

(2010) 07 KL CK 0170

In the High Court Of Kerala

Case No : Writ Petition (C) No. 33002 of 2007 (D)

Thazhepuram Nabeesu

APPELLANT

Vs

State of Kerala, P. Kunhan Bava, Retd. Sub Inspector, C.
Damodaran, Retd. Asst.Sub Inspector and M. Suresh

RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 202, 204
Penal Code, 1860 (IPC) — Section 302, 323, 34, 506

Citation : (2010) 07 KL CK 0170

Hon'ble Judges : V. Ramkumar, J

Bench : Single Bench

Advocate : C.P. Peethambaran, for the Appellant; K.V. Sohan, for the Respondent

Judgement

V. Ramkumar, J.—Petitioner, who is the mother of one Mujeeb challenges the refusal on the part of the 1st Respondent to accord sanction to prosecute Respondents 2 to 4, who were the Police Officers attached to crime detection party of Thalassery Police Station. According to the Petitioner, on 27.3.1996 at 9 P.M. the 2nd Respondent herein, who was the Additional Sub Inspector of Police, Thalassery and Respondents 3 and 4 who were constables attached to the crime detection party of Thalassery Police Station during the course of investigation of Crime No. 184/1996 against the six persons including the said Mujeeb (for allegedly beating one Pradeepan), went in search of the Petitioner's son Mujeeb and seeing the police party her son ran away and the police officers referred above, pushed him into the well in the property of one Janaki @ Vellachayil Vijayalakshmi and since the Petitioner's son did not come out of the well, in spite of the direction of the accused Nos. 1 and 3, the 1st accused hurled a granite stone at Mujeeb and the stone struck on his head and Mujeeb sustained fatal injuries. Even though he was rescued from the well he succumbed the injuries on 28.3.1996.

2. After the death of the Petitioner's son, the Petitioner preferred a private

complaint before the Additional Chief Judicial Magistrate Court, Thalassery as CMP No. 3131/1996. The learned Magistrate took cognizance of the offences punishable under Sections 323, 506(II) and 302 read with 34 IPC against the Additional Sub Inspector of Police and two police constables ie; Respondent Nos. 2 to 4 herein and registered the case as C.P. No. 1/1998. Out of the three accused persons, the 2nd accused was absconding. Therefore, after conducting the mandatory enquiry u/s 202 Code of Criminal Procedure the learned Magistrate as per Ext.P2 order dated 31.12.2005 committed the case as against A1 and A3 to the Court of Sessions. The case as against the absconding accused No. 2 was re-filed as C.P. No. 79/2007.

3. Accused Nos. 1 and 2 filed Crl.M.C. No. 2712/2006 before this Court contending inter alia that since the offences alleged against them were said to have been committed during the discharge of their official duty, the cognizance taken as against them without the requisite sanction for prosecution u/s 197 Code of Criminal Procedure was bad in law. As per Ext.P3 order dated 14.2.2007, this Court upheld their contentions and held that the Petitioners and 2nd Respondent (3rd accused) therein could be prosecuted only after obtaining the requisite sanction u/s 197 Code of Criminal Procedure. Thereafter, the Petitioner submitted Ext.P4 application before the Home Secretary, Government of Kerala seeking sanction to prosecute Respondent Nos. 2 to 4 herein. As per Ext.P5 communication dated 20.8.2007, the Petitioner was informed that the permission to prosecute Respondent Nos. 2 to 4 herein was declined since enquiries conducted through the Director General of Police revealed that the allegations raised against them were baseless. Ext.P5 was the reply given to the Petitioner on her application under the Right to Information Act, 2005. Hence this writ petition.

4. Since Ext.P5 was only a communication informing the Petitioner about the refusal to accord prosecution sanction, this Court called for the files. The learned Government Pleader produced before this Court the files pertaining to Ext.P4 application. The said files also contain only the recommendations of the Superintendent of Police, Kannur to the Director General of Police, Kerala that there is no need to accord sanction for prosecution. There is no formal order refusing sanction to prosecute Respondents 2 to 4. Ext.P5 also cannot be treated as an order refusing prosecution sanction. Accordingly, this writ petition is disposed of directing the 1st Respondent to consider all aspects of the matter and issue a formal speaking order disposing of Ext.P4 application for prosecution sanction. The Petitioner shall be given an opportunity of being heard by the Government before disposal of the Ext.P4 application for prosecution sanction. The learned Counsel appearing for Respondent Nos. 2 to 4 made a request for a personal hearing by the 1st Respondent. The accused have no right to be heard in the matter of prosecution sanction which belongs to the realm of investigation. The right of the accused to be heard arises only when they are summoned pursuant to the process issued by the Court u/s 204 Code of Criminal Procedure and not before. No doubt, if a sanction for prosecution has been accorded in a

given case, the accused are free to assail the same at the appropriate stage. The 1st Respondent after passing a speaking order disposing of Ext.P4 application shall communicate the said order to the Petitioner. This writ petition is disposed of as above.