
Kunjukutty Vs State of Kerala

None

Court: High Court Of Kerala

Date of Decision: Aug. 8, 1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 164

Citation: (1988) CriLJ 504

Hon'ble Judges: K. Sreedharan, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

K. Sreedharan, J.

An interesting question arises for consideration in this case. Petitioner wanted to have her statement recorded by a

Magistrate u/s 164 of the Code of Criminal Procedure, for short the Code. For the said purpose she filed a petition before the Magistrate who

rejected the same stating ""it is not expedient to record her statement at this stage, as she can very well avail the opportunity to disclose the facts

known to her, at the trial stage, if she desires."" This order is under challenge.

2. Section 164(1) of the Code reads:

Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made

to him in the course of an investigation under this chapter or under any other law for the time being in force, or at any time afterwards before the

commencement of the inquiry or trial:

Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the

time being in force.

A reading of the above provision would show that it is competent for a Magistrate to record a statement even though the investigating police have

not taken any initiative to request the Magistrate to record the statement. It is not necessary that the Magistrate should be moved by the police to

record the statement. There may be instances where police may not desire to have the statement of a witness recorded. Even in such a case

nothing prevents a person from going to a Magistrate with the request to have the statement recorded. If the Magistrate records the statement he

has to forward it to the Magistrate by whom the case is to be enquired into or tried.

3. Ordinarily, during investigations made by a police officer persons acquainted with the facts or circumstances of the offence would be questioned

by him, especially so when that person presents himself for such an interrogation. There can be exceptional cases where the police, for their own

reasons, may refrain from recording the statements of such a person. What is the remedy of such a person who is anxious to have his version

brought on record. If Section 164(1) of the Code is read in that perspective, it can be seen that the Magistrate has the power to record the

statement of such a person. When a person, without being initiated by the police seeks to invoke the powers of the Magistrate u/s 164 of the Code

the Magistrate has wide discretion to record his statement or refuse to record the same. This discretion has to be exercised judicially.

4. The statement of a witness is generally recorded u/s 164 of the Code to fix him up with that statement when it is feared that he may resile

afterwards. Ordinarily the police, in the course of investigation, sends witnesses for having their statements recorded by a Magistrate u/s 164 of the

Code when they feel that there may be some uncertainty about the evidence or when it is felt that the witness may at some distance of time speak

falsely or misleadingly with deliberate intention. If a statement of a witness is previously recorded under Section 164 of the Code, it leads to the

inference that there was a time when police thought the witness may change. If the witness sticks to the statement made by him, the mere fact that

his statement was previously recorded u/s 164 will not be sufficient to discard it. A statement recorded u/s 164 of the Code is not substantive

evidence. It can be used either for contradiction or for corroboration. If this be the legal position, what can be the purpose of a person

approaching the Magistrate to record his own statement? On account of the righteous indignation, if a person approaches the Magistrate to record

his statement u/s 164 of the Code, there is no uncertainty about the evidence and there is no chance for him to speak falsely or misleadingly at a later

stage. So the statement of such a witness need not be recorded u/s 164 of the Code for the purpose of being used for corroboration or

contradiction at a later stage in the trial.

5. In the instant case the incident is stated to have happened on 28th Makaram 1160. (10-2-1985). The petitioner claims to have seen some

events connected with the death of one Jolly. According to the petitioner, the police did not apprehend the actual culprit and that they refused to

hear her or record her statement. Therefore she has approached the Magistrate and filed M.P. 1241/85 on 23-5-1985. By that time the final

report in Crime 18/85 of the Konny police station (relating to the death of Jolly) has already been laid before court. A statement u/s 164 of the

Code is to be recorded in the course of investigation or at any time afterwards before the commencement of the inquiry or trial. Since the final

report has already been laid by the police, it is almost certain that the Magistrate would have commenced the inquiry for committal.

6. According to the petitioner the investigating officer did not hear her or record her statement. So her statement will not go to help the

prosecution. It can only benefit the accused. The accused can, if he so wants, make use of the evidence of the petitioner by citing her as defence

witness in trial. The learned Magistrate dismissed the petition filed before him taking the above view. In these circumstances, it cannot be held that

the court below acted illegally or with material irregularity in the exercise of its jurisdiction.

The result, therefore is the criminal revision petition fails. It is accordingly dismissed.