

(2001) 07 KL CK 0025

In the High Court Of Kerala

Case No : O.P.Nos. 5399, 8938 and 10025 of 1998

Unnikrishnan

APPELLANT

Vs

Divisional Inspector of Police

RESPONDENT

Date of Decision : 05-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 4
Constitution of India, 1950 — Article 226, 227, 246, 357, 359
Criminal Procedure Code, 1973 (CrPC) — Section 5
Mercantile Shipping Act, 1958 — Section 361, 368
Penal Code, 1860 (IPC) — Section 114, 2, 304(A), 337, 4

Citation : (2001) CriLJ 4558 : (1993) 1 KLJ 706

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : K.P. Vijayan, V.B. Jinnah, Bobby Mathew and K.S. Sreekumar, for the Appellant; V. Bhaskara Menon, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—Main question urged in these Original Petitions is whether powers of the ordinary criminal court are barred by detailed provisions contained in Part XII of the Mercantile Shipping Act.

2. On 21.7.1990, at about 0050 hours, a fire was noticed in and around the Cochin Oil Terminal area. At the time of the unfortunate incident, two boats, belonging to a contractor engaged by the Cochin Port Trust for the use of the staff, were lying along the Cochin Oil Terminal at the rear side. On seeing the fire, employees of the boats untied the same and started the engines and tried to get away from the place of incident. But, they were not able to escape. The boats were completely burnt. Four men who were inside the boats also lost their lives in the incident. An FIR was filed by the police immediately, reporting the incident, before the Additional Judicial First Class Magistrate's Court, Ernakulam. Thereafter, by notification dated 8.1.1992, Government of India published notification in the India Gazette dated 25.1.1993 empowering the Chief Judicial

Magistrate, Ernakulam under S. 361 of the Mercantile Shipping Act, 1958 (hereafter referred to as "the act") to conduct a formal investigation under para 12 of the Act into the loss of lives and boats and cause of fire. S. 361 of the Act reads as follows:

"361. Court empowered to make formal investigation: A Judicial Magistrate of the first class specially empowered in this behalf by the Central Government and a Metropolitan Magistrate shall have jurisdiction to make formal investigation into shipping casualties under this part."

The Chief Judicial Magistrate, Ernakulam, accordingly, conducted a detailed investigation. Petitioners in these three Original Petitions were also examined. After a very detailed consideration, the Chief Judicial Magistrate held that the fire occurred due to the leaking of naphtha from the cargo ship M.T. Dadabai Naoroji which was discharged alongwith the ballast water from the ship on 21.7.1990 and the following finding was entered into:

"18. Therefore, on a consideration of the entire evidence and the circumstances in this case, I conclude that the loss of life and boats and the cause of the fire in and around the Cochin Oil Terminal area on 22.7.1990 occurred due to pollution of naphtha by M.T. Dadabai Naoroji."

Ext.P1 report was submitted on 10.6.1994. Consequent to the finding, charges were issued to the petitioners, who were Captain, Chief Officer and Chief Engineer of the above ship at that time, under Ss. 114, 337, 431 and 304(A) of the Indian Penal Code.

3. This Original Petition is filed to quash the above charges on the contention that in view of the provisions in S. 361 of the Act, no criminal prosecution can be taken as there is an implied bar and criminal courts have no jurisdiction to deal with the matter and findings of the enquiry as per the Act. 368 of the Act is relied on by the petitioners to that purpose which is as follows:

"368. Power to commit for trial and bind over witnesses:- Whenever, in the course of any such investigation or inquiry, it appears that any person has committed in India an offence punishable under any law in force in India, the court making the investigation or inquiry may (subject to such rules consistent with this Act as the High Court may from time to time make) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper court, and may bind over any person to give evidence at the trial, and may, for the purpose of this section, exercise all its powers as a criminal court."

4. The above section only empowers the investigating court to arrest, commit and grant bail for trial of a person and bind over such person before the proper court and for that purpose the investigating court has got the power of a criminal court. Therefore, the above section is very clear that the investigating court investigating the matter under S. 361 has no power for convicting any person. S. 368 is an enabling power given to the investigating court to commit for trial and

bind over witnesses. But, it is for the proper court to try the case and decide whether punishment is necessary or not and the above section, neither impliedly nor expressly, makes any bar in proceeding before the criminal court.

5. The offences now charged are under the Indian Penal Code. Punishment of the offence committed within India are covered by S. 2 of the Indian Penal Code as well as by the procedure laid down under the Code of Criminal Procedure, 1908. In S. 4 C.P.C., it is stated that offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained therein. Therefore, trial of the offence alleged to have been committed has to be done according to the Code of Criminal Procedure by the jurisdictional criminal court. That is why, even under S. 361, the investigating court is also directed to commit the offence to the proper court. No other special form of procedure is prescribed so as to attract S. 5 of the Code of Criminal Procedure. Therefore, if an offence under the Indian Penal Code is alleged, the criminal courts in India, unless otherwise expressly barred, have power to deal with the matter after complying with the procedure laid down in the Code of Criminal Procedure and, here, there is neither an express bar nor an implied bar and merely because there are provisions in the Mercantile Shipping Act for a detailed enquiry and investigation, there is no bar for taking action under the Code of Criminal Procedure when offences under the Indian Penal Code are alleged to have committed. Therefore, I am of the opinion that the contention regarding maintainability of the petition cannot be accepted.

6. It is contended that in Ext. P1 finding of the Chief Judicial Magistrate, there is no finding against the petitioners in these three Original Petitions, who were in charge of the ship at that time. Further, it is also pointed out that there was delay in framing charge sheet. It is true that the incident happened in 1990. Ext. P2 FIR was lodged immediately regarding the incident and investigation was set in motion. In view of the investigation by the Chief Judicial Magistrate, police awaited for the report. There was a finding in Ext. P1 report of investigation that the fire occurred due to the leakage of naphtha from the vessel in question in which petitioners were the controlling officers. Charge sheet were laid without much delay. Therefore, it cannot be stated that charge sheets are liable to be quashed on the ground of delay in the absence of specific findings in Ext. P1 report. Quashing of a criminal proceeding under Arts. 226 and 227 of the Constitution of India can be done very rarely in exceptional cases. Here, the Court is not concerned whether they will be convicted or not, after the trial. The only question to be considered at this stage is whether, from the facts as alleged by the prosecution, prima facie, the charges will lie. Whether charges can be proved or not is a matter to be considered by the trial court after evidence. In this case, the finding, which is not disputed by the petitioners, is that the fire occurred due to the discharge of naphtha in ballastic operation by the ship in question and they were the Chief Officers controlling the ship. Whether there is any carelessness on their part as alleged in the charge, whether charge as framed with lie or not etc. are questions to be considered before the court

concerned. It is for the petitioners to place their defence when prosecution attempts to prove the charges.

7. It is also submitted by the petitioners that since the Mercantile Shipping Act was enacted under List I (Union List) under Art. 246 of the Constitution of India, the State has no jurisdiction in the matter. Here, the petitioners were charge-sheeted not under the Mercantile Shipping Act, but they were charge-sheeted for the offences under the Indian Penal Code. Therefore, the above contention regarding lack of jurisdiction of the police or criminal courts in the State cannot be accepted at all. Petitioners' contention that in view of Ss. 357 and 359 of the Act, jurisdiction of the criminal court established as per the Code of Criminal Procedure is ousted cannot be accepted.

8. It is finally submitted by the counsel for the petitioners that petitioners who are officers of the ships are in high seas. If that is so, petitioners can file petition for dispensing with their presence and the Court need insist their presence only if their presence is absolutely necessary and, I am sure, that the Criminal Court will pass necessary orders if a presented for dispensing with their presence.

All the three Original Petitions are dismissed with the above observations.