
(2001) 07 KL CK 0046
In the High Court Of Kerala
Case No : Criminal M.C. No. 1605 of 2001

Salim	Vs	APPELLANT
Deputy Superintendent of Police		RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(1), 173, 202, 202(1)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 37
Penal Code, 1860 (IPC) — Section 120B, 195, 196, 201, 211

Citation : (2001) 2 ALT(Cri) 139 : (2001) 3 ILR (Ker) 68 : (2001) 3 RCR(Criminal) 668

Hon'ble Judges : N. Krishnan Nair, J

Bench : Single Bench

Advocate : Jaiji Itten and Pramod Jaiji, for the Appellant; P.N. Sukumaran, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

N.Krishnan Nair, J.—Can a Magistrate forward a complaint to the police for investigation under S. 156(3) of the Code of Criminal Procedure when the offence complained of is exclusively triable by a Court Session? That is the question to be resolved in this petition filed under S. 482 of the Code of Criminal Procedure to quash the proceedings arising out of Crime No.234/CR/99/C.B.CI.E.,Special Investigation Group-I, Thiruvananthapuram.

2. The facts necessary for the disposal of this petition may be stated as follows: The petitioner is the 1st accused in Crime No. 234/CR/99/CBCID, Special Investigation Group-I, Thiruvananthapuram. The crime was originally registered as Crime No. 164/99 of Valiyathura Police Station. The case arose on a complaint filed by the de facto complainant against the petitioner and others before the Chief Judicial Magistrate's Court, Thiruvananthapuram, alleging the commission of the offences punishable under Ss. 195, 196, 201, 211, 120B and S. 307 of the Indian Penal Code which was forwarded to the police for investigation under S.

156(3) of the CrI.P.C. Subsequently as per a report filed by the investigating officer the offence under S. 21 of the N.D.P.S. Act is also included in the charge. The allegation is that accused Nos. 1 to 3 hatched a conspiracy to implicate the de facto complainant in a false narcotic case and in pursuance of the conspiracy the 1st accused procured 1.78 K.gms. of heroin and kept the same in a room at Bangalore, from where the D.R.I. officials seized the contraband. It is further that one of the accused informed the DRI officials that he heroin was brought there for handing over the same to the complainant for sale.

3. The petitioner filed a petition before this Court as CrI. M.C. No. 5072/99 to quash the proceedings exercising the jurisdiction under S. 482 of the CrI.P.C. Though the petitioner sought a stay of all further proceedings, this court was not inclined to stay the investigation. However, the petitioner was ordered to be released on bail on executing a bond for Rs. 10,000/- with two solvent sureties for the likesum to the satisfaction of the investigating officer. Thereafter the investigating officer moved an application before this Court for cancellation of the order and also to permit the investigating agency to arrest the petitioner in connection with the crime. This Court by order dated 7.12.2000 cancelled the order and directed the petitioner to move for bail before the Chief Judicial Magistrate's Court, Thiruvananthapuram. A direction was also given to the police not to arrest the petitioner whichever is earlier. Against this order, the petitioner moved a petition for special leave to appeal before the Hon'ble Supreme Court. The grievance of the petitioner before the Supreme Court was that the observation made by this Court that "there is prohibition for normal grant of bail imposed through S. 37 of the N.D.P.S. Act" is likely to be understood by the court below before which the bail application would be moved as one of imposing a total prohibition for granting bail. The Supreme Court made it clear that the said observation is not to be read like that and the observation only highlights the need to comply with S. 37 of the Act. The Supreme Court also directed the petitioner to surrender before the court and apply for bail and two weeks time was also granted to the petitioner. But without surrendering before the lower court as directed by the Supreme Court, the petitioner moved an application for bail before the Chief Judicial Magistrate, Thiruvananthapuram through his counsel. The said application was dismissed. The petition filed under S. 482 for quashing the proceedings was dismissed by this Court as per the order in CrI.M.C. 5072/99 dated 7th December, 2000. After the dismissal of the petition, the petitioner has again come up with this petition to quash the proceedings on the ground that the order of the Magistrate forwarding the petition to the police for investigation is illegal since one of the offences complained of is exclusively triable by the court of Session.

4. The learned counsel for the petitioner strongly contended that the Chief Judicial Magistrate ought not to have forwarded the complaint to the police for investigation since the petitioner and others are alleged to have committed an offence exclusively triable by the Court of Session. He also invited my attention to the first proviso to S. 202 of the CrI. P.C.

5. At the outset I must say this petition filed under S. 482 of the Crl. P.C. is not maintainable in view of the order of this Court in Crl.M.C.No. 5072/99 dated 7.12.2000. As stated earlier, the petitioner filed Crl.M.C.No.5072/99 before this Court to quash the proceedings alleging that the Cheif Judicial Magistrate went wrong in directing the investigation by the pokice 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 by the court concerned. On a consideration of the materials on record, the petition was dismissed finding that there are no sufficient grounds to quash the proceedings. Admittedly the order dated 7.12.2000 in Crl. M.C.No. 5072/99 dismissing the petition filed by the petitioner under S. 482 of the Crl.P.C. has become final. No doubt inherent jurisdiction under S. 482 of the Crl.P.C. can be invoked by the same person for a second time. But there must be a change of circumstances to entertain a second application. According to the petitioner, he is entitled to move a second application since he could not raise a very important contention in the earlier proceedings. I cannot agree. The petitioner ought to have raised all the contentions in the earlier proceedings. His failure to raise the contention in the earlier proceedings cannot be said to be a change in the circumstances of the case. However, I may consider the contention now raised by the petitioner. According to the petitioner, the order of the lower court forwarding the complaint to the Magistrate is clearly illegal since in the e complaint it is also alleged that the petitioner and others have committed the offence punishable under S. 307 of the IPC which is exclusively triable by the Court of Session. According to the learned counsel, the first proviso to S. 202 of the Crl.P.C. prohibits the Magistrate from forwarding such a complaint to the police for investigation. No doubt as per the first proviso to S. 202 if the Magistrate finds that the offence complained of is exclusively triable by the court of session, he shall not direct an investigation to be made by a police officer or any other person and he shall call upon the complainant to produce all his witnesses and examine them on oath. But in this case the complaint was forwarded to the police for investigation under S. 156(3) of the Crl.P.C. without taking cognizance of the offence, his power to direct investigation under S. 156(3) is unfettered. Even if the complainant alleges the commission of an offence exclusively triable by the Court of Session, the Magistrate can forward the complaint to the police under S. 156(3) of the Crl.P.C. In other words when a Magistrate sends the complaint for investigation under S. 156(3) of the Crl.P.C. the first proviso to S. 202(1) of the Crl.P.C. is not attracted. In this connection it is relevant to note the decision of the Supreme Court in Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, . In that case instead of taking cognizance of the offence, the Magistrate sent the complaint for investigation by the Police under S. 156(3) of the Crl.P.C. The Supreme Court held in that case that a Magistrate who receives a complaint disclosing offences exclusively triable by the court of Session is not debarred from sending the same to the police for investigation under S. 156(3) of the Crl.P.C. In this connection it is advantageous to refer to the following observations to the Supreme Court in the case referred to above :

"It may be noted further that an order made under sub-s. (3) of S. 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under S. 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under S. 156 and ends with a report or chargesheet under S. 173. On the other hand, S. 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under S. 202 to direct, within the limits circumscribed by that section, an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding". Thus the object of an investigation under S. 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him."

6. For the reasons stated above, I see no force in the contention of the learned counsel for the petitioner that the Chief Judicial Magistrate went wrong in forwarding the complaint to the police under S. 156(3) of the CrI.P.C. since the complaint also discloses the commission of an offence exclusively triable by the court of Session. There is no sufficient ground to exercise the extra ordinary power under S. 482 of the CrI. P.C. This petition is groundless and is liable to be dismissed.

In the result the petition is dismissed.