

Krishna Bhat Vs Keshava Bhat

Court: High Court Of Kerala

Date of Decision: Oct. 22, 1990

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 115
Criminal Procedure Code, 1973 (CrPC) â€” Section 195, 195(1), 340, 340(1), 340(2)

Citation: (1991) 1 KLT 72

Hon'ble Judges: M.M. Pareed Pillay, J

Bench: Single Bench

Advocate: D. Krishna Prasad, for the Appellant; U.P. Kunikkullaya, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.M. Pareed Pillay, J.

The revision Petitioner filed I.A. 623 of 1989 in O.S. 26 of 1987 before the Sub Court, Kasaragod for initiating

action against the Respondent u/s 340 of the Code of Criminal Procedure. Sub Judge dismissed the application and hence the civil revision

petition.

2. The preliminary objection to the revision petition is that it is not maintainable.

3. Chapter 26 of the Code of Criminal Procedure deals with the provisions as to offences affecting administration of justice. Section 340 of the

Code of Criminal Procedure is intended to be complementary to Section 195, Section 195 is an exception to the general rule that any person

having knowledge of the commission of an offence can set the law in motion by a complaint even if he is not interested in or affected by the

offence. This section bars cognizance being taken of the offences mentioned therein except where there is a complaint in writing by the Court or by

the public servant. Chief object of the section is to put a stop to reckless prosecution by private persons. Section 340 removes the bar by

conferring jurisdiction on the Court to file the complaint. The section provides . the procedure to be followed in the case of complaints by Courts in

respect of offences mentioned u/s 195(1)(b). The responsibility to launch a prosecution rests upon the Court. The Court is not expected to launch

a prosecution merely for the asking by a party. The Court has necessarily to consider whether it is expedient in the interests of justice to launch the

prosecution. The Court will not be a party to launch prosecution merely for private vendetta. When the Court orders prosecution it must do so in

the larger interest of justice and not to gratify the demand of a private party bent upon revenge against his opponent.

4. Whether the order of the Court below refusing to launch prosecution u/s 340 of the Code of Criminal Procedure is revisable u/s 115 of the

CPC is the point that arises for consideration. Section 341 of the Code of Criminal Procedure states that any person on whose application any

Court other than a High Court has refused to make a complaint under Sub-section (1) or Sub-section (2) of Section 340, of against whom such a

complaint has been made by such Court, can file appeal to the Court to which the Court which passed the order is subordinate. As the Court

below refused to make a complaint, the remedy available to the revision Petitioner is only by way of filing appeal as provided u/s 341. Even though

the Civil Court has passed the order the aggrieved party cannot challenge it u/s 115 CPC in view of the specific remedy of appeal as provided u/s

341 of the Code of Criminal Procedure.

The Civil Revision Petition is Dismissed as not maintainable.