

Marthandan Jayadeva Panicker Vs Kunjan Velayudhan and Others

Court: High Court Of Kerala

Date of Decision: Oct. 16, 1986

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 482, 91, 92, 93, 93(1)
 Penal Code, 1860 (IPC) â€” Section 34, 463, 464, 471

Citation: (1986) 23 KLJ 1017

Hon'ble Judges: K.T. Thomas, J

Bench: Single Bench

Advocate: N.N. Narayana Pillai, for the Appellant; V.N. Achutha Kurup and M.S. Radhakrishnan Nair, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.T. Thomas, J.

A complainant in a criminal case sought the assistance of the court to get a document searched out from the custody of

one of the accused. The court declined to extend its assistance to the complainant. Hence that complainant has approached this court with a

petition u/s 482 of the Code of Criminal Procedure (for short "the Code"). The complainant will be referred to hereinafter as the petitioner. The

petitioner filed the complaint against ten persons, accusing them of different offences and the learned Magistrate took cognizance of the offences

under Sections 463, 464 and 471 read with Section 34 of the I P. C. The all Rations in the complaint are not relevant for consideration at this

stage, and hence I do not narrate them here. During the pendency of the case the petitioner filed an application for giving a direction to the

Assistant Registrar of a Co-operative Society (for short "Society") to produce some records Pursuant to the summons issued to the said Assistant

Registrar, he appeared in court and submitted that the required records are not within his powers and control. Thereafter, the petitioner filed the

second application praying for the issue of a search warrant to search out the documents. It is mentioned in the application, that those documents

are being kept in the office room of the Society which is under the control of its Secretary. The learned Magistrate dismissed the said application.

Hence the complainant filed the present petition for invoking powers u/s 482 of the Code.

2 The Secretary of the Society is one of the accused in the complaint. The learned Magistrate dismissed the second application mainly on the

ground that the petitioner should have approached the Joint Registrar of the Society and request him to take further action. The Magistrate

expressed doubt in the bonafides of the petitioner in filing the said application.

3. From the petitioner's point of view the documents required are important so far as the allegations in the complaint are concerned It is not

disputed before me that those documents are important to prove the prosecution case. If those documents are in the custody of one of the

accused, a summons cannot be issued to the accused for production of those documents, since the said course may amount to infringement of the

protection afforded to an accused person against testimonial compulsion. Section 93 of the Code deals with search warrants in general. Sub-

section (2) and (3) of the said Section are not very material for the purpose of this case. Hence Section 93(1) alone is quoted below:

93. When search-warrant may be issued. -- (1) (a) Where any Court has reason to believe that a person to whom a summons or order u/s 91 or a

requisition under sub-section (1) of Section 92 has been, or might be, addressed, will not or would not produce the document or thing as required

by such summons or requisition, or

(b) where such document or thing is not known to the Court to be in the possession of any person, or

(c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this code will be served by a general search or

inspection.

it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions

hereinafter contained.

4. A search-warrant can be issued in one of those three contingencies. The first situation referred to in clause (a) of the sub-section has no

application in this case, because no summons could be issued to the accused to produce the documents. The second situation referred to in clause

(b) is also not applicable because the petitioner has no case that he does not know the place where the documents are kept and in fact mention is

made in the application that the documents are in the control of the Secretary and are kept in the office of the Society. Hence the next resort is to

the third situation envisaged in clause (c) of the sub-section. A condition for getting into the third situation is that the court should consider that the

purpose of any inquiry, trial or other proceeding will be served by a general search or inspection". When a document is alleged to be in the

possession of the accused, which document is very material for the purpose of inquiry or trial, the criminal court cannot be rendered helpless in

getting those documents produced in court. If the third situation referred to above could also not be used for that purpose, there must be some

other provisions in the Code to meet that contingencies. But, the counsel on both sides could not refer me to any other provision in the Code which

enables the court to order a search or to issue a search-warrant to get the documents in the possession of an accused. The learned counsel for the

respondent contended that the situation envisaged in Section 93(1)(c) would arise only if the place where the documents are kept is unknown. The

said contention cannot be accepted in view of the specific provision in clause (b) of the sub-section to meet such a situation.

5. The learned counsel referred to the following observation of the Supreme Court in V.S. Kuttan Pillai Vs. Ramakrishnan and Another, (same as

1980 (1) S.C.R. 673) in support of His contention that a general search can be issued only when the court does not know the place in which or the

person with whom the document is kept:

Section 93(1)(c) comprehends a situation where a search warrant can be issued as the court is unaware of not only the person but even the place

where the documents may be found and that a general search is necessary.....

The said observation cannot be read in isolation from the ratio of the decision which shows that the power of the court u/s 93(1)(c) cannot be cut

down by importing some of the requirement of clause (b). The Supreme Court, in that decision, took care to further observe that ""no canon of

construction would permit such an erosion of power of the court to issue a general search warrant"". The Supreme Court, in that decision,

considered the situation covered by clause (c) of the sub-section, and a note of caution was struck in the decision against whittling down of the

scope of that clause.

The learned counsel referred to a decision of a -single Judge of the Punjab and Haryana High Court in Shiv Dayal Vs. Sohan Lal Bassar, in which

the scope of S. 96(1) of the Criminal Procedure Code (1898) (which corresponds to S 93(1) of the Code) was one of the points discussed. The

learned Judge observed in the said decision that where the documents and things are known to be in the possession of the accused and their

location and place of storage are also known the warrant would not be: a general warrant for search and inspection Neither the observation nor any

other reasoning made by the learned single Judge in the aforesaid decision can be taken as laying down a proposition that when the required

document is in the possession of the accused, resort to clause (c) is impermissible. When the document or thing required in the criminal case is in

the possession or custody of the accused person, the criminal court must have powers to search them out, for otherwise the administration of

criminal justice can easily be impeded by the accused who is interested in hoarding or concealing that document or the furtive articles. Clause (c) of

the sub-section is so widely worded as to cover such situations as well. If the places where an accused conceals questioned documents or furtive

articles or contraband things can be searched when the complainant informs the court that the place of concealment is not known to him, it would

be inept to say that the court will have no jurisdiction to order search when the court is told that the said document or thing is concealed by the

accused. Hence the mere fact that the petitioner has mentioned in his application that the questioned documents are kept in the office of the Society

and are in the custody of the accused will not take away the jurisdiction of the court to exercise powers under S 93(1)(c) of the Code. The court

has to consider whether the purposes of the inquiry will be served by issuing a search warrant under the said clause. If the court finds that in the

affirmative, the court has jurisdiction to issue a search warrant. Refusal of exercise of the aforesaid jurisdiction may lead to abuse of the process of

court and interest of justice will consequently suffer.

With the said observations the impugned order is set aside. The matter is sent back to the court below to pass appropriate orders on the

application filed u/s 93 of the Code.