

(1992) 06 KL CK 0063

High Court Of Kerala

Case No: Criminal H.C. No. 1349 of 1991

Hajee P.M. Meeranan and
Another

APPELLANT

Vs

P. Venugopal, Special Officer,
Kanjirappally Municipality

RESPONDENT

Date of Decision: June 26, 1992

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 256, 256(2)

Citation: (1993) CriLJ 364 : (1993) 1 ILR (Ker) 128 : (1992) 2 KLJ 210

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

Bench: Single Bench

Advocate: M.V. Ibrahimkutty, for the Appellant; K.K. Chandran Pillai, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.M. Pareed Pillay, J.

Petitioners are accused 1 and 2 in S.T. 919 of 1991 of the Judicial Magistrate of First Class, Kanjirappally. They seek to quash the complaint, chiefly on the ground that the complaint filed by the Kanjirappally Municipality cannot be sustained as the complainant-Municipality is no longer in existence.

2. The short point that arises for consideration is whether the complaint filed by the Municipality survives when that body is no longer in existence. In other words, can the Panchayat which steps into the shoes of the Municipality prosecute the complaint under the Municipalities Act? Admittedly Kanjirappally Municipality has ceased to exist and now it is only a Panchayat. If that be so, the complaint under Sections 228, 320, 247, 248 and 357 of the Municipalities Act cannot be continued by the Panchayat, Kanjirappally Panchayat cannot be termed as the successor of the Municipality for the purpose of pursuing the criminal complaint. Offences made out

under the aforementioned sections of the Municipalities Act cannot obviously be continued by the authorities of the Panchayat. In view of the non-existence of the Municipality, it would not be possible for the complainant to appear before the Court.

3. Section 256, Cr. P.C. provides that if the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything herein before contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day. Sub-section (2) has been added to make a legal provision that death and absence of the complainant stand in the same footing in the matter of ending or proceeding with the case. As regards the sub-section Law Commission in its 41st report says:

"A question has arisen whether the complainant's death ends the proceedings in a summons case; and we find that different views have been expressed on this question. As a matter of policy we think the answer should depend on the nature of the case and the stage of proceedings at which death occurs. It is impracticable to detail the various situations that may arise and the considerations that may have to be weighed. We think, in the circumstances that the decision should be left to the judicial discretion of the court, and the legal provision need only be that death and absence stand on the same footing. We trust this will in practice work satisfactorily."

As the complaint under the various sections of the Municipalities Act cannot be pursued by the successor Panchayat and as there is no enabling provision to do so, it has to be necessarily held that the complaint cannot be proceeded with any further. In that view of the matter, the complaint (S.T. 919 of 1991) is quashed.

The petition is allowed.