
(2011) 06 KL CK 0228

In the High Court Of Kerala

Case No : Criminal M.C. No. 1783 of 2011

Sunil Vishwanath, Advocate

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 366, 376, 384

Citation : (2011) 06 KL CK 0228

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : C.S. Manu, for the Appellant; No Appearance, for the Respondent

Judgement

Thomas P. Joseph, J.—Petitioners are a lawyer practicing on the criminal side at Karunagappally and his clerk, arrayed as accused 2 and 3 in Crime No. 738 of 2011 of Chavara Police Station registered for offences punishable under Sections 366, 376, 384 and 120B of the Indian Penal Code. That case was registered on a direction given by the learned Judicial First Class Magistrate, Karunagappally based on a statement given by the alleged victim before the learned Magistrate on her being produced in Court. She stated that a few days back she went to various places with a boy aged 20 years since according to her, her parents had arranged a marriage against her wishes. She claimed that she was in love with the said boy with whom she had left the place. They went to Thenkasi where from a few persons brought them back to Karunagappally and accordingly, they reached that place on 02.06.2011. hHerself and her lover stayed in a house at Ambalapuzha for a few days (learned Public Prosecutor submitted that as per the instruction given to him the house was arranged at Thottappally in Alappuzha District). She stated that Petitioner in CrI.M.C. No. 1783 of 2011 had arranged that house for their stay at Ambalapuzha. The girl also stated about her ornaments and money being taken or extorted by some of the accused. At one stage she is seen to have told learned Magistrate that she has complaint about her lover (with whom she had gone to Thenkasi and other places). She also

stated that without her consent, her lover had subjected her to sexual intercourse. She was aggrieved as her ornaments and money were not returned to her. She has complaint against all who are involved in the matter. Learned Magistrate forwarded that statement to the Chavara police based on which the case was registered against Petitioners as well. Petitioners request this Court to quash proceeding against them. Learned Counsel has contended that Petitioner in CrI.M.C. No. 1783 of 2011 has only discharged his professional duty of giving a legal opinion. It is also pointed out by learned Counsel that even as per the statement given by the girl before the learned Magistrate, there is no allegation that any of the Petitioners are involved in the alleged abduction, extortion or rape and that the only allegation is that Petitioner in CrI.M.C. No. 1783 of 2011 arranged the house for the stay of the girl and her lover and the clerk of the advocate (Petitioner in CrI.M.C. No. 1808 of 2011) threatened the girl. Learned Counsel invited my attention to Annexure-A3, statement of the girl to the police where there is no mention about any involvement of Petitioners. It is also submitted by learned Counsel that case was registered by the Sub Inspector, Chavara who had a grudge against Petitioner in CrI.M.C. No. 1783 of 2011 for appearing on behalf of the accused who is said to have assaulted that Sub Inspector and he was able to get bail for that accused without a remand. Learned Public Prosecutor has submitted on getting instruction that investigation is at the preliminary stage and involvement of Petitioner in CrI.M.C. No. 1783 of 2011 is not ascertained so far. It is necessary to question the first accused, Jerrin (the alleged lover of the girl).

2. It is seen from the record that it is not as if the case was registered by the Sub Inspector on information given to him by the alleged victim. On the other hand, the statement based on which the case was registered was given by the girl to the learned Magistrate who forwarded a copy of that statement to the Chavara police for necessary action. Annexure-A3 contains the order dated 06.06.2011 passed by the learned Magistrate in that regard. It is accordingly that the case was registered against Petitioners.

3. It is not possible to say at this stage whether allegations made against Petitioners are correct or not or they are in any manner involved in the alleged incident. That is CrI.M.C. Nos. 1783 and 1808 of 2011 evident from the submission of learned Public Prosecutor on getting instruction from the Circle Inspector who is presently investigating the case that as of now, involvement of Petitioner in CrI.M.C. No. 1783 of 2011 is not ascertained. The matter requires investigation. It is required to be ascertained whether Petitioners or any of them had any role in the matter and if at all it be, concerning what. These are matters which the officer investigating the case has look into. The officer has also to bear in mind that the allegation concerns a member of the legal profession. I pointed out that only to say that the investigating officer has the added responsibility to look into every aspect of the matter before concluding one way or the other in the matter. Having regard to the situation as it is, I do not consider it appropriate or necessary to quash proceeding against Petitioners at this stage.

4. But the grievance of Petitioners is also required to be looked into. They have a case that the Sub Inspector, Chavara had a grudge against them for the reasons stated above (I am not going into the truth or otherwise of that allegation). Having regard to the seriousness of the matter, it is appropriate that investigation is conducted by a senior officer. I am told that Circle Inspector, Chavara is conducting the investigation. Investigation shall be conducted by an officer senior in rank to CrI.M.C. Nos. 1783 and 1808 of 2011 the Circle Inspector, Chavara. That officer shall look into every aspect of the matter including the complaint of Petitioners referred above and conduct the investigation in a fair and proper manner. The District Police Chief, Kollam shall issue necessary orders to transfer investigation of the case to an officer senior in rank to the Circle Inspector, Chavara who is presently investigating the case.

Resultantly these petitions are disposed of directing (without prejudice to the right of Petitioners to challenge the final report if any that may be filed against them) that the investigation of Crime No. 738 of 2011 of Chavara Police Station shall be conducted by an officer senior in rank to the Circle Inspector, Chavara as shall be appointed by the District Police Chief, Kollam. This shall be done within a week from the date of receipt of a copy of this order. Petitioners shall make available a copy of this order to that officer. The Investigating Officer shall ensure that Petitioners are not harassed.