C.P.Sunaid Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Feb. 4, 2025

Acts Referred: Code of Criminal Procedure, 1973 â€" Section 4, 4(2), 157, 173, 173(2)
Drugs and Cosmetics Act, 1940 â€" Section 32, 32(3), 36AC
Environment (Protection) Act, 1986 â€" Section 15, 19
Transplantation of Human Organs Act, 1994 â€" Section 22
Protection of River Banks and Regulation of Removal of Sand Act, 2001 â€" Section 25(1)

Hon'ble Judges: G. Girish, J

Bench: Single Bench

Advocate: Grashious Kuriakose, George Mathews, Pranoy K.Kottaram, Sangeetharaj N.R.

Final Decision: Allowed

Judgement

G. Girish, J

1. Whether the bar in taking cognizance of offences under The Environment (Protection) Act, 1986, in view of Section 19 of the said Act, is fatal for

the maintainability of a prosecution instituted on a final report filed by the police in respect of the offence under Section 15 of the said Act, is the

matter to be decided in this petition.

2. The petitioners who are running a hotel at Kannur, were booked by the Kannur City Police for the offence under Section 15 of The Environment

(Protection) Act, 1986 (hereinafter referred to as Ã¢â‚¬Ëœthe ActÃ¢â‚¬â„¢) for the reconstruction of their hotel without obtaining the clearance from the

Kerala Coastal Zone Management Authority. The crime was registered on 07.05.2016 as per the direction of the District Collector, Kannur. After the

completion of the investigation, the Sub Inspector of Police, Kannur City filed the final report before the Jurisdictional Magistrate alleging that the

petitioners committed offence under Section 15 of the Act. The learned Magistrate took cognizance of the offence, admitted the final report to files as

C.C.No.1336/2017 and issued summons to the petitioners. Now, the petitioners seek to quash all the proceedings initiated against them consequent to

the registration of the said crime stating the reason that Section 19 of the Act proscribes taking cognizance of the offence under Section 15 of the Act

except on a complaint preferred by the authority or person authorised by the said Section.

3. Heard the learned counsel for the petitioners and the learned Public Prosecutor representing the State of Kerala.

4. Section 19 of the Act, as it stood at the time of commission of the alleged offence, is as follows:

Ã¢â‚¬Å“19. Cognizance of offences - No court shall take cognizance of any offence under this Act except on a complaint made by -

(a) the Central Government or any authority or officer authorised in this behalf by that Government, or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the

Central Government or the authority or officer authorised as aforesaid.Ã¢â‚¬â€‹

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5. As per the aforesaid provision of the Act, cognizance of any offence under that Act could be taken if only the complaint is filed by the Central

Government or any authority or officer authorised by that Government, or by a person who had given notice sixty days in advance in the prescribed

manner to the Central Government or the authorised officer or authority about its intention to prefer such a complaint. As far as the present case is

concerned, the learned Magistrate had taken cognizance of the offence on the basis of the final report filed by the S.I of Police, Kannur City about the

commission of offence. The learned Public Prosecutor would contend that the crime in this regard had been registered by the police on the basis of

the direction of the District Collector, Kannur, who is authorised by the Central Government to initiate proceedings under the Act for the violation of

the provisions incorporated thereunder. It is further submitted by the learned Public Prosecutor that the offence under Section 15 of the Act is

punishable with imprisonment upto five years and hence it is a cognizable offence coming under Schedule II of the Code of Criminal Procedure. Thus,

according to the learned Public Prosecutor, the bar contained under Section 19 of the Act has no applicability for the case on hand. The learned

counsel for the petitioners, per contra, submitted that the tenor of the wordings in Section 19 of the Act make it abundantly clear that there is a blanket

bar against taking cognizance of any offence under the Act except upon a complaint made by the authority or person prescribed thereunder, and

hence the argument advanced by the learned Public Prosecutor cannot survive the scrutiny of law in view of the provisions contained in Section 4(2)

of the Code of Criminal Procedure.

6. Section 4 of the Code of Criminal Procedure, 1973 deals with the provisions governing the investigation of offence under the Indian Penal Code and

any law other than the Indian Penal Code. In Bharatiya Nagarik Suraksha Sanhita, 2023, there is the verbatim reproduction of the same Section with

the substitution of `Indian Penal CodeÃ¢â‚¬â„¢ with `The Bharatiya Nyaya Sanhita, 2023Ã¢â‚¬â„¢. Section 4 of the Code of Criminal Procedure, 1973 is

extracted hereunder, for the sake of easy reference:

Ã¢â‚¬Å“4. Trial of offences under the Indian Penal Code and other laws.

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions

hereinafter contained.

Ã, (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any

enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.Ã¢â‚¬â€‹

7. It is thus clear from Section 4(2) Cr.P.C that the investigation in respect of offences under any law other than Indian Penal Code shall be

conducted subject to such law in force regulating the manner or place of investigation, enquiry, trial or other procedures related to those offences.

Thus, when Section 19 of the Act prescribes the mode of taking cognizance of any offence under the said Act, no investigating agency is expected to

file a complaint in respect of such offence in violation of the mode prescribed by the said Section. It is true that the offence under Section 15 of the

Act comes under those category of offences specified under Schedule II of the Code of Criminal Procedure since it is punishable with imprisonment

upto five years. However, the court concerned cannot take cognizance of the said offence upon a final report filed by the police since the embargo

contained under Section 19 of the Act, when read with Section 4(2) Cr.P.C, forbids the court from taking cognizance of that offence upon a police

report. The mere fact that the police had registered the crime on the basis of a direction of the District Collector, who is said to be an authority

competent to file a complaint in respect of such offences, does not make any difference since the court, when a final report is filed by the Police under

Section 173(2) Cr.P.C., is expected to take cognizance on the said final report filed by the police, and not on any direction, report or complaint of any

other authority which prompted the police to register that crime. In the absence of a complaint filed before the jurisdictional court by the competent

authority under Section 19 of the Act, no cognizance could be taken on a Police Report filed under Section 173(2) Cr.P.C for the sole reason that the

police had initiated the proceedings on the basis of a complaint by the competent authority.

8. The proposition of law in this regard has been laid down in the context of Section 25 of the Protection of River Banks and Regulation of Removal of

Sand Act, 2001, by a Division Bench of this Court in Moosakoya v. State of Kerala [2008 (1) KLT 538] wherein it has been held that if a police

officer is authorised by the Government, he may also file a complaint on the basis of which the court may take cognizance, but no cognizance could be

taken in respect of an offence under the Sand Act on a police report filed under Section 173(2) Cr.P.C. The dictum laid down by the Division Bench

of this Court in that case had been quoted with approval by the Apex Court in Jeevan Kumar Raut v. C.B.I [AIR 2009 SC 2763] while dealing with

Section 22 of Transplantation of Human Organs Act, 1994 which stipulated that no court shall take cognizance of an offence under that Act except

upon a complaint made by the authorities prescribed thereunder. It has been held in paragraph No.20 of the said decision as follows:

Ã¢â‚¬Å“20. It is a well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. In a

situation of this nature, the respondent could carry out investigations in exercise of its authorization under Section 13(3)(iv) of TOHO. While doing so, it could

exercise such powers which are otherwise vested in it. But, as it could not file a police report but a complaint petition only; Sub-section (2) of Section 167 of the

Code may not be applicable. The provisions of the Code, thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions

of the Code and TOHO and as soon as the area of conflict reaches, TOHO shall prevail over the Code. Ordinarily, thus, although in terms of the Code, the

respondent upon completion of investigation and upon obtaining remand of the accused from time to time, was required to file a police report, it was precluded

from doing so by reason of the provisions contained in Section 22 of TOHO. To put it differently, upon completion of the investigation, an authorized officer could

only file a complaint and not a police report, as a specific bar has been created by the Parliament. In that view of the matter, the police report being not a

complaint and vice-versa, it was obligatory on the part of the respondent to choose the said method invoking the jurisdiction of the Magistrate concerned for

taking cognizance of the offence only in the manner laid down therein and not by any other mode. The procedure laid down in TOHO, thus, would permit the

respondent to file a complaint and not a report which course of action could have been taken recourse to but for the special provisions contained in Section 22 of

TOHO.Ã¢â‚¬â€‹

9. The Apex Court has reaffirmed the principles of law in this regard in Union of India v. Ashok Kumar Sharma and Others [(2021) 12 SCC 674]

wherein it has been held in the context of Section 32 of the Drugs and Cosmetics Act, in paragraph Nos. 115, 116 and 127 as follows:

Ã¢â‚¬Å“115. Under the Act, as noted by us, and bearing in mindÃ, theÃ, lawÃ, laidÃ, downÃ, inÃ, connection with similar statutes, we have no hesitation in rejecting

the argument of the petitioner that after the amendment of Section 36-AC of the Act, making the offences cognizable and non-bailable, it is open to the police

officer to prosecute the person for the offences set out in Section 36-AC of the Act. Having regard to the express provisions of Section 32 of the Act, insofar as the

prosecution is to be launched qua offences falling within the four walls of Chapter IV of the Act, and which are also the subject-matter of Section 36-AC of the Act,

there cannot be any doubt that prosecution of the offender, for such offences, can be done only in the manner provided in Section 32 of the Act. The prosecution

can be launched only by the persons mentioned in Section 32 of the Act. A police officer, as such, does not figure as one of the persons who may prefer a report

under Section 173(2)CrPC, on which, cognizance could be taken by the Special Court. Undoubtedly, as we have already clarified in respect of an offence under

Chapter IV, if the acts or omission also constitutes an offence under any other law, under Section 32(3) of the Act, it may be open to the police officer, if he is

otherwise empowered under the said law, to prosecute the person for the same offence, to act as such.

116. Consequently, the registration of an FIR, which under the scheme of CrPC, sets the ball rolling, empowering the police officer to investigate under Section

157 CrPC, and gather material and finally file a report, would all appear to us to be inapplicable to an offence under Chapter IV of the Act.

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127. We do agree with the learned Amicus Curiae that the police officer, for instance, cannot be approached by any person with a complaint that a cognizable

offence under Chapter IV of the Act has been committed and he is not bound to register the FIR in terms of the law which is being held down by this Court in

Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] . This is for the reason that if he were to register an FIR, then, he would

have to pass on to the stage of Section 157CrPC and, furthermore, carry out investigation, as understood in law, for which neither is he deemed qualified or

empowered by the law-giver nor is he entitled to file a report under Section 173CrPC.Ã¢â‚¬â€‹

10. Applying the law laid down by the HonÃ¢â‚¬â„¢ble Supreme Court in the aforesaid decisions, it is not possible to accept the argument of the learned

Public Prosecutor that the police is empowered to investigate an offence under Section 15 of the Act for the reason that it comes under those

categories of offences mentioned under the second Schedule of the Code of Criminal Procedure. Of course, the position would have been different if

the alleged violation had constituted an offence under any other law which the Police was empowered to investigate. Needless to say, the prosecution

initiated against the petitioners herein on the basis of the final report filed by the Kannur City Police, is prima facie not maintainable in law.

Resultantly, the petition stands allowed. The proceedings initiated against the petitioners in C.C.No.1336/2017 on the files of the Judicial First Class

Magistrate Court-II, Kannur, on the basis of the final report filed by the Kannur City Police in Crime No.547/2016, are hereby quashed.