
(2014) 02 KL CK 0025
In the High Court Of Kerala
Case No : Criminal Reference No. 7 of 2012

Suo Motu

APPELLANT

Vs

Thomson and Another

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Commission for Protection of Child Rights Act, 2005 — Section 25
Copyright Act, 1957 — Section 51, 52(A), 63, 68(A), 68A
Criminal Procedure Code, 1973 (CrPC) — Section 395
Penal Code, 1860 (IPC) — Section 292
Young Persons (Harmful Publications) Act, 1956 — Section 2(a), 3, 3(1)(b)

Citation : (2014) CriLJ 1863 : (2014) 1 ILR 945 : (2014) 1 KHC 630 : (2014) 1 KLJ 844

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : N. Suresh, Public Prosecutor for 2nd Respondent, Advocate for the Respondent

Judgement

K. Ramakrishnan, J.—This is a reference taken on the basis of a request for reference made by the Sessions Judge, Ernakulam, u/s 395 of the Criminal Procedure Code.

2. Crime No. 180/2006 of Munambam Police Station was registered against the accused, alleging offences u/s 292 of the Indian Penal Code and Section 3(1)(b) of Young Persons (Harmful Publication) Act, 1956 and Section 51 read with Sections 63 and 68A of Copy Right Act.

3. The case of the prosecution in that case was that on 29-7-2006, at about 7.15 p.m., the police party detected the accused displaying the CDs containing obscene pictures and also displaying spurious CDs of different films, violating the provisions of Copyrights Act and the same was intended for either sale or for hire. This was displayed in his shop with name "Toms CDs" at Angadi Bhagam, Pallipuram Village. After investigation, final report was filed before the Judicial First Class Magistrate Court I, North Paravur, and it was taken on the file by that

court and the learned Magistrate has taken cognizance of the case as C.C. No. 658/2006. Later after the establishment of Special Court u/s 25 of the Commission of Protection of Child Right Act, 2005, the Magistrate took the view that, he lost jurisdiction to proceed with the case and so committed the case to the Court of Sessions as per order in C.P. No. 150/2010. When this was received by the learned Sessions Judge, Ernakulam, the learned Sessions Judge thought that the committal order passed by the court below was not proper and that will not come under the purview of Section 25 of Commission of Protection for Child Right Act, 2005, as no child is involved in the case and wanted the interference of this Court to quash the committal order and direct the Magistrate to proceed with the trial of the case. Hence this reference. Notice was sent to the accused but he remained absent.

4. Heard the learned Public Prosecutor as well.

5. It is seen from the letter of reference sent by the Sessions Court that, the case was detected by the Sub Inspector of Police, Munambam Police Station, and a crime was registered as Crime No. 180/2006 against the accused, alleging offences u/s 292 of the Indian Penal Code and Section 3(1)(b) of Young Persons (Harmful Publication) Act, 1956 and Section 51 read with Sections 63 and 51 read with Section 68(A) of Copyrights Act.

6. The allegation of the prosecution was that, on 29-7-2006 at about 7.15 p.m., the police party found that the accused was displaying CDs containing obscene pictures and some fake CDs of different films for the purpose of sale or rent in his shop, named "Toms CDs" at Angadi Bhagam in Pallipuram Village, in violation of the provisions of the Copyright Act and the act of the accused will amount to impure thoughts of youths and tend to commit sexual offences and thereby he had committed the offence punishable u/s 292 of the Indian Penal Code and Section 3(1)(b) of the Young Persons (Harmful Publication) Act, 1956 and Section 51 read with Sections 63 and 51 read with Section 68A of the Copyrights Act. After investigation, the Investigating Officer submitted final report before the Judicial First Class Magistrate Court I, North Paravur. The learned Magistrate had originally taken cognizance of the case as C.C. No. 658/2006. While the case was pending before that court, when the Principle Sessions Courts have been designated as Special Courts to try the offences, affecting children and their rights u/s 25 of the Commission for Protection of Child Right Act, 2005, the Magistrate thought that, this will fall under that category and committed the case to the Court of Sessions as per order in C.P. No. 150/2010 dated 5-4-2011.

7. Section 2(a) of Young Persons (Harmful Publication) Act, 1956 defines harmful publication means:

(a) "harmful publication" means any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures, being stories portraying wholly or mainly--

- (i) the commission of offences; or
- (ii) acts of violence or cruelty, or
- (iii) incidents of repulsive or horrible nature;

in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty or in any other manner whatsoever.

8. Section 3 of the Act deals with punishment, which may extend to six months or fine or with both.

9. Section 63 of the Copyrights Act deals with punishment for infringement of Copy Right and it shall not be less than six months but may extend to three years and fine which shall not be less than Rs. 50,000 but which may extend to Rs. 2,00,000. Section 68(A) of the Copyright Act prescribes penalty for contravention of Section 52(A) of the Act, which may extend to three years imprisonment. Neither the Copyright Act nor Young Persons (Harmful Publication) Act, specifies a Sessions Court as Special Court for trial of offences under the respective Acts. Schedule II of the Code of Criminal Procedure shows that, the offences of this nature are to be tried by the Magistrate. Further there is nothing mentioned in the case on records of that case, that any child has been affected or any child's right has been affected therein. In the decision reported in the Abdul Aziz Vs. Circle Inspector of Police and others, , this Court has held that, only if a child is involved or child has been attacked or child's rights have been affected, only those cases need be tried by the Special Court constituted u/s 25 of the Commission of Protection for Child Right Act, 2005. In this case, no right of a child has been affected. Further no child has been involved in the transaction as well. So under the circumstances, the order of the Magistrate committing the case to the Sessions Court, on the assumption that this also will fall under the category of cases, triable by the Special Court, designated u/s 25 of the Commission of Protection for Child Right Act, 2005 is unsustainable in law and the order of committal passed by the learned Magistrate in C.P. No. 150/2010 is liable to be quashed. So the order of committal passed by the learned Magistrate in C.P. No. 150/2010 (C.C. No. 658/2006 in Crime No. 180/2006 of Munambam Police Station) committing the case to Sessions Court is set aside and the same is transferred to the Magistrate Court and the Magistrate is directed to dispose of the case in accordance with law. The learned Sessions Judge is directed to transfer the records to the concerned Magistrate Court for the disposal of the case.

With the above direction and observation, this reference is answered and disposed of.

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