

Shinto P. Kurian Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Feb. 5, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 197, 197(1), 482
Indian Penal Code, 1860 " Section 143, 149, 318, 323, 324, 342, 354, 427, 447, 451, 452

Hon'ble Judges: G. Girish, J

Bench: Single Bench

Advocate: Bobby George, Joy C. Paul, M.Vanaja, Sangeetharaj N.R

Final Decision: Allowed

Judgement

G. Girish, J

1. The petitioner, who was the erstwhile Sub Inspector of Kanjirappally Police Station, is the first accused in C.C.No.1/2016 on the files of the Judicial

First Class Magistrate Court, Kanjirappally. The aforesaid case has been instituted by the second respondent herein on a private complaint alleging

that the petitioner along with the other accused, including an Advocate Commissioner, appointed by the Chief Judicial Magistrate Court, Kottayam,

and the Manager of the State Bank of India, Regional Business Centre, Kollam, committed the offence under Sections 427, 447, 451, 452, 354, 342,

324, 323, 318 & 143 read with Sections 149 the Indian Penal Code, 1860 (in short, "IPC") under the pretext that they were executing the order of

the Chief Judicial Magistrate Court, Kottayam, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest

Act, 2002(in short "SARFAESI") to get physical possession of the residential property where the defacto complainant was residing.

2. The case was taken on files by the learned Judicial First Class Magistrate, Kanjirappally, after recording the sworn statement of the defacto

complainant and the witnesses. After numbering the case as C.C.No.1/2016 , summons were ordered to all the accused.

3. The Advocate Commissioner who was arraigned as the fourth accused, approached this Court by filing Crl.M.C.No.2323/2017, and got the

proceedings against her quashed under Section 482 of the Code of Criminal Procedure, 1973(in short, "Cr.PC").

4. ã, In the present case, the petitioner would contend that he had only rendered Police assistance to the Advocate Commissioner in executing the

order of the Chief Judicial Magistrate Court, Kottayam, and that the allegation in the complaint regarding the commission of offence is totally false. It

is further stated that the petitioner is entitled for the protection of Section 197 Cr.PC for the assistance rendered by him to the Advocate

Commissioner to execute the order of the Chief Judicial Magistrate Court, Kottayam. It is also contended that the petition filed by the petitioner

before the learned Magistrate for his discharge from the case, was disallowed by the learned Magistrate vide Annexure-VI order dated 09.03.2020.

5. Heard the learned counsel for the petitioner, the learned counsel for the second respondent and the learned Public Prosecutor representing the State

of Kerala.

6. It is apparent from the case records that the allegation against the petitioner pertains to the crime said to have been committed by him while in

discharge of his official duty in connection with the execution of the order of the Chief Judicial Magistrate Court, Kottayam, towards getting

possession of the residential property of the second respondent under the provisions of SARFAESI Act. The proceedings against the Advocate

Commissioner who was the fourth accused in the crime were quashed by this Court vide Annexure-IV order taking note of the protection available to

her under Section 197 Cr.PC.

7. The contention of the petitioner that he also is entitled for the protection of Section 197 Cr.PC, was not accepted by the learned Magistrate, stating

the reason that sanction under Section 197(1) Cr.PC was not required for the prosecution of the petitioner since he was not an officer who could be

removed from his office only with the sanction of the Government. The learned Magistrate has observed in Annexure-VI order that this Court had

held in *Sarojini v. Prasannan* [1996(2) KLT 859] that the Sub Inspector of Police can be removed from service by the order of IG, DIG, AIG & SPs

under the provisions of the Kerala Police Act, 2010, and hence they are not public servants removable from the office as stipulated in Section 197(1)

Cr.PC, and therefore, no sanction under the said provision is required. The above observation of the learned Magistrate in Annexure-VI order is

apparently erroneous since the dictum laid down by this Court in *Sarojini v. Prasannan* (supra) does not state the law that Sub Inspectors of Police of

Kerala Police are not entitled for the protection of Section 197 Cr.PC. It is pertinent to note that in the aforesaid order, a Division Bench of this Court

had discussed the scope and ambit of the Government notification dated 06.12.1977 directing that the provisions of Sub-section 2 of Section 197

Cr.PC to apply all members of Kerala State Police Force charged with maintenance of public order, and held that maintenance of public order can fall

within the definition of 'law and order' since they are, though conceptually distinct, two sides of the same coin. It has been further observed in

the said order that it was unnecessary that there should be anything specific to show that those charged with maintenance of 'law and order' which

have also been entrusted with maintenance of 'public order' which is not so different or unrelated to require a specific investiture, but is implicit

in the former function. Thus, the aforesaid decision of this Court is one upholding the position that Sub Inspectors of Police of Kerala Police come

under those category of officers who are entitled to the protection of Section 197 Cr.PC. In fact, in that reported case, the Division Bench of this

Court declined to extend the protection of Section 197 Cr.PC to the accused Police personnel stating the reason that the acts alleged to have been

committed by them cannot be termed as done in the discharge of their official duty related to maintenance of public order. As far as the present case

is concerned, the facts and circumstances are totally different since it is borne out ex facie from the records that the petitioner is alleged to have

committed the impugned acts while giving assistance to the Advocate Commissioner to take possession of the residential property of the second

respondent in accordance with the order of the Chief Judicial Magistrate Court, Kottayam,. Thus, the learned Magistrate obviously went wrong in

relying on *Sarojini v. Prasannan* (supra) to disallow the prayer of discharge of the petitioner.

8. The learned counsel for the second respondent argued that the petitioner has no manner of right to commit the crimes as alleged in this complaint

while discharging his official duty, and hence he is not entitled for the protection of Section 197 Cr.PC. The above argument of the learned counsel for

the second respondent cannot be accepted since the purpose of Section 197 Cr.PC would be rendered nugatory, if such a view is taken. It is to be

noted that in every case where the applicability of Section 197 Cr.PC comes into play, there would definitely be the allegation that the officer claiming

such protection had committed some crimes under the pretext of discharge of his official duty. The point to be looked into in such cases is whether

there existed a reasonable nexus between the official duty of the officer and the alleged acts of offence said to have been committed by him in the

course of discharge of such official duty. As far as the present case is concerned, the accusation levelled by the second respondent against the

petitioner is that he resorted to physical assault upon the second respondent and his family members while assisting the Advocate Commissioner to get

possession of the residential property of the second respondent in execution of the order of the Court. The above act of physical assault is said to have

been committed under the pretext of discharge of official duty of the petitioner. Needless to say that there exists a nexus between the aforesaid act of

the petitioner and the official duty cast on him to render assistance to the Advocate Commissioner in physically removing the second respondent and

his family members from the residential property which was sought to be recovered. Therefore, the argument advanced by the learned counsel for the

second respondent that the acts committed by the petitioner would not come under the purview of the official duty envisaged under Section 197

Cr.PC, is devoid of merit. As a conclusion to the aforesaid discussion, I find that the prayer in this petition to quash the proceedings against the

petitioner in C.C.No.1/2016 has to be allowed.

In the result, the petition stands allowed. The proceedings against the petitioner/ first accused in C.C.No.1/2016 on the files of the Judicial First Class

Magistrate Court, Kanjirappally, are hereby quashed.