(1995) 12 KL CK 0027

High Court Of Kerala

Case No: Criminal M.C. No. 1847 of 1995

Jose John		APPELLANT
	Vs	
K.C. Kuruvila Pillai and Others		RESPONDENT

Date of Decision: Dec. 12, 1995

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80
- Criminal Procedure Code, 1973 (CrPC) - Section 195, 195(1), 195(4), 340, 476
- Penal Code, 1860 (IPC) - Section 109, 120B, 191, 193, 196

Citation: (1996) 1 ALT(Cri) 514 : (1996) CriLJ 1449 : (1996) 1 ILR (Ker) 825 : (1996) 1 RCR(Criminal) 560

Hon'ble Judges: N. Dhinakar, J

Bench: Single Bench

Advocate: M.K. Damodaran, for the Appellant; K. Ramakumar, R1 and J. Jose, R2 and S. Gopakumaran Nair, R3 and R5 and Thankappan, Public Prosecutor R5, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N. Dhinakar, J.
Petitioner in Crl. M. C. 1847 of 1995 and the petitioner in Crl. M. C. 2161 of 1995 respectively are the 4th and 1st counter-petitioners in C.M.P. No. 8 of 1995 on the file of the Judicial First Class Magistrate, Ramankari. The above said C.M.P. was filed before the learned Magistrate by the 1st respondent under Sections 195 and 340, Crl. P. C. against the petitioners and respondents 2 to 4. The said petition was filed with a prayer to initiate proceedings against the petitioners and respondents 2 to 4 for offences under Sections 193 196 211 219 220 and 120-B read with Sections 109 34 and 500, I.P.C. The said petition is filed as annexure-II in the above Crl. M.Cs. The allegation in the said petition is that at the instance of the petitioner in Crl. M. C. 2161 of 1995, who was the then Asst. Supdt. of Police, Alappuzha, a false complaint

was laid by the petitioner in Crl. M. C. 1847 of 1995 and respondents 3 and 4 were made to register a crime in Crime No. 105 of 1995 on the file of Ramankari Police Station on 14-9-1990. It is said that after investigation by Crime Branch C.I.D., the above said crime was later referred as false on 31-3-1992 and the Court accepted the report of the Crime Branch C.I.D. on 15-4-1992.

2. On the petition filed by the 1st respondent the Judicial First Class Magistrate numbered it as C.M.P. 8 of 1995 and ordered Annexure-I notice to the petitioners as well as to respondents 2 to 4 and the said notice reads as follows:

"Take notice that an application has been presented/made. Inquiry will be held u/s 340, Criminal Procedure Code, to determine whether a complaint should not be laid against you for an offence punishable under Sections 193 196 211 219 220 120-B 109 and 34 of I.P.C. and that the said application will be heard by the Court at 11 a.m. on the 18th day of July, 1995. You are at liberty to show cause why such complaint should not be made."

The above said proceedings are now being sought to be quashed by the petitioners.

3. It is not in dispute that the notice under Annexure-I was issued to the petitioners for the purpose of initiating proceedings u/s 340, Crl. P. C. Section 340 occurs in Chapter XXVI under the heading "Provisions as to offence affecting the administration of justice." Section 340, Crl. P. C. deals with the procedure to be adopted in respect of offences affecting administration of justice. Section 340, Crl. P. C. reads as follows:

"340. Procedure in cases mentioned in Section 195.-

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, -

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred to a Court by Sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under Sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of Sub-section (4) of Section 195,

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court;

(4) In this section, "Court" has the same meaning as in Section 195."

A reading of the above section makes it clear that an enquiry can be confined only to offences referred to in Clause (b) of Sub-section (1) of Section 195, Crl. P. C. as the very words in the section "that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195" show. Similarly Section 195, Crl. P. C. deals with prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. A combined reading of the Sections 195 and 340, Crl. P. C. makes it abundantly clear that the Court can initiate proceedings u/s 340, Crl. P. C. only for the offences mentioned in Section 195, Crl. P. C.

4. In Patel Laljibhai Somabhai Vs. The State of Gujarat, the Supreme Court while dealing with the provisions of Sections 195 and 476, Crl. P. C. occurring in the old Code, held that the underlying purpose of enacting the provisions seems to be to control the temptation on the part of the private parties to start criminal prosecution on frivolous, vexatious or insufficient grounds inspired by a revengeful desire to harass or spite their opponents. The offences have been selected for the Court''s control because of their direct impact on the judicial process. It is the judicial process, in other words the administration of public justice, which is the direct and immediate object or victim of these offences. As the purity of the proceedings of the Court is directly sullied by the crime, the Court is considered to be the only party entitled to consider the desirability of complaining against the guilty party. The private party who might/ultimately suffer can persuade the Civil Court to file complaint. The Supreme Court further held that the offences about which the Court alone is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in that Court, the commission of which has a reasonably close nexus with the proceeding in that Court so that it can without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party. It was further held that it, therefore, appears to be more appropriate to adopt the strict construction of confining the prohibition contained in Section 195 only to those

cases in which the offences specified therein were committed by a party to the proceeding in character as such party. The Legislature could not have intended to extend the prohibition contained in Section 195 to the offences mentioned therein, when committed by a party to a proceeding in that Court prior to his becoming such party. The offences mentioned in Section 195, Crl. P. C. have been selected for the Court''s control because of their direct impact on the judicial process. It is the judicial process, in other words the administration of public justice, which is the direct and immediate object or victim of those offences and it is only by misleading the Courts and thereby perverting the due course of law and justice that the ultimate object of harming the private party is designed to be realised.

5. Keeping the above principles in mind it is to be decided whether the proceedings instituted by the 1st respondent on which Annexure-I notice was issued are legal.

6. The very purpose of incorporating Sections 340 and 195 Crl.P.C. is to prevent and control the temptation on the part of the private parties from considering themselves aggrieved for the offences mentioned in these Sections. A look at Annexure-I notice shows that the Magistrate has decided to hold an inquiry u/s 340 Crl.P.C. to determine as to why a complaint shall not be laid against the petitioners and respondents 2 to 4 for offences punishable under sections 193 196 211 219 220 120-B 109 and 34 I.P.C. There can be no doubt that an inquiry can be conducted as contemplated u/s 340 Crl.P.C only in respect of the offences under Sections 193 196 and 211 I.P.C. and not for the other offences mentioned in the said notice. As Section 340 Crl.P.C. contemplates an inquiry only in respect of the offence mentioned in Section 195 Crl.P.C. any inquiry that the Magistrate has decided to conduct, in respect of the offence not mentioned in Section 195 Crl.P.C, in my view, is illegal. If an inquiry is allowed to be conducted, in respect of the other offences not mentioned in Section 195 Crl.P.C, then the materials, which are not germane to decide whether the offences mentioned in Section 195 Crl.P.C. are made out, will also get included and it will end in prejudice to the cause of the petitioners and respondents 2 to 4. The contention of the 1st respondent''s counsel that the notice is only a pre-decisional notice and not a post-decisional one can| not be accepted. It is not in dispute that Annexure-II petition was filed by the 1st respondent u/s 195 and 340 Crl.P.C. with a prayer that action must be initiated against the petitioners and respondents 2 to 4 for offences under Sections 193 196 211 219 220 120-B read with Sections 109, 34 and 500 I.P.C. If, as the 1st respondent contends that the notice sent by the Magistrate under Annexure-I is only an intimation, intimating the petitioners and respondents 2 to 4, that a petition has been laid, then the said notice would have contained all the penal Sections mentioned by the 1st respondent including the penal provision u/s 500 I.P.C. The Magistrate while issuing notice left out Section 500 I.P.C. though stated in the notice that he intends making an inquiry in respect of the other offences to determine whether a complaint can be laid in respect of those offences. The fact that the Magistrate has left out Section 500 I.P.C. would clearly show that he was aware that the Court cannot lay a complaint for an

offence u/s 500 I.P.C. What the learned Magistrate did not realise was that the Court also cannot u/s 340 Cr.P.C, lay a complaint for offences under Sections 219 and 220 IPC. In my view the notice issued by the learned Magistrate cannot be termed to be a pre-decisional notice and as the learned Magistrate has decided to hold an inquiry, to determine as to why a complaint shall not be laid against the petitioners and respondents 2 to 4, for the offences under Sections 219 and 220 IPC also, it is illegal. I am of the view that on this ground alone Annexure-I notice has to be quashed.

7. Even if we assume, for a moment, that Annexure-I notice was only a pre-decisional notice and not a post-decisional one and that the Magistrate never intended to make an inquiry in respect of the offences under Sections 219 and 220 IPC, the proceedings, I feel, initiated u/s 195 Crl.P.C. and Section 340 Crl.P.C. have to be quashed for two reasons, in that, the allegations in the petition do not make out offences under Sections 193 and 196 and that the said petition itself came to be filed very belatedly resulting in abuse of the process of Court.

8. Section 193 is the penal provision for intentionally giving false evidence in any stage of a judicial proceeding or fabricating false evidence for the purpose of using it in any such proceeding. Similarly Section 196 IPC is a penal provision for corruptly using or attempting to use as true or genuine any evidence which a person knows to be false or fabricated. Section 191 IPC defines false evidence and it reads as follows:

"191. Giving false evidence, - whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence."

9. For proceedings to be initiated for the offences under Sections 193 and 196 IPC the Court can initiate proceedings only if any false evidence is given in any stage of a judicial proceeding or if one corruptly uses or attempts to use as true or genuine any evidence which he knows to be false or fabricated.

10. It is not the case of the 1st respondent that the petitioners and respondents 2 to 4 gave any evidence before any judicial proceedings so as to attract the penal provisions of Sections 193 and 196 IPC. It cannot be said that the investigation conducted by the police is a judicial proceeding unless it is an investigation directed by law preliminary to a proceeding before a court of justice or it is an investigation directed by a Court of justice as illustrations to Explanation 2 and Explanation 3 to Section 193 IPC show. Further, I feel, giving false evidence as defined u/s 191 IPC is not attracted as the first information report laid by the petitioner in Crl.M.C. 1847 of 1995 is neither a statement nor a declaration as he was not bound by oath to make such statement. In my view, taking the entire facts mentioned in the petition by the 1st respondent to be true, no offence, either u/s 193 or u/s 196 is made out.

11. Now the only question left to be decided is whether the proceedings can be initiated for an offence u/s 211 I.P.C. In my view, any continuation of the proceedings u/s 211 IPC will only amount to an abuse of process of Court. It is not in dispute that a crime in Crime No. 105 of 1995 was registered at Ramankari Police Station on 14-9-1990 and after investigation it was referred on 31-3-1992. The Court also accepted the said report of the police on 15-4-1992. The petition under Annexure-II was filed by the 1st respondent before the Court only on 2-1-1995. These facts are not disputed. A perusal of the petition filed by the 1st respondent, seeking to initiate proceedings u/s 340 Crl.P.C, does not show as to why he did not invoke the jurisdiction of the Court earlier, though the police report referring the case was accepted by the Court as early as on 15-4-1992. It is not as if the 1st respondent was not aware of his right. Even on 30-4-1993 the 1st respondent issued a notice u/s 80 C.P.C. to the petitioners wherein he has stated that the complaint filed by the petitioner in Crl.M.C. 1847 of 1995 is false, frivolous and malicious. He also, in the said notice, stated that they are liable for malicious prosecution. If even by 30-4-1993 the 1st respondent was aware of his rights and issued a notice u/s 80 C.P.C. then it escapes my comprehension as to why he did not choose to initiate any proceedings u/s 340 Crl.P.C. against the petitioners and respondents 2 to 4. The fact is that though the Court accepted the notice on 15-4-1992, the proceedings came to be initiated by the 1st respondent only on 2-1-1995 i.e. nearly after 3 years. As I have stated earlier, there is absolutely no explanation as to why he did not choose to invoke the jurisdiction of the criminal Court u/s 340 Crl.P.C. Sections 195 and 340 Crl. P.C. must be read together and Section 340 Crl.P.C. prescribes the procedure to be adopted by a Court when making a complaint; but this does not appear to affect the question as to what amount of latitude the Legislature intended to afford to Courts as complainants. In my view, it is the intention of the Legislature to restrict the power of the Court in the direction and only to suffer it when promptly exercised.

12. In Kurien v. State of Kerala (1987 (1) KLT 619) a learned single Judge of this Court held that Section 340 Crl. P.C. is intended to be complementary to Section 195 Crl. P.C. which creates a bar on the filing of a complaint by all and sundry, and Section 340 removes the bar by conferring jurisdiction on the Court to file the complaint. It also prescribes the procedure to be followed in the case of complaints by Courts in respect of offences mentioned in Clause (b) of Section 195(1) Crl.P.C. Mere satisfaction that an offence appears to have been committed in or in relation to a proceeding in Court is not sufficient. An enquiry should be conducted and the Court should not launch prosecution unless it considers that it is expedient in the interest of justice to launch the prosecution. Prosecution is not undertaken to satisfy the private grudge of a litigant. The learned Judge further held that though wide discretion is given to the Court, it should be exercised with care and caution inasmuch as the object of Sections 195 and 340 Crl. P.C. is to provide a safeguard against frivolous or vexatious prosecutions. As I have stated earlier, the 1st respondent did not invoke the jurisdiction of the Court at the earliest opportunity

and the proceedings came to be laid only after 3 years. No explanation is found given in the petition. Under the circumstances, I feel, any continuation of the proceedings even for an offence u/s 211 I.P.C. will amount to an abuse of process of Court and the proceedings have to be quashed.

13. For the foregoing reasons the proceedings instituted on C.M.P. No. 8 of 1995 on the file of the Judicial First Class Magistrate, Ramankari, are quashed. The petitions are allowed.