

(1989) 10 KL CK 0010

In the High Court Of Kerala

Case No : Criminal M.C. No. 909 and 945 of 1989

Satyanathan and Another

APPELLANT

Vs

T. Gopalakrishnan Nambisan and Another

RESPONDENT

Date of Decision : 12-10-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 11, 397, 482, 6, 97
Mental Health Act, 1987 — Section 13, 15, 16, 16(1), 3(4)

Citation : (1989) 2 KLJ 562

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

Bench : Single Bench

Advocate : M.A. Manhu, P.K. Aboobacker, P.K. Ibrahim and Chandrasekhar, for the Appellant; K. Kunhirama Menon and Public Prosecutor, T. N. Surendran, for the Respondent

Judgement

K.T. Thomas, J.—Satyanathan is final year M. B. B. S. student in the Medical College, Calicut. While studying medicine, he took particular interest in religious knowledge and eventually, he accepted faith of Islam. Though the change of faith did not invite much publicity initially, by efflux of time, it led to a situation in which the sanity of Satyanathan was brought into doubt. The consequence is that he is now being detained under orders passed by the Additional Judicial Magistrate of the First Class, Kozhikode. The detention is inside a room of the Mens Hostel attached to the Medical College. The detention was first made under an order passed in the purported exercise of Section 8 of the Mental Health Act, 1987. On the expiry of the period of the original order, Satyanathan was continued to be kept under detention by extending the period from time to time. Later, learned Magistrate realised that Mental Health Act has never been brought into force in the State of Kerala. Hence, the further detention was ordered in the purported exercise of some of the provisions of the Indian Lunacy Act, 1912 (for short "the Act"). The purpose Sought to be achieved by detaining Satyanathan is to subject him to observation by a team of medical experts attached to the Department of Psychiatry in the Medical College. Calicut. In the meanwhile, one

Abdul Kareem, another student of the same Medical College, filed CrI. M.C. No. 909/89 in this court praying for quashing the orders of detention. However, before the arguments could be heard in that case, CrI M. C, No. 945/89 has been filed by Satyanathan himself for similar reliefs. In view of the petition filed by Satyanathan, it is unnecessary to consider the locus standi of Abdul Kareem to challenge the orders affecting Satyanathan. Some more facts, which may be necessary for the disposal of these petitions, are the following: On 20-4-1989, Shri. T. Gopalakrishnan Nambisan, father of Satyanathan (who is the respondent in both the petitions here) gave First Information Statement to the Assistant Sub Inspector of Medical College Police Station, Calicut alleging that his son Satyanathan was abducted and kept in" concealment by four other students (Abdul Rasheed, Jalaludeen, Basheer and Abdul Kareem). The police registered a crime and started investigation. On 26-4-1989 Satyanathan's father filed a petition before the Additional Judicial Magistrate of the First Class, Calicut u/s 97 of the Code of Criminal Procedure (for short "the Code")" for the issue of a search warrant to trace out his son from the place of concealment. The father had alleged in the said petition that his son has some mental problems and that while he was under treatment, he was abducted by the four students who exerted pressure on him to proselytize him to the faith of Islam. On the same day. Satyanathan himself appeared in person before the learned magistrate and submitted a petition through Advocate Shri. Manjeri Sunder Raj in which he totally disowned any connection with the four students mentioned above. He made it clear that change of faith by conversion to Islam was done on his own accord uninflouenced by any other person. Learned magistrate observed, after questioning him in detail, that "Satyanathan does not seem to be a mental patient as he was giving sensible answers to all questions put to him". However, since it was Satyanathan's father who attributed insanity to his son, learned magistrate wanted him to be examined by a team Of expert doctors (one is the Director and Professor of Psychiatry and the other is the Tutor in Psychiatry). The doctors sent a report, after examining Satyanathan recommending that a two weeks" stay in hospital is necessary for Satyanathan to have "a thorough psychiatric examination and repeated observation". Accordingly, learned magistrate directed detention of Satyanathan "in a suitable place in the Medical College Hospital which is not having free access to the general public". The said order was passed on 28-4-1989. Though the learned magistrate did not use the term detention in his first order, he started using that word in subsequent orders by which the period of detention was extended from time to time (vide the order dated 17-5-1989). Learned magistrate has stated that it was passed in exercise of the powers under the proviso to Section 30 of the Mental Health Act, 1987.

2. On 15-5-1989, the team of doctors submitted a report expressing their "impression" that Satyanathan has "Paranoid Psychosis. They said in the said report that his cognitive functions are normal, his psychomotor activity is within normal limb, no formal thought disorders evident. No hallucinations elicited and on surface, he gives the impression of a person with very stable emotional

reaction. Learned magistrate seems to have allowed Satyanathan to be examined as a witness in court. He was cross-examined at length stretching over days to complete the examination. The impression one gathers from all the answers which Satyanathan gave is that he is a suave whose main interest is pursuit for scriptural treasures. None of the answers could possibly point to any abnormality of his mental or cognitive faculties. Despite all these, learned magistrate kept him under detention from 28-4-1989 onwards under orders of court which are in challenge in these proceedings.

3. Shri. K. Kunhirama Menon, learned counsel for the father of Satyanathan raised a preliminary objection regarding the maintainability of the petitions filed u/s 482 of the Code. He contends that the said section can be invoked only in proceedings under any provisions of the Code and since none of the impugned orders was passed under any provision of the Code, Section 482 cannot be invoked. But it is not disputed that the impugned proceedings were adopted by a Judicial Magistrate of the First Class, whether those proceedings were under the Mental Health Act, or under the Indian Lunacy Act - A court of Judicial Magistrate is a criminal court. Section 6 of the Code specifies the different classes of criminal courts and a court of the Judicial Magistrate of the First Class is one among them. That court was established by virtue of Section 11 of the Code. The inherent powers of the High Court preserved by the Code do not, in fact, come to the High Court because of enactment of Section 482, but because they are the inherent powers of the High Court. In fact, Section 482 is no part of the Code though it is incorporated in it (*Raja H. D. Singh v. Kunwar B. P. Singh*, 1962 All. L.J. 57). The argument in that case was that any proceedings under the Panchayati Raj Act though pending in a magistrate court are beyond the ken of inherent powers of the High Court. The said argument was repelled by A. N. Mulla, J., who observed that "The High Court is not only a Court of law, but a Court of justice also and in the interests of justice, the High Court can rectify a grave wrong". Section 482 preserves the inherent powers of the High Court not only to give effect to any order under the Code, but "to prevent abuse of the process of any court". Here, the word "process" is a general word. In effect, it denotes to anything done by the criminal Court, whether the action is under the Code itself or under any other enactment. (*Vide Kunhambu Nair v. State of Kerala*, 1977 KLT 189). The object is to prevent the abuse of the process of the criminal court and to secure the ends of justice. A reference to Section 397 of the Code in this context, is of use. The said Section confers revisional powers of the High Court or any Sessions Judge to call for the record "of any proceedings" before any inferior Criminal Court situate within its or his local jurisdiction. When the legislature conferred power over "any proceeding" of the criminal court, it intended to give power over a widest range of all proceedings in the inferior criminal courts. If that is the position in regard to the revisional powers, it cannot be understood that the amplitude of the inherent powers of the High Court preserved by the Code would be any less. In *Raj Kapoor and Others Vs. State and Others*, , V. R. Krishna Iyer, J. has observed: "The inherent power of the

High Court u/s 482 does not stand repelled when the revisional power u/s 397 overlaps. Nothing in the Code, not even Section 397 can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482.... The limitation is self-restraint, nothing more". The preliminary objection is, therefore, unsustainable.

4. Since it is not disputed that Mental Health Act, 1987 has not been brought into force in the State of Kerala, the scrutiny is to test the validity of the orders vis-a-vis the provisions of the Indian Lunacy Act. Certain powers are given by the said Act to a magistrate of the First Class who is specially empowered by the State Government to perform the functions of a magistrate under the Act. Satyanathan has a contention that the Additional Judicial Magistrate of the First Class has not been so empowered. Assuming that he is so empowered, the question is whether he has acted within his powers.

5. The Act is intended to be exercised in respect of a lunatic or a criminal lunatic. (Nobody has a case that Satyanathan is a criminal lunatic as defined in Section 3 (4) of the Act. Lunatic is defined as an idiot or person of unsound mind. Who is a person of unsound mind? The said words have not been defined in the Act, but those words indicate an abnormal state of mind as distinguished from weakness of mind. A man of weak mental strength cannot be called a man of unsound mind. Unsoundness of mind implies an unusual feature of the mind as has tended to make it different from the normal and has in effect impaired the man's capacity to look after his affairs in a manner in which another person without such mental irregularity will be able to do in the matter of his own. The idea suggests some derangement of the mind, whatever be its degree and it is not to be confused with or taken as analogous to a mere mental weakness or lack of intelligence". (Ganga Bhavanamma and Others Vs. Somaraju and Another and The State Vs. Durgacharan Barik alias Duria,). A Division Bench of this court has held that Lunatic under the Act refers to a state of mind, defective and undeveloped, as in the case of an idiot, or deranged or disordered, and thus abnormal and out of equilibrium as in unsoundness of mind" (In Peter v. Tresa, 1983 KLT 807). Serious contention has been raised about the applicability of the Act since Satyanathan cannot be considered, according to the counsel, as a person of unsound mind. The only provision which the teamed magistrate could probably have thought of to justify his action is Section 16 of the Act. No other provision gives him the power of detention before adjudging a person as lunatic. Section 16(1) confers jurisdiction on a magistrate to deal with a person who is alleged to be a lunatic when he is brought before the magistrate under the provisions of Section 13 or 15. Such a person can be detained by an order of the magistrate "for such time not exceeding 10 days as may be, in his opinion, necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a medical certificate may be properly given". Even if it is assumed that Satyanathan was brought before the learned magistrate under one of the relevant provisions of the Act, the detention should be limited to a period of 10 days in one instance. Learned magistrate has not

observed the said time limit when he extended the period of detention of Satyanathan on different occasions. The proviso to sub-section (2) imposes a ban on the magistrate against extension of the period of detention beyond a total period of 30 days. That sub-section reads thus;

(2) The Magistrate may, from time to time, for the same purpose by order in writing, authorize such further detention of the alleged lunatic for periods not exceeding ten days at a time as he thinks necessary:

Provided that no person shall be detained in accordance with of the provisions of this section for a total period exceeding thirty days from the date on which he was first brought before the Magistrate".

The detention of Satyanathan was commenced from 28-4-1989. It should not have gone beyond 27-5-1989 in any view of the matter. The order dated 26-5-1989 and the subsequent orders by which the detention period was extended later are all illegal ex facie and cannot be sustained for a moment.

I, therefore, quash the orders passed by the learned magistrate dated 26-5-1989 and the subsequent orders by which Satyanathan was directed to be detained.

Crl. M. Cs. are disposed of accordingly.