(1993) 02 KL CK 0069

High Court Of Kerala

Case No: Criminal R.P. No. 883 of 1992

Zain Salt	APPELLANT
Vs	
Intex-Painter, Interior Decorators, Civil Workers, Maintenance Workers and Water Profors and Others	RESPONDENT

Date of Decision: Feb. 12, 1993

Acts Referred:

- Child Marriage Restraint Act, 1929 - Section 9
- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 323, 341, 397, 401
- Industrial Disputes Act, 1947 - Section 29, 34(1)
- Penal Code, 1860 (IPC) - Section 232, 294, 323, 341, 342

Citation: (1993) CriLJ 2213

Hon'ble Judges: L. Manoharan, J

Bench: Single Bench

Advocate: V.K. Hamza, for the Appellant; Alexander Peter, for Respondents 1 and 2 and K. Usha, Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

L. Manoharan, J.
This petition under Sections 397, 401 and 482 of the Cr. P. C. (for short "The Code") seeks to set aside Annexure H order on M. P. No. 3095/92 in C. C. No. 513/91 on the file of the Judicial Magistrate of the IInd Class, Aluva and to quash C.C. No. 513/91.

2. The petitioner entrusted the interior decoration and furnishing work of the petitioner''s office with the 1st respondent. Misunderstanding arose between the petitioner and the 1st respondent regarding the work done. Respondents 1 and 2 filed Annexure-A complaint before the Judicial Magistrate of Second Class, Aluva alleging that the petitioner has committed offences punishable under Sections 418,

232, 342, 506(1) and 294 of the I.P.C. The learned Magistrate referred the same u/s 156(3) of the Code. The police registered it as Crime No. 100/90 and referred the case by Annexure R-3 report and issued notice on 12-2-1991 to the second respondent. The 2nd respondent, thereafter filed a protest complaint on 29-6-1991 before the Judicial Magistrate of Second Class, Aluva. After recording the sworn statement of the 2nd respondent, the learned Magistrate took cognizance of the offences under Sections 341 and 323 of the I.P.C. on 1-10-1991. The petitioner would maintain, the protest complaint is belated; and that no cognizance could have been taken as the same was barred by limitation and also because no joint complaint is maintainable under law. Therefore, the petitioner filed Crl. M. C. No. 1441 of 1991 u/s 482 of the Code. This Court, by Annexure 4 order, dismissed the petition observing that "As it is open to the petitioner to highlight his defence before the trial Court itself and press for dropping of the proceedings, I hold that there is no justification in quashing the proceedings as sought for by him." The petitioner, thereupon filed Crl. M. P. No. 3095 of 1992 for dropping the proceedings. The learned Magistrate, by Annexure H order dismissed the said petition. It is the said order that is under challenge.

3. Respondents 1 and 2 alleged, as per the request of the petitioner, the second respondent went to the office of the petitioner on 8-8-1990 by about 3 p.m.; while the discussion was in progress the petitioner became furious and caught hold of the collar of the second respondent and pushed him back as a result of which his head struck on the wall causing injury; and when he tried to go out of the cabin, the petitioner bolted the door. There were other allegations also.

4. As noticed, the occurrence is alleged to be on 8-8-1990. Annexure A complaint was filed on 7-8-1990 which the respondents would contend is a mistake for 10-8-1990. They have produced Annexure R-1 which would show that the complaint was submitted before Court only on 10-8-1990. The point urged by the petitioner is that as per Annexure E proceedings, since cognizance was taken by the Magistrate only on 1-10-1991 which is beyond one year from the date of occurrence, the same is barred by limitation as per Section 468(1)(b) of the Code. The first complaint Annexure A being on 7-8-1990 (or 10-8-1990) and the protest complaint on 29-6-1991 both are within one year of the date of occurrence. Whether the case of the respondents that 7th is only a mistake for 10th is a question of fact to be gone into at trial. But, according to the learned counsel for petitioner, what is material to be considered for the purpose of limitation is the date of taking cognizance and not the date of complaint. According to him, since cognizance was purported to be taken only on 1-10-1991, the same being beyond one year and is barred by limitation.

5. The point that would arise for consideration is whether the limitation u/s 468 of the Code is to be reckoned with reference to the date of complaint or with reference to the date of taking cognizance. The petitioner relied on the decision in

Kunhabdulla v. Kunhammed 1988 (1) Ker LT 343 in support of his contention. That decision arose under the Child Marriage Restraint Act, 1929 in which Section 9 of the said Act enjoined no Court shall take cognizance of any offence under that Act after the expiry of one year from the date on which the offence is alleged to have been committed. The complaint in that case was filed on 22-4-1987 and summons was issued on 28-4-1987 and the marriage was on 25-4-1986. It was held since cognizance was taken beyond one year of the marriage, it would attract the bar of limitation. The limitation for taking cognizance u/s 468 has to be understood in the context of Sections 469, 470, 471 and 473 of the Code. In considering the said question, the decision in Kunhabdulla''s case 1988 (1) Ker LT 343 evidently is distinguishable inasmuch as the same was rendered under the Child Marriage Restraint Act, 1929. There was no occasion also for considering the scope of Sections 468 in the context of Sections 469, 470, 471 and 473 of the Code.

6. There could be a case where the complaint is filed on the last date of limitation and on account of the inconvenience or otherwise of the Court the sworn statement of the complainant could be recorded only on a later date and the Magistrate took cognizance after the expiry of limitation. If the date of taking cognizance is taken the date to determine the period of limitation that would amount to penalising the party for no fault of his. Such a construction cannot be placed u/s 468 of the Code. A construction possible in the circumstance is that the bar u/s 468 of the Code from taking cognizance will operate only when the complaint is barred by limitation.

7. In the decision in Kamal H. Javeri and Another Vs. Chandulal Gulabchand Kothari and Another, the Bombay High Court held in a similar circumstance that "having regard to the scheme of Chapter XXXVI, Cr. P. C. and having regard to the provisions of Section 468 the only proper construction that could be placed on Section 468, in connection with the limitation is that if the complaint is filed beyond the prescribed period of limitation under Sub-section (2) of Section 462, then no Court shall take cognizance of an offence u/s 468(1) subject however to the power vested in Court to extend the period of limitation u/s 473". In the same view is taken in the decision in Basavantappa Basappa Bannihalli and Another Vs. Shankarappa Marigallappa Bannihalli, Cognizance taken by Magistrate after the period of limitation is not invalid, provided the complaint was filed within the period of limitation. This conclusion also gets support from the observation of the Supreme Court in the decision in Surinder Mohan Vikal Vs. Ascharaj Lal Chopra, There the complaint was u/s 500, I.P.C. and the question that arose for determination was whether the date of the allegation was the date from which the period of limitation started or the date of acquittal. Adverting to the same, the Supreme Court observed in paragraph 3:

But, as has been stated, the complaint u/s 500, I.P.C. was filed on February 11, 1977, much after the expiry of that period. It was therefore not permissible for the Court of the Magistrate to take cognizance of the offence after the expiry of the period of limitation.

The said observation would show that the date of filing the complaint is material date.

8. An observation of this Court in Malabar Market Committee v. Nirmala 1988 (2) Ker LT 420 to the effect that "The complaint in this case was filed on 19-7-1985. Hence the complaint was filed within six months from the date of the offence" also is in accordance with the conclusion that the date of filing the complaint is the material date to determine whether there is bar of limitation u/s 468 of the Code. The argument of the learned counsel for the petitioner, in this regard, therefore, is not sustainable.

9. As regards the contention that there was delay in filing the protest complaint apart from the fact that the Code does not prescribe any time limit for filing a protest complaint, whether there was such delay as to affect the complaint is a matter for evidence which cannot be gone into at this stage. The decision in Asaria v. Pazhani Swami 1981 Ker LT 93 : 1981 Cri LJ NOC 74 (Ker) also noted that the Code does not prescribe any limitation in this regard. The contention that the petitioner was away on the date of the alleged occurrence too is a matter for evidence to be established at the trial.

10. The last contention by the learned counsel for the petitioner is a joint complaint, as the present one is not maintainable under law and therefore the order of the Magistrate is vitiated. As already noticed, the complaint was under Sections 418, 323, 342, 506(1) and 294 of the I.P.C. After recording the sworn statement of the second respondent the learned Magistrate took cognisance of the offences under Sections 323 and 342, I.P.C. only. With due regard to the allegations in the complaint those offences are related to the second respondent.

11. The learned counsel for the petitioner relied on the decision in C. S. Desai v. B. Paul Abrao 1963 KLT 548 in support of the contention that a joint complaint is not maintainable. On the other hand, the learned counsel for the respondents contended that, even assuming that a joint complaint is not maintainable the Magistrate could treat the complaint as a complaint by one of the respondents at their option and proceed with the complaint. The learned counsel relied on the decision of the Madras High Court in Narayanaswami v. Egappa Reddy 1962 (2) Cri LJ 616 in support of the said contention. Learned counsel pointed out that the decision in C. S. Desai''s case 1963 KLT 548 also would show that, the same was rendered as per the statement filed by the complaint agreeing to have the accused discharged without prejudice to the right of the complainants to file fresh complaint. In C. S. Desai''s case 1963 KLT 548 reliance is made on the decision in State of Kerala v. Mary C. Nidhiri 1961 KLT 717 to hold that in a complaint where the trial itself was without jurisdiction the proper order that could be passed is the discharge of the accused. In Narayanaswami''s case 1962 (2) Cri LJ 616 after finding that a joint complaint is not maintainable, in para 3 of the judgment, it is stated that "The order of the Sub-Magistrate is wrong and it is set aside. The learned Magistrate would treat the

complaint filed in this case as a complaint by one of the respondents at their option and permit the respondents to file separate complaints, if they so desire.

12. In Mary C. Nidhiri''s case 1961 KLT 717 in a prosecution u/s 29 of the Industrial Disputes Act, 1947 the accused was convicted by the District Magistrate, but was acquitted by the Sessions Judge on the ground that there was no proper complaint in accordance with Section 34(1) of the Act. Section 34(1) of the said Act enjoined that no court shall take cognizance of any offence punishable under that Act, save on complaint made by or under the authority of the appropriate Government. The contention that was accepted by the Sessions Judge was that there was no authority as contemplated u/s 34(1) for filing the complaint. In para 2 of the decision in Mary C. Nidhiri''s case 1961 KLT 717 it is observed that once the complaint was found to be incompetent the proper course ought to have been not to acquit but to discharge the accused. But the appeal was allowed finding that the complaint was competent and reversed the decision of the learned Sessions Judge.

13. The observation was in the said context, The said observation in Mary C. Nidhiri''s cas 1961 KLT 717 cannot be interpreted to mean that in the case of joint complaint the court is not competent to treat such complaint as one by one of the complainants at their option and to permit the other complainants to file separate complaint as is held in Narayanaswami''s case 1962 (2) Cri LJ 616. The decision in C. S. Desai''s case 1963 KLT 548 itself was rendered on the complaint himself filing a statement agreeing to discharge the accused with liberty to file fresh complaint. Thus, it is clear that though the joint complaint is not maintainable the court has got jurisdiction to treat such complaint as one by one of the complainants at their option and permit the other complaints to file separate complaint.

14. In this case, it is not seen that the complainants exercised any such option though offences with respect to which the learned Magistrate took cognizance, in the light of the allegations in the complaint could relate to the second respondent.

15. In Annexure-H order the learned Magistrate states that a prima facie case is made out with respect to the offence punishable under Sections 323 and 341. But such cognizance could be taken only treating the complaint is by the second respondent. That could be done only at the option of the complainants as is held in Narayanaswamy''s case 1962 (2) Cri LJ 616. It is not seen that the complainants have exercised such option and therefore the cognizance is vitiated on account of the same, consequently Annexure-H order is liable to be set aside and the matter has to be remitted to the Magistrate to give an opportunity to the complainants to exercise the option to proceed with a complaint by anyone of them. Annexure-H order is set aside and the matter is remitted to the Magistrate who will give an opportunity to the complainants to exercise their option to proceed with the complaint by anyone of them and dispose of the matter in accordance with law and in the light of what is stated in this order.

The Crl. R. P. is disposed of as indicated above.