K. Kelappan Vs State of Kerala

Court: High Court Of Kerala

Date of Decision: Sept. 7, 1989

Acts Referred: Kerala Police Act, 1960 â€" Section 47
Official Secrets Act, 1911 â€" Section 1, 1(1)
Penal Code, 1860 (IPC) â€" Section 441
Street Offences Act, 1959 â€" Section 1(1)

Citation: (1990) CriLJ 697 : (1990) 1 ILR (Ker) 494

Hon'ble Judges: P.K. Shamsuddin, J; M.M. Pareed Pillay, J

Bench: Division Bench

Judgement

Pareed Pillay, J.
Revision petitioner who has been found guilty u/s 47 of the Kerala Police Act by the courts below challenges the

conviction and sentence entered against him on the ground that no offence has been made out against him.

2. The prosecution case is that on 29-12-1987 at 4.10 a.m. the revision petitioner and three others were found on the veranda of the Government

High School, Thiruvangad by P. W. 1 Sub Inspector who was on patrol duty and that they were not in a position to explain their presence

satisfactorily at the untimely hour. P.W. 1 gave evidence in support of the prosecution case. He stated that he and police party were on patrol duty

and it was then that he saw the revision petitioner and three others at the Government High School premises. D.W. 2 watchman of the school

stated that he was not aware of any such incident as alleged by the prosecution. Both the courts below accepted the evidence of P.W. 1 and held

the revision petitioner guilty of the offence u/s 47 of the Kerala Police Act (hereafter referred to as the Act).

3. The matter was referred to the Division Bench by Sankaran Nair, J. holding that 1983 K LT 579 : (1983 Cri LJ 199) (Naseema v. State of

Kerala) requires reconsideration. In Naseema"s case Balakrishna Menon J. held that a reading of Section 47 itself would clearly indicate that it is

only such entry as would amount to trespass that is dealt with in the section. The above decision has been followed by Padmanabhan J. in Cri. R.P.

17 of 1982.

4. Learned counsel for the revision petitioner submitted that mere entry into any dwelling house or any other building or any land or ground

attached thereto or on any boat, vehicle or vessel, or on any ground belonging to the Government or appropriated to public purposes will not

constitute an offence u/s 47 of the Act. It is contended that only an entry as would constitute a trespass under the Penal Code will constitute an

offence u/s 47 as the expression ''trespass'' cannot have any different meaning from the one u/s 441 of the Penal Code. It is urged that all the

ingredients u/s 441 of the I.P.C. must be satisfied and in that case only an offence u/s 47 could be made out.

5. Ingredients of Section 441 of the I.P.C. are the following:

(1) Entry into or upon property in the possession of another.

(2) If such entry is lawful, then unlawfully remaining upon such property.

(3) Such entry of unlawful remaining must be with intent --

(a) to commit an offence; or

(b)to intimidate, insult, or annoy any person in possession of the property.

The authors of the Indian Penal Code say:

We have given the name of trespass to every usurpation, however slight, of dominion over property. We do not propose to make trespass, as

such, an offence except when it is committed in order to the commission of some offence injurious to some person interested in the property on

which the trespass is committed, or for the purpose of causing annoyance to such a person. Even then we propose to visit it with a light

punishment, unless it be attended with aggravating circumstances.

Contention of the revision petitioner that offence u/s 47 can be there only if criminal trespass as defined u/s 441 of the I.P.C. has been made out is

untenable. Kerala Police Act does not import into Section 47 the ingredients of criminal trespass as defined under the Penal Code. As the Act is a

self-contained Code, the definition of criminal trespass in another statute cannot be invoked to decide whether any offence has been made out or

not u/s 47. No criminal intention is required to constitute an offence u/s 47 of the Act. A mere entry without reasonable excuse makes out an

offence. To constitute an offence u/s 47 of the Act it is not at all necessary to establish that whether such entry was with the intention to commit an

offence or to intimidate, insult, or annoy any person in possession of the property. Any entry into the premises mentioned u/s 47 without reasonable

excuse would constitute an offence under the Act. Though the heading of the Section refers to wilful trespass, a reading of the Section makes it

clear that any wilful entry upon the premises mentioned therein without reasonable excuse is an offence. The Act does not define trespass. So long

as the definition of ""criminal trespass"" as defined in the Penal Code is not adopted in the Act, Section 47 cannot be read as to include the

ingredients of criminal trespass as defined under the Indian Penal Code. In Chambers 20th Century Dictionary ''trespass'' is explained thus : ""to

interfere with another''s person or property; to enter unlawfully upon another''s land, to encroach, to intrude"". The expression trespass in the

heading of Section 47 of the Act can only mean unwarrantable intrusion or unlawful entry and it cannot be equated to criminal trespass as defined

in Section 441 of the I.P.C. It is an accepted principle of law that while interpreting a statute, when there is ambiguity about the meaning of a

particular section, its meaning must be understood in such a manner that it harmonizes into the subject of the enactment and the legislature''s object

in enacting it. So far as Section 47 of the Act is concerned there is no scope for any doubt in construing the section as it is abundantly made clear

that any wilful entry without reasonable cause into any public place categorised in that section will constitute an offence. As held in Mohan Lal Vs.

Jai Bhagwan, the Court has to bear in mind that the meaning of the expression in a section must be found in the felt necessities of the time. But for

Section 47 of the Act the likelihood of a public building or a public place being misused by anti-social elements in the darkness of the night with

impunity cannot be prevented effectively. To hold that the word ""unlawful entry"" in Section 47 means a criminal trespass would amount to reading

of something which is not in the Act. As the revision petitioner could not give any reasonable explanation for his presence there at the untimely

hour, the inescapable conclusion is that he has committed an offence u/s 47 of the Act. If he had any reasonable excuse for his presence, the

position would be different. For example, if a person takes shelter in the veranda of a public building during rain or storm, it would be no offence.

As Section 47 itself clearly states that only entry into a public place without reasonable excuse would be an offence, it is for the person against

whom a charge has been made under the Section to establish that there was valid reason or reasonable excuse for him to have entered into the

public premises.

6. The marginal note cannot form the foundation of the Section. Notes are often found printed at the side of Sections in an Act, which purport to

summarise the effect of the sections. Of course, they can be used as an aid to construction. But the weight of the authorities is to the effect that they

are not parts of the statute and so should not be considered, for they are ""inserted not by Parliament nor under the authority of Parliament, but by

irresponsible persons."" The above view was confirmed by the House of Lords in Chandler v. D.P.P. (1964) AC 763 where the side note

(""Penalties for spying"") to Section 1 of the Official Secrets Act 1911 was held not to restrict the wide words of the Section, which made it an

offence for any person for any purpose prejudicial to the safety or the interests of the State to approach or be in the neighbourhood of or enter any

prohibited place. Lord Reid said :

In my view side notes cannot be used as an aid to construction. They are mere catchwords and I have never heard of it being supposed in recent

times that an amendment to alter a side note could be proposed in either House of Parliament. Side notes in the original Bill are inserted by the

draftsman. During the passage of the Bill through its various stages amendments to it or other reasons may make it desirable to alter a side note. In

that event I have reason to believe that alteration is made by the appropriate officer of the House -- no doubt in consultation with the draftsman. So

side notes cannot be said to be enacted in the same sense as the long title or any part of the body of the Act.

Some times a marginal note will be inaccurate and will not be of any assistance whatsoever. A marginal note which is not indicative of the purport

of the section or not in tune with the specific mandates of the section is of little importance or consequence. While the court is entitled to look at the

headings of a section in a statute to resolve any doubt with regard to ambiguous words, the law is quite clear that the headings cannot be used to

give a different effect to the clear words in the section, where there cannot be any doubt as to their ordinary meaning. When the section itself gives

a straightforward meaning and suggests no ambiguity or uncertainty the Court cannot avoid the Section itself and go for the heading to give a

judicial interpretation.

7. As the revision petitioner was found in the school premises at the untimely hour and as he could not explain his presence there at the odd hour,

both the courts below were justified in holding that he has committed offence u/s 47 of the Act. In our view Naseema"s case 1983 K LT 579 :

(1983 Cri LJ 199) has not correctly laid down the law.

There is no merit in the criminal revision petition. However, considering the entire circumstances we hold that a sentence of fine would meet the

ends of justice in this case. We confirm the conviction against the revision petitioner, but the sentence is altered to one of fine. Revision petitioner is

sentenced to pay a fine of Rs. 300/ - and in default of payment of fine he shall undergo simple imprisonment for one month. With the modification

in the sentence the Criminal Revision Petition is dismissed.

Shamsuddin, J.

8. I agree with the reasoning and conclusion of my learned brother. However, in view of the importance of the matter, I feel that I should add a few

words of my own in support of the conclusion.

9. Section 47 of the Kerala Police Act which is herein referred to as "the Act" for short, reads as follows :

Section 47. Penalty for wilful trespass : Whoever without reasonable excuse wilfully enters into or on any dwelling house or other building or on

any land or ground attached thereto or on any boat, vehicle or vessel, or on any ground belonging to the Government or appropriated to public

purposes, shall be liable on conviction to imprisonment for a term not exceeding six months or to fine not exceeding five hundred rupees or to

both.

The contention raised by the learned counsel for the petitioner is that public have a right to entry into a public place and that therefore the entry to

or on a building or on ground belonging to the Government or appropriated to public purpose will not amount to trespass. It is also his case that in

order to constitute the offence, it should be a trespass as defined in Section 441 of I.P.C. The offence u/s 441 I.P.C. is not mere trespass but

criminal trespass and that therefore there is no justification in importing into Section 47 of the Act, the ingredients of Section 441 I.P.C.

10. Section 47 makes a wilful entry without reasonable excuse into or on any dwelling house or other building or on any land or ground attached

thereto or on any ground belonging to the Government, or appropriated to public purpose an offence liable to be punished thereunder. If the

contention, of the learned counsel for the petitioner that entry into or OP a ground belonging to the Government or appropriated to public purpose

will not amount to an entry within the meaning of Section 47 of the Act is accepted, the very purpose for which Section 47 is enacted will be

defeated and the expression ""whoever without reasonable excuse wilfully enters into or on....any ground belonging to the Government or

appropriated to public purpose"" would remain a dead letter in the statute book. The provisions of Section 47 of the Act would also become

redundant, if it is to be held that the ingredients of the offences u/s 441 IPC and Section 47 of the Act are the same.

11. It is a cardinal principle" of interpretation that a statute must be construed with reference to its object and that the expressions used in the

statute must be interpreted and understood in the context in which they are employed. The provisions contained in the Kerala Police Act appear to

have been enacted to preserve public order, decency and morality. Section 47 of the Act takes in not only public buildings but also dwelling

houses and other buildings in its ambit, presumably to protect privacy and prevent annoyance to the inhabitants of the dwelling houses and buildings

and also to plug circumstances which would render it easier to miscreants to enter into dwelling houses and buildings for purpose of committing

theft and other offences. It should be for this reason that the statute advisedly desisted from employing the expression such as ""with intent to

commit an offence or to intimidate, insult or annoy any person in possession of such property"" in Section 47 of the Act. If there is no prohibition of

entry to or on a ground belonging to Government or appropriated to public purpose, there is likelihood of making use of those grounds and public

places by men and women for immoral purposes with impunity at odd hours of night. Section 47 is enacted to prevent such abuses as well.

12. The significance of the object of the statute in the sense of mischief to be remedied and the remedy provided has always been appreciated in

interpreting statute. It would be difficult to exaggerate the importance of the bearing which the object of the statutes or statutory provisions has

upon their interpretation (See Cross Statutory Interpretation 1978 Edition pages 50 and 51).

13. Maxwell on the Interpretation of Statutes also lays emphasis on this rule, which is described as mischief rule and observes that ""consideration

of mischief or object or enactment will often provide a solution to a problem of interpretation."" (See Maxwell on The Interpretation of Statutes,

12th Edition, page 40).

14. The mischief rule has been applied in putting On interpretation on the provisions of the Statutes in number of cases. It was held in Smith v.

Hughes (I960) 1 WLR 830 that prostitutes who attracted the attention of passersby from balconies; or windows were soliciting ""in a street"" within

Section 1(1) of the Street Offences Act, 1959. Lord Parker C. J. observed that:

For my part, I approach the matter by considering what is the mischief aimed at by this Act. Everybody knows that this was an Act intended to

clean up the streets, to enable people to walk along the streets without being molested or solicited by common prostitutes. Viewed in that way, it

can matter little whether the prostitute is soliciting while in the street or is standing in a doorway or on a balcony, or at a window, or her solicitation

is projected to and addressed to somebody walking in the street. For my part, I am content to base by decision on that ground and that ground

alone.

15. On the most fundamental concepts in the interpretation of statutes that has always been recognised is the application of legislative intent. In the

Interpretation of Statutes, by Reed Dickerson, 1975 Edition puts this concept as follows:--

The appeal of the concept is strong. In the Division of responsibilities represented by the constitutional separation of powers, the legislature calls

the main policy turns and the courts must respect its pronouncements. In such a relationship, it would seem clear that so far as the legislature has

expressed itself by statute the courts should try to determine as accurately as possible what the legislature intended to be done.

16. The Supreme Court in Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, , observed as follows (at p.

1042 of AIR):--

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is

what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the

contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and

then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the

glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different

than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover

what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act.

This decision has been followed by a Full Bench of this court in Moideenkutty Haji v. Kunhikoya (1987) 1 K LT 635 : (1987 Cri LJ 1106).

17. In Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, , the Supreme Court observed thus (at p. 356 of AIR)

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The words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject

of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological

propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and that object to be attained.

In Assan v. Ahammed Kutty 1986 K LT 1223, a Division Bench of this court, to which I am a party, considered the question of Interpretation of

Statutes and observed as follows:--

The principle in Heyden''s case (1584 17 ER 637) *Citation seems to be 1584-76 ER 637 ....Ed) is operative in this situation. The State of the

previous law, the defect or mischief therein which the legislature wanted to remedy and the true reason of the remedy provided by the amendment

are determinative of the intention of the legislature. Thereafter, the office of all judges is always to make such construction as shall suppress the

mischief and advance the remedy "pro privat commodo" and to suppress subtle inventions and evasions for the continuance of the mischief and to

add force and life to the cure and the remedy according to the intent of the makers of the Act, pro bono publico.

18. It is also an important principle of interpretation that the court should avoid an interpretation which would render the provisions of the statute

redundant or meaningless. In Sirajul Haq Khan and Others Vs. The Sunni Central Board of Waqf, U.P. and Others, , the Supreme Court

observed as follows (at p. 204 of AIR):--

It is well settled that in construing the provisions of a statute courts should be slow to adopt a construction which tends to make any part of the

statute meaningless or ineffective; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by

the statute.

19. For the foregoing reasons, it is not possible to agree with the interpretation sought to be put by the learned counsel for the petitioner. With

respect, I agree with my learned brother that the decision in Naseema v. State of Kerala 1983 K LT 579: (1983 Cri LJ 199) has not correctly laid

down the law.

20. In the instant case, four persons (two males and two females) entered into the premises of the Government Girls High School, Thiruvangad on

29-12-1987 and the Additional Sub Inspector of Police, in the course of his patrol duty at 4.10 AM on that day, saw them in the verandah of the

school building. On questioning them, they were not able to satisfactorily answer for their presence at the verandah of the Government School and

it was in these circumstances, the Additional Sub Inspector of Police filed a complaint against them for offence u/s 47 of the Kerala Police Act

before the Additional Judicial First Class Magistrate, Tellicherry. The petitioner and the young man who was tried along with the petitioner had no

case that the two females found along with them in the varandah of the school were in any way related to them or that they made an entry with any

reasonable excuse. The trial court found that they entered into the premises of the Government High School wilfully and without any reasonable

excuse, which finding was confirmed by the learned Sessions Judge. The finding of the courts below in regard to the commission of offence is

correct and is liable to be confirmed.