
(1993) 03 KL CK 0019

High Court Of Kerala

Case No: Criminal M.P. No. 451/93 in Criminal M.C. No. 82/93 and Criminal M.P. No. 446/93 in Criminal M.C. No. 83/93

K.I. Cheriyan

APPELLANT

Vs

Mohanan and Another

RESPONDENT

Date of Decision: March 4, 1993

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 451, 482, 561A

Citation: (1993) 2 KLJ 44

Hon'ble Judges: L. Manoharan, J

Bench: Single Bench

Advocate: P. Vijayabhanu, for the Appellant; P.V. Chandra Mohan and S. Radhakrishnan Nair, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Manoharan, J.

These petitions are for impleadment u/s 482 Code of Criminal Procedure CrI.M.P. 451 of 1993 is in CrI. M.C. 82/93 and CrI.M.P. 446 of 1993 is in CrI.M.C. 83/93. In both the CrI.M.Cs. Petitioner is the same, who is the first Respondent in the above CrI.M.Ps. The second Respondent in the CrI.M.Ps. is the sole Respondent in the CrI.M.Cs. An order passed by the Magistrate u/s 451 Code of Criminal Procedure with respect to a bus is under challenge in the CrI.M.Cs. After the CrI.M.Cs. were heard and orders reserved, these CrI.M.Ps. were filed seeking impleadment consequent upon which the said CrI.M.Cs. are posted for spoken to.

2. Petitioner claims that he is the owner of the bus and one Gopalakrishnan, the registered owner is the hirer. Respondents 1 and 2, according to the Petitioner, claim right only under the said Gopalakrishnan. Therefore, the Petitioner would maintain that he

has got superior right than that of the Respondents in the matter of interim custody u/s 451 Code of Criminal Procedure. It is pointed out by the learned Counsel for the Petitioner that the second Respondent is the guarantor of the hire purchase, as can be seen from Annexure R-2A. Though the second Respondent has filed a counter to these petitions, the said aspect is not denied. In such circumstances, according to the Petitioner, he is entitled to be heard in the matter of interim custody of the bus u/s 451 Code of Criminal Procedure. Therefore, according to the Petitioner, he is entitled to be impleaded in the Crl.M.Cs., for which the inherent power of High Court u/s 482 Code of Criminal Procedure has to be invoked.

3. Learned Counsel for the second Respondent contended that there is no provision for impleading in a criminal proceeding and on that ground itself, the petitions are liable to be dismissed. It is not disputed that the Petitioner has filed a petition u/s 451 Code of Criminal Procedure before the lower Court and the said petition is now pending. As regards the question of jurisdiction, the learned Counsel for the 2nd Respondent relied on the decision in *Assan Haji v. S.I. of Police* 1977 KLT 76 to contend that for invoking Section 482 Code of Criminal Procedure, it is not enough to show that the impleadment is for the purpose of securing ends of justice. It has further to be shown that it is for giving effect to any order passed under the Code or for preventing abuse of the process of Court or for a purpose analogous to them. According to the learned Counsel, this application for impleadment cannot fall under any of the categories mentioned u/s 482 Code of Criminal Procedure.

4. As noticed, the Petitioner is not a wayfarer. He has shown himself to be interested in the subject matter with respect to which proceedings are pending. In view of the fact that the Crl. M.Cs. have not been disposed of, the question as to interim custody of the bus is still pending.

5. The inherent power u/s 482 Code of Criminal Procedure is only a recognition of the power vested in this Court. The Supreme Court in [The State of Uttar Pradesh Vs. Mohammad Naim](#), held with reference to Section 561A of the old Code held:

It is now well settled that the section confers no new powers on the High Court. It merely safeguards all existing inherent powers possessed by a High Court necessary (among other purposes) to secure the ends of justice. The section provides that those powers which the Court inherently possesses shall be preserved lest it be considered that the only powers possessed by the Court are those expressly conferred by the Code and that no inherent powers had survived the passing of the Code.

6. The question of invoking this inherent power should depend upon the nature of the proceedings that is pending and also the status of the party who seeks such impleadment. When there is provision in the Code to answer one situation, inherent power cannot be invoked. Inherent power cannot also be invoked, where the exercise of the same would adversely affect what is provided for in the other provisions of the Code.

The purpose of impleadment is to enable the Petitioner to present his case and to pursue his claim with respect to the interim custody of the bus. Since it is shown that he is interested in the matter and the proceeding that is pending is a valid proceeding, he is a person, who is entitled to come on record. The denial of the same in effect would be denial of opportunity of being heard. When the jurisdiction u/s 482 Code of Criminal Procedure is thus sought to be invoked to implead such a party to pursue his claim in a matter as the one now pending, it cannot be said that the same is not permitted u/s 482 Code of Criminal Procedure. The decision referred to by the learned Counsel for the second Respondent in [Bratindra Nath Dey Vs. Sukumar Ch. Dey](#), is clearly distinguishable inasmuch as the question that arose for consideration was as to the revisional jurisdiction of the High Court in relation to a matter, which was pending on the original side of the High Court. In such circumstances, the prayer of the Petitioner to get himself impleaded as additional Respondent in these petitions has to be allowed.

In the result, the Crl.M.Ps. are allowed.