C.P. Raju Vs State of Kerala

Court: High Court Of Kerala

Date of Decision: March 25, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 168, 173, 4(1), 4(2), 482
Immoral Traffic (Prevention) Act, 1956 â€" Section 13, 13(1), 13(2A), 13(3), 14

Citation: (2014) CriLJ 2936 : (2015) 1 Crimes 551 : (2014) 3 ILR 259 : (2014) 3 KLJ 36 : (2014) 3 KLT 410 : (2014) 4 RCR(Criminal) 514

Hon'ble Judges: P.D. Rajan, J

Bench: Single Bench

Advocate: B. Krishna Mani, Advocate for the Appellant; Reji Joseph, Public Prosecutor, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P.D. Rajan, J.
This is a petition filed under Section 482 of the Code of Criminal Procedure to quash Annexures-I and II in Crime No.

526/2010 of Keezhvaipur police station which is pending before the Judicial First Class Magistrate Court, Thiruvalla in C.C. No. 136/2011

punishable under Sections 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (for short "the Act") by invoking inherent power. The petitioner

is the 4th accused in the above case, who challenges Annexure-I and II on two grounds that there was violation of mandatory provision of the Act

and the investigation was conducted not by a special officer appointed by the Government under the Act. If the trial is proceeded it will amount to

abuse of the process of court. The 2nd respondent''s allegation is that on 30.10.2010 he got information that the petitioner and other accused were

indulged in immoral activities. Immediately he arrived at the house and ascertained the genuineness of the information, thereafter arrested A1, A2,

A3 and A4 in the presence of the independent witnesses. The articles found there were seized reaching at the police station he registered a crime.

After investigation the Sub Inspector of Keezhvaipur police station laid charge before the Judicial First Class Magistrate Court, Thiruvalla where it

was numbered as C.C. No. 136/2011. The learned counsel appearing for the petitioner contended that the S.I. of police Keezhvaipur police

station is not a special police officer under Sec. 13(1) of the Act to file a final report, which is a violation of mandatory provisions of the Act. He

relies the decisions reported in Roy v. State of Kerala (2001 KHC 53), Sinu Sainudheen Vs. Sub Inspector of Police, ; Radhakrishnan K. v.

State of Kerala (2008 (2) KHC 460); Abdul Rasheed v. State of Kerala (2012(4) KHC 395).

2. Adverting to the argument I have first considered Section 13 of the Immoral Traffic (Prevention) Act, 1956, which reads thus:

13. Special police officer and advisory body:- (1) There shall be for each area to be specified by the State Government in this behalf a special

police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.

(2) The special police officer shall not be below the rank of an Inspector of Police.

(2A) The District Magistrate may, if he considers it necessary or expedient so to do, confer upon any retired police or military officer all or any of

the powers conferred by or under this Act on a special police officer, with respect to particular cases or classes of cases or to cases generally:

Provided that no such power shall be conferred on-

(a) a retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an inspector,

(b) a retired military officer unless such officer, at the time of his retirement, was holding a post not below the rank of a commissioned officer.

(3) For the efficient discharge of his functions in relation to offences under this Act-

(a) the special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever

practicable) as the State Government may think fit; and

(b) the State Government may associate with the special police officer a non-official advisory body consisting of not more than five leading social

welfare workers of that area (including women social welfare workers wherever practicable) to advise him on questions of general importance

regarding the working of this Act.

(4) The Central Government may, for the purpose of investigating any offence under this Act or under any other law for the time being in force

dealing with sexual exploitation of persons and committed in more than one State, appoint such number of police officers as trafficking police

officers and they shall exercise all the powers and discharge all the functions as are exercisable by special police officers under this Act with the

modification that they shall exercise such powers and discharge such functions in relation to the whole of India.

Under Sec. 13(1) there is a restriction to the ordinary police officer to arrest a person and investigate a case. The State Government is empowered

to appoint any police officer not below the rank of an Inspector of Police as a Special Officer for dealing with the offences under this Act in a

specified area. In Section 13(2A), the District Magistrate may confer upon any retired police inspector or retired commissioned officer all or any

powers conferred on a special officer with respect to particular cases or cases generally.

3. The Apex Court in Delhi Administration Vs. Ram Singh, held that,

It is clear from the various provisions of the Act that it is a complete Code with respect to what is to be done under it. The entire police duties in

connection with the purposes of the Act within a certain area have been put in the charge of a special police officer. The expression ""police duties

in Sec. 2(i) includes all the functions of the police in connection with the purpose of the Act and, in the special contest of the Act they will include

the detection, prevention and investigation of offences and the other duties which have been specially imposed on them under the Act.

Further, the expression ''dealing with offences'' in Sec. 13(1) is of wide import and will include any act which the police has to do in connection

with the offences under the Act. The expression ''function in relation to offences'' in Sec. 13(3) also includes his functions connected with the

investigation of the offences. There is no reason to exclude such functions from the functions contemplated by sub-s.(3).

It is thus clear that the special police officer is competent to investigate and that he and his assistant police officers are the only persons competent

to investigate offences under the Act and that police officers not specially appointed as special police officers cannot investigate the offences under

the Act even though they are cognizable offences.

It is clear that the special police officer is competent to investigate and that he and his assistant police officers are the only persons competent to

investigate offences under the Act and the police officers not specially appointed as special police officers cannot investigate the offences under the

Act even though they are cognizable offences. This case was registered by the Circle Inspector of Police, Mallappally who is the Special Officer.

After search and arrest the articles were recovered, further investigation was entrusted to the Sub Inspector of Police, Keezhvaipur.

4. A single Judge of this Court in Joseph Vs. Sub Inspector of Police, held that, search conducted by S.I. of Police and crime also registered by

him who is not either a special police officer or a trafficking police officer - is not valid.

5. Another single Judge in Radhakrishnan K. v. State of Kerala (2008 (2) KHC 460) held that, it is well settled that Police Officers not specially

appointed as Special Police Officers cannot investigate the offences under the ITP Act eventhough those offences are cognizable offences.

6. A single Judge of the Madras High Court in In Re: Kuppammal, held as follows:

Where an offence under the Act was alleged to have been committed at a place outside the limits of the original jurisdiction of Madras, the offence

must be investigated by the Deputy Superintendent of Police authorised for the area to investigate. Section 13 no doubt enables a Special Police

Officer to associate a non-official body for the purpose of dealing with offences under this Act. But when the section says that a particular Police

Officer alone shall deal with offences under this Act, it means that such particular officer alone shall investigate into the offence. There can be no

''dealing with offences'' without an investigation into the matter. ''Dealing with offences'' is wider than ''investigation'' and an investigation therefore is

included in the expression ''dealing with offences'' and the offence must, therefore, be investigated only by one of the officers mentioned in the

section and in this case it must be investigated by the Special Officer, namely, the Deputy Superintendent of Police authorised for that area to

investigate.

Where the offence is investigated by the Inspector of Police and taken cognizance of by the Magistrate and the illegality of the investigation has

been brought to the notice of the Court during the trial, the Court, while not declining to take cognizance, will have to take the necessary steps to

have the illegality cured and the defect rectified. The only manner in which such illegality could be cured and the defect rectified is by quashing the

charge-sheet and the charge filed in this case and leave it open to the proper authority to re-investigate the case and file a charge-sheet.

7. According to Sec. 14, the Special Officer has power to authorise any officer not below the rank of Sub Inspector to arrest any person without

warrant. In the above situation the Sub Inspector shall report to the Special Officer about the arrest and circumstance in which he was arrested. It

is pertinent to note that according to Section 14, all offences punishable under this Act shall be deemed to be a cognizable and arrest without

warrant can be made only by the special officer or under his direction, guidance or subject to his prior approval. When the special police officer

requires any officer subordinate to him to arrest without warrant otherwise than in his presence any person for an offence under this Act, he shall

give that subordinate officer an order in writing, specifying the person to be arrested and the offence for which the arrest is being made, and the

latter officer before arresting the person shall inform him of the substance of the order and on being required by such person, show him the order.

Any police officer not below the rank of sub inspector specially authorised by the special police officer may, if he has reason to believe that on

account of delay involved in obtaining the order of the special police officer, any valuable evidence relating to any offence under this Act is likely to

be destroyed or concealed, or the person who has committed or is suspected to have committed the offence is likely to escape, or if the name and

address of such a person is unknown or there is reason to suspect that a false name or address has been given, arrest the person concerned

without such order, but in such a case he shall report, as soon as may be, to the special police officer the arrest and the circumstances in which the

arrest was made.

8. Now it is clear that the power of investigation conferred on a special officer is a mandatory one. Under section 13(1) of the Act, State

Government is empowered to appoint police officers not below the rank of an Inspector as a special police officer for a specified area. He cannot

delegate such powers to other subordinate officers other than under the ground mentioned under sections 14 and 15 of the Act. A delegated

power cannot be further delegated unless otherwise expressly authorised so to do. In other words, a delegatee cannot further delegate without an

express authorisation in the special statute. Here the special officer delegated his power to Sub Inspector of police to conduct investigation and

filed a final report and that delegation to a Sub Inspector is a violation of the mandatory provision.

9. Three Judge Bench while discussing Sec. 5A of Prevention of Corruption Act, 1947 discussed the parameters regarding the mandatory

provision. Paragraph 7 in Munna Lal Vs. State of Uttar Pradesh, held as follows:

''Held that though the letter of S. 5A of the Act was complied with its spirit was not, for in reality there was no investigation by the officer

authorised under that section and the real investigation was by a sub-inspector of police who was never authorised. S. 5A is mandatory and not

directory and an investigation conducted in violation thereof is illegal. Even if however there was irregularity in the investigation and S. 5A was not

complied with in substance, the trials could not be held to be illegal unless it was shown that miscarriage of justice had been caused on account of

the illegal investigation. There was no miscarriage of justice in these cases at all due to the irregular investigation. As a matter of fact on the

alternative case put forward by the accused the substance of the prosecution case was practically admitted by him and he merely pleaded certain

mitigating circumstances. No objection was taken at the trial when it began and it was allowed to come to an end.

10. Generally, investigation, enquiry and trial of offences are mentioned in the Code of Criminal Procedure and each stage is distinct from the

other, which is clear from Sections 4 and 5 of the Code. Section 4(1) of the Code says that all offences under the IPC shall be investigated,

inquired into, tried and otherwise dealt with according to the provisions herein contained. Section 4(2) of the Code says that all offences under any

other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provision but subject to any enactment for the

time being in force regulating the manner or place of investigation inquired into tried or otherwise dealing with such offences.

11. Different stages of investigation was discussed by the Apex Court in H.N. Rishbud and Inder Singh Vs. The State of Delhi, . While discussing

Sec. 5A of Prevention of Corruption Act, 1947 Apex Court held that Sec. 5A is mandatory and not directory and an investigation conducted in

violation of thereof is illegal. But cognizance was taken on a police report, violation of a mandatory provision relating to investigation cannot be set

aside, unless the illegality caused miscarriage of justice. Apex Court held as follows:

.....Thus, under the Code investigation consists generally of the following steps : (1) Proceeding to the spot, (2) Ascertainment of the facts and

circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence

which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer

thinks fit, (b) the search of places or seizure, of things considered necessary for the investigation and to be produced at the trial, and (5) Formation

of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the

necessary steps for the same by the filing of a charge-sheet under Section 173. The scheme of the Code also shows that while it is permissible for

an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for

every one of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in Section

168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear

that the final step in the investigation, viz., the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that

of the officer in charge of the police station.

12. Section 13(1) of the Act says that a Special Officer appointed by or on behalf of the Government for dealing with offences under this Act in

the specified area has the power to investigate. No doubt that the expression, dealing with offences would according to its ordinary meaning

includes the stages of investigation, inquiry and trial but specifically mentions that the special officer appointed by the State Government has the

power for such investigation. Therefore, it means that Section 13(1) makes it clear that the investigation shall be made only by the notified special

officer. When Parliament intend and explain in Section 13(1) of the Act, the importance of a special officer and empowering him to deal with the

offences under the Act, it intends to confer power upon him to investigate the offences under the Act. Therefore, a police officer not notified by the

State Government has no power to conduct the investigation. In In Re: Kuppammal, (page 390, para.5) Lordships of the Supreme Court in H.N.

Rishbud and Inder Singh Vs. The State of Delhi, held that, ""when the breach of such a mandatory provision is brought to the knowledge of the

court at a sufficiently early stage, the court while not declining cognizance, will have to take the necessary steps to get the illegality cured and the

defect rectified, by ordering such re-investigation as the circumstance of an individual case may call for."" The learned Magistrate failed to rectify the

illegality when such illegality brought to his notice. Therefore, this Court is bound to rectify the illegality by ordering a re-investigation by the special

officer. I have considered all the decisions relied on by the learned counsel appearing for the petitioner. It is clear from the various provisions of the

Immoral Traffic (Prevention) Act, 1956 which itself shows as a complete code with respect to what is to be done in a case. The entire police

duties in connection with the purpose of the Act within the notified area have been under the supervision and charge of a special police officer. In

Section 2(1), the expression ''police duty'' also includes all the offences in connection with the purpose of the Act which entrusts special officer for

detection, prevention and investigation of offences under the Act. A non-empowered officer without conferring any power under the Act has no

power to investigate or detect or prevent such acts which is clear in Section 14. However, any special officer can seek assistance of a police

officer under him which does not mean that the Assistant police officers are competent to investigate the offence, since they are not specially

appointed by the Statute. Considering that legal aspect, the investigation conducted by the S.I of Police, Keezhvaipur is invalid according to the

Act and the Annexure-II final report submitted by him is not in accordance with law. If that be so, a trial based upon the charge is a mere abuse of

process of court. Therefore, this is a fit case to invoke the jurisdiction under Section 482 Cr.P.C.

In the result, I allow the petition and quash the final report in Crime No. 526/2010 of the Keezhvaipur Police Station and cognizance taken in CC.

No. 136 of 2011 by the Judicial First Class Magistrate, Thiruvalla. However, it is made clear that quashing of the final report and cognizance taken

will not be a bar for the authorised special officer within the meaning of Sec. 13(1) of the Act to re-investigate the case again and file a charge-

sheet. If any fresh charge-sheet is filed by the special officer the court will proceed with the charge-sheet by taking cognizance of the offence, the

''plea of Autre fois acquit'' will not be available to the accused, since I am not acquitting the accused.

This petition is allowed.