

E. Maneesh Vs. State of Kerala, Represented By The Public Prosecutor and Others

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Court : Kerala

Decided On : Dec-14-2015

Judge : B. Kemal Pasha

Appeal No. : CrI.MC.No. 7331 of 2015

Appellant : E. Maneesh

Respondent : State of Kerala, Represented By The Public Prosecutor and Others

Judgement :

B. Kemal Pasha, J.

1. Heard learned counsel for the petitioner and learned Public Prosecutor.
2. Annexure-A4 order passed by the learned Enquiry Commissioner and Special Judge, Kozhikode, is under challenge. When a complaint was filed by seeking a relief to forward the matter under Section 156(3) Cr.P.C. for investigation, the court below has chosen to reject the complaint through Annexure-A4 order. Offences under the Prevention of Corruption Act are alleged in the private complaint. In such case, apart from forwarding the matter for investigation under Section 156(3) Cr.P.C., the court below cannot take cognizance of the offences by proceeding through Section 200 or 202 Cr.P.C.

3. In the said matter, an investigation is required and sanction under Section 19 of the Prevention of Corruption Act is also required on the final report for taking cognizance of the offences. Even when the court below proceeds through Section 200 Cr.P.C., sanction is required within the meaning of Section 19 of the Prevention of Corruption Act for taking cognizance of the offences, even though sanction is not required to conduct an inquiry. Therefore, even if the court below decides to have an inquiry within the meaning of Section 200 or 202 Cr.P.C., no fruitful purpose would be served.

4. In such a case, even when the only relief sought for in the complaint is to get the complaint forwarded under Section 156(3) Cr.P.C., it cannot be said that the complaint is not maintainable, if it reflects sufficient grounds to bring out the offences under the Prevention of Corruption Act. In cases wherein the contents of the private complaint reveal sufficient grounds to invite an offence, the mere fact that the complainant has sought for the relief of forwarding it to the police under Section 156(3) Cr.P.C., does not make the complaint not maintainable. When the contents reveal offences, courts are competent to take cognizance of the offences involved or to forward the matter under Section 156 (3) Cr.P.C. When the contents do not reveal any offence, and the relief sought for is solely for getting it forwarded to the police under Section 156(3) Cr.P.C., it can be said that such a complaint is not maintainable.

5. In this particular case, it seems that a preliminary enquiry was conducted and it was revealed that there are grounds to believe that the accused had committed the offences under the Prevention of Corruption Act. In such case, the court below ought not to have rejected the complaint merely by highlighting the reason that the relief sought for is one for forwarding the same to the police under Section 156(3) Cr.P.C.

6. Over and above it, it seems that the court below has relied on the decision in *Anil Kumar v. Aiyappa* [2013 (4) KLT 125 (SC)] by taking a view that even for forwarding the complaint for investigation, sanction is required. The court below has not cared to consider the decision of the Constitution Bench in *Nand Ram Agarwala v. H.C. Bhari and others* [AIR 1956 SC 44(1)], where in an identical

situation, it was held that 'sanction was required at the stage of taking cognizance only and not prior to it'. In the decision in Anil Kumar (supra), the aforesaid decision of the Constitution Bench was not considered. When there is a decision squarely applicable on the point by the Constitution Bench, the court below ought to have followed the decision of the Constitution Bench. Matters being so, the impugned order passed by the court below is liable to be set aside. The court below shall follow the observations made above as well as the decision of the Constitution Bench in Nand Ram (supra) and pass appropriate orders in accordance with law. The petitioner shall appear before the court below on 05.01.2016.

In the result, this Crl.M.C. is disposed of as above.

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