

R. Balakrishna Pillai Vs State of Kerala

Court: High Court Of Kerala

Date of Decision: Nov. 17, 1994

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 173, 207, 238, 239, 482

Citation: (1995) CriLJ 1244 : (1995) 1 ILR (Ker) 821

Hon'ble Judges: K.P. Balanarayana Marar, J

Bench: Single Bench

Advocate: T.V. Prabhakaran and S. Rajeev, for the Appellant; Director General of Prosecutions, M. Ratna Singh, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.P. Balanarayana Marar, J.

Petitioner is the first accused in C.C. 1 of 1991 on the file of Special Judge for the trial of Idamalayar

Investigations, Ernakulam. Petitioner moved that court by CrI. M. P. 64 of 1994 requesting the court to discharge him u/s 239 Criminal Procedure

Code as there are no material to connect the case with any of the offences alleged. Another petition was filed to consider the validity and legality of

the sanction produced. During the pendency of these two petitions. Shri V.S. Achuthanandan, the Leader of the Opposition in the Kerala

Legislative Assembly filed a counter statement dated 10-10-1994 requesting the court that petitioner shall not be discharged and Criminal M. P.

64 of 1994 should be dismissed. A copy of the counter statement was- served on petitioner also. By order dated 26-10-1994 the Special Judge

held that the objection filed by the third party to the discharge petition filed by the first accused is entertainable and the third party must be given an

opportunity for being heard while hearing the case u/s 239, Criminal Procedure Code. The first accused challenged that order in this criminal

miscellaneous case presented u/s 482 of the Code of Criminal Procedure.

2. Notice was given to the Public Prosecutor. Heard counsel for petitioner and Director General of Prosecutions.

3. Drawing attention to Section 239 of the Code of Criminal Procedure Shri. T. V. Prabhajcaran, learned counsel for petitioner strongly contends

that a third party cannot be permitted to be heard while the court considers the question whether the accused is liable to be discharged under that

Section. Section 239 reads:

When accused shall be discharged:-- If upon considering the police report and the documents sent with it u/s 173 and making such examination, if

any of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the

Magistrate considers the charge against the accused to be groundless he shall discharge the accused, and record his reasons for so doing.

Before an order for discharge is passed under this section the Magistrate is required to (i) consider the police report and the documents sent along

with it u/s 173 of the Code (ii) examine the accused if it is considered necessary and (iii) give the prosecution and the accused an opportunity of

being heard. In other words, the Magistrate has to ascertain whether the statements and the circumstances if accepted make out a prima facie case

and a charge could be framed against the accused. If a prima facie case is made out the Magistrate has to proceed with the trial of the offence after

framing charge. If not, the accused shall be discharged after recording reasons. The documents on which the Magistrate can depend either for the

purpose of discharging the accused or for framing charge are the documents referred to in Section 207, compliance of which has to be satisfied by

the Magistrate u/s 238. Apart from those documents the Magistrate can also make such examination of the accused and rely on the submissions

made by the prosecution and the accused. The hearing referred to in the section is an oral hearing and does not include the examination of anyone

as a witness at that stage. Examination of any witness is not contemplated u/s 239 of the Code. In other words, the Magistrate has to confine the

enquiry within the parameters of Section 239 of the Code.

4. Learned counsel for the petitioner has pointed out that the Special Judge had overstepped his powers u/s 239 of the Code by permitting a third

party to take part in the proceeding. In the very same case the Leader of the Opposition had challenged an order of this Court granting consent to

the Public Prosecutor to withdraw the prosecution in respect of one of the accused before the Supreme Court. The Supreme Court allowed the

appeal and the impugned order of this Court was set aside where by the order of the Special Judge declining the consent for withdrawal of the

prosecution was restored. This court had taken the view that the Leader of the Opposition in the State Legislative Assembly had no locus standi in

the matter. The Supreme Court did not go into that question because no counsel appearing before the Supreme Court disputed that the appellant

therein who is an acknowledged public figure of the State has sufficient locus in the matter. That principle according the learned counsel for

petitioner cannot be applied to the present case. That was in connection with the withdrawal of the complaint. That may create public opinion

according to counsel and this can be brought under the category of public interest litigation. But a third party cannot be permitted to trespass into

the region of the rights of the accused, according to the counsel and the discharge contemplated u/s 239 of the Code is a statutory right to be

exercised by the Magistrate confining to the materials directed to be considered as per that section. I see much force in this contention. Sections

238 and 239 are a complete code in the matter of the procedure to be followed for the purpose of discharging the accused or for framing the

charge in any warrant case instituted on a police report. A third party cannot have any say in the matter. The question of any third party being

permitted to take part in the proceedings while the court considers the materials on record in order to ascertain whether a charge should be framed

or the accused should be discharged does not therefore arise.

5. The question whether a third party can be permitted to challenge the correctness of the conviction and sentence imposed by a court after a

regular trial came up for consideration before the Supreme Court in *Simranjit Singh Mann Vs. Union of India and another*,). The Supreme Court

held that neither under the provisions of the Code nor under any other statute is a third party stranger permitted to question the correctness of the

conviction. In that connection the Supreme Court referred to the following observation in *S.P. Gupta Vs. President of India and Others*, .

But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for

personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by

politicians and others....

The Supreme Court has also referred to the following observations contained in paragraph 45 of the judgment in *Janata Dal Vs. H.S. Chowdhary*

and Others,).

Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused

persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before

the proper forum and not for third parties under the garb of public interest litigants.

In the light of the observations of the Supreme Court aforementioned and on a proper understanding of the provision contained in Section 239 of

the Code of Criminal Procedure there can be no doubt that Shri Achuthanandan, the Leader of the Opposition in the Kerala Legislative Assembly

has no locus standi to take part in the proceeding before the Special Judge while considering the question of discharge u/s 239 of the Code. The

Special Judge has therefore committed an illegality in holding that an opportunity can be given to Shri Achuthanandan for being heard while hearing

the case u/s 239, Criminal Procedure Code. Annexure-I order is therefore unsustainable.

For the aforesaid reasons the criminal miscellaneous case is. allowed and annexure-I order is set aside.