition comes into operation at the stage when the Court intends to take cognizance of an offence under S. 190(1) of the Cr.P.C. and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses commission of a cognizable offence, in accordance with Chapter XII of the Cr.P.C. even if the offence is alleged to have been committed in or in relation to any proceeding in court. In other words, the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by S. 195 of the Cr.P.C. though it is true that upon the charge sheet, if any, filed on completion of the investigation into such "an offence the court would not be competent to take cognizance thereof in view of the embargo under S. 195(1)(b) of the Cr.P.C. All the same, nothing in the section deters the court from filing a complaint for the offence on the basis of the FIR and the materials collected during investigation, provided it forms the requisite opinion

and follows the procedure laid down in S. 340 of the Cr.P.C.

10. In the present case, the complaint filed before the Chief Judicial Magistrate's Court, Thiruvananthapuram, is still at the stage of investigation. The C.J.M. Court has not yet taken cognizance of the offence. That apart, as already held, the offences were allegedly committed on a date before the proceedings in the Bangalore Court commenced.

11. In these circumstances, I am of the view that the petitioner is not justified in insisting that the proceedings before the Chief Judicial Magistrate's Court, Thiruvananthapuram, be quashed as not maintainable.

12. I have perused the Case Diary made available by the State Prosecutor. It is true that the case in the Bangalore Court is being investigated by the Directorate of Revenue Intelligence and the investigating Officer in the present case is a Deputy Superintendent of Police of the Kerala Police. I do not think that the difference in the ranks or in the cadres to which the investigating officers belong will have any impact with regard to the continuance of the investigation in the case initiated by a complaint made to the Chief Judicial Magistrate's Court, Thiruvananthapuram. The investigating Officer asserts that sufficient materials have been collected to indicate that the 5th accused in the Bangalore case from whose custody the heroin, in question, was seized was only a tool in the hands of the other accused and was only carrying out the designs hatched as part of the criminal conspiracy. Such being the trend of investigation, the question whether the conspiracy was, in fact, in existence or not is a material question which deserves to be considered.

13. In these circumstances, I am not satisfied that this is a fit case where the proceedings pending before the Chief Judicial Magistrate's Court, Thiruvananthapuram, can be justly quashed.

The Crl.M.C. is accordingly dismissed.