courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

P.N. Sagar Vs State of Kerala

Court: High Court Of Kerala

Date of Decision: Nov. 30, 2005

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 156(3), 195, 195(1), 340, 341
Penal Code, 1860 (IPC) â€" Section 120B, 193, 204, 34, 465

Citation: (2006) CriLJ 1104 : (2006) 1 ILR (Ker) 227 : (2005) 3 KLJ 722 : (2006) 1 KLT 69 : (2006) 1 RCR(Criminal) 904

Hon'ble Judges: K. Thankappan, J

Bench: Single Bench

Advocate: T. Rajesh, for the Appellant; K.J. George (PP) and M.V. Thamban, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K. Thankappan

1. The petitioner is the first accused in Crime No. 445 of 2004 of Punalur Police Station. The above crime was registered under Sections 120B,

193, 204, 465, 468 and 471 read with Section 34 I.P.C. The petitioner seeks to quash Annexure A9 F.I.R. in the said crime. The above crime

was registered by the police on a reference made by the Judicial First Class Magistrate"s Court III, Punalur u/s 156 (3) Cr.P.C. for investigation

and report in the light of Annexure A7 complaint filed by the learned Munsiff, Punalur. It is alleged in Annexure A7 complaint that while O.S. No.

284 of 2000, filed by the petitioner against one Mubarak Beevi and others against forcible eviction from shed constructed in their property, was

pending before the Muniff"s Court, Punalur, the learned Munsiff found that some of the documents produced by the petitioner/plaintiff were forged

documents. By Annexure A7, the learned Munsiff directed the learned Magistrate to forward the complaint to the police for investigation under

Sections 156(3) Cr,P.C. On receipt of the complaint, the learned Magistrate forwarded the complaint to the Sub Inspector of Police, Punalur for

investigation and report. At this stage, the petitioner filed this Crl. Miscellaneous Case.

2. Prior to the filing of this Crl. Miscellaneous Case, the petitioner had filed W.P. (C) No. 32238 of 2004 for keeping in abeyance the entire

proceedings initiated u/s 340 Cr,P.C. and this Court disposed of the Writ Petition by directing to keep in abeyance the proceedings for a period of

ten days from the date of the judgment.

3. Learned counsel for the petitioner submits that the Magistrate has no jurisdiction to forward the complaint to be investigated into and to file

report u/s 156(3) Cr.P.C. Counsel further submits that the procedure now adopted both by the Munsiff and the Magistrate is irregular and illegal.

As per Section 340 Cr.P.C. any court can make a complaint after entering a finding with regard to the offences alleged to have been committed by

the accused. Further it is contended that as per Section 341 Cr.P.C. If an appeal is preferred against the complaint under which the proceedings

has been issued, the entire matter shall be adjourned.

4. Sri. M.V. Thamban appearing for the additional second respondent is also heard by this Court. Sri. Thamban submits that as per the procedure

now prescribed u/s 340 Cr.P.C. the Munsiff has got jurisdiction to make a complaint to the Magistrate convened for trying the proceedings

involved in the alleged commission of the offence. The procedure now adopted by the learned Magistrate, according to counsel, is also as per the

direction issued by the Munsiff. If so, the actions now followed by the learned Magistrate or registration of the crime by the police are justifiable.

On receipt of the complaint from the learned Munsiff, the learned Magistrate was bound to proceed with the matter as per Section 340 Cr.P.C.

5. The question to be decided by this Court is whether the action of the learned Munsiff as well as the procedure followed by the learned

Magistrate are correct or not. Section 340 Cr.P.C. reads as follows.

Procedure in cases mentioned in section 195(1) When, upon an application made to it in this behalf of otherwise, any Court is of opinion that is

expedient in the interest of justice that an enquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195. which

appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given

in evidence in a proceeding in that Court, such Court may, After such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing.

(c) send it to a Magistrate of the first class having jurisdiction.

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it

necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (I) in respect of an offence may, in any case where that Courts has neither made a complaint

under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which

such former Court is subordinate within the meaning of sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed,-

a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

b) in any other case, by the presiding officer of the court;

(4) In this Section, Court has the same meaning as in section 195.

6. Any court empowered under the Code of Criminal Procedure has got jurisdiction to make a complaint to the concerned Magistrate on entering

a finding with regard to the commission of offences punishable u/s 195 Cr.P.C. It is the duty of the court to record a prima facie finding that such

persons against whom proceedings have been initiated have committed the offences punishable u/s 195 Cr.P.C. Once a finding has been entered

by the court with regard to commission of the offence, no second enquiry or investigation is necessary. In the case in hand, the learned Munisiff has

already entered a finding and hence the learned Magistrate ought to have proceeded with the complaint as if there is a police report instead of

forwarding the same for investigation u/s 156(3) Cr.P.C. The procedure adopted by the learned Magistrate is, therefore, irregular and illegal. The

registration of the crime itself is against the provisions of the Code of Criminal Procedure. This Court has already gone through the entire facts and

circumstances which lead the petitioner to approach this Court. The complaint in dated 29.10.2004. There were sufficient materials for the learned

Magistrate to proceed with the complaint. Hence, the registration of the crime and the investigation started by the police are hereby quashed.

Further, this Court holds that the direction of the learned Munsiff to far ward the complaint to the police is irregular and not in accordance with the

provisions of the Code of Criminal Procedure. That part of the direction in Annexure A7 also would stand quashed. The learned Magistrate shall

expedite the proceedings on receipt of a copy of this order. The observations made in this order will not preclude the petitioner from seeking any

other remedy as contemplated u/s 341 Cr.P.C.

The Crl. M.C. is disposed of as above.