(1996) 1 ALT(Cri) 162 : (1985) 1 KLJ 82 : (1995) 2 RCR(Criminal) 19

High Court Of Kerala

Case No: Criminal M.C. 1556/92

Hareendran	APPELLANT
Vs	
Sarada and Another	RESPONDENT

Date of Decision: Dec. 23, 1994

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - section 190, 193, 2, 201, 26
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 14, 20, 3, 3(1), 4

Citation: (1996) 1 ALT(Cri) 162 : (1985) 1 KLJ 82 : (1995) 2 RCR(Criminal) 19

Hon'ble Judges: M.M. Pareed Pillay, Acting C.J.; T.V. Ramakrishnan, J; P. Shanmugam, J

Bench: Full Bench

Advocate: K. Ramachandran and K.T. Sankaran, for the Appellant; P. Vijayabhanu, for 1st Respondent and K.C. Peter, Addl. Director General of Prosecutions for 2nd Respondent, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.M. Pareed Pillay, Actg. C.J.

1. The Crl. M.C. is to quash a complaint filed by the first Respondent before the Judicial Magistrate of the First Class, Ottapalam for offence u/s 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act"). Magistrate took cognizance of the offence. Contention of the Petitioner is that the Magistrate ought to have seen that he has no jurisdiction to initiate committal proceedings and hence initiation of the same cannot be sustained.

2. In view of the contention that the Magistrate did not have jurisdiction to take cognizance of the offence under the Act, Thomas, J. held that principles laid down by a

Division Bench of this Court in Re 1992 (2) KLT 748 require reconsideration. The matter was posted before a Division Bench of this Court and that Court referred the case to be heard by a Full Bench of this Court.

3. The question that arises for consideration is whether committal proceedings is necessary or not in a case under the Act. In Re 1992 (2) KLT 748 a Division Bench of this Court held that the Sessions Judge as Special Court constituted under the Act can take cognizance of the offences even in a case where offences under the Penal Code are also included without Committal proceedings. The learned Counsel for the Petitioner as well as the learned Additional Director General of Prosecutions contended that the Act does not envisage committal proceedings and as the Act has been enacted for speedy and expeditious trial and disposal of such cases, committal proceedings was never contemplated by the Legislature. It is also contended by them that if committal proceedings is insisted upon, it would cause further delay in the trial and every object of the statute would be defeated. It is their further contention that the committal proceedings would be disadvantageous to the complainant as well as the accused. According to them, as the Act is a self-contained one and as it confers original jurisdiction on the special court and as it does not even hint faintly that committal proceedings is necessary by implication, the matter which was never intended under statute cannot be incorporated in it.

4. Section 2(g) of the Code of Criminal Procedure defines "inquiry". "Inquiry" means every enquiry, other than a trial, conducted under the Code by a Magistrate or Court. Merely on the basis of the definition of inquiry under the Code of Criminal Procedure, it would not be possible to hold that the inquiry under the Act has to commence in the Court of the Magistrate. Section 201 of the Code of Criminal Procedure provides for the procedure by Magistrate not competent to take cognizance of the case. If a complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall, if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect; if the complaint is not in writing, direct the complainant to the proper Court. Contention of the Petitioner is that as the complaint was filed before the Magistrate he on being apprised of the fact that he is not competent to take cognizance of the offence should have returned it for presentation to the Court with endorsement to that effect as provided u/s 201 Code of Criminal Procedure and he could not have proceeded with the inquiry with a view to committing it to the Sessions Court later. In view of Section 20 of the Act, there is considerable force in the above contention.

5. Section 20 has been enacted in the Statute to override all other laws. It reads:

Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

As this section gives the Act over-riding effect and as the Act has been enacted with a view to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes and to provide for Special Court for the trial of such offences, it is rather difficult for us to hold that the committal proceedings is indispensable as a prelude to the case being tried before the Special Court. Merely on account of the definition of inquiry u/s 2(g) of the Code of Criminal Procedure, it is not possible to come to a conclusion straightaway that in the cases coming under the Act also inquiry has to be done by a Magistrate and only on committal of the case to the Special Court that court gets jurisdiction to try the offences. Section 3 of the Act prescribes punishments for offences of atrocities under the Act. Section 4 provides for punishment for neglect of duties to be performed under the Act. Section 14 provides for the constitution of Special Court. In that section itself it is made clear that for speedy trial the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under the Act. It is not possible to hold that there is no constitution of a Special Court under the Act only for the reason that Section 14 only directs specification for each district a Sessions Court to be a Special Court by notification. Specification by notification as a Special Court to try the offences under the Act can only be considered as constitution of Court of Sessions as a Special Court. As the Act is silent regarding the procedures to be followed by the Special Court, the ordinary incidents of procedure are to be followed for all purposes including taking cognizance of offence. Sections 4(2) and 26(b) of the Code of Criminal Procedure read along with Section 14 of the Act would make the above position clear.

6. So long as there is no ambiguity with regard to the above position and when Special Court takes cognizance of the offence under the Act and proceeds with the trial, Section 193 Code of Criminal Procedure cannot have any application. Section 193 provides that except as otherwise expressly provided by the Code or by any other law for the time being in force, no Court of Sessions shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under the Code. As the Sessions Court is specified as Special Court, it can take cognizance of the offences and as there is nothing indicative in the Act to hold that the Special Court gets jurisdiction to try the case only on committal by the Magistrate, it is not possible to hold that that Court can take cognizance of an offence for trial only on proper committal by the Magistrate. As Section 14 of the Act specifically provides for speedy trial and as the Act itself has been enacted to prevent commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes by providing Special Courts for trial of such offences and as the Act nowhere hints committal proceedings, Section 193 of the Code of Criminal Procedure cannot have any application. Section 14 enables the Special Court to exercise original jurisdiction. Hence its power to take cognizance has to be controlled by Section 190 of the Code of Criminal Procedure. In a case where Special Court receives final report disclosing offence uader the Act, it can certainly take cognizance of the same without committal.

7. In Re 1992 (2) KLT 748 Division Bench of this Court on an elaborate consideration of the entire matter held that committal proceedings are not warranted in a case coming under the Act and triable by the Special Court. We are in agreement with the said view.

8. As the Magistrate has no jurisdiction to take cognizance of the case, the complaint ought to have been returned for presentation before proper Court. As such, the entire proceedings in C.P. 14 of 1992 of the Court of the Judicial Magistrate of the First Class, Ottapalam are quashed. We would accordingly direct the Magistrate to return the complaint for presentation before the proper Court.

Crl. M.C. is allowed as stated above.