
(2014) 03 KL CK 0071
In the High Court Of Kerala
Case No : Crl. M.C. No. 4001 of 2012

Sudarsanan M.R.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Constitution of India, 1950 — Article 309
Criminal Procedure Code, 1973 (CrPC) — Section 155(2)(3), 155(2)(5), 156(1), 190, 195
Industrial Disputes Act, 1947 — Section 12(1), 12(5)
Kerala Conservation of Paddy Land and Wetland Act, 2008 — Section 11, 12, 12(1), 2(xii), 2(xv)
Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 — Section 25
Penal Code, 1860 (IPC) — Section 175, 176, 182, 188, 21

Citation : (2014) 2 KHC 595 : (2014) 2 KLT 1077

Hon'ble Judges : P.D. Rajan, J

Bench : Single Bench

Advocate : K.C. Eldho and M. Revikrishnan, Advocate for the Appellant; Jithesh R., (Public Prosecutor), Advocate for the Respondent

Judgement

P.D. Rajan, J.—This is a petition filed u/Section 482 of Cr.P.C. to quash Annexure-A final report in Crime No. 175/2012 of Chottanikkara Police Station, which was registered for offences punishable u/Section 188 IPC and u/Section 30 of Kerala Conservation of Paddy Land and Wet Land Act, 2008 (hereinafter referred to as the "Act" for short), pending before Judicial First Class Magistrate Court, Kolenchery as CC No. 1494/2012, by invoking the inherent jurisdiction. Petitioners are accused Nos. 5 to 11 in Crime No. 175/2012 of Chottanikkara Police Station, which was registered by the Sub Inspector of Police, Chottanikkara for violation of the provisions of the Kerala Conservation of Paddy Land and Wet land Act, 2008. Petitioners contended that mandatory provisions were not complied in this case and if trial is proceeded, it amounts to a mere abuse of the process of Court. The allegation against the petitioners is that on

30/05/2012 at about 8.45 a.m. while the Sub Inspector of Police, Chottanikkara, was on patrol duty, he found that the property comprised in Re. Sy. No. 269/5 in Block No. 2 of Kurikkad village, which includes a paddy land as per the revenue records, was converted illegally. There is a prohibition u/Section 3 of the Act for conversion of wet land and paddy land and petitioners, who are the owners of the property, ignoring that prohibition, converted the land for other purposes. Immediately, the Sub Inspector of Police, Chottanikkara registered the above crime and after completing investigation, he filed a final report in the Judicial First Class Magistrate Court, Kolencherry. In the circumstances, the petitioners approached this Court with this petition.

2. The inherent power contemplated under Section 482 Cr.P.C. has to be exercised only to prevent "abuse of the process" of any Court or to secure "the ends of justice", in a case when FIR was registered and the investigation is in progress, it is the responsibility of the Court to consider the face value which constitutes a prima facie case with regard to the allegation. If the allegations are so absurd and inherently improbable and there is no sufficient ground to proceed against the accused, the inherent power has to be exercised. The inherent jurisdiction can be exercised sparingly and carefully and with caution and only when such exercise is justified by the test specifically laid down in the Section itself. Apex Court in *State of Haryana v. Bhajanlal* 1992 SCC (CrI) 426 held as follows:

(1) Where the allegations in the FIR/complaint, even if they are taken at their face value do not prima facie constitute any offence against the accused. (2) Where the allegations in the FIR of other materials do not constitute a cognizable offence justifying an investigation by the police under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2)(3) Where the uncontroverted allegations in the FIR/complaint and the evidence collected thereon do not disclose the commission of any offence. (4) Where the allegations in the FIR/complaint do not constitute any cognizable offence but constitute only non-cognizable offence to which no investigation is permitted by the police without the order of Magistrate under Section 155(2)(5) Where the allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Statute concerned (under which the proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or in the Statute concerned, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused with a view to spite him due to private and personal vengeance.

3. Before adverting to the arguments in this case, it is fruitful to refer the

relevant provision of the Act. According to Section 3 of the Act, there is a prohibition on conversion or reclamation of paddy land. After commencement of this Act, it is stated in Section 3 that the owner or occupier or the person in custody of any paddy land shall not undertake any activity for the conversion or reclamation of such paddy land except in accordance with the provisions of this Act. But, it did not apply to the cultivation of any intermediary crops that are cultivated without changing the ecological nature of that paddy land or the strengthening of the outer bunds for protecting the cultivation.

4. Section 2(xii) defines "Paddy land"- means all types of land situated in the State where paddy is cultivated at least once in a year or suitable for paddy, cultivation but uncultivated and left fallow, and includes its allied constructions like bunds, drainage channels, ponds and canals; Section 2(xv) defines "reclamation", means such act or series of acts whereby a paddy land or a wet land as defined in this Act is converted irreversibly and in such a manner that it cannot be reverted back to the original condition by ordinary means. Section 2(xviii) defines "wet land", means, land lying between terrestrial and aquatic systems, where the water table is usually at or near the surface or which is covered by shallow water or characterised by the presence of sluggishly moving or standing water, saturating the soil with water and includes backwaters, estuary, fens, lagoon, mangroves, marshes, salt marsh and swamp forests but does not include paddy lands and rivers.

5. Taking cognizance of offence under the Kerala Conservation of Paddy Land and Wet Land Act 2008 is mentioned under Section 25, which reads as follows:

25. Cognizance of offence.--No Court below the rank of Chief Judicial Magistrate Court shall take cognizance of any offence punishable under this Act except on a report in writing of the fact constituting such offence by an officer authorised under sub-section (1) of Section 12.

The Chief Judicial Magistrate, who receives report u/Section 12(1), will have to consider the report and judicially take a decision to take cognizance of the offence. Therefore a written report of the facts by an authorised officer u/Section 12(1) is necessary for taking cognizance by a Court not below the rank of CJM. The term "cognizance" is not defined in the Code, but the word "cognizance" refers to a Court or Judge, "to take notice judicially". Taking cognizance does not involve any formal action of any kind, but when a Magistrate applies his mind to the commission of an offence for the purpose of proceeding to take subsequent steps towards inquiry and trial, taking cognizance includes intention of initiating a judicial proceeding against an offender in respect of an offence or taking steps to see whether there is a basis for initiating a judicial proceeding.

6. Section 12 of the Act deals with appointment of authorised officers and their powers. Besides this, every officer appointed in this Section shall be a public servant within the meaning of Section 21 IPC. Section reads as follows:

12. Appointment of Authorised Officers and their powers.--(1) The Government

may, by notification in the Official Gazette, Appoint such officers of the Revenue Department not below the rank of Village Officer as authorized officers and may determine the area of jurisdiction within which they shall exercise their powers under this Act.

(2) The Authorised Officer may, for the purpose of inspecting whether any of the provisions of this Act have been violated, or to prevent the commission of any of the offences under this Act,--

(a) enter any premises or any place connected therewith with such preparation as he thinks necessary for the inspection or investigation into the alleged offence under this Act;

(b) require any person to stop any act in contravention of Section 3 of Section 11;

(c) seize any vessel, vehicle or other conveyance or any implements used or purported to be used in contravention of the provisions of this Act and send a report to the Collector for initiating proceedings for their confiscation;

(d) require any person to furnish such information as he may consider necessary;

(e) take photographs, make inventories or do other things necessary for collecting evidence regarding the commission of the offence and send a report to the Court of competent jurisdiction in order to prosecute the accused.

(3) Any person required to produce any document or thing or to give any information to an authorised officer under this Section shall be legally bound to do so within the meaning of Section 175 and 176 of the Indian Penal Code 1860.

(4) Every authorised officer appointed under this Section shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

(5) If an officer authorised under sub-section (1) fails to take action on the report received by him regarding the violation of the Act, he shall be deemed to have committed an offence punishable under Section 23.

7. The use of the word "The Government "may", by notification in the Official Gazette, appoint such officers of the Revenue Department not below the rank of Village Officer as authorised officers and may determine the area of jurisdiction" in sub-section (1) of Section 12 has some significance. It means that Government is bound to issue a notification for appointing officers of the Revenue Department not below the rank of Village Officers as authorised officers and may determine the area of jurisdiction and then only such officers can exercise their power. In ordinary parlance "May" is used as an auxiliary verb qualifying the meaning of another verb by expressing ability, contingency, possibility or probability. Apex Court while discussing Constitution of India Article 309 in Keshav Chandra Joshi and others etc. Vs. Union of India and others, held that "The word "may" must be construed as to mean shall and is mandatory.

8. When a discretion is conferred upon a public authority coupled with an

obligation, Apex Court expressed that "may" is capable of meaning "Must" or "shall". This position is clarified in *Shri Rangaswami, The Textile Commissioner and Others Vs. The Sagar Textile Mills (P) Ltd. and Another*, and Apex Court held as follows:

The word "may" is capable of meaning "must" or "shall" in the light of the context where a discretion is conferred upon public authority, coupled with an obligation, the word "may" denoting discretion should be construed to mean a command.

The word "may" used in Section 31 Cr.P.C. 1973 (2 of 1974) not only confers a power but also imposes a duty of putting it in use. The word "may" in that Section should be read as meaning "shall". Where a Statute directs the doing of a thing for the sake of justice or public good, the word "may" has the same force as the word "shall". While discussing Section 12(5) of the Industrial Disputes Act, 1947, a Division Bench of Bombay High Court in *Firestone Tyre and Rubber Co. of India Ltd. Vs. K.P. Krishnan and Others*, , held as follows: "The expression "may" in Section 12(5) refers to a duty imposed upon Government. It has the implication of an obligation to discharge a duty which follows upon the satisfaction arrived at on a perusal of the report. When the Government is satisfied that there is a case for reference, but will not make a reference, the High Court would compel the Government by a mandamus to discharge its statutory duty.

9. A Three Judge Bench decision of the Apex Court in *State of Uttar Pradesh Vs. Jogendra Singh*, , held as follows: "The word "may" generally does not mean "must" or "shall". It is well settled that the word "may" is capable of meaning "must" or "shall" in the light of the context. It is clear that where a discretion is conferred on a public authority coupled with an obligation, the word, "may" which devotes discretion should be construed to mean a command. Sometimes, the Legislature uses the word "may" out of deference to the high status of the authority on whom the power and the obligations are intended to be conferred and imposed."

Having regard to the context under Section 12(1) of the Act in construing the power given to the Government, the expression "may" used in this Statute is read as "shall" or "must" when exercise of such power is conferred on a third person for an official act. In view of the above discussion, it is clear that a discretion is conferred on Government to notify the officer and the area of jurisdiction for exercising their power under the Act. For taking cognizance of the offence, a report in writing of the fact constituting such offence by the officers of revenue department not below the rank of Village Officer u/Section 12(1) is mandatory.

10. As per amendment Act, 14/2011, Government may, by notification in the Official Gazette, appoint officers of the revenue department, not below the rank of Village Officers, as authorised officers. Earlier notification GO (MS) No.

139/2009/Revenue Dt. 31/03/2009 was published in Kerala Gazette K. G. Ext. No. 806 Dt. 30/04/2009 and as per SRO No. 351/2009 - Land Revenue Commissioner, Additional/Joint/Deputy and Assistant Land Revenue Commissioner, District Collectors and Revenue Divisional Officers were notified as the authorised officers. After amendment Act, 14/2011, no fresh notification has been issued by the Government u/Section 12(1) authorising revenue officer not below the rank of Village Officer as authorised officers. It is not clear whether all the Village Officers in a District are appointed as the authorised officers in their jurisdiction or one Village Officer is appointed for the entire District by the Government. Such notified officers alone can make a report to the Chief Judicial Magistrate and on such report, Chief Judicial Magistrate can take cognizance of such offence. The Sub Inspector of Police is not an authorised officer for filing a report as per Section 12(1) of the Act. Therefore, the Judicial First Class Magistrate Court, Kolencherry is not the designated Court for taking cognizance of such offence.

11. A Division Bench of this Court while discussing Section 25 of Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 in Ismayil Vs. State of Kerala, held that when the Statute unambiguously postulates a specific method for taking cognizance, it shall follow such method. In view of the above decision, if the same principle is adopted, an authorised officer u/Section 12(1) of the Act alone can file a report for taking cognizance of any offence before CJM and any report submitted by a non-empowered officer or a non-notified officer is not sufficient for the compliance of Section 25 of the Act.

12. Another aspect to be noticed at this juncture is that offence u/Section 188 IPC was charge-sheeted by the police ignoring the restriction under Section 195 Cr.P.C. A scrutiny of Section 195 Cr.P.C. reveals that the Section is mandatory and the concerned public servant alone can make a complaint and initiate action in respect of these offences. The object of imposing this limitation is to save the accused from vexatious or baseless prosecutions by private complainants. The expression "public servant concerned" in Section 195(1)(a) includes the person holding the office of the public servant for the time being. The power to make the complaint conferred by Section 195(1)(a) is not in a personal capacity, but it can be exercised by the public servant or his successor-in-office of the public servant whose order is disobeyed under Section 188 IPC.

13. In A.R. Antulay Vs. Ramdas Srinivas Nayak and Another, , Apex Court held as follows:

While Section 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199 of the Cr.P.C. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal

jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e., an act or omission made punishable by any law for the time being in force is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. Punishment of the offender in the interest of the society being one of the objects behind penal Statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. To held that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the Court would require an unambiguous statutory provision and a tangled web of argument for drawing a far fetched implication, cannot be a substitute for an express statutory provision.

14. In Daulat Ram Vs. State of Punjab, Apex Court held as follows:

There is an absolute bar against the Court taking seisin of a case under Section 182, IPC except in the manner provided by Section 195(1)(a). Where the patwari makes a false report against certain persons knowing and believing that action would be taken the offence under Section 182 IPC was complete. It was therefore incumbent if the prosecution was to be launched, that the complaint in writing should be made by the Tahsildar viz., the public servant concerned. Compliance of Section 195 is not made if the Superintendent of Police, after the allegations were disproved asked the Tahsildar for "a calendar". The Court having taken cognizance without the complaint in writing of a public servant the cognizance of the case wrongly assumed and the trial was thus without jurisdiction ab initio.

15. In G. Pantigongpou Vs. State of Manipur, Gauhati High Court while discussing Section 188 IPC, held as follows:

In the absence of the complaint required by Section 195, the Magistrate acts without jurisdiction in summoning the accused and the subsequent proceedings are, therefore, void.

Therefore cognizance of the offence u/Section 188 IPC without a complaint by the concerned public servant is void. If trial is proceeded on police report, it amounts to a mere abuse of the process of Court. Arrest by the Police and filing a final report do not amount to cognizance of an offence by a complaint. The Section is mandatory and violation of such provision absolutely bar the Court to take cognizance. Therefore I am of the opinion that this is a fit case to invoke the inherent jurisdiction under Section 482 Cr.P.C.

Hence, I quash Annexure-A final report in Crime 175/12 of Chottanikkara Police Station and the cognizance taken in CC No. 1494/12 by Judicial First Class Magistrate, Kolencherry. Consequently I observe as follows:

(a) There will be a direction to the Government to issue notification in the Official Gazette for appointing such officers of the Revenue Department not below the rank of Village Officer as authorised officers u/Section 12(1) of the Kerala Conservation of Paddy Land and Wet Land Act, 2008.

(b) The area of jurisdiction within which they shall exercise their powers under the Act shall be mentioned in the notification.

(c) A communication shall be issued to all authorised officers u/Section 12(1) of the Act to file a report in writing of the fact constituting any offence punishable under the Act for taking cognizance by a Court not below the rank of Chief Judicial Magistrate of each District.

This petition is allowed.